

# WHITHER THE ELGIN MARBLES?<sup>1</sup>

John Henry Merryman<sup>2</sup>

In 1985 I published an article entitled “Thinking about the Elgin Marbles”<sup>3</sup> in which, at perhaps unnecessary length, I examined the legality and morality of Lord Elgin’s acquisition of a substantial number of the Parthenon Marbles.<sup>4</sup> The dramatic actress Melina Mercouri was then Greece’s Minister of Culture and was conducting an emotionally compelling international campaign for return of the Elgin Marbles to Athens. Her argument was based in part on the claim that they had been stolen. Leaning heavily on William St. Clair’s *Lord Elgin and the Marbles*<sup>5</sup> for the pertinent history, I examined that claim and concluded that the acquisition was legal and, by the standards applicable in that time and place, ethical. That conclusion still

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<sup>1</sup>The objects that Elgin acquired in Athens and are now held by the British Museum are customarily called the “Elgin Marbles.” Greeks and others sympathetic to the Greek campaign for their return to Athens often prefer to refer to them as the “Parthenon Marbles.” That terminology does not work well here because more than half of the known existing Parthenon Marbles were not taken by Elgin and remain today in Athens. To avoid the resulting ambiguity I continue to refer to the Marbles in the British Museum as the “Elgin Marbles.”

<sup>2</sup>Sweitzer Professor of Law and Affiliated Professor of Art, Emeritus, Stanford University. My thanks to William St. Clair and Kate Fitz Gibbon for their helpful suggestions.

<sup>3</sup>Merryman, Thinking about the Elgin Marbles, 83 *Mich. L. Rev.* 1880 (1985) The article is republished in John Henry Merryman, *Thinking About the Elgin Marbles: Critical Essays on Cultural Property, Art and Law* 24 (2000), cited herein as *Critical Essays*.

<sup>4</sup>Elgin removed, or took from the ground where they had fallen or from the fortifications or other structures in which they had been used as building materials, pedimental sculptures, metopes and portions of the frieze. The frieze, a three foot-high horizontal band carved in low relief, originally extended 524 feet around the Parthenon’s inner chamber. Elgin acquired 247 feet of the frieze. The metopes, a series of 92 four-foot square panels sculpted in high relief, surrounded the top of the Parthenon’s outer colonnade and recounted assorted historical and mythical battles. Elgin acquired 15 metopes, predominantly from the South side Lapith and Centaur group. The pediments, the low triangles at the ends of the building formed by the pitch of the roof, were filled with sculptures in the round. Elgin acquired 17 pedimental sculptures. In addition, he collected assorted architectural fragments from the Parthenon.

<sup>5</sup>William St. Clair, *Lord Elgin and the Marbles* (2d ed. 1983). The third edition was published in 1998.

seems right to me, but it should come as no surprise that others appear to disagree.<sup>6</sup>

The award of the 2004 Summer Olympic Games to Greece stimulated renewed arguments for the return of the Elgin Marbles to Athens, where a new Acropolis Museum was to be built near, but not on, the Acropolis to receive them in time to display them during the Games.<sup>7</sup> This time, however, the Greek position, as presented by then Greek Minister of Culture Evangelos Venizelos, was significantly different. Greece announced that it did not claim ownership of the Elgin Marbles. The argument was that, whatever one might think about whether the Elgin Marbles belong *to* Greece, they belong *in* Greece. The new Greek position has made it unnecessary to reargue the ownership issue here. We can focus our attention on the question whether the Elgin Marbles should return to Athens or remain in London, in the British Museum.

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<sup>6</sup> Dean David Rudenstine has published a series of articles in which he disagrees with crucial parts of William St. Clair's history and with my conclusions about the legality and morality of Elgin's actions.. See Rudenstine, *The Legality of Elgin's Taking: A Review Essay of Four Books on the Parthenon Marbles*, 8 *Int'l J. Cultural Prop.* 256 (1999); *id.* "Cultural Property: The Hard Question of Repatriation," 19 *Cardozo Arts & Ent. L.J.* 82 (2001); *id.* "A Tale of Three Documents: Lord Elgin and the Missing, Historic 1801 Ottoman Document," 22 *Cardozo L. Rev.* 1853 (2001); *id.* "Lord Elgin and the Ottomans: The Question of Permission," 23 *Cardozo L. Rev.* 449 (2002). John Moustakis, in an interesting student Note: "Group Rights in Cultural Property: Justifying Strict Inalienability," 74 *Cornell L. Rev.* 1179 (1989), argued that Greeks as a group have a property interest in the Marbles and that such group rights are, or should be, inalienable. Thus, like most other writers on the Elgin's removals (who are legion), Mr. Moustakis's adopts the cultural nationalist position, which I discuss below.

