

The Law and Ethics Deriving from the Parthenon Marbles Case

Irini A. Stamatoudi, LLM *

Attorney at Law

Athens

Doctoral Researcher

University of Leicester.

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Summary

Nearly two hundred years ago Lord Elgin removed vast amounts of Marble sculptures from the Parthenon on the Acropolis in Athens. This removal and the subsequent shipment of the Marbles to Britain took place in dubious circumstances. The Marbles ended up in the British Museum where they have been on display since. Should these important pieces of cultural heritage be returned to their country of origin? Should they be re-united with the Acropolis site for which they were intended and of which they form an integral part? The answer to this question will be provided after a careful examination of all legal arguments in favour and against the return of the Marbles to Greece as they are found in national and international legal instruments. These arguments will be based on both legal and ethical grounds.

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Introduction

One of the most interesting themes of the 20th century, in relation to the protection of cultural heritage, is the restitution and repatriation of cultural objects, which were taken from their country of origin, by reason of theft and illicit exportation, or by reason of legal means, during periods of colonisation, conquest or war.

A significant number of these objects has already been returned to their country of origin in response to popular demand, international initiatives and legal pressure. Nevertheless, the case that has incurred the greatest publicity, and which has given rise to the most interesting literature in this area, is the Parthenon Marbles case.

This article will examine the current debate on the return of the Parthenon Marbles from the United Kingdom to Greece, the legal and moral implications of such a prospect and whether there are sufficient grounds to justify their return to their country of origin.

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I. The Background to the Case

Lord Elgin was appointed British Ambassador to the Ottoman Empire in Constantinople in 1799. Since 1901 and under rather ambiguous conditions, he gained access to the Acropolis site of Athens, which was the under the Ottoman occupation, and started to remove from there the Parthenon sculptures, hereby dismembering them from the central temple of the site.⁽¹⁾ All the Marbles taken from the most representative temple of the High Classical period of the Greek art, were shipped to Scotland for the private use of Lord Elgin. The most probable intended use was said to be the decoration of his country house in Scotland. The Marbles taken by Elgin consisted of fifty slabs and two half-slabs of the frieze and fifteen metopes. Part of them were shipped in "Mentor" (a ship Elgin had purchased for this purpose)

and sank in deep water off Kythera. There inevitably most of the marbles were never found.

In 1816, Elgin experienced financial difficulties and decided to sell the Marbles to the British Crown. The decision to purchase was taken by the British Parliament in 1816 in full knowledge of the facts surrounding the acquisition of the Marbles. Elgin was paid £35,000. Later that year the Marbles were technically transferred as property to the Trustees of the British Museum by a further Act of Parliament that was passed on 11 July 1816 "To Vest the Elgin Collection of Ancient Marbles and Sculptures to the Trustees of the British Museum for the Use of the Public". However, Britain promised to return the Marbles as soon as Greece gained its independence from the Ottomans. But this promise was not kept. During the 1940's Britain promised again to return the Marbles as compensation to its wartime allies for the losses they had incurred during the war. Nevertheless, the Marbles were still not returned because the time was found not to be appropriate for such a decision. This attitude was exemplified by Attlee, the Lord Privy Seal, who told the House of Commons in 1941 that, as regards the introduction of a piece of legislation allowing the return of the Marbles to Greece, the moment was "inopportune".

After the restoration of democracy in Greece, in 1975, the Minister of Culture, Constantinos Trypanis, set up a committee for the preservation of the monuments of the Acropolis. Henceforth requests for the return of the Parthenon Marbles were made to Britain in order for the items taken from the Acropolis site to be restored. However, the first official request from the Greek government was only made in 1983 and it was delivered to the Foreign Office on 12 October by the Greek Ambassador, Mr Kyriazides. In the request it was argued that the Marbles should be returned to Greece, because:

"-they are an integral part of a unique building symbolic to the Greek cultural heritage-it is now universally accepted that a work of art belongs to the cultural context in which (and for which) it was created, and -they were removed during a period of foreign occupation when the Greek people had no say in the matter." (Greenfield 1989, p 83)

In 1983 a Bill was introduced to the British Parliament, which would enable the Trustees of the British Museum to return the Marbles. The Bill was discussed and finally defeated in the House of Lords on 27 October 1983. It was claimed that the Marbles were well cared for in the British Museum and that the return would set a precedent for the denuding of the world's museums. In April 1984 the Greek official request was formally declined by the British Government in a reply that was delivered to the Greek Ambassador in London on grounds that the Marbles were "secured" by Lord Elgin "as the result of a transaction conducted with the recognised legitimate authority at the time."

