



The Complexities of a Cultural Property Case: An Examination of the Parthenon Marbles

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The Complexities of a Cultural Property Case: An Examination of the Parthenon Marbles.

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Abstract

Cultural property disputes are more often than not complicated cases to resolve, not only as legal matters, but also as cases that extend into politics and international relations. Cultural property is itself hard to identify and define. Perhaps no other case warrants more analysis than the Parthenon Marbles, a collection of marbles and other artifacts forcibly removed from the Parthenon by Lord Elgin and his crewmen, a removal that was later deemed legal by the House of Commons in a controversial, almost split vote. Since then, the UK has maintained that the property is owned by the British Museum, legally purchased by Lord Elgin, and has denied requests of mediation. The terms culture and cultural property invite a lot of discussion among scholars. In the second chapter, the literature review focuses on these concepts and how they are inextricably linked to identity and history, while also discussing the value that cultural property may have, both financial and emotional. The question of who is the rightful owner of cultural property, especially in the advent of time, is also explored from different standpoints, although in many cases, one should be open to the idea that ownership needn't be exclusive to one party, a reality that is not easily reconciled in the legal world. The question of ownership, however, is the central point of dispute in most cultural property cases. There is, nowadays, a well-established, agreed upon international legal framework for dealing with such disputes. The 1954 Hague Convention was developed after World War 2 to safeguard cultural property in periods of armed conflict, while the 1970 UNESCO Convention is aimed at preventing and prohibiting the illicit

import, export and transfer of ownership of cultural property. Last but not least, the 1995 UNIDROIT Convention, complementary in nature to the UNESCO Convention, focuses on the return and restitution of cultural property and includes both states and private parties. While these laws now afford great protection to cultural property, they were reactive in nature and not pre-emptive, and because they are not retroactive, many injustices of the past remain to this day unresolved. It is clear, however, that if these laws were in effect at the time of the Parthenon Marbles' removal, there would be a clear, straightforward case for their return. The next chapter focuses on the legal analysis of the case, discussing all the various elements of the case, exploring the issues of authority, documentation, duress, as well as the nature and means of the Parthenon Marbles' removal among others. The chapter also focuses on the role of England and whether they can be considered as a good faith purchaser as well as time limitations and precedent considerations that further complicate the legal case for their return. Both cases of England and Greece have legal merits, however, it is evident that the circumstances surrounding the Parthenon Marbles' transfer of ownership are questionable and therefore if this case were to be tried in court, the outcome would not be easily predicted. The next chapter ties together the previous chapters, discussing the Parthenon Marbles under the lens of modern society, considering the legal aspects of the case but also widening the discussion to include today's morals, the role of technology and aesthetics and the debate between nationalism and universalism. The chapter ends with discussion of recent landmark developments and deals reached in similar cases that could also serve as potential solutions in this long-standing dispute. The conclusion reiterates the many complexities of the case of the Parthenon Marbles, but also highlights the recent trend in

resolving cultural property disputes, to end on a hopeful note. Inevitably, however, laws, as much as everything else, conform to society's morals, not the other way around, and today the world is witnessing a collective shift in thinking about these issues. It is a matter of time before the status quo is disrupted; after all the only constant is change.

Author's Biographical Sketch

The author was born in Athens, Greece in 1991. She attended the Hellenic American Educational Foundation and graduated with an International Baccalaureate diploma. She pursued her Bachelor of Maritime Business in Southampton Solent University. After completing her dissertation in maritime law on the subject of “A New Convention that deals with the unfair criminalization of seafarers”, she decided to further her academic studies and focus on law and public policy. She completed a Master’s degree in Public Administration from Cornell University. While pursuing various non-profit and governmental professional opportunities, she enrolled to Harvard Extension School where she completed a Graduate degree in International Relations. In addition, she was awarded a Graduate Certificate in Law from BPP University, in London. She is currently a Master of Legal Studies candidate at Harvard University. Furthermore, she is working as a Regulatory Affairs Associate in a top U.S. investment bank focusing on sustainable finance financial regulation.

Dedication

This thesis is dedicated to my family and most of all to my brother, Kreon, who always supported me. Thank you for always being next to me and for helping me achieve my dreams.

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The completion of this thesis would not have been possible without the support and guidance of Professor Shoemaker. Professor Shoemaker, believed in me and the topic of my thesis and gave me an opportunity, for which, I will always be grateful to him.

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Chapter I.

Introduction

The Parthenon Marbles, or also referred to as Elgin Marbles or Parthenon Sculptures refer to a collection of Marbles and other artifacts removed from the Parthenon temple on the Acropolis, Athens, Greece. They are now on display 2.000 miles away from Athens, at the British Museum, in London, UK. The Parthenon Marbles while 2,467 years old, remain as current as ever under the lenses of cultural property, as does the question of whether history, heritage and our past belong to the whole of mankind or whether there is justification in nations claiming these ‘modern’ cultural symbols as theirs.

The Parthenon Marbles is a popular term used to describe a collection of classical Greek stone sculptures, inscriptions and architectural pieces that were originally fixtures of the temple of Parthenon, Propylaea and Erechtheum, and other adjacent buildings on the ancient Athenian citadel, Acropolis. This classical Greek collection includes portions of the frieze, metopes, figures from the pediments and various other pieces of architecture and all together constitute about half of the remaining sculptures of Acropolis.¹

More specifically, the 247 feet frieze is part of the original 524 feet Parthenon frieze that extended around the Parthenon’s main internal hall. This frieze is a three-foot-high horizontal band, carved in low-relief Pentelic marble and recounts the Panathenaic

¹ “Top 10 Plundered Artifacts,” Time, accessed February 2, 2019, http://content.time.com/time/specials/packages/article/0,28804,1883142_1883129_1883001,00.html

Procession. Fifteen out of the originally ninety-two Metopes of the Parthenon are also included in the Parthenon Marbles collection. These are a series of four-foot high-relief carved marble panels that surrounded the top of the outside walls of the Parthenon and illustrate various historical and mythical events such as the battle of the Lapiths and Centaurs, the Trojan War and the Amazonomach. The Parthenon Marbles are also comprised of seventeen figures detached from the pediments of the Parthenon.²

Thomas Bruce, the Seventh Earl of Elgin, was appointed in 1801 by the British Empire to act as the British ambassador on the Ottoman Porte. One of the intentions behind this appointment was to assist progress of Fine Arts in Great Britain by creating accurate drawings and casts of valuable remains of sculpture and architecture dispersed throughout Greece and especially in Athens. Thomas Bruce, employed Signor Luisieri, a reputable painter at that time, together with two architects, two modelers and a figure painter to help on his procurement.³

On July 31, 1801, Elgin's crewmembers and workers started removing the 2,200 years old Marbles from Parthenon. Within months, the crew had lowered many of the remaining sculptures from the Athenian citadel and hauled them back to England. Luisieri, who was responsible of the removals on behalf of Elgin, disclosed that he had been obliged "to be a little barbarous," damaging the structure of the Parthenon. This collection is part of the Parthenon Marbles and is commonly known as the Elgin Marbles or Parthenon Sculptures.

2 "Acropolis, Athens." Unesco.org, accessed February 2, 2019, <http://whc.unesco.org/en/list/404>.

3 "The Elgin Affair," New York Times, accessed February 26, 2019, <https://www.nytimes.com/books/first/v/vrettos-abduction.html>.

The Parthenon Sculptures reached England. Lord Elgin attempted to sell them to the British Museum. A Select Committee of the House of Commons was called to debate on the legitimacy of acquiring the Marbles. In 1816, the British government bought the Marbles from Elgin, and they are now held under the terms of the British Museum Act 1963 which precludes Trustees from permanently disposing of objects.⁴

The Parthenon Sculptures are classified as “cultural property” and are perhaps the world’s most prominent cultural property dispute. Today collections from the Parthenon are housed around Europe; the Musée du Louvre, the National Museum of Copenhagen, the Vatican Museums, the Kunsthistorisches Museum in Vienna, the Glyptothek in Munich, the Würzburg University Museum in Germany and lastly, the New Acropolis Museum in Athens, Greece. More than half of the Greek classical artifacts collection is on display in the Duveen Gallery of the British Museum.⁵

The Parthenon Marbles were always a controversial issue. Even when England took the decision of acquiring them in 1816, Hammersley MP in the House of Commons, raised his voice and proposed the repatriation of the Marbles. Later on, numerous high-profile Greek individuals and philhellenes requested the restitution of the Marbles. In 1965, the Greek Government called for all cultural property artifacts to be repatriated. The first official attempt by the Greek Government for the return of the Marbles was in 1983. A year later; in late 1984, the British government officially rejected the request for restitution. In 1997, the British government declared that the matter should be completely handled by the Trustees of the British Museum and that the return of the Marbles is not in

4 “Elgin Marbles,” UK Parliament, accessed February 2, 2019 <http://www.parliament.uk/edm/1997-98/1373>.

5 “The Parthenon Sculptures,” The British Museum, accessed February 2, 2019 http://www.britishmuseum.org/about_us/news_and_press/statements/parthenon_sculptures.aspx.

their interest. The most recent request was made in 2003 in light of the 2004 Olympic games being hosted in Greece, where they were born, when the Greek Minister of Culture presented a proposal at an UNESCO committee for the repatriation of the Marbles to the new Acropolis Museum.⁶

It is hard to predict what lies in the future of the Parthenon Marbles dispute. In 2013, UNESCO invited Britain to enter a process of mediation in an attempt to discuss the issue of repatriation. Nevertheless, the British Museum, after a silent period of eighteen months, respectfully rejected this request.⁷

In 2015, the Greek government refused to proceed legally on the matter.⁸ The government contends that the issue should be resolved through political and diplomatic channels. A possible reason for this decision could be the broader socio-economic situation of Greece, which struggles with far more immediate problems.⁹

To further understand the issue of cultural property in respect to the Parthenon Marbles dispute, it is essential to take a deeper look at cultural property.

6 “The Parthenon Sculptures,” The British Museum, accessed February 2, 2019

http://www.britishmuseum.org/about_us/news_and_press/statements/parthenon_sculptures.aspx.

7 “The Parthenon Sculptures in the British Museum: UNESCO mediation proposal,” The British Museum, accessed February 6, 2019,

https://www.britishmuseum.org/about_us/news_and_press/press_releases/2015/unesco_mediation_proposal.aspx.

8 “Greece drops option of legal action in British Museum Parthenon marbles row”, The Guardian, accessed February 6, 2019 <http://www.theguardian.com/artanddesign/2015/may/13/greece-drops-option-legal-action-british-museum-parthenon-marbles-row>.

9 “Greece Snubs Amal Clooney over Elgin Marbles,” The Telegraph, accessed February 6, 2019

<http://www.telegraph.co.uk/news/worldnews/europe/greece/11604881/Greece-snubs-Amal-Clooney-over-Elgin-Marbles.html>.

Chapter II.

Literature Review

This literature review focuses on culture & cultural property. I discuss what a culture is, whether cultural property indeed exists, and under which circumstances a culture may be entitled to own property. I also discuss cultural universalism and the notion that culture belongs to all humanity. I compare ideas of scholars and discuss how they approach the subject of cultural property.

Young attempts to define culture, and discusses whether cultures can have claims of collective property over cultural property.¹⁰ Young thinks about the means by which ownership of property is transferred. Thompson also defines culture and questions when cultural property claims can be justified, what are the conditions, when are those valid and which are those that can potentially override those conditions.¹¹ Renold focuses on solutions in cultural property claims.¹²

What is culture and cultural property?

Some scholars try to define culture. Others perhaps assume that culture is an understood concept and focus on cultural property.

Young references Wittgenstein's definition of culture 'a family resemblance concept; someone is a member of a culture who shares enough of some nest of

¹⁰ James Young, O. "Cultures and Cultural Property." *Journal of Applied Philosophy* 24 (2): 111–24.

¹¹ Janna Thompson. "Cultural Property, Restitution and Value." *Journal of Applied Philosophy* 20 (3): 251-62

¹² Marc-Andre Renold. "Cultural Co-Ownership: Preventing and Solving Cultural Property Claims." *International Journal of Cultural Property* 22 (2-3): 163-76

properties.’¹³ He also states that an important factor in defining a culture, and later thinking about its claims, is the ability to identify members of a culture. He adds that there are times that cultures are coextensive to a country.

