ADMIRE THE PLUNDER, BUT ABHOR THE THIEF[1]: HOW THE DEVELOPMENT OF INTERNATIONAL LAW PERPETUATES COLONIAL INEQUITIES AS MODERN NATIONS BATTLE FOR THE REPATRIATION OF LOOTED ART AND ARTIFACTS

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ABSTRACT

History is the foundation upon which culture is built, a foundation that is fortified by the preservation of art, artifacts, and structures created by civilizations past. But how does culture fare when the physical manifestations of its history have been stolen, displayed, and legally ensnared by invading nations? Much of the basis for international law has facilitated the questionable, if not wholly illegal, acquisition of art and artifacts from culturally rich nations, or source nations. As most international law was written by dominant Western governments, or market nations, the international law established in the colonial era was exclusively favorable to these regimes. As a result, the systematic removal of cultural art and artifacts from colonized nations went unchecked and unauthorized. The colonial foundations of Western international law have not been challenged, and now act as a serious legal barrier when source nations attempt to regain ownership of property taken during the colonial period. Via the controversial case of the Greek Parthenon Marbles, commonly referred to as the Elgin Marbles, this article will explore the significant legal barriers source nations face when pursuing the repatriation of cultural property. Ultimately, this article illustrates that the development of international cultural property law has resulted in a self-serving legal system that is continuously exploited by Western nations in order to shelter and permit the illegal theft and possession of cultural art and artifacts stolen in a bygone age.

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1. "Some calm spectator, as he takes his view In silent indignation mix'd with grief, Admires the plunder, but abhors the thief." Lord Byron, The Curse of Minerva; The Complete Works, (Jerome J. McCann ed., Oxford: Clarendon 1811) (poem by Lord Byron describing the looting of the Elgin Marbles).

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INTRODUCTION

A weekend visit to a museum is not usually meant to be an exercise in international political theory. Visitors idle through the halls of public institutions, musing over artistic works, and perhaps marveling at the age and delicacy of artifacts on display. But once their tour is over, the average visitor hardly pays a second thought to the questions that lurk behind each display: Where did these pieces come from? Why are they displayed so far from their place of origin? How did they get here? To whom do they belong? Upon closer inspection, these questions give way to uncomfortable truths.

The reality is the vast majority of art and artifacts in Western museums and institutions are stolen pieces of cultural heritage taken during imperial expansion and colonial occupation. For example, in 2018, French President Emmanuel Macron commissioned a report which ultimately estimated that roughly 110,000 African artifacts looted during the French colonial era are housed in French collections.[2] This report surfaced in the wake of a United Nations Educational, Scientific and Cultural Organization ("UNESCO") report estimating that 90% of Africa's cultural heritage is housed in public and private collections overseas.[3] These estimates do not include the thousands pieces taken from Asia, the Mediterranean, Latin America, and the Pacific Islands during the occupations of colonial powerhouses such as France, Portugal, the Netherlands, and the United Kingdom during the 18th and 19th centuries.

The artifact reports from France and UNESCO illustrate the quagmire of issues surrounding the collection and display of stolen art and artifacts, issues which have become so pervasive in Western institutions as to earn legal criticism. As the result of such criticism, Western institutions are facing growing legal demands for the return of stolen cultural property, commonly referred to as a repatriation claim, from source nation governments[4] who argue that the theft of these cultural artifacts amounts to a theft of their cultural heritage.[5] The process of repatriating stolen

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2. Saskya Vandoorne and Lauren Said-Moorhouse, *France urged to return looted art and amend heritage*, CNN STYLE, (Nov. 21, 2018), https://www.cnn.com/style/article/france-african-cultural-heritage-intl/index.html [https://perma.cc/R4AQ-X978].

3. *Id*.

4. Geoffery Robertson, It's time for museums to return their stolen treasures, CNN Style (Jan. 2020), https://www.cnn.com/style/article/return-stolen-treasures-geoffrey-robertson/index.html [https://perma.cc/W87A-V24Q]. For reference, source nations are the countries of origin, and market nations are the countries seeking to acquire cultural artifacts from source nations.

5. In November 2018, Governor Tarita Alarcón Rapu of Easter Island expressed her hope for the return of the famed Hoa Hakananai'a statue after a joint meeting with British Museum officials and a Chilean delegation. The eight-foot basalt statue has been on display at the Museum for over 150 years after being removed from Easter Island without permission in 1868. In her emotional appeal to the Museum and the British Government, Rapu stated: "We all came here, but we are just the body – England people have our soul…and it is the right time to maybe send us back (the statue) for a while, so our sons can see it as I can see it. You have kept him for 150 years, just give us some months, and

heritage, however, has proven to be a major legal challenge. To illustrate the intricacies of this challenge, this article will refer to the on-going legal battle over the Greek Parthenon Marbles, also known as the Elgin Marbles, as a case study. The following section of this article will clarify the legal basis for repatriation suits in order to provide context for Section II, a deep dive into the historical origins of the Elgin Marble controversy. Section III then illustrates the jurisprudential foundation upon which international cultural property law is built. This system of legal philosophies is then applied to various aspects of the Eglin case in Section IV. Finally, Section V begins with an overview of proposed legal solutions to the current impasse between Greece and the United Kingdom concerning the repatriation of the Eglin Marbles, before defining the merits of a long-term loan, an option originally proposed by Greece in the early 2000s.

I. THE LEGALITY OF REPATRIATION

On its face, the legality of repatriating cultural property seems simple when reviewing the basics of property law: "Cultural property is, for most legal purposes, like other property: the owner can recover it, subject to the possible rights of good faith purchasers. The courts of all nations are open to such actions."[6] However, the legality of repatriation becomes increasingly ambiguous as politics influence property rights.

Source nations have taken varied approaches to repatriation claims over the last several decades. Some nations have recently declared themselves owners of all state cultural property in order to claim standing in future repatriation suits.[7] These declarations do not apply retroactively, however, but only to cultural property that is currently exported by source nations.[8] Such legislation triggers political issues as source nations' citizens are likely to demand just compensation for the exportation of cultural artifacts to foreign nations.[9] Determining the value of exported cultural property often results in judicial administration, hearings, and even pre-payment for each piece in question as ownership is officially established and transferred to the foreign buyer.[10] These convoluted processes often amount to "empty formalism intended primarily for a foreign audience," and frequently hint at internal corruption in source

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we can have it (on Easter Island)." Oscar Holland, *"You have our soul": Easter Island pleads with British for statue's return*, CNN STYLE (Nov. 21, 2018), https://www.cnn.com/style/article/easter-island-british-museum-moai-return/index.html [https://perma.cc/8GMK-6QAW].

6. John Henry Merryman, *Thinking About the Elgin Marbles*, 83 MICH. L. REV. 1881, 1889 (1985).

7. *See id*. at 1890-91.

8. *Id*.

9. Merryman, *supra* note 6.

10. *Id.*

nations.[11] Perceptions of corruption and empty formalism inevitably reduce the success of source nations' declarations of legal ownership of cultural property in the international forum, leaving the legal barriers to repatriation virtually untouched.[12]

A more direct approach available to source nations is the passage of legislation requiring State officials of both source and market nations to automatically seize illegally exported cultural property upon discovery.[13] Laws such as these immediately make the State the legal owner of any cultural property allegedly smuggled out of the country.[14] There are two ostensible pitfalls with this legal strategy, however: the inconspicuous nature of smuggling property, and the reliance on cooperation from market nations' law enforcement. First, in order to announce legal ownership of the smuggled property, the source nation must prove that it was illegally removed from State territory to be categorized as illegally exported property. However, the secretive, cloak-and-dagger operations of smugglers and traffickers routinely thwart border officials on the lookout for illegally transported goods, making the odds of discovery slim in both market and source nations. Second, should source nations successfully identify the illegal exportation of cultural property and establish legal ownership, they must still rely on the cooperation of market nation officials to repatriate the stolen property. Clearly, source nations have the upper hand if the artifacts are recovered before leaving the country,[15] but should the stolen artifacts be discovered while in possession of the market nation, disputes will likely result in claims of ownership from all parties involved, including private individuals and businesses.

Hobby Lobby, the popular American arts and crafts retailer, acts as a useful illustration of illegal exportation and subsequent repatriation claims. In 2009, Hobby Lobby began acquiring historical art and artifacts linked to the Bible in an effort to open a museum celebrating the Bible's historical and religious importance.[16] Many of these pieces originated in the Middle East, where historical sites often lie abandoned and are continuously plundered by looters who typically sell the looted artifacts on

11. *Id.*
12. *Id.*
13. *Id.* at 1892.
14. *Id.*
15. Such a discovery would likely lead to a simple escheat to the state. However, problems could easily arise if source country nationals come forward to claim ownership, arguing that ownership only reverted to the state once the property was discovered to be stolen and should be returned to private owners upon recovery. See Republic of Austria v. Altmann, 541 U.S. 677 (2004).
16. Susannah Cullinane, *Those ancient artifacts that were illegally smuggled to Hobby Lobby are headed home to Iraq*, CNN (May 2, 2018), https://www.cnn.com/2018/05/02/us/iraq-artifacts-return-hobby-lobby/index.html [https://perma.cc/7CLU-22T7]. *Accord United States Files Civil Action To Forfeit Thousands Of Ancient Iraqi Artifacts Imported By Hobby Lobby*, UNITED STATES ATTORNEY'S OFFICE, E.D.N.Y (July 5, 2017), https://www.justice.gov/usao-edny/pr/united-states-files-civil-action-forfeit-thousands-ancient-iraqi-artifacts-imported [https://perma.cc/ZB79-JLMH].