<sup>7</sup>A superstitious person might conclude that the Acropolis Museum project was accursed. A first architectural competition in 1976 that failed to produce an acceptable proposal was followed by further troubled competitions in 1979 and 1989. Finally, in 2001, a fourth, successful competition was won by New York-based Swiss architect Bernard Tschumi. When work began on the Tschumi project it was complicated and interrupted by opponents engaged in tenacious political and judicial action. Residents of the Makroyanni neighborhood and archaeologists concerned to protect the seven layers of archaeological remains said to lie beneath the site engaged in tenacious political and judicial action. Litigation that eventually reached the highest Greek courts intermittently ordered work at the site to stop or permitted it to proceed, and the prospect that the Museum would be completed in time for the Olympic Games continued to recede. In the *Art Newspaper* of April 2004, at p. 9, Martin Bailey reported that the Greek Government had halted construction in order to preserve important archaeological evidence at the site. This report sounds like it might signal the end of the Acropolis Museum project.

Who should decide that question? It appears that the British and the Greeks have been speaking to each other about the Elgin Marbles.<sup>8</sup> Perhaps they will reach an agreement. If they do, does that end the discussion? Is the problem solved? Or is it possible that such a settlement, while agreeable to the Greek and British national interests of the moment, might conflict with the broader international interest that all of us share in the welfare and disposition of the London Marbles? If there is such a conflict, how should it be resolved?

The international interest is expressed in the premise, stated in the preamble of the 1954 Hague Convention,<sup>9</sup> that cultural property is “the cultural heritage of all mankind.” This statement, which is echoed in other international instruments,<sup>10</sup> is the culmination of an innovation in international law that began in the mid-nineteenth century.<sup>11</sup> Should a settlement of the London Marbles question be expected to recognize and protect this international interest? Suppose, for example, that Greece and the United Kingdom agreed that the London Marbles would be sent to Greece on long-term loan in return for business concessions and trade preferences granted to Britain. Is this the way decisions should be made about the fate of great works of art?

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<sup>8</sup>In its 2003 Report at <<http://unes.doc.unesco.org/001307/130725e.pdf6>> UNESCO’s Intergovernmental committee for Promoting the Return of Cultural Property to its Countries of Origin or Its Restitution in Case of Illicit Appropriation reported that: “Outside the Secretariat’s efforts and the Committee’s framework, on 12 November 2002 the Greek Minister of Culture, while in London, had separate meetings with the British Secretary of State for Culture Media and Sport, and with the new Director and Chairperson of the Board of Trustees of the British Museum. On 18 March 2003 an additional meeting took place in London with representatives from the Department for Culture, Media and Sport, and from the Greek Ministry of Culture. A UNESCO representative also attended.” There have also been references in the public media to British-Greek talks about the Elgin Marbles.

<sup>9</sup>1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, in *Unesco, Conventions and Recommendations of Unesco Concerning the Protection of the Cultural Heritage (1985)*, p. 13

<sup>10</sup>Thus the Preamble to the 1970 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property* states that “the protection of the cultural heritage can be effective only if organized both nationally and internationally among states working in close cooperation.” The Convention is set out at p. 57 of the Unesco publication cited in fn. 9.

<sup>11</sup> This development, whose origin is the so-called *Lieber Code*, is described in Merryman, “Two Ways of Thinking about Cultural Property, 80 *Am. J. Int. L.* 831 (1986), reprinted in *Critical Essays* 66. The content of articles 34-36 of the *Lieber Code* may have been influenced by an 1813 decision of the Vice-Admiralty Court of Halifax, Nova Scotia: *The Marquis de Somerueles*, Stewart’s Vice-Admiralty Reports 482 (1813). The judge in that case, Dr. Croke, clearly was influenced by a French work published in 1796: *Lettres à Miranda*, by Quatremère de Quincy, a Frenchman who opposed Napoléon’s seizure of works of art during his Italian Campaign. See Merryman, “Note on *the Marquis de Somerueles*,” 5 *Intl. J. Cult. Prop.* 321 (1996).