The discussion was briefly re-opened in January 1996 when Lord Jenkins brought a question before the House of Lords on whether the British Government is willing to return the Marbles to Greece. The official position however remained unchanged.

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II. The Law of the Case

The issues that derive from the Parthenon Marbles case are not only based on moral or emotional grounds, but also on principles and set questions of law. Both parties have put forward a number of arguments, which will hereafter be analysed in discussing the case, and assessing which party has the strongest right to the Marbles.

1. The Applicable Law

Before discussing the substance of the case we must first examine which is the applicable law. The case seems to involve four possible laws each of which could potentially be applied. The first three are the national laws of the United Kingdom, Greece and Turkey, while the fourth is public international law. The choice, however, between one of the aforementioned national laws does not seem to be appropriate in the present case for the following reason. No provisions relating to disputes about cultural heritage are provided for in the laws of the three countries. Therefore any relevant existing rules can be applied only by analogy and may in the present case prove inadequate. Thus, national laws present a legal vacuum which must be superseded in order for the case to be decided.

As is well-known and established in the codes of the various countries and according to the British-United States Claims Arbitral Tribunal of 1910:

"...domestic law may not contain, express rules decisive of a particular case; but the function of jurisprudence is to resolve the conflict of opposing rights and interests by applying, in default of any specific provision of law, corollaries of general principles, and so to find ... the solution of the problem".

In that context it would be teleologically fairer to use principles deriving from the law of most civilised countries, and mainly common to the legal systems of the United Kingdom and Greece, instead of deciding the case in the light of one national system.

However, in conjunction with those principles we can also use, according to art. 38(1) of the Statute of the International Court of Justice, the general principles deriving from international law, recognised as basic sources of it, along with international conventions (art. 38(1)b). Disputes, such as the Parthenon Marbles case, where nations are involved, would be better settled in an international context and by an international judiciary. Both Greece and the United Kingdom are Members of the United Nations. Therefore, according to art.36(2) "may at any time declare that they recognise as compulsory ... the jurisdiction of the Court in all legal disputes concerning ... any question of international law" and under that article invoke the Court's jurisdiction to arrive at a judicial settlement of the case.

At this point, it must be stressed that, although the Conventions that will be considered, as well as any other legal material, were not in force at the time of the removal of the Marbles from Greece, the principles which the Conventions enshrine and which they codified are thought to go back to the start of the 19th century. Moreover, most of the Treaties that will be considered in this article, whether or not they have been ratified by the states at issue, by reason of their intention to have a general effect, and the incorporation of well-established principles, are thought to be "law-making" Treaties (distinguished from those which merely regulate issues between a few Member States). Therefore the rules deriving from them are considered to be general binding rules (Shaw (1991), p 81).

As regards the law in force at the time of the removal, we do not, unfortunately, have access to it and accordingly the case will be examined from the aspect of the current law.

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2. The legitimacy of the Acquisition of the Marbles

Perhaps the most decisive and important issue to be examined is the title Lord Elgin acquired to the Marbles. The question will be analysed in two basic parts: 1) whether the Turks, conquerors of the Greeks at the time, had the authority to dispose of the Marbles, and 2) whether Elgin was really authorised to remove the Marbles and ship them to Scotland.

(a) Whether the Ottomans had the authority to dispose of the Marbles

It is alleged that since Greece was at the time part of the Ottoman Empire, the Ottomans "had a solid claim to legal authority over the Parthenon because it was public property, which the successor nation acquires on a change of sovereignty" (O'Connell (1956), p 226). However, this public property is transferred upon the successor nation in trust and not with the perspective of being disposed of. According to art.5 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter the Hague Convention), countries "in occupation of the whole or part of the territory of another (State) ... shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property". The Ottomans acted contrary to and in breach of such obligation. Although the Convention was signed in 1954, the general principles found in it, which the Convention codified, create legal obligations because of the long-standing tradition and conduct of the States, which were also applicable to situations before the Convention came into force.

Moreover, the uprooting of cultural heritage is considered an illegal act of foreign occupation and therefore condemned by international law with regard to conduct at times of war. Art.4 of the Hague Convention provides in s.3 that the countries must: "undertake to prohibit, prevent and if necessary put a stop to ... any acts of vandalism directed against cultural property", as well as to "refrain from requisitioning moveable cultural property" situated in the territory of another State. Art.11 of the same Convention also reads: "The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit". If these are obligations undertaken at the time of war, one would assume that, at the time of peace, countries are even more obliged to respect the cultural heritage of another State, as well as the objects that are of special significance to its nationality, history and religion.