the black market. In October 2010, Hobby Lobby hired a cultural property law expert to personally inspect an order of historical artifacts from the United Arab Emirates ("UAE") before confirming the purchase.[17] The legal expert warned Hobby Lobby executives of the likelihood that some selected artifacts were looted from archaeological sites, and thus did not bear the correct country of origin on customs documents.[18] An incorrect declaration of origin for artifacts imported into the United States often results in a seizure of shipments by Customs and Border Protection, as was the case with the arrival of the Hobby Lobby purchase at the US border.[19] In 2016, the shipment from the Hobby Lobby supplier in the UAE was detained by US Immigration and Customs Enforcement ("ICE"),[20] and found to contain roughly 5,500 artifacts, including cylinder seals and clay impressions believed to be close to 4,000 years old.[21] Hobby Lobby reportedly paid $1.6 million for the shipment,[22] but was forced to pay a fine of $3 million following a suit from ICE and the Department of Justice.[23] The US retailer also agreed to forfeit 3,800 artifacts, which the US government returned to Iraq in a symbolic ceremony in Washington D.C. in 2018.[24] Despite the 2016 suit, Hobby Lobby continued to acquire artifacts for its Museum of the Bible, which opened the following year in Washington D.C.[25] The 2016 shipment was one of dozens ordered by Hobby Lobby to create the Museum of the Bible, and it is highly probable that thousands of illegal artifacts from the Middle East entered the US during that six-year period.[26] Today, experts estimate that the Hobby Lobby Museum of the Bible currently contains a total of 40,000 ancient artifacts said to be worth roughly $201 million.[27]

The Hobby Lobby case provides a contemporary example of Western institutions' ability to manipulate international cultural property law by capitalizing on the unequal footing upon which market and source nations

17. Chris Boyette, *Hobby Lobby to pay $3 million fine, forfeit ancient artifacts*, CNN (July 6, 2017), https://www.cnn.com/2017/07/05/us/hobby-lobby-ancient-artifacts-trnd/index.html [https://perma.cc/53WD-YLHE]; *accord United States Files Civil Action To Forfeit Thousands Of Ancient Iraqi Artifacts Imported By Hobby Lobby*, UNITED STATES ATTORNEY'S OFFICE, E.D.N.Y (July 5, 2017), https://www.justice.gov/usao-edny/pr/united-states-files-civil-action-forfeit-thousands-ancient-iraqi-artifacts-imported [https://perma.cc/ZB79-JLMH].

18. Boyette, *supra* note 17; *accord* UNITED STATES ATTORNEY'S OFFICE, *supra* note 17.

19. Boyette, *supra* note 17.

20. Jane Arraf, *Hobby Lobby's Illegal Antiquities Shed Light on A Lost, Looted Ancient City In Iraq*, NPR WORLD (June 28, 2018), https://www.npr.org/2018/06/28/623537440/hobby-lobbys-illegal-antiquities-shed-light-on-a-lost-looted-ancient-city-in-ira [https://perma.cc/554V-3Q6P]. In order to sneak passed customs, some of the artifacts were labeled "ceramic tiles" or "clay tiles (sample)."

21. *Id.*

22. *Id*.

23. Cullinane, *supra* note 16.

24. Arraf, *supra* note 20.

25. *Id*.

26. Cullinane, *supra* note 16.

27. *Id*.; Arraf, *supra* note 20.

stand in the international legal forum. Though one shipment was detained, and the company was disciplined, Hobby Lobby's overall operation was unimpeded, and cultural artifacts continued to be exported out of the Middle East to build the Museum of the Bible's current collection. The foundations of international law facilitate this type of questionable, if not wholly illegal, acquisition of cultural property from source nations. As international law and the treaties that support it were written by dominant Western governments, the 'rules' that accompanied much of the colonization of the 18th and 19th centuries were exclusively favorable to market nations. As a result, the pilfering of cultural property in colonized states went unchecked and unauthorized by source nations.

II. THE CHALLENGE OF THE ELGIN MARBLES

The most infamous international cultural property law battle revolves around the legal possession of the Greek Parthenon Marbles, also known as the Elgin Marbles, which are currently on display in the British Museum. The British Museum is notorious for its vast collection of imperial spoils, making it, according to leading human rights lawyer Geoffrey Robertson, "the world's largest receiver[] of stolen property."[28] Located in the heart of London, the British Museum draws millions of visitors every year to see priceless historical artifacts such as the Bust of Ramsses the Great, the Rosetta Stone, and the controversial Elgin Marbles.[29] The Museum has been embroiled in cultural property suits since its inception, but the Elgin Marbles continue to draw divisive attention among experts and laypeople alike, and serve as a symbol of the never-ending battle for source nation repatriation.[30] The controversy reached into the realm of political discourse in the late 1990s and early 2000s. Of the 629 members of the European Parliament, a democratically elected body of the European Union, 339 joined together in January 1999 to insist the British Government return the Marbles to Greece; after touring the Parthenon later that year, President Clinton made an unprompted offer to mediate negotiations between Britain and Greece for the return of the Marbles; and in June 2000, Greek Foreign Minister George Papandreou came before the Culture Select Committee in the British House of Commons to urge the government to honor Greece's repatriation

28. Dalya Alberg, *British Museum is world's largest receiver of stolen goods, says QC*, THE GUARDIAN (Nov. 4, 2019), https://www.theguardian.com/world/2019/nov/04/british-museum-is-worlds-largest-receiver-of-stolen-goods-says-qc [https://perma.cc/6SNN-M2Y7].

29. Statista Research Department, *Number of British Museum visitors in London, England 2008-2019*, STATISTA (Nov. 19, 2020), https://www.statista.com/statistics/422343/british-museum-visitor-numbers-uk/ [https://perma.cc/HDV8-FJ5D].

30. "The Elgin Marbles symbolize the entire body of unrepatriated cultural property in the world's museums and private collections. Accordingly, the preservation and enjoyment of the world's cultural heritage and the fate of the collections of the world's great museums are all in some measure at stake in a decision about the Marbles." Merryman, *supra* note 6, at 1895.

demands.[31] What is it about these Marbles that draws political statements from the European Parliament, United States Presidents, and Foreign Ministers alike? Why has the issue of their legal status become so controversial as to serve as the poster child for repatriation suits?

The Elgin Marbles are a collection of marble figures and reliefs depicting the pantheon of Greek gods and goddesses, as well as other mythological creatures. Sculpted from white Pentelic marble, the figures were created by the artist Phidias during the Athenian golden age, also known as the Age of Pericles.[32] The marble was sourced ten miles from Athens and hauled to the Acropolis by oxcart, where it was sculpted, fixed to the high pediments of the Parthenon, and remained untouched for 2,200 years until their removal in 1801.[33] The Marbles were forcibly removed from the Parthenon by Lord Elgin, also known as Thomas Bruce, who was stationed in Athens as the Ambassador Extraordinary and Minister Plenipotentiary of His Britannic Majesty to the Sublime Porte of Selim III, Sultan of the Ottoman Empire in Istanbul.[34] At this point in history, Greece had been under the dominion of the Ottoman Empire for close to 400 years, and the Acropolis had been transformed into a military fort under the command of the Ottoman Dizdar, or fortress commander.[35] With dubious consent from the Ottoman government and the Acropolis Dizdar, Elgin paid workers to remove approximately 247 feet of the Panathenaic Procession frieze, fifteen metopes (or sculpted panels), and seventeen pedimental figures sculpted in the round.[36]

The result of Elgin's excavation of the Parthenon was extensive. Today it is estimated that 95% of the sculptures removed from the Parthenon in 1801 are on display in the British Museum.[37] They have become one of the main attractions of the Museum, drawing millions of visitors each year and earning the largest dedicated gallery in the building.[38] But how did Elgin receive permission to remove these fixed artifacts from the ancient structure, and how did they end up in the British Museum? The answer to this query lays the foundation for the argument that Elgin did not, in fact, have any legal authority to remove the Marbles, and that his subsequent exportation of the Marbles to the United Kingdom amounted to illegal acquisition.

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31. See generally David Rudenstine, A Tale of Three Documents: Lord Elgin and the Missing, Historic 1801 Ottoman Document, 22 CARDOZO L. REV. 1853 (2001).

32. *Id*. The Age of Pericles is roughly 495-429 BC.

33. *Id*.

34. *Id*.

35. Merryman, *supra* note 6, at 1897.

36. Merryman, *supra* note 6, at 1883–84. During this removal effort, Elgin's workers caused permanent and irreparable damage to the structure of the Parthenon itself, which must be considered when analyzing the legality and morality of the removal.

37. *Id*. at 1881, FN 14 (referencing Thompson, *Why the Marbles are Not Just a Museum Piece*, THE GUARDIAN (June 27, 1983), at 9, col. 1).

38. *Id.*

The British government's argument that the Ottoman Empire gave consent for the removal of the Marbles from the Parthenon lies with three documents: a letter, and two translations of that same letter. The original document of consent, a letter obtained by Lord Elgin from Ottoman officials in Istanbul in July 1801, prescribed the type of archeological activities Eglin's men could conduct on the Acropolis.[39] The original Ottoman letter was, presumably, translated into Italian in 1801 by Reverend Philip Hunt, who had accompanied Elgin to his post in Athens.[40] The third document is an English translation of the Italian translation created by the British Parliament in 1816.

