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Victorious Youth in Peril: Analyzing Arguments Used in Cultural Property Disputes to Resolve the Case of the Getty Bronze

Alexander MacKintosh Ritchie *

I. INTRODUCTION

The figure stands triumphant and proud. Resting his weight on his right side he crowns himself with a wreath of thorns that no longer exists. The figure is that of a victorious youth, a static moment in time depicting an ideal youth as a victor likely in the Olympic Games.¹ This nearly complete bronze statue happens to be one of the rarest and most valuable of its kind. This Youth, commemorating a victory long forgotten, is now at the heart of a legal dispute that calls into question not only domestic and international law, but also the very right given through those laws by which a people may claim an object as part of their heritage. The case of this Victorious Youth is a case that reminds the legal community about other still hotly contested objects and exemplifies the principle that while cultural objects are subject to a nation's laws, the calling of a higher law and principle may outweigh even the most valid of claims.

As of November 20, 2007, a judge dismissed the legal claim of a local prosecutor in Pesaro, Italy, for the Getty Bronze.² The Italian government's

* J.D. Candidate, Pepperdine University School of Law, 2009; B.A. Economics and Art History, Minor in History, Southern Methodist University, 2006. I would like to dedicate this article to my parents, James E. Ritchie and Patricia J. Ritchie, for their support in all that I pursue and love. I would also like to thank my girlfriend Michelle K. Pulley for her constant support and tireless editorial efforts for this article.

1. See The Getty, Victorious Youth, available at <http://www.getty.edu/art/gettyguide/artObjectDetails?artobj=8912> (last visited Feb. 10, 2007).

2. The Atrium, Getty Bronze-Latest, available at <http://www.atrium-media.com/rogueclassicism/Posts/00007402.html> (last visited Feb. 23, 2008).

claim however, is still pending.³ In September of 2007, the Getty Museum announced that, in collaboration with the Italian Ministry of Culture, it would be returning forty objects currently in its collection that were acquired by means recently determined to be illegal.⁴ Currently, the Statue of the Victorious Youth is still being analyzed by the Getty to determine if it qualifies to be returned as well. Discussions on this statute have been postponed pending the judgment by the Italian government on whether it will continue its legal claim.⁵

There has been a great deal of press in the recent years concerning the illegal exportation of cultural objects, their illicit sale to museums and private collectors, and the arguments that would compel either the return or restitution of such objects.⁶ This article will offer an introduction to this area including the current law and arguments by focusing the dispute surrounding a tremendous cultural asset, currently owned and residing in the United States—the Getty Bronze.⁷ The status of the statue is in question because the Italian authorities are claiming that the statue was illegally exported and, therefore, could not be sold to a person outside of the country.⁸ The debate surrounding the Getty Bronze will be the focus of this

3. Anthee Carassava, *Ex-Getty Curator is Now on Trial in Greece*, N.Y. TIMES, Nov. 20, 2007.

4. See *infra* note 7 and accompanying text. What initially began as the return of three objects in 1999 has risen to the return of forty objects from the Getty to Italy, twenty-five of which were being claimed by the Italian Ministry of Culture. Getty Press Release, *Italian Ministry of Culture and J. Paul Getty Museum Sign Agreement in Rome*, Sept. 27, 2007, http://www.getty.edu/news/press/center/italy_getty_joint_statement_092507.html (last visited Jan. 06, 2008); BBC News, *Getty Museum Returns Stolen Art*, Feb. 6, 1999, <http://news.bbc.co.uk/1/hi/world/europe/273618.stm> (last visited Jan. 06, 2008). One set for return later is a Statue of a Goddess dating from the fifth century. AFP, *Looted Antiquities Return to Italy from Getty, other U.S. collections*, Dec. 17, 2007, <http://afp.google.com/article/ALeqM5gDmDJuzySwF1614dIah46BD5igRA> (last visited Jan. 13, 2007). It will be returned to Italy in 2010. *Id.*

