IV. CULTURAL PROPERTY: THE HARD QUESTION OF REPATRIATION

THE RIGHTNESS AND UTILITY OF VOLUNTARY REPATRIATION

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Internationally prominent museums located in nation states that controlled empires into this century continue to possess cultural property taken from weaker societies during that earlier period.[1] In recent decades, these weaker societies have increasingly requested the return of some of these most important cultural property objects.[2] Although a statement by a former director of the British Museum is far more harsh than the common diplomatic museum response to repatriation claims, it may express a depth of feeling about calls for repatriation that may not be uncommon. Speaking in response to the demand of Greece's Minister of Culture, Melina Mercouri, that Britain return the Parthenon sculptures to Athens, Sir David Wilson stated during a BBC television program in 1986:

"To rip the Elgin Marbles from the walls of the British Museum is a much greater disaster than the threat of blowing up the Parthenon . . . I think this is cultural fascism. It's nationalism and it's cultural danger. Enormous cultural danger. If you start to destroy great intellectual institutions, you are culturally fascist."[3]

The result is essentially a stalemate with great museums, on

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† At the symposium in honor of John Henry Merryman's influential scholarly contributions to the fields of art and cultural property law, Professor Rudenstine gave a paper which was published shortly thereafter in The Nation magazine. David Rudenstine, Did Elgin Cheat at Marbles?, The Nation, May 29, 2000, at 30-35. This essay was prepared specifically for the publication of this volume of the Arts & Entertainment Law Journal.

1 *See generally* JEANETTE GREENFIELD, The Return of Cultural Treasures (1989); RUSSELL CHAMBERLIN, Loot: The Heritage of Plunder (Facts on File) (1983); KARL E. MEYER, The Plundered Past (1973).

2 For a seminal article noting the sea of change in the international discourse over cultural property, *see* Paul M. Bator, *An Essay on the International Trade in Art*, 34 STAN. L. REV. 275 (1982); *see also* John Henry Merryman, *Thinking about the Elgin Marbles*, 83 MICH. L. REV. 1881, 1893 (1985) "Politically, there is increasing activity within UNESCO and, more recently, the Council of Europe, to encourage the voluntary repatriation of cultural property, independently of any legal obligation to do so." *Id.*

3 CHRISTOPHER HITCHENS, THE ELGIN MARBLES: SHOULD THEY BE RETURNED? 85 (1998).

the whole, turning a deaf ear to such requests and repatriation advocates frustrated with no meaningful legal remedy available.

The controversy over cultural property is fierce and streaked with charges of immorality and illegitimacy. Indeed, so strident are the feelings expressed even at public forums that at one public event Professor John Henry Merryman believed it appropriate to remind an audience, "No one on the panel," he stated, "represents an illegitimate interest. What we are talking about is different points of view that have legitimate bases."[4]

This brief essay offers a suggestion, which if adopted, might change the terms and the tenor of current disputes over cultural property. The suggestion is that the great museums of the world take good faith steps to consider repatriating selective objects of cultural patrimony (as distinguished from the much broader category of cultural property) on conditions that will assure the safety, preservation and accessibility of the patrimony repatriated.

There are two reasons why museums should give consideration to this suggestion. First, selective repatriation of cultural patrimony may be the right thing to do in that it responds to an historical episode that, in the opinion of many, should not have occurred and which remains a source of bitter contention today. Second, voluntary repatriation of selective cultural patrimony objects may advance a vital interest of the world's great museums, namely the ability to purchase antiquities legally on a comparatively open cultural property market.

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Well-endowed, western museums collected disputed cultural patrimony mainly during the late eighteenth and nineteenth centuries, when the power of northern Europe was dominant.[5] Although there are spirited disputes over whether those takings were proper in light of legal or ethical norms at the time of the takings,[6] there is little doubt that most of those takings would be improper under contemporary legal and ethical standards.[7] Although it is strongly asserted that the application of contemporary legal and ethical considerations to these past events is improper, museums in

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[4] Daniel Shapiro, *Legal Issues in the Trade of Antiquities*, 3 INT'L. J. OF CULTURAL PROP. 365, 369 (1994).

[5] *See generally* GREENFIELD, *supra* note 1.

[6] *See* Merryman, *supra* note 2, at 1981 (discussing the debate over the Parthenon sculptures); *see also* David Rudenstine, *The Legality of Lord Elgin's Taking: A Review Essay of Four Books on the Parthenon Marbles*, 8 INT'L. J. OF CULTURAL PROP. 1, 356 (1999).

[7] *See* Merryman, *supra* note 2, at 1890-95 (discussing contemporary restrictions on the exportation and ownership of antiquities from the nation of origin).

democratic societies are increasingly pressured to reconsider the provenance of their collections in light of contemporary standards.[8] There are many reasons for this trend, including the fact that museums, because they occupy important positions of public trust in a democracy, are increasingly being asked to reexamine their holdings in light of values most prized by democratic societies, the most obvious relevant one being the consent of the people whose patrimony was removed. Although the resistance to assessing the taking of cultural patrimony in light of contemporary values is strong, the trend seems to be in that direction and the pressure from varying sources on museums to engage in such a retrospective appraisal is likely to mount.

Given the broad resistance museums have towards the idea of repatriation, it is worth reviewing the most important reasons frequently offered in defense of the continued retention of cultural patrimony. In making this review, I make no effort to be exhaustive or encyclopedic. Moreover, I will assess these main contentions as they have been presented in the particular context of the dispute between Greece and Britain over the Parthenon sculptures Lord Elgin brought to London in the first decade of the nineteenth century, probably the most prominent cultural property dispute in the world today. Moreover, because this symposium celebrates the intellectual contributions of John Henry Merryman in developing and shaping the contours of art and cultural property law, I will refer extensively to his writings. Although, as will be evident, I frequently disagree with Professor Merryman, it is a tribute to the significance and breadth of Professor Merryman's scholarship that his writings occupy such a central place in the repatriation debates over the Parthenon sculptures, as they do in so many areas of the law.

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First, it is widely believed that such takings were not considered illegal or immoral when taken. Why such a belief is so widespread is unclear, but it might derive from the fact, as one authority has stated that, "the act of plundering in time of war is ancient, timeless, and pandemic."[9] If plundering during war is acceptable, why, one might wonder, is plundering under less violent circumstances less legal or moral? Although this position bolsters

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[8] *See* Merryman, *supra* note 2, at 1893.

[9] JEANETTE GREENFIELD, *The Spoils of War in* THE SPOILS OF WAR, (Elizabeth Simpson ed., 1997).

the retention of cultural property by museums, it does seem historically incorrect.

The debate over the Parthenon sculptures offers striking evidence as to the incorrectness of the widely held assertion that no meaningful legal and ethical considerations regulated the taking of cultural property until recent times. In 1816, Parliament considered Lord Elgin's request that Parliament buy his famous and highly praised collection of antiquities.[10] Elgin was deeply in debt and needed to sell his collection to raise revenue to pay his creditors, and it seemed likely that if Parliament refused to purchase the collection, Elgin would be forced to sell it to a buyer on the continent.[11] Although many at the time considered it almost scandalous that Elgin's collection might be sold to a French or German buyer, many members of Parliament opposed the purchase because they considered the circumstances surrounding Elgin's taking of the Parthenon sculptures illegal and immoral.

One member of Parliament, Mr. Hammersley, opposed the idea that Britain should take title to Elgin's collection "on the ground of the dishonesty of the transaction by which the collection was obtained."[12] This member further stated that he was "not so enamored of those headless ladies as to forget another lady, which was justice."[13] Hammersley favored a resolution (not adopted), which seems exceptionally modern and which provided that "Great Britain hold[s] these marbles only in trust till they are demanded by the present, or future, possessors of the city of Athens."[14] Another member of Parliament, Mr. Serjeant Best, told the Parliament he opposed the purchase of the Elgin collection because "this example of plunder"[15] was not authorized by the "firmaun Lord Elgin had obtained."[16] Sir J. Newport stated he opposed the purchase "on account of the unjustifiable nature of the transaction by which the marbles in question were acquired."[17] Lord Milton, who considered the sculptures "invaluable monuments of ancient

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[10] *See* Report FROM THE SELECT COMMITTEE ON THE EARL OF ELGIN'S COLLECTION OF SCULPTURAL MARBLES, ORDERED BY THE HOUSE OF COMMONS, TO BE PRINTED, 25 MARCH 1816, at 3.

[11] For a general biography of Lord Elgin *see generally* WILLIAM ST. CLAIR, LORD ELGIN & THE MARBLES: THE CONTROVERSIAL HISTORY OF THE PARTHENON SCULPTURES (1998). *But see* Rudenstine, *supra* note 6 (providing a critical review of St. Clair's biography).

[12] THE PARLIAMENTARY DEBATE FROM 1803 TO THE PRESENT TIME: Published under the Supreintendence of T.C. Hansard, Vol. XXXIV, 26 April to 2 July 1816, at 1031.

[13] *Id.*

[14] *Id.* at 1033.

[15] *Id.* at 1038.

[16] *Id.* at 1037.

[17] *Id.* at 1039.

art," concluded that they had not been "acquired consistently with the strict rules of morality."[18]

In the end, Parliament voted to compensate Elgin and to take possession of his collection. But the final vote was divided, 82 to 30,[19] which indicated substantial opposition based on legal and moral grounds to the original taking.