These latter rights are also enshrined in articles 18 and 19 of the Universal Declaration of Human Rights of 10 December 1948, as well as in articles 9 and 10 respectively of the European Convention on Human Rights of 1950. Specifically they provide that everyone has a right to conscience, religion and expression. The above provisions, which, in fact, enshrine constitutional rights of the laws of most States, are subject to a teleological and flexible approach. Since cultural heritage contributes to the self-determination of people and to their intellectual integrity, the disposal of someone's national patrimony, or eradication of what constitutes his history and culture can only be a violation of the right to his personality, religion, national and cultural identity.[\(2\)](#)

Apart from the human rights' dimensions that the disposal of someone's cultural property has, the Ottomans also had no right to dispose of the Parthenon Marbles for one further reason. The Parthenon and the Acropolis site are the symbol not only of Athens but of Greekness itself and this is the very

reason they constitute part of the things known in Roman law as *res extra commercium*. In the Greek Civil Code (hereinafter GCC), in art. 966, these things are defined as those "which are of common use and those destined for serving public municipal, communal or religious purposes". Thus, the enhanced public interest brings them into the category of "untradeable" objects, which are not subject to any legal commercial transaction. The UK, paradoxically, does not seem to have any relevant provisions thereon, although there are some categories of things, e.g. public offices, which cannot be subject to a commercial transaction. But these excluded categories are generally those which are contrary to the standard morals rather than ones which merely seek to exclude a number of things from all commercial transactions. The UK has a favourable and strong attitude towards the protection of property and this liberal approach would not permit any derogations even in situations where cultural property is involved.

However, this concept of "untradeable" objects is also found, although in another context, in the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter the 1970 Unesco Convention). Art.7(b)(i) provides that State Parties shall "prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution".

But, even if we reverse the situation and consider Britain's attitude towards the exportation of a similar object of such a significance to its nation, we will observe that, although an "art-market" State, it would probably not grant an export licence. Taking into account the criteria that should be met (known as the Waverley criteria and found in the Report of the Committee on the Export of Works of Art etc which is known as the Waverley Report 1952) for the withholding of a licence (close association with Britain's history and national life, of outstanding aesthetic importance, of outstanding significance for the study of some particular branch of art, learning of history), the Parthenon Marbles would have been considered "untradeable" at least for the international market. Actually, in 1952, the Waverley committee considered the Elgin Marbles as an example of cultural objects of outstanding aesthetic importance for which no export licence would have been granted (see Maurice and Turnor 1992, p 280).

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(b) Whether Lord Elgin was authorised to remove the Marbles

In the examination of Elgin's authorisation to remove the Marbles from Parthenon, three questions should be considered. First, whether there was, in fact, any authorisation. Secondly, the nature of this authorisation, and lastly the extent of the powers it conferred on Elgin.

It is said that Lord Elgin, in order to have access to the Acropolis site, obtained a firman (a Turkish administrative written instrument) as a result of his request to the Sultan:

"(1) to enter freely within the walls of the Citadel, and to draw and model with plaster the Ancient Temples there.

-(2) to erect scaffolding and to dig where they (Elgin's working team) may wish to discover the ancient foundations.

-(3) liberty to take away any sculptures or inscriptions which do not interfere with the works

or walls of the Citadel." (Smith 1916, p 190)

However, the authoritative firman for the removal of the Marbles was never found. It was not presented either to the British Parliament in 1816, nor found in the archives of the Turkish government, where all the documents were kept as evidence of their content. Only an Italian translation of the firman is available, whose origin was not precisely defined, but it is attributed to the Reverend D P Hunt, secretary to Lord Elgin.

Yet, even if a firman was granted, its legal nature is basically uncertain. According to writers specialised in the Ottoman history (Sarris 1985, p 223ff.), and to the Oxford English Dictionary, a firman is "an edict/order/decree/permit/letter from the Ottoman government addressed to one of its officials ordering/suggesting/requesting that a favour be conferred on a person". Firmans were held in the Ottoman Empire, in fact, to be written permissions, which were not capable of annulling or amending the law (if the latter was providing for something contrary to the content of the firman) and which could not be held to constitute any kind of contract.

Moreover, the identity of the authority that edited the firman was never confirmed. Mr Abair, the British Ambassador who succeeded to Lord Elgin said that, on the basis of a letter written in 1811 by Lord Elgin, he understood that the Ottoman government "denied that the persons who had sold those Marbles to me (Elgin) had any right to dispose of them ...".