Gazi, a Dutch social psychologist, thinks about "cultural prosperity" in similar terms with Young but expands on the benefit that a culture can give to people¹⁴. She defines culture as the collective program of the human mind, which is made to distinguish an individual from a given category or group. It can tell people who they are, the behaviors that they have, or which are appropriate for them, and which practices are considered unacceptable for them in society. Culture can affect everything people do, feel, believe, and see. Gazi provides an example of the American culture; the American dream, and the notion that if one works hard, then one can be in a position to achieve a given dream.¹⁵

Thomson defines cultural property as ‘the property of a collectivity.’¹⁶ She extends her reasoning by linking cultural property to control and territory. Interestingly, Young also identifies collectivity as a critical factor for cultural property. According to Young, collective property holds when the product is collective.¹⁷

Moving forward, when can claims of cultural property succeed? Young focuses on works of art. He begins his reasoning by questioning whether a culture can indeed claim that it owns property. He thinks that cultural property falls under the ideas of ‘inheritance, cultural practices and the collective production of property’. Young

¹³ Ludwig Wittgenstein, Von Wright, Alois Pichler, and Heikki Nyma, *Culture and Value*. (Oxford: Blackwell, 1998).

¹⁴ Andromache Gazi. "Museums and national cultural property II. The Parthenon marbles." *Museum management and Curatorship* 9. No. 3 (1990): 241-255.

¹⁵ Gazi, *Museums*, 241-255

¹⁶ Thompson, *Cultural Property*, 251-262

¹⁷ Young, *Cultures*, 111-24

considers four possible bases for a cultural property claim to be successful, when not acquired by gift or purchase. He calls the first one “Cultures and Inheritance of Cultural Property.”¹⁸ He initiates his reasoning by touching on the legal principles of a will. He claims that cultural property fails due to the absence of a final testament which a culture is declared as the beneficiary, which leads to the next question.¹⁹

What is identity?

In other words, what do scholars think about who can claim property and the identity of the claimant? Young raises the issue that cultural ownership fails if the members of the culture cannot be identified.

Young also questions the ties between the ‘original’ owner and the current ‘owner’. As an example, Young argues that the Parthenon Marbles ‘were not originally the property of Greek culture.’²⁰ He draws a distinction between Athenians and Greeks and highlights that Athenians themselves would not agree with the proposition that the Parthenon or the Acropolis belonged to the Greeks as a whole. He states that the State of Athens no longer exists, and therefore, it is impossible to know the intention of the Athenians in terms of the beneficiaries of their property of their culture.

Merryman in his paper “Two Ways of Thinking about cultural property”, contrasts ideas of cultural universalism and cultural nationalism.²¹ He states that often cultural nationalism enables nations to hoard objects that remain unused. He highlights

¹⁸ Young, *Cultures*, 111-24

¹⁹ Young, *Cultures*, 111-24

²⁰ Young, *Cultures*, 111-24

²¹ John Henry Merryman. “Two ways of thinking about cultural property”. *The American Journal of International Law* 80 (4): 831

the benefits of universalism particularly in cases where artifacts may be ‘better preserved, studied and displayed and more widely viewed and enjoyed.’²²

Within different lenses, Thompson also touches on museums’ responsibilities and the fact that museums ‘serve the people of all nations and should not be compromised for the sake of interests of one group of people.’²³ In a sense, she adds to Merryman’s point and while she does not argue directly for cultural universalism, she does focus on the role that museums play in ‘education and advancement of knowledge and aesthetic worth.’²⁴

What is collectivity?

When thinking about cultural property, Thomson and Gazi both touch on that term of ‘collectivity’. In their attempt to discuss what collectivity means, scholars often reference some characteristics; collective production, time, tradition and practices.

Young makes a distinction between collectivity and tradition.²⁵ He claims that the traditional knowledge of a culture that the creator holds is not a collective product but an individual, therefore, not collective property. Young remains skeptical on whether traditional practices result in intellectual property. He dismantles this claim on tradition based on the fact that there are numerous and significant differences between various sets of civilizations and cultures, therefore, the notion of collective owners cannot be applied. He explains that cultures do not collectively own the cultural property produced by individuals despite the fact that traditions are formed by individuals. The example that

²² Merryman, *Two Ways*, 831

²³ Thompson, *Cultural Property*, 251-262

²⁴ Thompson, *Cultural Property*, 251-262

²⁵ Young, *Cultures*, 111-24

Young uses is jazz music. According to Young, jazz is developed in the African-American culture, but the songs belong to individuals, not all African-Americans.²⁶

Thompson also links cultural property to collective production and tradition.²⁷ Nevertheless, she adds another factor too; she questions whether collectivity is a function of the passage of time.²⁸ Thompson discusses whether the right to cultural property ends when the collectivity itself no longer exists. And even in cases when this link has not been broken, Thompson suggests that anyway, time weakens the claim to cultural property. She references Waldron, who claims that once the adjustment has been made to ‘a life without it (the object)’ then its return is no longer vital.²⁹ Nevertheless, Thompson also states that collectivity may continue as long as members keep relevant parts of the tradition, and therefore, the artifact maintains value to the collective life. She also claims that a collective production alone is not enough to allow a cultural property claim to succeed. She does however, touch on the fact that if an artifact plays an important role to its communal practices then claims may succeed. This idea of the value of property is discussed a lot in the research community.

What is the Value of Cultural Property?

When some scholars discuss about value, they do it using the literal sense of the word. Others refer to the value that an artifact might have to the culture. Merryman poses this interesting question; are cultural property disputes a simple economic issue of supply

²⁶ Young, *Cultures*, 111-24

²⁷ Thompson, *Cultural Property*, 251-262

²⁸ Thompson, *Cultural Property*, 251-262

²⁹ Thompson, *Cultural Property*, 251-262

and demand?³⁰ He thinks about countries that are rich in cultural artifacts, even those that are, as he puts it ‘beyond any conceivable local use.’³¹ He also thinks about countries that are poorer in cultural property and therefore their internal demand for such artifacts is not met by their supply. He states that usually, the rich in cultural artifacts country is relatively poor and the one that lacks supply is usually wealthy.³² He concludes that this results in an unrestricted market that encourages the net export of cultural property.³³ Merryman introduced the concept that an artifact may indeed be governed by the laws of economics. However, the issue of the economic or monetary value of cultural property does not end here.

Thompson also touches on the economic value of cultural property. While she does not offer a similar explanation to Merryman, she states that cultural property differs from things whose value is purely economic.³⁴ Nevertheless, she proposes that in cases where restitution is not an option, a monetary compensation for the economic loss suffered should be offered to the ‘victim.’³⁵ Is this how one should think about the value of cultural property; by trying to assess where the equilibrium is and propose compensation?

Some scholars do not limit the value of cultural property to just economics. Young, while he refutes cultural property claims in their majority, he identifies one and only condition where those claims can be successful. This ‘exemption’ is dependent on the property’s utility to the people that hold it and claim it.³⁶ According to his reason,

³⁰ Merryman, *Two Ways*, 831

³¹ Merryman, *Two Ways*, 831

³² Merryman, *Two Ways*, 831

³³ Merryman, *Two Ways*, 831

³⁴ Thompson, *Cultural Property*, 251-262

³⁵ Thompson, *Cultural Property*, 251-262

³⁶ Young, *Cultures*, 111-24

whether a cultural property claim can be successful depends on whether the utility of the people that hold that property is higher or lower of than that of the people that claim the property; its value.³⁷ He supports his argument by highlighting the fact that current laws exist to place value on property that is considered valuable to a community. He calls that the ‘cultural significance principle.’³⁸ He claims that the strength of the claim is derived from the proportional value of the property for the members of the culture and this alone is capable to surpass all other principles that govern cultural property ownership.

Thompson also thinks about the non-monetary value of cultural property. As she states, ‘to the extent that individuals value their membership in the collectivity, they will be predisposed to value its cultural property.’³⁹

Scholars sometimes include definitions on culture and cultural property. Most importantly, they go a step further and discuss what can actually constitute cultural property. While a number of them reference international laws and Conventions, they all come up with their own criteria to assess when a country can have grounds to claim cultural property. As discussed, those focus on what constitutes collectivity and the value of the cultural property in question. Within these broader categories, they raise additional questions, about timing, tradition, cultural nationalism and relativism, monetary value and the potential value of cultural property to the claiming culture.

While many of the scholars discussed raise important points and offer a lot of ways to look at and further analyze the issue of cultural property, their opinions are often limited to a binary outcome; a country can either be successful or not at claiming cultural

³⁷ Young, *Cultures*, 111-24

³⁸ Young, *Cultures*, 111-24

³⁹ Thompson, *Cultural Property*, 251-262

property and one can either be for or against cultural universalism, and in that way, there is no middle ground approach offered that could help bridge the two opposing views on the subjects at hand. For example, the concept of ‘belonging’ need not be exclusive in nature; cultural property may very well belong to the whole of mankind, and yet also belong to a certain culture. After all, all cultures are a subset of mankind, of our collective existence in our world. All people, regardless of ethnicity, religion, or race, are in a position to admire and be inspired by our collective cultural heritage but it might also be true that people of a specific culture can enjoy a special, emotional bond to certain artifacts, artifacts that were perhaps part of their upbringing one way or another. So, who is to say that an artifact may belong to the whole world, or just a people, and why can it not be both?

Another argument that was not really touched upon but certainly merits discussion is that of ‘historical understanding’. Specifically, promoting historical understanding by achieving a greater appreciation and understanding of the artifacts displayed. If an artifact is miles away from their natural environment in a foreign soil, is it the same as being it its original location where one can benefit from the context and surroundings of the artifacts? In most cases, probably not, since context and surroundings often play a major role in our understanding of the artifact in question. Scholars also touch on education and the accessibility allowed under cultural universalism, and specifically how those might have hindered if cultural universalism were to be accepted. This argument is perhaps not as strong as it once was, since the digital era that we live, allows for everyone with an internet connection to not only have unprecedented access to museums around the world but also access to unlimited information and knowledge.

But instead of discussing who owns cultural property or figuring out ways to assess the value of cultural property, perhaps a deeper analysis should be centered on how to protect cultural property and how to maximize its value, and put other concerns aside for the time being. Legislation is one way to safeguard cultural property.

Analysis on legislation and its potential gaps is lacking. The next chapter is focused on the regulatory framework of cultural property to assess if it is appropriately developed. In various industries, such as the financial sector, regulators identify failings and attempt to address them with amendments, new regulations, and guidelines. Has cultural property law managed to stay up to date to prevent and address any shortcomings?

Chapter III.

The International Legal Framework

This chapter focuses on the existing legal concepts and remedies that are applicable in cultural property disputes. I discuss the legal framework, the legal principles that emerge from cultural property cases, the potential outcomes and/or remedies in cultural property disputes and discuss any gaps that may exist under the law to resolve them.

Cultural Property Law

‘Cultural property law is an area where property law, international law, art law, heritage law and intellectual property law intersect.’⁴⁰ That is evidence of how complicated cultural property disputes might become, and why such matters often fail to be resolved. There are international Conventions and domestic laws that protect what is defined as ‘cultural property’. This chapter will focus on the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

The 1954 Hague Convention was aimed at addressing cultural property disputes; however, its scope is limited to the protection of cultural property in armed conflict.

⁴⁰ “Property Law, Cultural Property and Heritage.” London School of Economics and Political Science. LSE. 2022. <https://www.lse.ac.uk/law/research/property>.

Nevertheless, as the first international coordinated attempt of its kind, it is crucial in understanding how cultural property law has been developed over time.