In the fifteen years between July 1801 and March 1816, the original Ottoman letter went missing, and there have been no known historical references to the document since.[41] Thus, when the Parliamentary Select Committee convened in 1816 to consider Elgin's proposal that the British government purchase his private art collection, including marbles taken from the Acropolis, the only evidence available to support Elgin's claim that he legally removed the Marbles was Philip Hunt's 1801 Italian translation of the original Ottoman letter.[42] The Italian translation was subsequently translated into English in a report published by the Select Committee on March 25, 1816.[43] As the Ottoman letter was lost, Hunt's Italian translation is the critical link between the original Ottoman letter and the English translation, and should garner strict attention and criticism. However, Hunt's translation disappeared from public record almost immediately after the Select Committee published the English translation.[44] Furthermore, the original record of the Select Committee's proceedings was destroyed in a Parliamentary fire, preventing any reassessment of the Committee's drafting of the English translation from Hunt's Italian translation.[45] Miraculously, the Italian translation resurfaced in 1967 when William St. Clair, a descendant of Philip Hunt, claimed to have discovered it among family documents.[46] With the Italian translation presumably back in play, it has remained an assumption of good faith that the original Ottoman letter was accurately translated into Italian in 1801,

39. Rudenstine, *supra* note 31, at 1858. The original document was written in Ottoman Turkish because it was a letter from the Grand Vizier to the Dizdar instructing him to give Elgin access to the Acropolis. There are strong arguments that the words in the original Ottoman document had different empirical meanings when translated. Elgin wanted permission to "dig" on the Acropolis to find artifacts and possibly ancient foundations but did not initially reveal any intention to remove art from the Parthenon walls.

40. *Id.*

41. Rudenstine, *supra* note 31, at 1861.

42. *Id.* at 1858. Hunt testified before the committee that he had personally translated the original Ottoman letter into Italian in July 1801.

43. *Id.* at 1861. The report also contained minutes of evidence and appendices.

44. *Id.* at 1867.

45. *Id.*

46. *Id.* at 1868.

that the Italian translation was accurately translated into English in 1816, and that the English translation published in the Select Committee's report correctly reiterates the contents of the original Ottoman letter. In sum, the St. Clair revelation in 1967 theoretically reestablished that Elgin did have permission from the Ottoman Empire to remove the Marbles from the Acropolis.[47]

Following this elaborate game of transnational telephone resulting the finalization of the Select Committee's report, ownership of the Marbles was transferred to the Trustees of the British Museum by an act of Parliament entitled "An Act to Vest the Elgin Collection of Ancient Marbles and Sculpture in the Trustees of the British Museum for the Use of the Public."[48] Having gained ownership of the Elgin Marbles via legislation, any claim for the recovery of the Marbles must be a legislative challenge directed against the Trustees, whose fiduciary status at the British Museum prevents them from transferring legal ownership of any property currently under their care.[49]

A. Plot Holes in the 1816 British Claim

Though the British Museum's title to the Elgin Marbles seems incontestable due to legislative protection, substantial circumstantial evidence indicates foul play on the part of Elgin, Hunt, and the Parliamentary Select Committee. If this evidence is authenticated, it would effectively invalidate Parliament's purchase of the Marbles and subsequent transfer to the British Museum.[50] As critics are unable to contest the contents of the original 1801 Ottoman letter due to its disappearance, contemporary criticism against the British Museum's title focuses on the actions of the Select Committee in 1816.[51] Though the Committee was convened to evaluate the legality of Elgin's title to the Marbles before making a bid for purchase, surviving records and reports indicate that the Committee utterly failed to establish "whether the Ottoman government gave Elgin written permission to denude the Parthenon of its sculptures."[52]

The Select Committee's 1816 report willfully ignores strong indications of fraudulent documents and testimony. It was no secret in

47. *Id*. at 1857.

48. Merryman, *supra* note 6, at FN 68.

49. *Id.* An act was introduced to the Parliament floor in 1984 that would give the Trustees authority to transfer ownership of the Marbles, but it failed.

50. *Id.* at 1901. Broadly, one must keep in mind that the Ottoman Empire was in decline at the time of Elgin's posting, and that the Ottoman Empire was effectively under the thumb of both the English and the French when the marbles were removed. It's highly probable that the Ottoman's concession of Acropolis artifacts to Elgin was an attempt to gain favor with the rising powers in the West.

51. *Id.*

52. Rudenstine, *supra* note 31, at 1861. The surviving records include those that were published by Parliament and publicly printed.

London society that Elgin was in "dire" financial straits when he opted to sell the entirely of his private collection in 1816.[53] Some sources have even described Elgin as "desperate" to sell his antiquities to pay off his debts, and that he was "prepared to bend, distort, and ignore the truth to strengthen his position before the [C]ommittee."[54] Elgin undoubtedly recognized that written documentation would be his only hope to establish fair legal title to the Parthenon Marbles, yet he was missing the original Ottoman letter given to him in 1801. Intriguingly, by the time Philip Hunt appeared before the Select Committee to present the Italian translation, it was clear from Elgin's prior testimony that he was completely unaware Hunt ever had access to the original Ottoman letter, let alone that Hunt had translated the letter into Italian.[55] If Elgin did not give Hunt access to the Ottoman letter, there is no authority to confirm that Hunt translated the correct document, nor is there reason to believe that Hunt's translation was linguistically accurate. These incongruities would have been more than enough reason for the Select Committee to suspect that Hunt's Italian translation, as well as Elgin and Hunt's testimonies, were inaccurate, if not wholly fraudulent.[56]

There were at least two methods available to the Select Committee to reduce the risk of inaccurate or fraudulent evidence: they could have pressed Hunt for details of both the original Ottoman letter and the Italian translation process, or they could have contacted the Ottoman government in Istanbul to confirm Elgin's testimony of written permission.[57] However, the Committee failed to take either measure to definitively establish that Elgin was given express permission by the Ottoman government, or to establish that the Italian translation was an accurate reiteration of the original Ottoman letter.[58] As the English translation published by the Select Committee relied exclusively on the Italian translation, any inaccuracies or fraud in the Italian translation would have been transcribed into the English translation. Said English translation was the foundation for the Parliamentary legislation that transferred ownership of the Marbles from the British government to the British Museum. Thus, any linguistic inaccuracies in the Italian translation that undermines the authority granted to Elgin in the original Ottoman letter would subsequently appear in the Parliamentary legislation and diminish the British Museum's claim for title to the Elgin Marbles.

The likelihood that the Italian translation was fraudulent or

53. *Id*. at 1865–66.
54. *Id*.
55. *Id*. There is evidence that Hunt considered Elgin a close friend and would go to great lengths to help him. If they were so close, however, then why was Elgin unaware of the existence of the Italian document? Perhaps because it did not exist until an issue arose?
56. *Id*.
57. *Id*. at 1866-67.
58. *Id*.

nonexistent was seemingly dispelled when it resurfaced in 1967, though doubt still remains as to its linguistic accuracy and historical authenticity. Experts believe that the document itself may be authentic to the time period, but its linguistic accuracy and legal effect has been thrown into doubt due to the lack of a signature, seal, or signet.[59] In 1967, Philip Hunt's descendant William St. Clair presented the presumably authentic Italian translation as if it had been formally signed by the acting Grand Vizier in Istanbul, Seged Abdullah Kaymacam, likely in an effort to avoid questions of period authenticity.[60] The document is not signed, however, nor does it have a seal or signet, leaving the question of legal authenticity, accuracy, and enforceability open to sharp criticism.[61]

If the St. Clair letter is the original Italian translation presented by Philip Hunt to the Select Committee, then there is little doubt that Committee members also recognized the legal ineptitude of a document lacking a signature or seal. This presents a strong and reasonable doubt that the Italian translation is, at the very least, not an enforceable translation of the original Ottoman letter.[62] Though the English translation may be an accurate linguistic translation of the Italian document, its legal authenticity is completely reliant on the legality of the Italian translation, and there is no evidence to support the assertion that either translation is faithful to the original Ottoman letter, and thus legally enforceable.[63] "Such a realization destroys the settled view that the Select Committee's English [translation] reliably and accurately defined the activities that Elgin's artisans were permitted to conduct" while excavating the Acropolis in 1801.[64] These discrepancies recast the Select Committee's lack of investigative thoroughness as instead a deliberate attempt to misrepresent the legal pitfalls of both the Italian translation and of Elgin and Hunt's testimonies in an effort to augment Eglin's claim to title.[65] But why would a Parliamentary committee go to such lengths to purchase an art collection from a bankrupt aristocrat? The answer lies not with an affinity for Lord Elgin or for art, but with politics.

There were many in London who knew of, and admired, Elgin's collection of antiquities, in particular the Parthenon Marbles.[66] There was strong public interest to keep the collection in London to strengthen the city's status as a center for international culture.[67] If Parliament did not purchase the collection from Elgin, it would be divided and sold to willing

59. *Id*. at 1874.
60. *Id*.
61. *Id*.
62. *Id*. at 1883.
63. *Id*.
64. *Id*.
65. *Id*. at 1877.
66. *Id*. at 1878.
67. *Id*.

buyers on the continent.[68] Though the desire to keep the Marbles in London was pervasive, there remained several members of Parliament who resisted the notion of purchasing the Elgin collection, and who initially blocked the path of the Select Committee's ostensible goal to obtain it.[69] In light of this political friction, it's highly probable that the Select Committee deliberately ignored the red flags associated with Elgin's claim in order to present to Parliament an air tight argument for purchasing the collection.[70] Evidently, the Select Committee's final report successfully mislead Parliament into believing that Elgin's claim to the Parthenon Marbles was ironclad, as Parliament subsequently passed the Act to Vest the Elgin Collection of Ancient Marbles and Sculpture in the Trustees of the British Museum for the Use of the Public. While the immediate consequence of the Select Committee's actions was to keep the collection in London and boost the city's status, the "long-term consequence was the fabrication of a claim of legitimacy that [has] powerfully affect[ed] contemporary events." [71]

III. THE DEVELOPMENT OF INTERNATIONAL LAW WITH A FOCUS ON CULTURAL PROPERTY

In 1816, the Select Committee utilized a system of international law that had been in place long before Elgin laid eyes on the Parthenon and that has not been seriously challenged in contemporary national or international courts since. It now acts as a barrier to source nations taking legal action against market nations and former colonial powers to repatriate stolen cultural property and heritage. Current cultural property law affecting the fate of the Elgin Marbles grew from the foundations of international law in the early 17th Century.