But, were the Marbles actually sold to Elgin? No contract of purchase was found (given also that the firman cannot be held to constitute one), nor was any form of consideration given to the Ottoman authorities. According to historians and the Report on the Elgin marbles of 1816, Lord Elgin used his special office as Ambassador and the defeat of the French in Cairo on 17 June 1801, as well as bribery, in order to obtain what otherwise would have been impossible.

Allegations such as "whatever the motivation (of the responsible officials) may have been, they had the legal authority to perform those actions" (Merryman 1983, p 776) seem to carry little weight. By virtue of the well-established principles enshrined in the laws of all the civilised countries, actions against the morals and the public interest affect the validity of an act and render it null. Article 178 GCC reads: "An act which is contrary to morality shall be null and void" (See further Stathopoulos 1995, pp. 114ff.). English law is also very likely to consider such acts illegal, as they might fall within the category of contracts through which a civil wrong is committed. Other legal systems also adopt a similar approach. Under the German Civil Code, in art.138, the transaction is void if it is contrary to public policy and the Swiss Code of Obligations holds transactions, which are *contra bonos mores*, as invalid.

Another issue that should be considered is the kind and extent of permission the firman conferred on Elgin. The phrase in the firman that seems to have authorised Elgin's massive removals of Marbles is the following, as quoted in the Report of the Parliamentary Committee on the Elgin Marbles of 1816:

"[Elgin's working team had permission] to view, draw and model the ancient Temples of the Idols, and the sculptures upon them and to make excavations and to take away any stones that might appear interesting to them" (3)

Unfortunately, the whole text of the firman cannot be quoted here in order to attempt a complete analysis and comparison with Elgin's initial request. Nevertheless, the aforementioned clause has to be seen in conjunction with the third paragraph of Elgin's request as outlined above. In that context, the firman's contended sentence seems to have been put there rather cursorily without any serious thought. The

powers it confers on Elgin are evidently ambiguous, whereas the Ottoman intention seems to be narrow and strict.

What is most likely is that at the time the Ottomans could not have foreseen Elgin's real intentions. They relied on their assumptions that Elgin basically wanted to copy the architectural structure of Parthenon as well as make copies of its decorations. They were probably deceived. Therefore, Lord Elgin, being surely "the best interpreter of the instrument by which he had acted, if he erred, he erred knowingly".⁽⁴⁾ What the Ottoman's actions would have been if they had realised Elgin's principle aim, is not clear. But it is more likely that they would not permit the denuding of the Temple and the dismantling of the sculptures, causing serious damage to the site, given that they themselves recognised its significance and had used it in the past as a Mosque.

From the foregoing it follows that Elgin had exceeded the powers conferred on him by the firman and it casts doubt on whether Elgin legitimately removed the Marbles from the Acropolis site or stole them on his own initiative, being supported by Turkish officials, who, by reason of their offices in Athens, could assist him after they were bribed.

The argument of estoppel, by reason of subsequent ratification by both Greek and Turks, derived from the inactivity of legal authorities, which can indicate acquiescence by implication, fails to consider two major issues. First, there is nothing which confirms that Greek and Turks were not displeased over the dismantling of the Marbles from the Temple, and it is unclear what the circumstances were which prevented them from taking radical steps. On the other hand, the local authorities of that time were not subject to any organisation or supervisory system that would enable them to act quickly and efficiently; nor could they understand the gravity of Elgin's act. Therefore, their inactivity should be interpreted restrictively.

In addition, an excess of authority on their part cannot be made legitimate by reason of implied ratification for two basic reasons. Firstly, no ratification by local authorities, which had no competence regarding the disposal of national property, could have been valid. But even if they were competent, the indifference or bad execution of public servant's duties cannot be turned against the State itself, which entrusted them in good faith with these duties. Secondly, implied ratification of an unlawful act is a notion alien to international law and therefore of no legal significance (Shaw 1991).

Thus, it follows that Elgin did not have any documentary proof of title or at least not a valid one. Consequently, he never became the owner of the Marbles. According to s.23 (sale under voidable title) of the Sale of Goods Act 1979 (hereinafter SOGA 1979), "when the seller of goods has a voidable title to them, but his title has not been voided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect". To the same result provide also art.1034 in conjunction with art.1036(1) GCC, according to which the purchaser does not become an owner, in a case where he purchases from someone, who is not the owner himself, unless he acts in good faith.