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

The principles of the 1954 Hague Convention include the protection, the safeguarding, and the respect of cultural property.⁴¹ Armed conflicts throughout history, have always had an adverse impact on the course of humanity. These conflicts, in addition to the negative implications on human lives, also resulted in the destruction of cultural heritage. To that extent, the 1954 Hague convention aimed to protect cultural property. Cultural property is formally defined as:

1. *“Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular, archaeological sites, groups of buildings which, as a whole, are of historical or artistic interest, works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, as well as scientific collections and important collections of books or archives or of reproductions of the property defined above”⁴².*

This is the very first formal, agreed upon definition of cultural property, which is however quite vague at points, and is meant to include a very wide array of objects. It is also quite subjective, since “property of great importance” is not by any means a common standard, even though the definition goes on to provide typical examples of cultural property. The goal of the Convention is to protect cultural property in times of armed conflict, and it is therefore no surprise that the definition chosen allowed for a very broad

⁴¹ United Nations, “The Convention Include the Protection, the Safeguarding and the Respect of Cultural Property” (1954).

⁴² United Nations, “The Convention 1954”

list of objects to be considered as cultural property. We will later see how this definition has changed to become more restrictive in later years.

2. *Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph 1 such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph 1.*⁴³
3. *Centers containing a large amount of cultural property as defined in sub-paragraphs 1 and 2, to be known as “centers containing monuments.”*⁴⁴

Items (2) & (3) would not be typically expected to be classified as cultural property. One would logically expect that a building which houses cultural property is not cultural property itself, at least not necessarily. As discussed previously, however, the goal of the Convention is to safeguard and protect cultural property during armed conflict, and treating buildings and areas that house cultural artifacts as cultural property themselves, affords even greater protection to them, by adding another layer of security for them.

After all, the 1954 Hague convention was initiated after World War II, due to the large – scale destruction of cultural property during that period. It is the most widely recognized international treaty exclusively dedicated to the protection of cultural heritage in armed conflicts. It defines a number of measures that States should take during peacetime and in preparation for conflict, and thus, provides a protocol for the protection of cultural property during war. It was a much needed first step by the International community to address the importance of cultural property, and the importance of safeguarding it, especially in times of armed conflict. Armed conflict is not, however, the

⁴³ United Nations, “The Convention 1954”

⁴⁴ United Nations, “The Convention 1954”

only threat to cultural property and WWII also gave rise to another significant hazard: the illicit import, export and transfer of ownership, namely the black market. In 1970, another international Convention was created to combat this rising threat.

The principles of the 1954 Hague convention include the protection, the safeguarding, and the respect for cultural property.

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

As a result of more States gaining their independence by the 1950s, there was a need by the international community to create a treaty which would prevent the dismemberment of ancient sites and monuments and prevent the black-market growth of such cultural property.⁴⁵ The need to address the flourishing of illegal trade in cultural property and the increasing number of claims of for the return and restitution of cultural objects, led to the adoption of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property on 14 November, 1970.⁴⁶ Under the Convention, the signatory States take measures to prohibit and prevent the illicit trafficking of cultural property. The principles of the Convention are: Prevention, Restitution and International Cooperation. The remedies under the convention are the return and restitution of cultural property. Under the Convention, signatory States agree to oppose practices resulting in illegal cultural property transfers, by putting measures in place to prevent those, and cooperating to

⁴⁵ UNESCO, "About 1970 Convention," UNESCO, February 12, 2020, <https://en.unesco.org/fighttrafficking/1970>.

⁴⁶ UNESCO, "The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property" (1970).

achieve necessary repatriations. However, it is important to note, that the 1970 UNESCO Convention provides a minimum level of protection against the illicit imports and exports of cultural property and is not a 'self-executing legal instrument.'⁴⁷

Article 1 of the Convention defines cultural property. It contains a general definition and an enumerative one. For the purposes of this Convention, the term 'cultural property' means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;*
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance;*
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries ;*
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;*
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;*
- (f) objects of ethnological interest;*
- (g) property of artistic interest, such as:*
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);*
 - (ii) original works of statuary art and sculpture in any material;*
 - (iii) original engravings, prints and lithographs ;*
 - (iv) original artistic assemblages and montages in any material;*
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections ;*
- (i) postage, revenue and similar stamps, singly or in collections;*
- (j) archives, including sound, photographic and cinematographic archives.⁴⁸*

⁴⁷ I A Stamatoudi, *Cultural Property Law and Restitution : A Commentary to International Conventions and European Union Law* (Cheltenham: Edward Elgar, 2011).

⁴⁸ United Nations, "The Convention 1970"

The definition, as opposed to the one in The Hague Convention, is far more restrictive by having two conditions placed within it. One is that cultural property must be of archeological, prehistorical, historical, literature, artistic or scientific importance, and secondly that it must fall under one of the categories listed in Article 1. So, the UNESCO definition reiterates the main element for cultural property; that it must be of specific importance, but it also limits it in that objects not falling under one of these categories, may not be considered cultural property. And this limitation is useful in this context, since the UNESCO Convention is primarily focused on preventing the transfer of such cultural objects, and so these objects need to be clearly and exhaustively defined. It is important to note that a number of scholars in the literature review chapter also focused on the importance, or value, of cultural property, similarly to how the UNESCO convention highlights the importance of cultural property. However, UNESCO also provides for specific criteria to determine the value of cultural property to a nation but also goes a step further by classifying specific categories that may be of such importance to a nation.

Article 13(d) goes even further to set out a special category of cultural property, which cannot be exported, nor change ownership regardless of whether the transfer of ownership was a black-market transaction or not and regardless of whether it was conducted in good faith or not. That overarching ownership right of the state is justified by the immense significance an artifact may have for a state; it is an “imprescriptible” and “inalienable” right over it. This is an article aimed at protecting the most significant, most profound cultural artifacts of a nation, and that is why it overlooks other conditions of transfer or ownership change. Ownership becomes an “imprescriptible” right for the

nation which holds such significant cultural property and it ensures that nations will never have to worry about claiming the property rights as rightfully theirs. One would certainly assume that the Parthenon Marbles fall under this special category, given that the Parthenon is probably the most celebrated and significant Ancient Greek monument surviving today. The 1970 UNESCO Convention was not, however, in effect when Lord Elgin shipped the Parthenon Marbles to London, and therefore both parties are left to debate the legal merits of their own case.

Article 3 of the Convention defines the cases in which cultural property is considered to be illicit. If a cultural object has been already exported and is outside the country of origin or is due to leave its country of origin, and being exported would result in violating the export regulations at the time of the completion of a contract, the object is part of an illicit export. The argument behind this interpretation is also tied to the cooperation principle under the Convention. If an object is classified as an illicit export by the origin country, and if the same object is classified as licit by the importing country, no international cooperation is achieved. While the convention attempts to limit and safeguard the illicit trade of cultural property by strengthening national laws at the borders of signatories States, it does not address any cases where illicit property has already been imported by a State. The 1970 Convention is public law that guards the relationship between signatories; governments. It does not capture private citizens and entities and those private parties do not have any rights under the Convention. In other words, a nation cannot sue a private individual on the basis of this Convention.⁴⁹

⁴⁹ Stamatoudi, “Cultural Property”.

Articles 5 and 14 go into specific details about the states' obligations under the Convention. Each state should have a dedicated national service, fully committed, staffed and adequately funded to protect their cultural heritage as best as they can. Their scope is very wide, but at the very least, they are responsible for drafting and updating national legislation so that it is in full agreement with the Convention, establishing and maintaining a national inventory of cultural property, supporting the development of institutions, like museums, through which these artifacts are preserved and celebrated, as well as supervising and protecting any present or future archaeological site. Furthermore, they need to devise a set of rules, reflecting the ethics of the Conventions, that is aimed at all the stakeholders of the art trade, including but not limited to curators, collectors, antique traders and so on. Last but not least, they are responsible for publicizing any disappearance, which is particularly important as a deterrent for potential illicit transactions.

Articles 7 and 13 set out the measures which need to be adopted by all signatories for the recovery and return of illegally imported cultural property. It is aimed at preventing museums and similar entities from acquiring stolen or illegally imported cultural property, while also paying "just compensation" to any party that has operated in good faith and has been financially hurt. It is important to note, that while "good faith" is an internationally recognized legal term, it varies greatly in its legal interpretation from one jurisdiction to another, including but not limited to how the burden of proof is assigned.

Finally, the Convention opens the way for even more specialized bilateral agreements between states where the need arises and leads the way for enhanced

international cooperation through the Intergovernmental Committee for promoting the Return of Cultural Property to its Country of Origin or its Restitution in case of Illicit Appropriation. In addition, due to UNESCO's tremendous experience and expertise in the area, the committee can also act as a mediator for the resolution of a dispute, although it is in no way a substitute of a court. The Convention, even though limited and vague at certain points, sets out a basic set of rules and code of ethics that has been widely accepted, counting 120 signatories. Of course, as with all conventions and legal instruments, there is a constant need for updating, correcting, and enriching those areas that are still found to be lacking towards the end goal, which is the protection of the world's cultural property.

The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects is complementary to the 1970 UNESCO Convention. The 1995 UNIDROIT Convention was signed in Rome in 1995 and regulates both matters of private and public law and extends to matters regarding bona fide possessors, rights to compensation and time limitations.⁵⁰ The Convention's purpose is not only 'to contribute effectively to the fight against illicit trade in cultural objects', but also to 'establish common, minimal legal rules for the restitution and return of cultural objects between Contracting Parties.'⁵¹ The Convention also provides for the repatriation of stolen cultural property. While complementary to the UNESCO Convention, the UNIDROIT Convention focuses on the recovery of cultural property.

⁵⁰ UNIDROIT, "The Convention on Stolen or Illegally Exported Cultural Objects" (1995).

⁵¹ UNIDROIT, "The Convention".

The UNIDROIT Convention in particular allows the courts of a state to opine on cases of cultural property theft or illicit export. In order for one to have grounds under the Convention, the claim should be of international character. In cases of stolen cultural property, the state where the stolen good is located must be signatory of the Convention. In cases of illegally exported cultural property, both states need to be signatories. Compared to the 1970 UNESCO Convention, the scope of the UNIDROIT Convention was broadened in order not only to capture states but private parties as well. The UNIDROIT Convention also expanded the definition of cultural property from the 1970 Convention. While the approach of both Conventions is to have a general definition and an enumerative one, and while the Annex of the UNIDROIT Convention categories is complementary and to a large degree is the same with the UNESCO Convention, the UNIDROIT Convention does not rely on a state to define its own cultural heritage. The UNIDROIT Convention therefore, captures a wider scope of objects that have already to be found to be of archeological, prehistorical, historical, literature, artistic or scientific importance even if those objects are not part of an inventory of a state/institution. This also allows for stolen objects. And again, there is a significant expansion from the 1970 UNESCO Convention, as the UNIDROIT Convention captures objects that have been unlawfully excavated or retained according to the law of the State where the cultural treasures were originally in, including objects that were taken without proper authorization as these also amount to theft.

Article 3 of the UNIDROIT Convention provides that ‘the possessor of a cultural object which has been stolen shall return it.’ The importance of this article hinders on this unequivocal obligation to return the stolen cultural artifact and is derived from the failure

to minimize the illicit trade of cultural property at the time. Compared with the solutions provided under civil or common law, the UNIDROIT Convention goes a step further in dictating both the return of the object and the compensation for the one that returns the object.

Article 4, in addition to the return of the cultural object, provides for ‘fair and reasonable compensation’. This principle applies only to possessors of good faith or in other words a possessor that neither knew nor ought to have known that the object was stolen. The burden of proof lies to the possessor to prove that he/she did not know about the stolen object. If according to the Convention, the buyer has done his due diligence, then the likely outcome would be that he would be entitled to just compensation. This article encourages private parties who unknowingly participated in an illegal purchase to come forward and return the cultural artifact in question without suffering great financial damage. It is a very useful addition, since it also highlights the importance of conducting proper due diligence as a buyer, since the burden of proof lies on the buyer/possessor.

Alternative Remedies

As discussed previously, International law in most cases seeks to allow the original owner to recover what was taken from him or at least obtain some form of compensation.⁵² Renold, UNESCO Chair in the International Law of the Protection of Cultural Heritage, argues that litigation offers only ‘an either/or solution: either I am the owner, or you are.’⁵³ He draws a distinction between the legal right of ownership and the

⁵² Renold, Cultural Co-Ownership, 163-76

⁵³ Renold, Cultural Co-Ownership, 163-76

non-legal right of possession. Therefore, he proposes an in-between solution which he names as ‘cultural co-ownership.’⁵⁴ He also claims that traditional litigation in Courts can be a helpful first step which may facilitate further negotiations to follow. At the same time, in his view, if Courts had the ability to go a step further than just recognizing the original owner or not, which is a binary decision, then more cultural property disputes would be resolved.

