
7. Issues in the international market for cultural heritage

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Transactions of artworks and heritage are as old as markets themselves. Flintstones extracted in Baltic, Polish or Hungarian¹ quarries have been discovered in French prehistoric sites and caves from the Magdalenian era (18000 to 10000 BC). Mediterranean shells have been found in Russia, amber from the North and the Baltic Sea was discovered in Delphi and in Tutankhamun's tomb. And so were other hand-made artifacts, such as jewels and small sculptures.

International exchanges of artifacts are, in general, not questioned, but there are some cases where they do seem unacceptable, and are not accepted. For an exchange to be 'perfect', it should be agreeable to both parties. The Kunsthistorisches Museum in Vienna has some of the best paintings by Brueghel that were legally acquired by Archduke Leopold, brother of the Emperor of Austria Ferdinand II. One can be sorry that they do not hang in Brussels or Antwerp, but nobody ever raised an eyebrow. It took time for paintings that were 'bought' by Nazi dignitaries in the 1940s to be returned to the heirs of their original owners, but one feels this to be reasonable. Some objects that deal with the 'invisible' or the ritual and are carefully preserved and transmitted from one generation to the next are now also slowly but surely given back to the tribes² that were, rightly³ or wrongly, stripped. The consequences of colonization or the actions of not always fully trustworthy archaeologists are more difficult to absolve and will probably never fully be.

The question is, does it really matter in today's world, and our chapter will, accordingly be organized as follows. Our first section is devoted to the essential question of who owns art. Next, we consider the case of illegal excavations and trade, and suggest that de-accessioning from the reserves kept by most museums, and the alienation of art that this generates, could help curb looting, and move 'hidden' or almost invisible art to those who value it more. We then turn to international and touring exhibitions, and to museums 'going global'. We also briefly deal with some problems that may restrict movements instead of fostering them.⁴

WHO OWNS ART?

The case of the Elgin marbles at the British Museum, or Nefertiti at the Neues Museum in Berlin are just two highly publicized examples of what is a much wider controversy (Cuno, 2008, 2009),⁵ and the response from major museums, which hinges on ‘the importance and value of universal museums’ (ICOM, 2004), is far from convincing all parties.⁶ Though worshipping of cultural heritage is a global phenomenon, everyone wants it to remain in his or her country, and not be exported or on loan.

To start the discussion, it may be useful to compare translations of literary texts and movements of other artworks, such as the Elgin marbles or Nefertiti. Both consist in transferring cultural objects across locations. Therefore, the first question that comes to mind is why does everyone agree to transfer texts from one language to another, so that a work written in say China can be read in Denmark, while some – if not many – have objections in moving an object from one place (country) to another. Why not think in terms of what Susan Sonntag said in her acceptance speech when she was awarded the Friedenspreis des Deutschen Buchhandels in 2003 in Frankfurt.⁷

What saved me as a schoolchild in Arizona, waiting to grow up, waiting to escape into larger reality, was reading books, books in translation as well as those written in English. To have access to literature, world literature, was to escape the prison of national vanity, of philistinism, of compulsory provincialism, of inane schooling, of imperfect destinies and bad luck. Literature was the passport to enter a larger life; that is, the zone of freedom.

Why do we accept, and why can we even be delighted, that James Joyce’s *Ulysses* became known worldwide and celebrated only after the work was translated into French in 1929, while it was completely ostracized in Joyce’s home country, and, more generally, in the English-speaking world?⁸ To make the story more complete, it is fair to recall that Joyce was living in France at the time, was supported by Sylvia Beach who owned a bookshop (Shakespeare and Company) and published *Ulysses* in 1922. The novel was the object of a paper in the then famous *La Nouvelle Revue Française* by Valéry Larbaud who helped to translate it into French. Given the prestige of French literature, being translated into French was, at the time, considered a consecration. And from there, Joyce’s masterwork was deemed acceptable and praised in the rest of the world. Translations may therefore, under certain circumstances, raise attention more than the original work.⁹

Would the Greek, the Egyptian, or even the Italian cultures be as well known as they are today (1) if the Elgin marbles had not been detached

from the Parthenon and brought to London, even if it is not fully clear that Lord Elgin transacted in the best terms, and unfortunately also disfigured the building? (2) or if Nefertiti's bust, seen every year by 500 000 visitors in Berlin, had not been brought there in 1913 by Ludwig Borchardt? (Isn't it paradoxical to reclaim Nefertiti and, simultaneously, send Tutankhamun on trips all over the world?); (3) or if François I, King of France, had not invited Leonardo, accompanied by the Mona Lisa, to come to work at Clos Lucé, near the King's castle of Amboise.

What sculptor Antonio Canova said when he saw the marbles, is similar in tone to Susan Sontag's evocation of translations.¹⁰

Oh, that I had but to begin again, to unlearn all that I had learned. I now at least see what ought to form the real school of sculpture. I am persuaded that all artists and amateurs must gratefully acknowledge their high obligation to Your Lordship for having brought these memorable and stupendous sculptures into our neighborhood.

The statement by Neil McGregor, director of the British Museum, whether correct or not, is also worth mentioning: 'The way Europeans view the [African] continent was considerably influenced by [the Edo bronzes affair] during the whole 20th century. A historical paradox: Once in London, the bronzes participated to undermining the concept of Europe's superiority, which, in reality, allowed the looting'.¹¹

This should, however, not be taken as an excuse for stealing or dismembering a monument. Both Greece and Egypt try to recover their works for different reasons, but there is no Italian claim for the Leonardo, though in 1911, an Italian stole the painting and wanted to restitute it (in fact, to sell it) to his country. If anything, it shows that it may be less contentious to import (or steal) an artist, Leonardo, than a work of art.

