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# The Application of International Law, Morality, and Public Policy to the Elgin Marbles Dispute

## Abstract

*In the past century, the former imperial powers of Europe have been subjected to countless calls for repatriation of cultural property. Perhaps the most famed of these disputes lies between the United Kingdom and Greece. In the early 19th century, a British ambassador situated in Ottoman-era Athens removed a considerable amount of ancient works from the city's historic Parthenon site, and these objects (the "Elgin Marbles") found their way into permanent exhibition at London's British Museum. Since the establishment of an independent Greek state, its people have routinely called for the return of this property to its place of origin – a request continually denied by British authorities. Given the durability of this particular dispute, the fame surrounding the works themselves, and the progression of international law, the Elgin Marbles will likely remain at the forefront of cultural heritage and foreign relations discussions through the next few decades. Today, the Greeks have several options (legal and otherwise) with which to try and get the property back.*

*In order to make a strong prediction of the dispute's future developments, this paper will apply to the relevant facts not only common principles of international law, but also morality, historicism, and the growing trend of voluntary cultural repatriation in diplomatic relations.*

## Annotasiya

*Ötən əsrdə Avropanın keçmiş imperiya qüvvələri tərəfindən mədəni sərvətlərin geri qaytarılması üçün saysız-hesabsız çağırışlar edilmişdir. Yəqin ki, bu mübahisələrdən ən məşhuru Birləşmiş Krallıqla Yunanıstan arasında olmuşdur. XIX əsrin əvvəllərində, Osmanlı imperiyasında yerləşən Britaniya səfiri tərəfindən Afinadakı Parfenon məbəbindən xeyli sayda qədim əsərlər götürüldü, və bu əsərlər ("Elgin mərmərləri") Londondakı Britaniya Muzeyində sərgiyə qoyuldu. Müstəqil Yunanıstan dövləti yarandıqdan sonra, xalq bu əsərləri geri qaytarmaq üçün mütəmadi olaraq çağırışlar edirdi, lakin bu çağırışlar Britaniya hökuməti tərəfindən rədd edilirdi. Mübahisənin davamlılığı, əsərlərin məşhurluğu və beynəlxalq hüququn inkişafı əsas verir ki, bir neçə on illik ərzində "Elgin mərmərləri" mədəni irs və xarici əlaqəli mübahisələrin ön sıralarında dayansın. Hal-hazırda yunanların bu əsərləri geri qaytarmaq üçün bir neçə seçimi vardır (hüquqi və digər).*

*Mübahisənin gələcək inkişafını müəyyənləşdirməkdən ötrü bu məqalədə işin faktları ilə əlaqədar olaraq nəinki beynəlxalq hüququn ümumi prinsiplərinə, həmçinin əxlaq qaydalarına, tarixiliyə və diplomatik münasibətlərdə könüllü qaytarılmaya da müraciət olunacaqdır.*

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## Introduction

Past practices of archaeological excavation by Europe's former imperial powers have brought about an ongoing string of cultural property clashes between modern states – the most famous of these concerning the “Elgin Marbles”. Beginning in 1801, Thomas Bruce, the 7<sup>th</sup> Earl of Elgin and British Ambassador to the Ottoman Empire, removed a large number of intact sculptures on the Parthenon in Athens, Greece, and shipped them to England.<sup>1</sup> He sold these artifacts – now collectively known as the Elgin Marbles – to the British Museum, where they have been on display ever since.<sup>2</sup> In 1983, the Greek government asked that the objects be returned to Greece – the first official request for the sculptures since their removal.<sup>3</sup> This appeal was officially declined by the British government the following year,<sup>4</sup> and all subsequent efforts to reunify the Marbles in Athens have been rejected by Parliament and the British Museum.<sup>5</sup>

Existing international law on cultural property demonstrates that the British have no legal obligation to return the Elgin Marbles to Greece. Additionally, even if it is assumed that the morality of the removal should be considered equally with the law, this is not a particularly strong argument.

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<sup>1</sup> Report from the Select Committee of the House of Commons on the Earl of Elgin's Collection of Sculptured Marbles, 2-3 (1816).

<sup>2</sup> *Ibid.*

<sup>3</sup> See 50 Parl. Deb., H.C. (6th ser.) 379 (1983) (Written Answers); see also Ioannis Gennadios, O Lordos Elgin 232 (1930).

<sup>4</sup> 58 Parl. Deb., H.C. (6th ser.) 188 (1984) (Written Answers).