The obvious alternative to a bilateral settlement is a multilateral one in which the various national and international interests are properly represented, argued and considered. To whom should such arguments be addressed? A case argued in February of 2004 before the United States Supreme Court, *Austria v. Altmann*,<sup>12</sup> suggested the possibility that Greece might have standing to sue the United Kingdom in an American court under a provision of the Foreign Sovereign Immunities Act of 1976.<sup>13</sup> *Austria v. Altmann* awaits decision as this is written, and the Court may well decide against U.S. jurisdiction. If it does not, we could face the surreal prospect of what is essentially a replevin action, brought by the claimed owner, Greece, against the purchaser in good faith, the United Kingdom, from the alleged trespasser *de bonis asportatis*, Lord Elgin, in a U.S. District Court. The mind reels. And, in an only slightly less exotic case, whose alleged jurisdictional basis also rests on the Foreign Sovereign Immunities Act, the heirs of the Russian Suprematist artist Kazimir Malevich have sued Amsterdam's Stedelijk Museum in the Federal District Court for the District of Columbia to recover works by the artist held by the Museum.<sup>14</sup>

Rather than second guess the Supreme Court, we can imagine that Greece brings an action against the United Kingdom before a hypothetical International Cultural Property Tribunal that is charged with making informed, principled decisions concerning the proper allocation of disputed cultural property. What should the Tribunal decide? Should the Elgin Marbles continue to repose in London or can Greece establish good reason to move them to Athens?

I shall try to convince the reader that there are weighty reasons why the Elgin Marbles should remain in London, in the British Museum. In doing so, I consider three<sup>15</sup> distinct varieties of what lawyers call "arguments" and others might variously

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<sup>12</sup>The Ninth Circuit opinion is reported in 317 F.3d 954 (2002).

<sup>13</sup> 28 U.S.C. s.1605(a)(3).

<sup>14</sup>The case is discussed by Sylvia Hochfield in "Who Owns the Stedelijk's Maleviches?" *ARTnews*, April 2004, p. 64.

<sup>15</sup>The alert reader will observe that all of my argument's components seem to come in threes. Is this an expression of some fundamental truth about the structure of argument? An indication of the author's limitations? Whatever.

refer to as “patterns of discourse” or “narratives,” which we can call *nation-*, *world-* and *object-*centered. Such arguments would be addressed to the Tribunal and would have to be considered by it in reaching its decision. We begin with the Nation.

## I THE NATION

When she was the Greek Minister of Culture, Melina Mercouri, like Lord Byron before her,<sup>16</sup> eloquently and passionately argued that the Elgin Marbles should be returned to Greece, where they belong because they are Greek. They were created in Greece by Greek artists for civic and religious purposes of the Athens of that time. The appealing implication is that, being in this sense Greek, they belong among Greeks. This is the argument from cultural nationalism, which to some readers may seem to be more an assertion than a reasoned argument. They may wonder whether it is self-evident that an object made in a place belongs there, or that something produced by artists of an earlier time ought to be returned to the territory now occupied by their cultural descendants, or that the present government of a nation should have power over artifacts historically associated with its people or territory.

In its best sense, cultural nationalism recognizes the relation between cultural property and cultural definition. For a full life and a secure identity, people need exposure to their history, much of which is represented or illustrated by objects. Such artifacts are important to cultural definition and expression, to shared identity and community. In helping to preserve the identity of specific cultures they help the world preserve texture and diversity. They nourish artists and generate art (it is a truism among art historians that art derives from art). Cultural property stimulates learning and scholarship. A people deprived of its past is culturally impoverished. As one of John Steinbeck’s characters asked in *The Grapes of Wrath*: “How will we

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<sup>16</sup> Byron’s version of historical events and motivations has strongly influenced modern attitudes toward the Marbles. Byron’s attack on Elgin was carried on in conversations and correspondence but took its most influential form in his poetry, particularly in *The Curse of Minerva* (1811) and in *Childe Harold’s Pilgrimage* (1812), Canto II, Stanza XII. *Childe Harold*, in particular, was an immediate best seller in several languages, quickly entered the culture and engendered the French epithet *Elginisme* to refer to one who removed cultural property from its site.

know its us without our past?"<sup>17</sup>

There is, however, little danger that the Greeks will ever be deprived of the opportunity for ample direct contact with their past. Greece is full of monuments of antiquity, and its museums contain extensive collections of Greek art of all periods. As to the Parthenon sculptures themselves, something over half of those presently known to exist remain in Athens.<sup>18</sup> Lord Elgin took some of the best pieces, and it is undeniable that some of those left in Athens are in worse condition today than those that were taken to London, for reasons we will discuss below. But what remains in Greece still is substantial and representative.

