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The International Restitution of Classical Antiquity:
Creating Uniformity Within Museum Restitution Policy

By

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A Thesis Submitted to

The Faculty of the Department of Public Policy and Law

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Abstract

This thesis will explore the scope of the restitution debate for Greek and Italian classical antiquities and how it has evolved over the past 70 years. Chapter 1 will focus on the scholarly works of well-known figures within the restitution debate, including John Henry Merryman, James (Jim) Cuno, and Patty Gerstenblith. Their work is crucial in developing the terminology that defines the debate and also for understanding their opinions on both sides of the debate. Chapter 2 will center on claims to cultural property and restitution efforts that have been made at both the international and national level. The three major international conventions, Hague 1954, UNESCO 1970, and UNIDROIT 1995 will be examined. The United States' 1983 Convention on Cultural Property Implementation Act (CCPIA) that applies to American museums specifically will be explored. Museum associations such as the Alliance of American Museums (AAM), the Museums Association (U.K. only), and the International Council of Museums (ICOM) will all be examined as well. Finally, the individual policies of the Metropolitan Museum of Art (MET) and the British Museum will also be discussed.

Chapter 3 will focus on two major restitution case studies, the Euphronios Krater and the Elgin Marbles. The Euphronios Krater, once owned by the MET, and the Elgin Marbles, still in the possession of the British Museum, are two entirely different antiquities with deep histories of illegal ownership history. Lastly, Chapter 4 will provide a policy proposal for the future of restitution policy. By giving more authority to ICOM, binding, international policies for restitution can be imposed through a new membership agreement. All of these chapters help explain the restitution debate throughout recent history with the goal to find a possible solution to the long debate of who "protects" cultural property the most effectively.

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“We didn’t want objects that weren’t rightfully ours.”

- Katie Getchell, 2006 MFA Boston Deputy Director,

New York Times Interview

Introduction

In 2006, the Museum of Fine Arts Boston faced a restitution claim from Italy for a group of Greek vases and a statue of the Empress Sabina, who was the wife of one of the “five good” Roman emperors Hadrian.¹ The Italian government desired the artifacts to be returned by the museum and had evidence supporting their claim. Their evidence concluded that the artifacts had been looted from Italian soil illegally many years prior to the MFA Boston’s acquisition.² The approaches that museums take with restitution claims are almost always unique, and in this case, the MFA Boston ultimately returned the antiquities. In 2006, despite “staring each other down at a negotiating table, bargaining tensely over who should have title to 13 archaeological artifacts,”³ by the end of 2007, “they seemed the best of colleagues, amicably discussing how museums might cope with demands for the restitution of cultural property.”⁴

The MFA Boston chose an ethical approach, deciding that returning the artifacts was better for the antiquities and their own reputation. There was cooperation from both sides, where a lawyer representing the Italian government said that “now we’re the tangible example of what happens when there is collaboration.”⁵ Italy became aware that cooperating with the MFA Boston in their best interest rather than forcing a legal avenue, which is more often the case with restitution. The return of the artifacts is both important to Italy’s cultural heritage and representative of their history. Italy chose to send other artifacts on loan as compensation to replace the loss by the museum, but the museum didn’t force that to happen. Instead, the deputy director of MFA Boston at the time, Katie Getchell, simply felt that “we didn’t want objects that

¹ Elisabetta Povoledo, “Returning Stolen Art: No Easy Answers,” *New York Times*, October 27, 2007, <https://www.nytimes.com/2007/10/27/arts/design/27ethi.html>

² Povoledo, “Returning Stolen Art.”

³ Povoledo, “Returning Stolen Art.”

⁴ Povoledo, “Returning Stolen Art.”

⁵ Povoledo, “Returning Stolen Art.”

weren't rightfully ours."⁶ Getchell played a major role in the decision-making to send the artifacts back. Getchell said to a University of Milan conference panel after the artifacts were returned that "I can confirm that a responsible, legal, ethical solution to disputes is possible."⁷ Both Italy and the MFA Boston benefited from the agreement. As a result, Italy received antiquities important to their cultural heritage while the MFA Boston made an ethical choice that boosts their public perception and also received more artifacts on loan. Looking back on the agreement roughly 15 years later, it remains one of the most successful restitution agreements in recent history.

Classical antiquity has been dispersed throughout museums across the world following an extensive looting era during the latter half of the 20th century. In fact, "from 1970 to 2006...more than 858,000 art objects originating in Italy were stolen, and only a third have been recovered."⁸ Italy is not alone in its request to have cultural property returned to them. Greece faces the same issue with its antiquities in museums and the struggle to have them returned. Currently, the restitution debate lies within encyclopedic museums wanting to retain their massive collections. They face continuous restitution claims, legal and ethical, from nations that once proudly celebrated their cultural heritage with these antiquities. Most notably, nations like the U.S. and the U.K. face the most restitution claims due to their abundance of encyclopedic museums containing classical antiquities. The questions center on who has the right of ownership of cultural property and which are artifacts unique to a specific nation. Essentially, "does a country that produced cultural property have the right to it, or museum visitors around the world

⁶ Povoledo, "Returning Stolen Art."

⁷ Povoledo, "Returning Stolen Art."

⁸ Povoledo, "Returning Stolen Art."

who get to appreciate it?”⁹ This debate shows no sign of ending soon, but efforts have been exhaustive to find a solution.

This thesis will explore the scope of the restitution debate for Greek and Italian classical antiquities and how it has evolved over the past 70 years. Chapter 1 will focus on the scholarly works of well-known figures within the restitution debate, particularly John Henry Merryman, James (Jim) Cuno, and Patty Gerstenblith. Their work is crucial in developing the terminology that defines the debate and also for understanding their opinions on both sides of the debate. These three figures have enjoyed successful careers in educating the public on art law. Chapter 2 will focus on claims to cultural property and restitution efforts that have been made at both the international and national level. The three major international conventions, Hague 1954, UNESCO 1970, and UNIDROIT 1995 will be examined. The United States’ 1983 Convention on Cultural Property Implementation Act (CCPIA) that applies to American museums specifically will be explored. Museum associations such as the Alliance of American Museums (AAM), the Museums Association (U.K. only), and the International Council of Museums (ICOM) will all be examined to see how they affect individual museum policies. Finally, the individual policies of the Metropolitan Museum of Art (MET) and the British Museum will also be discussed. This chapter will explain how far the restitution debate has come since the concern for cultural property protection expanded throughout the 20th century.

Chapter 3 will focus on two major restitution case studies, the Euphronios Krater and the Elgin Marbles. The Euphronios Krater, once owned by the MET, and the Elgin Marbles, still in the possession of the British Museum, are two entirely different antiquities with deep histories of illegal ownership history. Lastly, Chapter 4 will provide a policy proposal for the future of restitution policy. By giving more authority to ICOM, binding, international policies for

⁹ Povoledo, “Returning Stolen Art.”

restitution can be imposed through a new membership agreement. All of these chapters help explain the restitution debate throughout recent history with the goal to find a possible solution to the long debate of who “protects” cultural property the most effectively.

Chapter 1.

Fundamental Scholars for Cultural Nationalism and Internationalism

Throughout the 20th century, the cultural property illicit trade market grew to become larger than ever before. Specifically with classical antiquity, artifacts were stolen and sold for a profit. Following a lengthy chain of title, many museums found themselves as the buyers or recipients of these artifacts. Cultural property, which “on religious or secular grounds, is specifically designated by each state as being of importance for archaeology, prehistory, history, literature, art or science,”¹⁰ was spread out across the world. Encyclopedic museums, which are large institutions that maintain a collection of artifacts from around the world, compiled extensive amounts of cultural property for their collections. Some of these museums can be found in the U.S. and U.K., which don’t share the same copious amount of cultural property as more Eastern countries. These Eastern countries, such as Greece and Italy, did not share the same strength of government as the U.S. and U.K. This meant they had less control over their export of cultural property but eventually realized the need to gain it back. The lack of a systematic process for a restitution agreement, as well as the rise of the illicit trade market, showed the acquisition process of cultural property raised many questions.

The process by which museums had come into possession of antiquities suddenly was under scrutiny. What seemed simple many years ago forced museums to take their own steps in returning cultural property back to countries through restitution. Encyclopedic museums facing criticism drafted their own policies focusing on ethical and legal approaches. These encyclopedic museums, based on what cultural property they had in their possession and what countries were asking for them back, had to make decisions about whether to return property through restitution.

¹⁰ Culture and Science Ministry of Education, “What Is Cultural Property? - Cultural Goods - Information and Heritage Inspectorate,” Webpagina (Ministerie van Onderwijs, Cultuur en Wetenschap), last updated December 22, 2014, <https://english.inspectie-oe.nl/cultural-goods/what-is-cultural-property>.

For example, a museum acquired cultural property from a private dealer; however, the private dealer may have acquired the item illegally, still making the museum responsible. A return would be imminent upon proper review of the artifact's ownership history. Moreover, a lack of evidence of artifact ownership history might suggest a museum's failure in the acquisition process.

The ethical and legal issues museums face informs the restitution debate today. Whether a museum should return cultural property to its origin nation is the biggest question. Restitution policy has grown as museums continue to benefit financially from property that countries want back. This causes the act of returning objects to become a highly contested and difficult process. Nonetheless, encyclopedic museums across the world face growing pressure to return cultural property to their origin countries. Overall, efforts are sporadic and mostly result following threats of litigation from origin nations. The purpose of this chapter is to examine the expert scholars who discuss the restitution debate and the challenges of creating a uniform international restitution policy. Their work helps origin countries, museum organizers, and the public to understand the restitution debate better.

Three principal scholars have defined the contours of the debate. John Henry Merryman was one of the first principal scholars to discuss the restitution debate beginning in the 1970s, helping to describe the framework that forms the two major sides of the debate. As an ethicist, his work describes the importance for museums to understand their conflict with restitution and how to act. Stemming from Merryman are the terms new scholars mostly identify with, those being "Cultural Nationalism" and "Cultural Internationalism," both of which have values on opposite sides of the argument. Although he may appear unbiased, Merryman was a collector and has internationalist tendencies that contradict his work. Still, Merryman stood at the forefront of the debate, which would have gained less traction without him.

The second principal scholar is James Cuno, an art historian, curator, and former CEO of the J. Paul Getty Trust in Los Angeles, CA. He is an advocate for keeping universal museums intact and returning as little cultural property as possible back to origin nations. He takes a larger worldview when discussing ownership rights and possession of cultural property. Furthermore, Cuno is on one side of this debate and has even said the laws constituting the return of cultural property need to be further evaluated and rewritten due to vagueness. Because of this, his bias appears often in his work and his opinions cannot be taken for fact. Nonetheless, his work is important to analyze when it comes to museum curators and the policies they create for returning cultural property.

The third and final scholar is Patty Gerstenblith, best known for her work surrounding cultural property provenance. Provenance is one of the core factors of the debate itself. It refers to the ownership history of cultural property and is a very hard process to track without proper documentation. Gerstenblith's work helps to describe the restitution process when provenance is involved and how it can become the biggest solution when enough provenance knowledge is acquired. Thus, the purpose of this chapter is to analyze the works of Merryman, Cuno, and Gerstenblith as they are all expert scholars within the restitution debate and their work has helped piece together knowledge that forms the debate itself.

John Henry Merryman

Widely considered to be a "founding father" for the cultural property restitution debate, Merryman evaluated the debate as a whole. Merryman's work quickly rose in popularity as he discussed the debate and introduced terminology for the first time, preaching why cultural property ownership matters so many years later. It can be easy to praise Merryman for his work, but it is important to keep in mind his internationalist roots as a collector. Still, Merryman likely

became popular so quickly because no one had evaluated the restitution debate during the 1970s, therefore reading his work was influential for people who wanted to learn more about the topic.

Merryman's strongest insights come from his ethical perspective, applying his ideals that litigating is not the best approach when determining who owns cultural property. Merryman believed that "the law is presumed to be in the wrong. Ethics has a higher moral status than law."¹¹ Merryman recognizes that the law and the ethics might conflict when it comes to the cultural property in question. Ethics would advocate that cultural property should be returned, while the law would evaluate whether the cultural property should be returned. Merryman notes that: "in the absence of a treaty, the foreign state has no obligation under international law to seize and return the illegally exported work."¹² Instead, "codes of ethics and much world opinion, however, call for the return of illegally exported works... Thus the legal rule and the applicable ethical principle... appear to conflict when applied to works of art."¹³

Ethics are important in the cultural property debate when it comes to nations determining their own cultural property laws and what to do on a case-by-case basis. There is a case to be made for the "ethical mobility"¹⁴ of cultural property when it comes to deciding the best way to preserve antiquity. Merryman proposes three factors, fragility, integrity, and information when it comes to effectively protecting cultural property. Depending on the artifact, it may be best not to move it at all, or on the other hand, move it to somewhere else for the cultural artifact to survive. He says that: "Are some objects so delicate that movement exposes them to an unacceptable risk of damage or destruction? Should the source nation have an ethical obligation to restrict the movement of such objects?"¹⁵ However, "if taken abroad [to] receive proper care; would it be

¹¹ John Henry Merryman, "Cultural Property Ethics," *International Journal of Cultural Property* 7, no. 1 (1998): 21.

¹² Merryman, "Cultural Property Ethics," 23.

¹³ Merryman, "Cultural Property Ethics," 23.

¹⁴ Merryman, "Cultural Property Ethics," 26.

¹⁵ Merryman, "Cultural Property Ethics," 26.

ethical for the source nation to prevent removal of such objects to safety?"¹⁶ Essentially, is it worse to either remove an object at all based on concerns solely for removal, or to remove it by getting it restored elsewhere for continued preservation?

Merryman poses a question to the reader in his article on ethics. He discusses a hypothetical scenario in which a church painting is falling apart and chipping, but law prevents it from being removed and restored elsewhere. The church priest wants it to be taken away and repaired, but it has not happened. Ethically, it feels right to remove and restore the painting elsewhere so more people can continue to enjoy it for years to come. Legally however, it is wrong to remove the painting at all due to its historical nature and structure. There is no right answer to this debate, but this is exactly what Merryman wants his readers to understand when it comes to ethics, that it is more important than the law.

As mentioned before, Merryman created the framework and terminology for the restitution debate, and most importantly the two major ways to view cultural property. One way would be to view cultural property as part of all human culture, regardless of national ownership, property rights, and where the artifact is located presently.¹⁷ By contrast, cultural property could be interpreted as national cultural heritage regardless of ownership and its current location. This means the origin nation reserves all rights to wherever its cultural property is in the world.¹⁸ When comparing these two competing theories, they differ in terms of defining cultural property as either property of the world or instead as property of specific nations. Merryman coined "source nations" and "market nations" when it comes to the dichotomy of cultural property ownership. Source nations have a dilemma, where "the supply of desirable cultural property

¹⁶ Merryman, "Cultural Property Ethics," 26.

¹⁷ John Henry Merryman, "Two Ways of Thinking about Cultural Property," *American Journal of International Law* 80, no. 4 (October 1986): 832.

¹⁸ Merryman, "Two Ways" 832.

exceeds the internal demand.”¹⁹ Market nations have the opposite issue, where their “demand exceeds the supply.”²⁰ For example, the United States, a relatively new nation, does not have sufficient domestic cultural property needed for its encyclopedic museums. Therefore, these nations encourage the legal purchasing of cultural property from source nations. Market nations export cultural property from source nations, and many exported artifacts do not have clean ownership histories. In the past, it was up to the museums to determine whether they still wanted to purchase the artifact. Because of how source and market nations operate, and the constant circulation of cultural property, the exportation of artifacts continues to thrive throughout the world.

Merryman described the market and source nations by the terms “Cultural Internationalism” and “Cultural Nationalism.” These terms will be explored at greater length further in the chapter, but it’s important to summarize Merryman’s main points about them. Essentially, the terms are “different emphases, one cosmopolitan, the other nationalist; one protective, the other retentive, [they] characterize two ways of thinking about cultural property.”²¹ “Cultural Nationalists” support retaining as much cultural property as possible and not exporting artifacts to other countries. While this side supports cultural property remaining in its home, it can lead to what Merryman calls “destructive retention” or “covetous neglect.”²² The act of hoarding or storing so much internal cultural property can be damaging to the artifacts themselves when they might be better suited for preservation, and even viewing, elsewhere. “Cultural Internationalists” support museums in continuing to purchase cultural property and

¹⁹ Merryman, “Two Ways,” 832.

²⁰ Merryman, “Two Ways,” 832.

²¹ Merryman, “Two Ways,” 846.

²² Merryman, “Two Ways,” 846.

interpret them as objects really without ownership. They believe the artifacts should be for the world to examine, analyze, and enjoy.

Merryman has never stated a clear preference for nationalism or internationalism, but his bias for the internationalist approach is evident. Indeed, critics of his work have found him to be sympathetic towards museums, falling under “moderate internationalism.”²³ His opinions were formed during his acquisition of his art collection, when “during his travels, he and his wife began collecting modern art.”²⁴ In regards to his collection, he was quoted saying: “Here’s a great work of art by a great artist, and it has my name on it...Is there a greater honor?”²⁵ Clearly, Merryman has an affinity for collecting art, which shows he is biased towards internationalism in creating collections. Furthermore, his sympathetic wording is found in some of his earlier works regarding internationalism, where he describes cultural property as including “components of a common human culture, whatever their places of origin or present location, independent of property rights or national jurisdiction.”²⁶ Here Merryman betrays a bias by viewing internationalism favorably as property rights and national jurisdiction are main factors of the nationalist perspective. This language questions what else might be said about nationalism within his other works with this bias. Still, the important takeaway is that both nationalism and internationalism contribute to the restitution debate and that neither side is entirely correct in all cases. It should be noted that the “heritage of any human culture belongs both to that culture’s

²³ Marina Papa-Sokal, “Beyond the Nationalist-Internationalist Polarisation in the Protection of Archaeological Heritage: A Response to Professor Merryman,” *Art Antiquity and Law* 14, no. 3 (October 2009): 248.

²⁴ Sam Whiting, “John Henry Merryman, Law Professor and Art Collector,” SFGATE, last modified August 20, 2015,

<https://www.sfgate.com/art/article/Obituary-John-Henry-Merryman-law-professor-and-6453580.php#:~:text=John%20Henry%20Merryman%2C%20law%20professor%20and%20art%20collector.>

²⁵ Whiting, “John Henry Merryman, Law Professor and Art Collector.”

