Erhard Schüttpelz

Everything Must Go: Looting the Museum as Compensation for Looting the World

Raubkunstforschung als angewandte Wissenschaft

Preliminary Remarks on: Felwine Sarr/Bénédicte Savoy, „The Restitution of African Cultural Heritage. Toward a New Relational Ethics“ (November 2018).

http://restitutionreport2018.com

Marx was right, but we can delve deeper into his famous dictum from „The Eighteenth Brumaire of Louis Bonaparte“. History does not repeat itself by alternating from tragedy to farce. Farce is the covering of tragedy, i.e., its being and its mask. The development of Berlin's Humboldt Forum is a tragedy that hasn't only now taken on the form of farce, but that was prepared by many little tragicomic travesties, and will be accompanied by several more. But even this capital tragicomedy pales in comparison with the art historical Chernobyl Accident of the decade, the „Report“ written by Felwine Sarr and Bénédicte Savoy for Mr. Macron. In the following lines, I try to devote myself to the tragedies involved in this „report“ to make the travesty more recognizable. There are many people in the fields of museum curating, anthropology and post-colonial exhibitions that could write a better commentary than I am able to assemble in the first rush of anger and perplexion. The only reason I have started writing this text is, that I have witnessed the ambivalence of others like myself. After all, is this not a historical landmark (or landslide) report? Are our sympathies not with all those who were robbed, humiliated and disinherited under colonial rule? And indeed, from what I can tell, museum people are behaving cautiously and act like diplomats, after all, they are depending on political decisions too; anthropologists do sympathize with the radicalism and the „payback“ promised after centuries of power abuse, and they think of the possibilities of the dispossessed being compensated for material and immaterial

losses; nobody wants to be called a colonialist; and some older anthropologists have admitted defeat in the face of a new epoch that flies in the face of everything they stood for and the scholarly authority they could take for granted. And I feel like that too, sympathizing with the radicalism and the „payback" offered after centuries and in the presence of power abuse. But that should be no reason to accept a proposal that is full of inconsistencies and injustice, uninformed and actively distorting history.

Please compare Nicolas Thomas' passages in:
https://www.theartnewspaper.com/comment/restitution-report-museums-directors-respond

1. This report is not about looted art, it is about looting museums in the name of historical justice. That is, in the name of a concept of historical justice.
2. The museology in this report is pseudo-museology. The history written in the report is pseudo-history.
3. The legal principles of this report are against traditional principles of law. And they don't try to acknowledge the legal conceptions of source communities either.
4. The report is not about the restitution of property, but about getting rid of inalienable property, and especially about getting rid of the concept of inalienability.
5. Making inalienable property into profane property means making it commercial property: the report creates a new art market (and a potentially violent art market too).
6. If you give up the custody of scientific scholarship for political reasons, the artefacts will be political artefacts, and they will be disinherited many more times.
7. If you give up the heritage of anthropological museums, you are not turning artefacts into art: you are preparing for historical amnesia, and for anthropological amnesia.
8. If you put this report into practice, tragedy will be performed as travesty, and travesties will be parts of tragedies.

This report is not about looted art, it is about looting museums in the name of a concept of historical justice.

Pursuing this principle of historical justice will be a case of „summum ius summa iniuria". Of course, looting the museum after looting the world seems like the perfect equalizer, or the perfect act of balancing. It may even seem to be the perfect gift, or the pure gift. But it is not. Looting the museum after looting the world means just another act of injustice. It will be a case of looting the world too. Imagine this report is not about Africa, it could be about the territories of the Pacific. All the Pacific artefacts have at least a tag saying from which island they are. Just send them all back to their respective islands, five thousand of them. By mail, all these artefacts arrrive and are disseminated and are meant to stay on its specific island of origin, isolated in the strictest sense of the term. What has been won? We would have to find out. But we know what we have lost. Nobody in his whole lifetime will be ever be able to visit 5000 islands to compare the artefacts materially and archeologically. Nobody will have the financial means and the time to pursue this task; and nobody from Polynesia, Melanesia, Micronesia either. There may be traditions regained, but there is a cultural heritage lost, a scientific heritage lost, and even a political heritage lost. And why do you think Africa is different in this respect? Take 500 museums instead of 5.000 islands; or take the frustration that sets in once you try to keep track of where the artefacts are. Imagine the frustration of an African scholar in 20 years time. There are archives, there are catalogues, there are specialists with expertise to talk to, now. Once we disseminate the artefacts, these will be the catalogues to rely on in the future. And only auction catalogues will tell us in the future after „restitution" where they will have been in between. This is not about „corruption", no, I am not writing about that. I am writing about „property" (see below), and especially B. Savoy's concept of „property".