Why is it that we can agree to use the word 'translation' for books and not for objects? Why can't we say that the Greek marbles have been 'translated' from Greek to English, but that, as Cavafy or Homer, they still belong to the Greek heritage? Nefertiti, like Naguib Mahfouz, has been translated from Egyptian or Arabic to German, but belongs to the Egyptian heritage. To keep the *simile* going, since we pay for translations, it would be natural for England to pay for the damages that Lord Elgin caused when he had the marbles cut out from the Parthenon, and for Germany to compensate Egypt for Borchardt's possible larceny (*TAN*, April 2009: 18). Quatrème de Quincy (1796) was opposed to the plundering operated for the constitution of the Louvre. He thought that artworks should not be removed from their context,¹² since their nature changes: 'a tiger in a museum is a tiger in a museum, and not a tiger' (Museologist Kenneth Hudson, quoted by van Mensch, 2004),

and a tiger from a zoo will not be at ease if brought back to the jungle. The Elgin marbles may now be considered as much British as they were Greek.

A large part of the debate on restitutions is almost 'religious'. The reasons that press Greece or even Egypt to call for restituting artworks is not really rational, but touches upon what Riegl (1903) called 'the modern cult of monuments'. This cult, together with its notion of ritual or sacramental, recalls the role of relics during the Middle Ages: no bishop would have agreed to replace a genuine bone of Saint John with a plaster cast, unless he did not mind receiving some baksheesh in return.¹³

In a provocative paper published in TAN (December 2008: 30), Sir Norman Rosenthal, the former exhibitions secretary of the Royal Academy of Arts in London suggests that 'the time has come for a statute of limitations' on art looted by the Nazis, and reclaimed by

people distanced by two or more generations from their original owners . . . History is history, and you can't turn the clock back, or make things good again through art . . . If valuable objects have ended up in the public sphere, even on account of the terrible facts of history, then it is the way it is.

He also suggests that

the Metropolitan Museum was forced to send the Metropolitan Euphronios vase back to Italy [in 2008]. This begged the question does Italy really need another vase by this artist, when there are others? Italy has so many great objects of this kind that one piece, however outstanding, makes little difference. To the best of my knowledge, this vase is not even on public view at the moment. At the Metropolitan, however, it could quite easily have inspired young people to get involved in, or spend their lives with, classical culture,

and draws the following strong conclusion '[t]here is much market-driven hypocrisy buried with the subject of restitution. Each person should invent him or herself creatively in the present, and not on the back of the lost wealth of ancestors'.

If this is true for art looted 70 years ago, it could also hold true for the Elgin marbles and Nefertiti. We now discuss copies, digitization, loans, sharing and export restrictions as alternative solutions to restitutions.

Copies as a Form of Translation

Why should all the objects be preserved if they can also be well documented by trusty copies? The idea of copies is far from being new. Martens (2005) suggests that while Italian art had its theorists (Vasari, of course, during the sixteenth century, but also, Ghiberti, Alberti and Filarete,

during the fifteenth century), the Flemish used copies and models of sculptures to transmit their knowledge and discoveries.

In the late nineteenth century, a *Musée des Copies*, also called *Musée Européen*, opened in Paris. A document introduced in the French Parliament clearly states the reasons for this. 'Nobody thinks that only originals should be exhibited. If this were the case, there would exist only eight to ten cities with museums exhibiting original paintings, and only there would it be possible to educate the public'.¹⁴ Charles Blanc, then Directeur des Beaux-Arts, commissioned copies from living French artists and tried to gather older copies exhibited in other museums. Blanc's successor, Philippe de Chennevières, decided to close the museum a mere 9 months after its opening; its exhibits (paintings and sculptures) were returned to the Ecole des Beaux-Arts, where they are probably still used for teaching as well as for . . . copying.¹⁵ Those who were opposed to the museum suggested opening a photographic library showing expensive 'hand-made' copies. Both projects failed.

Today, Lascaux II consists of 'five hundred tons of modeled concrete reproducing every little bump and hollow of the original, with a precision of a few centimeters . . . [and including] the patina of time'.¹⁶ And visitors come in droves to see the copy, since the original is reserved for a happy few. Schwartz (1996: 249) notes that the Diaspora Museum in Tel Aviv (Beth Hatfouthoth) that illustrates Jewish life across centuries 'is all copies and makes no bones about it'.

After years of discussion, the new Acropolis museum decided to display the originals alongside casts of the pieces removed from Greece, including the many that hang in the British Museum (*TAN*, July–August 2008: 10); the museum opened in June 2009, while a UNESCO intergovernmental committee is still seeking 'a mutually satisfactory resolution to the issues' (*TAN*, July–August 2009: 22).

Should one really care? In some cases, restorations of artworks are so important that little remains from the original, so there is *in fine* little difference between the original and a copy. A completely repainted Barnett Newman *Who Is Afraid of Red, Yellow and Blue?* which was badly damaged by a vandal, hangs in the Stedelijk Museum in Amsterdam as if nothing had ever happened. The painting is hardly an original by the artist, but is displayed as if it were original. A *true* copy would have done as well.¹⁷

The recent *Brillo Boxes* affair is another illustration that there is little difference between copies and originals. The case is centred on 100 Warhol boxes (in fact, supposedly 'authorized' by Warhol to be copied, which leads to the amusing paradox that copies authorized by Warhol are originals) were produced by the Moderna Museet in Stockholm, the Centre

Pompidou and the Los Angeles Museum of Contemporary Art. After a 3-year investigation, the Warhol Art Authentication Board downgraded them. Interestingly though, the ‘board has not revoked the certificates’ (*TAN*, October 2010: 1 and 4). If the Greek and the Egyptian authorities would officially ‘authorize’ copies of the Parthenon frieze and Nefertiti’s bust, would this transform them into originals, and make the restitution claims void of content?