Even if all of the Parthenon Marbles were in London, it would not be obvious that the Greeks were culturally deprived. If the British had attempted to appropriate the identity of the Marbles, disguising or misrepresenting their origin, then the Greeks, and all the rest of us, would rightly object. But in the British Museum the Marbles have always been presented openly and candidly as the work of Greek artists of extraordinary genius and refinement. Presented as they are, spectacularly mounted in their own fine rooms in one of the world's great museums, the Elgin Marbles honor Greece and bring admiration and respect for the Greek achievement. No visitor to the British Museum could come away with any other impression.

Cultural nationalism is a sword with two edges. The Elgin Marbles have been in England since 1821 and in that time have become a part of the British cultural heritage. They have entered British culture. They help define the British to themselves, inspire British arts, give Britons identity and community, civilize and enrich British life, stimulate British scholarship. One can argue that in these terms

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<sup>17</sup>For a fuller discussion of the relationship between objects and national cultures see Merryman, "The Public Interest in Cultural Property," 77 Calif. L. Rev. 339 (1989), republished in *Critical Essays*, p. 93.

<sup>18</sup>In commenting on this statement Mr. St. Clair wrote in February, 2004, in a letter to the author: "I also think that the summary about 'half the marbles' being in Athens is misleading - partly because the monument is far more than its sculptural decoration but also because the pieces in Athens are, with few exceptions, in far worse condition. With the exception of one metope and a section of frieze that could not be removed without huge damage to the building, Elgin took all the best surviving pieces. So the estimate of 'half' that I know is widely quoted is, if not technically untrue, rather misleading to those who do know the fuller picture."

the Greek claim is more powerful than that of the British, but it is not unreasonable to perceive the two positions as roughly equivalent.

Several papers in this volume discuss NAGPRA, the Native American Graves Protection and Repatriation Act of 1991.<sup>19</sup> Under this remarkable law, American museums have been required to publish inventories of the American Indian and Native Hawaiian human remains, funerary objects, sacred objects and objects of cultural patrimony that they hold and, on request, return them to their cultures of origin. The analogy to the cultural nationalist argument in the Elgin Marbles case is tempting. If it was right to return their artifacts to the Indian tribes and Hawaiians, as I think it was, by the same logic should not the Marbles return to Athens?

There are, however, significant differences between the two cases. Most important, under NAGPRA cultural objects are returned to the living cultures that originally made and used them. The objects involved were essential to the religious and ceremonial lives of those cultures, whose members today share the values and beliefs and seek to perform the same ceremonies and participate in the same rituals as the ancestors who made the objects. Repressed and fragmented by American imperialism, they want to regain the means that will enable them to heal and restore their cultures. On their return, the objects will be put to their traditional uses.<sup>20</sup>

Modern Greeks relate differently to the Parthenon Marbles and to the Classical culture in which they were created and employed. That culture is dead. To the extent that its values, beliefs and accomplishments are shared by modern Greeks they also are shared by every other participant in Western culture, including the British. There is no serious interest in or possibility of putting the Elgin Marbles to their ancient Greek ceremonial uses. They are now in a museum in London. If they return, they will go into a museum in Athens. NAGPRA, a fascinating cultural

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<sup>19</sup>25 USC sections 3001-3006 (1990).

<sup>20</sup>Compare the Afo-A-Kom incident,. The Afo-A-Kom is a 5-foot tall sculpture that appeared on the New York art market in 1973, was said to embody “the spiritual, political and religious essence” of the Kom people of Cameroon, became the object of impassioned public and private discussion and was voluntarily returned to the Kom in May of 1974. The case is described in John Henry Merryman and Albert E. Elsen, *Law, Ethics and the Visual Arts* (4<sup>th</sup> ed. 2002) p.267.

enterprise about which we all have much to learn, is not an applicable precedent for the Marbles case.

The cultural nationalist argument tends to merge and become confused with two others, which might be called economic nationalism and political nationalism. Economically, whoever has any of the Parthenon Marbles has something of great value. It is inconceivable that they would ever be put on the market, although if a pedimental figure, a metope or an element of the frieze were offered for sale it would bring an enormous price. The more relevant economic consideration is that the presence of the Marbles in a public collection nourishes the tourist industry. Possession is obviously necessary in order to exploit that kind of economic value. For Greece to claim it, however, merely re-argues in another form the question of ownership, an argument that I believe it would lose. And in any event, we have seen that Minister of Culture Venizelos did not propose to press that argument.