<sup>5</sup> Dr. Derek Fincham, *The Parthenon Sculptures and Cultural Justice*, 23 Fordham Intell. Prop. Media & Ent. L.J. 943, 981 (2013) [hereinafter Fincham].

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However, recent cases involving international negotiations over cultural property signal that, as a matter of public policy, the United Kingdom will likely engage with Greece in alternative dispute resolution in the near future – and offer to return at least a portion of the Marbles to their homeland.

This paper will be divided into three sections. The first part will lay out potential legal arguments that Greece could raise, and then analyze each argument under applicable international law; the legal dispute between Yale University and the government of Peru over artifacts from Machu Picchu will also be introduced as a real world means of comparison for the Elgin situation. The second part of the paper will be devoted to potential moral arguments over the Marbles' removal from Greece, and spell out the likelihood of success for each assertion. Finally, the third section will examine recent, extralegal instances of repatriation, and apply the facts and outcomes of each to the Marbles dispute.

## I. Legal Considerations

The Marbles fit squarely in the realm of “cultural property”: objects “having artistic, ethnographic, archaeological, or historical value”.<sup>6</sup> When cultural property from one nation has been unlawfully relocated to another state, the legal remedy most often sought is repatriation.<sup>7</sup> The national courts of several different states have shown a willingness to hear repatriation cases.<sup>8</sup> Therefore, the Greek government could potentially sue the British Museum in a court within the United Kingdom for the Marbles' return. Under such circumstances, Greece could assert that the sculptures were wrongly taken by Elgin, and thus have never legally belonged to the British.<sup>9</sup>

This proposition raises the issue of ownership of the respective property. According to the historical record, the British government bought the Marbles from Lord Elgin “in full knowledge of the facts”.<sup>10</sup> Thus, in the opinion of Professor John Merryman:

(I)t seems fair, and is consistent with the law of all civilized jurisdictions, to

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<sup>6</sup> The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240 (1956) and the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231 (1972), *reprinted in* 10 INTL. LEGAL MATERIALS 289 (1971).

<sup>7</sup> John Henry Merryman, *Thinking About the Elgin Marbles*, 83 Mich. L. Rev. 1881, 1889 (1985) [hereinafter Merryman].

<sup>8</sup> See *Kunstsammlungen zu Weimar v. Elicofon*, 678 F.2d 1150 (2d Cir. 1982) (holding that two Dürer paintings, missing since the end of World War II and eventually discovered in a private collection in Brooklyn, were to be returned to East Germany).

<sup>9</sup> Merryman, *supra* note 7, at 1896.

<sup>10</sup> REPORT, *supra* note 1.

suppose that the right of the Crown to the Marbles was no better than Elgin's right to them...If Lord Elgin owned the Marbles, he could transfer ownership to the Crown. If his title was defective, then so was the Crown's title.<sup>11</sup>

It is thus necessary to determine whether the Ottoman officials in Athens had the authority to transfer property rights in the Marbles, and whether they did in fact authorize Lord Elgin to remove the Marbles and take them to England.<sup>12</sup>

### A. The Authority of the Ottomans in Athens

All of modern-day Greece was then a part of the Ottoman Empire.<sup>13</sup> Under this imperial rule, the responsible local officials were the *Voivode* (the civil governor) and the *Cadi* (the chief judicial officer),<sup>14</sup> and the Acropolis of Athens was at that time a military fort.<sup>15</sup> International law of the early 19<sup>th</sup> century suggests, "the acts of Ottoman officials with respect to persons and property under their authority were presumptively valid".<sup>16</sup> The Ottomans had a solid claim to legal authority over the Parthenon because it was public property.<sup>17</sup> Therefore, it is clear that the Ottomans could legally give Elgin the right to remove the Marbles.<sup>18</sup>

### B. Whether the Ottomans Gave Elgin the Right of Removal

Before conducting his removal of the sculptures, Elgin obtained from the Ottomans a formal written instrument called a *firman*, which responded to his written request for permission.<sup>19</sup> This document stated that he had the "liberty to take away any sculptures or inscriptions which do not interfere with the works or walls of the Citadel".<sup>20</sup>

In international law, the effects of a transaction depend upon the law in force at the time.<sup>21</sup> From both a practical and legal standpoint, this rule makes

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<sup>11</sup> Merryman, *supra* note 7, at 1896.

<sup>12</sup> *Ibid*, 1896-7.

<sup>13</sup> See Douglas Dakin, *The Greek Struggle for Independence: 1821-1833*, 5 (1973).