Why would visitors of museums or other places where art is exhibited care much about copies of works they cannot see otherwise because they are too far away, or like Lascaux, bound to destruction if millions of tourists visited the cave? Today, even art historians are less fascinated by the idea of originality, and take into account the legacy left by Marcel Duchamp or Andy Warhol, that originality is nonsense. Warhol tried to turn things around with his prints of the Mona Lisa, claiming that it is the multiplicity of reproductions that made a star out of her. Therefore, and contrary to the predictions made by Benjamin (1939), copies and reproductions do not destroy the aura of the original, but contribute to its value (Hughes and Ranfft, 1997). This is probably what Warhol meant with his silkscreen *Thirty Are Better Than One*. Copies and reproductions can be considered a testimony to the value of originals (Belting, 1998), and, following Pastoureau (1991), a work that does not inspire copies is a dead work.¹⁸

Digitization

Paul Otlet is one of the fathers of librarianship and documentation. At the turn of the twentieth century, this Belgian scholar launched the idea of a systematic compilation of all library catalogues around the world before gradually turning to the entire range of information supports, including museum collections (Otlet, 1934). Using all possible collections available worldwide (books, archives, photographs, museum objects), Otlet thus designed a fully organized form of documentation, a *sine qua non* condition for the development of science. New technologies for developing museum databases and creating cyber-museums are making progress (Hemsley et al., 2005; Kalay et al., 2008; Parry, 2010).¹⁹ The launch on the Internet of massive databases such as *Europeana* or *Google Books* is part of this desire to collect all kinds of objects, more or less well digitized and described. Two million images of French collections, and 13000 British works are online (*TAN*, January 2008: 5).

A collection of material objects, however, allows for a different perception, linked to the senses rather than to understanding. Through its very presence and its *aura* (Benjamin, 1939), the *real thing* still differs in a quite obvious fashion from the digital copy, though the differences between

the two worlds are getting thinner with 3D films and other holographic methods. Within a few years, it will probably be possible to capture digitally an object to the extent that retaining it in material terms would become superfluous.

Digital collections, in place of material ones, present some interesting features: they save space,²⁰ are easier to manage and nobody will want to steal them. It should, however, be stressed that digital material is still very fragile (much more so than an archaeological potsherd!), requiring highly sophisticated and expensive conservation protocols in order to ensure its preservation. In any case, digital collecting may well prove to be equally compulsive: as digital documentation appears sometimes a bright solution for space and money saving, the temptation exists to develop unlimited collections, leading to the same pitfalls as those that plague museums today. Omnipresent and ominous copyright rules could however seriously restrict the construction of such sites (*TAN*, May 2008: 16).

Loans and sharing

Why is it impossible to consider the Parthenon marbles and Nefertiti as loans by Greece and Egypt? Or why not return them to Athens and Cairo as loans from the British Museum and the Berlin Neues Museum?²¹ Is there really a difference between Nefertiti not being located in Egypt, and King Tut, as he became to be called, travelling all year round from one exhibition to another? Though it seems that often it is copies that travel. The latest *Tutankhamun: His Tomb and his Treasures* show in Manchester's largest shopping centre is one of the three 15 million euro replicas that travelled to Pittsburgh in April 2011; the second was in Madrid and moved to Dublin in November 2010; the last opened in Cologne in September 2010 and moved to Brussels in May 2011 (*TAN*, October 2010: 6).

Sharing, when feasible, is another possibility. The Nimrud ivories will be shared between Iraq and the British Museum. They were excavated between 1949 and 1963 in Iraq by Max Mallowan, Agatha Christie's husband, and were shared according to Iraqi law, between the British Museum and the British Institute for the Study of Iraq. The latter part will be divided into three groups of roughly equal value. The first one will be offered on sale to the British Museum, the second is likely to be donated to the British Museum, while the third will be returned to Iraq (*TAN*, June 2010: 16).

Rules Instead of Discretion

The biggest problem is that restitutions are dealt with on a case-by-case basis, which may end up being dangerous for both sides of the transactions.

As Hershkovitch and Rykner (2011) suggest, more global rules and less emotional heat is called for. This would probably be more efficient, but sounds like complete contracts being more efficient than incomplete ones, and complete contracts need to foresee all possible contingencies. Restitutions cases are not always similar.

ILLEGAL MIGRATIONS: LOOTED ART

The borderline between legal and illegal modes of appropriating artworks is thin, and varies over time, but illicit trade is huge. Interpol estimates that the value of this trade ranks third, after drugs and arms (Brodie, 2006). The ICOM (2004) code of ethics tries to engage museums to forego buying objects whose provenance is unknown, but this hardly prevents them from doing so, for good or less good reasons. The recent scandal in which, Marion True, a former antiquities curator of the Getty museum was accused of conspiring to receive illegally excavated and exported Italian antiquities is not unique.²² This may sometimes prevent museums from buying looted art, but will hardly stop those people who want to take a chance (collectors, tourists, etc.), and simply not show the loot in public. It will not stop looting from happening either, given the large number of unprotected archaeological sites in the world. The new guidelines of the American Association of Art Museum Directors leave every museum free to carefully balance the possible costs and benefits of acquiring, but to 'post an image and information about the work', and to 'take whatever steps are necessary to address [a possible] claim, including, if warranted, returning the work, as has been done in the past' (*TAN*, July–August 2008: 9).