Renold, refers to the recent work in 2005 of the International Law Association’s Committee on Cultural Heritage Law and highlights its resolution which states:

‘Museums and other institutions shall develop guidelines consistent with those of the International Council of Museums (ICOM) for responding to requests for the transfer of cultural material; these guidelines may include alternatives to outright transfer such as loans, production of copies and shared management and control.’

Renold discusses a number of cases which were fairly complicated but in which the parties involved successfully managed to achieve a ‘shared co-ownership.’⁵⁵ It should be point out, however, that the cases discussed by Renold were all paintings. As Renold discusses, the key to achieve such co-ownership is identifying common interests between the parties. He also adds that while cultural property may be universal, this should not mean that it cannot be owned by several parties. This was discussed in the earlier chapter, as a middle ground approach that could facilitate a win-win outcome for those involved in cultural property disputes. As Renold points out, common interests between the parties is the key to willfully settling into a co-ownership state, and that is rather difficult to achieve in disputes that involve states and not private parties.

⁵⁴ Renold, Cultural Co-Ownership, 163-76

⁵⁵ Renold, Cultural Co-Ownership, 163-76

In reality, in many cases, the parties to a cultural property dispute may have conflicting priorities, especially when the monetary one party favors the monetary value of the property while the other party favors its overall value or cultural significance.

Chapter IV.

The Parthenon Marbles Case under Cultural Property Law

This section provides an insight into the legal arguments of both sides that are involved in the everlasting debate surrounding the Parthenon Marbles. It is important to understand that the case of the Parthenon Marbles is one that is very complicated to assess and explore, as we will discuss later on, and this complexity is perhaps one of the reasons, for which a legal solution to the matter has not been possible. The origin of the dispute, to start with, dating back to the 1800s, inherently creates many issues and raises various questions, mostly to the detriment of Greece. To start with, evidence and witness testimonies are very limited and further discovery of those is impossible. This is discussed extensively in the section of the so-called “firman”, the notorious warrant that started it all, allegedly giving Elgin permission for his actions. Most notably, however, this document, which is the cornerstone of Elgin’s and subsequently England’s legal defense has not survived, which makes any assessment of it, hypothetical at best. I will also discuss how the time interval itself, since the Parthenon Marbles were first displayed in the British Museum in 1816, is a legal obstacle on its own, citing similar cases around the world, which were dismissed due to statutes of limitations and delays in demanding the restitution of stolen art. Furthermore, the number of parties involved in this case complicates the legal discussion of the matter even more. When disputes arise between two parties, actions and the consequences of those actions can be easily attributed to the party responsible. In the case of the Parthenon Marbles, Greece, the Ottoman Empire, Elgin, England and their intertwining actions provide for even more controversy. It is obvious that the Ottomans at that time did not have a lot of respect for the cultural

property of Greece. This is evidenced in countless historic reports of looting and vandalism of cultural monuments. However, the same would not be expected in the case of England or its ambassador, Elgin, who seemingly did not pause to consider the morality of his actions. I will discuss later on, the role of England and whether England could be classified as a good faith purchaser, citing relevant law cases. I will also discuss how modern law frequently favors the status quo with specific examples and how sometimes, bold but otherwise fair decisions have been overruled, in order to avoid dangerous case precedent that could potentially open the floodgates for extensive future litigation. In this next section, I will examine whether the Ottoman authorities, who at that time were the occupying force of Greece, had the proper authority to assert and transfer the ownership rights to the Parthenon Marbles.

The Ruling Authority

If we are to properly evaluate Britain's ownership claim to the Parthenon Marbles, the maxim *nemo plus juris ad alium transferre potest quam ipse habet* should be considered.⁵⁶ Accordingly, the rights that Elgin had to the Marbles were the rights that were subsequently transferred to Britain. Thus, it becomes especially important to address whether the Ottoman Empire had the authority to grant Elgin the permission for his actions as a first step and then look at whether that permission was legal, and whether Elgin had exceeded his authority.

The Greek side contends that the removal of the Parthenon Marbles is merely a case of looting and that the Ottoman government did not have the power to authorize

⁵⁶ John Henry Merryman, "Thinking about the Elgin Marbles," *Michigan Law Review* 83, no. 8 (August 1985): 1880, <https://doi.org/10.2307/1288954>.

Elgin. An analogy often sighted is the looted artwork from Nazis during Hitler's invasion. In many cases, looted artwork from the Nazis has been successfully returned to its rightful owners. It is therefore important to examine whether such cases are applicable in the case of the Parthenon Marbles, considering similarities and differences in this seemingly similar, albeit unique context. The Ottomans were an occupying force in much the same way the Nazis were. The international community recognizes that the taking of art by Nazis was essentially an act of stealing, specifically art theft. In fact, sales by Jewish vendors in the era of Nazi-controlled Germany are generally considered unlawful due to coercion and vulnerability, even if the sellers were well-compensated⁵⁷. There is clearly a very straightforward case to be made for the Greek side, that is to support that Elgin's removal of the Parthenon Marbles was a case of art theft, allowed under the violent military control of the occupier. The British side on the other hand, supports that Greece was conquered by the Ottoman Empire in 1460 and remained under foreign authority for almost four centuries. The international community, during the 1800s recognized the Ottoman government as the sole authority ruling Greece. Since the Parthenon was public property, Ottomans had sound legal authority over the territory.⁵⁸ Thus, they had absolute authority over all national landmarks, including the Acropolis.

Four centuries do indeed seem like a long-time interval to settle disputed territories between nations. It is no surprise that Britain, among other nations, had officially recognized the Ottomans as the official governing body of Greece. However, the following is also true; the international community at the time was very well aware of

⁵⁷ Leila Amineddoleh, "The Art Law Review - the Law Reviews," thelawreviews.co.uk, January 11, 2022, <https://thelawreviews.co.uk/title/the-art-law-review/cultural-property-disputes>.

⁵⁸ Merryman, "Thinking about".

the attempts and effort of Greece's liberation movement that finally led to the reclamation of their land ten years later. Based on that, one could argue that Greece was once again disputed land in the midst of armed conflict, and that since the Ottomans' ruling power was being actively challenged, the legitimacy of their actions should have been lost in the eyes of the international community, including England.

There is, however, a very important distinguishing factor between cases of Nazi looted art and the case of Parthenon Marbles, which infinitely complicates matters. Art thefts that occurred during that era, and later art disputes that arose because of them, involved for the most part two private parties, such as an art collector and an art museum or institution, or at the very least one individual claiming restitution against a state. There have not been instances, in which a state has turned against another, for restitution of cultural property. When states are involved, the dispute quickly involves politics, international relations and potential diplomatic complications. In sharp contrast, private individuals are much more flexible and faster at reaching settlements, and more willing, in many instances, to create win-win scenarios without having to undergo national scrutiny and judgement from political opposition. It is also much simpler for private disputes and the relevant parties to agree on the relevant jurisdiction and the relevant law that needs to be applied. This is not so straightforward with nations, since nations do not share jurisdiction or legal systems, and legal action is therefore inherently complicated and costly to pursue in an international, commonly accepted forum. Mediation and settlement discussions are also difficult to organize and commit to, as evidenced by the UK's recent rejection of UNESCO's call to mediation in 2015. We will discuss in later

sections of this paper, how England's particular stance has negatively impacted public opinion against them.

Coming back to whether the Ottomans did indeed have proper authority to act in this way, many objective parties seem to now accept that even if the actions were not morally sound, the Ottomans had full authority and acted in compliance with the international law of the time. Thus, if Ottomans wished so, they could in fact authorize Elgin to remove the Parthenon Marbles, with international acceptance of the legitimacy of that action.

The Document and the Rights under the Document

It is significant to examine the legitimacy and therefore the legality of the document that had been issued to Elgin by the Ottoman Porte. This is especially important because the British parliamentary committee has based on this document the legality of the removal and the consequential acquisition of the Marbles. I will also examine the circumstances under which the Marbles had been detached and transferred.

Nine months after Elgin's arrival and when the British army succeeded over the French in Egypt, the Ottomans, who detested the French for religious reasons, turned in favor of the British. Specifically, the very same report from the selected committee on the Parthenon Marbles (1816) states that Ottoman's "universal benevolence and good-will appeared to take the place of suspicion and aversion. Nothing was refused which was asked."⁵⁹ It is also important to mention that Lord Elgin's appointment intended to

⁵⁹ Select Committee of the House of Commons, "On the Earl of Elgin's Collection of Sculptured Marbles," 1816, https://books.google.gr/books?id=NwUFAAAAYAAJ&printsec=frontcover&source=gbs_ge_summmary_r&cad=0#v=twopage&q&f=false.

benefit the “progress of fine arts in Britain by procuring accurate drawings and casts of the valuable remains scattered through Greece.” While Elgin made numerous attempts to express his interest to the British government, he never received any encouragement nor funding in support of his actions. According to the report, Elgin “looked upon himself as acting in character entirely distinct from his official situation.” Therefore, it is unlikely that the British government was even aware of how Elgin was perceived by the Turkish ministers. Furthermore, one must also consider that Lord Elgin was allegedly the only official that has been granted such permissions. It is also unlikely that Britain was the only nation interested in the Parthenon Marbles, assuming that the Ottomans were willing to grant those requests. Elgin’s morality and surrounding circumstances are also of note but these are discussed further in this chapter. Lord Elgin took advantage of this auspicious alteration and secured access to the Acropolis, allegedly with permission that provided him with the right not only to draw and model the Greek artifacts, as originally planned, but also to remove any pieces of stone that might appeal to him. This written permission letter only survives as an Italian translation of a “firman” (warrant), which provided permission to enter freely within the walls of the Citadel, to draw and model with plaster the Ancient Temples there, to erect scaffolding, to dig where they may wish to discover the ancient foundations, and to take away any sculptures or inscriptions, which do not interfere with the works or walls of the Citadel.⁶⁰ As mentioned above, the original document has never been found. The report of the Select Committee mentions that as Elgin “did not have the report with him in London, he stated the substance (as above), according to his recollection.”⁶¹ However, the existence of the firman is not

⁶⁰ Merryman, “Thinking about”.

⁶¹ Select Committee of the House of Commons, “On the Earl”.

greatly disputed, as the Italian translation was then forwarded by Dr. Hunt, but its spirit and its validity as a firman issued by the Sultan might be as will be discussed in the following section.

Greeks argue that the document has no legal power. The alleged 'firman' had indeed been issued by the Ottomans who were the occupying power back then. Except for the obvious issue, which is the fact that Greeks were not involved in the production of that document, there are other issues that affect the legality of the firman. The main reason is that this document, is not regarded as a firman because it lacks important basic features, which distinguish firmans from other types of documents issued during that time. Specialists in Ottoman diplomatic language have claimed that the document in question is not a firman on the grounds of dissimilar compilation and absence of certain common features, the most important ones being the sultan's emblem, the sultan's monogram, the incorrect greeting and the absence of a series of complementing Arabic phrases. In addition, the document in question mentions the editor's name, Abdullah Pasha, and bears his seal, whereas a firman never bears the name of the editor, for it is issued on behalf of the Sultan. These arguments certainly question whether the document was indeed a firman, since it had none of the distinguishing features and general format compared to other firmans of the time.

