

1 The Patrimonial Field

Debates and Debacles

In November 2018, Felwine Sarr and Benedicte Savoy released a report commissioned by French President Emmanuel Macron, entitled *The Restitution of African Cultural Heritage: Toward a New Relational Ethics* (2018). In what has become a very influential document, Sarr and Savoy argue that the acquisition of cultural artifacts in Africa and their transfer to European metropolises was part of an orchestrated colonial enterprise resulting in cultural voids, the magnitude of which is poorly understood today (Sarr and Savoy, 2018, p. 15). Given this legacy, the report advocates seeing sub-Saharan Africa as a special case based on the dual premise that 95 percent of cultural artifacts from Africa are outside its borders and 60 percent of the continent's population is less than twenty years old. The implication, they argue, is memory loss, alienation, and cultural amnesia in contemporary Africa, specifically amongst the younger generation. The authors contend that this highlights the need for redistributive justice, historical reparations, memory work, and a new form of "relational ethics," where restitution has more relevance than ever before (Sarr and Savoy, 2018, p. 39).

The report is commissioned by the highest office in France, a nation that holds rich, extensive, and incomparable collections from sub-Saharan Africa. It also stands out in so far it is not a marginal voice, but draws on three high-level workshops with museum professionals, lawyers, and cultural bureaucrats, and on extensive consultation *within* the museum sector, the antiquities and art trade, and political spheres. The press has reported extensively on it (e.g. Jackson, 2018). The report defines concretely the chronological, juridical, museological, and financial frameworks for a major restitution program to Africa.

This new ambition of the French Presidency has sparked discussion and controversy beyond sub-Saharan Africa, but little concrete action as yet. As such, the report constitutes the latest contribution to five decades of the "who owns culture" debate, as the issue has repeatedly been pitched, since UNESCO adopted the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. We would argue that Macron's current initiative comes right out of and builds on the last two decades of this debate.

The current tone of this debate is framed by *The Declaration on the Importance and Value of Universal Museums* (Declaration, 2004) signed in 2003 by nineteen museums, all in Europe and North America. This

Declaration famously argued against return/restitution on the grounds that “universal museums” are custodians of encyclopedic collections, making them unique as repositories for all peoples, united under a single roof and accessible to the public at large. In this sense, the universal museum is like a central bank holding treasures in trust for humanity, providing universal access and knowledge for everyone endowed with curiosity. Going beyond the case-by-case approach and technicalities of legal frameworks and collection management policies, the *Declaration* emerged as a major counter-discourse to restitution claims.

Perhaps the most eloquent articulation of the *Declaration* was staged in May 2006 at a public symposium titled “Museums and the Collecting of Antiquities – Past, Present, and Future” at the New York Public Library. This significant event gathered the key signatories to the *Declaration* and their protagonists: The Director of the British Museum, Neil MacGregor; the Director of the Art Institute in Chicago, James Cuno; the Director of the Metropolitan Museum of Art, Philippe de Montebello; backed by Princeton



Figure 1 The New York Public Library (NYPL) in New York City, where the public symposium entitled “Museums and the Collecting of Antiquities – Past, Present and Future” took place on May 4, 2006. The event was organized and sponsored by the Association of Art Museum Directors (AAMD). The chosen venue resonated with the virtues and values of what the symposium called “the Encyclopedic or Cosmopolitan Museum as a legacy of the Enlightenment.”

Photograph by W & J (CC BY-SA 2.0).

philosopher Kwame Appiah and Stanford law Professor John Henry Merryman, united in New York City to give new currency to the term “cosmopolitanism” and breathe new life into the values of the Enlightenment.

The controversial Marion True case formed the subtext for this event, in which the curator of antiquities for the J. Paul Getty Museum in Los Angeles – one of the wealthiest museums in the world with one of the most respected curators – was indicted by the Italian government for taking part in the illicit trafficking of artifacts in 2005, ruining True’s career and damaging the reputation of her institution. Not wanting to follow the Getty Museum down this road of disrepute, the Metropolitan Museum of Art announced in February 2006 that it would return a 2,500-year-old Greek vase known as the “Euphronios Krater” to Villa Giulia at the outskirts of Rome, within a larger partnership agreement. This announcement triggered a heated debate in 2006 about why New York City should lose an ancient Greek vase to a “sleepy” provincial museum in Italy. Three universal museum directors, backed by a philosopher and a lawyer, took a stand at the New York Public Library.