5. See The Atrium, *supra* note 2.

6. See *supra* notes 2-6; see also *infra* note 23 for a definition of “return” and “restitution.”

7. Press Release, The Getty, Michael Brand, Dir. of the J. Paul Getty Museum, Object Lesson, (Jan. 31, 2007), http://getty.edu/news/press/center/wsj_brand_object_return_oped013107.html (last visited Feb. 13, 2008). The Statue of the Victorious Youth, also known as the Getty Bronze, was created by an unknown artist and is Greek in origin. *Id.* It was discovered in international waters in 1964. *Id.* It was purchased by the Getty in 1977 for almost four million dollars. See *supra* note 2. The purchase by the Getty in 1977 was contingent on the fact that Italian courts declared that the statue was not the property of Italy. See Press Release, The Getty, *supra* note 7.

8. In Italy, it is legal for a private person to own cultural property as long as it remains within the country's borders. See James Cuno, View from the Universal Museum, in IMPERIALISM, ART, AND RESTITUTION 15, 25-26 (John Henry Merryman ed., 2006). This policy stems from the prohibition by the Italian state for almost any material discovered in Italian soil is “crucial to the national identity and self-esteem of the Italian people.” *Id.* at 25.

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article. This article will analyze the arguments for and against its return based upon the Getty's recent returns⁹ and two other examples of disputed cultural property including the Elgin Marbles¹⁰ and the Nefertiti bust.¹¹

There will be a number of principles underlying the arguments. These principles include: nationalism—the way a people or nation views cultural objects as a connection to their heritage; legality—the legal circumstances of the acquisition, and the legal validity of a claim for the return of the cultural property; morality—the moral validity in acquiring the cultural property in each example, and whether the moral climate of the present day, if different from the time of the acquisition, should have any effect on the judgment for the property's return; and cultural property internationalism—“[t]he idea that everyone has an interest in the preservation and enjoyment of cultural property wherever it is situated, from whatever cultural or geographic source it derives.”¹²

Part II will discuss the background of cultural property, types of acquisition, the protection offered by international conventions, and the origins of cultural restitution.¹³ Part III will discuss applicable international conventions and analyze possible restitution of the Elgin Marbles and the bust of Nefertiti as comparative examples.¹⁴ Part IV will present the background of the Getty Bronze, analyze the applicable international conventions, and apply the arguments from the two modern examples.¹⁵ Part V will discuss the importance of alternative dispute resolution and will propose a solution for both the Getty Museum and the Italian government in their dispute over the Victorious Youth. The solution will propose a modified system of ADR and discuss how each side can reach a profitable outcome.¹⁶ Part VI will briefly conclude the article.¹⁷

9. See *infra* note 273 and accompanying text.

10. See *infra* Part III.A.

11. See *infra* Part III.B.

12. See MERRYMAN, *infra* note 24, at 10-12.

13. See *infra* Part II.

14. See *infra* Part III.

15. See *infra* Part IV.A.

16. See *infra* Part IV.B.

17. See *infra* Part V.C.

II. BACKGROUND OF CULTURAL PROPERTY DISPUTES

A. Definitions

Experts cannot fully agree on an exact definition regarding material objects of cultural value. Archaeological artifacts, also known as antiquities, are defined as “things of ancient human manufacture.”¹⁸ Cultural property on the other hand is a “political construct” and very often covers what one group claims to be its identity.¹⁹ Cultural property is seen by most as beyond something of title to an individual, it is perceived as the property and legacy of an entire country or people and is thus entitled to protection equal to its stature.²⁰ “By including antiquities within the political construction of ‘cultural property’, national, retentionist cultural policies often claim all antiquities found beneath or on the soil of the lands within their borders as cultural property and of importance to their national identity and their citizen’s collective and individual identities.”²¹ The debate surrounding whether antiquities are truly separate from cultural property is still ongoing.²² For purposes of this article, “cultural property” will be referring to those physical objects of human manufacture.²³

B. Types of Acquisition

Throughout recorded history, there has been an evolution of what are accepted practices for acquisition of cultural objects. By being aware of

18. Cuno, *supra* note 8, at 17.

19. *Id.* Cultural property can thus include “ceremonies, songs, language, and other forms of cultural expression.” *Id.*

20. Barbara T. Hoffman, *Introduction: Exploring and Establishing Links for a Balanced Art and Cultural Heritage Policy*, in *ART AND CULTURAL HERITAGE: LAW, POLICY AND PRACTICE* 1, 1-18 (Barbara T. Hoffman ed., 2006).