Furthermore, the political issues strongly altered the course of the events. The Ottoman Empire after the victory of the British over the French in Egypt, due to reasons motivated by international relations, decided to grant all sorts of favors to their British allies. It is undisputed that Elgin had made previous attempts at gaining access to the Acropolis, without any success prior to the British victory in Cairo. Abdullah Pasha in

what was allegedly a gesture of gratitude for the victory of the British army over the French in Egypt, supplied the much-coveted letter to Elgin Pasha, however, he would never take the risk to issue a firman himself, certainly not without the approval of the sultan, who would have probably turned down the Ambassador's request.⁶²

Based on all of the above, it becomes highly likely that this document, on which the British committee has based the legality of the removal and the consequent acquisition of the Marbles, was not a firman issued by the Ottoman Porte and therefore should not have any legal standing. It is most likely a reference letter that Abdullah Pasha wrote giving in to Elgin's persistent ask and utilizing the Ottomans' newfound fondness of the British. A common counter argument to this point of view, is that the document, had it not been a firman, should not have been successful in granting Elgin actual permission. In reality, this letter acted essentially as a basis for negotiations between Elgin and the Voivode, the highest ruling authority of the District. In the words of Elgin himself, "in point of fact, all permissions issuing from the Porte to any distant provinces, are little better than authorities to make the best bargain that can be made with local magistracies."⁶³ This is further evidenced by the fact that actions completely out of the scope of the alleged firman were allowed to take place will be discussed later. If it is assumed that the firman did exist and was legal, one would also need to look at the context and what specific actions this document authorized.

First and foremost, the alleged firman did not grant any permission to the British Ambassador to remove the sculptures from the Athenian citadel and ship them to

⁶² Ian Swindale, "The British Committee for the Reunification of the Parthenon Marbles," www.parthenon.newmentor.net, 2022, <http://www.parthenon.newmentor.net/new.htm>.
<http://www.parthenon.newmentor.net/illegal.htm>

⁶³ B F Cook, *The Elgin Marbles* (London: British Museum Publications, 1995).

England, nor was there such an allusion in its content. Elgin was granted authorization to merely remove “any sculptures or inscriptions which do not interfere with the works or walls of the Citadel.” However, Elgin not only removed these pieces, but he also took the liberty of cutting pieces of the Acropolis and shipping them to England. There is no suggestion that he had those rights. According to British historian William St. Clair, Elgin did not have the authorization for the removal and export of statues and reliefs from the Parthenon.⁶⁴ In particular, the firman referred to items found in the excavations conducted on site, not pieces that were adorning the temples. In fact, Elgin’s secretary, Dr. Hunt himself admitted in 1816 to the House of Commons Committee constituted to consider the purchase of the Marbles, that “the voivode had been induced to extend rather than contract the precise permission of the firman.”⁶⁵

Elgin damaged the Citadel, thereby clearly exceeding his rights, and proceeded to remove the Marbles and ship them to a foreign country. As Edward Daniel Clarke wrote: “Looking up, we saw with regret the gap that had been made, which all the ambassadors of the earth, with all the sovereigns they represent, aided by every resource that wealth and talent can bestow, will never again repair.” It is well preserved throughout history that the detachment of the Marbles from the Athenian ancient citadel was brutal. The removal of the sculptures terribly damaged the Parthenon and the Erechtheum. For example, in order to remove the Metopes, which were affixed on the top of the outside walls of the Parthenon, Elgin’s crew destroyed their stoned framework. In addition, to reduce the weight and make the transportation of the sculptures feasible he slashed them

⁶⁴ National Geographic, “How the Parthenon Lost Its Marbles,” History, March 28, 2017, <https://www.nationalgeographic.com/history/history-magazine/article/parthenon-sculptures-british-museum-controversy>.

⁶⁵ Cook, “The Elgin Marbles”.

in half.⁶⁶ The brutal, violent nature of the act clearly enforces the view of looting, with a devastating execution method that left the Acropolis looking nothing like the monument in its former glory. Luisieri, who was acting on behalf of Elgin, had been obliged to be barbarous in removing the Marbles and this resulted in damaging the structure of the Parthenon and the nearby buildings.⁶⁷ It is important to note here that this is not a disputed fact. It is hard to imagine that someone acting lawfully, needed to take such inconsiderate measures to execute his orders, especially someone who recognizes the artistic and cultural value of these Marbles and monuments. It seems as though they were in a hurry to complete their mission, with no regard given to minimizing their damage. This somehow speaks volumes to the legitimacy as well as the motives of their actions; they were meant to “draw and model” the monuments and instead they chopped and desecrated the Parthenon.

It is therefore evidenced that Elgin exceeded any authority allegedly given in the original document and disrespectfully proceeded in damaging the Parthenon, dismantling the sculptures and ruining them in the process of shipping them to England. Elgin did not own the property rights to the Marbles. Moreover, another ethical, political and legal question that should be addressed is the conditions under which Elgin managed to obtain such authority. Elgin had been accused of bribery as he admittedly made numerous gifts to authorities of his interest. This not only puts his morality in jeopardy but questions his conduct as a British Ambassador.⁶⁸ It is alleged that Elgin bribed authorities both for obtaining the document in question and for obtaining the necessary authorization to allow

⁶⁶ “Moral Issues of Cultural Return,” *ParthenonNews*, <http://www.parthenon.newmentor.net/answers.htm> (cited on 6 February 2019).

⁶⁷ Merryman, “Thinking about the Elgin Marbles,” 1915.

⁶⁸ Merryman, “Thinking about the Elgin Marbles,” 1915

the vessels with the Marbles to depart from Piraeus, the port of Athens. Elgin had also bribed local officials to gain entry into the Acropolis, even before he received the alleged firman. In fact, Lusieri in a desperate plea to continue his work wrote to Elgin; “I therefore beg your Excellency to have one sent to us as soon as possible, drawn up in such terms as to prevent us meeting with new difficulties in resuming and peaceable continuing our work.⁶⁹ The dizdar had declared that he could no longer allow Elgin’s men to enter the Acropolis without a firman, because the kadas and the voivode threatened him. It therefore becomes clear, that even if some of Elgin’s actions were made legal when receiving the alleged firman, Lusieri and his men did not wait for such authorization, showing that Elgin was determined to achieve his goal, one way or the other, and that the letter was merely a method by which he could prolong and extend the scope of his illegal actions.

The Rights Transferred to Britain - Was England a good faith purchaser?

In many cases, England and the trustees of the British Museum have stated that the Parthenon Marbles were lawfully purchased, clearly wishing to put the legality of the matter at rest. However, not every act of sale is lawful. So, it is worthwhile to examine what constitutes a legal sale.

A sale is a voluntary act; or at least one would think. History has shown, however, that this is not always true. Sales also happen under duress, under fear of persecution or even due to the vulnerability of the seller and the sale’s surrounding circumstances. These sales are often described as forced sales. This is often seen in cases of Nazi looted art,

69 A. H. Smith, “Lord Elgin and His Collection,” *The Journal of Hellenic Studies* 36 (November 1916): 163–372, <https://doi.org/10.2307/625773>.

like in *Schoeps v Museum of Modern Art*, in which a pair of Picasso's paintings were allegedly sold under duress during the Nazi era.⁷⁰ Similarly, in *Di Giuseppe v Louvre Museum*, di Giuseppe's creditors won a ruling 'in absentia', opening the way for the liquidation of his estate, while Di Giuseppe had fled the country.⁷¹ The liquidation, despite the fact that it was court-ordered, was deemed illegal by the Court of Appeals in Paris in 1999, and ordered the restitution of the paintings in question to Di Giuseppe's surviving heirs.

Today's strict legal standards place two main conditions for a good faith purchase defense. First and foremost, is that the good faith purchaser does not have any knowledge of irregularities or illegal acts concerning the provenance of the sale object. Secondly, an art institution today would have to take one step further and in the absence of knowledge regarding an art piece's origins, launch its own investigation to determine whether a purchase would be upheld in case of legal proceedings. In *Di Giuseppe heirs' claim against Princeton University Art Museum*, Princeton University had acquired an Italian renaissance painting without knowledge of its history and then voluntarily reached a settlement to compensate the heirs, recognizing in part that they had foregone the responsibility of due diligence, and also managing to prevent future litigation against them. In most jurisdictions, including the US, there is a well-settled rule that neither a thief nor a good faith purchaser can pass good title to stolen goods.⁷²

70 Bruce L Hay, *Nazi-Looted Art and the Law* (Cham Springer International Publishing, 2017).

71 Art-Law Centre, University of Geneva, "Five Italian Paintings – Gentili Di Giuseppe Heirs v. Musée Du Louvre and France — Centre Du Droit de L'art," plone.unige.ch, 2022, <https://plone.unige.ch/art-adr/cases-affaires/five-italian-paintings-2013-gentili-di-giuseppe-heirs-v-musee-du-louvre-and-france>.

72 Alan Schwartz and Robert Scott, "Rethinking the Laws of Good Faith Purchase," *Columbia Law Review* 111, no. 393 (2011): 1332.

It seems that Britain was adequately informed and at the same time concerned about the potential purchase of the Parthenon Marbles from Elgin. This is largely evidenced by the fact that Britain held a parliamentary hearing to decide whether this purchase was a legitimate one. The parliamentary hearing would therefore account for the reasonable diligence, which a responsible, moral buyer would undertake. It is important, therefore, to examine whether Britain by its own standards viewed themselves as a bona fide purchaser.

The parliamentary report as mentioned above, acknowledged that Elgin acted “in a character entirely distinct from his official situation”, that the British government did not authorize nor fund Elgin to commit his acts, that the original firman was never presented before the Parliament, that the context of the firman is based on Elgin’s recollection and the Italian translation and that the Ottoman had not granted similar authorizations to any other nation or official. Elgin at the parliamentary hearing recognized that his acts were probably illegal and was unable to produce a firman as he told the Committee that he never kept his personal copy of the authorizations he was given. Nevertheless, as mentioned above, he justified his actions by claiming that he was trying to save the Marbles from looting by the Ottomans. Later he also argued that the sale of the Marbles would add to the imperial image of Britain. The report also mentioned that the Ottomans “showed a total indifference and apathy as to the preservation of these remains.”⁷³ Elgin was under financial distress. He also covered the shipping costs of the Marbles to Britain including bribes for safe passage. Elgin priced the Marbles at £35,000. After assessing all the facts and the report, the Parliament approved the sale by an excess

⁷³ Select Committee of the House of Commons, “On the Earl”.

of only two votes; eighty against and eighty-two in favor of the sale. The British Government bought the Parthenon Marbles in 1816. The majority of money went to Elgin's creditors.

Now, while the gathering of all these facts may indeed amount to a reasonable due diligence, one reasonably wonders whether the purchase passed this due diligence process or whether, solely based on these facts, the Parliament should have decided differently. This would mean that England would not be a good faith purchaser since at the time of the decision it was aware of significant issues that would alarm any purchaser attempting to ensure that he had indeed a legitimate right in his purchase.

Another issue that should be considered is not only the intentions of the parties but what actually happened after the purchase. The Marbles were damaged upon their arrival at the British Museum. In 1938, the employees of the British Museum during the cleaning and restoration process of the Marbles had applied abrasive restoration techniques that resulted in damaging the surface of the sculptures to a great extent. The Museum forced the keeper to early retirement, his assistant to resign and fired all of the craftsmen involved.⁷⁴

The British argue that Elgin had rescued the Marbles. They claim that it is because of him, that the Marbles were in a museum for 180 years and that they are in a better condition today than they would be if Elgin had not rescued them. It is no longer reasonable for the British to argue that the Marbles have been transferred to England in

⁷⁴ The British Museum, "The Parthenon Sculptures," The British Museum, n.d., <https://www.britishmuseum.org/about-us/british-museum-story/contested-objects-collection/parthenon-sculptures>.

order to be kept safe from potential damage, when the Museum itself harmed them significantly.⁷⁵

The British also argue that the Marbles, which Elgin left behind, are in a dreadful condition mostly because of acid rain and pollution.⁷⁶ Nevertheless, the Marbles that still remain in the Acropolis remain intact. It would be difficult to weigh the actual damage in these two cases, without also considering that one is the outcome of manmade errors in the cleaning and preservation of the Marbles and the other is the result of natural phenomena and the Athenian pollution during the 20th century.