Given that the British Parliament before purchasing the Marbles was in full knowledge of the facts surrounding their acquisition as well as the inability of Lord Elgin to produce any documentary proof of title before them; and the fact that no good faith existed, according to the Latin maxim "nemo plus juris ad alium transferre potest quam ipse habet", enshrined in s.21(1) SOGA 1979 "where goods are sold by a person who is not their owner ... the buyer acquires no better title to the goods than the seller had ...", the British Government never acquired title to the Marbles, nor by extension did the Trustees of the British

Museum.

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3. Legal Consequences of the Long Passage of Time

A second legal basis that should be considered is the long passage of time and the effects it has on any claims of return of cultural property. From 1815 (when the last removals of the Marbles took place) until 1983 (when there was the first official request for their return from the Greek government), 168 years have passed and therefore any rights of return have been statute-barred. Specifically, according to s.2 Limitation Act 1980 (hereinafter LA 1980), an action founded on tort is prescribed in "six years from the date on which the cause of action has accrued". Article 937(1) GCC provides for five years. However, s.4 LA 1980 reads: "The right of any person from whom a chattel is stolen to bring an action in respect of a theft shall not be subject to the time limits under s.2 ...". Whereas art.937(2) GCC provides only for a longer prescription, equal to the one provided in the Greek Penal Code: five years from the time the injured party has had knowledge of the injury and of the person liable for compensation; or in any case for a twenty year period after the occurrence of the act.

Moreover, in the case where the British government is considered to be the trustee of the Parthenon Marbles, s.21(1)(b) LA 1980 is of interest since "no period of limitation prescribed in this Act shall apply to an action by a beneficiary under a trust, being an action ... to recover from the trustee trust property".

There is, of course, the view which holds that the Parthenon Marbles are immovable property, because they constitute an integral part of the Temple, although this view is not strongly related to a common-law system. This notion is found in English law under the concept of "fixtures" (objects which are attached in a permanent way to the building and which cannot be separated from the immovable and therefore are susceptible to any rules relating to it). The GCC enshrines this concept in its art.953 relating to "constituent parts", while the French Civil Code expresses it in art.526. Two English cases that had to deal with cultural property of this kind held that a door and a door frame that had been designed by the famous architect Adam and that had been detached from the house, should be returned and re-installed as they constituted an integral part of it and continued to do so after their unauthorised removal (*Phillips v Lamdin* [1949] 2 KB 33). While in *Norton v Dashwood* [1896] 2 Ch 497, tapestries which had been affixed to the walls of a house for more than one hundred years were also considered an integral part of it and therefore could not be separated without causing damage to their context.

However, the most interesting case, albeit a French one, is *Ville de Genève et Fondation Abegg v Consorts Margail* D 1985.208 where it was held that the frescoes detached from a building and sold outside the country remained immovables even after their detachment, and therefore they were subject to the rules relating to immovables. This case and its outcome present strong similarities with the English *Phillips v Lamdin* case.

The real issue about fixtures is whether these items have become part of the building. If any chattel is affixed definitively to a building as part of the overall and permanent architectural scheme that will be the case. The building with the fixtures incorporated in it is then treated as a single immovable item. Carved oak wall panels and balustrading to the staircase were considered to be fixtures as defined above in *Corthorn Land & Timber Company Ltd v The Minister of Housing and Another* (1965) LGR 490. Modern English law protects such fixtures along with any listed building under s.1(5) Planning (Listed

Buildings and Conservation Areas) Act 1990. Any removal of such fixtures is an offence, whether or not the person removing them realised that they were fixtures attached to a listed building or not. The offence is one of strict liability and no *mens rea* needs to be demonstrated. The decision in *R v Wells Street Metropolitan Stipendiary Magistrate, ex parte Westminster City Council* [1986] 3 All ER 4; [1986] 1 WLR 1046, does not allow for any other conclusion. And as long as a reasonable percentage of the material which formed part of the unlawfully demolished building (70 to 80 per cent of a listed barn in the case at issue, *R v Leominster District Council, ex parte Antique Country Buildings Ltd and Others* and *Scott and Others v Secretary of State for the Environment and Another* (1988) 56 P&CR 240; (1988) 2 PLR 23; (1988) JPL 554) remains available the appropriate sanction is the restoration of the building. Fixtures which have been detached from the building can only be treated again as chattels if they have been detached lawfully. Any other conclusion would be wrong because it would favour the offender who took fast and radical action to destroy the building and its architectural scheme. The argument advanced by Hoffman J which was quoted in *R v Leominster District Council, ex parte Antique Country Buildings Ltd and Others* and *Scott and Others v Secretary of State for the Environment and Another* that the remaining pieces of a wrongfully demolished building are still a building for legal purposes applies here by analogy.