Potential cures, as Brinkman (2006) calls them, are very inefficient. Lists of stolen objects exist,²³ but can hardly be exhaustive; protecting all archaeological sites is financially impossible for many countries, including in Europe, and especially Italy. Looting is, however, not only the work of the usual Italian *tombaroli*. John Curtis of the Middle East Department, British Museum, suggests that between 2003 and 2005, 400 000 to 600 000 artifacts seem to have been illegally excavated from sites in Iraq (*TAN*, May 2009: 51). According to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), occupying powers should 'take the most necessary measures of preservation'. But as US Secretary of Defense Donald Rumsfeld scandalously said in 2003 about the looting of Baghdad's museum: 'Stuff happens'.²⁴ Two cures could nevertheless be envisaged to curb looting: public–private partnerships, and selective de-accessioning by museums of their reserves.

Public-private partnerships (PPPs) have become very fashionable in many developing and even developed countries during the 1970s and 1980s.²⁵ In such a partnership, the private organization usually takes responsibility for providing the service (or the good), but the public sector remains accountable. In the case of archaeological sites, the private firm could be responsible for carrying out the excavations, under the scientific control of state-appointed archaeologists, and the findings could be shared between both members of the partnership. Such partnerships did exist in the past, and even today, between universities or museums and local authorities.²⁶ It should not be very difficult to engage private firms in such endeavours, such as those that salvaged ancient vessels sunk in the China Sea and elsewhere. The cargos consisting mainly of china, but also of gold ingots in the case of the so-called Nanking cargo, were sold at Christie's during the 1980s and 1990s and attracted great interest by collectors and antiquarians.²⁷

De-accessioning considered a taboo 10 or 15 years ago, has not yet become ordinary practice, but is at least discussed in the museum world.²⁸ Here are some (not so) astonishing facts:

The British Museum has more than two million objects from archaeological excavations in Britain and elsewhere, and 130 000 cuneiform tablets. The Museum of London has finds from over 5000 excavations including over 250 000 individually registered finds and 140 000 boxes of bulk finds from London. There are about 750 000 objects in the archaeological collections of the National Museums of Scotland and a million or so in the National Museum of Wales . . . It is doubtful whether collections should be retained if substantially better access to them could be provided elsewhere . . . Accepting that disposal can be justified where it helps ensure the preservation of collections, make them *more accessible and better used*, removes them to a context in which they are better understood or more deeply valued.

These are not the views borrowed from Grampp's iconoclastic book *Pricing the Priceless* (1989),²⁹ but from a very serious report of a conference 'Too much stuff? Disposal from Museums' organized in 2003 by the British National Museum Directors Conference.³⁰ The Conference suggests three solutions: transfer and loan, destruction and sale.³¹

The Tel Aviv Museum recently found that it 'misplaced 624 works thanks to a fault in its cataloguing system'. Meanwhile it also 'found 2492 works that do not appear on the museum's books' (*TAN*, May 2010: 26). Would it make a big difference for the museum and its visitors if the works were disposed of, or as is often suggested nowadays by archaeologists, reburying unworthy objects?

Giving, loaning and to some extent selling to other institutions or to recognized collectors would indeed make these artworks more accessible and

better used by people who value them more than those who do not even know that they are stored in the reserves of their museums.³² Selling would probably also curb looting. Collectors would be able to buy in organized markets since it seems reasonable to believe that a collector would prefer to buy (at comparable prices) scientifically excavated and legally exported objects, with much larger probability of being authentic. And one day or the other, collectors may anyway donate their collections to . . . museums.

Note finally that some countries or museums are willing to pay to recoup looted art. China has given financial compensation to two US-based collectors who returned bronzes looted in the 1990s (*TAN*, January 2010: 1). The dispute for Schiele's *Portrait of Wally* was resolved in a similar way: The Leopold Foundation paid \$19 million to the estate of the Bondi family from whom the painting had been stolen in 1939. The portrait, on a tour at the MoMA (Museum of Modern Art), was confiscated by a New York District attorney, and it took 13 years to resolve the case. No information is available about how much lawyers cashed to settle the case (*TAN*, September 2010: 4–5).

MIGRATING ARTWORKS: EXHIBITIONS IN THE WIDE WILD WORLD

In the past, paintings travelled, but in small numbers. Today, it is large parts of public collections that travel. Tutankhamun (the real one) was in London in 2008 (*TAN*, January 2008: 41) and elsewhere. In 2008, 140 of the Tate Gallery's Turners went on a tour to the National Gallery in Washington, to Dallas, to the Metropolitan, to Moscow's Pushkin and to Beijing (*TAN*, September 2008: 16). During the same year, 50 paintings and 120 drawings on paper by Van Gogh travelled to the Albertina in Vienna (*TAN*, September 2008: 16). The Chinese government gets its own long-term exhibition space in the heart of Rome, and an Italian exhibition hall will open in the National Museum of China, Beijing (*TAN*, December 2010: 13).

Private collections also go global. Khalili's collection is on show in Paris at the Institut du Monde Arabe, as well as in the Hermitage in St Petersburg (*TAN*, June 2009: 2). Louis-Antoine Prat's collection of nineteenth century French drawings goes on show in Australia (*TAN*, September 2010: 35).