As we saw, Elgin claimed that he intended to save the Marbles from the Ottomans. Nevertheless, following his actions, the Marbles have been through mistreatment including a flood in 2018 into the Greek Galleries of the British Museum. On the other hand, the Marbles that remained in Greece have withstood two world wars, a civil war, a military dictatorship and Greece's default. While these certainly seem like unintended accidents, it would still be difficult to characterize Britain as a good faith purchaser. It is also worth asking why Britain bought the Marbles, kept them and refused to return them since they claimed that they wanted to study the Marbles and further their fine arts or perhaps save the Marbles, given that they had plenty of opportunities to study them in the 205 years that they have kept the Marbles and that now Greece is not under Ottoman rule nor are the Marbles at the risk of being looted by Ottomans.

⁷⁵ David Rudenstine, "The Legality of Elgin's Taking: A Review Essay of Four Books on the Parthenon Marbles," *International Journal of Cultural Property* 8 (1999): 356, 357.
Ruth Emery and William St. Clair, "Lord Elgin and the Marbles," *The American Historical Review* 73, no. 4 (April 1968): 1153, <https://doi.org/10.2307/1847452>.

⁷⁶ William St Clair, *Lord Elgin and the Marbles : [the Controversial History of the Parthenon Sculptures]* (Oxford: Oxford University Press, 2003).

The Passage of Time

The passage of time is also important in claims of cultural property and the timing around the facts of this case is very important. In particular, it is important to note when Greece asked for the Parthenon Marbles to be returned, when Britain declined and the applicable statutes of limitations. As mentioned above the Marbles were sold to Britain in 1816. Greece made the first official request for their return in 1983. The time lapsed between the purchase and Greece's request operates as an obstacle in the success of the marble's return. There are a number of laws limiting the rights of return, both the UK and Greek laws provide for five to six years from the time an action in tort occurred. Both legal systems provide for an exception when the injured party did not have knowledge of the injury. However, in the case of the Parthenon Marbles, both parties were fully aware of where the Marbles were and that Britain had bought them in 1816. In particular, Greece first made an attempt to request the repatriation of the Marbles in 1842, nineteen years after it gained its independence. This is also important as both legal systems have an absolute ceiling in such requests stating "or in any case for a twenty-year period after the occurrence of the act."

In the case of *Grosz vs. Modern Museum of Modern Art (MoMA)*, the United States District Court for the Southern District of New York granted the Museum's motion to dismiss the case, holding the claim was time-barred by the statute of limitations. In this case, Grosz's heirs sought declaration of title and replevin to three paintings in the Museum's possession. These paintings were lost during Nazi persecution when George Grosz, fled Germany leaving behind them behind. The court looked at when Grosz became aware that the paintings were in MoMA, when Grosz and his heirs decided to

make a request for the paintings' return and when MoMA declined this request. MoMA declined the request based on a report conducted by a former US attorney general which supported that the Museum didn't have to return the paintings as Grosz failed to seek restitution shortly after he found out instead of a delay of fifty years. The timing of declining such requests is also important as it dictates the starting point after which a party is entitled to damages and when a party becomes a wrongdoer which is only after declining the owner's demand for the return.

One can argue that the Grosz case was decided on the basis of a technicality. As the court put it, nine months too late. At the same time, the court also argued that this delay was indeed unjustified. While in the case of the Parthenon Marbles Greece has surpassed the statute of limitation and has not brought formal legal action against the British Museum, one can still argue that this is a technicality and certainly a much more complex case as it is in not a matter between private individuals and as mentioned in the previous chapter at the time the necessary international conventions were not in force.

In the famous *Menzel v. List* decision where the statute of limitation had expired in an art theft case during the Holocaust-era the court looked at when the plaintiff's claim had accrued. It was decided that 'demand and refusal' were "necessary to show a conversion."⁷⁷ In this case, the Menzel's claim against List accrued, and the statutes of limitations started to apply when the defendant refused to return the chattel not when the property was stolen. Accordingly, in the case of the Parthenon Marbles, the statute of limitation would apply from the moment the British Museum officially declined the repatriation of the Marbles. That being said, thirty-eight years have passed since that

⁷⁷ Bruce L Hay, *Nazi-Looted Art and the Law* (Cham Springer International Publishing, 2017).

moment. As we discussed, however, above, the case of the Parthenon Marbles is a dispute between States which involves a lot of diplomatic efforts and complex negotiations that affect the international state of play. Another factor in the Menzel case was the fact that when the Nazis seized the painting they left behind a receipt “for safekeeping.” This is a crucial fact, as in his own words Elgin claimed that the reasoning behind his action was to protect the Marbles from Ottoman looting. This fact and claim is also mentioned in the parliamentary report. One, therefore, can argue that the British took the Marbles for “safekeeping” with the intention of saving them. It would logically follow that after the period of safekeeping ended and the circumstances creating the need for that safekeeping ceased to exist, the Marbles could be returned. It is not always the case that delay in demand, even if unreasonable, would prohibit a claim from succeeding. In the case of *Republic of Turkey v. Metropolitan Museum of Art*, where the Republic of Turkey allegedly had full awareness of the property’s whereabouts and the information needed to proceed to demand the repatriation of property, the district court denied the museum’s motion for summary judgment on the basis that the delay did not adversely affect the defendant. In my opinion, Greece’s delay in demanding repatriation similarly has not harmed the British Museum, so by this reasoning and the reasons mentioned above, while the statute of limitation is indeed a problematic element in the Parthenon Marbles case, should not be the sole deciding factor.

Does the Return of the Parthenon Marbles set a dangerous precedent?

The Parthenon Marbles case is one of the most important cases of cultural property. Its long 200 year and counting story is followed closely by the international community. It is a case that may have far reaching consequences for all stakeholders of

the art trade, be it museums, art collectors, and whole nations. A return of the Parthenon Marbles to Greece, if it were to be achieved through legal means, would have an unprecedented precedential effect on the world's cultural property claims. Many have stated that the repatriation of the Marbles will lead to the denuding of the world's encyclopedic museums.⁷⁸ The British Museum, alone, houses one of the greatest, more diverse, collections with artifacts collected from all around the world.

In theory, a case should always be judged on its merits, disregarding any potential effect it might have on other cases. In reality, setting a precedent that might encourage future litigation often acts as a deterrent, weighing against a decision that would alter the status quo. That is because case precedent can be a very strong legal argument when it is applied to seemingly similar situations. It is largely how the legal system in many jurisdictions today maintains its consistency in an increasingly complicated environment but also how it evolves through landmark decisions that change what was previously thought as the norm.

However, this argument is probably aimed at swaying public opinion; describing a dystopia, in which long-standing museums will be emptied if every artifact were to be returned to the original place it was found in. It is an oversimplification that is not at all realistic; case precedent is applied very carefully and narrowly. It is therefore difficult to imagine a real-world scenario, in which the same or even largely the same circumstances would be found today. It is even harder to suggest that similar circumstances might be

⁷⁸ Elginism, "Greece Requests Return of Parthenon Marbles," Elginism, April 1, 2007, <http://www.elginism.com/similar-cases/greece-requests-return-of-parthenon-marbles/20070401/702/>.

replicated in the future, since present international legislations safeguards cultural property today in more ways than ever.⁷⁹

Even if we were to afford some merit to the theory that the restitution of the Parthenon Marbles would have an avalanche-like effect in other restitution claims, there are still serious considerations to be made. First of all, precedent, to some extent, has already been established by the return of several artifacts of the Parthenon from Sweden,⁸⁰ the University of Heidelberg, Germany,⁸¹ the Getty Museum,⁸² Los Angeles, and the Vatican.⁸³ Yet many other artifacts from the Parthenon still remain at museums in Paris, Vienna, Copenhagen and Munich, among others. This is a shining example of the complexity of cultural property cases and it shows that when it comes to artifacts, it is never a one-rule-fits-all kind of situation.

One can easily capture the uniqueness of the case of the Parthenon Marbles by asking one essential question: How many artifacts out there survive as torn pieces of a building, still standing today not only physically, but also mentally, as one of the greatest cultural emblems so deeply connected to an entire nation's heart and culture? The answer, of course, is very few, if any. Nevertheless, the discussion of the precedential effect of the case and the fear of a large segment of the public and art community has

⁷⁹ British Committee for the Reunification of the Parthenon Marbles, "Fresh Refutations to Old Objections," British Committee for the Reunification of the Parthenon Marbles, 2017, <https://www.parthenonuk.com/refuting-the-bm-s-statements-1>.

⁸⁰ Malcolm Brabant, "Swede Gives Back Acropolis Marble," *News.bbc.co.uk*, November 10, 2006, <http://news.bbc.co.uk/1/hi/world/europe/6138214.stm>.

⁸¹ CBC News, "Greece Reclaims Parthenon Sculpture from Germany," CBC, September 5, 2006, <https://www.cbc.ca/news/entertainment/greece-reclaims-parthenon-sculpture-from-germany-1.592170>.

⁸² Ta Nea, "TA NEA," Ta nea, 2018, <https://www.tanea.gr>.

⁸³ The Guardian, "Return of Parthenon Marbles Is up to British Museum, Says No 10," November 16, 2021, <https://www.theguardian.com/artanddesign/2021/nov/16/return-of-parthenon-marbles-is-up-to-british-museum-says-no-10>.

halted many attempts to open a discussion about returning the Parthenon Marbles to their birthplace place, Athens.

Chapter V.

Analysis

In this chapter, I will conduct an analysis and discuss whether the Parthenon Marbles should be returned. I will base this section on the chapters that preceded this one. Scholars, international conventions, laws and judges have tried to define cultural property and prevent cultural property disputes, perhaps even offer solutions in certain cases. However, there are many cases, including the case of the Parthenon Marbles where a solution has not been reached. I attempt to discuss why and answer why today is a pivotal moment in this 200-year-long dispute.

Laws

People and societies have always undergone gradual but certain changes. This is certainly not something new. As societies grow more educated, aware, and socially enlightened, past injustices are rectified and new norms arise. As we see throughout history, this process is usually slow. It is never easy to be among the first to challenge the status quo. It always has to start from that one person, a voice, that is brave enough to provoke and to call upon those responsible for their wrongdoings. One voice attracts more voices, and these voices grow louder and louder until they're too loud to ignore. However, for society to effectively turn a new corner, it is the law that needs to adapt and evolve to reflect the shift in societal values. This process can also take a long time; in many cases, such change becomes law through the court system and landmark rulings and of course, court proceedings are anything but fast. The US has many such cases, where

controversial landmark decisions have at last adapted to legalize what society typically has embraced and accepted quite some time earlier.

Partly, this mismatch between the higher rate that our society's principles develop and the rate that the tools that are there to protect us do, is responsible for the failures we face. Institutions need to support societal values. Nevertheless, today's institutions and tools are still part of an earlier society. Society often challenges their decisions but perhaps it is the restrictive set of tools they have, including the law, that prohibits them from time to time to reach a 'just' outcome under modern beliefs.

Would Elgin's actions be justified today? Would the modern world sit back and allow history to repeat itself or would it fight for what society thinks is right? I think it is safe to say that the answer to the first question is astoundingly no. As we saw in detail in previous chapters, there are now international laws in place that would prevent the same actions to happen today, that would find these actions as illegal and that would potentially lead to the repatriation of the Parthenon Marbles. These international frameworks however, were created more than a hundred years later than when they were needed. The purchase of the Parthenon Marbles was dated in 1816. The Hague Convention of 1954, the UNESCO Convention of 1970 and the UNIDROIT Convention of 1995 went into effect much later. Of course, they have safeguarded cultural property since their creation, but should the mere fact of the timing of their development be enough to guide the decisions on what is right and wrong? There is a very quick response to the question of why the Parthenon Marbles have not been returned to this day, which is that the laws do not apply retrospectively, and hence a legal case for their repatriation will most likely, if not certainly, fail.