<sup>14</sup> Stanford J. Shaw, *History of the Ottoman Empire and Modern Turkey: Volume 1, Empire of the Gazis: The Rise and Decline of the Ottoman Empire 1280-1808*, 26, 50 (1976).

<sup>15</sup> See Halil Inalcik, *The Ottoman Empire: Conquest, Organization And Economy* 112, 129 (1978).

<sup>16</sup> Merryman, *supra* note 7, at 1897.

<sup>17</sup> See Daniel Patrick O'Connell, *The Law of State Succession*, 226-227 (1956).

<sup>18</sup> *Supra* note 16.

<sup>19</sup> See 4 Oxford English Dictionary 249 (1961); see also Report, *supra* note 1, at 4.

<sup>20</sup> Quoted in William St. Clair, *Lord Elgin and the Marbles* (2<sup>nd</sup> ed. 1983) at 88 [hereinafter W. St. Clair]; see Also J. Rothenberg, 'Descensus Ad Terram': The Acquisition And Reception Of The Elgin Marbles (1977) at 149-51; Theodore Vrettos, *A Shadow Of Magnitude: The Acquisition Of The Elgin Marbles* (1974) at 65-66 [hereinafter T. Vrettos].

<sup>21</sup> M. Akehurst, *A Modern Introduction to International Law* 132 (5<sup>th</sup> ed. 1984).

sense.<sup>22</sup> As Professor Merryman explains, “To allow old transactions to be questioned is to invite fraud and perjury and to unsettle the affairs of the present”.<sup>23</sup> In essence, a holding in favor of Greece could set a dangerous precedent – leading to an unmanageable stream of cases concerning property over the course of centuries of imperialism.

There is no statute of limitations in international law, but the same considerations apply.<sup>24</sup> If we take the year that Greece gained its independence from the Ottomans to be 1828 – when a tributary Greek state was established by the “London Protocol”<sup>25</sup> – then the state had 155 years during which to pursue legal remedies.<sup>26</sup> Prescription statutes run against one who fails to exercise an available judicial remedy.<sup>27</sup> Greece has accordingly been in a position to sue in the English courts for the Marbles since 1828, but has never done so.<sup>28</sup> Under this approach, the Greeks have lost any right of action they might have had for the recovery of the Marbles before an English court.<sup>29</sup>

### **C. The Applicability of the Peru-Yale dispute to the Elgin Marbles**

The extended debate between Yale University and the state of Peru over several artifacts collected from Machu Picchu further demonstrates the unlikelihood of success in Greece finding legal remedy. In 1912, both the University and the National Geographic Society supported an expedition by Yale professor Hiram Bingham to the Machu Picchu ruins of Andean Peru.<sup>30</sup> From this venture – as well as a 1915 trip – Bingham ultimately removed hundreds of tools, pots, and silver objects from the excavation site, supposedly with the approval of the Peruvian government.<sup>31</sup> For decades, the

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<sup>22</sup> Merryman, *supra* note 7, at 1900.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> See “War of Greek Independence”. *Encyclopædia Britannica. Encyclopædia Britannica Online.*

Encyclopædia Britannica Inc., 2015. Web. 29 Jan. 2015

<<http://www.britannica.com/EBchecked/topic/244575/War-of-Greek-Independence>>.

<sup>26</sup> Merryman, *supra* note 7, at 1900

<sup>27</sup> *Ibid.*, at 1900-1.

<sup>28</sup> 11 Halsbury's Laws of England 747 (Lord Hailsham 4th ed. 1976); *see also* Enactment of the Crown Proceedings Act, 10 & 11 Geo. 6, ch. 44 (1947)

<sup>29</sup> See Limitation Act, 1939, 2 & 3 Geo. 6, ch. 21, § 2(1)(a).

<sup>30</sup> Molly L. McIntosh, *Exploring Machu Picchu: An Analysis of the Legal and Ethical Issues Surrounding the Repatriation of Cultural Property*, 17 Duke J. Comp. & Int'l L. 199, 206-09 (2006) [hereinafter McIntosh].