Money is, of course, not (always) absent from these deals. The Musée d'Orsay sent exhibitions to Japan and to the Gulf to raise money (*TAN*, September 2008: 14). The Kunsthistorisches Museum in Vienna was offered 500 000 euro to lend Vermeer's *Art of Painting* to

the Tokyo Metropolitan Art Museum, the highest amount ever publicly revealed (*TAN*, February 2009: 20), but the deal was overruled by the Austrian Minister of Culture (*TAN*, September 2010: 11). Meanwhile, the Mauritshuis agreed to send *Girl with a Pearl Earring* to Kobe's museum; the price is not quoted (*TAN*, September 2010: 11). Chinese terracotta warriors visited Stockholm (*TAN*, October 2010: 90). Chicago's Art Institute loaned 90 of its Impressionist and Post-Impressionist paintings to Texas to raise money for a new wing.

Though Iran and Great Britain are not great friends, they agree on exchanging art. The British Museum loaned one of its most iconic antiquities, a rare cuneiform cylinder, the Cyrus Cylinder, to Iran. This was in return of Teheran's loan of antiquities for the British Museum exhibition *Splendors of Ancient Persia* in 2005 (*TAN*, April 2009: 11; *TAN*, January 2010: 16; *TAN*, March 2010: 5). But not everything goes through. A bit of the cylinder, which belongs to Yale University Library will be missing, since American sanctions forbid exporting goods to Iran (*TAN*, October 2010: 1). Teheran loaned one of Picasso's most important paintings, *The Painter and his Model* to the Kunsthau Zurich (*TAN*, October 2010: 87).

International – and financially interested – collaborations between museums are becoming more frequent. The Hermitage reopened an expanded branch in Amsterdam (*TAN*, July 2009: 22), and the first Fabergé museum has opened in Baden-Baden (*TAN*, July 2009: 22). A museum funded by Germany opened in Naga, Sudan. The Dresden State Art collection and the Doha Museum of Islamic Art will share exhibitions. Treasures from the Dresden Green Vault was displayed in Doha (*TAN*, July–August 2010: 16). Boards have also become international. The State Russian Museum in St Petersburg created a board of trustees that includes former director of the Louvre, Pierre Rosenberg, a former BP chief executive and chair of the Tate trustees, and the director-general of the National Galleries of Scotland (*TAN*, October 2010: 24).

This is not to say that everything works smoothly, there are also backlashes. The London Royal Academy's 2010 exhibition of treasures from the Liechtenstein Collection was cancelled, because one of the paintings bought by the Prince in London was barred from export (*TAN*, January 2010: 4). There is unhappiness because works travel too much. Director of the Uffizi protests over a forced loan to Tokyo of Titian's *Venus of Urbino*: 'The Uffizi is not a quarry to be mined. Rules should be set on loans' (*TAN*, May 2008: 28). The plan to send Copenhagen's *Little Mermaid* to China provoked a row in the Danish parliament (*TAN*, November 2008: 4).

Can this go as far as museums lending art to private galleries, as was the case during the autumn of 2008 in some Manhattan galleries that

were showing works by Picasso (from the MoMa), Giacometti (from the Metropolitan) Barnett Newman (from the Tate in London). The title of the paper by Lindsay Pollok 'Public art for private gain' (*TAN*, December 2008: 37) tells it all: this enhances the visibility of galleries, since museums would hardly lend important pieces to doubtful galleries.

MIGRATING MUSEUMS: GOING GLOBAL

Thomas Krens, director of the Guggenheim Foundation between 1988 and 2008, is probably the one who launched the idea that even entire museums can migrate. The impressive list of projects includes realizations, but also misses. Realities concern Guggenheim Soho, Bilbao (1997), Berlin (1997), Las Vegas (2001, closed in 2008, but planned to re-open). Richard Armstrong, Guggenheim's new director, decided to keep engagements with Asia (Abu Dhabi), but does not know 'if there is a big appetite to keep adding sites to the operation' (*TAN*, October 2008: 16).³³

This, of course, gave ideas to other museums to enter into similar endeavours. The Tate Gallery delocalized part of its collections to Liverpool and St Ives during the 1980s. Centre Pompidou created an outpost in Metz, as Laurent Le Bon, its associate director 'wants to show that a Matisse seen in a room in Paris may not have the same flavor in Metz' (*TAN*, November 2008: 30). The Louvre built a satellite in the northern city of Lens (*TAN*, February 2010: 13). The V&A (Victoria and Albert Museum) considered the possibility of an expansion to Blackpool (*TAN*, January 2009: 1). The Guggenheim Bilbao is considering building a branch near Guernica, 40km east of Bilbao (*TAN*, November 2009: 1). Baroness Thyssen-Bornemiza tried to sell the Spanish part of her collection to Spain, and use the rest to franchise other Thyssen-Bornemiza museums (*TAN*, April 2008: 33).

The implementation of the Louvre (together with other French museums, but under the Louvre brand name) in Abu Dhabi 'may well be the biggest cultural transaction in history. France will receive one billion Euros over 30 years for loaning 750 works' (*TAN*, June 2008: 13) 'and inaugurate a new French military base' (*TAN*, June 2009: 11). The British Museum, together with Tate, the V&A, the British Library, the Natural History Museum and the Royal Botanic Gardens, Kew, are encouraged to forge ties with Asia and Africa. Though Neil MacGregor from the British Museum is more careful than Henri Loyrette from the Louvre, he claims 'nowadays, you can't have a domestic policy, at least in London, without a foreign policy' (*TAN*, May 2008: 32–34). And German museums in Berlin, Munich and Dresden have entered into a collection-sharing

agreement with Dubai, though there seems to be no money involved in this case (*TAN*, June 2008: 13). This situation does not make everybody happy. Philippe de Montebello, former director of the Metropolitan Museum 'declares himself perplexed by the activities of Western museums in countries where their heritage makes no sense' (*TAN*, June 2008: 27).³⁴ Italian museums as well as the Vatican show little sign of following suit. Criticisms were numerous in France as well.³⁵