In addition to statements of members of Parliament which evidence the prevalence of legal and moral norms pertinent to the removal of cultural property from their original site, Professor Merryman, who has written in support of the retention of the sculptures by the British Museum, has also concluded that Lord Elgin's removal of the Parthenon sculptures occurred in an environment regulated by legal and moral norms. Indeed, Professor Merryman accepts that legal rules governed the taking to such an extent that he devotes several pages of a technical law review article to assessing the question of whether the removal of the sculptures was legal under norms at the time. Merryman framed the relevant questions as follows:

> If Lord Elgin owned the Marbles, he could transfer ownership to the Crown. If his title was defective, then so was the Crown's title. How good was Lord Elgin's title to the Marbles? To answer that question we have to determine (1) whether the Ottoman authorities, who at the time were the recognized government of Greece, had the authority to transfer property rights in the Marbles to Lord Elgin; (2) whether they did in fact authorize Lord Elgin to remove the Marbles and take them to England; and (3) whether Lord Elgin exceeded the authority given him.[20]

Although Professor Merryman concludes his legal analysis with the statement "on the facts available to us, it appears that the law favors the British side of the case,"[21] what is important for our purposes is not Professor Merryman's conclusion that Elgin had good legal title which he could transfer to the Crown, but that the taking was governed by legal norms existing at the time and that mere possession of the sculptures was not tantamount to a valid legal claim.

Over many years, Professor Merryman has been one of the main proponents of a second argument frequently offered in opposition to repatriation (as well as highly restrictive ownership and

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18 *Id.* at 1031.
19 *Id.* at 1040.
20 Merryman, *supra* note 2, at 1896.
21 *Id.* at 1902.

exportation regulations and practices). By the terms of this position, repatriation is not required because, as Professor Merryman has maintained, "everyone has an interest in the preservation and enjoyment of all cultural property, wherever it is situated, from whatever cultural or geographical source."[22] The proponents of this position think of it as embodying an international perspective and they term the position as one of "cultural internationalism." In his oft-cited article, *Thinking About the Elgin Marbles*, Merryman espouses this claim and applies it to the dispute over the Parthenon sculptures. Under a heading of "Cultural Internationalism," Merryman maintains:[23]

> The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of May 14, 1954, states in its preamble that "cultural property belonging to any people whatsoever" is "the cultural heritage of all mankind." These words, appearing for the first time in any major piece on international legislation, announce the important principle that everyone has an interest in the preservation and enjoyment of all cultural property, wherever it is situated, from whatever cultural and geographic source. There is still, regrettably, an exception for military necessity, and nations sometimes do violate their legal obligations toward cultural property, but the principle is clearly accepted. All of us, from every country, have an interest in the preservation and disposition of the Marbles; the matter does not touch only on Greek and English interests. The Marbles are "the cultural heritage of all mankind."[24]

Merryman's idea is attractive: Irrespective of our roots or country of origin, we all have an equal claim, as Merryman asserts, to the "cultural heritage of all mankind." This idea reaffirms our interdependence and emphasizes our common humanity. But once we step back from the emotive quality of that claim, and we ask what is the meaning of Merryman's claim that "'cultural property belonging to any people whatsoever' is 'the cultural heritage of all mankind,'" we find an enigma.

What does it mean to say that the "'cultural property belonging to any people whatsoever' is 'the cultural heritage of all mankind?'" For all the importance he places on this international perspective, Merryman does not clarify what he means by it. Moreover, it is not at all clear what he could possibly mean. Certainly Merryman does not mean by the claim that the Parthenon sculp-

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[22] *Id.* at 1916.
[23] *Id.*
[24] *Id.*

tures "are 'the cultural heritage of all mankind,'" that "mankind" owns the sculptures or that "mankind" has any control over the sculptures. Such an implication would imply that Merryman might think that New York has a claim equal to Greece's to the Parthenon sculptures, and he certainly does not think that. Nor could Merryman possibly mean that in some more abstract intellectual sense the sculptures are as much a part of Mayan or Japanese history and culture as they are of Greece's history and culture. Perhaps all Merryman means is that because of ancient Greece's profound impact on later societies, everyone has been influenced—whether aware of it or not—by the sculptures and the civilization they represent and thus have some, finite, intangible interest in the preservation and accessibility. But if that is all Merryman means—and it is not at all clear what else he may mean—the value and importance of the claim as a useful tool in helping to assess cultural property disputes vanishes.

Merryman's suggestion that the sculptures "are 'the cultural heritage of all mankind'" seems vulnerable to the same criticism he levels at repatriation claims. Merryman describes Greek claims for repatriation as nothing more than romantic "Byronism," a term he uses as an "epithet" and which he equates with cultural nationalism. Merryman asserts that "cultural nationalism is more an assertion than a reason" and that there is nothing more to the "cultural nationalism argument than a mere self-serving assertion."[25] Putting aside the merits of Merryman's dubious conclusion that repatriation claims may fairly be ridiculed as romantic and dismissed because they are more assertion than reason, it is clear that Merryman's critique of repatriation claims applies to his own concept of "cultural internationalism" and his assertion that the Parthenon sculptures "are 'the cultural heritage of all mankind.'" By claiming that the Parthenon sculptures effectively belong to everyone, Merryman seeks to strengthen the British moral claim to the sculptures in the face of Greek claims for repatriation by suggesting that the British claim to the sculptures is as strong as the Greek claim. But, as already noted, the idea that the Parthenon sculptures "are 'the cultural heritage of all mankind'" is, at least intellectually, an empty vessel, or to use Merryman's words, it is "more an assertion than a reason." Merryman's idea that "cultural property belonging to any people whatsoever" belongs to everyone because the cultural heritage of any one people is the "cultural heritage of all mankind"

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25 *Id.* at 1912.

seems more like a slogan in a bitter feud over cultural patrimony than an idea that illuminates.

Voluntary repatriation of wrongfully taken patrimony is opposed on the ground that it presents a devastating threat to the world's great museums. The claim here is that the voluntary repatriation of one major cultural patrimony object such as the Parthenon sculptures will create such a precedent that the result will be that the galleries of the world's great museums will be emptied.[26] The assumption seems to be that the voluntary return of any patrimony long housed at the British Museum or at the Louvre, for example, would so weaken the wall of resistance to repatriation claims, that the galleries of the great museums would soon be emptied.

The fear that voluntary repatriation of wrongfully taken cultural patrimony would gravely threaten great museums seems unwarranted. It must be emphasized that cultural patrimony is a much smaller and narrower group of antiquities than the broad term cultural property. Patrimony refers to something so basic and fundamental to a society, a people, a civilization that its alienation would be unthinkable and would result in a loss so great that nothing could compensate for it. Patrimony tends to have continued historical, cultural, or religious significance to a society. It is usually something no one individual ever personally owned and it could not be alienated, conveyed or transferred. Professor James Cuno tried to capture the profound nature of patrimony when he noted that patrimony is "not something owned by a people but something *of* them, a part of their defining collective identity."[27] The United States *Native American Graves and Repatriation Act* sounded similar themes when it defined patrimony as "an object having ongoing historical, traditional, or cultural importance . . . [which] cannot be alienated, appropriated, or conveyed by any individual . . . ."[28] Further, only patrimony wrongfully taken should be considered for return. Although the definition of a wrongful taking in this context may be uncertain, at its core it would emphasize a taking without permission from a governmental authority that fairly and fully represented the interests of the people who believed that the patrimony in question was a part of their culture,

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[26] *See* HITCHENS, *supra* note 3, at 85. Before offering his own assessment of this contention in the context of the Parthenon sculptures controversy, Christopher Hitchens stated the assertion as follows: "The return of the marbles would set a precedent for the denuding of great museums and collections." *Id.*

[27] James Cuno, *Museums and the Acquisitions of Antiques*, 19 CARDOZO ARTS & ENT. L.J. 83, 85 (2001).

[28] Native American Graves and Repatriation Act, 25 U.S.C. § 3001 (3)(D) (1990).

history, or heritage.[29] In addition, only patrimony for which there is a claim of repatriation should be considered for return.[30]

It is difficult to accept that the greatness of internationally acclaimed museums would be vanquished if, over time, they selectively repatriated cultural patrimony to countries in which its safety and accessibility would be assured. The collections of these museums have impressive depth, and if the legal market for cultural property became more vibrant, these fabulous institutions would be able to fill out their collections with new acquisitions not now available.

Fourth, it is argued that there is almost no discernible meaning and significance to the voluntary repatriation of cultural patrimony because almost all repatriated patrimony would merely go from one museum to another. As a result, there would be no restoration of patrimony to its original setting and thus no enhancement of the cultural context that originally provided a framework for the patrimony. Again, the Parthenon sculptures debate provides a graphic illustration of the point, which Professor Merryman makes as follows:

> If we think of the intact Parthenon as an integrated work of art, so that the parts together have more beauty and significance than the sum of the dismembered pieces, then it makes sense to argue that the sculptures should be reinstalled on the temple. . . There is, however, a serious objection: the marbles cannot be reinstalled on the Parthenon without exposing them to almost certain damage from the elements and the smog of Athens. . . The masterpiece is better dismembered than destroyed or seriously damaged. . . In fact, the Greek proposal is not to restore the Marbles to the Parthenon but to transfer them from a museum in London to a museum in Athens. Their site in Athens would be near the Parthenon (within 200 yards according to Minister Mercouri), but that small distance is critical. The argu-

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[29] The gift by the government of Egypt to the United States in 1965 of the Temple of Dendur, awarded to the Metropolitan Museum of Art in 1967, seems to have all the characteristics of a voluntary gift of patrimony by a governmental authority fully endowed with powers to alienate it. *See* The Metropolitan Museum of Art- The Collection: Egyptian Art, *available at* http://www.metmuseum.org/collections/view1.asp?dep=10&item=68%2E154 (last visited Mar. 3, 2001).