If we continue our application by analogy and consider the Elgin Marbles case in the light of the current English law the outcome is rather straightforward, albeit obviously not legally binding. The Marbles are an integral part of the Temple building and must be considered as fixtures. Their removal can, in the light of the evidence, hardly be considered to be entirely lawful. The intentions and motives of the parties involved are without relevance. The only outcome can be the restoration of the Temple to its original state. This presents, at the very least, a strong moral argument for the return of the Marbles to Greece. What is the mandatory solution for any listed building in England, must clearly also be the appropriate solution for one of the world's unique pieces of architectural heritage.

Or do we operate a dual standard when on the one hand returning the Stone of Scone to Scotland, after having taken it in the 13th century in circumstances which were definitely not as doubtful as those in which Lord Elgin acquired the Marbles, while on the other hand retaining the Parthenon Marbles in London? If all time limitations could be ignored in the former case and moral arguments were allowed to take the higher ground in the absence of an cast iron legal case favouring either side, surely the same should apply in the case of the Marbles, even if cynics would add that in Athens there are no votes to be won by British politicians.

Section 15 LA 1980 provides in cases relating to immovable for a limitation period of 12 years while art.249 GCC provides for a 20 years period. Nevertheless, both the English statute, in s.28(1) and the Greek law in art.255 provide that this time limitation is suspended in case of force majeure. English law provides more specifically for an "extension of limitation period in case of disability". If in the period, where someone is entitled to raise an action certain events take place, which make it impossible for him to claim his rights, the statutory limitation periods are suspended. Since 1830, when Greece became an independent State and until the final restoration of democracy, it has had to face five wars and two dictatorships. Thus, it was by analogy unable to claim back cultural property when more pressing problems had to be given priority.

Nevertheless, even apart from any provisions in national law, international law does not recognise any statutory limitation periods. Consequently, any rights of return can still be claimed since national law cannot prescribe any rights in international law (see Shaw 1991). Moreover the Hague Convention as

well as the 1970 Unesco Convention have no provision on prescription. ICOM, the International Council of Museums, also made clear that "in no event shall the State, which holds the cultural property in question, be able to invoke any statutes of limitation" (Venice Committee, Unesco Doc. SHC-76/CONF.615/5,5). In that light, because of the special interest and bonds of people to their cultural heritage, many cases have been settled, irrespectively of time limits, including the case concerning the Manuscripts taken from the library at Heidelberg in 1622 (Nahlik 1983, p 12).

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4. Restitution and return of the Marbles

According to art.2 of Directive 93/7/EEC of 15 March 1993 ((1983) OJ L 74, 27.03.1993, p 74) cultural objects unlawfully removed from the territory of a Member State "shall be returned in accordance with the procedure and in the circumstances provided for in this Directive". Art.7(b)(ii) of the 1970 Unesco Convention, also, comes in support of this obligation. Specifically it provides that: the Parties at this Convention undertake "at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property". Also the most recent international legal instrument in the area of cultural property, the 1995 Unidroit Convention on stolen or illegally exported cultural objects (hereinafter the Unidroit Convention) provides in art.3(1) that "the possessor of a cultural object which has been stolen shall return it"; while in relation to illegally exported cultural objects it provides in art.5(1) that "a contracting state may request the court or other competent authority of another contracting state to order the return of a cultural object illegally exported from the territory of the requesting state". One needs to add though that the international legal instruments referred to above do not cover claims before their entrance in force. Thus, in this article they are considered from a general principles point of view.

Therefore, given that the Marbles have been illicitly exported from the Greek territory, the British Museum is obliged to return them to their country of origin according to the principles deriving from the European Directive and the International Conventions. "The principle of physical return of cultural property is, through increasing State and Institutional practice, becoming a custom of international law" (Greenfield 1989, p 104); and rules of customary law may become an overriding principle of international law known as "ius cogens" (see e.g. Brownlie 1990, p 512ff.).

However, the same issue has already been the subject of close scrutiny at the Unesco World Conference on Cultural Policies, which was attended by Ministers of Culture in Mexico in 1982. The Conference has published Recommendation No.55, which reads as follows:

"Recalling resolution 4/09 adopted by the General Conference of Unesco at its twenty-first session, on the return of cultural property to its countries of origin,

Recalling the recommendations adopted by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its second session (Paris, 14-18 September 1981).