Many private collectors are going public. The French billionaire François Pinault opened two museums in Venice, the Punta Dogana and the Palazzo Grassi. The German industrialist Reinhold Würth who owns 11 000 works opened his 14th gallery with works by Grünewald and Cranach in Baden Wurtemberg (*TAN*, October 2008, 13). A Turrell museum, financed by a Swiss art collector and vintner opened in Argentina (*TAN*, February 2009: 13). The Van Otterloos who assembled one of the most focused collections of Dutch and Flemish 17th century paintings in the world have displayed the collection in Europe and the US (*TAN*, September 2009: 34–35). The 1000-piece Donald Fisher collection of contemporary art was bequeathed to the San Francisco MoMA, and will be on show once the museum finds adequate gallery space (*TAN*, December 2009: 12). Portuguese billionaire José Berardo's collection that includes works by Picasso, Bacon, Warhol, Balthus, Fontana, De Kooning, Frank Stella may go to Rio de Janeiro (*TAN*, February 2010: 8). There are four private museums in Berlin (the Rika and Rolf Hoffmann collection, 1997, the Christian Boros collection, 2008, the Axel Haubrock collection, 2005, and the Wilhelm Schürmann collection, 1997), and a fifth, by Thomas Olbrich opened in 2010 (*TAN*, April 2010: 46; *Art Press*, April 2011). The Russian collector Roman Abramovich invested \$400 million to renew a derelict site in St Petersburg to include museums and galleries (*TAN*, December 2010: 1). Private museums have appeared in Odessa (*TAN*, January 2009: 10). A discrete British collector, David John Lewis, exhibited his old masters' collection in Liverpool (*TAN*, December 2010: 7).

This is not fully new. The Louvre started in 1793 with the Royal Collection, as well as works confiscated from the nobility and the Church during the French Revolution. The Barnes Collection (consisting of over 2500 objects and 800 paintings), as well as more recently, the Beyeler collection in Basel (200 paintings) or the Thyssen-Bornemisza collection in Madrid were large enough to become museums by themselves. But many collectors seemed keener to give artworks to museums. This seems to be changing, since museums are becoming more reluctant than they were in the past to accept 'special' deals, such as hanging the collection in a special room with the name of the donor.

RESTRICTIONS TO MIGRATIONS

Not everything is shiny, and new dangers that are percolating through the art world, may end up hampering exchanges, as well as the production of copies. Copyright is one of them. Zahi Hawass, the chairman of Egypt's Supreme Council of Antiquities will seek to enact legislation to give copyright protection to the Pyramids and be paid royalties for exact replicas of museum artifacts and other monuments.³⁶

An exhibition of the photographs taken during Joseph Beuys's performance *Das Schweigen von Marcel Duchamp ist überwertet* was judged to violate Beuys' copyright, though the artist granted permission to take the pictures. The museum director where the exhibition was held commented that 'the judgment will limit us massively in that it forbids us from exhibiting works from our collection. It abolishes the medium of "performance photography" as now every photograph of a happening is "a deformation of the original"' (*TAN*, November 2010: 13–14).³⁷ If this became the rule, we would be unable to see performance or body art, unless we were present during the performance. And pictures of land artists and ephemeral art would eventually also become unlawful unless they were made (and sold) by the artists themselves.³⁸

A recent European ruling (that became binding in all countries) determined that works by Bill Viola and Dan Flavin (installations which include bulbs or videos) should not be considered works of art for tax purposes, and would be submitted to tax rates of over 20 instead of 5 or 6 per cent (*TAN*, January 2011: 28 and 58). This is of course a replay of Brancusi's *Oiseau dans l'Espace*. The sculpture was barred from entering US territory in 1926 as a duty-free artwork, following the 1916 United States v. Olivotti case, which stated that a sculpture is an artwork only if carved or chiseled and represents a natural object in its true proportions. Which was of course not the case of the *Bird*.³⁹

Droit de suite (DS), which is binding in all EU countries, is another obstacle to exchange. DS is the right, enjoyed by the author of an original work of art,⁴⁰ to an economic interest in its successive sales. According to the Directive of the European Parliament,⁴¹ the right is supposed to ensure that artists benefit from successive 'exploitations' of their work,⁴² which does not prove to be fully true. DS increases prices of first sales, it may have a negative effect on the quantity of art produced, it constitutes a detrimental transaction cost since a sometimes substantial part of the levy is captured by author societies, it has negative redistribution effects from the young to the old, from artists to their heirs, and may delocalize art transactions to those countries (the United States and Switzerland, among others) where it is not levied, increasing the risk of works to remain there,

as European collectors may be discouraged by the customs duties they would have to pay to re-import them.⁴³

Export Restrictions

Most countries have export restrictions on art, though some are very lenient (the United States and Switzerland), others are moderate (the UK with its Waverley criteria, and the possibility for temporary export bans on works sold at auction, for instance, to give time for museums to raise funds and match the auction price).⁴⁴ Export restrictions are widely discussed in the literature.⁴⁵ It is, however, doubtful that this could stop, or even decrease illegal migrations, since bribery exists everywhere. The famous British art historian and British Museum director John Pope-Hennessy was 'allowed' by an expert committee to take a Carracci from his personal collection to the United States in 1976, because 'it would [have been] difficult to recommend that its export license be delayed, to allow a UK public collection to match the price' (*TAN*, October 2009: 6).