[30] Artifacts from Cyprus now at the Metropolitan Museum of Art that some might consider so important as to constitute patrimony were taken during the last century under circumstances that might well give rise to questions regarding their taking. Yet, at the opening of the museum's Cypriote Galleries in 2000, Cyprus governmental officials participated in the celebration and praised the museum's collection on the ground that it gave many who would never otherwise see Cypriote art and artifacts an opportunity to view and possibly study examples of the cultural heritage. Interview with Metropolitan Museum of Art Officials in New York, N.Y. (Dec. 13, 2000).

> ment for return is an argument for restoration of the integrity of the Parthenon, and that is not (at present) possible without exposing the Marbles to unacceptable hazards.[31]

Merryman is certainly correct: the restoration of the sculptures to the Parthenon walls would present a compelling case for their return. And Merryman is also certainly correct that such restoration is not now contemplated. But, does Merryman exaggerate the significance of the 200 yards that might one day separate a museum featuring the Parthenon sculptures from the Parthenon itself? If the only value at stake were the aesthetic one identified by Merryman, namely the integrity of the Parthenon as a unified building adorned with its original sculpture, then the difference between the sculptures being in their original location as part of the Parthenon and being housed in a museum would seem highly significant. But as important as the beauty of an integrated public monument is, it is not the only value. Context of the patrimony has another element to it other than the aesthetic of its beauty. Context inspires, stimulates, and fosters study, learning, and understanding. And having the Parthenon sculptures close to the Parthenon does mean that they will be an integral part of the Acropolis and thus enhance and intensify a visitors overall exposure to ancient Greece.

Additionally, repatriation of cultural patrimony might put internationally acclaimed artifacts at risk or limit their accessibility. The preservation of patrimony is a major consideration, and there will be few, if any, who publicly endorse the repatriation of patrimony when such repatriation puts such items in harm's way. Moreover, the idea that the return of the Parthenon sculptures to a museum in Athens would put them at an unacceptable risk is indefensible.

The question of accessibility is another question. London, Paris, and New York are centers for international tourists, and their tourist traffic probably overshadows the tourist visits to Athens or Istanbul. Nonetheless, these older Mediterranean centers of historic cultures are major international cultural centers in their own right, and it seems hard to claim persuasively that the value of accessibility is in fact compromised if patrimony were to go from northern European centers to historic Mediterranean ones. Moreover, the question of accessibility has an insidious side to it. Accessible to whom? Certainly, many from the Mediterranean world who might travel to Athens or Istanbul or Cairo and thus see patrimony

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[31] Merryman, *supra* note 2, at 1918-19.

of historic importance might not travel to London, Paris, or New York. Thus, the issue of accessibility seems like a draw in any analysis except in extreme cases, and even then one must take into account the comparative meaning of patrimony to peoples of foreign lands compared to a people from where the patrimony came.

Sixth, it is often claimed that museums are entitled to retain the patrimony now in their possession because the artifacts would be in far worse condition than they are today if they had been left in their original position. Thus, this point is almost always made when repatriation of the Parthenon sculptures is discussed. This point has some validity to it; the sculptures are in better condition today than they would have been if left on the Parthenon walls. But does the point, assuming its validity, really strengthen a museum's claim to continue to retain cultural patrimony that should otherwise be repatriated?

It is difficult to understand how this claim actually strengthens a museum's legal and moral position in a dispute over cultural patrimony. After all, given that the first principle of museum stewardship is the preservation of its holdings, it seems anomalous to argue that a museum's discharge of that duty has the effect over time of actually strengthening a museum's legal and moral claim to the object itself. If that were an accepted principle, then a museum's preservation of an object which was undisputedly stolen and which might have been damaged or destroyed if not stolen, would be thought sufficient to defeat what otherwise be an unimpeachable legal and moral claim to possession by another. That is not a defensible position.

The preservation of cultural patrimony by a museum would support a museum's continued possession of that object if the alternative would result in the destruction of the artifact. But such a consideration simply honors the great weight placed on preservation and it contributes nothing to the underlying legal and moral claim a museum may have to an object.

Lastly, it is often claimed that a museum is entitled to retain the patrimony in question because the artifact in dispute has, over time, become part of the patrimony of the society in which the museum is located. This argument is often made with particular vehemence with regard to the Parthenon sculptures. Although the sculptures had been in Greece for over 2200 years, they have now been in London for almost 200 years, and as a result, it is asserted that the sculptures are a meaningful part of British patrimony.

This argument places a premium on the idea of patrimony. As noted, patrimony is a much narrower idea than cultural property

and, as Professor Cuno has suggested, patrimony is something not owned by a people, but something "of them, a part of their defining collective identity."[32] Using this as a guide, the idea that the Parthenon sculptures are part of British patrimony seems fatuous. Unless one thought of the sculptures as a symbol of the historic British empire and power or as an embodiment of British imperialism, it is difficult to understand how the Parthenon sculptures help define and embody some historic and fundamental aspect of British history and culture. Moreover, even if one were to credit the claim that the sculptures did form a constituent part of British patrimony, is it really believable that the meaning of the sculptures to Britain is equal to or superior to their meaning to Greece? It seems implausible that one could seriously make such a claim.

There is little doubt that the British are attached in some meaningful way to the Parthenon sculptures, and that attachment certainly forms part of the core of resistance to repatriation. But the idea that it would be improper to repatriate the Parthenon sculptures because such repatriation would mean alienating British patrimony is fanciful and unconvincing.

The main arguments reviewed above, which are frequently offered against even considering the idea of voluntary repatriation, are weak and unpersuasive. Moreover, the pressure on museums to consider the idea of selective repatriation will only increase. Although museums might embrace these developments in an effort to do the right thing, there is a utilitarian reason why museums should give serious consideration to voluntary repatriation of selective cultural patrimony objects.

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Museums may find that there is benefit to being more open minded than they have generally been in the past regarding the issue of the voluntary repatriation of cultural patrimony. Today many nations have highly restrictive policies which aim at curtailing foreign ownership and exportation of cultural property.[33] Thus, these policies all but make it impossible for a person to legally own or export newly discovered artifacts of a certain age. One result of these policies is that there is almost no lawful market in antiquities which provide museums with artifacts that allow them to enlarge and strengthen their collections.

These restrictive ownership and exportation policies, which

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[32] Cuno, *supra* note 27, at 85.

[33] *See* Bator, *supra* note 2, at 313-14.

have been in place for decades, have been sharply criticized.[34] Three criticisms are worth emphasizing. First, the definition of cultural property subject to these restrictions is exceedingly broad and results in the accumulation, within the art source nation, of an overwhelming amount of cultural property that far and away outstrips any reasonable needs or interests it may have. Second, art source nations often lack the resources to take adequate care of the vast amount of cultural property uncovered and to make it accessible to the public and scholars. Third, the restrictive policies contribute to a black market in antiquities that leads to the destruction of unexcavated archaeological sites, the destruction of artifacts themselves, and the inability to further the information of knowledge about the past.

Although art source nations have been requested to modify their ownership and exportation policies, no change has been forthcoming. Art source nations seem as intransigent with regard to modifying their ownership and exportation issues as museums are with regard to the question of repatriation.

Thus, the question is raised as to how to unstick these two stuck controversies. There is no predictably effective answer. But, it is conceivable that if museums approached the question of selective repatriation of internationally acclaimed pieces of cultural patrimony with a fresh and open mind, art source nations might respond with a new sense of flexibility and openness and take steps to modify the most restrictive ownership and exportation restrictions thus permitting meaningful and lawful acquisitions of cultural property in an open market.

There are reasons why it is conceivable that a museum initiative might trigger a response in art source nations. Art source nations do want selective objects of cultural patrimony returned and they have almost no meaningful legal remedy available to them as they consider how to secure the return of their cultural heritage. Voluntary repatriation may well stimulate an era of good feeling which, in turn, may prompt art source nations to reconsider their ownership and exportation policies. Moreover, in addition to the fact that the criticisms of extremely restrictive ownership and exportation policies are trenchant, it seems most likely that art source nations can advance their general and admirable goals of assuring that much of their cultural heritage remains within their own bor-

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[34] *See* LAW, ETHICS AND THE VISUAL ARTS 71-72 (John Henry Merryman & Albert E. Elsen eds. 1998); *see also* John Henry Merryman, *The Public Interest in Cultural Property*, 77 CAL. L. REV. 339 (1989).

ders with regulations and practices that permit a meaningful market in cultural property.

The suggestion that museums consider voluntary repatriation of selective cultural patrimony in the hope that art source nations relax their ownership and exportation policies offers something—not everything—important to each side. Museums embracing a more open mind toward repatriating selective pieces of cultural patrimony (not property) may gain, in return, a more meaningful and open market in cultural property (not patrimony) that allows them to enhance collections. Art source nations permitting the lawful sale and exportation of some cultural property (not patrimony) may gain selective pieces of cultural patrimony (not property).

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Historical developments leading to contemporary disputes over cultural property were a long time in the making, and it will be a long time before future developments dampen the fires that are so emblematic of today's controversies over the remains of the past. But change will occur, and it will affect museums and art source nations. Today, museums have the opportunity to take the initiative with regard to repatriating selective cultural patrimony objects. If they give serious consideration to this opportunity, they may find that their actions help prompt art source nations to reconsider their ownership and exportation policies. Such developments would likely be beneficial for all—that is, for museums, art source nations, and the public.