Political nationalism treats the presence of the Marbles in England, or in any other place than Greece, as an offense to Greeks and the Greek nation. Here the demand for the return of the Marbles is based on national pride. No candid observer can deny the power of political nationalism in world affairs. A Greek government that secured the return of the Marbles would be wildly popular. A Greek politician who could claim credit for the return would be a national hero. But political nationalism comes loaded with heavy baggage: a troubling history of exploitable superstition and prejudice, an unsavory record as the religion of the state and a tool of demagogues, a source of international economic, social, political and armed conflict. To most observers, its assertion does not argue persuasively for the return of the Elgin Marbles to Greece.

Returning to cultural nationalism, does it make the case for the return of the Elgin Marbles? I have argued elsewhere<sup>21</sup> that its attraction is a relic of 19<sup>th</sup> Century Romantic nationalism, dramatized and popularized by Byron's life, death and poetry and kept alive by Greeks and Hellenophiles. Still, the plea that the Marbles are Greek and belong in Greece has an undeniable appeal. There is a romantic strain in most of us, and at some deep psychological level we are all helpless Hellenophiles.

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<sup>21</sup>See the discussion of cultural nationalism in Merryman, "The Retention of Cultural Property," 21 *U.C.Davis L. Rev.* 477 (1988), reprinted in *Critical Essays* at pp. 122, 133-37.

Despite its emotional pull, however, the power of Greek cultural nationalism weakens if we recall that many of the known surviving Parthenon Marbles are already in Greece and that those in the British Museum openly honor Classical Greek artists and the Greek achievement. And, as we have seen, cultural nationalism is a two edged argument that is also available to the British. One can admire the Greekness of the Elgin Marbles and respect their specific cultural importance to Greeks without concluding that they belong in Greece.

## II THE WORLD

We have seen that a number of international instruments state that "cultural property belonging to any people whatsoever" is "the cultural heritage of all mankind." These words in the Hague Convention of 1954 announce the principle of cultural internationalism: that everyone has an interest in the preservation and enjoyment of cultural property, wherever it is situated, from whatever cultural or geographic source it derives. UNESCO's legitimacy as an international agency concerned with cultural property stands on that premise, and UNESCO pronouncements build on it. Thus in 1976 UNESCO promulgated a *Recommendation*<sup>22</sup> whose Preamble states that the international circulation of cultural property:

“is a powerful means of promoting mutual understanding and appreciation among nations.” . . . [and] “would also lead to a better use of the international community’s cultural heritage which is the sum of all the national heritages.”

And the Preamble to the 1970 UNESCO Convention<sup>23</sup> states that:

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<sup>22</sup>1976 UNESCO Recommendation Concerning the International Exchange of Cultural Property, in Unesco, *Conventions and Recommendations of Unesco Concerning the Protection of the Cultural Heritage* 1985) p. 101.

<sup>23</sup>1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property *id.* p.57.

“the interchange of cultural property among nations . . . increases the knowledge of the civilization of man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations.

What do these various statements of cultural internationalism say or imply about the proper disposition of the Marbles? I identify three (*sic*) main factors: *education*, *cultural enrichment*, and *better use*.

**Education.** Museums are educational institutions whose exhibitions of art from other times and places help us understand, appreciate and respect our own and other peoples’ cultures. The exhibited collections of the British Museum, the Metropolitan Museum, the Louvre and other great museums temper, if they cannot totally eliminate, cultural parochialism. In the case of the Marbles, their installation in the British Museum has had and continues to have, as Elgin hoped, a strong educative impact, quickly commanding respect not only for Greek art but for the civilization that produced it. Today Greek achievements in art, drama, literature, philosophy and science permeate Western culture. If all of Classical Greek art had remained in Greece, our world today would be a significantly different one.