Considering that the removal of the so-called Elgin marbles from their place in the Parthenon has disfigured a unique monument which is a symbol of eternal significance for the Greek people and for the whole world,

Considering it right and just that those Marbles should be returned to Greece, the country in which they were created, for reincorporation in the architectural structure of which they formed part,

1. *Recommends* that Member States view the return of the Parthenon Marbles as an instance of the application of the principle that elements abstracted from national monuments should be returned to those monuments;

2. *Recommends* that the Director-General give his full support to this action which comes properly under the heading of the safeguarding of the cultural heritage of mankind".

If this Recommendation is taken up Britain might have a claim for compensation if the Parthenon Marbles are returned. Art.7 of the 1970 Unesco Convention in s.7(b)(ii) provides that "the requesting State shall pay just compensation to an innocent purchaser or to a person who has a valid title to that property". Articles 3(3) and 6(1) of the Unidroit Convention contain a similar solution. However, it has become clear so far that Britain was neither an innocent purchaser acting in good faith nor does it have a valid title given the questionable acquisition of the Marbles by Elgin.

Nevertheless, Britain can claim as a bailee the costs of the preservation of the Marbles. The preservation of cultural antiquities is very costly and few museums can afford to give away objects in which they have invested time and money. However, Britain has, in fact, been compensated in two ways. First, it has been compensated *in natura* by the number of tourists who have visited London over the last 180 years to see the Marbles and secondly, by setting off its claims against Greece's claim for the demolition of the Parthenon Temple.

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III. The Ethics of the Case

The moral issues deriving from the Parthenon Marbles case have to be considered at this stage, not only because they represent some very interesting points, but also because they carry weight both in national and to an even larger extent in international law. In international law they can justify the return of the Marbles when being considered as an independent basis, apart from any claims at national level.

1. Was Lord Elgin a Preservationist?

The British have occasionally set out various reasons to justify their insistence on the Marbles staying in Britain. The first reason to be mentioned is that England succeeded in preserving the Parthenon Marbles in a period where the antiquities in Greece were in danger because of the war or because of the ignorance of certain people. Therefore Elgin acted in the spirit of a preservationist rather than in the spirit of someone who is only pursuing his own profit.

The retention of the Parthenon Marbles on such grounds is unjustifiable. This is so firstly, because the question why the Marbles that were left on Parthenon did not suffer any damage receives no satisfactory answer. And secondly, because, although Elgin did spend much of his fortune removing the Marbles from the Parthenon and shipping them to Scotland, he had no intention of either preserving the Marbles for the Greeks or of making them a gift to the British State. If Elgin had been altruistic and had merely

taken the Marbles out of danger, the logical conclusion would be that the antiquities should be returned to Greece now that the reasons of their initial removal no longer exist.

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2. Are the Parthenon Marbles Safer in London?

Safety is no longer an issue since after their return to Greece the Parthenon Marbles will not be exposed to the open air natural environment, but they will be housed at the Acropolis Museum, where they can be preserved in the best possible way.

The ornaments, friezes, metopes, and pediments will be in their architectural context when placed in the Athens Museum, although they will still be displayed in a museum, whereas in the British Museum they are not being displayed in their authentic setting. Such an approach is fully in line with the recommendation that "there is deep-rooted and indissoluble bond between nature, man and his artistic creations" (Zaire, UNGA (XXX) Explanatory Memorandum A/9199,2). The Marbles are an integral part of the Parthenon Temple itself, so, seeing them in conjunction with the Temple is essential for a better understanding and assessment of these pieces of art. Dissociated from the rest they lose most of their meaning, mystique and significance.

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3. Would the Return of the Marbles Set a Precedent for the Denuding of the World Museums?

This argument seems to fail to distinguish between the particularities some cases present. Debates on cultural property should always be subject to a case-by-case approach, so that strong petitions which are well-founded as the Parthenon Marbles one, can be separated from the ones that are weak and unjustified as for example items of lesser significance which can be found in large numbers so as not to constitute irreplaceable pieces of art which are of priceless national significance and form the symbol for a nation and a culture. Greece's claim is particularly strong. Mainly, because the Parthenon is a unique piece of cultural heritage of great architectural, philosophical and historical significance. Therefore its integrity should be supported. And secondly, because the idea of the Parthenon was conceived and realised by Greek sculptors in Athens, where the Temple still remains in recognisable form while the partial damage is due to Elgin's massive removals.