A. International Law of the Imperialist Era

The Select Committee's legal manipulation was well within the bounds of the international legal experimentation promoted by Europe at the time of the Marbles' removal. An overhaul of international legal theory was well underway by the time Hugo Grotius's De Jure Belli Ac Pacis (On the Law of War and Peace) was published in 1625.[72] Grotius's work, generally considered a cornerstone of modern international law, is not

68. *Id*.
69. *Id*.
70. *Id*.
71. *Id*. at 1878.
72. Benedict Kingsbury, A Grotian Tradition of Theory and Practice: Grotius, Law, and Moral Skepticism in the Thought of Hedley Bull, 17 Q.L.R. 3, 13-15 (1996); accord Brian Z., Tamanaha What Is International Law? (October 7, 2016), Washington University in St. Louis Legal Studies Research Paper No. 16-07-01, Available at SSRN: http://dx.doi.org/10.2139/ssrn.2803387, 7.

based on a theory of statehood or sovereignty but is instead constructed around a system of moral obligations that are directly imposed upon individual rulers from natural law.[73] Seventeenth and Eighteenth Century proponents of Grotius's theory believed that God's will imposed natural law, and thus that the values underlying international law should be rooted in Christianity.[74] These notions of natural law, coupled with religious legitimacy, undeniably supported the development of international law as it was conceived by Western Powers in the 17th and 18th Centuries.[75] In essence, modern international law "owes its very existence to the theory of the Law of Nature" that Western philosophers promoted at the beginning of the Western imperialist era.[76]

Imperialism was bound to international law, "providing justifications for securing land and seizing territory, entering unequal treaties, forcibly opening commerce and imposing trade monopolies, fighting wars, and more."[77] Imperial dominance between states was seemingly justified under international law by the divisive notion of "civilized" versus "uncivilized" states.[78] Western nations classified a state's civility on the basis of their political and moral beliefs. "Christian European and American nations were accorded full status; 'barbarous humanity' (Asian nations) had partial recognition; and 'savage humanity' (the rest) stood beyond the pale of the society of states." [79] Recognizing the power of "civility," political systems of the 18th and 19th centuries began to adopt Western theories of international law, both as a sword with which to seize domestic power by claiming sovereignty, and as a shield against Western advances by

73. Roscoe Pound, *Philosophical Theory and International Law*, *in* 1 BIBLIOTHECA VISSERIANA 71, 76-77 (1923).

74. Hedley Bull, The Anarchical Society: A Study of Order in World Politics 28 (New York: Macmillan 1977).

75. Lassa Oppenheim, *International Law*6 (H. Lauterpach, Lauterpacht ed.,7th ed., London: Longmas, Green & Co.) 1948).

76. *Id*. at 89 (quoting Oppenheim, *supra* note 75.)

77. Tamanaha, *supra* note 72, at 9. Tamanaha makes it clear that he does not believe that Western international theory was developed to further imperialist goals because core doctrines, particularly on natural law, were developed before imperialism took hold. However, he does argue that these doctrines were interpreted and used "to serve the economic and political objectives of colonizing countries." *Id.* at 10. *See* Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press 2005); *see also* Casper Sylvest, '*Our Passion for Legality': International Law and Imperialism in Late Nineteenth Century Britain*, 34 REV. INT'L STUD. 403 (2008); *see also* Duncan S.A. Bell, *Empire and International Relations in Victorian Thought*, 49 HIST. J. 281 (2006); see *also* Ian Hunter, *On the Critical History of the Law of Nature and Nations*, inLaw and Politics in British Colonial Thought: Transpositions of Empire (S. Dorsett and I. Hunter, eds., New York: Palgrave Macmillan 2010).

78. Tamanaha, *supra* note 72, at 9-10. *See* Casper Sylvest, *'Our Passion for Legality': International Law and Imperialism in Late Nineteenth Century Britain*, 34 REV. INT'L STUD. 403 (2008).

79. Bull, *supra* note 74, at 38; *see also* Tamanaha, *supra* note 72, at 10 (internal quotations removed); *see generally* Jennifer Pitts, *Empire and Legal Universalisms in Eighteenth Century*, 117 AM. HIST. REV. 92 (2012).

invoking the rights of sovereign civilized nations.[80] In the name of civilization and sovereignty, Western international law became world international law as political theory was asserted through military occupation, defensive invocation, and economic negotiations.[81]

It was against this legal and political backdrop of burgeoning international law that the United Kingdom asserted its claim on the Marbles via Elgin's supposed agreement with the Ottoman Empire. As a failing state with recognized sovereignty and non-Christian ideology, the Ottomans would have been classified as a "barbarous humanity" or a "partially civilized" state, moderately– but not comprehensively– protected by the rules of international law. Under these classifications, it should come as no surprise that the 1816 British Parliament and Select Committee were not particularly zealous in their attempts to establish a fair exchange of property between the Ottoman government and a British citizen, especially when given the opportunity to further their own notions of civilization by obtaining a priceless collection of classical artifacts.[82]

B. Developments in Modern International Law

In the beginning of the 19th Century, the early years of Britain's possession of the Elgin collection, international law theorists abandoned Grotius's touchstone of natural law and individual morality, instead reconceiving international law as laws among independent states. These laws are consented to either explicitly by treaty or implicitly by international custom.[83] International law was now conceived of as a series of contracts or customs whose authority was reaffirmed by the participating independent states.[84] In this new state-centric "corpus of rules arising from…the conscious creation of the States themselves,"[85] individual citizens "possess no pre-political natural rights: rights are civil rights granted to citizens within an organized polity."[86] However,

80. Tamanaha, *supra* note 72, at 11-12. *See* Arnulf Becker Lorca, *Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation*, 51 HARV. INT'L L. J. 475 (2010).

81. Wolfgang Preiser, *History of the Law of Nations: Basic Questions and Principles*, 7 ENCYCL. PUB. INT'L L. 126, 128 (Amsterdam: Elsevier 1984); *accord* Tamanaha, *supra* note 72, at 12.

82. The legitimacy of the Ottoman claim to the Marbles as an occupying nation will be discussed in the next section.

83. Pound, *supra* note 73, at 76-77; *accord* Oppenheim, *supra* note 75, at 7; *see also* Tamanaha, *supra* note 72, at 9.

84. Tamanaha, supra note 72, at 9**;** see also Edwin D. Dickinson, The Law of Nations as Part of the National Law of the United States, 101 U. PA L. REV. 26 (1952).

85. Stephen C. Neff, *A Short History of International Law*, in International Law 15 (Malcolm Evans 3d ed., Oxford: Oxford University Press 2010)*; accord* Tamanaha, *supra* note 72, at 9.

86. Anthony Pagden, *Human Rights, Natural Rights, and Europe's Imperial Legacy*, 31 POL. THEORY 171, 184 (2003)*; accord* Tamanaha, *supra* note 72, at 9. "The classic *Law of Nations* by J.L. Brierly states that 'The Law of Nations, or International Law, may be defined as the body of rules and principles of actions which are binding upon civilized states in their relations with one another.'" Tamanaha, *supra* note 72, at 2-3 (quoting J.L. Brierly, The Law of Nations (6th ed. 1963).

international law continued to "bear[] the marks of the professional legal culture of…jurists who produce[d] it."[87] The core doctrines of international law in the 19th and 20th centuries formed by Western theorists and the body of domestic legal knowledge from which they drafted new developments.[88] As a result, "today's universal international law carries a strong European imprint—which is why, from a historic perspective, we may call it 'eurogenetic.'"[89] The "eurogeneticism" of international legal theory is perpetuated today as Western jurists continue to dominate the development of international law in practice and knowledge, inevitably resulting in a professional dialogue that reflects Western priorities in areas such as international trade, criminal activity, human rights, and property.[90]

C. Contemporary Cultural Property Law

As international law developed with the spread of Western ideals of modern civilization, so too did Western idealism develop around cultural property and heritage law. The common impetus for such discussions centers around an ever-present circumstance of history: war and conquest. As early as the conquests of Alexander the Great, theorists have discussed the principles of leaving cultural property in its country of origin.[91] While these principles may have been cast aside as idle conversation, especially during the centuries of plunder of African nations and the Mediterranean basin, they once again gained significance with the Napoleonic conquests in the 18th Century.[92] After the defeat of Napoleon, the nations of Europe demanded that France repatriate the cultural property stolen during its conquests. One British delegate to the Treaty of Paris (1815) went so far as to wonder "in the name of what principles France might wish to keep the spoils of the art of all other countries . . . which . . . all modern conquerors had invariably respected as belonging to the country of origin," adding that France's actions were "contrary to the principles of justice and the modern rules of war."[93] Mere months after this statement,

87. Tamanaha, *supra* note 72, at 19.

88. *Id*.

89. Jorn Axel Kammerer and Paulina Starski, *Imperial Colonialism in the Genesis of International Law—Anomaly or Time of Transition?* Max Planck Institute Research Paper Series No. 2016-12, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2789595 [https://perma.cc/H34N-573V]; a*ccord* Tamanaha, *supra* note 72, at 18-19.

90. Tamanaha, *supra* note 72, at 18-20. "Europeans and Anglo-Americans heavily populate the ranks of international lawyers. The main journals in the field are in English, distantly followed by French and German; many prominent international law institutes and influential NGOs active on international law topics are European or Anglo-American."