<sup>31</sup> Danna Harman, Peru Wants Machu Picchu Artifacts Returned, USA Today, Jan. 6, 2006, at 10A [hereinafter Harman]; Rupert Cornwell, Peru Tells Yale It Wants Its Machu Picchu Treasures Back (After 100 Years), The Independent (London), Feb. 3, 2006, at 35, available

artifacts Bingham brought back composed a major exhibit in Yale's Peabody Museum, and they were also the subject of a drawn-out legal dispute between Peru and the University.<sup>32</sup> Yale claimed that Bingham had permission to remove the artifacts from the Peruvian president himself, and also that Peru's Civil Code of 1852 permanently transferred title to the University.<sup>33</sup> Peru did not dispute that Bingham had permission, but it asserted that the artifacts were only on loan to the school.<sup>34</sup>

Peru began to request return of the cultural property in 1917, but Yale continually put off its response.<sup>35</sup> The University claimed to have returned a small number of pieces in 1922, but the Peabody Museum retained approximately 250 objects of "exhibit quality".<sup>36</sup> The government of Peru also pointed to a 1912 agreement with Yale which declared: "The Peruvian Government reserves to itself the right to exact from Yale University and the National Geographic Society of the United States of America the return of the unique specimens and duplicates".<sup>37</sup> More specifically, Peru argued that after World War I, it invoked this contract and requested return of the Machu Picchu objects.<sup>38</sup> Additionally, there was the discovery of a letter written by Bingham, which states that the artifacts "do not belong to us, but to the Peruvian government, who allowed us to take them out of the country on condition that they be returned in eighteen months".<sup>39</sup> Despite its initial cooperation with Yale, the National Geographic Society also supported the position that Peru had title.<sup>40</sup> In response, the University stated that it had already returned all the objects from Bingham's 1915 trip; therefore, the chief dispute that remained until 2008 was who had title to the objects from the 1912 expedition.<sup>41</sup> In addition to its citation of Peru's 1852 Code, the University

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at <http://news.independent.co.uk/world/americas/article342877.ece>.

<sup>32</sup> Harman, *supra* note 31, at 10A.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> Andrew Mangino, Peru Dispute Has Long, Murky Past, Yale Daily News, Apr. 14, 2006, available at <http://www.yaledailynews.com/Article.aspx?ArticleID=32693> [hereinafter Mangino, Peru Dispute].

<sup>38</sup> *Ibid.*

<sup>39</sup> Andrew Mangino, Elections Could Avert Peru's Lawsuit, Yale Daily News, Apr. 12, 2006, available at <http://www.yaledailynews.com/Article.aspx?ArticleID=32634> [hereinafter Mangino, Elections].

<sup>40</sup> Kim Martineau, Peru Presses Yale on Relics--Nation's First Lady Keeps Issue in Public Eye, Hartford Courant, Mar. 14, 2006, at A1.

<sup>41</sup> Matt Apuzzo, Disputed Collection Holds Keys to Machu Picchu's Secrets, Associated Press Newswires, June 16, 2006 ("The Peruvian government maintains that, while Bingham had approval to remove the artifacts, they were essentially on loan to Yale and the country never relinquished legal ownership.") [hereinafter Apuzzo].

also claimed that the relevant statute of limitations could bar Peru's claims for return of the objects, since they were removed from Peru nearly one hundred years ago.<sup>42</sup>

In spite of all the legal strategies invoked by the two parties, it was only outside of the law that the matter was finally resolved. In 2008, the Peruvian government filed a lawsuit against Yale – spurring increased negotiations between them.<sup>43</sup> Shortly thereafter, the University received a letter from alumni, urging them to return the artifacts.<sup>44</sup> These developments helped move the process out of the courts, and not long after, the dispute was resolved through two separate agreements.<sup>45</sup> The first, between Yale and the Peruvian government, established that the University would return all of the objects by the end of 2012; the second established a partnership between Yale and the San Antonio Abad University in Cuzco, Peru, to “share stewardship” of the collection.<sup>46</sup>

The Machu Picchu case is a useful reference for the Elgin Marbles debate in several respects. First, while many have found the Peruvian artifacts to be comparable to disputed property possessed by such institutions as Malibu’s Getty Museum and the Metropolitan Museum of Art in New York City, no cases “involve as remarkably similar a fact pattern as the case of the Elgin Marbles”.<sup>47</sup> Much like the strong argument that Elgin had legally taken the Marbles from Athens, the legality of the Machu Picchu property’s removal was not doubted – even by the Peruvian government.<sup>48</sup> Both the Yale artifacts and Elgin Marbles were removed with at least apparent, if not express, authority.<sup>49</sup> Second, despite the many similarities between these two cases, their differences *also* illustrate the impracticality of a legal approach to the Marbles. Given the facts above, Peru arguably had better legal reasoning than their Greek counterparts, and even they opted not to go ahead with the lawsuit, and instead proceed through means of negotiation. This scenario raises the possibility for alternative dispute resolution between the United Kingdom and Greece, which will be further explored in the third section of this paper.