²⁶ Merryman, “Two Ways,” 831.

descendants and to humanity as a whole. It follows that both ‘nationalist’ and ‘internationalist’ concerns are relevant and deserve to be accommodated in cultural-heritage policy.”²⁷

More questions are raised about the intentions of cultural property internationalism than actual confirmation when it comes to those that believe cultural property belongs in museums. However, internationalism can more broadly include the fact that cultural property is meant to be enjoyed throughout the world, not just within museums. Internationalism doesn’t always represent cultural property rights when it comes to cultural property. Rather, it goes beyond museums and into discussions about accessibility and affordability for those who cannot travel.

Merryman made a point about the laws holding artifacts back from the world’s view:

“Consider a typical law prohibiting export of works of art over 100 years old. Such a law may protect works too fragile to travel, but it also immobilizes sturdier works that could circulate without significant risk of damage or destruction. The same law may keep at home works of outstanding importance to the nation’s history and culture but, as we have seen, it also can be and has been used to prevent the export of works that have no such relationship or importance. Similarly, a law that prohibits trade in antiquities can help immobilize objects that ought to be retained in place, but it will also add to the hoarded stocks of redundant antiquities that languish unconserved, unstudied, unpublished, unseen, and unloved in the warehouses of major source nations.”²⁸

Source nations grapple with how to best protect their cultural property, and sometimes protection laws might harm their cultural property inadvertently. Source nations creating laws that cause some cultural property to unintentionally suffer or be hidden from the public is one of the more stronger internationalist arguments.

Despite the biases discussed above, John Henry Merryman contributed significantly to the cultural property and restitution debate. His ethical concerns for cultural property have helped museums develop their own restitution policies, creating a path for continuing changes

²⁷ Papa-Sokal, “Beyond the Nationalist-Internationalist Polarisation,” 248.

²⁸ John Henry Merryman, “Cultural Property Internationalism,” *International Journal of Cultural Property* 12, no. 1 (2005): 31.

when it comes to museum and source nation agreements. His concern for ethics is missing from the legal approach and internationalist stance that the next scholar, James Cuno, is criticized for.

James Cuno

James (Jim) Cuno is a second principal scholar who has revolutionized the internationalist side of the debate and is an advocate for the position that museums should retain their cultural property. As the former J. Paul Getty Trust CEO in Los Angeles, Cuno argues that encyclopedic museums are important to world history and therefore their collections should remain intact. After analyzing Cuno's work, he should be regarded as the most biased and opinionated scholar of the three. His internationalist claims are strong, but they cannot be taken for fact, an important point to remember. With that being said, he believes that source nation governments "are increasingly making claims of ownership of cultural property on the basis of self-proclaimed and fixed state-based identities"²⁹ with a nationalist propaganda narrative. Encyclopedic museums allow visitors to take in years' worth of history and they have worked hard to not only build such an environment but should not be forced to give antiquities back based on what he believes is nationalist propaganda. Rather, a "cosmopolitan worldview" instead of a "nationalist concept"³⁰ of cultural property should be considered. He believes artifacts no longer have a strong relation to the current culture of a source nation, rather they are property that attracts tourism and generates wealth once returned.

Cuno's opinions developed before his job in Los Angeles, where he was tasked with putting together different museum collections. His research on their ownership history started to catch up to him based on the criticism he received. Cuno did recognize the danger in acquiring cultural property illegally and that it could harm a museum's reputation. However, when the

²⁹ James Cuno, "Culture War: The Case Against Repatriating Museum Artifacts," *Foreign Affairs* 93, no. 6 (2014): 119–120, <http://www.jstor.org/stable/24483927>.

³⁰ Cuno, "Culture War," 120.

problem of unknown ownership history stepped in his way, Cuno felt that this should not stop museums from acquiring the object. When asked about this acquisition conflict, Cuno said: “I told him why we had acquired them and that they were better in our hands, in the public domain, and published for the world to know than in a private collection somewhere, whereabouts unknown.”³¹ His stubbornness to stand by his beliefs is often shown in his interviews.

Cuno certainly will argue for why the restitution process might be flawed. He believes that the laws governing restitution are weak or politically motivated. It seemed as though museums were returning cultural property back to a source nation if even a sliver of evidence existed. This can be seen with this important quote:

“I found discussions about the law—strictly speaking, about the legality or illegality of acquiring unprovenanced antiquities—insufficient, and in the end even uninteresting. They were too narrowly focused; too technical. They didn’t ask why such laws were written in the first place, or what they represented about the ambitions of the nations whose laws they were. Laws are human creations. They express the social and political values of a people. And as their jurisdiction is politically determined, they represent the values of a nation. If there are laws against the acquisition of . . . undocumented antiquities, it is because politicians have judged them to be in the best interests of their citizens (or subjects).”³²

Cuno struggles with understanding the basis and goals of the laws serving to protect undocumented cultural property. Cuno knew that he can only challenge the laws to a certain degree, but their true meaning and what they’re actually protecting should be questioned. Coupled with his ideals that cultural property is international property, he defends his own approach.

Cuno is a supporter of foreign excavating teams and believes they can help protect the “world’s heritage” with findings found at dig sites. Findings would be distributed for science and conservation, before eventually ending up in museums and contributing to their collections.

³¹ James Cuno, *Who Owns Antiquity? Museum and the Battle over our Ancient Heritage*. (Princeton, NJ: Princeton University Press, 2008), 23.

³² Cuno, *Who Owns Antiquity? Museum and the Battle over our Ancient Heritage*, 24.

Cuno says that “I have often argued that their [cultural property] distribution is itself a means of conservation, as it distributes the risk that they might be damaged or destroyed.”³³ However, Cuno does not recognize the invasive nature of foreign excavation teams. Many fail to obtain permission and are actually looting artifacts. He is overlooking the damage these teams can cause. This is true because “all undiscovered artefacts are the property of the state. Excavations take place with permissions obtained from the relevant authorities, and permits are typically issued to trained archaeologists, both local and foreign.”³⁴ With this unclear judgment, Cuno preaches that museums are better at preserving artifacts than origin nations, but this doesn’t mean origin nations can’t do so. He feels that artifacts were “often exploited as instruments of state formation and national identity”³⁵ and that countries use cultural property as an advantage to increase nationality rather than seeing them for their historical value.

Lastly, Cuno focuses on artifact ownership history, and in many cases the lack of proper records. Museums are criticized for not doing their diligence in researching an artifact’s history before the acquisition process, which further increases the need for restitution and serves as fuel for the illicit trades market. In defense of museums, Cuno argues that it’s nearly impossible for museums to find the exact ownership history of an artifact. Rather, illegal activities occurred long before a deal was made to acquire the artifact. He states that antiquities with unknown ownership history “are almost always looted from archaeological sites or from what would become archaeological sites.”³⁶ Critics argue that Cuno is wrong to give the benefit of the doubt to museums regarding their research into artifact ownership history. Archaeologists obtain accurate permits to excavate artifacts that help to combat the illicit trade market. Although they

³³ James Cuno, “The Responsibility to Protect the World’s Cultural Heritage,” *Brown Journal of World Affairs* 23, no. 1 (Fall/Winter 2016): 97-98.

³⁴ Morag M. Kersel, “Engaging with Demand and Destruction,” *Antiquity* 2020, Vol. 94 (376): 1074-1076, <https://doi.org/10.15184/aqy.2020.62>

³⁵ Cuno, “The Responsibility to Protect the World’s Cultural Heritage,” 98.

³⁶ Cuno, *Who Owns Antiquity? Museum and the Battle over our Ancient Heritage*, 1-2.

never gain ownership of artifacts during the excavation process, archaeologists prevent tomb raiders from acquiring artifacts by excavating legally. This allows artifacts that could become illegally excavated to stay off the market that museums might eventually purchase. Furthermore, what are known as “stewards” of artifacts do exist. They show that there are more than just archeologists contributing to legal excavations of artifacts. These stewards, “while not professionally trained archaeologists, are people who follow laws and who care for their collections. The stewards do no harm and are pure of heart, with a desire to engage with the past...”³⁷ Museums must take every precaution in their acquisition process and should be criticized for not doing so.

Of the three principal scholars within the restitution debate, Cuno is the most biased and supportive of museums. Given his background as a former prominent museum curator, this makes sense. His opinions should be criticized as they allow museums to cut corners, especially with the acquisition process. Encyclopedic museums are large institutions with their own policies and should be pushed to return artifacts if accurate, legal claims are presented. While he is allowed to disagree with the ethical claims made by origin nations, his opinions cannot be taken as fact. In the end, Cuno fights to protect museums from hasty claims against their artifact’s ownership history given all of the uncertainties. However, his work with ownership history is not as crucial as the final expert scholar, Patty Gerstenblith.

Patty Gerstenblith

The final influential figure on interpreting cultural property is Patty Gerstenblith. Her best work comes from her writing on provenance. That is, how it works and how it is interpreted by different groups of people within the debate. Gerstenblith’s interpretation is distinct from Cuno’s, where the lack of knowledge of an artifact’s past should warrant a return rather than

³⁷ Kersel, “Engaging with Demand and Destruction.”

retaining the artifact. The word “provenance” has been around for many years, but its true meaning is unknown. To most, provenance refers to the ownership history of an artifact, similar to a title that shows property ownership history today. When ownership actually began however, is debatable. Does it begin following an artifact’s removal regarding archaeological context or when the artifact was physically created? Ideally, “provenance would trace that ownership history back to the hands of the artist to establish the twin principles of authenticity and legality, both of which are crucial to the functioning of the art market and to achieving a full and accurate understanding of the art historical record.”³⁸ Many artifacts were handled several times over thousands of years and have been excavated before eventually being illegally sold. This means that there is no evidence of a bill of sale or agreement.

Regardless of how people interpret provenance, it is extremely hard to trace when dealing with antiquities. There are two terms Gerstenblith explains that today have nearly the same definition, provenance vs. “provenience.”³⁹ Some scholars considered “provenance” to mean the history of ownership (as we understand it today), while “provenience” means the history of the archaeological objects in general, an understandable distinction. Gerstenblith uses this quote to put the distinction into perspective:

“This distinction illuminates the reason these two concepts promote such different understandings: provenience is a fixed point, while provenance can be considered an itinerary that an object follows as it moves from hand to hand. Where the two concepts intersect is the place that the archaeological provenience singles out as the only important location in this itinerary, the find site.”⁴⁰

Moving forward, the museum and archeological world have adopted “provenance” as the term, but it’s still a factor that continues to be abused. Gerstenblith identifies “fake provenance”

³⁸ Patty Gerstenblith, “Provenances: Real, Fake, and Questionable,” *International Journal of Cultural Property* 26, no. 3 (August 2019): 287.

³⁹ Gerstenblith, “Provenances,” 287.

⁴⁰ Gerstenblith, “Provenances,” 288.

as the process of forging documents to make cultural property appear to have a documented ownership history. This process makes them more appealing within the art market, when in fact they have a much more illegal history. Gerstenblith says that “fake provenance may be attached to authentic artifacts in order to make them appear ‘legal’ or at least to provide a sufficient veneer of documentation history such that they appear acceptable on the art market and in museum collections.”⁴¹ Fake provenance begins the illegal trade process with the transportation, importation, and sale agreement of cultural property. Some include prior invoices, fake identities, and other ways to convince buyers of the cultural property’s fake legitimacy. This is a major wrinkle for museums doing their due diligence in researching cultural property provenance. These scams confuse museum staff in their process to purchase cultural property, causing the need to return them back to source nations based on legal issues. It’s clear that provenance today is one of the most contentious areas that both source nations and museums face. It involves cultural property illegally leaving a source nation and, although not always intentionally, being obtained by museums. Combating these fake provenance scams will need to be a priority for museums going forward, or else more litigation will occur.

Gerstenblith stresses the importance of the public interest when it comes to restitution and the provenance of an item, for it is important to know the full extent of an object’s acquisition process and history. She says that “the theft and looting of antiquities raise unique and compelling concerns for the public interest because, in addition to the theft itself, they involve an essential loss of context.”⁴² Even with more acquisition precautions and stronger ethics in place, it’s difficult to differentiate artifact provenance. Gerstenblith says that: “If virtually an entire corpus of ancient objects is known only through examples that have appeared

⁴¹ Gerstenblith, “Provenances,” 289.

⁴² Patty Gerstenblith, “The Public Interest in the Restitution of Cultural Objects,” *Connecticut Journal of International Law* 16, no. 2 (Spring 2001): 198.

on the market...then it is impossible to know which are the genuine and which are the fake, and our knowledge of the past again becomes irreparably corrupted.”⁴³ There have been efforts to combat fake provenance and better understand ownership history with newfound technology. Museum leaders have created organizations, such as the Association of Art Museum Directors, to track artifact provenance through an online registry. Museums must post artifacts with as much knowledge as they know about their artifact’s provenance. Despite this effort, Gerstenblith said that the system is “very, very loose,”⁴⁴ and should be more fully regulated. Overall, Patty Gerstenblith’s work on provenance is very important to the cultural property debate, for provenance is the most important issue facing source nations and museums today. With the debate moving forward with the help of these scholars, the debate has continued with current scholarship.

The Debate Moving Forward: Conclusions from the Scholars

Today, the debate has grown with the help of Merryman, Cuno, and Gerstenblith. With internationalism, those with views similar to Cuno’s argue that cultural property belongs to humanity and that museums should not be hard pressed to return artifacts through restitution. This argument persists even with questionable background research on provenance or a lack of documents proving ownership. As Merryman argued, Cultural Internationalists support museums in retaining the maximum amount of their collections as possible, meaning “cultural property should belong to the world”⁴⁵ and “cultural property should be placed in institutions with the greatest resources.”⁴⁶ Encyclopedic museum visitors benefit from the internationalist due to the accessibility and expense factors that reduce travel to nations with specific antiquities. However,

⁴³ Gerstenblith, “The Public Interest in the Restitution of Cultural Objects,” 199-200.

⁴⁴ Graham Bowley, “For U.S. Museums with Looted Art, the Indiana Jones Era Is Over,” *New York Times*, December 13, 2022, <https://www.nytimes.com/2022/12/13/arts/museums-looted-art-repatriation.html>

⁴⁵ Hannah R. Godwin, “Legal Complications of Repatriation at the British Museum,” *Washington International Law Journal* 30, no. 1 (December 2020): 150.

⁴⁶ Godwin, “Legal Complications,” 150.

the acquisition process of cultural property is being overlooked both by museum visitors and museums themselves. Museum visitors simply pay a fee to indulge in the knowledge presented to them, whereas museums benefit economically. Gerstenblith mentions this about internationalism, where “the notion that cultural objects belong to all humanity and not to a single nation is used today often as an excuse for reliance on market-based principles and as an apologetic for the wide-scale looting of archaeological sites.”⁴⁷ Regardless, museums must continue to research cultural property provenance prior to the acquisition phase.

Cultural Nationalists support museums returning artifacts in their collections to source nations and believe cultural property “emphasizes national interests, values, and pride.”⁴⁸ Returning artifacts based on legal grounds, which is when a source nation threatens litigation with sufficient evidence, is part of the nationalist identity. It also supports the ethical pressure to return cultural property to source nations even if a claim lacks sufficient evidence. Cultural Nationalists see returning cultural property through restitution to a source nation as progressive. This is because not only does it belong there in terms of its history, but when any allegations rise, it’s the right decision to return the artifact. Critics dislike this ideology, because some source nations leverage this abundance of cultural property as exclusive to their country. Although this is not wrong, it does create a boost in tourism and therefore a boost in a source nation’s economy while taking away from the collections of museums. This can reach a level where the source nation no longer has the capacity to display all of their cultural property and they are not seen by the public. As Merryman explained, source nations warehouse their cultural property only for it to be enjoyed by no one. Nonetheless, the objective of ownership has been achieved.

⁴⁷ Gerstenblith, “The Public Interest,” 200.

⁴⁸ Godwin, “Legal Complications,” 149-150.

When museums continue to return more cultural property, they lose a certain amount of their collections and the history those artifacts have. As a result, museums must compensate for their losses by bringing in new artifacts to their collections. If countries aren't loaning or selling enough artifacts though, this can be a problem. However, there is a process for museums to be compensated through Mutually Beneficial Repatriation Agreements, or MBRAs. These agreements can occur either from good faith and a strong relationship between the source nation and a museum or for a museum to avoid litigation from the source nation. For example, Italy is returned cultural antiquities by a museum through a restitution agreement that will attract more tourism and Italy might even see a boost in its economy over time. Correspondingly, the museum will not only avoid litigation and damage to their public perception, but Italy could negotiate a schedule to loan other antiquities to compensate for the economic loss the museum will incur. Moreover, before returning the artifacts, the museum might be able to retain them for a while longer if they change the description plaque to show the artifacts no longer belong to them. Even with the success of these agreements, museums don't always act justifiably. Rather, museums "[ignore] source nations' inquiries and claims until it becomes impossible to do, intentionally refraining from calling attention to disputed works through exhibition and relying upon procedural defenses when faced with lawsuits."⁴⁹ MBRAs serve as a possible placeholder solution until a reliable, uniform restitution agreement can be created for individual museums.

The most important takeaway from the dialogues of Merryman, Cuno, Gerstenblith is that there truly is no "right" answer to the debate. The public is meant to form their own opinions, such as Cuno being a biased internationalist, but neither internationalism nor nationalism have stronger standing over the other. In order for museums and origin nations to move forward, both

⁴⁹ Stacey Falkoff, "Mutually-Beneficial Repatriation Agreements: Returning Cultural Patrimony, Perpetuating the Illicit Antiquities Market," *Journal of Law and Policy* 16, no. 1 (2007): 291.

sides need to compromise. Firstly, nationalists must “forgive past indiscretions made by museums...lawsuits filed regarding antiquities acquired a century ago only stall the debate and help neither internationalists nor nationalists further their directed goals.”⁵⁰ Furthermore, internationalists need to reform their understanding of the acquisition process and recognize the need for more research into an artifact’s provenance. If museums don’t make strides to do so, “such acquisitions impede society’s understanding of history because artifacts lacking clear provenance do not tell a clear story regarding their origins and the context in which they were used.”⁵¹ Museums must formulate their own policies in conjunction with their own ethics and laws by country, while source nations must decide how to effectively protect their cultural property if it is not to be seen by others. Most importantly, museums can use these three scholars to constitute their own individual policies. That is the most crucial role these scholars play in the debate moving forward.