91. Dalia N. Osman, Occupiers' Title to Cultural Property: Nineteenth-Century Removal Egyptian Artifacts, 37 COLUM. J. TRANSNAT'L L. 969, 974–75 (1999).

92. *Id*.

93. *Id*. (quoting the words of Lord Castlereagh at the Treaty of Paris Convention, 1815). Keep in mind that much of what Napoleon had appropriated during his conquests were European treasures or artifacts that European nations had seized centuries earlier.

the British Parliament and Select Committee chose to gloss over these principles of cultural property to legitimize the transfer of Greek cultural property into their possession.

The decades following the Treaty of Paris saw numerous treaties and conventions explicitly prohibiting the appropriation of cultural property during times of war. Cultural property at this time was considered private property and was first protected from pillaging armies in the Hague Conventions of 1899 and 1907.[94] In 1919, the Treaty of Versailles required the return of French cultural property taken by Germany in World War I and the Franco-Prussian War (1870-1871). Later that year, the Treaty of St. Germain similarly demanded the return of property taken by Austria. [95] Perhaps the most significant repatriation effort in regard to European wars began with the Paris Peace Conference held after the defeat of Nazi Germany in 1946. Having plundered much of Europe's precious art and artifacts in an attempt to establish a master collection under Hitler, Germany was required to return any stolen cultural property taken during World War II.[96]

While several treaties of the 19th and 20th Centuries included provisions prohibiting the looting of cultural property from countries of origin, it was not until the Hague Convention of 1954 that an international treaty was created for the sole purpose of protecting cultural property. The preamble to the Convention states that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world."[97] Additionally, Article 4(3) of the Convention states that each party is to "refrain from requisitioning movable cultural property" in another's territory.[98] At a granular level, the language of the Convention "codifies the obligation of preserving cultural

94. *Id.*

95. *Id.*

96. *Id.* Adolf Hitler was an avid art lover in his lifetime and was famously rejected from a renowned art school before paving the path to the Third Reich and the Holocaust. He had plans to create a series of museums in his new capital, all designed in the Classical Greco-Roman style. To fill these museums, he commissioned several high-ranking officers and a personal art historian to collect precious art and artifacts from around Europe. He hid the looted works in castles and even salt mines in occupied territories. In an effort to reduce the loss of precious works, the United States sent a group of artists and art historians to track and recover Hitler's stashes of stolen works. These men were largely successful and came to be known as the "Monuments Men." A major effort to repatriate works stolen by the Nazis still exists today, though there are many systemic issues. Several of the works were stolen from Jewish families, whose names and locations were not documented. The effort to locate survivors of the families, to whom these works are personal and private property, has been grueling. Christopher Klein, *The Real-Life Story Behind "The Monuments Men,"* HISTORY (Aug. 29, 2018), https://www.history.com/news/the-real-life-story-behind-the-monuments-men. For more information, visit LOOTEDART.COM: THE CENTRAL REGISTRY OF INFORMATION ON LOOTED CULTURAL PROPERTY 1933-1945, https://www.lootedart.com; or THE ART LOSS REGISTER at https://www.artloss.com.

97. Joseph P. Fishman, Locating the Int'l Interest in Intranational Cultural Prop. Disputes, 35 YALE J. INT'L L. 347, 389 (2010).

98. Merryman, *supra* note 6, at FN 64 (quoting the Hague Convention of 1954, Art. 4(3)).

property, even [an] enemy's property[] during war."[99] The stance the Convention takes here is one acknowledging the significance of cultural property and, in turn, displaying concern for the preservation of cultural property in times of war.[100] It is a multinational and multicultural perspective that formally establishes a basis for international cultural property legislation.[101] "Moreover, the Convention's fundamental requirement, to safeguard the cultural property of signatory nations during times of war or occupation, has since become a part of customary international law. That customary law flows directly from the Convention's professed goal of cultural diversity."[102]

In the decades following the Hague Convention, several other conventions on cultural property expanded upon the legal goals set forth in 1954. In 1970, the UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export, and Transfer of Ownership of Cultural Property was signed into law, becoming the most influential international cultural property treaty in force today.[103] Shortly thereafter, in 1972, the World Heritage Convention established the World Heritage Committee and World Heritage List which designates cultural heritage sites that are to be preserved.[104] In 1978, the UNESCO Inter-governmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation was established to organize and expedite the return of cultural property to formerly colonized nations; and in 1995 the International Institute on the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects created an individual cause of action for the return of stolen cultural property.[105] Today, the 1970 UNESCO Convention and 1995 UNIDROIT Convention represent the two most influential multilateral international cultural property treaties in effect, as they grant all signatories the right to "restrict [the] trade of designated items of cultural significance, even if privately owned."[106] Under UNESCO and UNIDROIT, when an artifact is illegally exported or imported in violation of the treaties' provisions, the importing state is required to begin the process of recovery and repatriation.[107]

As previously stated, the foundation for these cultural property laws is multiculturalism and multinationalism: a universal understanding of the

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99. Osman, *supra* note 91, at 995.
100. *Id.*
101. Fishman, *supra* note 97, at 389-90.
102. *Id.*
103. *Id.* at 389–90.
104. *Id.*at 357-85. Sites listed on the World Heritage List generally include immovable property.
105. *Id. See generally* Republic of Austria v. Altmann, 541 U.S. 677 (2004).
106. Fishman, *supra* note 97, at 390-91.
107. *Id.*

importance of preserving cultural heritage. When drafting these laws, however, the Conventions made clear that an appreciation for the importance of cultural heritage and property does not preclude keeping such property in a location outside its nation of origin. For example, the UNESCO Convention preamble states, "the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations."[108] Additionally, the UNIDROIT Convention states that its purpose is "the fundamental importance of the protection of cultural heritage and of cultural exchanges for promoting understanding between peoples, and the dissemination of culture for the well-being of humanity and the progress of civilization."[109]

While the treaties developed in the 20th Century certainly show an appreciation for the preservation of cultural property, the principles of repatriation and preservation they champion do not universally apply to non-European source nations. In fact, they completely fail to address the status of cultural property previously taken, focusing almost exclusively on illicit trade and wartime destruction. As shown above, a convention may condemn the destruction of cultural property in one breath and encourage the "interchange of cultural property among nations" in the next, effectively creating a shelter for the exchange of some artifacts and condemning the exchange of others. The international custom of these conventions and treaties invariably stems from Grotius, promoting an agreement between nations of "civilized societies" historically stemming from Christian ideologies.[110] As custom and treaties remain the primary source of international law– and, in turn, cultural property law– the international legal norms that have developed over the centuries continue to inevitably disfavor the repatriation of stolen art and artifacts to non-Western European source nations, such as Greece.[111]

D. Nationalism in Cultural Property Law

As the international cultural property treaties of the 20th Century came into effect, a new debate was sparked around the issue of repatriation. The argument can be roughly divided into two ideologies: cultural nationalism and cultural internationalism. The cultural nationalism can be found at the heart of both repatriation claims and retention claims alike, though it is generally considered to favor the country of origin. Simply speaking, if an

108. *Id*. at 390.
109. *Id*. at 391.
110. Osman, *supra* note 91, at 975-67.
111. *Id*.

artifact is of Greek origin, it should remain in, or be returned to, Greece.[112] This perspective is, somewhat confusingly, encouraged in the preamble of the UNESCO Convention, which states that "[…] cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history, and traditional setting."[113] If cultural property is considered to embody a nation's culture and history, it is no mystery as to why a nation may be protective of these artifacts, the preservation and possession of which generate a sense of national pride for a shared heritage. Unlike other areas of law, "cultural property is less territorial and more intrinsically attached to the culture responsible for its creation. While it may consist of moveable, sellable items exchangeable on the international market, in its essence it remains rooted to the people whose history and beliefs it represents."[114]

In response to the continued retention of cultural property by market nations and the booming trade in illicit artifacts, states have passed national ownership statutes establishing blanket ownership over any piece of property which the state considers to be the property of the nation as a whole.[115] While this development in cultural nationalism may result in the retention of cultural property in source nations, some jurists believe that national ownership statutes will instead fuel illicit trade and possibly threaten legitimate arts and artifacts markets that are primary sources for major institutions and museums.[116] In such transactions, the restrictive ownership statutes create a presumption of guilt against both the purchaser and the seller of artifacts, whether deserved or not.[117] The spread of cultural nationalism in source nations is therefore sending strong ripples of alarm through the antiquities industry and other legitimate forms of trade in art and artifacts.[118]

But perhaps these industries should be concerned. The assumption that all transactions in antiquities or art markets are completely legitimate is irrational. As discussed, the legal foundation for displaying several pieces in major institutions is based on illegal transactions from centuries ago. Institutions receiving stronger scrutiny at national borders may simply be the tip of the iceberg as lawmakers continue to dive deeper into the definition of a "legitimate" cultural heritage property market.

E. Internationalism in Cultural Property Law

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112. *Id*. at 992-3.
113. *Id*. (quoting the preamble of the 1970 UNESCO Convention).
114. Jordana Hughes, The Trend Toward Liberal Enforcement of Repatriation Claims in Cultural Property Disputes, 33 GEO. WASH. INT'L L. REV. 131, 135 (2000).
115. *Id*. at 132-133.
116. *Id*.
117. *Id*.
118. *Id*.