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<sup>42</sup> Mangino, Elections, *supra* note 39.

<sup>43</sup> Orson, Diane. "Finders Not Keepers: Yale Returns Artifacts to Peru." *NPR* 18 Dec. 2011. Web. 1 Apr. 2015. <<http://www.npr.org/2012/01/01/143653050/finders-not-keepers-yale-returns-artifacts-to-peru>>.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> McIntosh, *supra* note 30, at 206.

<sup>48</sup> Matt Apuzzo, *supra* note 41.

<sup>49</sup> McIntosh, *supra* note 30, at 207.

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## II. Moral Considerations

In the debate over the Marbles, it has been suggested that morality should also be analyzed, and to some extent, this is true. As noted by Dr. Derek Fincham,

Looking simply at the question of whether Elgin rightfully acquired the sculptures gives an incomplete picture...current law and normative practice have begun to shift radically to allow increased respect for the preservation of sites and archaeological context.<sup>50</sup> However, it is important to first consider how effectively morality could actually be applied to this situation. Simply put, the moral question is much harder to resolve than the legal one because moral norms are imprecise, and their applicability is controversial.<sup>51</sup> Examining the relationship between law and morality, Professor Merryman explains, “That is one reason for legal rules: to provide definitive and practically workable solutions to otherwise troubling and unruly questions”.<sup>52</sup>

### A. Existing and Potential Damage to the Parthenon and the Marbles

In judging the morality of Elgin's actions, it has been asserted that the resulting damage to the Parthenon should be considered.<sup>53</sup> This is a reasonable request; the removal of the sculptures by Elgin's agents has been called “one of the most destructive acts committed on what is the world's most important ancient Greek monument”.<sup>54</sup>

Nonetheless – assuming the Marbles would have remained on the Acropolis if Elgin had removed nothing – they likely would have been exposed to a variety of more serious hazards.<sup>55</sup> The Ottomans appeared to be insensitive to the artistic and cultural importance of the Marbles.<sup>56</sup> It has also been suggested that, at the time, the Greeks themselves lacked interest in or respect for their own antiquities.<sup>57</sup> Those that were not removed have seen tremendous deterioration, while those taken to England and installed in the British Museum have been much better preserved.<sup>58</sup>

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<sup>50</sup> Fincham, *supra* note 5, at 949.

<sup>51</sup> Merryman, *supra* note 7, at 1903.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*, at 1887.

<sup>54</sup> See Robert Browning, ‘The Parthenon in History,’ in *The Parthenon Marbles: The Case for Reunification* 13 (updated ed. 2008) at 10.

<sup>55</sup> Merryman, *supra* note 7, at 1906.

<sup>56</sup> See REPORT, *supra* note 1, at 7; see also W. ST. CLAIR, *supra* note 20, at 55-57.

<sup>57</sup> See REPORT, *supra* note 1, at 5; W. ST. CLAIR, *supra* note 20, at 211-14; T. VRETTOS, *supra* note 20, at 104-06.

<sup>58</sup> Merryman, *supra* note 7, at 1917.

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## **B. The Likelihood the Marbles Would Have Remained in Athens if not for Elgin's Actions**

Historical records indicate that the French sought to acquire Greek antiquities for their own museums, and also to prevent Elgin from obtaining them for England.<sup>59</sup> These circumstances suggest that, had Elgin not removed the Marbles, someone else would certainly have acted in his place. As with the aforementioned international law, the morality prevailing in that time and place should also be considered in a judgment of Elgin's acts.<sup>60</sup> It is thus reasonable to ask whether moral culpability should attach to a historically unavoidable act.<sup>61</sup> As Merryman notes, "If the removal of the Marbles was bound to occur, is it right to assign moral blame to one who merely did the inevitable?"<sup>62</sup>

## **III. The International Trend of Voluntary Repatriation of Cultural Property**

Despite the strength of the United Kingdom's legal position in the Marbles controversy, as well as the weakness of the morality argument against Elgin, the impact of recent dispute resolution over other cultural property cannot be denied.

Over the last two decades a growing number of incidents involving the voluntary return of items of cultural significance to countries of origin from governments, museums, and individuals have occurred throughout the world. These acts of voluntary repatriation have all occurred extrajudicially and demonstrate an emerging norm in the international community favoring the voluntary return of cultural property to its country of origin.<sup>63</sup>

The initiating parties of such cases have included governments, major museums, and even individuals.<sup>64</sup> It is true that, in the absence of any relevant international authorities, the United Kingdom is not legally bound by any outside acts of repatriation.<sup>65</sup> Regardless, as these cases of voluntary return become more common, the British – already scrutinized as one of the greatest imperial powers in history – will likely appear as a sort of cultural outlier in

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<sup>59</sup> *Ibid.*, at 1905.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*, at 1906.