MUSEUMS AND THE ACQUISITION OF ANTIQUITIES

JAMES CUNO*

Debate continues in this country over the acquisition of antiquities by art museums. In my brief remarks this afternoon, I will articulate the legal and ethical terms by which our art museums can make such acquisitions. These, I hasten to say, are grounded in our nation's laws as I understand them, as well as in reasonable international standards of professional practice.

In 1983, our nation implemented the *1970 United Nations Educational, Scientific, and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property ("UNESCO Convention")*[1] by adopting the Convention on Cultural Property Implementation Act.[2] This Act empowers the U.S. Department of State to accept requests from countries seeking to place import restrictions on archaeological or ethnological artifacts, the pillage of which places their national cultural patrimony in jeopardy.[3] Such requests are reviewed by the President's Cultural Property Advisory Committee, which makes recommendations to the Department of State, which in turn makes decisions with regard to the requests and may enter into a cultural property agreement with the requesting parties.

The Cultural Property Advisory Committee bases its recommendations on four determinations, whether:

> (1) the cultural patrimony of a State Party to the Convention is in jeopardy from pillage of archaeological or ethnological

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1 *See* Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231, 10 I.L.M. 289 (1971), *available at* http://www.unesco.org/culture/laws/1970/html_eng/page1.htm (last visited Nov. 27, 2000) [hereinafter UNESCO]; *see also* PAUL M. BATOR, THE INT'L TRADE IN ART 94-108 (1981) (detailing the *UNESCO Convention*'s legislative history, from drafting sessions to final approval).

2 *See* H.R. 14171, 94th Cong. § 2 (1976); *see also* Leonard D. Duboff et al., *Proceedings of the Panel on the United States Enabling Legislation of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 4 SYRACUSE J. INT'L L. & COM. 97, 98-139 (1976) (offering the text of the legislation and that of a panel discussion held by the Association of American Law Schools).

3 *See* H.R. 14171.

> materials, (2) the State Party has taken measures for the protection of its cultural patrimony, (3) import controls by the United States with respect to designated objects or classes of objects would be of substantial benefit in deterring such pillage, and (4) the establishment of such import controls in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes . . . .[4]

Of critical importance here is the distinction between cultural *patrimony* and cultural *property*. Article 1 of the *UNESCO Convention* defines cultural *property* broadly as, "products of archaeological excavation. . .; elements of artistic or historical monuments or archaeological sites which have been dismembered; antiquities more than one hundred years old, such as inscriptions, coins and engraved seals. . .; [and] property of artistic interest."[5] Differences between cultural *property* and cultural *patrimony* are often confused in these respects.[6] Common sense would hold that cultural *patri-*

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[4] *Id.*

[5] UNESCO, *supra* note 1, at 358.

[6] Definitions of cultural property often fail to distinguish between "patrimony" and "property." The two words are frequently used interchangeably, sometimes together with "cultural heritage." Mark Feldman, Deputy Legal Advisor to the State Department during the drafting of the United States enabling legislation, pointed to these definitional problems in the *UNESCO Convention.*

> The term 'cultural heritage' used in Article 4 of the *UNESCO Convention* does not appear anywhere else in the Convention and has no operational significance per se. It is one of the many imperfections in the *UNESCO Convention* resulting from the fact that the *UNESCO Convention* was revised over a two-week period. One result is that we have an article, which has no specific operating reference. This may raise definitional issues.

Duboff et al., *supra* note 2, at 130 (quoting Mark B. Feldman).

More inclusive definitions of cultural property (that do not distinguish between "patrimony" and "property") often cause more problems than they solve. As Frank Fechner has argued, "[t]he temptation to broaden the definition is particularly acute now, when the law of cultural property is in a state of flux. Yet, an overly inclusive definition of cultural property means not only a weakening of the notion itself but also a weakening of the legal rules for its protection. Thus, a broad notion of cultural property can be even more harmful than a too-narrow one; if a tight definition might exclude some objects worthy of protection, a too-broad one might well fail to be effective at all. Only a clear and narrow definition can prevent misuse of cultural property law and the loss of cultural property itself." Frank G. Fechner, *The Fundamental Aims of Cultural Property Law*, 7 INT'L J. CULTURAL PROP., 376, 377-78 (1998).

My understanding of "patrimony" as distinct from "property" is supported by the definition of "cultural property" in Hague 1954. *See* discussion *infra* note 12; *see also* UNESCO, *supra* note 1, at 17 (quoting both the Convention and the Protocol for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954. Article 1 of the Convention states:

> The term 'cultural property' shall cover, irrespective of origin or ownership: (a) 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

mony is a subset of cultural *property*. For example, all old bells are cultural *property* but the Liberty Bell is cultural *patrimony*. Cultural *patrimony*, in other words, suggests a level of importance greater than that of cultural *property*. It is not something owned by a people, but something *of* them, a part of their defining collective identity.

Some countries, like the United Kingdom and Japan, have mechanisms for distinguishing between cultural *property* and cultural *patrimony*.[7] If, for example, a non-British museum sought to purchase an Elizabethan painting from a British source—or a non-Japanese museum sought to purchase a Kamakura-period scroll painting from a Japanese source—experts in the respective source country would examine the work to determine if it were truly worthy of the distinction "cultural patrimony." If it were, every effort would be made to retain it for that country. If it were not, it would be given an export license as cultural property. In the case of Japanese cultural *patrimony* already outside Japan, the Japanese government often seeks to conserve such works of art where they are located. The art is so important to the Japanese cultural identity that the government wants them preserved in the best possible condition as representative examples of Japanese patrimony. Indeed, a country's patrimony need not lie within its borders to be considered its patrimony. Wherever it is, a country's patrimony is what nourishes a country's identity at home and abroad.[8]

> a whole, are of historical or artistic interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above . . . .

Id. It is the emphasis on "great importance" that is significant; not just any kind of importance, but "great importance to the cultural heritage of every people." *Id.*

[7] *See* BONNIE BURNHAM, THE PROTECTION OF CULTURAL PROPERTY 82-83, 98-99 (1974); *see also* II UNESCO, THE PROTECTION OF MOVABLE CULTURAL PROPERTY: COMPENDIUM OF LEGISLATIVE TEXTS 112-48 (1984) (reprinting all articles and provisions drafted at the 1970 UNESCO including specific legislation from several countries that provides definitions relevant to the *UNESCO Convention*).

[8] The international trade in cultural property is most often regulated through export controls. (Through these bilateral agreements, the United States government has put into place discrete import controls.) The most extreme form of export control is a total embargo; in some cases, countries have imposed de facto embargoes, by which cultural property can be exported with an export license granted by an administrative authority. Such licenses are virtually never granted. The English and Japanese export models are based on screening export requests. Some countries employ both embargoes and screening, with certain important works of art embargoed and others reviewed before a license is granted. The United States is unusual in that it has made few laws protecting its cultural property, and these are limited to "historically, architecturally, or archaeologically significant objects on land that are owned, controlled or acquired by the federal government." Therefore, legislation such as the Native American Graves Protection and Repatriation Act "vests title to cultural objects discovered on tribal lands in the individual descendant or tribe on whose tribal land the object was discovered, not in the United States government. Even Native American cultural objects found on federal land become the property not of the

The 1983 Cultural Property Implementation Act goes further and suggests that every example of a foreign country's cultural patrimony is not of equal value.[9] After all, the Cultural Property Advisory Committee is meant to determine whether the requesting country's cultural patrimony is *in jeopardy* before considering the merit of the request to restrict its importation.[10] In other words, under the legislation the Committee could determine that while there are precious few examples of significant, large-scale ancient bronze statuary still extant in Greece, there are enough, and thus, even though a particular object is of a kind with another which has been accepted as part of Greece's cultural patrimony, Greece's cultural patrimony is not itself in jeopardy and so the request for import restrictions may be denied. Paul Bator, former professor and associate dean of Harvard Law School and a principal architect of the Act, noted that it is "perfectly clear that the power to place import controls on art was seen as an extreme and dangerous step to be used only in cases of great necessity . . . . There really has to be some specific showing that illegal export is destructive to some important category of art."[11] Further, the determination that an object is of sufficient importance to be designated part of a culture's patrimony and that that particular culture's patrimony is in jeopardy, are just two factors set within the larger context of our country's stated interest in the international exchange of works of art. As Mark Feldman, Deputy Legal Advisor for the State Department during the proceedings that led to the enabling legislation, put it, "[t]he idea is to have the legislation reflect our general sup-

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government but of the tribe which has the 'closest affiliation' with the object." Brief Amici Curiae by Michael H. Steinhardt, at 14, United States v. An Antique Platter of Gold, 991 F. Supp. 222 (S.D.N.Y. 1997). Despite the seemingly lax cultural property laws of the United States, it can be argued that in effect the United States discourages the exportation of its cultural property (including archaeological and ethnological material found on U.S. soil and objects not made by Americans, such as Greek vases or Roman bronzes) by allowing significant tax benefits to individuals who give such property to our country's public institutions. *See also* BATOR, *supra* note 1, at 37-40 (discussing various export controls used in different countries to regulate international trade in art).

9 *See* H.R. 14171, 94th Cong. § 2 (1976).

10 *See* UNESCO, *supra* note 1.