It is understandable for the Greek people to feel disappointed by the modern legal framework surrounding the protection of cultural property. If any of the aforementioned Conventions were in force at the time of Elgin's actions, the Parthenon Marbles would have remained in Greece. As we saw in detail, the 1954 Hague Convention protects cultural property in times of armed conflict. It was inspired by the devastating effect that World War II had on cultural heritage. However, during Elgin's actions around 1801, the Greeks were under the rule of the Ottomans. The Greeks intended and were planning to claim their independence and succeeded in 1821, five years later than the famous purchase of the Marbles by the British Museum. One has to wonder if the 1954 Hague Convention would have stopped this sale if it was in force at the time of the events. Even if the 1954 Hague Convention failed as it is limited to periods of armed conflict, the 1970 UNESCO Convention would not. The 1970 UNESCO Convention focuses on preventing illicit cultural property from leaving its original State. If the Convention was in force at the time, Elgin would have not been able to export the Marbles to the UK. Even if Elgin had succeeded in his actions to remove and ship the Marbles to the UK, the Convention would ensure that they would be recovered and returned. Due to the fact that the 1970 Convention was in a sense limited in scope, the 1995 UNIDROIT Convention was ratified to complement the UNESCO Convention. The UNIDROIT Convention captures both private and public parties, provides for the repatriation of stolen cultural property and expands on cultural objects that classify as cultural heritage. It also goes a step further and highlights the need for proper authorization for the removal of any artifact. As we saw in great detail in previous chapters, Elgin most likely did not have proper authorization and even if he did, Elgin's actions certainly exceed his authority.

The modern legal framework also stipulates that if the British museum was found to be a good faith purchaser, they would be subject to a 'just' compensation.

However, as discussed and analyzed previously, the UK was most likely not a good faith purchaser. The mere fact that they needed Parliamentary approval for the purchase to go ahead is a testament that the UK was aware of the issues surrounding the Marbles and wanted to shield itself against any potential claims. As mentioned before, Elgin was unable to produce any of the documents asked. The fact that it was passed by the slightest margin (80-82 in favor), is another indication that there was increased doubt about whether Elgin's actions were legal.

UNESCO has focused on the case of the Parthenon Marbles, trying in many cases to act as a mediator. In 2014, UNESCO offered to mediate the dispute between Greece and the UK. The UK declined on the basis that the trustees of the British museum is a private entity and not a government body. The latest attempt by UNESCO was in October 2021, where UNESCO urged the British museum to return the Parthenon Marbles. However, once yet, the UK declined to reconsider its position on the Marbles claiming that the Marbles were obtained legally 'in accordance with the law at the time'. Many would consider these to be technicalities, aimed at avoiding to discuss the essence of this case, which is not just legal in nature. Assuming that there was willingness by the UK government to repatriate the Marbles, a parliamentary hearing could take place. One that could take a different decision this time.

In conclusion, it is clear that there are now international frameworks in place to ensure, to a great extent, the prevention of cases like the Parthenon Marbles from happening again. Undoubtedly, if these mechanisms were in force when Elgin conducted

his actions, today's reality would be much different. Nevertheless, should society allow the fact that they did not exist at that time to lead to injustice?

Nationalism vs. Universalism and the role of technology

Scholars debate in great length whether cultural property is universal, and whether notable museums of the world would be empty if the floodgates opened and allowed for all cultural property claims to succeed. As read previously, Thompson argues that museums 'serve the people of all nations and should not be compromised for the sake of interests of one group of people and that they add to 'education and advancement of knowledge and aesthetic worth'. Indeed, the British Museum has stated "that it takes its commitment to be a world museum seriously" and that the collection of the Parthenon Marbles is "a unique resource to explore the richness, diversity and complexity, our shared humanity."⁸⁴

I think everyone would agree that we can all benefit from sharing our culture with others, however some critics take issue with the term "global museum." The term implies that there is some added value from gathering all of the world's artifacts in one place; that it somehow adds to the experience of the visitors. Others claim it is a dangerous principle; should museums start to join together to create larger collections, and should that be the ultimate goal? Chika Okeke-Agulu, director of Princeton's program in African Studies and professor of Art History, is not convinced. In his view, these institutions are saying "that they have the right to hoard the world's heritage" and that the discussion

⁸⁴ "How a Marble Foot Puts More Pressure on Britain over the Elgin Marbles," The Independent, January 22, 2022, <https://www.independent.co.uk/independentpremium/world/britain-greece-elgin-marbles-italy-b1994144.html>.

should be centered on “sharing them, not hoarding them.”⁸⁵ He ironically states that he “would like to see the same kinds of global museums not just in London and New York, but in Lagos, Singapore, Delhi, Johannesburg”, pointing out the fact that these ‘global museums’ are rather found in the world’s biggest powerhouses.⁸⁶

Merryman proposes that the cultural property disputes are governed by the law of economics. Those countries poor in artifacts but wealthy otherwise are unable to meet their internal demand to fill their museums and this demand is fulfilled by the supply of financially poor countries, richer in artifacts. This is a sound theory when applied to the case of the Parthenon Marbles. Should economics, however, govern our cultural inheritance and our societal values? If the answer is yes, then one should also consider the monetary value that the Greeks have been deprived of; all associated profits that the British Museum benefits from, the actual value of the Marbles, the value of increased tourism in Greece, the value of additional tickets to the Acropolis museum not to mention the Acropolis itself. While some dynamics may indeed be of financial and economic nature, it is difficult to only consider the matter in this sense, when the Greek people have long maintained that the value of the Marbles to them is priceless.

It is important to address a very important, but often overlooked point: Many people think of the Parthenon Marbles as artifacts, but some stakeholders would claim that they are in fact not. An artifact comprises an artistic whole, which is not the case, according to Nikolaos Stampolidis, director of the Acropolis Museum. He explains that “it’s not a free-standing sculpture that has been brought away; it is the body of the

⁸⁵ The Independent, “Marble Foot”.

⁸⁶ The Independent, “Marble Foot”.

monument itself that asks for its members back.”⁸⁷ It has been made difficult to see these stripped pieces, and to simply enjoy their timeless beauty, without being reminded of the fact that they are at the center of a long-standing dispute between two nations, and while Greeks claim that they are remnants of a very cruel, very violent and shameful looting crusade. As Mr. Stampolidis points to a chunk of the South frieze that Elgin’s workers cleaved off, he exclaims “Look what he has done!”⁸⁸ A 3D illustrated video shows how Elgin used crowbars to pull the friezes down. Most people would agree that this is not the right context, in which to admire and think about these wondrous monuments. It is saddening to think that the Marbles’ recent history is a shameful stain on its thousands year presence; it is as if society never learned to appreciate its true meaning and beauty but have degraded it to a mere object, that is for someone to “own.” It is understandable and perhaps inevitable in today’s legal reality, to not center the discussion of the Parthenon Marbles around ownership, but for many this is simply about uniting parts of an artistic whole. In a recent article by the Times, the author offers an analogy that is likely to strike a chord with the British: He claims that it would be like “tearing Hamlet out of the First Folio of Shakespeare’s works and saying the two can still exist apart.”⁸⁹ Jennifer Neils, director of the American School of Classical Studies at Athens, argues this point even further: He claims that when people look at a mere fragment of a greater whole, “it sits there and it’s kind of meaningless” because even when you tell them that it is part of something greater, “they can’t picture it”⁹⁰. For all of these reasons, the

⁸⁷ The Independent, “Marble Foot”.

⁸⁸ The Independent, “Marble Foot”.

⁸⁹ The Times Leading Articles, “The Times View on the Elgin Marbles: Uniting Greece’s Heritage,” [Www.thetimes.co.uk](https://www.thetimes.co.uk), January 11, 2022, sec. comment, <https://www.thetimes.co.uk/article/the-times-view-on-the-elgin-marbles-uniting-greeces-heritage-spdz5vz6k>.

⁹⁰ The Independent, “Marble Foot”.

Parthenon Marbles might very well be a sui generis - a class by itself, and one needs to carefully consider and appreciate the uniqueness of this dispute.

There is also one important parameter of our era being ignored; the role of technology. Nowadays, anyone can take a virtual tour through any museum in the world through our living room. Virtual reality technology is today one of the fastest growing industries and its applications are countless, ranging from how we explore, shop, learn, and experience. Technology has evolved so radically that it casts doubt to the claim that the Parthenon Marbles are enjoyed by more in the British Museum. There are other ways in which technology has transformed our capabilities, in ways that might even resolve disputes such as the Parthenon Marbles. Stephen Fry, a famous British actor, writer and director, has suggested that the Parthenon Marbles could be replaced by an artificial reality experience. He proposes using laser technology to cast exact replicas of the Marbles, so that the originals could be returned to Athens, “where they belong.”⁹¹ He goes even further to suggest that you could enrich this experience by using virtual reality helmets to not only experience the Parthenon in its entirety, but also watch the process of how the Marbles were perfectly reproduced and how the originals were transported to Greece, undoubtedly both challenging tasks.

Several arguments raise doubts about whether Greece has the capacity to host the Marbles and that acidic rain will damage them if they were returned to the Acropolis. That argument made a lot of sense until Greece completed the development of the completely new, state of the art New Acropolis Museum. In sharp contrast, it is known

⁹¹ Valentine Low, “Create Virtual Elgin Marbles and Return Real Thing, Urges Stephen Fry,” *Www.thetimes.co.uk*, December 12, 2021, sec. news, <https://www.thetimes.co.uk/article/create-virtual-elgin-marbles-and-return-real-thing-urges-stephen-fry-87jv98ww2>.

that the British Museum damaged the Marbles when they arrived by using toxics to clean them. The British Museum also flooded one year ago, which forced the Greek galleries to close down for more than 8 months. So, does keeping the Parthenon Marbles in the British museum indeed further the “‘education and advancement of knowledge and (their) aesthetic worth’?”

Thompson raises an important point on aesthetics. The Parthenon Marbles can be viewed at room 18 of the British Museum. However, imagine if one could look at the Parthenon Marbles under the Athenian blue sky, through glass windows overlooking the ancient citadel of the Acropolis at the new Acropolis Museum. Imagine walking around the Parthenon in the Acropolis, looking at the missing metopes. Where would an objective visitor appreciate the Marbles more? Where would he/she develop a better understanding of what it meant 2000 years ago to carry tons of Marbles to the Acropolis hill? Where would he/she have the opportunity to look at the other temples of the Acropolis and grasp what Athenians created in totality? Where would he/she feel that the Gods sculpted in them were at home?

Cultural Property: Identity, Collectivity and Value

In thinking about cultural property, some scholars questioned the links between property and culture, others thought about the transfer of property rights and attempted to define who is entitled to cultural property; one culture or everyone. Other discussions revolve around the value of cultural property.

The notion presented by Young, that of drawing a parallel between cultural property and a will, is perhaps oversimplified.⁹² One could very well think of cultural property as inheritance, however, applying the same rules that govern private property to public property, which belongs to a nation, is problematic at best. While discussing the links of the ‘original’ owner, in the case of the Parthenon Marbles, Young highlights how the ties between Greeks and ancient Athens are non-existent. He claims that Athens was a State, often at war with other Greek States, therefore he questions whether ancient Athenians would want their property to belong to the whole of Greece. While it is true that Greek states would often engage into war with each other, it is also true that they shared many other characteristics. Athens remains after thousands of years, the capital of Greece. The same grounds are still occupied by Greeks. Greeks had great wars among each other, Athens and Sparta, the rivals of the golden era. Nevertheless, even at those times, when facing the same enemy, those City-States combined their power and fought the common enemy, famous instances included the war against the Persians. What united them back then was the same language, beliefs, culture. It could be argued that the same stands for today. Modern Greeks certainly feel that there is a direct, unbreakable link between the people of the ancient city of Athens and modern Athenians and Greeks; for them, the Parthenon Marbles are part of their identity.

Many people grasp the concept of culture, history and what it means for a nation and its people. Young references Wittgenstein’s definition of culture ‘a family resemblance concept; someone is a member of a culture who shares enough of some nest of ‘properties’. What is, however, enough?

⁹² Young, Cultures, 111-24

Modern Athenians look outside the windows and overlook the Acropolis. They go to school and are taught the ancient Greek language and history, the works of Plato, Socrates and Sophocles. Kids play pretending to be in an ancient Greek market. Students repeatedly visit the Acropolis on school trips, each time contemplating its significance as they grow up. They are reminded that democracy was born in that city as they visit the sculpture of Themis, the goddess of justice and law, in the National Archeological Museum of Athens. Modern Greeks, the collective set of people occupying the same lands in the last 2000 years ago, feel that they are direct descendants of Ancient Greeks and carry their history, culture and spirit in their souls; they feel and believe that Ancient Greeks are part of their identity.