In contrast to cultural nationalism, cultural internationalism relies on the principle of world heritage as opposed to national heritage. More specifically, that cultural property belongs to mankind, rather than a singular nation or culture.[119] Under the principles of internationalism, the location of an artifact is irrelevant, as even those who are not from the culture of origin may still maintain an interest in the preservation and accessibility of art and artifacts. Preservation and global accessibility are the only concerns attached to cultural property, whether or not those concerns account for the legal rights of source nations or cultures.[120] This perspective encourages the institutions, industries, and markets threatened by cultural nationalism because it relies on the simple economic principles of supply and demand: those who are most willing to pay for the artifact are likely to be the most capable of preserving it.[121]

Though this assumption is flawed, it has been proven mostly accurate by institutions such as the British Museum. "Encyclopedic museums" market an image of a "world citizen" or a "world heritage" to be shared and enjoyed by all who visit the collections.[122] Cultural internationalism is the ideology that fuels museum economies, which provides the funds these institutions use to pay for costly, cutting-edge preservation technology that maintains their collections. While institutions such as the British Museum may be able to afford the best technology and care for their collections, the assumption that an abundance of funds correlates to the best preservation and protection of an artifact is unsound.[123] Additionally, the principles of cultural internationalism do not account for the national pride a source nation may take in a particular piece, and such sentiment may be a powerful source of motivation to adequately preserve cultural property in its place of origin.[124]

IV. WHAT ABOUT THE MARBLES?

How do these developments in international cultural property law and theory affect Greece's efforts to repatriate the Elgin Marbles? In no uncertain terms, these legal developments have created barriers between Greece and the Elgin Marbles which the Greek repatriation claim must surmount in order to secure the return of their cultural property. However, in international law "the rule is that the legal effects of a transaction

119. Osman, *supra* note 91, at 993-4.
120. *Id*.
121. *Id*.
122. Fishman, *supra* note 97, at 400-1.
123. Osman, *supra* note 91, at 994. Many artifacts are in private collections today. While the current owner may have had the money to purchase the piece, this does not mean they have the funds, or the knowledge, necessary to adequately preserve it.
124. *Id*.

depend on the law in force at the time."[125] Thus, we must first examine the status of the law and the legal actors at the time of the transaction to determine what aspects of cultural property law may apply today.

A. Military Conquest and Occupation

The first issue to address when arguing for repatriation of the Marbles is whether the Ottoman Empire had the legal authority to transfer the Marbles to Lord Elgin. John Henry Merryman, Sweitzer Professor of Law at Stanford University and renowned expert on art and cultural property law, argued that the Ottoman occupation of Greece in 1801gave the Empire a "solid claim to legal authority over the Parthenon because it was public property, which the successor nation acquires on a change of sovereignty."[126] Under Merryman's argument, the Ottomans had valid sovereign recognition in the international legal forum to grant Elgin the authority to excavate the Acropolis and remove the Marbles, making Elgin's subsequent sale to the British Government a legitimate transaction.[127]

However, Professor Merryman's argument faces several roadblocks under the laws of conquest and occupation. The Ottoman Empire was not officially recognized as a sovereign nation until 1856 when the Ottoman Sultan agreed to "participate in the advantages of the public law and system of Europe", per Article VII of the Treaty of Paris.[128] There was some cursory recognition of the Empire prior to this agreement due to its cooperation with the British Empire in conquests of North Africa.[129] However, the nature of this recognition is imperative as it establishes the basis of authority in international law. *De jure* recognition, as opposed to *de facto* recognition, allows the "legal succession to the property of the predecessor government."[130] *De facto* recognition is characterized by limited consular relations, no full diplomatic relations between states, and does not initiate the legal succession of property.[131] As Britain maintained only consular relations with the Ottoman Empire, the state received only *de facto* recognition as a sovereign and was not legally entitled to the property of the nations it occupied.[132] Thus, until the Sultan's agreement in 1856, the Ottoman Empire did not have the legal authority to sanction the removal of any cultural property from Greece as it was "outside the

125. Merryman, *supra* note 6, at 1900.
126. *Id.* at 1897.
127. *Id.* at 1899.
128. Osman, *supra* note 91, at 977-78.
129. *Id.*
130. *Id.* Both *de facto* and *de jure* forms of recognition were accepted in 19th Century international law.
131. *Id.*
132. *Id.*

specter of civilized nations and hence lacking the sovereignty to decide on such transactions."[133]

B. Public Property

Professor Merryman's claim that the Ottoman Empire had authority over the Marbles because they were public property is correct in at least one sense. The Marbles and all other artifacts on the Acropolis can accurately be defined as public property, both today and in 1801. The buildings on the Acropolis were temples and areas of worship. The construction of the buildings, both in scale and purpose, indicates that they were "never intended to pass into private possession".[134] The public nature of the buildings on the Acropolis, including the Parthenon, precludes them from being included in a category of art and artifacts that could be freely alienable and sold on the market.[135] The buildings are public property that were never meant to be sold and marketed across borders, so why should this classification not extend to the art adorning, and permanently attached to, the buildings? The Marbles were sculpted specifically for display on the Parthenon, and only became moveable objects once Elgin removed them from the building. Are we to assume that the dismantling of public property inevitably transforms it into private property, permanently stripping it of its legal status and protections as cultural property?

As part of the tradition of public property, the Parthenon and its Marbles belong to Greece and its people as a monument of cultural heritage. As cultural property belonging to the nation as an identifiable group, the Marbles were, and are, inalienable, and will remain inalienable until the Greeks as a whole agree to relinquish their title.[136] Though the concept of group rights to cultural property is new to the legal field, it is gaining traction though rising cultural nationalism and has found scholarly support in recent years.[137] Moreover, group rights to cultural property are consistent with the body of cultural property law present today, such as the 1970 UNESCO Convention, whose preamble states that "cultural

133. *Id.*

134. *Id.* at 982. Here, Osman is discussing public Egyptian monuments, but the concepts are equally applicable to the Greek case.

135. *Id.*

136. *Id.* at 980-81. For more on communal property rights, *see* Antonia M. De Meo, *More Effective Protection for Native American Cultural Property through Regulation of Export*, 19 AM. INDIAN L. REV. 1, 61-62 (1994). For more on the rights of indigenous and subnational groups, *see* Fishman, *supra* note 97.

137. *Id. See,* e.g., Ronald R. Garet, *Communality and Existence: The Rights of Groups*, 56 S. CAL. L. REV. 1001, 1001-02 (1983): "[T]here is an intrinsic value in groups.... To rob existence of communality, of the communal celebratory process which forms the substance of much of our experience, would be to deny one ethical constituent of our humanity." *See also* John Moustakas, *Group Rights in Cultural Property: Justifying Strict Inalienability*, 74 CORNELL L. REV. 1179, 1190 (1989); *see also* Terence Dougherty, *Group Rights to Cultural Survival: Intellectual Property Rights in Native American Cultural Symbols*, 29 COLUM. H. RTS. L. REV. 355 (1998).

property constitutes one of the basic elements of civilization and national culture."[138] Civilizations, cultures, and nations can easily be classified as groups that are accorded legal rights. Therefore, as an identifiable civilization, culture, and nation in both 1801 and today, Greece maintains an inalienable right to its public property, including its cultural property, unless those rights are explicitly relinquished by Greece. As of today, there is no evidence that Greece has ever relinquished its claim to the Elgin Marbles, either at the time of their removal or in the centuries since.

C. Where is the Elgin Dispute Now?

When considering the incongruities of the English and Italian translations of the original Ottoman letter granting Elgin permission to remove the Marbles from the Parthenon, along with the dubious claims of Ottoman sovereign authority over the Acropolis and its edifices, the British claims to the Elgin Marbles based on 19th century law are fragile. Though this is an accurate assessment, the British have nonetheless kept the Marbles in their possession for over 200 years, despite both Greek and multinational efforts to have them returned. Why then, are the Marbles still in the British Museum? What arguments has the United Kingdom used to fend off repatriation attempts for the last 200 years?

The United Kingdom has set forth four distinct arguments in favor of keeping the Elgin Marbles. First, they claim that the removal and sale of the collection by Elgin was legal under the international law and customs of the early 19th Century.[139] Second, the Elgin Marbles have become part of British cultural heritage and property due to their presence in the United Kingdom for over two centuries.[140] Third, the removal of the Marbles inadvertently "saved" them from the atmospheric pollution in Athens, which has damaged the marbles that have remained on the Acropolis.[141] Finally, repatriating the Marbles would create a precedent for the repatriation of artifacts all over the world, effectively crippling museums' role in arts, culture, and education.[142]

As we have already discussed the limitations of the United Kingdom's legal argument for retaining the Marbles, we move on to the second prong of the British claim: cultural nationalism. Today, many believe the Marbles to be the rightful property of the British Museum and the United Kingdom, declaring that they have equal claim to the Marbles in terms of

138. Osman, *supra* note 91, at 992-3 (quoting the preamble of the 1970 UNESCO Convention).

139. Melineh S. Ounanian, Of All the Things I've Lost, I Miss My Marbles the Most! An Alternative Approach to the Epic Problem of the Elgin Marbles, 9 CARDOZO J. CONFLICT RESOL. 109, 120–21 (2007).