James Cuno defined the virtues of the kind of museums gathered at the New York Public Library:

Encyclopedic museums, like the British Museum and the Metropolitan Museum of Art, with collections representative of the world’s diverse artistic production, are a force for understanding, tolerance, and the dissipation of ignorance, superstition and prejudice about the world. They are a legacy of the Enlightenment and are dedicated to the principle that access to the full diversity of human artistic industry promotes the polymeric ideal of discovering and understanding the whole of human knowledge and improve and advance the condition of our species in the world we inhabit. (May 4, 2006; recording on file with the authors)

Cuno maintained that the emergence of cultural property laws and UNESCO conventions in the second half of the twentieth century was an “invention of nationalism,” which “discouraged the building of encyclopedic collections. This comes at a time when the world is increasingly divided along ideological, political, and cultural lines, and thus challenges the very principles on which the Encyclopedic Museum as an enlightenment museum was founded” (May 4, 2006; recording on file with the authors).

Princeton philosopher, Kwame Anthony Appiah, picked up where Cuno left off and juxtaposed cosmopolitanism and nationalism, which “stood side by side in a close relationship for a long time. What has happened is that the balance between nationalism and cosmopolitanism has gone completely to the wrong side,” Appiah deplored, and paused before adding: “the right side being the

centre.” “Now,” he denounced, “we have a system which looks like its point is to stop the movement of culture across national borders”:

It looks like the UNESCO regulations seem to have behind them the thought that every object is the expression of some national *Geist* – this is a Herderian idea – and that this Geist should live at home. But that’s to forget the cosmopolitan side, which says that every object is indeed an expression of a *Geist*, but human beings need to share the products of their communities across borders. We need to understand each other’s cultures, in part because that is the way which we can understand our identity as human beings. (May 4, 2006; recording on file with the authors)

From this creative tension between nationalism and cosmopolitanism, Appiah developed the argument that UNESCO regulations are antithetical to the cosmopolitan ideal, suggesting that if the proliferation of nationalist regulations continued unabated then one thing was certain: “There will be no more encyclopedic museums”:

In particular, there will be no encyclopedic museums in Africa. That would be a tragedy, in my opinion. There was once an encyclopedic museum in Kumasi, where I grew up. It was destroyed by the British and the objects were looted. I am not an enthusiast for looting, but if we wanted to try to do again what the Ashanti King did, one of the main obstacles to our doing so would be a bunch of UNESCO regulations. This is the irony, since the King of Ashanti who started that museum did so because he was inspired by the story of the British Museum. (May 4, 2006; recording on file with the authors)

For the arguments that art knows no national borders; that art should travel without regulation; and that the encyclopedic project was not imperialism with a white face, but an idea that once caught on in Kumasi, Appiah received long and standing applause in the New York Public Library.

Neil MacGregor picked up Cuno’s lead and used the French Enlightenment project to define the kind of context that his institution could provide for objects:

In the introduction to the seventh volume of the *Encyclopédie* in the mid-1760s, Diderot talks about the endeavor to gather universal knowledge, so that we can bring our fellow men to love each other, tolerate each other and to recognize the superiority of universal morality over the particular one. That’s what the context of the universal museum was meant to do. May 4, 2006; recording on file with the authors)

Having evoked this kind of context – one that differed radically from the particular historical-cultural context prevalent in Sarr and Savoy’s 2018 report – MacGregor showed a number of concrete objects exhibited in the British

Museum, each one of which had scattered prejudices and stereotypes about the world in the sense of Diderot's notion of universal knowledge: from the Oldowai Gorge axes excavated in Tanzania by physical anthropologist Richard Leakey, discovered in the late 1920s, which put the beginnings of civilization firmly in Africa, thus subverting hierarchies at the time, to a stool acquired in 2002 built by weapons, showing that Mozambique could not have had a civil war without the rest of the world but also that Africa had found a way to decommission weapons, which Belfast had not, reversing usual assumptions about who has to learn from whom. According to MacGregor, the unique collections of universal museums enabled this universal knowledge production, and that justified removing objects (be that the Benin Bronzes or the fossil record of humanity) from their original contexts to encyclopedic museums. And the objects remaining there.

Less than a year after this powerful articulation of the neo-Enlightenment position by its most eloquent protagonists in New York City, UNESCO headquarters in Paris responded with a public debate entitled *Universality and Cultural Memory: New Challenges for Museums*. This latter debate serves as subtext to the Sarr and Savoy 2018 report, as these attempts to realign universality and cultural memory reverberate throughout their report. Prof.



Figure 2 UNESCO Headquarters at Place Fontenoy, Paris. Photograph by Matthias Ripp (CC BY-SA).