⁵⁰ Nicole Klug, “Protecting Antiquities and Saving the Universal Museum: A Necessary Compromise between the Conflicting Ideologies of Cultural Property,” *Case Western Reserve Journal of International Law* 42, no. 3 (2010): 724-725.

⁵¹ Klug, “Protecting Antiquities and Saving the Universal Museum: A Necessary Compromise between the Conflicting Ideologies of Cultural Property,” 725.

Chapter 2. International Conventions, Domestic Law, Museum Associations, and Individual Museum Policies

By the middle of the 20th century, the exchange of cultural property was well underway. Museums in market nations were full of artifacts from around the world creating extensive collections for their visitors. Classical antiquities were plentiful and drew more visitors that were especially interested in that era. The artifacts were sold by dealers to more Western societies that lacked their own internal cultural property. Eventually, once the antiquities illicit trade market had heated up, source nations like Greece and Italy started searching for their lost cultural property in encyclopedic museums, which they asked to be returned. Cultural property protection was an immediate concern for these source nations, both by protecting what they still had and getting back what was rightfully their own. Their stolen classical artifacts were representative of their proud past but also symbolic of their more recent losses. Cultural property protection, coupled with restitution, made up the basis of concern for source nations and what they asked of market nations. Thus, restitution claims of stolen cultural property built up against museums in market nations that were unsure of how to react.

Some museums acted ethically and returned stolen items they might have unknowingly acquired, but a lack of structure for both museums and nations caused nothing but a slow return process with no uniformity. Therefore, because of these increasing claims against museums from source nations, major international conventions were conducted during the second half of the 20th century to tackle the issue of cultural property protection and restitution. Furthermore, individual museums, working outside of these conventions, began to develop their own restitution policies and guidelines, which has ultimately seen the most success.

Three major conventions were created in the 20th century, each building on the previous effort. The goal was for more countries to sign on and pledge to protect the world's cultural property. However, even as more countries signed up over the years, the downfall of these conventions was that they could not be applied internally at the national level. What might act as international guidelines and good faith could not directly translate as law for countries domestically. They were instead recommendations that guided countries to develop their own laws surrounding protection of cultural property. It was up to countries to either ratify parts of these conventions as their own laws or create domestic laws themselves. Because the international conventions are not effective, the antiquities illicit trade market still remains a major issue. Presently, it is individual museum policies, which are influenced by domestic laws, that hold the most power in restitution policy, for museums create the agreements to return cultural property.

Many of the conferences, domestic laws, and individual museum policies revolve around classical antiquity because they were so often traded for their high value. The purpose of this chapter is to describe international and national attempts at cultural property protection and restitution policy. This includes the three major international cultural property conventions, Hague 1954, UNESCO 1970, and UNIDROIT 1995. While their frameworks were strong attempts to change cultural property protection laws, they ultimately failed to make a difference to their members. Furthermore, this chapter will describe a domestic cultural property law, the United States 1983 Convention on Cultural Property Implementation Act (CCPIA), that is the strongest example of an applicable domestic law for individual museums today. Museum associations, including national ones such as the American Alliance of Museums (AAM), and the U.K.'s "Museums Association" will be examined. The International Council of Museums

(ICOM) will also be explored for it being an association at the international level. Lastly, the MET and British Museum's individual restitution policies will be analyzed and compared.

International Conventions

Hague 1954

By the conclusion of World War II and the end of the Nazi regime, the need to protect cultural property became a matter of international concern. Nazi pillaging and destruction of several nation's cultural property led to the need to develop restitution policies. Therefore, in May of 1954, at The Hague in the Netherlands, 37 countries were brought together to sign the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Notably nicknamed, "Hague 1954," it was the first international convention to "deal solely with the protection of cultural property."⁵² The convention's main goal was informed by an internationalist perspective. In other words, "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."⁵³ Along with this viewpoint, the need to protect cultural property from war damage was prevalent. Despite the efforts, there are some provisions of the conference, such as the infamous "military necessity" clause, which will be described in further detail later, that essentially nullify parts of the convention. While the convention had its strengths and weaknesses, it still defined the initial protection of cultural property across the world and opened the door for elaboration.

At the time of the conference, writers believed that cultural property was property of the world and that it would be protected by multiple nations as such. The convention itself says that:

⁵² Merryman, "Two Ways," 836.

⁵³ Chip Colwell-Chanthapongh; John Piper, "War and Cultural Property: The 1954 Hague Convention and the Status of U.S. Ratification," *International Journal of Cultural Property* 10, no. 2 (2001): 225-226.

“Art. 4. 1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.”⁵⁴

Signing onto this conference reaffirms a nation’s commitment to protecting not only their own cultural property but also the cultural property of others. Furthermore, nations cannot take action to destroy the cultural property of other nations. These were the basic guidelines of the convention that nations initially agreed upon.

The “military necessity” clause is the largest weakness of this convention. While relevant to the recent ending of World War II, it defeats the purpose if immunity is not always upheld.

The clause below follows in response to the clause mentioned above:

“Art. 4. 2. The obligations mentioned in paragraph I of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.”⁵⁵

While the writers weren’t necessarily wrong to include this, the vagueness of what constitutes a “military necessity” is troubling for the integrity of the document. Essentially, “since this clause is vaguely defined and thus open to diverse interpretations, a country in time of war is essentially free to claim that any violation of the Convention is a ‘military necessity.’”⁵⁶ For such a document to be trumped by one singular clause, especially when the term is essentially undefined, is likely why later international conventions omitted this part. This clause alone is what caused many nations to not trust the integrity of the entire convention.

There is no doubt that the 1954 Hague Convention made an impact on the protection of cultural property. It opened the doors for newer and improved conventions and helped to define the initial boundaries and expectations for signing nations. But there are reasons why it took

⁵⁴ The Hague, “Convention for the Protection of Cultural Property in the Event of Armed Conflict,” opened for signature May 14, 1954, https://en.unesco.org/sites/default/files/1954_Convention_EN_2020.pdf

⁵⁵ The Hague, “Convention for the Protection of Cultural Property in the Event of Armed Conflict.”

⁵⁶ Colwell-Chanthapongh; Piper, “War and Cultural Property: The 1954 Hague Convention and the Status of U.S. Ratification,” 229.

longer for market nations, such as the U.S. in 2009 and the U.K. in 2017, to sign the convention. This failure is the result of both the infamous “military necessity” clause and because the convention is overly broad. It failed overall to make a difference internationally, as it never could be binding to countries domestically. Countries eventually turned to a different framework.

UNESCO 1970

By 1970, more countries had gained independence and the world was now further removed from World War II. With this newly gained independence, countries became more conscious about their cultural property and where it was located. These countries then started to request that their cultural property be returned to them. The illicit market for cultural property, especially classical antiquity, was booming, and there was little attention towards combating this issue. In 1970, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) hosted an international convention on fighting back against the illicit antiquities market. UNESCO labeled it the “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.”⁵⁷

Building upon the pledge by the Hague 1954 Convention for the world to protect its cultural property, the objective shifted towards finding ways to improve that protection. This meant fighting back against the illicit antiquities market. The major objective was to have multiple market nations sign onto the convention to help the younger, newly independent nations with their own cultural property protection and to return stolen property through restitution. These young nations now had larger responsibilities to keep their cultural property safe, but their concerns were “mainly related to the growth of the black market during this time and, in

⁵⁷ UNESCO, “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,” opened for signature April 24, 1972, <https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural>

particular, to the dismemberment of monuments and ancient sites to meet the demand.”⁵⁸

Protection of cultural property was not a new idea, however making restitution a major goal was, as “the return and restitution of cultural property is central to the Convention.”⁵⁹

Like the other two major conventions, UNESCO 1970 interprets the definition of cultural property slightly differently. It says that “‘cultural property’ means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science.”⁶⁰ This definition is more nationalist than the Hague 1954 Convention as it interprets cultural property as belonging to specific nations. There are specific clauses within the document in relation to restitution and international cooperation that need to be discussed more individually. Regarding restitution, Article 7b (ii) and Article 13 frame the guidelines for state parties to follow. Article 7b (ii) states that:

“At the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.”⁶¹

Essentially, any state party that signs onto the convention must act itself when faced with accurate evidence of a restitution claim. Compensation may be involved, but nonetheless the artifact must return to its origin nation. Article 13 takes it one step further, saying “parties are responsible at the national level in term[s] of restitution and cooperation.”⁶² This was more

⁵⁸ UNESCO, “About the 1970 Convention,” accessed March 24, 2023, <https://en.unesco.org/fightrafficking/1970>.

⁵⁹ “About the 1970 Convention.”

⁶⁰ UNESCO, “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.”

⁶¹ UNESCO, “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.”

⁶² UNESCO, “About the 1970 Convention.”

controversial, where the “national level” clause was overbearing in terms of the responsibility for state parties to oversee the restitution claims they were facing. Restitution is essential to cultural property protection and to this convention, but at the time was still a new idea and one that state parties hadn’t fully understood yet.

International cooperation was the second major factor of this convention. Source and market nations from all over the world in different economic situations were signing on. Article 9 states the guidelines for international cooperation:

“Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.”⁶³

Overall, three important responsibilities were needed for state parties to follow: Adopting individual protection measures, controlling the movement of their cultural property (import and export), and lastly returning stolen cultural property. All of them seem straightforward to follow, but international cooperation ended up falling short, as state parties could not agree on what restitution of cultural property actually means. Upon deeper examination, most of the values and targeted change is found in Article 7b. It was aimed at market nations that would export more cultural property through restitution claims and as a result face stricter importation law. A net export would occur, and market nation museums would have fewer artifacts coming in.

For several reasons the convention ultimately failed. For example, the most important clause, Article 7b, doesn’t apply to antiquities that were unlawfully excavated, since they cannot

⁶³ UNESCO, “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.”

be considered “stolen” after museums obtain possession.⁶⁴ Private residence collections were also safe, as encyclopedic museums were the main target. Most importantly, the convention is not “retrospective,”⁶⁵ meaning these guidelines only applied following implementation of the convention by the market nations. Lastly, “any attempt at recovery by the source State would usually involve a fairly hefty payout to the lawful possessor of the property, something that can be a real challenge for the cash-strapped countries of the developing world.”⁶⁶ Therefore, source nations had to decide how important their restitution claims were, for they might need to provide compensation by loaning artifacts or sending money.

Ultimately, UNESCO 1970 did not collapse the illicit trade market. Currently, “fifty years after the adoption of the 1970 UNESCO Convention, the illicit trade in cultural objects endures, with harmful consequences to local communities, knowledge acquisition, and archaeological landscapes and objects.”⁶⁷ If the objective was to combat the illicit trade market but the Convention could not apply directly to unlawfully excavated cultural property, then what is the Convention truly protecting? UNESCO focused on creating guidelines that all state parties could agree upon, but in doing so abandoned its original objective. Consequently, in the end, many state parties didn’t even sign on. A current group of famous archaeologists state the issue clearly, saying: “Cultural heritage is always vulnerable. We believe the reason for poorly controlled illicit trade is ill-informed, unrealistic, or unenforceable international policy.”⁶⁸ Today, museums still actively participate in the illicit antiquities market by purchasing artifacts from middle-men who sell illegally excavated cultural property. This is because museums willingly purchase cultural

⁶⁴ Alexander Herman, “Fifty Years On: The Meaning of the 1970 UNESCO Convention,” Institute of Art and Law, June 18, 2020, <https://ial.uk.com/fifty-years-on-unesco-convention/#content>.

⁶⁵ Herman, “Fifty Years On: The Meaning of the 1970 UNESCO Convention.”

⁶⁶ Herman, “Fifty Years On: The Meaning of the 1970 UNESCO Convention.”

⁶⁷ Neil Brodie, Morag M. Kersel, Simon Mackenzie, Isber Sabrine, Emiline Smith, Donna Yates, “Why There is Still an Illicit Trade in Cultural Objects and What We Can Do About It,” *Journal of Field Archaeology*, 47, no. 2 (2022): 117, <https://doi.org/10.1080/00934690.2021.1996979>

⁶⁸ Brodie et al., “Why There is Still an Illicit Trade in Cultural Objects and What We Can Do About It,” 118.

property without doing enough provenance research. It's true that "museums play a significant role in the black market art network, thus it is essential for civil and criminal penalties to apply to museums and museum representatives as well, not just to private dealers and collectors."⁶⁹

Both archaeologists and governments are concerned about the ongoing illicit antiquities trade market. Archaeologists are worried because the "method of their acquisition entails destruction of archaeological context and a loss of archaeological provenance."⁷⁰ Meanwhile, governments are worried because it's a "challenge to the sovereignty of the state and an attack on the national heritage."⁷¹ These claims are valid because UNESCO failed to combat the illicit antiquities trade market. It is a major issue for museums, governments, and the world's cultural property. As the group of archaeologists state: "It is high time we started thinking about something new and more effective for tackling the illicit trade in cultural objects,"⁷² and ultimately a better option than UNESCO.

UNESCO 1970 was not a complete failure, but it could not ultimately hold the most important state parties accountable. Market nations like the U.S. and U.K. initially refused to ratify the convention because of how vague it was. If a country signed but violated the rules of the convention, there was seemingly no penalty for doing so. It was said that "the reasons for its failure lie mainly in the fact that it does not provide for remedies for the violation of its provisions, revealing itself ineffective because of its generality in formulating principles that are not assisted by appropriate sanctions that make them enforceable."⁷³ Furthermore, if a country

⁶⁹ Leila Amineddoleh, "The Role of Museums in the Trade of Black Market Cultural Heritage Property," *Art Antiquity and Law* 18, issue 2, (October, 2013), <https://ssrn.com/abstract=2370699>

⁷⁰ Neil Brodie, "Illicit Antiquities," Encyclopædia Britannica, Encyclopædia Britannica, Inc, accessed May 2, 2023, <https://www.britannica.com/topic/illicit-antiquities>.

⁷¹ Brodie, "Illicit Antiquities."

⁷² Brodie et al., "Why There is Still an Illicit Trade in Cultural Objects and What We Can Do About It," 127.

⁷³ Geo Magri, "The Impact of the UNESCO and UNIDROIT Conventions and the EU Directives on the International Art Market: An Analysis Fifty Years after the Introduction of the Obligation to Return Stolen or Illegally Exported Cultural Goods," *Brazilian Journal of International Law* 17, no. 3 (December 2020): 64.

did sign on, they could “cherry-pick portions of the agreement”⁷⁴ that best fit their individual needs. UNESCO is at best a framework and guidelines to follow, and without self-accountability by its state parties, the convention doesn’t have any effect. The third and final convention, UNIDROIT 1995, sought to build upon UNESCO 1970 and create a more defined convention for hesitant market nations.

UNIDROIT 1995

By the 1990s, protection of cultural property and restitution was more refined. Museums had developed stronger general policies and more countries had signed onto the pledge to protect cultural property. There was still one major problem. UNESCO 1970 had failed to garner the important market nations to abide by its rules at the international level. In Rome of 1995, the International Institute for the Unification of Private Law (UNIDROIT) sought to improve upon UNESCO by hosting another convention. The goal was to fix any issues that countries didn’t initially agree upon. The UNIDROIT “Convention on Stolen or Illegally Exported Cultural Objects” pairs nicely with UNESCO by trying to “reduce illicit traffic in cultural objects by expanding the rights upon which return of such objects can be sought, and by widening the scope of objects subject to its provisions.”⁷⁵ The convention made one major change that placed a larger burden and more accountability on a state party because it “allows no reservations except those expressly stated within the treaty.”⁷⁶ Countries could no longer avoid certain clauses and still sign the convention. This fixed a major prior loophole.

UNIDROIT 1995’s strength placed a major emphasis on restitution, with the goal that museums would focus more on returning artifacts. As the preamble to the convention states:

⁷⁴ Amineddoleh, “The Role of Museums in the Trade of Black Market Cultural Heritage Property,” 232.

⁷⁵ Zsuzanna Veres, “The Fight against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention,” *Santa Clara Journal of International Law* 12, no. 2 (2014): 100.

⁷⁶ Veres, “The Fight against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention,” 100.

“This Convention will not by itself provide a solution to the problems raised by illicit trade, but that it initiates a process that will enhance international cultural co-operation and maintain a proper role for legal trading and inter-State agreements for cultural exchanges.”⁷⁷ Now, a state party could present a claim in the court of another state party, henceforth being the claimant in the case. This places the burden of proof on themselves to prove that an artifact should be returned to them by that state party if it impacts state interests or is an artifact of significant importance. Article 5(1) states this:

“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.”⁷⁸

In other words, the court hears a legal argument before determining rightful ownership of the cultural property and state parties are far more accountable with their cultural property than before.

The most controversial issue of UNIDROIT 1995 was creating an elongated statute of limitations for presenting restitution claims. This allows for a longer period for restitution claims to be brought to court provided that enough evidence can prove restitution is required. Article 5(5) states this fact:

“Any request for return shall be brought within a period of three years from the time when the requesting State knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the date of the export or from the date on which the object should have been returned under a permit referred to in paragraph 2 of this article.”⁷⁹

Given that a state party knows the location and identity of the current owner, three years is ample time to compile evidence and present a restitution claim. When a restitution claim is proven correct, it is up to the possessor to return the cultural property to the source nation,

⁷⁷ UNIDROIT, “The 1995 UNIDROIT Convention Turns 25,” accessed May 9, 2022, <https://www.unidroit.org/the-1995-unidroit-convention-turns-25/>.

⁷⁸ UNIDROIT, “Convention on Stolen or Illegally Exported Cultural Objects,” opened for signature July 1, 1998, <https://www.unidroit.org/instruments/cultural-property/1995-convention/>

⁷⁹ UNIDROIT, “Convention on Stolen or Illegally Exported Cultural Objects.”

putting the liability in the possessor's hands. Bona fide possessors with no knowledge of bad provenance might even be entitled to just compensation for an artifact. Still, the statute of limitations is important to the integrity of the convention, as it recognized restitution as an evolving piece of cultural property protection.