The British Waverley Criteria are a good reason why countries such as Egypt or Greece may be so frustrated and try to recover works that have the importance of Nefertiti or the Elgin marbles. Here are the three criteria that the Waverley Committee has to take into account in deciding whether a work can be refused an export license: (1) it is so closely connected with our [that is British] history and national life that its departure would be a misfortune, (2) it is of outstanding aesthetic importance, and (3) it is of outstanding significance for the study of some particular branch of art, learning or history. Would Egypt or Greece have allowed their works to be 'exported' if such criteria had existed in both countries? It is difficult to accept that one can have it both ways. And though buyers get refunded if the work cannot be exported, they may incur welfare losses.

CONCLUSIONS

Countries and museums are far from being equal in the game of fighting for restitution and against illicit trade. But they seem to agree to become more collaborative. The following sentence by Maxwell Anderson, director of the Indianapolis Museum of Art, is worth quoting. 'Ownership isn't everything. Barter among museums is more efficient than rental, and alternatives to ownership will yield greater benefits in protecting heritage, new scholarship, public enjoyment, and institutional vitality' (*TAN*, September 2010: 29).

Despite the row that the Western world is having with Iran, Teheran

exchanges artworks with the UK and Switzerland. The number of museums, as well as the number of delocalized or multi-location museums increases. So does the number of international loans and of art fairs,⁴⁶ which constitute good opportunities for works of art to change ownership. This shows how much artworks travel. But as Anderson (*TAN*, September 2010: 29) suggests, ownership is not an end in itself. Heritage should be concerned with transmitting cultures over space and time. But there should also be a distinction between transmission and profit seeking from tourism, loans and international heritage lists.

Finally, difficulties linked with the institutional constraints as well as with actors' behavior have to be taken into account. De-accessioning is impossible in many countries, but even when allowed, the museum personnel opposes (O'Hagan, 1998:171; Frey and Meyer, 2006). Grampp (1996) also underlines the rent-seeking behavior of museum directors that leads them to increase their power, a function of the size and the quality of the collection (so that acquiring is good, while de-accessioning or restituting is not). It is likely that the Louvre would attract fewer visitors without the Mona Lisa, and so would the British Museum if it restituted the Elgin marbles. This star system relationship among museums also explains the 'Bilbao' syndrome of building more, bigger and more visible, and exporting brand names. Everything is done to make culture look as if it were one of the key factors of the world's future economic development (see e.g. EU Commission, 2006). Hannah Arendt (1961: Chapter 6) would obviously disagree.

NOTES

- * We are grateful to both editors and to S. Weyers for comments on a previous version.
1. To locate where things happened in the very distant past, we refer to countries that, of course, did not exist at the time.
 2. The demands by Native Americans in the United States, Canada by Inuits or societies living in Australia and New Zealand, led to important returns of artifacts. The *Native American Graves Protection and Repatriation Act* (NAGPRA), signed in 1990 (Mihesuah, 2000; Robson et al., 2007) set a major milestone.
 3. It is quite unlikely that anthropologists such as Franz Boas or Claude Levy-Strauss were robbers.
 4. The reader will note that in many parts of the chapter we try to illustrate the discussion with recent facts. To do this, we skimmed the last 3 years of events described in *The Art Newspaper* (referred to as *TAN*) as well as in other newspapers such as *The New York Times*.
 5. Egypt has other works on its wish list, including the British Museum's Rosetta Stone and the Louvre's Dendera Zodiac (*TAN*, November 2009: 11). But there are many other examples. The Jordanian government complained that the Dead Sea Scrolls were illegally seized during the 1967 war (*TAN*, February 2010: 14). It took the Italian government over 50 years to return to Ethiopia the Axum Obelisk stolen by Mussolini

- in 1937 (*TAN*, May 2008: 8) that was finally re-erected in 2008. The beautiful Bino Edo bronzes (consisting of more than 300 brass plaques from the Royal Palace of the Kingdom of Benin) looted by the British Army after a punitive action in 1897 were never officially reclaimed by the Nigerian government. An interesting and very recent example is the ongoing trial in Tel Aviv to determine who will be the keeper of several boxes of Kafka's original writings. See Judith Butler, 'Who owns Kafka?', *The London Review of Books* 33, 3 March 2011. Some returns are 'domestic': The illuminated manuscript 'Lindisfarne Gospels' will be on permanent loan from the British Library to Durham (*TAN*, February 2010: 12).
6. For a recent book on documents dealing with the issue of returning objects, see Prott (2009).
 7. See http://www.boersenverein.de/sixcms/media.php/806/2003_sontag.pdf.
 8. Fragments of *Ulysses* were published in 1919 and 1920 in *The Little Review* a New York literary journal that was sued several times for publishing obscene prose. See Casanova (2002).
 9. See Casanova (1999, 2002) for other cases, including Kafka.
 10. Letter dated 10 November 1815 from Chevalier Canova to the Earl of Elgin (Canova, 1816).
 11. *Libération*, 10 February 2007, freely translated from the original in French quoted in Hershkovitch and Rykner (2011).
 12. Note that an identical argument was used in the late 1980s by sculptor Richard Serra whose public commissioned artwork *Tilted Arc* was removed from a New York Plaza. See Weyergraf-Serra and Buskirk (1990).
 13. In this respect, it is surprising to observe the recent request by the Turkish government asking Italy to return the remains of the third-century Saint Nicholas. Italian sailors removed the bones from Turkey in the eleventh century and transported them to Bari (*TAN*, February 2010: 1).
 14. See *Annales de l'Assemblée Nationale* (1872).
 15. Details can be found in Chamoux et al. (1973) and in Cuzin (1993).
 16. Delluc and Delluc (1984), quoted by Schwartz (1996: 249).
 17. Benhamou and Ginsburgh (2006).
 18. Benhamou and Ginsburgh (2006).
 19. See also Part V.
 20. See *TAN*, January 2010: 34, with the provocatively titled paper 'Forget the new building, focus on the internet'.
 21. This now seems excluded for Nefertiti since the German Minister of Culture has officially turned down Egypt's demand. Berlin even refused to loan the statue for the 2012 opening of the Akhenaton Museum in Minya, Upper Egypt (*TAN*, July–August 2010: 8).
 22. See *TAN*, January 2011: 8–9 for a summary of the case in interviews given by Marion True and Paolo Giorgio Ferri, the Italian prosecutor.
 23. See for example the Art Register or the database available on the website of ICOM which contains a list of objects stolen from Peru, Iraq, Haiti or Afghanistan (see www.icom.museum/redlist/).
 24. See *The New York Times*, February 24, 2009: A1.
 25. See also Swennen (2011).
 26. Crumbling Pompeii may be saved through a new foundation made up of private and state organizations, though the site will remain the responsibility of the state (*TAN*, June 2010: 7 and December 2010: 8).
 27. Note that in 2009, an American federal judge issued a report finding that Spain owns the booty that was salvaged by a private company in international waters. The reason is that the ship that sunk in 1804 was a Spanish sovereign vessel (*TAN*, July–August 2009: 8). Similarly, a Greek bronze exhibited at the Getty was found in 1964 outside Italian waters. An Italian judge considers the bronze Italian state property, since it was found by a vessel flying the Italian flag (*TAN*, April 2010: 18).