**Cultural Enrichment.** At a fundamental level, most learning is comparative. It has truly been said that “thinking without comparison is unthinkable.” At a different level, what we know is enriched, acquires breadth and depth, by comparison. In London, the educative impact of the Elgin Marbles on visitors to the British Museum is significantly enhanced by their proximity to great works of Mesopotamian, Egyptian, Asian and other great cultures, with which they can conveniently be contrasted and compared. Every visitor to the British Museum, even one who enters totally focused on viewing the Marbles, must pass great monuments of other cultures on the way to the room in which the Marbles are exposed. Most visitors will find it impossible to pass by without pausing for a few moments before some of them. This kind of opportunity makes every visit to the British Museum an experience in comparative education. In Greece, where the museums understandably are filled with Greek art, this kind of comparative viewing and learning experience is not available to the viewer, nor would moving the Elgin Marbles to Athens provide it.

**Better Use.** Recall that the 1976 UNESCO Recommendation, quoted above, says that the interchange of cultural property “would also lead to a better use of the international community’s cultural heritage.” What does “better use” mean? The quoted text does not tell us what the drafters had in mind, so we are free to speculate. Does exposure to a larger and more widely distributed number of the world’s people constitute a better use? Consider the great quantities of redundant works that are hoarded in Greece, where they will never be accessioned, studied, published or exhibited. They merely languish, deteriorating, in storage. Would distribution abroad of such works constitute a “better use” of them? Would selling or exchanging them for objects from other cultures in order to enrich Greek private and museum collections constitute a “better use?”<sup>24</sup>

It would seem so. In the Recommendation’s context, it is “the interchange of cultural property” that can lead to a “better use.” Such interchange can serve a variety of desirable objectives, one of the most obvious of which is the wider distribution of the works of a given culture. That version of “better use” would not be achieved by the return of the Elgin Marbles to Athens, which would narrow rather than broaden the distribution of Classical Greek sculpture. Interchange can, however, also serve the important purpose of reintegration of dismembered works, which is better discussed in the next part of this article.

I conclude that all three (*sic*) of the world-centered arguments—education, cultural enrichment and better use--favor (*pace* the very important integrity interest discussed below) retention of the Elgin Marbles in the British Museum.

### III THE OBJECT

Finally, we consider object-centered considerations applicable to decisions about the possible relocation of the Elgin Marbles. I can think of three (*sic*) such

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<sup>24</sup>For a discussion of retentionism and its consequences see “The Retention of Cultural Property,” 21 *U. C. Davis L. Rev.* 477, republished in *Critical Essays* at p. 122.

considerations which, in declining order of relative importance, we can call *preservation, integrity and distribution*.<sup>25</sup>

**Preservation.** Preservation takes priority for obvious reasons. If the Elgin Marbles are destroyed, people of all cultures will be deprived of access to them, and considerations of integrity and distribution become irrelevant. Damage short of destruction, whether through inadequate care, the action of the elements or the hazards of war, terrorism or vandalism, threatens the same values. If the Marbles now in London would be better preserved in Athens, that would be a powerful argument for return.

In the British Museum, the Marbles are well mounted, maintained and guarded. The Museum's record is of course not perfect, marred by the "cleansing" episode in 1937-38 which Mr. St. Clair has so vividly described.<sup>26</sup> The extent of damage to the Marbles from that unseemly chapter in their history is differently estimated by Mr. St. Clair, Ian Jenkins and John Boardman.<sup>27</sup> To an interested foreign observer it might appear that Mr. St. Clair has taken care not to underestimate the damage, while Mr. Jenkins and Professor Boardman, with comparable scrupulosity, are at pains not to overestimate it.

There seems to be little doubt, however, that the sculptures that remained on the Acropolis after Elgin departed have been more seriously eroded by exposure to a variety of hazards, including vandalism, souvenir-hunters and *nefos*, the marble-devouring smog of Athens. Eventually, most of the remaining sculptures were taken down and removed to a safer environment, while the smog continues to consume the

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<sup>25</sup>For a fuller discussion see "The Nation and the Object," 3 *Intl. J. Cult. Prop.* 61 (1994), republished in *Critical Essays* at p. 158.

<sup>26</sup>St. Clair, "The Elgin Marbles: Questions of Stewardship and Accountability," 8 *Intl. J. Cult. Prop.* 291 (1999).