Like UNESCO 1970, UNIDROIT 1995 isn't retrospective, meaning restitution claims only apply to cultural property stolen after it's signed. Currently, restitution reform must benefit already stolen cultural property source nations have requested to be returned. Given the similarities to UNESCO, many countries, especially market nations like the U.S. and U.K., didn't see the need to also sign on to UNIDROIT. Like UNESCO, UNIDROIT helped keep the illicit antiquities trade market relevant since it could not garner enough international interest. This was because "successful lobbying has prevented its adoption by the most important market states,"⁸⁰ and therefore the illicit antiquities trade market continues today. Currently, UNIDROIT 1995 has 48 state parties,⁸¹ certainly less than ideal, but enough for a following. Even though "the number of States parties is relatively low does not mean that the content of the Convention is not adhered to or that the aims of the Convention are not subscribed to,"⁸² but as legislation it does not have a major effect at the international level. This point is evidence of the overall effect all three conferences have had. They are not binding, but still serve as guidelines for countries to create their own policies. Although this is not what the conferences intended, it's the purpose they serve today. Currently, international conventions remain non-binding to state parties at the domestic level, therefore their own legislation is needed for effective restitution claims, something the U.S. in 1983 implemented.

⁸⁰ Brodie et al., "Why There is Still an Illicit Trade in Cultural Objects and What We Can Do About It," 122.

⁸¹ UNIDROIT, "The 1995 UNIDROIT Convention Turns 25."

⁸² Nout van Woudenberg, "Adherence to the 1995 Unidroit Convention: Wider than One Would Think at First Sight," *Uniform Law Review* 21, no. 1 (2016): 121.

Domestic Law: The U.S. 1983 Convention on Cultural Property Implementation Act (CCPIA)

State parties to the international conventions pledged allegiance to their guidelines, but accountability for what goes on within their own borders is what these conventions could not control. The United States, with the passing of the 1983 Convention on Cultural Property Implementation Act, showed signs of accountability by ratifying specific Articles of the 1970 UNESCO Convention into federal law. Internationally, they still ratified the entire convention. The U.S. is one of the largest market nations, meaning the likelihood for illegal trade of cultural property and bad provenances, and therefore a lack of cultural property protection, is high. Ratification of UNESCO 1970 was important, but the U.S., by becoming the first market nation to implement pieces of the convention, convinced the world that they were committed to cultural property protection. It was well known that “the United States was ripe for illegal import of items of cultural property,”⁸³ and that some sort of legislation, even prior to the ratification of the convention, needed to be passed. The 1983 CCPIA was designed to mirror many of the qualities of the 1970 UNESCO Convention, including how to deal with illegal importations of cultural property. One important parallel from UNESCO 1970 states that the “import of cultural material identified as stolen from an institution in another state party to the UNESCO Convention”⁸⁴ will not be allowed and subsequently returned.

Within the 1983 CCPIA is the Cultural Property Advisory Committee (CPAC), which helps other countries who are looking for U.S. aid with their own cultural property protection under the guidelines of UNESCO 1970. The CPAC has been praised as the most effective part of the law, because it promotes assistance, learning, and overall, a better scope of the evolution of

⁸³ Alexandra Love Levine, “The Need for Uniform Legal Protection Against Cultural Property Theft: Final Cry for the 1995 UNIDROIT Convention,” *Brooklyn Journal of International Law*, (2011): 6.

⁸⁴ Levine, “The Need for Uniform Legal Protection Against Cultural Property Theft: Final Cry for the 1995 UNIDROIT Convention,” 6.

cultural property protection. To give a brief overview of what the committee does, the CPAC “reviews requests from countries seeking import restrictions, and it makes recommendations regarding the laws for import and export of cultural property.”⁸⁵ Similar to other advisory committees within the U.S., the President selects its members, who have a great deal of responsibility when facing requests from other State parties under UNESCO 1970. Regarding membership:

“The Committee shall be composed of eleven members appointed by the President as follows:

- (A) Two members representing the interests of museums.
- (B) Three members who shall be experts in the fields of archaeology, anthropology, ethnology, or related areas.
- (C) Three members who shall be experts in the international sale of archaeological, ethnological, and other cultural property.
- (D) Three members who shall represent the interest of the general public.”⁸⁶

Members can be reappointed following their three-year term and can continue to be reappointed afterwards. Members are expected to conduct substantial reports following investigations into other State party requests, and bringing diverse members to the committee introduces professionalism and knowledge in different fields of work. This provision of the act helps solidify what some believe to be confusing at times, but this committee is a fixture to cultural property protection in the U.S.

Despite its strong framework and guidelines from UNESCO 1970, the act has been met with criticism since its implementation. First, the act only implements Articles 7 and 9 of UNESCO 1970, which, although they are two crucial articles, they are still just two of the many articles written. Articles 7b (ii) and 9 are already stated above, but for clarity, Articles 7a and 7b(i) state:

“The States Parties to this Convention undertake:

⁸⁵ Levine, “The Need for Uniform Legal Protection,” 6.

⁸⁶ U.S. Congress, House, *Convention on Cultural Property Implementation Act of 1983*, H.R. 7333, 97th Cong., 1st sess., introduced in House November 30, 1982, <https://eca.state.gov/files/bureau/97-446.pdf>

(a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

(b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;”⁸⁷

By pairing these articles along with the other articles previously mentioned, the U.S. wants to combat the illegal importation and exportation of cultural property as well as take initial steps into restitution. Furthermore, the ratification of Article 9 satisfies an effort by the U.S. to assist other nations with their own cultural property protection. There still is a formal process, where a “request made to the United States under Article 9 of the Convention by a State Party must be accompanied by a written statement of the facts known to the State Party that relate to those matters...”⁸⁸ Thus, this is the basic framework of the law, and it still remains within the U.S. legal system today.

The CCPIA has been part of litigation in different U.S. cases over the years. Since its inception, “federal courts have adjudicated whether a particular contested property was subject to forfeiture, and if so, whether the claimant was entitled to compensation, whether a claimant contesting forfeiture successfully presented an affirmative defense, and the question of how the burdens of proof in a CCPIA forfeiture proceeding...were to be allocated and satisfied.”⁸⁹ A U.S. court case involving classical antiquity and the use of the CCPIA is that of *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.* which was brought

⁸⁷ UNESCO, “Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.”

⁸⁸ U.S. Congress, House, *Convention on Cultural Property Implementation Act of 1983*.

⁸⁹ Daniel A. Klein, J.D., “Construction and Application of Convention on Implementation Act (CPIA), 19 U.S.C.A. §§ 2601 et seq.,” *American Law Reports*, (2011): 4.

in a U.S. District Court in Indiana. An Indiana Museum had been sold ancient mosaics from a Church in Cyprus and sued the museum under the CCPIA to have them returned. This case was an example of artifacts of cultural property “subject to forfeiture”⁹⁰ under the CCPIA and it was used successfully under U.S. law. The result was that under the state’s replevin law, which is a law that allows property to be returned after it was wrongfully taken, “the Republic of Cyprus was entitled to recover possession of mosaics taken from a church in Cyprus and ultimately sold to a museum owner in the state.”⁹¹

In terms of the law’s criticisms, implementing only Articles 7 and 9 might conflict with other state parties that implement different articles of the convention. This means there will be a lack of continuity between nations on how they approach implementing articles of UNESCO 1970. This conflict can move source nations fully away from any U.S. assistance under the CCPIA. There is also a lack of guidelines other nations need to follow to obtain U.S. protection, where they “[provide] at least some notice to foreign states regarding steps they need to take in order to obtain U.S. protection of their cultural property.”⁹² Lastly, only museums remain liable under the CCPIA, meaning private collections can escape scrutiny, a common theme throughout this chapter.

The legislation has certainly seen success in improving cultural property protection, but it fails to assist the other nations the U.S. pledges to aid. Furthermore, restitution remains a very independent process at the museum level, while private collections continue to get away with no consequences. By only implementing Articles 7 and 9 of UNESCO 1970, despite their importance, it ignores other articles and most of the convention. Overall, “domestic laws are [as]

⁹⁰ Klein, “Construction and Application of Convention on Implementation Act (CPIA), 19 U.S.C.A. §§ 2601 et seq.,” 1.

⁹¹ Klein, “Construction and Application of Convention on Implementation Act (CPIA), 19 U.S.C.A. §§ 2601 et seq.,” 5.

⁹² Levine, “The Need for Uniform Legal Protection,” 6.

strikingly inconsistent as international legal remedies.”⁹³ Moving forward, this U.S. law will remain in place, and its binding nature is clearly valuable to the U.S., but not for other nations. This remains a consistent issue throughout cultural property protection, the need for binding international remedies for cultural property protection. In the interim, museums will continue to create their own policies regarding restitution for cultural property to be returned.

Museum Associations

International conventions and domestic laws are important, but the most success currently comes from individual museums who write their own policies. Policies that are smaller in scope allows for actual progress to be made. This has been seen when museums take matters into their own hands to send cultural property back to a source nation and ultimately “protect” such property. This section will examine the national and international museum associations that assist museums in creating their own policies. The Alliance of American Museums (AAM), of which the MET belongs to, the U.K. Museums Association (MA), of which the British Museum belongs to, as well as the International Council of Museums, which both the British Museum and MET belong to, will all be examined. Individual museums must follow their own nation’s binding laws but have the autonomy to create their own policies. Without this, museums would rely heavily on the domestic binding laws and international guidelines.

The Alliance of American Museums (AAM)

In the U.S., The Alliance of American Museums (AAM) is the largest museums association in the nation. The mission statement of the AAM is to “champion equitable and impactful museums by connecting people, fostering learning and community, and nurturing

⁹³ Levine, “The Need for Uniform Legal Protection,” 6.

museum excellence.”⁹⁴ The AAM is made up of roughly 35,000 member museums, with the objective to find common ethics and museum policies amongst the vast array of American museums. These policies can all be found in the AAM’s Code of Ethics. This code states that “Museums [take] that compliance as given. But legal standards are a minimum. Museums and those responsible for them must do more than avoid legal liability, they must take affirmative steps to maintain their integrity so as to warrant public confidence. They must act not only legally but also ethically.”⁹⁵ Being a part of the AAM is a privilege, as the AAM holds its members to high standards. However, it takes for granted how regulatory individual museums are on themselves. Museums make a pledge to join the AAM and its guidelines, but there isn’t any evidence of enforcement. In fact, there is a “governance” section to the Code of Ethics, but it more so helps museum leaders understand how to operate a museum effectively versus what to do when an issue arises. There is a section on how to manage museum collections, one that combines protection, acquisition, and deacquisition policies together. Notable sections include:

1. “Collections in its custody are lawfully held, protected, secure, unencumbered, cared for and preserved.
2. Collections in its custody are accounted for and documented.
3. Access to the collections and related information is permitted and regulated.
4. Acquisition, disposal, and loan activities are conducted in a manner that respects the protection and preservation of natural and cultural resources and discourages illicit trade in such materials.
5. Acquisition, disposal, and loan activities conform to its mission and public trust responsibilities.
6. Disposal of collections through sale, trade or research activities is solely for the advancement of the museum’s mission. Proceeds from the sale of nonliving collections are to be used consistent with the established standards of the museum’s discipline, but in no event shall they be used for anything other than acquisition or direct care of collections.”⁹⁶

⁹⁴ American Alliance of Museums, “About AAM,” last updated December 9, 2017, <https://www.aam-us.org/programs/about-aam/#:~:text=The%20American%20Alliance%20of%20Museums%20mission%20is%20to%20champion%20equitable,community%2C%20and%20nurturing%20museum%20excellence.>

⁹⁵ American Alliance of Museums, “AAM Code of Ethics For Museums,” accessed March 14, 2023, [https://www.aam-us.org/programs/ethics-standards-and-professional-practices/code-of-ethics-for-museums/.](https://www.aam-us.org/programs/ethics-standards-and-professional-practices/code-of-ethics-for-museums/)

⁹⁶ American Alliance of Museums, “AAM Code of Ethics For Museums.”

Elsewhere within the AAM is the “Collections Management Policy,” which outlines more details on the preservation of museum collections. It has a section on “required elements” for the actual language collections management policies should contain, but nothing that specifies for what the policies must be. Cultural property protection is without a doubt the priority, but not much is said about restitution.

The AAM is the strongest American museum alliance but the power they have in governing individual museum policies is low. Individual museums have their own governing ability, thus signing onto the AAM is a pledge to practice good museum ethics. The AAM is a reliable alliance, but its guidelines are a framework for newer museums to follow on cultural property protection. Restitution remains out of the equation as a guideline, meaning individual museums are on their own in the U.S. As this chapter will see later, the MET, which is a member of AAM, has more ability to govern itself than the policies set out by the AAM.

The U.K. Museums Association (MA)

The Museums Association is the U.K. equivalent to the AAM, applying to museums across the four U.K. nations. As the oldest museums association in the world, it’s responsible for uniting the museums across the entirety of the U.K. and finding common ground amongst museums guidelines. Their mission statement is short: “Inspiring museums to change lives.”⁹⁷ They want to effect museum guidelines without being overly bearing, as a non-profit association advocating for better museum policies. Like the AAM, they have a Code of Ethics, which helps unite its members to follow a code grounded in good faith practices. It starts by saying: “All museums are bound by national laws and international conventions relevant to museums. The code supports this legal framework and sets a standard for all areas of museum practice.”⁹⁸ This

⁹⁷ Museums Association, “About Us,” accessed February 10, 2023, <https://www.museumsassociation.org/about/>.

⁹⁸ Museums Association, “Code of Ethics for Museums,” accessed February 22, 2023, <https://www.museumsassociation.org/campaigns/ethics/code-of-ethics/>.

shows they are accepting their role not as a governing body, but as an association laying out guidelines to assist museums. The Code itself is separated into three sections: “Public Engagement & Public Benefit,” “Stewardship of Collections,” and lastly “Individual & Institutional Integrity.” Stewardship of Collections is the most important section for the topic at hand. Here is the language found in that section:

“Museums and those who work in and with them should:

1. Maintain and develop collections for current and future generations.
2. Acquire, care for, exhibit and loan collections with transparency and competency in order to generate knowledge and engage the public with collections.
3. Treat museum collections as cultural, scientific or historic assets, not financial assets.”⁹⁹

Like the AAM, there is no specific mention of restitution in the Code of Ethics. Perhaps it is more so implied within Step 2, but the lack of a statement shows that it is up to individual museums to combat the issue. Step 3 is also important, where cultural property is not monetary but rather cultural heritage of the world and should be treated as such.

The MA does acknowledge restitution, just not in its official documents. The current director of the MA, Sharon Heal, wrote as recently as March 2023 that “legislation on restitution needs updating.”¹⁰⁰ In a short article, the director acknowledged that the restitution debate is evolving, where it matters now more than ever. However, regarding U.K. museums, she said that: “the process is not straightforward for some national museums in England. These museums are governed by statutory laws that legally prevent them from disposing of items from their collections.”¹⁰¹ This acknowledgement shows her awareness of the issue, just her lack of the power to do much about it. As the MA director, her job is to help the MA advise U.K. museums

⁹⁹ Museums Association, “Code of Ethics for Museums.”

¹⁰⁰ Sharon Heal, “Policy: Legislation on Restitution Needs Updating,” Museums Association, accessed March 30, 2023, <https://www.museumsassociation.org/museums-journal/opinion/2023/03/policy-legislation-on-restitution-needs-updating/>.

¹⁰¹ Heal, “Policy: Legislation on Restitution Needs Updating.”

effectively and create strong frameworks going forward. This is similar to the AAM, where both are not involved in governance but in assistance to museums.

The International Council of Museums (ICOM)

The International Council of Museums (ICOM) unites museums from around the world together, including both the MET and British Museum. Since its inception in 1946, it has grown to become the largest international museum association in the world. It now consists of over 138 countries, with 119 national committees and 32 international committees.¹⁰² ICOM includes an Executive Board, General Assembly, and Advisory Council. Its national subcommittees also have branches directly associated with the U.S. and U.K. Its mission statement includes five steps: “Establish standards of excellence,” “lead a diplomatic forum,” “develop a professional network,” “lead a global think tank,” and lastly, “carry out international missions.”¹⁰³ The objective is to bring together museums from around the world and with the help of its different committees and leadership to create unified guidelines for museums. It’s essentially a constantly evolving international convention, as the members meet consistently, and it has the power to make changes. Furthermore, its subnational committees help to unite museums on a country-by-country basis, where it can help individual museums at the national level. While viewing ICOM U.K. versus ICOM U.S., there are differences in the language of their missions.

Here is ICOM U.K.:

“It is an organisation which promotes intangible heritage and the preservation of material heritage. It develops best practice standards for the world- wide museum industry and, through its global reach and events programme, contributes to the international agenda of museums in the UK.”¹⁰⁴

Here is ICOM U.S.:

¹⁰² International Council of Museums, “Missions and Objectives,” accessed March 23, 2023, <https://icom.museum/en/about-us/missions-and-objectives/>.

¹⁰³ International Council of Museums, “Missions and Objectives.”

¹⁰⁴ ICOM UK, “About Us,” accessed December 1, 2022, <https://uk.icom.museum/about-us/>.

“ICOM-US facilitates U.S. museum professionals’ participation in the global museum community, in addition to representing and advocating for U.S. museums’ international interests within ICOM. To date over 7,310 museum professionals and 140 museums from 50 states and territories have joined the National Committee of ICOM for the United States.”¹⁰⁵

Both committees seek to serve the U.S. and U.K. differently, but their objectives are similar. Furthermore, these committees can loosen the international burden of ICOM. They help to branch out its values by creating subnational committees, therefore this museums association is extremely effective at spreading out across the globe.