21. *See* Cuno, *supra* note 8, at 17-18. Cuno notes that examples of this include: Iraqis, who lay claim to objects of Assyrian and Arab origin; Afghans, who lay claim to artifacts of “Buddhist, Islamic, or Hindu origin”; Italians, who lay claim to artifacts whether they are of “Greek, Roman, Etruscan origin”; or Greeks, who lay claim to Athenian, Byzantine, or Ottoman artifacts. *Id.* at 18.

22. *Id.* at 22. U.S. museums, in their acquisition of antiquities, acknowledge at least in political terms that “antiquities are considered cultural property” *Id.*

23. Further, the distinction between “restitution” and “return” needs to be made. The term “return” refers to objects that were lost as a result of colonial rule. Wojciech W. Kowalski, *General Observations: Claims for Works of Art and Their Legal Nature*, in *RESOLUTION OF CULTURAL PROPERTY DISPUTES* 31, 49 (Int’l Bureau of the Permanent Court of Arbitration ed., 2004). “Restitution” refers to the restoration of the “lawful status of cultural property and returning cultural objects displaced in clear violation of their legal status, namely as a result of looting or ordinary theft.” *Id.*

these various types of acquisition and their chronology, the observer of a modern cultural dispute is better informed of the context for and against the restitution of an object.

1. Aggressive Acquisition

Aggressive acquisition of artwork and cultural property has existed since Roman times.²⁴ Such an acquisition is essentially an invading culture removing cultural property, usually of great value or symbolism to the invaded culture. This is done either for financial gain of the invading people or their country, or the symbolic act of removing an object from an invaded country to demonstrate the invading force's dominion over the invaded.²⁵ Such activities were not often spontaneous or by chance.²⁶ These aggressive acquisitions were often characterized as "reparations" on those who lost a war that was fought.²⁷ At this point in time, although imperial conquest was accepted, and such behavior was not contrary to international law, intellectuals argued over the ethical validity of such a method.²⁸ Some argued that it was of greater benefit to have all of these great works collected in one location to be enjoyed by all rather than dispersed and seen by the

24. JOHN HENRY MERRYMAN, INTRODUCTION *in* IMPERIALISM, ART, AND RESTITUTION 1, 4-5 (John Henry Merryman ed., 2006). *See also* CAROL C. MATTUSCH, THE VICTORIOUS YOUTH, 59 (Benedicte Gilman ed., 1997), for a description of how Cicero, an avid purchaser of sculptures during his lifetime, "disapproved thoroughly of individuals who did not pay for what they collected, such as the many Romans who brought back statues as booty from Greece." *Id.* One of the largest of such acquisitions was the looting of the most holy Jewish site, the Temple of Solomon, in 586 B.C.E., as described by the prophet Jeremiah in the Bible. MICHAEL J. KURTZ, AMERICA AND THE RETURN OF NAZI CONTRABAND: THE RECOVERY OF EUROPE'S CULTURAL TREASURES 3 (2006), "The Chaldeans [i.e., the Babylonians] broke up the bronze pillars in the bronze sea, and carried off all the metal to Babylon. They removed also the pots, shrouds, snuffers, tossing-bowls, saucers, and all the bronze vessels used in the service of the temple." *Id.* (*quoting Jeremiah 52:17-18* (Oxford Study Bible: Revised English Bible with *Apocrypha*)).

25. *See* MERRYMAN, *supra* note 24.

26. Two years prior to Napoleon's "acquisitions" in Italy, a committee had been assembled in Paris to determine objects of art and science that would be of interest in places the army would be marching. *See* MERRYMAN, *supra* note 24, at 5. This practice was based upon the widespread feeling of the French people as a result of the French Revolution and during the Enlightenment that "France saw itself as the center of enlightened thought and practice, Europe's liberator from its feudal past, and thus the 'natural repository' for Europe's artistic heritage." *See* KURTZ, *supra* note 24, at 5.