The museology in this report is pseudo-museology. The history written in the report is pseudo-history.

Just try and make sense of the occurence of „anthropology“ in this report. „Anthropology“ is mentioned twice: as a child of colonial violence, and as a hand-maiden of colonial violence in 1903. And then, there are two mottos: one by Michel Leiris accusing anthropology of looting the temples; and one quote about Africa from the „Manifeste culturel panafricain“. Which means, 100 years of anthropology and of anthropolocial scholarship at museums, are reduced to colonial violence as the „original sin“. The „original sin“ characterizes anthropology once and for all. There is no assessment of anthropological museum work, there is no history of anthropological museum work, there is not even an acknowledgment that work was accomplished in anthropological museums. They are ignoring the work that was most crucial for their own enterprise and treat it as non-existent. This is not history, but a philosophy of history; this is no philosophy of history (because it would need more evidence), but the salvation from history: an argument for ahistorical redemption. In the report, 100 years are but one wink of an eye. Nothing has happened after decolonisation, quote: „To speak of restitution in the year 2018 is to thus to simultaneously reopen the old colonial machine as well as the file containing the erased memories of both the Europeans and the Africans…“ The history of restitution seems to be the story of Rip van Winkle.

The language of historical redemption in this report is speaking of „memory“, of „re-activating a concealed memory“. And speaking of „memory“, fitting for ideas of universalism, this is about universal „human experience“, or, interchangeable, „human brilliance“, „humanity’s creativity“, „ a relation that needs to be reinvented“, and many more qualifications. Memory in this report, is historical amnesia. Memory, it seems, will start from scratch. It will be „human experience, brilliance, creativity“, not historical experience, brilliance, creativity, because that would make it part of an entangled history.

But what about the non-erased memories and files in the museums? What about 100 years of work on and against colonialism in anthropology? And what about the files

that documented the old colonial machine? What about acknowledging work being done for the historical memory of mankind? Could the authors please re-quote their second motto along these lines:

> „The conservation of material culture has helped to save the various African peoples from the attempts at erasing the history and soul of African's peoples … and if it (culture) binds humans together, it also impels memory. This is the reason anthropology has gone to such great lengths and taken such care in recovering the world's culture heritage, in defending its personality and tending to the flourishing of new branches of its culture."

The legal principles of this report are against the traditional principles of law. And they don't try to acknowledge the legal conceptions of source communities either.

If everything is loot, there are less reasons to investigate individual guilt, and the trajectories of objects. They are dis-entangled by classification, and they are de-invidiualized too. Tomorrow, once this report becomes practice, nobody will wish to know how many objects were looted. How individuals acted under which circumstances, which ethical choices they had, which trajectories objects followed, all these historical questions are submerged in a haze of collective guilt. Because not only the whole period of colonialism is re-classified as a period of war-crimes in Sarr's and Savoy's report, but each transaction too. Which makes it easy to re-classify everything as loot, even all academic activities up to 1960. But this way of categorizing will re-bound: generalized collective guilt will appear like so many cases of individual fate or half-innocence, or even innocence. The heterogenous histories of colonialism, of resistance and exchange, mutual transformation and inventions remain untold. Thus, the sweeping claim of loot and counter-loot will give way to amnesia, and the feeling of being cheated.