Like the AAM and MA, ICOM has a code of ethics, instead called “Standards on Ethics.” However, it is larger and split up into different sub-topics across different documents. More importantly, it also combats the issue of restitution unlike the AAM and the MA. There are two important documents, one on the acquisition and accession process, as well as the deaccessioning process. Accession refers to the process of recording and inventorying cultural property after its acquisition. A detailed acquisition process can be found within the documents. It states that:

“The decision to acquire an object (whether it is offered for donation, acquired at sale or auction or found during an archaeological excavation) and accession it into a museum’s collection should be made thoughtfully, considering the nature of the object and its provenance, the museum’s mission and the resources that will be required to care for, display and provide access to the object. A museum’s collections policy should thoroughly define the acquisition process and address the legal and ethical principles and professional responsibilities involved.”¹⁰⁶

There is a clear emphasis placed on determining provenance and how protection of cultural property will be managed once it arrives in the museum. All appropriate paperwork proving an artifact’s provenance should be included as well as any other applicable evidence supporting the museum’s acquisition. The accessioning document also includes links to databases for researching provenance history to prove a clean slate or for any other questions

¹⁰⁵ ICOM-US, “Home,” accessed April 8, 2023, <https://www.icomus.org/>.

¹⁰⁶ International Council of Museums, “Guidelines on Deaccessioning of the International Council of Museums,” approved September 2019, <https://icom.museum/wp-content/uploads/2019/10/Guidelines-on-Deaccessioning-of-the-International-Council-of-Museums.pdf>

about an artifact's history.¹⁰⁷ ICOM makes it clear that they will uphold museums to high standards in the acquisition and later accession process. It's important to remember that these are the guidelines on which museums should base their own policies. This is what museums *should* adopt, not must adopt, a continuing issue for international policy making.

With the deaccessioning process, several steps are outlined for reasons to deaccession cultural property. Of the ten listed, one is important regarding restitution: "The museum's possession of the object is inconsistent with applicable law or ethical principles, e.g., the object was, or may have been, stolen or illegally exported or imported, or the object may be subject to other legal claims for return or restitution."¹⁰⁸ The legal status of the artifact is considered prior to returning any cultural property so a museum can best decide the course of action for restitution. Those steps prior to deaccession include:

- "the object's authenticity,
- the object's legal status of ownership,
- any restrictions made by the donor of the object,
- all the available provenance of the object, including prior ownership, sale, exhibition and import/export history,
- any other conditions and restrictions made at the time of acquisition."¹⁰⁹

Furthermore, there is mention of hesitancy to return artifacts when no provenance history or documentation is included, where it should be avoided unless research has been done to the fullest extent. Deaccessioning should only be done when truly necessary but should also be conducted to avoid legal battles and when ethics plays a strong enough role.

ICOM is the strongest museums association in the world. However, since ICOM has no direct authority over its members, museums still only adhere to their own national laws and their current individual policies. ICOM is most similar to the international conventions mentioned

¹⁰⁷ International Council of Museums, "Standards on Accessioning of the International Council of Museums," approved December 2020, https://icom.museum/wp-content/uploads/2022/03/Accessioning-Standards_EN.pdf

¹⁰⁸ International Council of Museums, "Guidelines on Deaccessioning of the International Council of Museums."

¹⁰⁹ International Council of Museums, "Guidelines on Deaccessioning of the International Council of Museums."

above but much better. Because its documentation and addition of more member museums constantly evolve, it can effectively work harder to help museums than the international conventions. It is also stronger than the AAM and the MA, not only because it identifies restitution as a larger issue with guidelines to assist museums, but also because it operates on an international scale and has more members. Museum associations, national and international, are crucial to developing individual museum policies, because they unite thousands of museums to combine their policies and find which ones work the best.

Individual Museum Policies

This section will focus specifically on the policies of the British Museum in London as well as the Metropolitan Museum of Art (MET) in New York City, which are relevant analysis in the next chapter. Both are large, encyclopedic museums that share similar values, but are managed by separate governments that influence them.

The Metropolitan Museum of Art (MET)

In the U.S., the Metropolitan Museum of Art is one of the largest and one of the most incredible collections of artworks from around the world. Aside from its massive collection, it is well known for its success in restitution policy. This is detailed in its “Collections Management Policy” document, which lays out general policy for museum operations but also the cultural property acquisition process and return policy. The policy states that: “The Museum is committed to the principle that all collecting be done according to the highest standards of ethical and professional practice.”¹¹⁰ This not only creates high standards but shows that the MET has adopted self-accountability regarding collection management. A major factor that appears often in the document is provenance, a part of the acquisition process that is most

¹¹⁰ The Metropolitan Museum of Art, “Collections Management Policy,” approved September 13, 2022, <https://www.metmuseum.org/-/media/files/about-the-met/policies-and-documents/collections-management-policy/Collections-Management-Policy.pdf>

important to the possession history of an artifact. As discussed in Chapter 1, provenance is a central component in determining cultural property ownership, and with reliable evidence, an ethical and legal acquisition can be made. The document states this regarding artifact provenance:

“The Museum shall rigorously research the provenance of a work of art prior to acquisition to determine that the Museum can obtain clear title. Such research should include, but is not necessarily limited to, determining:

- the ownership history of the work of art;
- the countries in which the work of art has been located and when;
- the exhibition history of the work of art, if any;
- the publication history of the work of art, if any;
- whether any claims to ownership of the work of art have been made;
- the circumstances under which the work of art is being offered to the Museum.”¹¹¹

There is also mention of objects entering the U.S. after a five-year period that must come with import and export documentation. For larger purchases, a search in stolen art databases must be conducted. As applicable to all U.S. museums, the MET is liable for its acquisitions under the CCPIA, but its own acquisition policies are much more defined.

The document also states more clearly its decision making regarding the acquisition process when faced with what they define as “archaeological material” and “ancient art.” They recognize that documentation cannot always be produced despite meticulous efforts of provenance research, meaning simply documentation might not exist despite no evidence of illegal ownership history. The museum will at that point make a judgment call on whether to acquire the object, but if there are too many questions, to simply not move forward. Nevertheless, the document states that: “In all instances, the Museum shall carefully balance the possible financial and reputational harm and the potential for legal liability against the benefit of collecting, presenting, and preserving the work in trust for the educational benefit of present and

¹¹¹ The Metropolitan Museum of Art, “Collections Management Policy.”

future generations.”¹¹² Clearly, the decision-making process is a difficult one, but not one without careful thought and attention to detail.

Lastly, the museum does recognize the need for restitution given enough evidence of ownership rights by another, third party entity. Many have praised the MET for their policy, mostly because of their willingness to cooperate when evidence shows an artifact should be returned. This is stated in their policy here:

“If the Museum, as a result of its continuing research, gains information that establishes another party’s right to ownership of a work, the Museum shall bring this information to the attention of the party, and if the case warrants, initiate the return of the work to that party. In the event that a third party brings to the attention of the Museum information supporting the party’s claim to a work, the Museum shall respond promptly and responsibly and take whatever steps are necessary to address this claim, including, if warranted, returning the work.”¹¹³

It’s clear that the MET has taken measures to limit or prevent liability, but overall do right by returning any artifacts that should not be in their possession. This is what sets the MET apart as a well-respected institution at a time where restitution continues to be a difficult process. The next chapter will focus on one of the more famous restitution stories involving the MET.

The British Museum

The British Museum is a large, encyclopedic museum located in London responsible for hundreds of artifacts whose policies have not garnered the same respect and reputation as those of the MET. In fact, the museum “has been scrutinized for possessing and displaying objects...from countries and communities that have requested their return.”¹¹⁴ This can be attributed to the different laws they follow, but more so that they have proven to push against restitution claims brought against them. The British Museum follows the British Museum Act of 1963, a document that reshaped the structure of the British Museum regarding Board of Trustee

¹¹² The Metropolitan Museum of Art, “Collections Management Policy.”

¹¹³ The Metropolitan Museum of Art, “Collections Management Policy.”

¹¹⁴ Godwin, “Legal Complications,” 145.

abilities and the museum's jurisdiction. Twenty-five people make up the Board of Trustees, with one being appointed by the King or Queen, fifteen by the Prime Minister, four by the Secretary of State, and the remaining five by the twenty members already appointed. In terms of general powers, the Board of Trustees has few restrictions regarding museum decision-making. Here is the clause in the document:

“The Trustees of the British Museum shall have power, subject to the restrictions imposed on them by virtue of any enactment (whether contained in this Act or not), to enter into contracts and other agreements, to acquire and hold and land and other property, and to do all other things that appear to them necessary or expedient for the purposes of their functions.”¹¹⁵

The general power of the Board of Trustees includes the protection of the museum's property, which can extend further to the removal of any objects through disposal or restitution. Here lies the very issue, where the British Museum Act of 1963 has no mention of restitution or the return of an object to another nation. Although this document is older than most museum policies, it still governs the current British Museum policies today and has not set up any framework for restitution. Instead, the only way for an artifact to be removed from the museum is through disposal. More specifically, when an artifact is a duplicate item, or if “it has become useless for the purposes of the Museum by reason of damage, physical deterioration, or infestation by destructive organisms.”¹¹⁶ In the current British Museum policy labeled:

“de-accession of objects from the collection,” items can be disposed of if they are “duplicates,” “unfit,” and even “useless” to remain in the collection. Restitution is not mentioned otherwise.

The Board of Trustees has power regarding the de-accession process, which includes selling, exchanging, or giving away artifacts. However, “the British Museum Act of 1963 dictates that Museum Trustees are legally bound by fiduciary duty to preserve the Museum's

¹¹⁵ The United Kingdom, “British Museum Act of 1963,” enacted July 10, 1963, <https://www.britishmuseum.org/sites/default/files/2019-10/British-Museum-Act-1963.pdf>

¹¹⁶ The United Kingdom, “British Museum Act of 1963.”

collection and dispose objects only in extremely specific and unusual circumstances.”¹¹⁷ Outside opinions and other expert advice are often brought forward given that de-accession is rare, but returning an object yields no mention. However, there is a clause mentioning an “external claim” process, one that says: “Where there is an external claim for the de-accessioning of an object within the Collection, the Trustees shall regard de-accession as a last resort that will only be considered if they regard it as the only fair and sufficient response to the claim.”¹¹⁸ This is the closest language to restitution that the current policy refers to, but it does not constitute a coherent restitution process. Given these policies, the British Museum’s restitution policies are much weaker than those enforced at the MET.

International conventions, domestic laws, museum associations, and individual museum policies currently make up the structure and framework of cultural property protection and restitution policy. However, the restitution process of cultural property remains unstable and lacking in clear guidelines. There is a need for a more coherent, updated, and binding convention that can clarify the restitution process between market nations and their museums with source nations and their cultural property. As this chapter revealed, international conventions can be agreed upon by countries, but are not binding to them at the domestic level unless countries take matters into their own hands. Domestic law is required to ratify parts or all of an international convention for them to be fully effective, but those vary throughout state parties as well. Museum associations such as ICOM have the potential to build on international conventions but lack the authority to do so. Currently, individual museum policies fill in the gaps of international and domestic legislation. A lack of uniformity causes the restitution process to be inconsistent.

¹¹⁷ Godwin, “Legal Complications,” 147.

¹¹⁸ The British Museum, “British Museum Policy: De-accession of Objects from the Collection,” approved September 29, 2018, https://www.britishmuseum.org/sites/default/files/2019-10/De-accession_Policy_Nov2018.pdf

Without enough cooperation by nations and museums, restitution, and as a result cultural property protection, remains weak.

Chapter 3. Restitution Case Studies

As a result of the implementation of international conventions, domestic laws, and individual museum policies, the process by which museums make restitution of cultural property has become more defined. It still remains a complicated process however, as countries have signed onto different international conferences, have promulgated their own domestic laws, and developed distinct museum policies. Ideally, market nation museums will return cultural property to source nation museums when convincing restitution claims are presented. With the restitution process reliant upon individual museum policies, certain museums have been more successful than other museums without strong restitution policies. Some museums are unable to handle restitution claims because they lack a proper policy, which can lead to costly litigation. Some museums have chosen to avoid litigation entirely by returning cultural property ethically. All museums need to adopt restitution policies in order to avoid threats of litigation, especially when provenance history is an issue. The purpose of this chapter is to evaluate two restitution case studies which will illustrate why there is a need for uniform restitution policies for museums throughout the world.

Throughout this chapter, two separate museum restitution case studies will be examined, one from the Metropolitan Museum of Art (henceforth the MET) in New York City and one from the British Museum in London. Since Chapter 2 examined the restitution policies of these two institutions, these case studies describe and analyze the execution of their policies and the differences between them. First, the Euphronios Krater will be examined, an ancient bowl used for mixing wine with water created by the famous Greek vase painter Euphronios and one of the best surviving Greek pottery artifacts today. The MET returned the bowl back to the Italian government in 2006, due both to its controversial history and also to implement a stronger

restitution policy moving forward. Second, the British Museum's Elgin Marbles will be examined, which are pieces from the Parthenon in Athens, a major historical structure in Greek history, much of which remains standing today. Currently, the marbles remain in the British Museum. The Museum's Board of Trustees has refused to return them to Greece despite numerous requests. Greece recently built a new Acropolis museum and wants to accommodate the artifacts, claiming rightful ownership. The Board of Trustees believes the Museum has rightful ownership because a representative from the U.K., Lord Elgin, took the marbles for research purposes and sold them to the British Museum. Overall, these restitution case studies demonstrate the effectiveness of the differing restitution policies adopted by the two museums.

The Euphronios Krater

Description

The Euphronios Krater was painted by the legendary Euphronios. It was created roughly 2,500 years ago. Euphronios was a Greek vase painter in Athens working during the late 6th and early 5th centuries B.C.E. His work is unique, not only for his incredible craftsmanship and style, but also because many of his works have been lost, putting the Euphronios Krater in rare company. Apparently, "fewer than 30 vases by Euphronios...are known to have survived. The krater dates from around 515 B.C. and is considered one of his finest achievements."¹¹⁹ The purpose of the artifact was to be a bowl used to mix wine with water, also known as a calyx-krater. Although it has been called a vase, krater, and bowl, its use was well-defined for the Ancient Greeks. What's included on the vase is an Ancient Greek myth. The description reads:

"The Euphronios (Sarpedon) krater is a red-figure calyx krater made in Athens *circa* 515 BC, 46 cm high and 55 cm in diameter, signed by Euxitheos as potter and Euphronios as painter. It is decorated on the front with a scene depicting the death of Sarpedon, who is attended by Hypnos

¹¹⁹ Elisabetta Povoledo, "Ancient Vase Comes Home to a Hero's Welcome," *New York Times*, January 19, 2008, <https://www.nytimes.com/2008/01/19/arts/design/19bowl.html>

and Thanatos with the god Hermes looking on. On the reverse are three Athenian youths arming themselves for battle.”¹²⁰



Figure 1. Euphronios Krater.

This was a common theme in Ancient Greek pottery, as polytheism dominated Ancient Greek culture. Other sources note that the twin Gods tending to Sarpedon, Hypnos and Thanatos, represent sleep (Hypnos) and death (Thanatos) as they “bear him home.”¹²¹ Due to Euphronios’ natural skills and the depiction of the myth, the Krater is very elegant according to Greek pottery standards. The MET recognized this, paying \$1 million dollars for the Krater in 1972, one of the most expensive acquisitions in its history. What the institution didn’t know at the time was that their purchase would quickly become controversial.

¹²⁰ Neil Brodie, “Euphronios (Sarpedon) Krater,” *Trafficking Culture*, September 6, 2012, [https://traffickingculture.org/encyclopedia/case-studies/euphronios-sarpedon-krater/#:~:text=krater%20to%20Italy,-The%20Euphronios%20\(Sarpedon\)%20krater%20is%20a%20red%2Dfigure%20calyx%20potter%20and%20Euphronios%20as%20painter](https://traffickingculture.org/encyclopedia/case-studies/euphronios-sarpedon-krater/#:~:text=krater%20to%20Italy,-The%20Euphronios%20(Sarpedon)%20krater%20is%20a%20red%2Dfigure%20calyx%20potter%20and%20Euphronios%20as%20painter).

¹²¹ Povoledo, “Ancient Vase.”

Background to the Controversy

Despite the disputes about the origins of the Krater, most acknowledge that it was illegally obtained by *tombaroli*, or tomb raiders, in the Italian town of Cerveteri in 1971.¹²² This is the start of its illegal provenance and acquisition history. Immediately following excavation, the Krater, in fragments, was sold to Giacomo Medici for \$88,000, a known antiquities dealer who would eventually be convicted of his continued illegal acquisitions by 2005.¹²³ Rather than keeping the artifact in Italy, the goal was to sell it for a profit elsewhere. It ultimately arrived in Switzerland, as it was smuggled into the often-used destination for the illegal transfer of cultural property by 1972.¹²⁴ It was sold for \$350,000 to a man named Robert E. Hecht, another known antiquities dealer who decided to have it repaired in Zurich.¹²⁵ Although it was in a fragmentary state, it was repairable. At this point, Hecht began to develop a fake provenance so that it could be sold to a museum for a large profit.

Following completion of newly forged documents, Hecht “alerted the Metropolitan Museum to the existence of the krater with a letter to Dietrich von Bothmer, the Metropolitan’s Curator of Greek and Roman Art.”¹²⁶ Hecht and von Bothmer had a personal relationship and had negotiated together before.¹²⁷ Following this, von Bothmer, along with the MET’s young director at the time, Thomas Hoving, met with the acquisitions committee within the Board of Trustees to convince them that the Krater would make a strong addition to its classical collection. They were successful, and after a lengthy sale process of coins and medals to obtain the funds,

¹²² Brodie, “Euphronios (Sarpedon) Krater.”

¹²³ Brodie, “Euphronios.”

¹²⁴ Brodie, “Euphronios.”

¹²⁵ Brodie, “Euphronios.”

¹²⁶ Brodie, “Euphronios.”

¹²⁷ Vernon Silver, *The Lost Chalice* (New York: HarperCollins, 2009), 58.

the MET bought the Krater for \$1 million. It was “the largest sum ever paid for a Greek vase, albeit a substantially lower price than that originally asked by Mr. Hecht.”¹²⁸

Despite the MET being the new owner of the Krater, it had, as noted above, a fake provenance. Hecht had successfully done this by posing as an “agent” for another man, Lebanese collector Dikran Sarrafian. Hecht forged letters confirming Sarrafian’s intention to sell the Krater and his prior ownership of it for up to fifty years.¹²⁹ Both of these letters were false. The first letter stated that Sarrafian had planned on selling the Krater to Hecht for an agreed upon sum of money. The second letter stated that the Krater had been obtained in 1920 by Sarrafian’s brother in London and had been sent to Switzerland for repair. Hecht crafted an effective plan, obtaining the funds in his Swiss bank account a day after the sale was completed. What became known later was that both von Bothmer and Hoving had been involved in the controversy.