11 Duboff, et al., *supra* note 2, at 132 (quoting Paul M. Bator). Mark Feldman went further and stated:

> The language of the legislation tracks that of the *UNESCO Convention*; the concept of cultural patrimony of a state being in jeopardy from the pillage of archaeological or ethnological materials. And I suppose that involves, at a minimum two considerations: One is the destruction of irreplaceable cultural resources through the illicit excavation of sites or the dismantling of ceremonial centers, which we've seen around the world in recent years; the other is the loss of a cultural patrimony through the outflow of important artistic objects. The question is what demonstration would be necessary to show jeopardy? And what remedies should be provided?

Id. at 131 (quoting Mark B. Feldman).

port for the international movement of art."[12]

This, then, is the legal background against which I want to pose the professional practice of museum acquisitions. Guiding such practice is the concept of "due diligence," as set forth in Article 4 (4) of the 1995 UNIDROIT Convention:

> In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the prices paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any step that a reasonable person would have taken in the circumstances.[13]

Inherent in the concept of "due diligence" is acceptance of the fact that at the time of acquisition all evidence may not be at

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[12] *Id.* at 116 (quoting Mark B. Feldman). John Merryman offers a useful distinction between "cultural internationalists," such as the United States, and "retentive cultural nationalists," such as Italy. "Cultural internationalists" view cultural property "as components of a common human culture whatever their places of origin or present location, independent of property rights or national jurisdiction." John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80 AM. J. INT'L L. 831 (1986). "Retentive cultural nationalists" view cultural property "as part of a national cultural heritage. . .[which] gives nations a special interest, implies the attribution of national character to objects independently of their location or ownership, and legitimizes national export controls and demands for the 'repatriation' of cultural property." *Id.* at 832. Merryman traces the influence of these two points of view, from the appearance of the "internationalist" viewpoint in the Hague in 1954 to that of the "nationalist" viewpoint in UNESCO 1970. "Hague 1954 seeks to preserve cultural property from damage or destruction. UNESCO 1970 supports retention of cultural property by source nations. These different emphases—one cosmopolitan, the other nationalist; one protective, the other retentive—characterize two ways of thinking about cultural property." *Id.* at 846. Since 1970, cultural nationalism has dominated the debate on cultural property. *See generally* John Henry Merryman, *Thinking About the Elgin Marbles*, 83 MICH. L. REV. 1871 (1985); John Henry Merryman, *The Nation and the Object*, 3 INT'L J. CULT. PROP. 61 (1994).

A post-colonial twist on "repatriation" from the nationalist perspective is offered by Irene Winter:

> That international challenges even arise must be seen as part of a larger post-colonial universe. The successful negotiations resulting in Denmark's return of a group of medieval manuscripts to Iceland opened the door to former colonies worldwide to petition for redress against historical imbalances of power that permitted the removal of valued moveable goods. Indeed, the Greek delegation to the ICOM Working Group on the Return of Cultural Property in 1983 included in its statement, 'that all countries have the right to recover the most significant part of their respective cultural heritage lost during periods of colonial or foreign occupation.'

Irene J. Winter, *Cultural Property*, 52 ART J. 103, 105 (1993).

[13] *UNIDROIT Convention*, 5 INT'L J. CULT. PROP. 155 (1996) (special issue dedicated to the UNIDROIT Convention, including a reprinting of the text of the Convention); *see also* LYNDELL V. PROTT, COMMENTARY ON THE UNIDROIT CONVENTION ON STOLEN AND ILLEGALLY EXPORTED CULTURAL OBJECTS 1995 (1997) (detailing both the text of the convention and the commentary on it).

hand regarding the legal standing of the work of art in question. A museum is free to make the acquisition without such evidence only after certain procedures have been followed. If after making the acquisition, convincing evidence is brought forward to prove that the work of art was illegally exported from its country of origin, then one is obliged to return it to the proper authorities in that country. It may result in money spent inappropriately, but that is part of the cost of doing business as a museum. The same would be true, of course, if a museum unknowingly purchased a "fake" work or a work later reattributed from a greater to a lesser master.[14]

Let me offer a couple of examples from my own experience of how and why museums should acquire works of antiquity.

I.

Five years ago, our Sackler Museum acquired a group of vase fragments that had been acquired by a scholar of Greek vases, Robert Guy.[15] On seeing them, my first thought was how beautiful they were and how important they could be for teaching. They comprised more than two hundred fragments representing Greek vase painting from the sixth to the late fifth century B.C. The fragments contained Attic, Chalcidian, Corinthian, Laconian, and Etruscan examples. I saw immediately that a student could hold them in her hands and pass them around the seminar table, learning from the fragments things she could not from a complete pot. She could feel their texture and weight, see the depth of their clay walls, hold them up to raking light and see the clearly inscribed lines of their under drawings and the different reflective qualities of the blacks that comprise their outlines and painted bodies. Present and future students could learn a great deal about the materials and methods of Greek vase painting and about the particular stylistic qualities of some of its best and most influential artists. The vase

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[14] The often-cited Harvard guidelines for the acquisition of works of art and antiquities places special emphasis on the curator's expertise and on "reasonable assurance" that the work of art or antiquity had not been "exported from its country of origin (and/or the country where it was last legally owned) in violation of that country's laws." Thus, "the Curator should have reasonable assurance under the circumstances that the object was not exported after July 1, 1971, in violation of the laws of the country of origin and/or the country where it was legally owned." The crux of the matter lies with the concept and practice of "reasonable assurance." I understand that to mean the same as "upon performing due diligence" as I have described it above. THE HARVARD REPORT (1971), *reprinted in* KARL E. MEYER, THE PLUNDERED PAST, at 255 (1973).

[15] Robert Guy is currently an associate at the antiquities dealership, *Michael Ward and Company*, in New York. He was formerly the curator of Ancient Art at the Princeton University Art Museum.

fragments were not, to my mind, so much display objects as they were teaching and research objects. That is what interested me most about them.

As we proceeded to acquire the fragments, we contacted Mr. Guy and asked how and when he had acquired them, and if he had written evidence to back up his claims. He said he had no such evidence and that he had acquired them over many years from friends and dealers. Some of my colleagues would have wanted us to stop at that point, believing that such objects are presumed "guilty until proven innocent," and that not having positive evidence that they had been legally and ethically acquired, was the same as admitting that they had been illegally and unethically acquired. I disagreed. We had no reason to believe that the fragments were illegally or unethically acquired. Just because other people had illegally acquired other fragments at other times—fragments that had been looted from archaeological sites—did not mean that ours were of dubious acquisition. The fact that many of ours had been acquired since the adoption of the *UNESCO Convention* did not mean that they had been removed from Italy (if, in fact, that is where they originated) after that date. They could just as easily have been out of the ground and on the market for many years prior to 1971. Who was to know?

I *did* know that Robert Guy was a scholar of considerable renown, former curator of ancient art at Princeton University and at Oxford, that he had built the collection over time with an eye to its potential for teaching, that we would publish an announcement about the collection in full and that his name would forever be associated with the fragments. He knew that the press and his colleagues, who would come to know of it through our publication, would scrutinize the acquisition carefully. If he thought that they had been illegally exported and acquired, or that his association with the collection would be detrimental to his standing as a scholar, he could easily have instructed the dealer who sold them to us to sell them a few at a time to private collectors, where they would have attracted little or no attention. Instead, he wanted the collection to be made public and to be held by a teaching museum, where it could be studied and appreciated by students, scholars, and the general public for many years to come.

I also knew that these were vase fragments, of which there are no doubt tens of thousands in Italian museums. There was no evidence that these had come from a looted archaeological site, let alone an important archaeological site (as opposed to, say, found in a farmer's field). Thus, I had no reason to suspect that our ac-

quiring these fragments was jeopardizing Italy's cultural patrimony. The matter would have been different if the objects in question had been Khmer temple sculptures for one would have been instantly suspicious of their status. (In this sense, I am reminded of Professor Colin Renfrew's statement that for many years the British Museum has followed a stringent policy, "which is to avoid acquisition [whether by purchase or bequest] of unprovenienced antiquities, defined as those on the market subsequent to 1970. Exception is made for minor antiquities and, in certain circumstances, for those originating from within the British Isles, for which the British Museum is the repository of last resort.")[16] On these terms, so far as we could tell—and "the price paid" part of the due diligence guidelines I cited above would support this—the vase fragments were "minor antiquities."[17]

Subsequently, I agreed that we should acquire the fragments and thus directed the Department of Ancient Art at the Arthur M. Sackler Museum to research them further and to prepare them for publication and exhibition. In December 1997, they were exhibited at our Fogg Art Museum. A fully illustrated and descriptive catalogue of the fragments was published and distributed.[18] To date and to my knowledge, with the exception of letters from officials of the Archaeological Institute of America, a mention in the President's Column in the AIA's popular journal, *Archaeology*,[19] and in conversations with a faculty colleague, we have been criticized only in the local press.[20] No foreign government or cultural authority has suggested that the fragments were looted or illegally exported, despite our sending the Director General of the Italian Ministrero per i Beni Culturali e Ambientali a copy of our publication and asking his assistance in identifying any problems with the

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[16] The Trustees recognize, however, that in practice many minor antiquities that are legitimately on the market are not accompanied by detailed documentary history or proof of origin and they reserve the right for the Museum's curators to use their best [sic] judgment as to whether such antiquities should be recommended for acquisition. Colin Renfrew, Loot, Legitimacy and Ownership: The Ethical Crisis in Archaeology, Address Before the Stichting Nederlands Museum voor Anthropologie en Praehistorie te Amsterdam (Oct. 15, 1999) in LOOT, LEGITIMACY AND OWNERSHIP, at 83-84.