In this report, nobody from the groups of owners of ethnographic artefacts up to 1960 is presumed to be innocent, instead they have to prove they were innocent, or

somebody has to prove that for them. This is the logic not of a fair trial, but of an inquisition, a tribunal, or a poison ordeal. The rightful owner may not be able to prove anything, but then she or he is suspect or supposed to be guilty by association. The future owner may not be able to prove anything either, but then he or she just has to prove he is acting in the name of a post-colonial state's territorial sovereignty that includes persons on whose behalf he is claiming restitution, and she or he is capable of exercizing their rights.

The report is not about the restitution of property, but about getting rid of inalienable property, and especially about getting rid of the concept of inalienability.

On the non-acknowledgment of different legal conceptions, cf. Larissa Förster's seminal article, Frankfurter Allgemeine Zeitung, 24.11.2018.

All that is left is a Roman conception of property and possession. It is this distinction that Bénédicte Savoy follows and that she defends against any notion of non-European law, and against European notions of „inalienability" that could and can be quite compatible with Non-European legal concepts. Cf. https://voelkerrechtsblog.org/eigentum-und-besitz/. In the consequences of this Roman law conception, things will be restituted as property. Which means, they can circulate in market-places. Making inalienable property into profane property means making it commercial property: the report creates a new art market (and a potentially violent art market too).

For the rejection of Non-European law, read the following justification:

Auf einer im vergangenen Juni im Collège de France in Paris abgehaltenen Tagung zum „Selbstbestimmungsrecht von Objekten ?" plädierte der Ethnologe Benoît de L'Estoile überzeugend dafür, die aktuelle Restitutionsdebatte von ihrem engen, binären römisch-europäischen Rechtskorsett zu befreien (droit des personnes et droit des biens) und sie mit außereuropäischen Rechts- und Besitzvorstellungen zu

konfrontieren. Es sei an der Zeit, alternative Konzepte von Besitz und Eigentum zu explorieren, um zukunftsweisende, innovative Rechtsmodelle für den Kulturbesitz im 21. Jahrhunderts zu entwerfen. Eine solche Exploration ist sicherlich angebracht, wenn nicht schon überfällig. Sie kann meines Erachtens aber auch in der eigenen Rechtstradition erfolgen und in dieser, im Sinne einer prospektiven Historiographie, nach verloren gegangenen Optionen oder produktiven Konstellationen suchen.

At a conference on the "Right to self-determination of objects?" held last June at the Collège de France in Paris the anthropologist Benoît de L'Estoile convincingly argued for liberating the current restitution debate from the narrow, binary Roman-European legal straightjacket (droit des personnes et droit des biens) and confronting it with non-European ideas of law and property. The time had come to explore alternative concepts of property and ownership in order to develop forward-looking, innovative legal models for cultural heritage in the 21st century. Such an exploration certainly seems appropriate, if not overdue. In my opinion, however, it may also take place within our own legal tradition searching for lost options or productive constellations within that tradition, in the sense of a prospective historiography (Übersetzt von Robin Cackett).

https://voelkerrechtsblog.org/eigentum-und-besitz/

Savoy writes: yes, we should listen to foreign legal traditions, but we can do that in our own tradition. We only have to radicalize what we find in our tradition. And then she refers to the basic principle of Roman Law that distinguishes Roman Law from all other legal traditions and follows this reduction to the bitter end. It is from this rejection that B. Savoy develops her ideas of the healing power of „property" and the „restitution" of property. Because every act of acquisition in the colonial period (up to 1960) can be re-classified as „theft", it never was legitimate property, and it always already was the „property" that is restored – or invented on the spot – for the future owner, and for future trade. Defining the thief defines „property", and defining all European possessions of Sub-Saharan artifacts as „loot" defines future property.