Krzysztof Pomian, an art historian, opened the debate and coined the key question, “To whom does a heritage belong? To humankind or to a given people?” Pomian argued that works of art are produced by individuals, not by peoples and that “works of art embody the dignity and become visible emblems of the identity of a particular group, but other groups can be touched or moved by such works of art as well” (February 5, 2007; recording on file with the authors). This conception of material artifacts as collectively vested with identities, should make Pomian positive toward restitution, but he had one overriding reservation: “Top priority should be given to conservation. There is no reason to return an object if it is in danger of damage” (February 5, 2007; recording on file with the authors).

Another key player in the debate who directly challenged the notion of “cosmopolitanism” set out in New York was the Chair of ICOM’s Ethics Committee, Bernice Murphy: “Last year in New York, Philippe de Montebello defined his idea of the universal museum as ‘the cultural family tree where all people can find their roots’” (February 5, 2007; recording on file with the authors). Murphy took issue with this “high-minded idea of the universal museum” by venturing to Melbourne arguing that Montebello’s Museum in Manhattan:

showed only the memory patterns of one culture at work – the collecting culture. The cultural family tree in New York, demonstrates the loss and erasure of the memory structures of the cultures collected. Therefore, for me, Philippe de Montebello’s image of the universal museum as the cultural family tree where all people can find their roots cannot possibly express what is happening. (February 5, 2007; recording on file with the authors)

According to Murphy, what was happening to the objects collected among Aborigines was this:

All of these spears and shields and other things that were shown in the New York exhibition have come from different peoples of different kinship, different traditions, different languages, and the original producers would have been horrified to find their cultural items mixed up with foreign items in this way, destroying all meanings that are important to the producing cultures, or what is here being called the “source cultures.” The producing cultures – many of them continuing and flourishing today – give meaning to any particular item only through the total ensemble of living relationships and practices that emanate from one particular people, language and tradition. (February 5, 2007; recording on file with the authors)

Going beyond the politics of museum display, Murphy took issue with the very notion of “universality.” She argued that the challenge to encyclopedic museums did not come from afar in the shape of restitution claims; rather, it came from within:

Encyclopedic museums now face intense pressures as we know but, I want to emphasize, that pressure comes not from somewhere else far away. The pressures are coming from within the history of the discourse of universality itself, which has given birth to a legacy of ideas such as the dignity of humankind, fundamental human rights, ideas of distributive justice, liberty for all and the right of diverse societies to their own cultural practices and self-determination. All these tensions come from within the heritage of the universal discourse. (February 5, 2007; recording on file with the authors)

Murphy argued, in other words, that the Enlightenment the “cosmopolitans” claimed as their own was in fact an emancipatory source of universal justice and equal rights, which the “cosmopolitans” conveniently ignored, confining themselves to a form of conservatism that foreclosed other ontologies; their universalism, she suggested, verged on a provincial orthodoxy.

The same decade as the *Declaration on the Value of Universal Museums* was crafted, we saw the inauguration of two prestigious institutions built as antipodes to the *Declaration*. First, in September 2004, the *National Museum*



Figure 3 The National Museum of the American Indian, located on the National Mall in Washington, DC, with a clear view of Capitol Hill. The NMAI opened on September 21, 2004, to the largest assembly of Indigenous Peoples in Washington, DC, to this time. Its architectural features draw on a multitude of Native American design cosmologies. Photograph by O Palsson (CC BY 2.0).



Figure 4 Entry to the new Acropolis Museum in Athens, where the conference “Return of Cultural Objects to their Countries of Origin” took place in March 2008, just before the official inauguration of the Museum itself. This conference was organized and sponsored by the Greek Ministry of Culture. Photograph by Martin Skrydstrup.

of the American Indian opened in Washington, DC, recognizing “America’s First Citizens” on the National Mall and providing a new home for artifacts and ancestral remains repatriated with recourse to NAGPRA (Native American Graves Protection and Repatriation Act, 1990). Second, in March 2008, the *New Acropolis Museum* opened in Athens, an architectural counter-argument to the *Declaration*, with the proclaimed purpose to bring back the Parthenon sculptures, held by the British Museum, to the “blue skies of Attica.”

We hope we have brought into view the tug-of-war between forces of pull and push, or centripetal and centrifugal gravity, which are at work in the discursive fields and institutional spaces of what we call the global patrimonial field. Common to all these debates, right up to French President Macron’s current initiative and the Sarr and Savoy report, is that they hardly distinguish between cultural heritage and cultural property. We argue that the debates and debacles we have rendered here can be illuminated and even rethought by careful conceptual labor, departing from a historical distinction between the two concepts and linking them to distinct governmentalities.