<sup>27</sup>The differing opinions on damage to the Marbles from the cleansing episode are stated and contested in William St. Clair, "The Elgin Marbles: Questions of Stewardship and Accountability," 8 *Intl. J. Cult. Prop.* 391 (1999); John Boardman, "The Elgin Marbles: Matters of Fact and Opinion," 9 *id.* 233 (2000); and Ian Jenkins, "The Elgin Marbles: Questions of Accuracy and Reliability," 10 *id.* 55 (2001).

temple itself, which is made of the same marble as the sculptures. If one had to make a decision based solely on concern for the physical preservation of the Elgin Marbles, it would be difficult to justify moving them to Athens. Even if they would be placed in a museum there, as the Greeks plan, rather than reinstalled on the Parthenon, what reason would there be to expect that they would be safer in Athens over the next two centuries than they have been in London over the past two centuries? Under present conditions, the preservation interest does not seem to argue for moving the London Marbles from London to Athens.

**Integrity.** The second international concern is for the integrity of the work of art. If we think of the intact Parthenon as an integrated work, with more power, beauty and cultural significance than the sum of the dismembered pieces, then it makes sense to argue that the sculptures should be reinstalled on the temple. That result could of course be achieved by moving the Parthenon to London and there reuniting it with the sculptures, but not even the British have advanced such a proposal. The only reasonable way to reintegrate the Elgin Marbles with the Parthenon is to send them to Athens. Accordingly, the integrity argument clearly favors the Greek position.

There is, however, the serious difficulty that the Marbles cannot be reinstalled on the Parthenon without exposing them to certain destruction from the combined effects of the elements and the smog of Athens. The preservation and integrity interests are in direct conflict, and in that case preservation must prevail. At a time when the sculptures remaining on the Parthenon and the remaining Caryatids on the Erechtheion have had to be taken indoors by the Greek authorities to preserve them from further erosion, it cannot seriously be proposed that the Marbles should be restored to their places on the temple.

In fact, the Greek proposal is to transfer them from a museum in London to a museum in Athens. There they would be nearer the Parthenon and, if the new Acropolis Museum were completed, in sight of it. That remaining distance, however, appears to be critical. Being near the Parthenon is not enough. "Close only counts in horseshoes."<sup>28</sup> Under present conditions, true reintegration of the integrity of the

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<sup>28</sup>The text quotation, a bit of folk wisdom, is commonly heard on golf greens when a putt comes close but fails to drop into the cup. It is also heard in other sports contexts has crept into

temple is impossible without exposing the Marbles to unacceptable hazards.

**Distribution.** The other object-centered interest is in an appropriate international distribution of the common cultural heritage, so that all peoples have a reasonable opportunity for access to their own cultural achievements and those of others. How should this distribution/access consideration affect the allocation of the Elgin Marbles? It is true that Greek antiquities can be found in major museums and private collections throughout the world and that some of the greatest Greek antiquities are abroad. But it is difficult to argue that Greece itself is in this sense impoverished. Greek museum and private collections are enormously rich in Greek antiquities of all periods. One of the reasons people go to Greece is to enjoy its wealth of cultural treasures, including the numbers of surviving Parthenon Marbles that remain in Athens.

The distribution argument actually seems to work in favor of the dispersion, rather than concentration in one place, of the works of a culture. Thus the late art critic John Canaday argued that American art should be "spread around," not kept at home. The idea of "missionary art" that makes a culture vivid and comprehensible abroad is, as we have already seen, an appealing one that promotes international understanding and mutual cultural respect. If all the works of the great artists of classical Athens were returned and kept there, the rest of the world would be culturally impoverished.

Dispersion of related objects may also offer an important preservation value. As this is written, religious fundamentalism and international terrorism are serious preoccupations throughout much of the world. Serbs deliberately destroyed the Mostar bridge and other Islamic buildings and artifacts. The Taliban deliberately destroyed the Bamiyan Buddhas and thousands of other works of art in Afghanistan, fully informed of their world importance and despite international appeals that they be preserved. An entire major collection of Rodin's sculpture, including lifetime casts and unique works, was destroyed in the attack on the World Trade Center on 9/11/2001. Paranoia might be a poor guide to cultural property policy, but we have seen enough to know that the Marbles might seem to some terrorists or religious

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more general usage. A popular variant is "Close, but no cigar."

fundamentalists to be an attractive target.<sup>29</sup> Would it be safer to keep the Parthenon Marbles divided between London and Athens, as they now are, rather than putting all those irreplaceable eggs in one Athenian basket?

Criteria for an appropriate international distribution of the artifacts of a culture do not yet exist; the dialogue until now has been dominated by demands for repatriation and by deference to cultural nationalism. But on the facts it seems difficult to argue convincingly on distributional grounds for the return of the Elgin Marbles to Athens. If we focus instead on the question of access, there is no apparent reason to suppose that the Elgin Marbles would be more accessible to the world's people in Athens than they now are in London.