[17] *Id.*

[18] *See* Aaron J. Paul, *Fragments of Antiquity: Drawing Upon Greek Vases*, 5 HARV. U. ART MUSEUMS BULLETIN (1997).

[19] The AIA officials were Stephen L. Dyson, President, and Claire Lyons, Vice-President for Professional Responsibilities. *See* Stephen L. Dyson, *From the President of the Archaeological Institute of America*, ARCHAEOLOGY, May/June 1998, at 6 (reprinting the president's column).

[20] *See* Walter V. Robinson and John Yemma, *Harvard Museum Acquisitions Shock Scholars*, BOSTON GLOBE, Jan. 16, 1998, at 12 (documenting the reaction by the local press).

acquisition. The collection has been used in teaching, just as its collector and we had intended.

This is the process a museum should undertake when acquiring antiquities. Within the limited period of time preceding acquisition, museums should research the objects thoroughly, inquiring with colleagues into any problems known or suspected with the objects, the collector, or the dealer in question, and notify the appropriate governmental authorities of the likely country of origin. If nothing discouraging turns up, one is free to acquire such objects. However, the museum is still obligated to research the works further in anticipation of their being published and exhibited.

II.

Sometimes it is only through the post-acquisition process that one determines problems. This happened to us in 1991. We were given three Hellenistic, so-called Entella bronze tablets (from the Sicilian city of that name referred to in the inscriptions). They were given to the museum by someone who said he had acquired them in Europe in the early 1960s and had brought them to this country by 1965. We knew nothing about them and had no reason to disbelieve the donor, so we accepted them and set about cataloguing them. This required extensive research, undertaken by a graduate student in Harvard's Department of Classics.

Over the next few months we learned that the texts of the tablets had been published in an Italian journal in 1980, but that the whereabouts of the tablets themselves were then unknown (one could only conclude that the texts were preserved from rubbings taken from the tablets before our donor purchased them). We also learned that there were suspicions that these tablets, along with others, had been unearthed in clandestine excavations. With this information—that scholars did not know where our tablets were and that some believed them to have been excavated and exported illegally—we wrote the Soprintendente ai Beni Culturali of Palermo to report that we possessed the tablets. We asked for any evidence they had that showed they were indeed exported illegally. While waiting for a reply, we submitted our findings for publication in the international journal *Harvard Studies in Classical Philology*.[21]

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[21] *See* William T. Loomis, *Entella Tablets VI (254-241 B.C.) and VII (20th.cent.A.D.?)*, 96 HARVARD STUDIES IN CLASSICAL PHILOLOGY 127 (1994). Loomis presented an oral summary of his findings at the 127th Annual Meeting of the American Philological Association in San Diego on December 30, 1995.

Finally, in February 1996, almost four years after we had reported our acquisition of the tablets, we received a reply that presented us with convincing evidence that the tablets were indeed illegally exported. We promptly turned the tablets over to the Museo Archeologico Regionale di Palermo.[22] I emphasize that the return of the tablets was made possible by our having acquired and researched them in the manner commonly practiced by art museums. Had they not been acquired by a museum, their whereabouts might not have been known for a very long time, if ever, and the tablets might never have made their way back to Palermo, where they belong. In the course of acquiring the tablets, we were able to rectify a wrong that had been done years before we acquired them.

Museum acquisitions are thus in the service of the public good. They are a means of transferring works of art from the private to the public realm, where scholars are more likely to learn of their whereabouts, and students and the general public will be given the chance to study and appreciate them. This is why I believe that museums should continue to acquire works of ancient art, albeit following the procedure outlined above. It is one way by which we can preserve the past for the benefit of generations to come.

Our critics, however, do not share this view. They believe that we should not acquire antiquities unless it can be proved that they were excavated and exported legally. They believe further that a work of ancient art is meaningless without knowledge of the archaeological circumstances of its "find spot." I disagree. Acquiring works of art advances knowledge. It is by making works of art available for study that we learn about their manufacture, style, iconography, date of execution, and relation to other works of art of similar characteristics. We may even learn about their original and subsequent uses and history. To declare, as some scholars have, that one should not publish, study, or teach from works of art without known provenance, and that museums should not acquire them, is not in the service of advancing knowledge but in opposition to it.[23]

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[22] *See Museo Archaeologico Regionale, available at* http://www.comune.palermo.it/musei/archeologico/index.html (last visited Nov. 30, 2000). The Museo Archeologico Regionale di Palermo is one of the most important archaeological museums in the Mediterranean area.

[23] The policy of the American Journal of Archaeology, the official journal of the Archaeological Institute of America, is as follows:

> As the official journal of the Archaeological Institute of America, AJA will not serve for the announcement or initial scholarly presentation of any object in a private or public collection acquired after 30 December 1973, unless the object

This point was raised recently in a 1998 article on the long-standing debate among Mayan scholars over the value of studying and teaching from unprovenienced objects, as objects without archaeological evidence are called.[24] The debate is all the more significant because so little is known of the "Post-Classic Mayan" history, the period after the Mayans left their cities in the jungle lowlands of what is now Central America and moved to highlands in the south and the upper Yucatan Peninsula. During this time period, the Mayans no longer carved stone monuments but continued to practice their religion and write hieroglyphs. The Post-Classic period lasted until the seventeenth century, when the Spanish finally succeeded in stamping out the Mayan religion by burning books and conducting an extensive anti-literacy campaign. What little is known of the final eight hundred years of Mayan civilization is preserved primarily in the painted images and hieroglyphic texts on manuscripts and ceramic pots.

The debate focuses on what can be learned from an object if its archaeological context is unknown, and whether in fact it is ethical even to study an unprovenienced object. Clemency Coggins, a Mayanist who wrote an article thirty years ago that pointed to the presence of looted Mayan artifacts in American museums, stated, "[t]here's an aesthetic-versus-cultural division here. . . . One takes the short-term view—connoisseur-ship— and can't appreciate the broader view that sees the objects in historical context."[25] Another scholar, John Henderson from Cornell University, has said that unprovenienced "pieces have no research value, only aesthetic value."[26] On the one hand, the debate concerns aesthetic versus historical values, as if aesthetics bears no historical imprint. On the other, the debate focuses on the ethics of studying unprovenienced objects. While the points are, for the sake of argument, on different hands, the hands are clasped and the points, like fingers, intertwined.

David Stuart of Harvard's Peabody Museum of Archaeology and Ethnology, often described as the world's leading Mayan epigrapher, has said, "I work with looted objects routinely in my re-

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was part of a previously existing collection or has been legally exported from the country of origin.

Fred S. Kleiner, *On the Publication of Recent Acquisitions of Antiquities*, 94 AM. J. ARCH. 525 (1990).

[24] *See* John Dorfman, *Getting Their Hands Dirty? Archaeologists and the Looting Trade*, 8 LINGUAFRANCA 28 (1998).

[25] *Id.* at 31; *see also* Clemency Coggins, *Illicit Traffic of Pre-Colombian Antiquities*, 29 ART J. 94 (1969). *See generally*, Clemency Coggins, *United States Cultural Property Legislation: Observations of a Combatant*, 7 INT'L J. CULT. PROP. 52 (1998).

[26] Dorfman, *supra* note 24, at 31.

search. I have no qualms about using material if it's going to be scientifically useful. If I'm looking for a glyph—say, the glyph for 'cave'—I'm going to look for as many examples as I can get."[27] Regarding context, he has said, "[s]o-called dirt archaeologists do things like survey sites and study settlement patterns and ceramic chronology; they tend to see objects taken out of context as useless. They're not aware of the intrinsic usefulness of visual material because they haven't been trained that way. There are different subcultures in the discipline, and that's where a lot of intellectual debate comes in."[28] The Yale Mayanist Michael Coe, author of *Breaking the Mayan Code and Art of the Maya Scribe*, is even more pointed in his remarks saying, "[i]f you have the Rosetta Stone, provenience doesn't matter! It's content!"[29] And while Ian Graham, director of Harvard's Maya Corpus Program, would strongly disagree with Coe, he emphasizes that refusing to consider a looted or unprovenienced object is absurd. "However much I despise the trade in pottery and stelae, from the decipherment point of view, there's an enormous value to be got from a text, even if you have no idea where it comes from."[30]

Is this not the same for works of antiquity from the Mediterranean world?[31] Isn't there equally enormous value to be gotten from an ancient Greek vase, even if one doesn't know where it came from? I have been told that an unprovenienced work of art has no historical value. The person to whom I was speaking also said that if she were to come across such an object, she would rather see it destroyed than "legitimized" by having it acquired by a museum. This position assumes that all unprovenienced objects were clandestinely ripped from their archaeological context, and that the acquisition of such objects only encourages further looting. First of all, how can one substantiate the claim that all unprovenienced objects were looted? It is easily possible that an object was found long divorced from its archaeological context—perhaps dug up by a farmer in a field in which there is no evidence to explain why the object was found there because there is no tomb, no building remains or other objects. Or, as in the case of Greek vases, it could have been produced for export in the first

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27 *Id.* at 32.

28 *Id.*

29 *Id.*

30 *Id.* at 36.