<sup>63</sup> Michael J. Reppas II, *Empty "International" Museums' Trophy Cases of Their Looted Treasures and Return Stolen Property to the Countries of Origin and the Rightful Heirs of Those Wrongfully Dispossessed*, 36 *Denv. J. Int'l L. & Pol'y* 93, 114-15 (2007) [hereinafter Reppas].

<sup>64</sup> *Ibid.*

<sup>65</sup> Melineh S. Ounanian, *Of All the Things I've Lost, I Miss My Marbles the Most! An Alternative Approach to the Epic Problem of the Elgin Marbles*, 9 *Cardozo J. Conflict Resol.* 109, 127-31 (2007) [hereinafter Ounanian].

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the eyes of the international community for their refusal to adapt to worldwide change.

### A. The Axum Obelisk

The Axum Obelisk is a “1,700 year-old, 160 ton, 78 ft., ornately decorated” artifact that is regarded as one of Ethiopia's national religious treasures.<sup>66</sup> The controversy began upon its looting in 1937 by Italian Dictator Benito Mussolini, during Italy’s brief military occupation of Ethiopia.<sup>67</sup> Beginning in 1947, Ethiopia sought the return of the obelisk, motivated by the artifact’s “tremendous” sense of cultural significance.<sup>68</sup> It not only represents their ethnic identity, but it is also one of the few historic monuments that Ethiopians feel link them to their ancestors.<sup>69</sup> At last, in 2005, the Italian government agreed to voluntarily return the Obelisk to Ethiopia – a gesture seen as “a significant achievement for world-wide repatriation efforts”.<sup>70</sup> The successful conclusion of the Italian-Ethiopian negotiations stemmed from “the recognition by (Italy) that the obelisk was important to the Ethiopian people and their culture”.<sup>71</sup>

This act of repatriation is not an isolated incident in Italy’s modern foreign relations. While Italian law allows for criminal prosecution of those who engage in the illegal trade or excavation of antiquities, the state has consistently favored out-of-court agreements.<sup>72</sup> For example, in September 2006, Italy reached an agreement with Boston's Museum of Fine Arts, providing for the return of thirteen artifacts to Italy in exchange for a loan to the Museum of other cultural property.<sup>73</sup> Italy also made an agreement with

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<sup>66</sup> Final Obelisk Section in Ethiopia, BBC NEWS, Apr. 25, 2005, <http://news.bbc.co.uk/2/hi/africa/4472259.stm>.

<sup>67</sup> Verity Murphy, Obelisk Points To Ancient Ethiopian Glory, BBC NEWS, Apr. 11, 2005, <http://news.bbc.co.uk/2/hi/africa/4376627.stm> [hereinafter Murphy].

<sup>68</sup> Lucille A. Roussin, J.D., Ph.D., *Cultural Heritage and Identity*, 11 *Cardozo J. Int'l & Comp. L.* 707, 708 (2003); Final Obelisk Section in Ethiopia, BBC NEWS, Apr. 25, 2005, <http://news.bbc.co.uk/2/hi/africa/4472259.stm>.

<sup>69</sup> Murphy, *supra* note 67.

<sup>70</sup> Reppas, *supra* note 63, at 115.

<sup>71</sup> Rosella Lorenzi, Italy Returns Stolen Obelisk to Ethiopia, Discovery News, Nov. 23, 2004, available at <http://dsc.discovery.com/news/briefs/20041122/axumobelisk.html>.

<sup>72</sup> Ariel David, US Museum Returns 13 Italian Artifacts, Associated Press, Sept. 28, 2006, available at <http://www.washingtonpost.com/wpdyn/content/article/2006/09/28/AR2006092800749.html> (“Boston's Museum of Fine Arts returned [thirteen] disputed ancient artifacts to Italy[ ], a deal that Italian officials hope will pave the way for others to give back antiquities they say were smuggled out of the country”).