„Property“ and „possession“ are metaphysically distinct; and „inalienability“ never occurs as a relevant category, neither in the report nor in Savoy’s commentary on „Eigentum und Besitz“. B. Savoy quotes a Karl Pfeifer addressing Savigny in 1840 polemically:

> „Kann man denn auch fremdes Eigentum an einer Sache ausüben?! Wohl kann man das Eigentum an einer fremden Sache ausüben, und das tut z.B. der Dieb; überhaupt jeder, welcher die Sache als seine eigene behandelt, und doch nicht Eigentümer derselben ist. Aber was fremdes, *resp.* eigenes Eigentum an einer Sache ausüben bedeuten soll, das kann ich mir nicht vorstellen. Es ließe sich unter dem Willen, fremdes Eigentum auszuüben, etwa noch der Wille denken, das Eigentum einer Sache, von welcher man weiß, dass sie einem Andern gehört, auszuüben, also ein Wille, wie ihn derjenige hat, welcher eine Sache stiehlt, raubt, unterschlägt. Aber in dem Sinne versteht es Savigny nicht, denn der Dieb gerade soll den Willen haben, eigenes Eigentum an der Sache auszuüben!“ (Pfeifer, 1840, *Was ist und gilt im römischen Rechte der Besitz? Eine Abhandlung gerichtet gegen die v. Savigny’sche Doktrin über das Recht des Besitzes*)
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> “Can one also exercise foreign ownership of a thing? One may well exercise ownership of a foreign thing, as is the case, for example, with the thief; or anyone else who treats the thing as his own and yet is not the owner of it. But I can’t imagine what it might mean to exercise foreign or even one’s own ownership of a thing. Considering the will to exercise foreign ownership of something, one might think, for example, of the will to exercise ownership of a thing of which one knows that it belongs to somebody else, i.e. a will such as that of somebody who steals, robs, misappropriates. But this is not how Savigny understands it, because the thief is supposed to have the will to exercise his own ownership of the thing!“ (Pfeifer, 1840, *Was ist und gilt im römischen Rechte der Besitz? Eine Abhandlung gerichtet gegen die v.*

Savigny'sche Doktrin über das Recht des Besitzes). (Übersetzt von Robin Cackett)

The Sarr/Savoy-report is the manifestation of what Macpherson called „The Political Theory of Possessive Individualism", in the name of collectives indeed, but first of all in the name of individuals that are capable of speaking in the name of collectives. And „property" in this report means alieanable property handled by individuals, on behalf of collectives, yes, but on behalf of their self-interest, and on behalf of the self-interest of their individual and contingent constituencies. Interestingly, people from the art market have already spoken out against the consequences of the Sarr/Savoy report. It seems as if abolishing the „inalienability" of Non-European Art in public collections may destroy the value of commercially traded Non-European Art too. Because Art in public collections represents the guarantee that your Collection may be redeemed by public collections, by donating a work of art, by arranging a museum for a collection, by building a public museum yourself or sponsoring one that houses your collection. Once this guarantee is gone, with restitution hanging like a sword above each artefact, commercial collections have to be carefully hidden, or they suffer from the same consequences. Nothing guarantees the price of an artefact from Non-European sources before 1960, because their twins may be restituted, and the artefact may be confiscated to prove its non-innocence.

https://www.sueddeutsche.de/kultur/raubkunst-debatte-richtig-falsch-uebereilt-nichtig-und-sehr-mutig-1.4226044

But even if the worries of the art market for Non-European Art are unfounded, the long-term consequences of the report, once they are practised, will follow the Roman Law distinction that B. Savoy cherishes. The artefacts are liberated to enter Non-European museums; an unknown quantity will be re-circulated; but the market may break down, or be substituted by a „Black Market" of unknown future proportions.

If you give up the custody of scientific scholarship for political reasons, the artefacts will be political artefacts, and they will be disinherited many more times.

AND THIS IS THE MOST IMPORTANT POINT. SKIP THE REST, BUT READ AND DIGEST:

Minorities and the source communities of ethnographic artefacts will not be protected under the new regime, but will suffer from the consequences. They will be dependent on the representative institutions of post-colonial states; instead of post-colonial museums. The self-interest of post-colonial states will interfere with the precarious representation of small communities on the fringes of the world-system. And most of all these small communities will not own the artefacts – this will be a matter of the diplomacy of states and their institutions. There is no way this will be a better future for the rights of source communities. Especially, „restitution" will be trapped in politics. Of course, there will be political enthusiasm in African states for „restitution". And that is where the trouble starts. Once „restitution" is a matter of political claims, objects may be claimed by several parties at once or from each generation to the next.