140. *Id.*

141. *Id.*

142. *Id.*

cultural significance.[143] It is difficult, however, to equate 200 years of display in a museum gallery to 2,000 years atop the Parthenon on the Acropolis. Retentionists recount, however, that the Marbles were placed in a wing of the British Museum specifically built to house them.[144] The Duveen Gallery was built solely for the display of the Marbles and is undoubtedly a main attraction of the Museum.[145] Arguing that "with time, objects become part of the heritage of the nations which house them," the United Kingdom asserts that the Marbles are central not only to the Museum, but to British culture.[146] Ironically, British attempts to utilize cultural *nationalism* to bolster their claim is contradicted when defending their retention of the Elgin Collection—along with countless other colonial treasures—in the British Museum. To defend the Museum as it exists today, retentionists must claim that the institution is preserving world heritage, which is a foundational value of cultural *internationalism*. Yet, when pressed specifically about the Elgin Marbles, retentionists turn to cultural *nationalism* to argue for the preservation of the collection in United Kingdom.[147]

The third British claim, that they have saved the Marbles from damage, is factually inaccurate. Though it is true that several buildings on the Acropolis have sustained damage from atmospheric pollution, Elgin did not "save" the Marbles or invariably keep them from harm's way.[148] First, it was well documented that Elgin's removal of the Marbles from the Parthenon caused irreparable damage to both the Marbles and the Parthenon itself.[149] Second, a mass cleaning campaign undertaken by the British Museum in the 1930s was revealed to have caused more damage to the Marbles, stripping them of their original color.[150] According to a suppressed statement from an official at the Museum in 1939, the damage that the Marbles sustained from the cleaning campaign "cannot be exaggerated."[151] Though the British government still argues that the cleaning campaign had no detrimental effects, the Marbles are significantly diminished in quality when compared with those that remain on the Acropolis.[152] As reported by Professor Anthony Snodgrass of

143. Michael J. Reppas II, The Deflowering of the Parthenon: A Legal and Moral Analysis on Why the "Elgin Marbles" Must be Returned to Greece, 9 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 911, at 931-32 (1999).

144. Ounanian, *supra* note 139, at 125.

145. *Id*.

146. *Id*. (quoting Carol Kino, *Cultural Property Disputes are Reshaping the Art World—but How*? July 28, 2003, www.slate.com/id/2086136 [https://perma.cc/UG8B-AQ27]) (internal quotations removed).

147. Ounanian, *supra* note 139, at 125.

148. *Id*. The marble collections of the Parthenon that remained in Greece were removed to the New Acropolis Museum in 1993. Ounanian, *supra* note 139.

149. *Id*. at 124.

150. *Id*.

151. *Id*. at 125.

152. *Id*. at 124.

Cambridge University, the marbles that remained in Athens are today brighter, "have more detail preserved, and are more like what their makers intended" than those maintained in the British Museum.[153]

The threat of atmospheric pollution has been a strong argument for the British. But in addition to the recent reports of successful preservation on the Acropolis, the Greek government has declared its intention to house the Marbles, should they be returned, in a museum dubbed the New Acropolis Museum.[154] As preservation is a concern felt by all who admire the Marbles, this development weighs heavily in Greece's favor. The Marbles are no longer definitively safer in London than they are in Athens given the dissemination of preservation and conservation technologies. However, many retentionists resolutely cling to the definition of "safer," asserting that there is no reason to believe that has become Athens a securer location for the Marbles than London. Professor Merryman states: "What reason would there be to expect that [the Marbles] would be safer in Athens, over the next [200] years, than they have been in London, over the past [200] years? If the time should come when they would be safer in Greece, then the preservation interest would argue for their return."[155] Professor Merryman's argument is attractive to reunionists in both a cultural nationalist and preservationist sense, as it is difficult to rebuke without the test of time.

The United Kingdom's final defense is the threat of a slippery slope for museums should a precedent for repatriation be established. The British argue that should the Marbles be returned to Greece, this would allow for the "universal removal" of art and artifacts from other major institutions, and thus "any country that owns and displays a work originating from another country would be subject to the claim of superior title by the country of origin."[156] This is undoubtedly a legitimate concern, for much of the collections of major world museums, many of them in Europe, are founded upon artifacts that were illegally acquired from source nations. Consequently, Professor Merryman stated:

> The Elgin Marbles symbolize the entire body of unrepatriated cultural property in the world's museums and private collections. Accordingly, the preservation and enjoyment of the world's cultural heritage and the fate of the collections of the world's great museums are all in some measure at stake in a decision about the Marbles.[157]

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153. *Id.*

154. Merryman, *supra* note 6, at 1919. "[Greece] is now building an Acropolis Museum which is due to be completed by 2006. The museum will include a Parthenon Hall which will remain empty until the marbles have been returned." Ounanian, *supra* note 139.

155. Merryman, *supra* note 6, at 1917.

156. Ounanian, *supra* note 139, at 122 (quoting Reppas II, *supra* note 143, at 978-797).

157. Merryman, *supra* note 6, at 1895.

Should an institutional powerhouse such as the British Museum lose a repatriation suit, such a legal precedent could result in a flood of legal battles that have the potential to decimate institutional museums as we know them today.

D. The 2002 Universal Museums' Declaration

In response to the growing fear of dissolution among museums in recent years, the directors of dozens of the world's leading museums met in December 2002 to issue the 2002 Universal Museums' Declaration.[158] Following a meeting in Munich in October, the meeting included members of the International Group of Organizers of Large-Scale Exhibitions, also known as the Bizot Group.[159] Highly influential in the museum industry, the Bizot Group kept a low profile during the December meeting, but their presence lent substantial credibility and significance to the final declaration. The sentiment of those present was that the rise in cultural nationalism, and the resulting repatriation suits, resulted in a one-sided conversation concerning cultural property, and thus it was time the voices of the world's museums be heard.[160]

The meeting was ostensibly called to discuss all issues of cultural property; at its core, however, members convened to address the fate of the Elgin Marbles.[161] The result was a crippling blow to the repatriation movement. Though the Declaration issued at the conclusion of the meeting condemned the theft of cultural property, there was "virtually no discussion of repatriation."[162] The Declaration has been highly criticized for attempting to divert attention from the growing repatriation movement toward the important role of museums in society. It has also been condemned for its undeniably Eurocentric perspective.[163] Each of directors present at the 2002 meeting represented European or American museums, most of which have acquired cultural artifacts cited in current repatriation claims.[164]

After the 2002 Declaration, the United Kingdom passed the Cultural Objects Offenses Act in December 2003, which condemned illicit trafficking of cultural property, though only property that was taken

158. Christine K. Knox, They've Lost Their Marbles: 2002 Universal Museums' Declaration, the Elgin Marbles and the Future of the Repatriation Movement, 29 SUFFOLK TRANSNAT'L L. REV. 315, 325-326 (2006).

159. *Id*. So named after Irene Bizot of France, the organizer of the first meeting. B.N. Goswamy, *Should Cultural Property be Returned?*, THE TRIBUNE SPECTRUM (Feb. 9, 2003), http://www.tribuneindia.com/2003/20030209/spectrum/art.htm [https://perma.cc/7YG8-4RJL].

160. Knox, *supra* note 158, at 325-326 (referencing a statement from the director of the Rijksmuseum in Amsterdam, who was present at the December 2002 meeting).

161. Ounanian, *supra* note 139, at 119.

162. *Id*.

163. *Id*. at 331-333.

164. *Id*. at 333.

illegally according to the laws in place at the time of their removal.[165] Once again, the laws passed by Parliament created a legal shelter for the current owners of stolen cultural property such as the Elgin Marbles. Should an investigation of the 1816 Select Committee or of the recognition of Ottoman sovereignty in 1801 prove that Elgin did not legally remove the Marbles according to the laws in place in the early 19th Century, then Parliament and the British Museum would be subject to discipline from the very laws created to shelter their actions.[166]

E. The "Greek Offer"

Despite the conclusive tone of the 2002 Universal Museums' Declaration, the Greek government has not been deterred in its efforts to repatriate the Elgin Marbles. Following a failed, though quite public attempt to have the Marbles returned to Greece by the 2004 Olympics,[167] the Greeks instead proposed the Marbles be returned on a long-term loan from the British Museum, avoiding the need for a legal transfer of title or a formal repatriation settlement.[168] The "Greek Offer" includes several other factors meant to both incentivize and placate the British Museum and Parliament. Tabling the issue of ownership, the Marbles would be displayed "in the new, purpose-built Acropolis Museum in Athens in direct view of the original Acropolis rock and providing ideal conditions for conserving, viewing and appreciating the reunited Sculptures in a historical setting close to the Parthenon."[169] Additionally, a portion of the Acropolis Museum would be designated as an annex of the British Museum, and the Greek government would reciprocate with a loan of priceless Greek artifacts for temporary exhibitions at the British Museum.[170]

On its face, it is clear that the main motivation for the Greek government to extend such an offer is the value of the Marbles as a piece of Greek history and heritage.[171] However, skeptics argue that the Greeks have ulterior motives, such as obtaining the Marbles and never returning them to the British Museum despite vowing to acknowledge the United Kingdom's legal claims to the collection.[172] An unintended permanent removal of the Marbles is heavy on the minds of all retentionists who scrutinize the Greek Offer with heavy suspicion, creating yet another

165. Ounanian, *supra* note 139, at 119.
166. *Id*.
167. *Id*. at 126-27.
168. *Id*. at 137.
169. *Id*. at 138.137. The New Acropolis Museum and the Acropolis Museum are one and the same.
170. *Id*. at 137-38.
171. *Id*. at 137.
172. *Id*. at 137-39.

impasse in the resolution of the Elgin controversy.

F. The 2019 Statement

The most recent development in the case of the Elgin Marbles involves a statement from Hartwig Fischer, the current director of the British Museum. In a 2019 interview with Greek newspaper *Ta Nea*, Fischer stated that the Museum would not support repatriating the Marbles to Athens, and furthermore that their removal by Elgin was a "creative act."[173] Fischer went on to claim that the Museum does not participate in "indefinite loans," and stated that British law would have to be rewritten "because [the Marbles'] legal owners are the British Museum's trustees, who had the responsibility of preserving the museum's collections for future generations conferred on them by the British Parliament."[174]

Fischer received swift and harsh backlash from both the British people and the international community. Responding to Fischer's comments, George Vardas, Secretary of the International Association for the Reunifications of the Parthenon Sculptures, stated that "'[t]he imperialist patronage of the British Museum has no limits,'" and that Fischer's comments indicate "'amazing historical revisionism and arrogance.'"[175] Even members of Parliament shared Vardas's views, with Jeremy Corbyn, the leader of the Labor Party, asserting that he would have the Marbles repatriated if he were Prime Minister.[176] Opinion polls of the British public also indicate that the majority of the British people agree with the views of Vardas and Corbyn, and hope to see the Marbles repatriated to Greece.[177]

V. PROPOSED SOLUTIONS

Despite the growing universal trend toward cultural nationalism and repatriation, major institutions and organizations, such as the British

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173. Naomi Rea, *The British Museum Says It Will Never Return the Elgin Marbles, Defending Their Removal as a 'Creative Act,'* ARTNET NEWS (Jan. 28, 2019), https://news.artnet.com/art-world/british-museum-wont-return-elgin-marbles-1449919 [https://perma.cc/53NF-DCCW].