<sup>73</sup> *Ibid* (“[t]he agreement promises loans of other Italian treasures to the MFA, and marks the latest victory for Italy in its quest to regain antiquities that were dug up illegally and sold to museums worldwide”).

the Metropolitan Museum of Art in New York for the return of twenty-one pieces.<sup>74</sup> As illustrated by these cases,

Alternative dispute resolution is better suited for the art world than traditional litigation. Not only are there issues of venue and jurisdiction, but prosecution is necessarily more adversarial and can sever important ties. This is particularly true of countries like England and Greece who, since entering the European Union... have more of an incentive to work together, and bolster rather than destroy their relationship.<sup>75</sup>

The success of the Axum Obelisk negotiations is also a strong counterpoint to the transportation argument raised by the United Kingdom. Specifically, it has been suggested that returning the Marbles back to Greece would present dangers during transportation that are not worth the risk.<sup>76</sup> However, the negotiations on – and the subsequent return of – the Obelisk demonstrates that this issue is not too serious. In order to move the Obelisk safely back to Ethiopia, a special cargo plane was chartered – bringing back the three segments of the artifact across three flights.<sup>77</sup> Italy then delivered machinery to put the stone in place, after repairing the road leading to the Obelisk's original site.<sup>78</sup> With such advancements in transportation, returning cultural property is often easier than the past removal was.<sup>79</sup>

## B. Other Artifacts from the Parthenon

In 2006, the University of Heidelberg announced that it would return a piece of the Parthenon's north frieze to Greece “in recognition of the significance of the Parthenon as part of the world's cultural heritage.”<sup>80</sup> In response, Greece has promised to the international community that for every piece of the Parthenon returned, it will offer another antiquity to the donor in a goodwill gesture.<sup>81</sup> This resolution marked the second significant return in recent years of Parthenon pieces.<sup>82</sup>

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<sup>74</sup> *Ibid.*

<sup>75</sup> Ounanian, *supra* note 65, at 129.

<sup>76</sup> *Ibid.*

<sup>77</sup> Italy to Return Ethiopian Obelisk, [http:// news.xinhuanet.com/english/2005-01/28/content\\_2517820.htm](http://news.xinhuanet.com/english/2005-01/28/content_2517820.htm) (last visited Feb. 19, 2007).

<sup>78</sup> *Ibid.*

<sup>79</sup> Ounanian, *supra* note 65, at 130.

<sup>80</sup> Press Release, Univ. of Heidelberg, University of Heidelberg Returns Fragment of Parthenon Sculptures to Greece Permanently (Jan. 11, 2006), [http://www.uni-heidelberg.de/press/news/news06/2601par\\_e.html](http://www.uni-heidelberg.de/press/news/news06/2601par_e.html). (last visited Feb. 19, 2007).

<sup>81</sup> Christy Papadopoulou, Parthenon Fragment Returns Home, Athens News, Sept. 8, 2006, at A29, available at [http://www.athensnews.gr/athweb/nathens.print\\_unique?e=C&f=13199&m=A29&aa=1&eid os=A](http://www.athensnews.gr/athweb/nathens.print_unique?e=C&f=13199&m=A29&aa=1&eid os=A). (last visited Feb. 19, 2007).

<sup>82</sup> Reppas, *supra* note 63, at 115

### C. The Stone of Destiny

This traditional coronation stone of Scottish kings and queens was stolen by the English king Edward I approximately seven hundred years ago.<sup>83</sup> After centuries of dispute, England decided that the artifact was of great cultural significance and returned the stone to Scotland in

1996.<sup>84</sup> As Yeshiva University student Melineh S. Ounanian observes about the Marbles dispute, “It is surprising that England (as part of the United Kingdom) is currently making an argument for retaining property that has such significance to another culture, given that it recognized the importance of Scotland's Stone of Destiny”.<sup>85</sup>

### D. Potential Counterarguments by the United Kingdom

The British have frequently fallen back on the matter of time as a defense for retaining the Marbles. On this matter, Ounanian concedes, A key obstacle separating the case of the Marbles from other cases of cultural property restitution is one of timing. The Ethiopian obelisk (was)...acquired relatively recently. England is basing a large part of its argument on the fact that it has had the marbles for so long. The longer it keeps the marbles in its possession, the stronger that argument will become.<sup>86</sup>

Perhaps the biggest flaw with this reasoning outside the legal context (already addressed in part one of this paper) is that it puts approximately 150 years of British possession on equal footing with nearly 2500 years of Greek ownership.<sup>87</sup> Furthermore, as noted by cultural property expert Michael J. Reppas, “The cultural nationalistic arguments made by the British pale in comparison to that of the Greeks”.<sup>88</sup> For example, survey information suggests that British nationals are largely in favor of returning the Marbles.<sup>89</sup> In a 1996 UK poll, over ninety-two percent of the nearly one hundred thousand participants voted to repatriate the Marbles to Greece.<sup>90</sup>

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<sup>83</sup> Elazar Barkan, *Amending Historical Injustices: The Restitution of Cultural Property - An Overview*, in *Claiming The Stones, Naming The Bones: Cultural Property and the Negotiation of National and Ethnic Identity*, 16, 17 (Elazar Barkan & Ronald Bush eds., Getty Publications 2002).