Reviewing the object-centered arguments, it appears that they lead in different directions. The most powerful of them, preservation, seems not to advance the Greek cause, since there is no apparent basis for arguing that the Elgin Marbles would be safer in Athens than they are in London. The integrity argument favors reuniting the Marbles with the Parthenon, but that is not at present possible without exposing them to unacceptable hazards. There are no developed criteria for surely applying the distribution criterion but it does not appear that the present distribution of Classical Greek antiquities would be improved by returning the Elgin Marbles to Athens.

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## CONCLUSION

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<sup>29</sup>Religious fundamentalism can strike art anywhere. The following AP report appeared in the Jan.11, 1983 San Francisco Chronicle, datelined at Fort Worth, Texas:

Wealthy businessman Cullen Davis, a born-again Christian, destroyed more than \$1 million worth of gold, silver and ivory art objects because they were associated with Eastern religions, evangelist James Robison said yesterday. Robison told the *Fort Worth Star Telegram* that he and Davis used hammers to smash the carvings, which Davis had donated last September to help Robison pay off debts. The evangelist decided not to accept the gift after recalling a verse in Deuteronomy: "The graven images of their gods shall we burn with fire for it is an abomination to the Lord thy God." Robison said he considered Davis' actions "a good testimony for his Christian faith."

The precise question before the hypothetical International Cultural Property Tribunal is whether, excluding any ownership considerations, the case has been made to move the Elgin Marbles from the British Museum in London to a museum in Athens. In concluding that the case has not been made I have considered nation-centered, world-centered and object-centered arguments on behalf of the Greek position and found them unpersuasive. On the facts of the Elgin Marbles case, all of these arguments (with one *caveat*), as I have understood them, favor the British position.

Some readers may think that I concede too little weight to cultural nationalism, much less than it generally receives in popular literature and the media. Even in serious international cultural property fora, interested parties sometimes play the cultural nationalism card with significant effect. There are, of course, many circumstances in which the relation between an object and a nation or a people justifies legal recognition and protection. The Native American Graves Protection and Restitution Act (NAGPRA) and the Afo-A-Kom case provide obvious examples. Too often, however, nationalist sentiment and the befogging rhetoric that supports it have been allowed to displace reasoned argument. I believe that public debate about the Elgin Marbles has been seriously afflicted by this malady.

Conversely, my argument gives substantially greater weight to cultural internationalism than it typically receives in popular literature and the media. Although the international interest is confidently stated in several important international instruments,<sup>30</sup> excerpted above, in practice it often loses its power when confronted by a national claim, even when that claim is, by objective standards, excessive. How the law and politics of cultural property came to such an unbalanced state cannot be explored here. In this paper I have compensated for both effects by giving less effect to nationalism and more to internationalism, in an effort to take a more balanced position.

The *caveat* concerns possible restoration of the integrity of the dismembered Parthenon by restoring it as nearly as possible to its original harmony and grandeur.

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<sup>30</sup>See footnotes 22 and 23 and accompanying text, *supra*.

Such a project would face a number of difficulties. Most important, it would require marshaling and reinstalling in their original places on the temple all of the surviving sculptures now found in Athens, London, Paris, and Munich, plus bits and pieces of the fabric of the Parthenon now held abroad.

Even if those nations would agree to submit their Parthenon holdings to such a project, we have seen that it is presently not feasible because of the chemical vulnerability of the marble of which the sculptures and the temple were made. Athens, like other modern cities, has a corrosive atmosphere that would damage and eventually destroy the sculptures, just as it is currently eroding the few sculptural fragments remaining on the Parthenon and the fabric of the building itself.

It seems reasonable to suppose that the modern technology that produces Super Domes could be employed to isolate and protect the Parthenon from the Athenian atmosphere. Would such a project be worth the expense? Would the resulting change in the dramatic Athenian skyline, where the romantic ruin of the Parthenon now hangs in the sky, visible for miles around, be acceptable? Finally, would reintegration of the sculptures with the temple really be feasible? Or has the building been so reduced over the last two centuries by the combined actions of the elements, the smog, souvenir-hunters and vandalism that the result would risk being more a travesty than a restoration?

We do not know the answers to such questions. In the present state of our knowledge and under present conditions, for the reasons set above, the Elgin Marbles should remain in London.

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