Dietrich von Bothmer & Thomas Hoving Controversy

At first, the Krater received praise and public interest. The *New York Times Magazine* picked up the story early, and “notable scholars both here and abroad wrote to express their admiration for the purchase.”¹³⁰ By February of 1973 however, less than six months after its purchase, the *New York Times* published an article saying the acquisition was illegal. The article cited its illegal excavation in Cerveteri two years prior to the acquisition. A rumor spread through the *New York Times* and other media that the MET had “conspired” with Hecht and Sarrafian to keep the illegality of the purchase away from the public eye.¹³¹ The MET remained calm, as they “publicly expressed its willingness to cooperate with any official inquiry.”¹³²

¹²⁸ Ashton Hawkins, “The Euphronios Krater at the Metropolitan Museum: A Question of Provenance,” *Hastings Law Journal* 27, no. 5 (May 1976): 1165.

¹²⁹ Brodie, “Euphronios.”

¹³⁰ Hawkins, “The Euphronios Krater at the Metropolitan Museum: A Question of Provenance,” 1165.

¹³¹ Hawkins, “The Euphronios Krater,” 1166.

¹³² Hawkins, “The Euphronios Krater,” 1166.

Museum director Dr. Thomas Hoving appeared in a TV interview to answer the claims, where he famously nicknamed the Krater the “‘hot pot’ - a name that stuck.”¹³³

On its face, one could write off von Bothmer and Hoving as innocent dupes, but this wasn't the case. They were actually aware of the Krater's illegal history but instead chose to ignore those facts. Rather, they were more focused on obtaining the Krater for the MET's classical antiquities collection than recognizing the illegality of the purchase. In a letter to the *New York Times* from a concerned citizen, the citizen said that “it is self-evident that Mr. Hoving has not told the truth...and...Mr. von Bothmer is shown to have not told the truth.”¹³⁴ Although Hecht was the true criminal in this case, both von Bothmer and Hoving participated in the questionable acquisition. Hecht initially flew to New York to convince von Bothmer at his summer home that the Krater was real. Upon agreement, von Bothmer took Hoving to Switzerland to see the Krater in person.¹³⁵ von Bothmer was enamored by the Krater, trying to exhaustively convince Hoving on the flight to buy the Krater “presumably to assuage any possible doubts Hoving had about making a major purchase from the dealer.”¹³⁶

When Hoving did ask about the origins of the Krater, von Bothmer “fell silent, and Hoving decided that this would be the last time they would speak about where the krater had really come from.”¹³⁷ Once von Bothmer and Hoving arrived in Switzerland and saw the Krater for the first time, any questions about its questionable past no longer existed. The Krater was simply too incredible for the MET to pass up. Hecht fabricated the Sarrafian ownership story to von Bothmer and Hoving, however “Hoving didn't buy this, but that didn't mean he wouldn't

¹³³ Brodie, “Euphronios.”

¹³⁴ “Letters to the Editor,” *New York Times*, March 7, 1973,

<https://www.nytimes.com/1973/03/07/archives/letters-to-the-editor-the-case-against-a-world-central-bank-the.html>

¹³⁵ Silver, *The Lost Chalice*, 58.

¹³⁶ Silver, *The Lost Chalice*, 59.

¹³⁷ Silver, *The Lost Chalice*, 65.

buy the krater.”¹³⁸ For Hoving, he knew the Sarraffian story was fake, but he chose not to tell the media an alternative story. When approached by the media initially, Hoving decided to not even mention Sarraffian because the media might “snicker.”¹³⁹ It was his responsibility to tell the truth to the public and media as the MET director, which he did not do. He was quoted saying about Sarraffian, “I bet he doesn’t exist,”¹⁴⁰ but told the MET’s acquisitions committee that Sarraffian was a “well-known art dealer.”¹⁴¹ Ultimately, both von Bothmer and Hoving chose to ignore the illegality of the situation and failed to do their jobs morally.

Ultimately, both von Bothmer and Hoving are at fault for their involvement. They chose to ignore the evidence that the Krater had been illegally excavated and told the MET to acquire the Krater regardless. It was von Bothmer who knew all along, but he stayed less away from the media. Notably, von Bothmer reportedly acknowledged the looted tomb from a photo to a source at another museum, who came forward and told the media, but he also denied this claim.¹⁴² Hoving also notably said that “despite all of our ‘evidence,’ the hot pot wouldn’t go away,”¹⁴³ and it never did. Neither of them was punished for their involvement in the Krater’s acquisition, and with both of them passing away in 2009, they will live on through this controversy. Many years later, the MET had to return the Krater partly as a result of their actions.

Media Attention & Central Controversy

As the case developed outside of von Bothmer and Hoving, multiple storylines were created by the media and consumed by the public. One interview included a self-proclaimed tomb robber, where he stated that he recognized a fragment of the Krater during his illegal excavation activities in Cerveteri. Another story stated that the Krater was a fake copy of the

¹³⁸ Silver, *The Lost Chalice*, 67.

¹³⁹ Silver, *The Lost Chalice*, 72.

¹⁴⁰ Silver, *The Lost Chalice*, 70.

¹⁴¹ Silver, *The Lost Chalice*, 70.

¹⁴² Brodie, “Euphronios.”

¹⁴³ Thomas Hoving, *Making the Mummies Dance* (New York: Simon & Schuster, 1993), 336.

original that was being stored in an offshore Italian yacht. The MET, even after the media fueled acquisition crisis, remained cooperative in order to come to a resolution. They even did their own investigation abroad, sending lawyers to Sarrafian himself in Beirut with the intention to obtain legal evidence of a rightful acquisition.¹⁴⁴ The lawyers obtained signed affidavits of other artifacts connected to Sarrafian and what they believed to be evidence that the Krater had been in Switzerland before it was reportedly excavated.¹⁴⁵ Elsewhere, the Italian government opened an investigation separately. They recovered fragments related to Euphronios' other works, believing that they had enough evidence to prove the Krater was recovered in Cerveteri. The controversy eventually cooled down by 1973 following no new developments. An arrest warrant for Robert Hecht was even thrown out by the highest Italian Court due to lack of evidence.¹⁴⁶ Still, Italy felt harmed by this act. They used the controversy to spark their continuing loss of cultural property argument, wanting to show the world that they deserved to have their cultural property returned to them. This trend continues today.

By 1977, Sarrafian died in a car crash, and he therefore could no longer provide information on the case.¹⁴⁷ Despite this, a new theory had emerged. By 1993, some believed that there were two kraters, both owned by Sarrafian. One was the relevant Krater within the controversy, as well as a second krater in worse condition but with much better documentation and provenance. The theory emerged that Hecht had "taken the provenance and documentation from the [second] krater and attached it to the illegally-excavated and better-preserved Sarpedon krater bought by the Metropolitan."¹⁴⁸ Due to this theory, in 2001, the Italian government resumed its investigation into Hecht. After raiding Hecht's home and recovering a "memoir," the

¹⁴⁴ Brodie, "Euphronios."

¹⁴⁵ Brodie, "Euphronios."

¹⁴⁶ Hawkins, "The Euphronios Krater," 1174.

¹⁴⁷ Brodie, "Euphronios."

¹⁴⁸ Brodie, "Euphronios."

authorities found the evidence they needed. They concluded that Hecht had purchased the Krater from Medici following its illegal excavation.¹⁴⁹

The MET-Italy Accord

By February of 2006, the Euphronios Krater, along with a group of other artifacts, were planned to be returned to Italy following a mutual agreement. The new MET director at the time, Philippe de Montebello, felt it was time to return it. The MET had received too much media attention, and enough speculation showed there *could* be evidence connecting the Krater with the illegal dig site. In fact, “although the evidence for illegal excavation and trade was still largely circumstantial, the Metropolitan’s director Philippe de Montebello clearly thought it was convincing when he was quoted as saying that it was ‘highly probable’ that the vessel had been stolen from an Etruscan tomb.”¹⁵⁰ However, some reports concluded that the “fragments examined seem to be from a Euphronios krater other than the one belonging to the Metropolitan.”¹⁵¹ This wasn’t impossible, as Euphronios’ style and signature is consistent throughout his work. What is impossible to know is whether Sarrafian’s paperwork, which is what caused initial evidence of there being two kraters, contained conclusive information. The fact remains that there was an illegal dig involving Euphronios Krater fragments, but they may or may not have belonged to the MET’s Krater.

Regardless of whether the Euphronios Krater was illegally excavated, the MET’s officials allegedly had no awareness of or involvement in any illegal activities. However, the MET is aware of its public reputation and returning the Krater was definitely the right choice. Even while under pressure to act on the speculation, the MET attempted to find evidence that they had completed a legal transaction. Thus, “despite contrary gossip, press speculation, and varying

¹⁴⁹ Brodie, “Euphronios.”

¹⁵⁰ Brodie, “Euphronios.”

¹⁵¹ Hawkins, “The Euphronios Krater,” 1178.

recollections of an itinerant tornbarolo, the conclusion seems warranted that the museum's role in the acquisition of the krater was entirely proper and that the attack upon its provenance was unfounded."¹⁵² Because von Bothmer and Hoving kept the true facts from the acquisition committee, the MET as an institution was not in the wrong. They made a choice while under immense pressure, and even after extensive attempts to uncover conclusive supporting evidence, they correctly chose to return it to Italy.

The 2006 MET-Italy Accord was monumental for its time. As discussed in Chapter 1, the Accord turned out to be more mutually beneficial than prior agreements. The Krater actually remained in the MET until 2008, two years after the Accord was agreed upon. Its label was changed to now more accurately read: "Lent by the Republic of Italy."¹⁵³ Once the Krater was officially returned, Italy agreed to send some of its own cultural property as compensation on four-year, rotating terms. New objects were to be of "equivalent beauty and artistic/historical significance, mutually agreed upon."¹⁵⁴ Therefore, Italy received the Krater, a prized cultural artifact, while the MET in return received multiple artifacts to display in the Krater's place over time. Lastly, Italy agreed to move past old litigation claims for the items included in the Accord, which was the biggest factor that helped the MET to sign. The MET became free from legal claims and its reputation was maintained, while Italy showed its "willingness to pursue restitution claims outside the judicial context and achieve an amicable end to cultural property disputes."¹⁵⁵ The Accord ultimately helped both sides find a mutual solution. The Krater was returned to Italy while the MET was compensated for its cooperation throughout the process.

¹⁵² Hawkins, "The Euphronios Krater," 1181.

¹⁵³ Aaron Kyle Briggs, "Consequences of the Met-Italy Accord for the International Restitution of Cultural Property," *Chicago Journal of International Law* 7, no. 2 (Winter 2007): 642.

¹⁵⁴ Briggs, "Consequences of the Met-Italy Accord," 642.

¹⁵⁵ Briggs, "Consequences of the Met-Italy Accord," 642.

Ultimately, “this is a recognition of both the importance of museums in displaying cultural patrimony to the public and the necessity for cultural exchange between nations.”¹⁵⁶

This Accord set a new precedent and framework to determine the resolution of future restitution claims. It showed Italy’s commitment to reclaiming ownership of the Krater, but also their willingness to remove litigation threats and come to an agreement. With museums, before the Accord, they “were usually unwilling to seriously negotiate since they knew that if they simply denied any wrongdoing, most of the time the claim would not be pursued further.”¹⁵⁷ The greater question remains: Can this Accord be replicated as a framework for future restitution claims and agreements?

Results of the MET-Italy Accord

There is the possibility that the Accord could be used as a model for future restitution agreements. If it will be, however, is still unknown. Italy likely pursued the case because of the high-profile status of the Euphronios Krater and their partial evidence of its illegal excavation. Furthermore, the MET had a public and international reputation to maintain. The poor media publicity they received affected their reputation as one of the major art institutions in the world. Moreover, “the quid pro quo of antiquities for loans was a centerpiece of the Accord and a crucial factor in bringing the [MET] to the table.”¹⁵⁸ The MET was likely more cooperative because Italy compensated them with more artifacts. Lastly, the commitment to cultural property protection, from both museums and source nations, remains the highest priority. Italy is a source nation with better resources than others to protect its cultural property adequately. Because of this, the MET felt confident returning the Krater. According to scholar Aaron Kyle Briggs:

¹⁵⁶ Briggs, “Consequences of the Met-Italy Accord,” 642.

¹⁵⁷ Briggs, “Consequences of the Met-Italy Accord,” 642.

¹⁵⁸ Briggs, “Consequences of the Met-Italy Accord,” 645.

“The argument for restitution is stronger when a source nation has the ability to protect its cultural heritage domestically because preservation of the object is of the utmost importance for both museums and source nations. If the object is unlikely to be preserved in the source nation because that country is unwilling or unable to undertake protections, either due to lack of the rule of law, or lack of the economic resources necessary to protect the objects from theft and adverse environmental conditions, then the source nation will have a weaker claim to restitution.”¹⁵⁹

The MET understands that, with the return of the Krater to Italy, the physical protection quality will remain strong. Other source nations lack such resources physically to do so, but the MET knows Italy is not one of them.

Because of the prominence of the Krater, the public and other institutions paid close attention to the Accord. Public awareness of restitution before the Accord was low, but afterwards restitution became more important to the public. In fact, “the number of *New York Times* articles concerning looted antiquities has increased dramatically.”¹⁶⁰ Furthermore, the Association of Art Museum Dealers (AAMD), of which the MET belongs to, had published provenance guidelines two years before the Accord. They decided to amend portions of it following the agreement and has “shown an increased concern for acquiring works without provenance.”¹⁶¹ Lastly, this Accord should inspire other source nations to protect their own cultural property more effectively and also find ways to get it back. They could start by refusing to loan cultural property to museums that ignore provenance. Therefore, “the Model could thus act as a catalyst by showing other nations that it is possible to achieve successful resolution of cultural property disputes outside of litigation through cooperation with museums.”¹⁶²

Thus, was the Accord successful? Many would say yes, but it took many years of controversy before full cooperation from both parties fully materialized. In the end, both sides benefitted, an outcome not guaranteed with restitution agreements. It’s true that the Accord,

¹⁵⁹ Briggs, “Consequences of the Met-Italy Accord,” 646.

¹⁶⁰ Briggs, “Consequences of the Met-Italy Accord,” 649.

¹⁶¹ Briggs, “Consequences of the Met-Italy Accord,” 651.

¹⁶² Briggs, “Consequences of the Met-Italy Accord,” 652.

“although not perfectly replicable, it is unprecedented and reveals the possibility of an alternative to litigation in US courts.”¹⁶³ Upon its return to Italy in 2008, the nation was overcome with happiness. They used the Euphronios Krater as symbolism of winning a cultural property battle. To Italians, “the Euphronios krater holds a special place, symbolizing the war against clandestine tomb-robbing and illicit trafficking of the nation’s cultural patrimony.”¹⁶⁴ The Euphronios Krater is a coveted artifact for Italy’s and there was great reason to celebrate. Oscar Fiumara, the Italian Attorney General at the time, was quoted saying: “In these gloomy days, it gives me great pleasure to celebrate something positive.”¹⁶⁵ Clearly, the Euphronios Krater was a symbol of national pride.



Figure 2. Journalists and officials at a ceremony for the return of the Euphronios krater to Rome.

Ultimately, both the MET and Italy achieved an equitable resolution of the matter. It was truly the media that accelerated the scope of the issue, taking advantage of a high-profile artifact in a well-known institution. The MET was under pressure by the media to respond to the

¹⁶³ Briggs, “Consequences of the Met-Italy Accord,” 652-653.

¹⁶⁴ Povoledo, “Ancient Vase.”

¹⁶⁵ Povoledo, “Ancient Vase.”

reported claims or find stronger evidence to deny them, which they attempted to do by sending their lawyers abroad. Even though Hoving and von Bothmer were aware of the Krater's illegal provenance, they deflected any of their blame and the MET's in the initial cover-up. In the end, "one can only speculate about what actually took place in Cerveteri...it is certainly conceivable that fragments of a calyx krater, perhaps by Euphronios, were discovered."¹⁶⁶ The MET made the proper choice to return the Euphronios Krater. The same cannot be said about this second case study, where talks remain stalled for a crucial piece of Ancient Greek history to be returned to Athens from the U.K.'s British Museum.

The Elgin Marbles

Description

One of the most disputed sets of artifacts today is the Elgin Marbles. They are pieces of the Parthenon in Athens, Greece that were removed by Lord Elgin in the early 19th century. Lord Elgin sold them to the British Museum not long afterwards, where they remain today. Lord Elgin refers to a man named Thomas Bruce, who held the title as 7th Earl of Elgin and served as the British Ambassador to the Ottoman Empire between 1799 to 1803. The Ottomans occupied Greece at the time, welcoming Elgin to "study" the Parthenon directly.¹⁶⁷ The pieces Elgin removed were structurally integral to the Parthenon and damaged the building. Elgin was aggressive in what he took and had little remorse for the Parthenon as a historic ruin. The man in charge of Elgin's removals, an artist named Lusieri, said: "I have even been obliged to be a little barbarous"¹⁶⁸ when asked about the removal process. After a lengthy removal process, Lord Elgin eventually sold the pieces of the Parthenon to the British Museum in 1816, and they are

¹⁶⁶ Hawkins, "The Euphronios Krater," 1180.

¹⁶⁷ John Henry Merryman, "Thinking about the Elgin Marbles," *Michigan Law Review* 83, no. 8 (August 1985): 1884.

¹⁶⁸ Merryman, "Thinking," 1884.

now commonly called the “Elgin Marbles.” What Elgin took were several different parts of the Parthenon, such as the frieze, metopes, and pediments. Here is a detailed description:

“The frieze, a three-foot-high horizontal band carved in low relief, originally extended 524 feet around the Parthenon’s main inner chamber and depicted the Panathenaic Procession. Elgin acquired approximately 247 feet of the frieze. The metopes, a series of ninety-two 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 fifteen metopes, predominately from the south side Lapith and Centaur series. The pediments, the low triangles at the ends of the building formed by the pitch of the roof, were filled with a series of sculptures in the round. Elgin acquired seventeen pedimental figures. In addition, he collected assorted architectural fragments from the Parthenon.”¹⁶⁹



Figure 3. In a poll, 54% of the British public said they thought the sculptures should be returned.