31 *See* David Lowenthal, *Archaeology's Perilous Pleasures*, ARCHAEOLOGY, Mar./Apr. 2000, at 62; Christopher Chippindale, *Archaeology's Proper Place*, ARCHAEOLOGY, Mar./Apr. 2000, at 67 (presenting an interesting exchange on matters similar to those raised in the Dorfman article in LINGUAFRANCA).

place, purchased by a southern Italian, and buried by natural circumstances more than two thousand years ago, rediscovered years later, moved, buried again, rediscovered again, moved and buried again, until it was finally unearthed thirty years ago, sold in the trade, and acquired by a museum from a private collector with no documentation as to when it was unearthed and exported from its so-called "country of origin." Why should one assume the object was looted? And what could possibly be known of its archaeological context? Perhaps nothing. But what could be learned from its imagery if it showed, for example, social practices among Greek athletes, women, sculptors, slaves, or new twists in the representation of Greek gods and religious practices? Perhaps quite a lot. Should one then acquire, preserve, and study such an object even if it is unprovenienced? In my opinion, most emphatically yes.

The unprovenienced object should be studied not only for its iconography or the meaning of its text, but also for the beauty of its form and the quality of its decoration. This is not always appreciated by every archaeologist, as Stuart and Coe remind us. One such archaeologist—or more accurately perhaps, a historian of early material—wrote in an opinion piece not long ago in the *Boston Globe* that "without historical context, the objects retain little more than aesthetic appeal."[32] But what is so little about "aesthetic appeal?" It is a condition of works of art that they have aesthetic appeal, and it is legitimate to appreciate and articulate that appeal. Works of art are not merely documents that reflect the conditions in which they were found. They have meanings other than the historical. Yet, they have many historical meanings. These historical meanings include their archaeological circumstances, their forms, iconography, their material conditions (size, scale, material, technology, etc.), their public and critical reception, and their artistic influence. Works of art, in fact, have many categories of meaning. That is why they remain so interesting to us, millennia after they were manufactured, and that is why museums do and should acquire them.

CONCLUSION

The acquisition of antiquities will be debated for many years to come. And I believe there is a role for art museums to play in this debate, a moderate and civilizing role, one that is in keeping with the terms of the 1983 legislation by which the United States imple-

[32] Ricardo J. Elia, *Chopping Away Culture: Museums Routinely Accept Artifacts Stripped of Context by Looters*, BOSTON GLOBE, Dec. 21, 1997, at D1.

mented the *UNESCO Convention* and the guidelines of "due diligence" and one that respects our country's stated policy of general support for the international movement of art. Set within the context of these guidelines, and acknowledging that after acquisition, when convincing evidence is brought forward, museums should return objects to the proper authorities in their source country, museums are right to pursue the acquisition of antiquities for the benefit of our public's legitimate interest in works of art and their many meanings and complex values, not least of which is their profound and inherent beauty independent of archaeological context.

PUBLIC OPINION REGARDING CULTURAL PROPERTY POLICY

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Nearly twenty years ago, when speaking about international trade in art, Paul Bator wrote:

> It is *my impression* (emphasis added) that over the past 20 years there has been an important change in consciousness. Art importing societies such as the United States have become increasingly aware that the preservation and conservation of humanity's artistic and archaeological heritage constitutes a general human obligation. . . .[1]

At the time Bator was writing, there was no reliable measure of the strength of public sentiment with regard to cultural property issues. Most countries in the world, with the exception of the United States, had attempted to preserve their own cultural heritage by enacting legislation regulating the export of cultural property. In addition, the *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*[2] had been adopted and ratified by many nations. However, in the United States, the necessary implementing legislation had not been passed. Thus, UNESCO was not an effective tool in the fight against the illicit trade of antiquities in the United States.

Today, however, the situation has changed. For the first time since cultural property issues have become a matter of widespread concern, we have an accurate gauge of public opinion on the topic. Only a few weeks ago, the Archaeological Institute of America announced the results of a quantitative study undertaken by Harris Interactive on behalf of a broad coalition of United States archaeological organizations.[3] In addition to the Archaeological Institute

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[1] Paul M. Bator, *An Essay on the International Trade in Art*, 34 STAN. L. REV. 275, 313 (1982), *reprinted in* PAUL M. BATOR, THE INTERNATIONAL TRADE IN ART 37 (The University of Chicago Press 1983).

[2] *See* Convention on the Means of Prohibiting and Preventing the Illicit, Import, Export, and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231, 10 I.L.M. 289 (1971), *available at* http://www.unesco.org/culture/laws/1970/html_eng/page1.htm (last visited Nov. 27, 2000) [hereinafter UNESCO].

[3] *See generally* MARIA RAMOS & DAVID DUGANNE, EXPLORING PUBLIC PERCEPTIONS AND ATTITUDES ABOUT ARCHAEOLOGY (Harris Interactive, eds., 2000), *available at* http://www.saa.org/Pubedu/nrptdraft4.pdf (last visited Mar. 27, 2001).

of America, other organizations supported the study. These other organizations include the Society for American Archaeology, Archaeological Conservancy, Bureau of Land Management, Fish and Wildlife Service, Forest Service, National Park Service, and the Society for Historical Archaeology.

The study aimed to examine the perceptions of, knowledge of, and attitudes about archaeology among the American public. The study consisted of 1,016 telephone interviews with adults aged eighteen or older who were selected at random from the continental United States. The margin of error was plus or minus 3% at a 95% confidence level. Thus, it can be argued that the results accurately reflect the opinions of the population of the United States as a whole.

The initial questions in each interview were designed to test the public's awareness, perceptions, and knowledge of archaeology. Not surprisingly, nearly every respondent was aware in some way that archaeologists study ancient civilizations (99%) and the human past (98%). Most (82%) also knew that archaeologists work worldwide. Almost all of the respondents (99%) said that archaeological sites have educational and scientific value, and nearly as many (94%) said that archaeological objects and sites have aesthetic or artistic value. More than a third had actually visited an archaeological site and more than half learned about archaeology by watching television.

Most (96%) of the respondents agreed that there should be laws to protect historical and prehistoric archaeological sites, and nearly as many (90%) felt that there should be laws to prevent the general public from importing artifacts from a country that does not want those artifacts exported. There was strong support (69%) for laws preventing the general public from selling artifacts found on their own property, and even greater support (82%) for laws preventing the general public from selling artifacts found on someone else's property.

The respondents were asked, "What would you do if you found an object for sale that you knew was taken from an archaeological site, and you really liked the item?" Interestingly, only 18% of the respondents said that they would buy the item and keep it, while twice as many (36%) replied that they would not buy the item. In addition, 19% said they would report the seller to local law enforcement authorities; 12% said they would buy the item and donate it to a heritage institution, museum or historical society; 9% said they would report the object to the state archaeology or historical commission; and 8% indicated that they would find out if it

was legal to purchase the item. Finally, there were a number of responses such as 'tell the seller that the item is illegal,' 'buy it as a gift,' and 'do nothing,' for which very small percentages (less than 4% of the total) were recorded.

Because the question was purely open-ended, respondents sometimes gave multiple answers that fit into more than one of the categories used to analyze the data. As a result, the total percentages add up to more than 100% (in this case 120%). For example, most of those who answered that they would purchase the item qualified their response by some reference to the legality of the purchase. A sample of their verbatim responses includes:

"If it were legal to purchase, I would buy it. I would not break the law." "If the price was right and it was legal, I'd buy." "If it were for sale, I would buy it and contact the authorities to find out where it came from and if it's sold legally." "I'd buy it since they need permission to sell it." "If it were illegal, I would do nothing. If it were legal, I would buy it."

Significant in the responses to this particular question is the fact that more than three quarters of those questioned gave answers indicating that, when confronted with the purchase of an archaeological artifact, they would support the preservation of archaeological heritage even when doing so conflicted with their own desire to own such an object.

Yet, despite their stated interest in protecting archaeological sites and artifacts, only a small number of respondents knew about current laws affecting archaeology. Only 23% were aware of laws regarding the buying and selling of artifacts, while slightly more (28%) knew of laws protecting archaeological sites. Nevertheless, the general consensus of those interviewed was that archaeology is important to today's society. When asked to rate "the importance of archaeology in today's society" on a scale of 0 to 10 (where 0 means "not at all important" and 10 means "very important"), the mean score of the respondents was 7.3. Furthermore, when asked why they rated the importance of archaeology as they did, a majority (60%) said it was due to their interest in the past and the value of archaeological research and education. It is clear, therefore, that there is strong sentiment in favor of archaeological research and preservation among the general public.

It is significant that we now have a measure of the American public's attitude toward archaeology because it is widely acknowledged that public opinion can play a significant role in the formulation of government policy. Nearly twenty years ago, Benjamin Page and Robert Shapiro (of the University of Chicago and Colum-

bia University, respectively) published a study on the relationship between public opinion and government policy in the United States during the years 1935 to 1979.[4] After analyzing the data from a large number of national surveys, as well as measuring policy outputs over the two years preceding the initial survey and the four years following the final survey, the authors were able to demonstrate a substantial congruence between changes in opinion and policy over a fifty-year period. They determined that factors such as interest-group campaigns and elite leadership affect public policy. However, they concluded that they do so by manipulating public opinion, i.e., "policy changes only *because* opinion changes."[5]

A change in public opinion in and of itself, however, cannot bring about a policy change. Although we can now demonstrate that the American public values the preservation of archaeological sites and objects both here and abroad, changes in governmental policy will not necessarily result. Before such changes can happen, the issue must rise to prominence, either on the agenda of the relevant government officials or on the agenda of those who influence their agendas.[6] Therefore, it is important to understand how and why issues come to command the attention of those who are empowered to resolve them.[7]

In any public debate, the most important opposing parties are not individuals, but groups.[8] Groups filter out information that is detrimental to their cause. Groups also reinterpret information so as to arrive at conclusions that are vastly different from those presented by their opponents. As a result, groups often propose dissimilar and even conflicting solutions to problems while at the same time presenting their interests as "synonymous with the general interest."[9]

In the case of cultural property, one group—archaeologists—has consistently argued in support of restrictions on trade in illicit antiquities. This group believes that over time, such restrictions will bring about a reduction in the looting of archaeological sites and the resulting loss of scientific information which is detrimental to

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[4] *See generally* Benjamin I. Page & Robert Y. Shapiro, Effects of Public Opinion on Policy, 77 Am. Pol. Sci. Rev. 175 (1983).