28. See for example Mairesse (2010) and Thomson (2002).
29. See Grampp (1989: 173–178).
30. NMDC (2003: 5, 7, 9). Too much stuff also leads museums to ‘lose’ artworks.
31. The term ‘destruction’ in the title of the conference is an eye-catcher, since what is discussed there is destructing copies of artworks.
32. In a lecture at the American Association of Museums in May 2010, philanthropist and collector Eli Broad suggested to ‘get art out of the basement’ (TAN, July–August 2010: 13).
33. Many others projects were envisaged but did not realize for various reasons, though some reached advanced planning, and choice of architects: Salzburg (1989, stalled in 1990 due to lack of funding), Vienna (1994, rejected by a national referendum), East River, New York (1998, fell victim to the effects of September 11), Tokyo (2001, project cancelled by the local corporation), Rio de Janeiro (2001, blocked by Brazilian courts, agreement terminated in 2005), Taichung, Taiwan (2004, failed for political reasons), Guadalajara, Mexico (2004, failed in 2008 for financial reasons), Kowloon, Hong Kong (2005, abandoned since the local government changed the terms of the deal), Singapore (2005, no longer active), and Vilnius (dropped in 2011 for Helsinki).
34. But then, by the same token, Egyptian art should not be displayed in Paris, London and Berlin, and the Musée du Quai Branly that features art from Africa, Asia, Oceania and the Americas has no place in Paris either.
35. See, for instance, Clair (2007).
36. BBC News, December 25, 2007 (http://news.bbc.co.uk/2/hi/middle_east/7160057.stm, accessed 12 October 2012) and TAN, February 2008: 5.
37. It should be noted that some performance artists reject the notion of producing permanent documents of their performances (TAN, January 2011: 68).
38. There is also the problem of videos that may disappear or fade out, and of neon bulbs that cannot be replaced, because the original bulbs are no longer produced.
39. See Merryman and Elsen (1987: 318–319) for details. Similar stories happened later to works by Hans Haacke and Piero Manzoni.
40. Including his heirs, since the right runs for 70 years after the author’s death.
41. Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art.
42. This is the interesting word used in the Directive. According to the *Oxford Advanced Learner’s Dictionary*, ‘to exploit’ means ‘to use or treat somebody/something in an unfair and selfish manner for one’s own advantage or profit’.
43. See Ginsburgh (2011).
44. The National Gallery of Scotland had to raise £100 million for two paintings by Titian that would make £300 million if sold on the open market (TAN, September 2008: 11). The *Clive of India Flask*, bought at auction by the Sheikh of Qatar saw its export license deferred, but the V&A could apparently not meet the £3 million price to buy it. The Sheikh eventually withdrew the application to export the flask, after the V&A and the Museum of Islamic Art in Doha reached an understanding on sharing the work (TAN, November 2008: 1). There is also the strange story of the Giorgio Vasari archive sold for 150 million euro by its Italian owner (a certain Giovanni Festari) to a Russian company in 2009. It was seized by the Italian government, which does ‘not believe that the Moscow-based firm actually exists’ (TAN, May 2010: 6).
45. See McAndrew and O’Hagan (2000) for a careful review of the Waverley criteria in the UK, or Merryman (2009) for other countries.
46. Even Havana had a biennial in 2009 (TAN, May 2009: 8). Venice, of course, Art Basel Miami, Frieze in London, FIAC in Paris, NY Biennial, TEFAF, Bucharest Biennale, Gwangju Biennial, Lodz Biennial, Vienna Art Week, Rio Biennial, BRAFA in Brussels. A quick look at the ‘What’s On’ section in each *Art Newspaper* makes one realize how much artworks travel over the world. Eleven fairs took place in November 2009 alone (TAN, November 2009: 86): Art Beijing, Paris Photo, Cologne Fine Art and Antiques, Artissima Turin, pAn Amsterdam, Basel Ancient Art Fair, Winter Fine

Art and Antiques Fair London, Abu Dhabi Art, International IFPDA Print Fair, New York, Sculpture, Objects and Functional Art, Chicago and Pinta, New York. Dealers (including Gagosian, Sadie Coles, Perrotin and Zwirner) are teaming to launch an internet art fair (*TAN*, September 2010: 60).

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