The English version of the report by Sarr and Savoy, Fn. 35, states explicitly this is about nation-building in Sub-Saharan Africa: „However, the history of restitution has shown that once works are returned, the Nation-States are quick to welcome them and prepare for the adequate political infrastructures necessary."

What about those minorities and small groups that live in conflict with their nation-states, and what about acknowledging that many, if not most groups that are represented in ethnographic museums have lived or may live in conflict with their states? All those unknown negotiations and restitutions between non-state people and ethnographical museums and collections in the past, yes, though it is hard to understand for believers in the state and its institutions, they will be made impossible by the future regime. Did it ever occur to Sarr and Savoy that the post-

colonial state may be the inheritor of colonial violence and injustice, and that most of the small populations represented in anthropological museums and collections lived and live on the fringes of empires and states?

History repeats itself, as footnote, as memory and as threat:

„However, the history of restitution has shown that once works are returned, the Nation-States are quick to welcome them and prepare for the adequate political infrastructures necessary.“

If you give up the heritage of anthropological museums, you are not turning artefacts into art: you are preparing for historical amnesia, and for anthropological amnesia.

You are preparing for ethnocentrism of the worst kind: standardizing behaviour, norms and legal rights, instead of acknowledging the heterogeneity of behaviour, norms and legal rights. Disinherit anthropology and prepare for a world of administrative norms. Sarr and Savoy propose to make restitution simple: filling out forms and making lists, if you are the rightful owner. No personal negotiations and shared knowledge needed, only negotiations about filling out forms. Let the lawyers decide, instead of discussions between inheritors of traditions and rights and anthropological curators.

Governing by lists, by filling out forms, all this will not amount to constituting justice, and not even to constituting a sense of justice. It will boil down to repeating the recognisable, to repeating what can be captured by listing. The individual or ‚artisanal‘ negotiations between anthropologists and source communities will give way to legal ‚mass production‘. (Cf. Tim Murphy, „Legal fabrications and the case of ‚cultural property‘“, in: Alain Pottage/Martha Mundy (eds.), Law, Anthropology, and the Constitution of the Social.)

http://kafedr.at.ua/_bd/6/691.pdf

If you put this report into practice, tragedy will be performed as travesty, and travesties will be parts of tragedies.

> „Purify us from our contamination with colonial guilt. And lead us not into temptation to regain what was ours in between, with the help of our immense financial means. And let our museums not be part of the new property regime. And please let them acknowledge we have given artefacts back to their rightful owners as long as they can claim to be rightful owners. And silence the voices of those who claim to have been cheated of their rights and even of their access to what their ancestors fabricated and traded. And let us not be responsible for the misdeeds of property unleashed by our irresponsibility. If the fate of our responsibility is to encounter irresponsibilities ever after restitution, spare us this fate. And let amnesia reign.“

Erhard Schüttpelz *is Professor for Media Theory at the University of Siegen and speaker of the Collaborative Research Center “Media of Cooperation”. He completed his habilitation in 2003 at the University of Constance with a thesis on “Modernism in the Mirror of the Primitive. Ethnology and World Literature (1870-1960)” and his doctorate in 1994 with a linguistic theoretical dissertation “Figures of Speech. The Theory of the Rhetorical Figure.” As for some others from his generation, German media studies proved to be the best place to further plumb the boundaries of the social sciences, cultural studies, and engineering sciences and, through research projects, to transform some of these boundaries into common threshold spaces, for example with research on “Trance Media and the New Media” and the German Research Association Graduate College “Locating Media” in Siegen, as well as through long-lasting discussion contexts between media studies, anthropology, philology, the history of science, and philosophy.*