However, the Parthenon Marbles case was not the first one to be considered. Many antiquities have found their way back to their country of origin. In 1948, the Wright Brothers' Kittyhawk aircraft was returned to the United States from London's Science Museum. In 1962 the University Museum of Archaeology and Anthropology at Cambridge returned cultural objects to the Kabaka of Uganda. The Ethiopian Manuscripts were returned in 1872 and in early 1930s Ceylon took back the shrine, sceptre and orb of the last King of Kandy. Did these cases and numerous others change the flow of history or did they upset the international status quo?

In addition, given that the legitimacy of the acquisition of the Marbles is questionable, their return would not merely constitute an act of good will by Britain, but it would also be in compliance with the world-wide approved ethics of no retention of cultural material whose legitimacy is ambiguous. Art.3(2)

of the ICOM Code of Professional Ethics of 1986 states: "A Museum should not acquire whether by purchase, gift, bequest or exchange, any object unless ... (it is) satisfied that it can acquire a valid title to the object in question and that in particular it has not been acquired in, exported from, its country of origin ... in violation of that country's laws".

Lastly, arguments against the return of cultural objects on grounds of alleged nationalism (Merryman 1983, p 785) are devoid of substance. It is doubtful whether in that light Britain would be willing to dispose of Big Ben, Westminster Abbey, Shakespeare's own manuscripts if these are ever found or America of its Statue of Liberty. In his article Merryman seems to confuse the notion of "cultural internationalism" with that of "cultural imperialism", and, after all, as O'Keefe and Prott point out in a characteristic way, "there is something equally nationalistic in the view that a particular ... State is an especially appropriate custodian of other people's material culture, irrespective of their laws and their views" (O'Keefe and Prott 1989, p 470.).

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Conclusion

In this article the law and the ethics of the Parthenon Marbles case have been analysed, showing the complexity of the issues involved. Both parties have interesting points and arguments to make, but evidently any solution has to favour just one of them. The two basic arguments of the retentionists regarding Britain's title of possession and the passage of time have proved to be weak and they are therefore unconvincing. On the side of morality based arguments it has also been concluded that preservation and safety are no longer viable arguments since Greece is able to provide both. However, these arguments were once more presented by the British government as a response to Lord Jenkins' question and plea for the return of the Parthenon Marbles when it was brought before the House of Lords. On 18 January 1996 this discussion took place and the same ethical issues, as the ones that were rebutted in this article, were raised. In spite of the flimsiness of these arguments the British government made it clear that it had no intention of returning the Marbles.

Nevertheless, the Parthenon Marbles case is not only a legal and moral one, but it also touches the heart of the Greek nation. Characteristic in this respect are the words of the former Greek Minister of Culture, Melina Mercouri:

"This is our history ..." (San Francisco Chronicle, 26 May 1983, p 26)

"(T)hey are the symbol and the blood and the soul of Greek people ... (W)e have fought and died for the Parthenon and the Acropolis ... (W)hen we are born, they talk to us about all this great history that makes Greekness ... (T)his is the most beautiful, the most impressive, the most monumental building in all Europe ..." (New York Times, 4 March 1984, p 9).

Even J H Merryman agrees that "if the matter were to be decided on the basis of direct emotional appeal, the Marbles would go back to Greece tomorrow" (Merryman 1983, p 759). As has been shown above even if the matter were to be decided on the more tangible grounds of law, Greece would still have a strong case. And after all, law cannot be considered in isolation. If it is to fulfil its natural role it has to be blended in with the realities and the real life in which it finds its roots and from which it is destined to be an emanation.

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Footnotes

(1) The Parthenon is the central building of the Acropolis of Athens. It is the most representative temple of the High Classical period of the Greek art. It was built in 488 B.C., during the Golden Century of Pericles (famous statesman at the period of Athenian Democracy), by the architects and sculptors Phidias and Ictinus. It was a temple in Doric style which succeeded in a unique way to combine optimism, quality, symmetry and simplicity. The whole work took sixteen years to be completed. The basic material used for its construction was Pentelican Marble. The pillars were made of marble as well as the sculptures which decorate it. There were no separate decorations attached to it. The pillars, the pediments, the frieze and the metopes were an integral part of the whole structure and the ornaments were sculptured on them. [Back to text](#).

(2) It is worth mentioning here that the denuding of one of the most important cultural sites of the world by Elgin lead the French to associate his name with a form of cultural vandalism (Elginisme). [Back to text](#).

(3) Quoted from the translation of the Italian text which Dr Hunt submitted to the 1816 Parliamentary Committee. [Back to text](#).

(4) See Mr Best's speech in the June debate of the Parliamentary Committee on the purchase of the Marbles. [Back to text](#).