Sovereignty and Reformation: Cultural Property vs. Cultural Heritage

A persisting problem for the critical study of cultural property is how to conceptualize differences in the ways in which national and indigenous claims are shaped and legitimated. The coupling of identity and indigeneity with ownership and rights mobilized in claims have been read analytically as identity politics (Handler, 1988), nation building (Li, 2001), resistance (Miller, 1995), postcolonial mimesis (Bhabha, 1994), alternative modernities (Coombe, 2003), forms of ethno-commodification (Comaroff and Comaroff, 2009), and as a “provincializing move that destabilizes our certainty about what is local and what is global” (Geismar, 2013). It seems to us that such readings hinge on how we configure “case studies” vis-à-vis larger processes of state formations.

In what follows, we cut a different pathway through these conundrums. We present a sustained argument, which reframes the debate about how to read claims. Our argument is based on contrasts between cultural property and cultural heritage and between distinct technologies of governmentality, which we argue are associated with these terms. Thus, specific technologies of governmentality produce distinct sets of claims. The stepping stones in our argument are the following: first, we set out the nominal distinctions between property and heritage, then we show how *property* is associated with technologies of *sovereignty*, and *heritage* with technologies of *reformation*, and finally we discuss how these technologies of governmentality can coexist in single-case trajectories.

In an article published in the first volume of the *International Journal of Cultural Property* in 1992, Lyndel V. Prott and Patrick J. O. Keefe contrast the terms “cultural property” and “cultural heritage.” Whereas cultural property denotes ownership and exclusivity, they contend, cultural heritage denotes a relationship of responsibility, custodianship, and sharing. The thrust of their argument is that the time had come for the latter concept to succeed and supplant the former: “Is it time for law and lawyers to recognize that the term ‘cultural heritage’ is rightfully superseding that of ‘cultural property’? To our minds the answer can only be ‘Yes’” (Prott and O’Keefe, 1992). In conclusion, they add:

The concept of the “cultural heritage” is one well recognized and universally used by historians, archaeologists, anthropologists and other researchers of human life both past and present. They virtually never use the term “property” unless in a legal context. In the law which has embodied the notion of “property” it is now coming to be recognized that this is inadequate and inappropriate for the range of matters covered by the concept of the “cultural heritage.” (p. 319)

Eight years later, Janet Blake, legal scholar and long-term UNESCO consultant, suggests that although the “relationship between ‘cultural property’ and ‘cultural heritage’ is unclear, appearing interchangeable in some cases, . . . ‘cultural heritage’ has now become the term of art in international law since it is capable of encompassing [a] much broader range of possible elements” (Blake, 2000, p. 67). In a book on *International Cultural Heritage Law* from 2015, Blake reaffirms that “cultural property” is “far too limited a term” and therefore now “much less widely used and the alternative cultural heritage is generally favoured” (Blake, 2015, p. 8).

On the other hand, Manlio Frigo, another legal scholar, observes that “the concepts of cultural heritage and cultural property practically never appear simultaneously as complementary notions in the same legal text” (Frigo, 2004, p. 376), which may be taken to indicate that in fact they have distinct functions and relate to legal regimes that are at least partly separate. Frigo suggests that this relationship is further complicated by different national terminologies (p. 370), a claim which legal anthropologist Rosemary Coombe dismisses, along with any attempts to distinguish between the two concepts:

Such interpretive difficulties now seem provincial. In any case, these promise only to proliferate as these categories expand, their distinction implodes, and their subject matter and fields of reference proliferate. (Coombe, 2009, p. 394)

We take issue with Coombe’s position as well as with the claims by Prott and O’Keefe and by Blake that the concept of heritage has superseded or ought to take the place of cultural property. As we understand them, these concepts operate within a global patrimonial field with a proliferating variety of actors: states, intergovernmental organizations, transnational NGOs, indigenous peoples, local communities, museums, archives, institutions, universities, scholars, and experts. The patrimonial field is governed by national and international regimes, some of which gravitate toward a rights-based approach to protection and dispute management under the sign of cultural property, while others gravitate toward an ethical approach to conservation and safeguarding under the sign of cultural heritage. Rights-based regimes of cultural property come with their own set of national laws and international conventions, committees, discourses, and forms of expertise and while there are certainly overlaps, these can be distinguished from corresponding institutions of the ethical regimes of cultural heritage operating in the same global patrimonial field. We argue that the two correspond to distinct governmental rationalities and modes of subject formation: that cultural property is a technology of sovereignty and cultural heritage a technology of reformation.