<sup>84</sup> Richard Blystone, *Scotland's 'Stone of Scone' Finds its Way Home*, Cnn World News, Nov. 15, 1996, <http://www.cnn.com/WORLD/9611/15/stone.of.scone/> (last visited Feb. 19, 2007).

<sup>85</sup> Ounanian, *supra* note 65, at 131.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> Michael J. Reppas II, *The Deflowering of the Parthenon: A Legal and Moral Analysis on Why the "Elgin Marbles" Must Be Returned to Greece*, 9 *Fordham Intell. Prop. Media & Ent. L.J.* 911, 931-2 (1999).

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

The other potentially viable argument the British could offer concerns the Marbles' impact on both prospective artists, and the wider public. Several years ago, there was an academic debate concerning the "Nefertiti Bust", an artifact which was taken from Egypt, and now resides in Berlin's Egyptian Museum.<sup>91</sup> Professor Stephen Urice, assigned to argue on behalf of Germany, offered a series of policy-oriented arguments for retention of the bust in the German institution.<sup>92</sup> Among these, Urice incorporated "'a new value(:)...protecting the stream of creative expression'...for the benefit of prospective artists who might be inspired by the bust and, by virtue of their spin-off creations, for the benefit of the general public as well".<sup>93</sup> In the context of the Marbles, the United Kingdom could argue that the retention of this property within the renowned British Museum will ensure it is witnessed by masses of tourists and artists drawn to the institution.

This assertion is largely negated by the exceptional recent efforts of the Greeks to preserve their ancient history. In the present day, the government of Greece has set an idealistic – yet attainable – goal for itself: to reunify the Parthenon sculptures in Athens, so that they may be viewed "as the artists originally intended, with the exact layout of the temple, all while making a direct visual connection between the sculptures and the Parthenon itself".<sup>94</sup> In order to facilitate this setup, a new museum has been constructed in Athens – with the Parthenon visible from the building's upper gallery.<sup>95</sup> So long as Greece remains stable enough to attract the masses of visitors it historically has played host to, this promising exhibit of the reunified artifacts has the potential to be one of the greatest displays of creative expression on the planet.

## Conclusion

In the modern era, the former empires of Europe have been subjected to countless calls for repatriation of cultural property. Perhaps the greatest of these powers could be found in the United Kingdom, and – fittingly – this state is at the center of the biggest cultural property dispute of our time. It is not hard to sympathize with Greece and its request for the Elgin Marbles to be returned to Athens. However, fair legal principles must be applied, and in this situation it is unlikely that Greece could obtain the Marbles through a

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<sup>91</sup> James A. R. Nafziger, *International Law, Museums and the Return of Cultural Objects*. by Ana Filipa Vrdoljak. Cambridge, New York, Melbourne: Cambridge University Press, 2008. Pp. Xxxviii, 342. Paper, \$48. *Imperialism, Art and Restitution*. *Edi*, 102 Am. J. Int'l L. 408, 413 (2008).

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> Fincham, *supra* note 5, at 979.

<sup>95</sup> *Ibid.*

legal avenue. Relevant facts demonstrate that the Ottomans legally gave Elgin the right to remove the Marbles from the Parthenon.

Furthermore, under the application of current international law, the Greeks have likely lost any right of action for the recovery of the Marbles before an English court. With regards to the potential incorporation of morality into this dispute, there is little – according to moral principles of the nineteenth century – to indicate that Elgin committed a clear wrong by removing the Marbles.

Despite such setbacks, Greece will likely see at least a portion of the Elgin Marbles returned in the near future – due to the impact of the growing, international trend of extrajudicial repatriation of cultural property. This movement has seen several states – including the United Kingdom – return culturally significant objects to their places of origin. Besides the threat of isolation from an international community that engages more and more in such dispute resolution, the British will probably also be compelled to return the Marbles on account of the examples set with Yale University and the University of Heidelberg. In both cases, the possessors complied with the requests for return, and they were rewarded with stewardship of the artifacts at issue, or the possession of similar antiquities offered in goodwill. These opportunities, along with the current environment, will someday override the United Kingdom's interests in holding out over the Elgin Marbles.