174. *Id*.

175. *Id*.

176. *Id*.

177. *Id*. In September 2019, the Greek Prime Minister petitioned British Prime Minister Boris Johnson to agree to a loan of the Elgin Marbles in exchange for other ancient artifacts never before shown outside of Greece. However, a spokeswoman for the museum stated that this would be a matter for the trustees of the British Museum, not the British government. Naomi Rea, *Greece's New Prime Minister Wants Boris Johnson to Loan the Parthenon Marbles in a Bold Swap of Ancient Treasures*, ARTNET NEWS (Sept. 2, 2019), https://news.artnet.com/art-world/greek-prime-minister-parthenon-marbles-british-museum-1640605 [https://perma.cc/L2NL-XH74]. For more on recent legal battles for cultural property; *see* Williams v. Nat'l Gallery, London, 139 S. Ct. 1347 (2019), and Attorney General v. Trustees of British Museum, English Law Reports, 2 Chancery Division 598 (1903). *See also* Kunstsammlungen Zu Weimar v. Elicofon, 678 F.2d 1150 (2d Cir. 1982), Schultz v. United States of America, Respondent., 2003 WL 22490659, and United States v. Mask of Ka-Nefer-Nefer, No. 4:11CV504 HEA, 2012 WL 1977242 (E.D. Mo. June 1, 2012), aff'd, 752 F.3d 737 (8th Cir. 2014).

Museum and the Bizot Group, stand in the way of returning illegally appropriated cultural property. However, as this debate may have begun as early as Alexander the Great, there has not been a shortage of proposed solutions over the years.

A. Managed Markets

Of the possibilities available, one of the most widely considered solutions is that of a managed market, which would incorporate both the concerns of source nations and "art-hungry" nations.[178] Dalia Osman Blass, the Director of the Division of Investment Management at the U.S. Securities and Exchange Commission, described the two premises of a managed market in a 1993 article: "The first premise is that international exchange is inherently desirable because of the economic and other benefits which befall both source and importing nations. . . The second premise is that many antiquities are redundant or otherwise lack special archeological, historical, or cultural significance to source nations."[179] Redundant artifacts would be subject to a managed market of equitable trade, while other artifacts of more significance, such as the Elgin Marbles, would be repatriated.[180] Following these premises, Osman Blass details how a managed market could be created via three fundamental steps:

> First, source countries would repeal umbrella statutes and allow controlled exchange. Second, source nations would relinquish ownership claims to artifacts currently housed in western museums or private collections that fall within the class of marketable objects. Finally, importing countries would reform their antiquities laws and allow for the repatriation of the class of objects that are held to be inalienable by the source nation.[181]

This solution is believed to distinguish an equitable middle ground between cultural nationalism and cultural internationalism by limiting the class of cultural property subject to repatriation and national ownership statutes.[182] Through control, rather than prohibition or indiscriminately strict rules, a managed market can reconcile the nationalist goals of source nations to preserve cultural heritage, and the internationalist goals of market nations vying for access to cultures other than their own.[183]

Though a managed market is attractive to many jurists, its main weakness is the imbalance of economic risks. The three-step structure asks

178. Hughes, *supra* note 114, at 150. *See* Knox, *supra* note 158, at 334-53. *See also* Osman, *supra* note 91, at 995–96.
179. Osman, supra note 91, at 996.
180. Knox, *supra* note 158, at 334-35.
181. Osman, *supra* note 91, at 996.
182. *Id*. at 995-96.
183. Hughes, *supra* note 114, at 150.

source nations to repeal much of the law put in place to protect what cultural property remains in their possession in the hopes that market nations will reform their own laws and allow for repatriation. This places source nations at a greater risk of losing priceless artifacts, whether or not they are redundant, to nations that will inevitably make a profit from their transfer. Consider that most art-rich source nations are those that were colonized and occupied during imperial conquests. Several of these nations, such as Greece and Egypt, remain at substantial economic and legal disadvantages compared to market nations such as the United States and the United Kingdom. Without possession of the artifacts, or any legal or economic leverage, it is possible that a managed market could perpetuate rather than solve the problem of inequitable trade of cultural property. Cultural property hinges on possession: if a nation possesses an artifact, it has the upper hand both legally and economically. Barring sufficient economic incentives, or the threat of legal repercussions, it is unlikely that museums in market nations will relinquish the advantage they have in the market, even in the name of fairness. They will simply rely, as they always have, on Professor Merryman's astute observation: "[A]n existing situation should continue unless some reason is given for changing it."[184]

B. The Long Term Loan

Other, more realistic and palatable solutions to the Elgin controversy have come to light in recent years. Following theories of environmental protection proposed by Christopher Stone, Nathaniel Guest has suggested affording legal rights to cultural property by placing art and artifacts in trusts and assigning guardians to bring legal suits on their behalf.[185] Others have suggested that Greece and other source nations bring their cases before the International Court of Justice to secure the repatriation of stolen cultural heritage.[186] Again, however, none of these solutions truly address or diffuse the economic and legal issues both market and source nations face in cultural property disputes. The international world of art "is still one which dislikes the use of legal remedies and relies primarily on the use of 'handshakes.'"[187] Thus, goodwill between professionals seems to be more valuable than a good lawyer, as most cultural property cases are likely to be resolved out of court.[188]

However, when Greece proposed a long-term loan to the British Museum and the United Kingdom, they successfully outlined a sustainable

184. Merryman, *supra* note 6, at 1911.

185. Nathaniel C. Guest, Putting History on A Stone Foundation: Toward Legal Rights for Historic Property, 18 TEMP. POL. & C.R. L. REV. 699, 701–02 (2009).

186. Ounanian, *supra* note 139, at 140-14.

187. *Id*. at 134.

188. *Id*.

solution to both repatriation claims and the preservation of museums' economic health. Thus, normalizing long-term loans of disputed cultural property is a compromise that is most likely to succeed at calming the waters of repatriation disputes. Though source nations have indicated that they will not drop their repatriation suits,[189] a significant endorsement of long-term loans from a major institution such as the British Museum would invite smaller museums to follow suit. Fears of dissolution due to successful repatriation claims would be alleviated, cultural nationalists would be placated, and yet the legal title would remain with the institutions which, in the end, makes all the difference.

Should there be a reluctance to return the loaned pieces, as is the permeating fear concerning a loan of the Elgin Marbles to Greece, the loaning nation can introduce both legal and economic sanctions. Market nations that illegally appropriated cultural property centuries ago remain some of the most powerful countries in the modern world, capable of affecting the economies of source nations whose political development was stymied by centuries of imperialism and colonization. Political and economic pressure from hegemonic nations still in possession of legal title will undoubtedly encourage source nations such as Greece to uphold the provisions of an artifact loan agreement. Moreover, it is entirely possible that a long-term loan may make the British Museum and other institutions more amenable to full repatriation. Experiencing tourism seasons without opening the Duveen Gallery may reveal that the British Museum can continue to successfully function without its most prized collection. Until that time, barring any shocking change in politics or major museums' retentionist policies, a long-term loan is the only viable compromise that would appeal to both cultural nationalist and cultural internationalist ideals.

VI. CONCLUSIONS

Cultural property, like any property, "is an institution, created largely by laws which are best designed by thinking about how they can serve the human interests of those whose behavior they govern."[190] It is such self-serving designs that have led to international laws that, though they may protect against the theft and illicit trade of cultural property today, continue to shelter and permit the possession of cultural property stolen centuries ago. In the legal landscape of cultural property, the Elgin Marbles are the poster child. Any legal resolution to the issue of

189. Naomi Rea, *Greece's New Prime Minister Wants Boris Johnson to Loan the Parthenon Marbles in a Bold Swap of Ancient Treasures*, ARTNET NEWS (Sept. 2, 2019), https://news.artnet.com/art-world/greek-prime-minister-parthenon-marbles-british-museum-1640605 [https://perma.cc/2YM3-NNHG].

190. Fishman, *supra* note 97, at 403 (quoting Kwame Anthony Appiah, Cosmopolitanism 134-35 (2006)).

repatriating the Marbles will not only be closely watched by the international community, but will also have a major impact on cultural nationalism and internationalism.[191] For source nations, repatriation of the Marbles, even in the face of one-sided legislation such as UNESCO and UNIDROIT, "would constitute the closure of decades of pillage and plunder by the western colonialist nations, and a restoration of … national heritage."[192] For market nations, however, repatriation of the Marbles could indicate a loss of priceless art foretelling the decimation of Western museums' collections, a concern voiced by the 2002 Universal Museums' Declaration.[193] However, this multicultural repatriation dispute need not be perpetual impasse. Long-term loans of disputed cultural property from major world institutions would satisfy the cultural nationalism of source nations, maintain museums' legal and economic claims to the loaned pieces, and ultimately present a viable solution and foreseeable end to centuries of illegal theft and possession of cultural art and artifacts.

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191. Knox, *supra* note 158, at 336.
192. Osman, *supra* note 91, at 995.
193. *Id*.