Indeed, many people have reiterated that the Parthenon Marbles are part of their Greek identity. But what does it actually mean for something to be a part of one's identity? In simple terms, for something to be a part of one's identity, it would have to play a major role in shaping and developing his/her character and ideals. The Parthenon is by all accounts, the greatest historical monument of Greece. It is an architectural wonder, a timeless beauty even in ruins, and within it, it embodies so much history, culture and values embedded in its mythological carvings. Greek people continue to be inspired, empowered, and reminded of their common ancestors and what they stood for, and as long as that holds true, Parthenon is and will be their deepest, most profound and meaningful link to them. One could argue that this is that ever-lasting effect the Parthenon has on them, that truly makes it a part of their identity.

Gazi and Thompson touched on the collectivity and whether the collective society of today is linked to the past and the cultural artifact in dispute. Ancient Greece has

revolutionized the world, be it in the field of philosophy, science, or politics and so it certainly has different meanings for different people. If you are a philosopher, you probably fell in love with the writings of Plato or Aristotle; if you are a scientist, you will feel deeply connected to Pythagoras or Archimedes, and if you are involved in politics you will be in admire the Ancient Greek society for giving birth to democracy as we know it. These words still fail to capture what the Parthenon Marbles mean to Greeks, their identity, their society, so in Gazi's words: "Culture can tell people who they are."⁹³

Morality and The Court of Public Opinion

As we discussed earlier, societies and their values evolve through time, trial and error, and law changes to adapt to these shifts in collective morality. It is the pace of change, however, that has radically and emphatically changed; in fact, it has exploded. Social media has been the game changer. People are interacting, arguing, and promoting a constructive dialogue simply with the press of a button, from their home or their workplace, sitting down or walking through a busy street. It has never been easier to start a conversation nor for that matter to keep it going. Controversial debates become never-ending public, engaging dialogues, though not always constructive, but because they happen in a public forum, everyone has a voice, everyone is watching and everyone is, in a sense, peer-reviewed, even though "fake news" and propaganda still have a place in these platforms. It is a numbers game; however, the majority view is the one that gets the most attention and the one that becomes viral. For all of its shortcomings, social media is a modern-day adaptation of democracy, and it is a much-needed forum in today's ever-

⁹³ Gazi, *Museums*, 241-255

growing, complicated world. It is an unprecedented tool that enables today's society to swiftly and successfully effect change.

Today, voices grow exponentially and they are unforgiving to those resisting change. Public perception has become a very powerful tool for change; simply because the public, once it's made up its mind, will, in many cases, not wait for a court decision to confirm what they already know to be right. This is evident in countless recent cases of social media outrage targeted at public figures, with devastating effects for the victims. This frequent and rapid process has given birth to a whole movement; it has been termed cancel culture. In simple terms, cancel culture refers to a modern form of ostracism, in which someone is forced out of his social or professional environment, many times with a devastating effect to their career. Societies and individuals are realizing the power that their voice can now have, and are eager to use it, to right the wrongdoing they experience on a daily basis. This is the reason why these new voices now have the potential to make a profound and lasting difference in the case of the Parthenon Marbles. It is important, therefore, to take a closer look at some recent developments and discuss whether we might be experiencing a monumental shift in the public perception of the Parthenon Marbles.

The latest Greek government, under the leadership of Prime Minister Kyriakos Mitsotakis, has made it a priority in his agenda to pursue the return of the Parthenon Marbles. In his recent visit this past November to London, he resurfaced the issue in his statement: "Our request is not a flare; We will insist methodically to build the necessary foundations within the British public opinion on the need to reunite the sculptures of the Acropolis", adding that "it's not just a legal issue, but primarily a moral and political

issue.”⁹⁴ Boris Johnson, otherwise known for his appreciation towards the Greeks, avoided the issue, stating that the matter solely concerns the British Museum, even though as we saw earlier, it was a parliamentary act in the first place, which allowed the British Museum to effectively add the Marbles in their collection.

Shockingly, however, in a YouGov poll that followed Mitsotakis’ visit with Boris Johnson, found that 59% of the UK respondents sided with the view that the Marbles should be returned.⁹⁵ Some days later, Stephen Fry, known actor and writer, and Hugo Dixon, journalist at The Times, both called for “exact marble replicas to be made” so that the original Marbles could be returned to Greece.⁹⁶ A month later, The Times, in an article titled “The Times View on the Elgin’s Marbles: Uniting Greece’s heritage”, sent shockwaves through its British readership, while the article made national headlines in Greece. The reason is that The Times, one of the most iconic and well-established publications globally, decided to publicly change its 50-year long view, which sided with the British Museum and the UK government, citing that “times and circumstances change”, and clearly stating that “the case for returning the Elgin Marbles to Athens has become compelling.”⁹⁷ The article goes even further to call out the British government on its poor handling of the situation as “bureaucratic absurdity”, claiming that just like the Parliament once sanctioned their addition to the British Museum collection, it could now “sanction their return.”⁹⁸ The article also acknowledges how such a magnanimous return

⁹⁴ Σταύρος Παπαντωνίου, “Τσάι και... Γλυπτά στο Λονδίνο – Τι συζήτησαν Μητσοτάκης, Τζόνσον | Η ΚΑΘΗΜΕΡΙΝΗ,” www.kathimerini.gr, November 17, 2021, <https://www.kathimerini.gr/politics/561589171/tsai-kai-glypta-sto-londino-ti-syzitisan-mitsotakis-tzonson/>.

⁹⁵ “Daily Question | 23/11/2021 | YouGov,” yougov.co.uk, November 23, 2021, <https://yougov.co.uk/topics/travel/survey-results/daily/2021/11/23/9b053/2>.

⁹⁶ Low, “Virtual Elgin Marbles”.

⁹⁷ The Times, “The Times View”

⁹⁸ The Times, “The Times View”

could open the way for a myriad of repatriation requests and dismisses the argument, supporting that the Parthenon Marbles are a sui generis - and that “they (the Marbles) stand in the way of what should be a warm relationship with Greece, while reminding readers that “Lord Byron is seen as a hero of Greek independence” and that “Hellenism reached its zenith in Victorian Britain.”⁹⁹ He concludes by claiming that such a grand gesture would go a long way towards the “need to rekindle European friendships.”¹⁰⁰

It seems that society is at a crucial turning point in world history. This shift in collective thinking does not seem to be isolated to the UK. There is, in fact, a global newfound awareness and appreciation for the world’s cultural heritage, and many predict that this global trend is not likely to stop anytime soon in the wave of increasing globalization. People are once again appreciating the ways in which individuals and nations are different, and cultural identity is being celebrated all over the world. This is not just a sentiment; the world bears witness to meaningful, clear actions, which support this paradigm shift. Museums around the world are now returning items acquired in questionable circumstances from colonial strongholds. In November, France agreed to return 26 artworks to Benin, which were taken from the former Kingdom of Dahomey. Similarly, in April, the German government announced that it would begin repatriating its collection of Benin bronzes. New York’s Metropolitan Museum stated that it would return another two Benin bronzes, along with a tenth century Hindu sculpture of Shiva to Nepal, while the “German Lost Art Foundation brought together forty experts from

⁹⁹ The Times, “The Times View”

¹⁰⁰ The Times, “The Times View”

around the world to discuss looted art and the restitution of colonial objects.”¹⁰¹ Indeed, the global restitution debate has taken off and is now more alive than ever.

Another significant development made global headlines in January 2022. On January 10, Athens' Acropolis Museum presented the "Fagan fragment," the foot of the ancient Greek goddess Artemis that was returned from the Antonio Salinas Archeological Museum in Palermo.¹⁰² This landmark deal has reignited the debate about the British Museum and has put immense pressure on it to renew its position. In the welcoming ceremony, which was televised nationally, Greek PM Mitsotakis admitted that “there is a momentum building, and of course, the elephant in the room is the discussion we will have to have with the British Museum.”¹⁰³ What is also very interesting, is the structure of the deal reached between the two countries, as it could potentially serve as a roadmap for a similar deal between the UK and Greece. The fragment is categorically not “on loan”, as has been falsely reported by some, but “on deposit for eight years” and Sicily has stated its intention “to request from the Italian Ministry of Culture to make the move permanent.”¹⁰⁴ In addition, the deal also includes the “move of an ancient statue and an amphora” to the Palermo museum in Italy.¹⁰⁵ There could be tremendous potential in that type of deals; Imagine if museums from all over the world were not these culturally rich, yet stagnating places of appreciation but were constantly renewed through global co-operations with other museums to rotate on a temporary basis certain artifacts of

¹⁰¹ Deutsche Welle (www.dw.com), “Italy’s Return of Parthenon Fragment to Greece Shakes up Debate in UK | DW | 11.01.2022,” DW.COM, January 11, 2022, <https://www.dw.com/en/italys-return-of-parthenon-fragment-to-greece-shakes-up-debate-in-uk/a-60146803>.

¹⁰² Deutsche Welle, “Italy’s Return”.

¹⁰³ “Greece PM: Italy Museum Sets Example for Parthenon Marbles’ Return,” GTP Headlines, January 10, 2022, <https://news.gtp.gr/2022/01/10/greece-pm-italy-museum-sets-example-for-parthenon-marbles-return/>

¹⁰⁴ The Independent, “Marble Foot”.

¹⁰⁵ The Independent, “Marble Foot”.

renowned beauty and significance. That would, perhaps, be a truly 'global museum'. It is certainly a win-win scenario for both Italy and Greece; Greece has the chance to add a piece of the puzzle to its most celebrated cultural and historic monument, while Italy has the opportunity to showcase two artifacts truly beautiful, and never-before-seen in Italy. The important distinction is that these moves do not disturb an artistic whole; no one is suggesting to cut artifacts in pieces, so that everyone can have a piece. Perhaps, a similar deal can be reached with the UK and Greece.

Chapter VI.

Conclusion

A way forward in the future, could be for both UK and Greece to engage in a back-and-forth agreement that would allow countless more artifacts to be seen in the UK and enjoyed by the British Public, in a deal that would also renew the public's interest in the British Museum in a profound way. In return, the British Museum would allow the return of the original Marbles to Greece, while at the same time creating exact marble replicas and creating a new attraction in itself, by presenting the process of creating the replicas and moving the originals into an eye-catching virtual reality experience. It could be a way to not only resolve this long-standing dispute, but to also reinvigorate public interest, become a leading example to museums all over the world and in doing so, to also provide them with a new sense of purpose: to celebrate and showcase the world's global heritage.

The case of the Parthenon Marbles is a very complex one. It is a dispute not between private parties but one entangled with nations, history, diplomacy, international relations and politics. A dispute where laws fail due to the multitude parties involved and its timing. A dispute from a world that seems very distant to today. Yet, many still think about it, write for it, discuss it, advocate for it and fight for this dispute that has been going on for centuries. Why after two centuries do people still consume all this energy and occupy their minds with this case?

In writing this paper, the case for the return of the Parthenon Marbles seems to be more alive and more prevalent than ever. So much so, that even conservative voices traditionally against the return are now expressing a shift in their views. There is

undoubtedly a movement on the rise, one that seems to have taken up a life of its own, outside of the world of politics, diplomacy or even law. So, what changed, one might ask, in this 200-year ongoing dispute and what is the new critical element driving and pushing towards a new revolution? The answer is surprising yet simple: People.

Specifically, the way people feel when thinking about the history of humankind, when contemplating about the thousands of years and the giant steps they have taken, the achievements they reached as a society, the evolution as species, the principles and ethics that society has developed, the failures and successes that all the good and the bad have led the society to where it stands today.

As many people have said, one thing is constant and that is change. The world is moving forward, and it now accepts the wrongdoings of the past, embraces them, with the full intent to right them. Today's society cares and fights about rights. Maybe the era we live in is a silent acknowledgement that we need to change, we need to care, we need to correct actions that society once deemed 'normal'. Societies nowadays question their actions and rise to the occasion by having a united front and demanding change. One thing is certain: actions of the past and present, that contradict who we are today or who we want to be tomorrow, will not be easily accepted going forward.

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