The scenes themselves depicted on the marble sculptures are detailed and remain well intact today, showing scenes of Ancient Greek mythology. Several mythological and historical figures can be identified, such as charioteers, musicians, animals, and even centaurs, which are half-human, half-horse mythological beings. However, a particular group of sculptures is singled out, which include “slightly larger than life-size human figures, some reclining, some sitting, and some in movement, all of them missing either their head or limbs, together with a number of horse heads, and especially the extremely realistic horse head identified as that from the chariot

¹⁶⁹ Merryman, “Thinking,” 1884.

of the goddess Selene (moon).”¹⁷⁰ This group of figures has brought public curiosity but also criticism to the British Museum since their arrival. Activists are calling for their return, but the British Museum retains a tight grip on the Marbles.

Background to the Controversy

The legality of Lord Elgin’s acquisition process of the Marbles is still up for debate. At the time, the leaders of the Ottoman Empire occupied Greece and were allies with the U.K. The Ottomans supposedly approved of the acquisition, but with an Empire that no longer exists and with no formal documentation, this is an assumption. Elgin’s presence as the British Ambassador certainly was welcome, however. Greece, now an independent nation, claims the Marbles were removed illegally. A race with France was also a factor, where Elgin believed the French could have gotten to the Parthenon Marbles first. A British magazine wrote about that: “The fact is that the French are jealous of our good fortune in having secured those inspired productions by Lord Elgin’s energy.”¹⁷¹ However, once Elgin arrived at the Parthenon, his actions became more controversial. The furthest extent of his “studying” was to make casts of the Marbles for personal use back in England. His “studying” of the Parthenon evolved into the removal of the Marbles, which he was never there originally to do. The ability to transfer the Marbles back to London was obtained through an “ambiguous firman”¹⁷² which granted Elgin permission. A “firman” is known as an “official decree, order, license, or grant issued by a ruler.”¹⁷³ This grew to bribing Ottoman officials to turn a blind eye to his removal of the Marbles that eventually caused the

¹⁷⁰ Yannis Hamilakis, *The Nation and Its Ruins: Antiquity, Archaeology, and National Immigration in Greece*, Oxford University Press, New York, 2007, 246-247.

¹⁷¹ Hamilakis, *The Nation and Its Ruins*, 251.

¹⁷² Hamilakis, *The Nation and Its Ruins*, 251.

¹⁷³ Merriam-Webster, “Firman Definition & Meaning,” accessed May 11, 2023, <https://www.merriam-webster.com/dictionary/firman>.

structural damage.¹⁷⁴ What Elgin was truly approved to do legally by the Ottomans still remains in dispute, but nevertheless he achieved his purpose in Athens.

By 1816, the remainder of the antiquities had arrived in London, and the British Museum Acquisition Committee purchased the Marbles for 35,000 Euros. This was far less than Elgin wanted but his debt to the government played a role.¹⁷⁵ The British Museum bought the Marbles from Elgin legally but understood the acquisition circumstances and were fully aware of his actions. This does not put the British Museum out of the equation for the blame. Furthermore, around this time, public perception on museums was changing. Museum visiting no longer involved “spaces destined for the private pleasures of the aristocracy and became more arenas of public indoctrination, and museum visiting a sign of social distinction.”¹⁷⁶ The Elgin Marbles acquisition quickly contributed to the British Museum’s success and was symbolic of the power Western European museums held in protecting cultural property from source nations, which they regarded as less capable of offering adequate protection.

After several years of possession, the British Museum had their own internal controversy in the 1930s. During their move to another part of the Museum, the Marbles were “cleaned” of any coating of patina, which is marble discoloration or a color coating. This was completed by Lord Duveen, who was a sponsor of the gallery at the time. The details of the “cleaning,” which was not authorized by the museum, was carried out using copper chisels, metal brushes, and strong chemicals. When the matter was discovered by the museum, an unsuccessful attempt was made to cover it up; the story reached the British press, however, and at that time it caused a minor scandal.¹⁷⁷ The event went relatively unnoticed but gained traction by the late 1990s. In

¹⁷⁴ Hamilakis, *The Nation and Its Ruins*, 251.

¹⁷⁵ Hamilakis, *The Nation and Its Ruins*, 251-252.

¹⁷⁶ Hamilakis, *The Nation and Its Ruins*, 252.

¹⁷⁷ Hamilakis, *The Nation and Its Ruins*, 261.

1999, the British Museum held a symposium to discuss the issue as a result of new pressure from the media to explain the basis behind the “cleaning.” News of this issue sparked restitution supporters to gather more evidence of why the British Museum should return the Marbles. It was in fact the British Museum that didn’t know how to care for the Marbles, supporters claimed.

Greece has since completed a new Acropolis Museum (Acropolis refers to the entirety of the site including the Parthenon) at the foot of the Parthenon to act as a “visual link between the sculptures inside it and the Parthenon but also...an exhibition mode which will resemble the original appearance of the sculptures on the monument.”¹⁷⁸ The Greek government hoped this would trigger the British Museum to discuss an agreement, but still nothing has happened. Greece even offered to include a unique space in the museum for the Marbles and highlight its importance, to no avail. Furthermore, Greece felt prepared enough to offer a package of cultural property in return, where they would “send antiquities that have not been seen outside Greece...in an arrangement of rotating exhibitions, or even reciprocate the permanent loan of the Parthenon marbles with a permanent loan of antiquities.”¹⁷⁹ Today, despite these efforts, the British Museum has not moved forward with discussion on an agreement.

Controversy & Failure to Return the Marbles

The British Museum remaining the possessor of the Marbles has created more controversy as they continue to display them. On its face, the British Museum is an affluent institution in the public eye. As the first public encyclopedic museum in the world, admission is still free to the public. Their “aim is to hold a collection representative of world cultures and to ensure that the collection is housed in safety, conserved, curated, researched and exhibited.”¹⁸⁰

¹⁷⁸ Hamilakis, *The Nation and Its Ruins*, 259.

¹⁷⁹ Hamilakis, *The Nation and Its Ruins*, 263.

¹⁸⁰ Godwin, “Legal Complications,” 145.

However, their refusal to return cultural property, especially surrounding the Elgin Marbles, has created controversy.

As discussed in Chapter 2, the Board of Trustees governs the entirety of the museum outside of any British government involvement. They are very particular in letting artifacts, if any, leave the possession of the museum. Some scholars believe that the British Museum acknowledges the power it holds over Greece by possessing such valuable artifacts. In fact, “power can be demonstrated by possessing cultural property from source countries or by possessing items belonging to a nation’s claimed heritage,”¹⁸¹ which may be the British Museum’s desire. In 1974, long removed from the Ottoman Empire’s control but after years of internal conflict, the Third Hellenic Republic, the current Greek government, assumed power.¹⁸² This new government claimed the Marbles embodied the combined loss of their cultural property and the plundering of their cultural heritage. Essentially, the Marbles “became an emotional symbol of newly independent Greece.”¹⁸³ By 1983, the Greek government made its first official request for the return of the Elgin Marbles which the British Museum denied. This is what started an ongoing dispute where both sides have yet to come to a mutual compromise.

The Board of Trustees is bound by the British Museum Act of 1963 which “dictates that Museum Trustees are legally bound by fiduciary duty to preserve the Museum’s collection and dispose objects only in extremely specific and unusual circumstances.”¹⁸⁴ Unusual circumstances are presented with the Elgin Marbles, but the Museum’s longstanding possession and belief that their ownership is justified causes them to repel the Greek government’s persistent claims. This has caused the Elgin Marbles to become one of the most important yet controversial restitution

¹⁸¹ Godwin, “Legal Complications,” 151.

¹⁸² Godwin, “Legal Complications,” 153.

¹⁸³ Godwin, “Legal Complications,” 153.

¹⁸⁴ Godwin, “Legal Complications,” 147.

cases of all time. The Board of Trustees is strictly limited in their approach, but returning the Marbles would lead to the best solution. Compensation may need to be introduced, but surely it would take a large weight off of the British Museum's shoulders.

The issue has remained political within the U.K. During his campaign for Prime Minister, U.K. Labour Leader Jeremy Corbyn stated he would help to return the Marbles if elected.¹⁸⁵ In hindsight, this would have been difficult since the British Museum acts under sole authority of the Board of Trustees. Furthermore, in 2019, the British Museum's director faced backlash when he stated that the Marbles' removal was a "creative act"¹⁸⁶ and therefore they will never be returned. He believes that the Museum's ownership of the Marbles is entirely legal, stating that "[t]he objects in the collection of the British Museum are owned by the museum's commissioners."¹⁸⁷ As a result of the director's public statements, a member of the Museum's Board of Trustees subsequently resigned. The Trustee highlighted the Museum's failure to return cultural property, likely referring to the public statements. This only weakened public trust and the Museum's reputation more. The controversy has caused other countries to adopt policy changes in response. The European Union spoke out against the British Museum for its failure to return the Elgin Marbles, saying in 2020 it would not trade with the nation until they returned them.¹⁸⁸ Current President of China Xi Jinping, has voiced support for Greece in their request for the Marbles.¹⁸⁹ The debate has influenced others because of how important the Marbles are to Greece's cultural heritage and due to the unresolved status of the claims.

A notable advocate in the controversy is the late Melina Mercouri. As the former Minister of Culture and Sports in Greece, she made the Elgin Marbles a priority and eventually a

¹⁸⁵ Godwin, "Legal Complications," 147.

¹⁸⁶ Godwin, "Legal Complications," 147.

¹⁸⁷ Godwin, "Legal Complications," 147.

¹⁸⁸ Godwin, "Legal Complications," 146.

¹⁸⁹ Godwin, "Legal Complications," 146.

“national issue” in Greece. The issue was no longer political for Greece either. Mercouri believed this controversy could unite Greece’s citizens if successful. Two years after she took her position the first formal request in 1983 was made. Mercouri was quoted saying: “You must understand what the Parthenon Marbles mean to us. They are our pride. They are our sacrifices. They are the supreme symbol of nobility. They are a tribute to democratic philosophy. They are our aspiration and our name. They are the essence of Greekness.”¹⁹⁰ Her advocacy and goals inspired many Greeks to care about the Elgin Marbles and fight for their return. Moreover, she wanted Greeks to take more interest in their own cultural heritage and advocate for the return of stolen cultural property. Mercouri stated that: “I hope that I will see the Marbles back in Athens before I die; but if they come back later I shall be reborn.”¹⁹¹

Unfortunately, in 1994, Mercouri passed away. Her death caused a small reaction within the British Museum, where Greek students studying abroad in the U.K. forced negotiations with museum officials to be let inside and leave flowers on the Marbles directly in her honor.¹⁹² It was mostly peaceful, likely out of respect for Mercouri’s recent passing. Although Mercouri’s death occurred nearly 30 years ago, her influence on Greece’s citizens sparked more involvement and advocacy for restitution of the Marbles than ever before. This applies today, where newer generations of Greek officials have not let the Marbles be forgotten. Her image remains symbolic to the Greek restitution movement, and she inspired many to get involved in the restitution debate overall.

¹⁹⁰ Jules Dassin, “The Parthenon Marbles,” Melina Mercouri Foundation, accessed March 30, 2023, <https://melinamercourifoundation.com/en/the-parthenon-marbles/the-parthenon-marbles/>.

¹⁹¹ Dassin, “The Parthenon Marbles.”

¹⁹² Hamilakis, *The Nation and Its Ruins*, 254-255.

The Future of the Controversy

The Elgin Marbles have changed the way the world perceives cultural property protection. In December of 2002, a group of roughly 40 museum directors from the world's largest encyclopedic museums came together to issue a "Declaration." In fact, they came together "in response to the political pressure Great Britain faced from Greece concerning the Elgin Marbles."¹⁹³ While the Declaration itself was not extensive, it was an understanding amongst the museum directors of the importance of encyclopedic museums for protecting cultural property and that the restitution debate was growing. The Elgin Marbles were an example of the success of cultural internationalism in their view, and that there was not enough evidence for Greece to build a claim for their return.

Because the museum directors were internationalists, they believed that "under international standards, the Ottomans had legal authority over the Parthenon because it was public property and therefore acquired by the successor nation after a change of sovereignty."¹⁹⁴ The Declaration deflected any blame that encyclopedic museums were taking, where "cultural property acquired centuries ago should be viewed in light of the time period in which they were taken."¹⁹⁵ There are reasons why this argument falls short, especially because "such an argument is contrary to modern examples of nations responding to demands to act morally and acknowledge their own gross historical injustices and grievances..."¹⁹⁶ Instead of answering relevant questions, this regressive approach views the controversy in the time period it occurred. It is designed to dodge conflicts like the Elgin Marbles instead of confronting them head on. The British Museum has taken this approach before, claiming that Lord Elgin removed the Marbles

¹⁹³ Christine K. Knox, "They've Lost Their Marbles: 2002 Universal Museums' Declaration, the Elgin Marbles and the Future of the Repatriation Movement," *Suffolk Transnational Law Review* 29, no. 2 (Summer 2006): 315.

¹⁹⁴ Knox, "They've Lost Their Marbles," 328.

¹⁹⁵ Knox, "They've Lost Their Marbles," 332.

¹⁹⁶ Knox, "They've Lost Their Marbles," 332.

because of the Athens atmospheric pollution. Naturally, they have failed to note the damage Lord Elgin caused to the Parthenon and the improving Athens air quality since.¹⁹⁷ One fact remains true regardless of the arguments: “Lord Elgin’s removal and taking of the world’s greatest single collection of classical Greek sculptures is likely the world’s most celebrated cultural property dispute and continues to be to this day.”¹⁹⁸

Many criticize the British Museum for the mishandling of the Elgin Marbles, but it is important to see their own perspective on the matter today. The British Museum dedicates a section of their website to the Marbles and the controversy, which recognizes facts like the history of the Parthenon and the new Acropolis Museum. The British Museum also acknowledges most of the basic facts, but still states that Elgin had permission with the firman to go as far as remove pieces of the Parthenon.¹⁹⁹ This is one of the most disputed facts because the firman has since been lost. Furthermore, the museum recognizes Greece’s formal request in 1983 for the return of the Marbles but states a “loan request has never been received.”²⁰⁰ The museum appears to be open to a loan process but the Greek government’s unwillingness to recognize the British Museum’s lawful title to the Marbles stands in the way. Lastly, they claim that they currently have a good relationship with the Acropolis Museum.

The British Museum, according to its own publications, seems steadfast on keeping an internationalist perspective and sharing the Marbles with the world instead of sending them back to Greece. However, they appear open to discussion if Greece is willing to recognize the British Museum as the rightful owner. This seems unlikely since it is one of the principal arguments holding discussions back. Therefore, the British Museum continues to hold out for a beneficial

¹⁹⁷ Knox, “They’ve Lost Their Marbles,” 334.

¹⁹⁸ Knox, “They’ve Lost Their Marbles,” 329.

¹⁹⁹ The British Museum, “The Parthenon Sculptures,” accessed April 1, 2023, <https://www.britishmuseum.org/about-us/british-museum-story/contested-objects-collection/parthenon-sculptures>.

²⁰⁰ The British Museum, “The Parthenon Sculptures.”

solution, but in the meantime has attempted to quell public concerns with trustee statements²⁰¹ and their website.

Most recently, there have been reports of both sides being close to a restitution agreement. However, some reports have said that the sides are still far apart. In 2021, Greece Prime Minister Kyriakos Mitsotakis and British Museum chairman George Osborne began talks in mutual locations, suggesting a promising outcome.²⁰² According to the press, “an agreement is 90% complete, but a critical 10% remains unresolved. It’s hard to get there, but it’s not impossible. Significant progress has been made.”²⁰³ Terms of the reported deal are still unknown to the press. The most difficult question is what the British Museum will receive in return if they send back any of the Marbles. Reports suggest Greece has offered “priceless artifacts, some of which have never left Greece,”²⁰⁴ which seems like a fair compromise. Other ideas have been promoted such as returning parts of the Marbles to Greece on a more incremental basis rather than all at once. Nevertheless, reports suggest both sides are “negotiating in good faith,”²⁰⁵ but talks are slow. Even if no deal is accomplished, this is certainly progress. One reporter said that “if there was some kind of deal, it would be a great symbol for others seeking restitution claims.”²⁰⁶ The fact remains that the discussion is based around “a deal that is beneficial to both

²⁰¹ There is a separate section of the website titled: “The Parthenon Sculptures: The Trustees’ Statement,” accessed April 23, 2023. This section explains any FAQs and what the Trustees call “common misconceptions.” This can all be found here: <https://www.britishmuseum.org/about-us/british-museum-story/contested-objects-collection/parthenon-sculptures/parthenon>

²⁰² Alex Marshall, “After 220 Years, the Fate of the Parthenon Marbles Rests in Secret Talks,” *New York Times*, January 17, 2023, <https://www.nytimes.com/2023/01/17/arts/design/parthenon-sculptures-elgin-marbles-negotiations.html>

²⁰³ Katie Razzall, “Deal to Return Elgin Marbles to Greece at Advanced Stage - Reports,” *BBC News*, December 3, 2002, <https://www.bbc.com/news/entertainment-arts-63846449>

²⁰⁴ Marshall, “After 220 Years.”

²⁰⁵ Marshall, “After 220 Years.”

²⁰⁶ Marshall, “After 220 Years.”

Greece and Britain, centered on a cultural partnership between the two countries,²⁰⁷ and that cannot happen if both sides do not find a way to agree on equitable terms.

Overall, both the Euphronios Krater and the Elgin Marbles show the stark contrasts that make up the restitution debate. Some museums are willing to compromise while others are not, but this rests upon individual museum policies that are all so different. The return of the Euphronios Krater is an advancement of restitution policy, while the Elgin Marbles remain an unresolved and contested case. Perhaps the Elgin Marbles might reach the same conclusion as the Euphronios Krater did, but after many years of holding out, that conclusion appears bleak even with recent discussions. Ultimately, the facts remain clear that it takes strong restitution policies for an artifact to be returned, even under legal circumstances.

²⁰⁷ Razzall, “Deal to Return Elgin Marbles to Greece at Advanced Stage - Reports.”