[5] *Id.* at 186.

[6] *See generally* John W. KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES (Harper Collins 1995).

[7] *See generally* ROGER W. COBB & CHARLES D. ELDER, PARTICIPATION IN AMERICAN POLITICS: THE DYNAMICS OF AGENDA-BUILDING (1983).

[8] *See* David B. Truman, The Governmental Process: Political Interests and Public Opinion 43 (Alfred Knopf, New York 2d ed. 1971) (1951).

[9] COBB & ELDER, *supra* note 7, at 31.

everyone—present and future generations alike.[10] In contrast, collectors and dealers have advocated a free market for antiquities. They have suggested that further restraints on the trade in antiquities will encourage illicit excavations. Specifically, they argue that restraints on the trade will effectively drive the antiquities market underground. In addition, they argue that such restraints will also deprive the public of opportunities to share in world culture.[11] Since the claims of the archaeologists on one hand, and the collectors and dealers on the other hand are mutually exclusive, both groups cannot be correct. However, such a result is to be expected. As Cobb and Elder have so succinctly put it, "consistency is a logical imperative, not a political one."[12]

Claims for repatriation of cultural property are often based on political rather than legal arguments (as was evident in many of the arguments regarding the repatriation of the Elgin [or Parthenon] marbles). In fact, source nations have achieved repatriation of their cultural property both in the courts and through negotiated or political settlements. Some repatriation claims are supported by existing legislation, but others are not. In the case of illicitly excavated objects, for example, the difficulty of proving exact provenance is often insurmountable. Thus, legal action becomes impossible. *Greece v. Ward*[13] was just such a case. Here it was not legal action that brought about the return of the objects to Greece. Rather, the archaeological objects were repatriated as the result of an out-of-court settlement with a United States non-profit organization, which received them as a donation from the dealer.

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[10] *See* Ricardo J. Elia, *Looting, Collecting, and the Destruction of Archaeological Resources, in* 6:2 NONRENEWABLE RESOURCES 85-98 (Plenum Press 1997) (discussing the destruction of an artifact's original archaeological context as the most serious consequence of looting).

[11] *See, e.g.*, John Henry Merryman, *The Free International Movement of Cultural Property*, 31 N.Y.U. J. INT'L L. & POL. 1 (1998).

[12] COBB & ELDER, *supra* note 7, at 77.

[13] *See* Emily C. Ehl, *The Settlement of Greece v. Ward: Who Loses?*, 78 B.U. L. REV. 661 (1998) (citing Ricardo J. Elia, *Greece v. Ward: The Return of the Mycenaean Artifacts*, 4 INT'L J. CULTURAL PROP. 119, 120-22 (1995).

> On May 14, 1993, attorneys for Greece notified the Ward Gallery that the Mycenaean artifacts belonged to Greece and demanded the artifacts' return. . . .[T]he Ward Gallery failed to comply with Greece's demand. On May 25, 1993, Greece asked the U.S. District Court for the Southern District of New York for a temporary restraining order to prohibit the sale or transfer of the artifacts. At the same time, Greece sought a declaratory judgment to establish that it was the collection's lawful owner. In December 1993, seven months after Greece filed the lawsuit but still at the beginning of the pre-trial discovery process, the Ward Gallery announced that it had reached an out of court settlement with Greece. The gallery agreed to donate the collection of the Mycenaean artifacts to the Society for the Preservation of the Greek Heritage, a Washington-based nonprofit charitable organization, and Greece agreed to drop the suit.

Id. at 674-75.

Although pressure from members of the archaeological community familiar with the case contributed in large part to its eventual settlement, many of us remain uneasy about this particular avenue for achieving the return of illicitly excavated objects to their country of origin. Why should American taxpayers in effect indemnify art dealers and collectors by allowing tax deductions for such donations? Dealers who choose this way out of their predicament incur little or no financial risk. Only their reputations are at stake. As a result, such settlements only exacerbate rather than curtail the problem of illicit trade in stolen antiquities.[14]

Some museums and collectors, on the other hand, have sought to "to avoid embarrassment"[15] by voluntarily repatriating cultural property whose origin has been questioned. One of the best-known examples is, of course, the return of the "Lydian Hoard" to the Republic of Turkey by the Metropolitan Museum of Art.[16] The "East Greek Treasure," as the museum called it "for purposes of obfuscation,"[17] was finally returned to Turkey in 1993, more than twenty-five years after its acquisition by the Metropolitan.

Hoving's account of the Metropolitan Museum's change in acquisition practices at about this time is especially instructive. Specifically, it implies that it was not just the threat of new legislation that brought about the Metropolitan's change of heart. Rather, it seems that the threat of negative public reaction played a major role. As Hoving stated:

> At the [UNESCO] conference, I was astonished to learn of the extent of the smuggling, especially from Africa, Turkey, and Italy. It was not that I suddenly got religion; it was that I recognized that with the UNESCO hearings, the age of piracy had ended. I decided to change the Metropolitan's free-wheeling methods of collecting. Just in time.[18]

Today, the public is increasingly knowledgeable about cultural

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[14] *See generally id.*

[15] *See* Lisa J. Borodkin, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COLUM. L. REV. 377, 404 (1995) (stating that a fear of negative publicity induces art institutions to avoid lawsuits over illicit antiquities).

[16] *See* Mark Rose & Ozgen Acar, *Turkey's War on Illicit Antiquities Trade*, Archaeology, Mar.-Apr. 1995, at 44, 46 (referring to 6th Century B.C. hoard of silver and gold antiquities illegally excavated and smuggled out of Turkey, which was knowingly purchased by Metropolitan Museum of Art).

[17] *See* THOMAS HOVING, MAKING THE MUMMIES DANCE: INSIDE THE METROPOLITAN MUSEUM OF ART 217 (1993) (explaining how Turkish connection to the collection was disguised).

[18] *Id.* at 217 (reiterating the power of public opinion as a motivating force behind new institutional attitudes toward collecting artifacts).

property issues. This development may be attributed to the efforts of journalists such as Karl E. Meyer of *The Washington Post*, Nicholas Gage of *The New York Times*, Walter Robinson of *The Boston Globe*, and Mike Toner of *The Atlanta Journal-Constitution*, to name only a few. Archaeologists and an ever-growing number of museums now include discussions in their educational programs of the harm caused to the archaeological record by looting. The survey data to which I referred earlier shows that public awareness of the problem is widespread. However, as can be seen with regard to other issues, such as environmental protection, the cessation of the ivory trade, and the protection of endangered species, it may take time for cultural property issues to command enough public attention to bring about further changes in public policy.

So where does this leave us with regard to the repatriation of cultural property? By now it should be clear that I regard many repatriation debates, especially those involving antiquities that left their countries of origin long before the UNESCO convention was ratified, as belonging to the political, rather than the legal, domain. As with all political problems, various opposing groups have defined the issues in keeping with their own particular view of the facts. These groups muster their own set of facts in an attempt to sway public opinion and ultimately to bring about their desired ends. Examples of such stereotypes are Merryman's argument that "archaeologists are not helping"[19] and Elia's assertion that "collectors are the real looters."[20]

What will it take to find an acceptable solution to the "cultural property wars," as the organizers of this symposium have dubbed the problem? Perhaps we should begin by taking to heart the message that Walter Lippman gave us many years ago when he said, "public opinion is primarily a moralized and codified version of the facts. . . . The pattern of stereotypes at the center of our codes largely determines what group of facts we shall see and in what light we shall see them. . . ."[21] As a result, we tend to regard those who deny our own moral judgments or see a different set of facts as "perverse, alien, or dangerous."[22] It is only when we recognize that our opinions are partial experiences, seen through our stereotypes, that we become truly tolerant of an opponent. Without that habit,

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19 *See* John Henry Merryman, *Commentary: Archaeologists Are Not Helping*, 55 THE ART NEWSPAPER, Jan. 1996, at 26.

20 Ricardo J. Elia, *A Seductive and Troubling Work*, ARCHAEOLOGY, Jan.-Feb. 1993, at 69 *reiterated by* Colin Renfrew, *Collectors are the Real Looters*, ARCHAEOLOGY, May-June 1993, at 16.

21 WALTER LIPPMAN, PUBLIC OPINION 126 (1922).

22 *Id.*

we believe in the absolutism of our own vision, and consequently in the treacherous character of all opposition. Although we are willing to admit there are two sides to a 'question,' we do not believe that there are two sides to what we regard as 'fact.' Therefore, unless archaeologists and collectors are willing to begin an open dialogue in which each group acknowledges the validity of at least some aspects of the other side's position, we are destined to remain at a stalemate until the weight of public opinion settles the debate for us.

There is one fact, however, that I believe everyone, archaeologists and collectors alike, can accept without debate: looting of archaeological sites must be stopped. Not only does looting irrevocably destroy scientific information—information that helps us understand our past and that guides us as we prepare for the future. It also diminishes the value of artifacts derived from these sites. Thus, it is in the best interest of all of us to find ways to stop the looting of archaeological sites. By working together toward this goal, we may, in the process, find a way to end the cultural property wars that challenge us today.