Chapter 4. Policy Proposal

Restitution policy has evolved dramatically since the onset of the cultural property debate. As the previous chapters have determined, encyclopedic museums and their individual restitution policies currently decide how restitution claims are handled. Furthermore, source nations now have stronger resources to physically protect cultural property, a prior concern for these museums. With restitution, “the pace...has only accelerated in recent years. In just the last few months, museums...have returned dozens of antiquities to the countries from which they were taken.”²⁰⁸ Even so, there is no uniform international system for the restitution of cultural property. This must change, for restitution cannot be improved if a new system is not adopted. Today, individual museums should be bound to return artifacts, but even when sufficient evidence is presented, there is no penalty for failing to return them. The purpose of this chapter will be to provide a policy proposal as a solution to the restitution debate and how to effectively return cultural property.

The Restitution Issue Presently:

As it stands, international conventions have failed to improve the restitution process. They are not fully binding on all countries throughout the world and therefore they do not control the policies of individual museums. Essentially, they have not had much of an effect other than acting as a reference for following restitution and cultural property protection guidelines. Although domestic laws such as the CCPIA are binding on U.S. museums, they focus less on the restitution process and more on the importation process. Currently, even the most organized encyclopedic museums do not share common language or goals in their restitution policies.

²⁰⁸ Bowley, “For U.S. Museums With Looted Art.”

Instead, “museums began to set guidelines that aligned in spirit with [their] principles”²⁰⁹ rather than seeking uniform policies. Granted, individual museums have no obligation to match each other’s policies, but this is precisely why consistent restitution policies are needed.

The acknowledgement of the failure to find international continuity on restitution and cultural property protection is not new. Scholars have recognized that both international conventions and domestic laws have failed to impact both restitution policy and cultural property protection. The overall scope of the issue was described by Alexandra Levine:

“Although the importance of cultural property demands laws that will truly protect it, there is currently no legal system that has effectively done so. While the UNESCO Convention ignores the need for uniform law and permits individual countries to maintain varying domestic laws concerning stolen cultural property, domestic laws still do not provide adequate protection. Further, since cultural property theft has historically been regulated on the domestic scale, many countries have resisted the movement toward a more uniform, international system of regulation...”²¹⁰

This has been a consistent issue for restitution development, where international attempts are strong but have no enforcement ability. International conventions have no governance while domestic laws do not provide enough assistance. In sum, new rules that require international continuity on restitution policy and cultural property protection are needed.

The ICOM Code of Ethics, the strongest attempt at an evolving set of museum policies to date, is well-positioned to accommodate new restitution policies more quickly and effectively than the international conventions. However, ICOM has neither authority over museums, nor governance over countries that create relevant cultural property protection laws. Through this Code of Ethics, ICOM has the resources to advance restitution policy within individual encyclopedic museums. But how can the ICOM Code of Ethics be enforced?

²⁰⁹ Bowley, “For U.S. Museums With Looted Art.”

²¹⁰ Levine, “The Need for Uniform Legal Protection,” 10.

Background: Current Structure of the International Council of Museums (ICOM)

ICOM has a robust missions and objectives section, an Executive Board, General Assembly, Advisory Council, and Secretariat, all of which have been outlined in Chapter 2. The job of ICOM's executive board is to act as the head governing body of the association. The roles of the Executive Board are that it "ensures the good governance of ICOM. It oversees ICOM's various resources (financial, human, intellectual and technical) and their development. It protects ICOM's reputation, international esteem and public regard and provides direction to the Secretariat."²¹¹ Furthermore, the elected president of ICOM "ensures the continuity of ICOM's policy orientations and represents the organisation in situations where an external party is involved."²¹² With a strong governing branch foundation, ICOM is structurally sound.

The General Assembly acts as the most democratic branch of ICOM. It serves as the decision-making body and embodies the representation of its members. Meeting every year, the General Assembly elects members of the Executive Council, sets any new statutes, and adopts new parts of ICOM's strategic plan.²¹³ This branch has the ability to make changes and decisions regarding the future of cultural property protection and restitution policy. Additionally, the Advisory Council acts as the consulting branch, where it "advises the Executive Board and the General Assembly in the general interest of ICOM on matters concerning the policies, programmes, procedures and finances of ICOM."²¹⁴ Having an Advisory Board made up of other alliances and regional associations ensures key decisions are done with serious consultation and outside opinions. Lastly, the Secretariat "implements the decisions taken by the Executive

²¹¹ International Council of Museums, "Executive Board," accessed March 23, 2023, <https://icom.museum/en/about-us/executive-board/>

²¹² International Council of Museums, "Executive Board."

²¹³ International Council of Museums, "General Assembly," accessed March 23, 2023, <https://icom.museum/en/about-us/general-assembly/>

²¹⁴ International Council of Museums, "Advisory Council," accessed March 23, 2023, <https://icom.museum/en/about-us/advisory-council/>

Council, works in accordance with the strategic plan, coordinates the Committees' activities, manages the programmes linked to ICOM's missions and provides services to the organisation's members."²¹⁵ This position is a helpful aid that ensures the branches of ICOM operate smoothly.

Based on these descriptions, ICOM is structurally sound and has a diverse set of branches that create an internal government structure. Unfortunately, ICOM cannot actually govern its membership. Instead, ICOM is a “non-governmental organisation which establishes professional and ethical standards for museum activities.”²¹⁶ Members can pledge to ICOM's standards but how much they are utilized individually is questionable. Finding a solution to provide authority to ICOM to govern its members will greatly help. The purpose of ICOM is for it to become more than a non-binding international museums association, and the future of restitution policy and cultural property protection will therefore improve. Because restitution policy and cultural property protection have been reduced to the individual museum level, ICOM's governance can become more effective than the international conventions and domestic laws.

Expanding ICOM: Strengthening INTERCOM is the First Step

Within ICOM, there is a separate international committee designed to help other museums with their own governance and leadership. This committee is known as the ICOM International Committee for Museum Management, or INTERCOM. It “focuses on ideas, issues and practices relating to management, governance and leadership within the context of museums.”²¹⁷ Furthermore, its common objective is to “lead and represent a public body/institution, and to plan, resource, implement, evaluate and adjust, based on an identified vision.”²¹⁸ Essentially, the committee is designed to help museum leaders more effectively

²¹⁵ International Council of Museums, “Secretariat,” accessed April 5, 2023, <https://icom.museum/en/about-us/general-secretariat/>.

²¹⁶ International Council of Museums, “Missions and Objectives.”

²¹⁷ ICOM INTERCOM, “About INTERCOM,” accessed April 17, 2023, <https://intercom.mini.icom.museum/about/committee/about-intercom/>.

²¹⁸ ICOM INTERCOM, “About INTERCOM.”

manage their own institutions by bringing multiple museum leaders together to find common goals. In fact, “scholars have repeatedly pointed out that museum leadership has received little attention so far.”²¹⁹ Strengthening museum leadership can place a bigger emphasis on restitution if the leaders understand the scope of the issue better. Museum leaders are not necessarily hired for their knowledge of restitution, but instead can be brought in for a different expertise, such as fundraising. Without this restitution background, museum leaders do not know how to approach the responsibility of a restitution claim because they do not fully understand the multiple facets of the issue. INTERCOM’s emphasis on enhancing museum leadership through restitution education will improve restitution policy and overall individual museum integrity.

INTERCOM’s mission is correlated with ICOM’s Code of Ethics. Its mission “defines the committee’s interests in management practices, particularly stressing human and financial resources as well as reputation, which is closely connected to ICOM’s Code of Ethics.”²²⁰ Thus, there is a direct connection between improving museum leadership with the restitution policies found within the Code of Ethics. As examined with the case studies in Chapter 3, public perception matters to museum leaders. Restitution is one of the factors that can affect a museum’s reputation in both a positive and negative way. The public supports ethical museum policies and returning artifacts will further enhance that support. Moreover, museum leaders “need to rethink what the role is of museums in the present and for the future,”²²¹ and that involves the restitution debate. An argument can be made that restitution is a part of a museum’s role going forward. Restitution claims against museums will not stop as source nations bring forth new evidence in support of reclaiming their lost classical antiquities. The growth of public

²¹⁹ INTERCOM, “Museum Leadership: 2021 Taking the Pulse Conference,” ICOM, 2022, https://intercom.mini.icom.museum/wp-content/uploads/sites/62/2022/04/PULSE-2021-ENG_compressed_compressed-compressed.pdf

²²⁰ INTERCOM, “Museum Leadership.”

²²¹ INTERCOM, “Museum Leadership.”

support for restitution and the advancement of provenance technology, such as databases with stronger ownership history evidence, have provided source nations with more resources. Therefore, the role of improving museum leadership is crucial not only for the success of museums but also for restitution policies going forward.

INTERCOM's role in assisting museum leadership and governance should be expanded upon. INTERCOM has already suggested taking on a larger responsibility because "there is a role for ICOM and INTERCOM to advocate for more autonomy for museum leaders with regards to the resources they require to effectively lead their institutions."²²² Resources include restitution education to help museum leaders establish restitution policies that follow ICOM's Code of Ethics. Still, improvement of restitution and cultural property protection is paramount. Individual museums that hold the responsibility need more help than what has been given to them. INTERCOM has "identified weaknesses in governance practices that have contributed to museums' vulnerable situation."²²³ These specific weaknesses for museums include resilience and decision-making, both of which reflect upon restitution policy. Museum leaders require confidence in their approach to restitution claims and must show resilience in their response to difficult legal threats. While resilience is still an "open question about the tools for leaders to use when building resilience in their institutions,"²²⁴ restitution policy can be improved if resilience is emphasized. Furthermore, if museum leader decision-making is improved, the restitution process will become more streamlined. In fact, by "carefully balancing risks and finding opportunities for their museums, leaders [can] [create] milestones for change, and the necessity

²²² INTERCOM, "Museum Leadership."

²²³ INTERCOM, "Museum Leadership."

²²⁴ INTERCOM, "Museum Leadership."

to change has been the very focus of...INTERCOM.”²²⁵ Therefore, INTERCOM needs authority to push museums to act on their education and implement it within their own institutions.

Giving ICOM the authority to impose binding policies on its members is the proper solution, for they hold the tools and the structure to assist museums. INTERCOM’s education of restitution policy to museum leaders will operate under the umbrella of ICOM’s newfound authority. In fact, all sub-committees within ICOM will operate more effectively as a result. With this authority, ICOM’s Code of Ethics can further impose its terms on the members in a binding fashion. The process requires that a policy proposal will be presented that allows individual museum restitution policy and cultural property protection to find international uniformity through a binding set of policies. The objective of this policy proposal is to enhance uniform restitution procedures among individual museums. Granting the authority to ICOM, its sub-committees, and its resources is the right decision to move restitution policy forward.

Policy Proposal: Granting ICOM the Authority to Impose Binding, International Policies Through a New Membership Agreement:

It is a fact that “with any international initiative, one country must take the lead.”²²⁶ In this instance however, ICOM can take the lead with its strong infrastructure already in place. Countries should work in parallel with ICOM in backing their policies with international support, even if they do not have to have any direct involvement. If needed, ICOM can call upon specific nations to spread their policies to its individual members. Making the international policies binding is the first step for this agreement to work. Contractually, a new membership agreement will be developed to enforce ICOM’s international policies. ICOM offers a service to its members with its policies, and in turn the members must accept the offer, thereby completing a

²²⁵ INTERCOM, “Museum Leadership.”

²²⁶ Katharine J. Namon, “The Restitution of Nazi-Looted Art in the United States: A Legal and Policy Analysis,” (Senior thesis, Trinity College, Hartford, CT 2022), <https://digitalrepository.trincoll.edu/theses/961>

new membership agreement. Some individual member museums may not accept the binding nature of the international agreement and may no longer want to be members. They may feel the need to separate and instead remain an individual governing institution. For this reason, the binding requirement, this “must be established early on in the process of [adjusting] the international laws and guidelines that govern”²²⁷ the members.

Once member museums acknowledge the binding nature of the international policies, penalties for not adhering to them should be established. Although this is contentious, they are needed to achieve accountability among museums. These penalties must be concrete and reflect the level of offense. Options include ICOM publishing a statement against its member for a specific violation or stripping a member of their membership entirely. Still, the penalties should be effective enough to prevent museums from breaking the policies or else they become meaningless. ICOM is a non-profit organization so they cannot accept monetary fees, but there are different ways in which ICOM can impose penalties on its members. For instance, being a member of ICOM is already a level of status for museums, but status can be expanded. Creating an accreditation system, a system currently not developed by ICOM, will encourage museums to adhere to ICOM’s policies and reward them. Museums can display their rewards for their efforts and for being a contributing member in practicing ethical museum policies. With this system, ICOM can hold museums accountable to follow their policies while museums are rewarded for doing so. Public perception matters greatly to museums, and if ICOM’s accreditation system grows to signify a museum’s compliance with its policies, then museums will be motivated to adhere to them to enhance their public reputation.

In order for ICOM’s authority to be effective, there must be four major steps taken that help ensure ICOM can successfully govern its individual member museums:

²²⁷ Namon, “The Restitution of Nazi-Looted Art in the United States: A Legal and Policy Analysis.”

1. ICOM must review their current policies as they stand. This includes their Code of Ethics. Since they are binding moving forward, restitution policies should be revised to include updated standards, such as stronger provenance research, especially with the emergence of comprehensive databases. In turn, they should remove any old language that is inaccurate. The most recent guidelines for restitution policy and cultural property protection must be included as they influence how members will change their own policies to follow ICOM. This also includes changing any sub-committee language, especially for INTERCOM, for this committee applies directly to museum leadership and governance.
2. Once ICOM has fully updated their policies, creating a binding process for them to be enforced on its members should follow. Through contract law, a new membership agreement can be created. ICOM offers a service to its members through its policies, however the binding nature is a key change. Museums must decide whether they want to remain members, and there shall be no penalty for leaving ICOM. With the possibility that all museums leave ICOM, the accreditation system is designed to combat this. Since ICOM already has an established membership, museums likely will desire accreditation status to display to their audience. Therefore, members should not abandon their membership. Once a member accepts the terms, the agreement is completed, and the policies can be enforced. Members now fully understand the binding implications of ICOM's policies and will implement them within their individual institutions.
3. A failure to follow the binding international policies shall result in a form of a penalty. Contractually, if a museum fails to hold up its end of the agreement, then

ICOM can react. Although penalties cannot be monetary, stripping membership status or publicizing a report on a member's failure to follow policies are possibilities. Individual museums today care a great deal about public perceptions and the status of belonging to ICOM, therefore penalties are effective. Without penalties in place, the binding nature of the policies would serve no purpose.

4. Once members implement the binding policies within their individual institutions and follow them diligently, a reward system should be established. This can be built through accreditation status, where ICOM distributes rewards to its members through different ranks of status. Tiers such as bronze, silver, and gold can be used based on membership length and what members have done individually to contribute to restitution policy. Museums can proudly display their accreditation status physically and on their websites, improving public perception and ensuring to visitors that they adhere to ethical standards. Museum reputation will ultimately benefit based on this accreditation system.

As it stands, restitution policy is unpredictable. There is not yet a concrete system for a restitution policy that is binding on individual museums. That can change with this policy proposal. ICOM and its sub-committees like INTERCOM are well-established but need the authority to push museums forward in establishing their own restitution policies. With the enactment of this policy proposal, ICOM will have more actual authority and individual museums will be better able to deal properly with restitution claims. Where international conventions and domestic laws have failed to achieve their goals, ICOM can succeed. ICOM has the governmental framework, a membership network, and strong restitution policies for museums already in place. If considered, this policy proposal will give ICOM the authority they

need. Its binding policies, penalty system, and accreditation status system ensures members will follow their policies. It will unite restitution policy and remove uncertainty about its future. Cultural property protection will ultimately improve as a result. Until change occurs, restitution policy and cultural property protection efforts remain uncertain moving forward because individual museums operate under their own distinct restitution policies.

Conclusion

There is no doubt that restitution policy has been transformed over the past 70 years. How source nations and museums protect cultural property is constantly evolving. With the effects of international conventions, domestic laws, museum associations, and individual museum policies, the debate is still not settled. Currently, restitution agreements are governed by the restitution policies of individual museums and source nations. Cultural Internationalists and Cultural Nationalists have defined the scope of the debate, drawing a distinct line for who has the right of ownership to cultural property. It can be difficult to pick a side in this debate, for both museums and source nations have strong claims about who is entitled to own cultural property. Should museums continue sharing what they believe is the world's heritage to their visitors, or should countries be able to take back any cultural property that was once crafted within their borders? The biggest question within the restitution debate is: Who owns cultural property? That question will likely remain unanswered, but with enough research on an artifact's provenance and with the right documentation, correct ownership can be established.

Still, as the restitution case studies explored demonstrate, determining cultural property provenance is not an easy task. Even though the Euphronios Krater was returned, questions about the validity of its origins and its documentation were raised. Hecht underwent great lengths to cover up the artifact's ownership history and was successful until exhaustive research was conducted. As seen with the Elgin Marbles, not all restitution cases result in a return, and despite talks being reportedly close, there is still no movement by the British Museum to return the Marbles to Greece. Even with a questionable history, museums are willing to hold onto their priceless classical antiquities. As discussed above, the return of the Krater by the MET and the

failure to return the Marbles by the British Museum, their restitution policies differ greatly. These case studies are evidence of the need for uniform, international restitution museum policy.

These case studies confirm that restitution policy is created by individual museums. International conventions serve as guidance but do not authoritatively govern museum restitution policies. Some domestic laws partially influence their design, such as the United States' CCPIA, but otherwise museums have autonomy in approaching restitution claims. However, the policy proposal presented in the last chapter indicates that ICOM has the structure designed to govern museum restitution policies if provided with the requisite authority. The need to unify encyclopedic museums with a binding set of restitution policies is evident and important for the future of cultural property protection. Furthermore, finding ways to hold museums more accountable for their return of cultural property is essential, or else museums will never be required to return cultural property that should not be in their possession. Overall, the amelioration of restitution policy remains the objective, but the debate is far from over. This thesis described the debate among prominent scholars, the results of the current attempts to create restitution policy, examples of differing restitution cases studies, and finally a policy proposal to improve restitution policy. Cultural property protection and restitution policy will remain a concern, and a solution must be found in order to protect cultural property more effectively.

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