27. *See* MERRYMAN, *supra* note 24, at 6. Such practices were given a "legal cloak" by the French through the use of "armistices and peace treaties concluded with the defeated foes." KURTZ, *supra* note 24, at 5.

28. *See* MERRYMAN, *supra* note 24, at 6.

few.²⁹ It was not until the 17th century that countries began efforts of restitution for these aggressively acquired properties, which consequently laid the groundwork for future efforts during the following four centuries.³⁰

2. Opportunism

Another example of acquisition that has been called into question is that of opportunism.³¹ As an example, opportunism can involve the practice of taking advantage in purchasing cultural objects from culturally rich countries under rule from another government.³² This type of acquisition was used with the Elgin Marbles and will be explained more fully in Part II.A.³³

3. Partage

Another example of cultural acquisition is the practice of *partage*. This practice involved the division of cultural objects between an excavating team which discovers the objects and the host country where the articles are found.³⁴ This is done by mutual agreement.³⁵ An example of this is the bust of Nefertiti which was acquired by the German government through *partage* in 1912.³⁶ However, as of late, it has been returned as a result of recent negotiations.³⁷ The return of the Nefertiti bust will be analyzed more fully in Part II.B.

4. Purchase

The legitimate purchase of an object by an interest in one country from another is another form of acquisition of cultural property. During the past few years, this type of acquisition has come under controversy since it has been used as a cover for the illegal exportation of objects under a legitimate cover. The primary concern with this type of acquisition is determining the

29. *Id.*

30. See KURTZ, *supra* note 24, at 4-5. Two examples include the Treaty of Westphalia from 1648 "which provided for a limited return of property to the Estates of the Holy Roman Empire" and the Treaty of the Pyrenees in 1659 which created a recognized body to resolve disputes that arose during the restitution of property. *Id.* See Part II.C for a discussion of restitution.

31. *Id.*

32. See MERRYMAN, *supra* note 24, at 8-9.

33. *Id.*

34. See *id.* at 9.

35. *Id.*

36. *Id.*

37. *Id.*

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provenance³⁸ of the object and being able to define a clear history of ownership up to the present legitimate seller. This is the type of acquisition under which the Getty Bronze was acquired, which will be discussed more fully in Part III.³⁹

C. *Origins of Cultural Restitution*

In response to Napoleon's acquisitions of art and property in newly conquered territory, major legal efforts began to unfold at the Congress of Vienna based upon the "old Latin concept [of] *restitus*."⁴⁰ "[T]he first international condemnation of looting and the establishment of the principle that all loot should be returned to the country of origin" came about in the Convention of Paris in 1815.⁴¹ A new principle came to emerge as well for cultural property, that of the "territorial principle."⁴² This principle focuses upon the return of an object from the place from where it was taken, regardless of the political changes that have come to pass, and who currently resides in power over the territory.⁴³ One historical example of this occurred at the end of the Napoleonic Wars.⁴⁴ This involved the restitution of a collection of manuscripts from Heidelberg that had been taken from the Vatican.⁴⁵ At the end of the war, "the manuscripts were not returned to the

38. Provenance is defined as a "record of ownership for a work of art, ideally from the time it left the artist's studio to its present location, thus creating an unbroken ownership history." Art Terminology, available at www.progressiveart.com/art_terms.htm.

39. See *infra* notes 188-232.

40. KURTZ, *supra* note 24, at 6. Even in Roman times, the issue of taking booty sometimes rose to a criminal matter. For example, in Sicily sometime during 73 to 70 B.C., Verres, the governor of Sicily at the time, was prosecuted for his taking of precious objects for his personal taste from Sicily and other surrounding territories. See MATTUSCH, *supra* note 24, at 60. Cicero served as the prosecutor. *Id.* See *supra* note 24 and accompanying text.

41. See KURTZ, *supra* note 24, at 6. "This decision was based on the concept of the artistic integrity of a nation, an idea first propounded by French scholars and artists such as Jean-Louis David, Jean Louis Darmond, and Antoine Quatremère de Quincy, who had forcefully objected to Napoleonic looting." *Id.* See generally *supra* note 24, Ch. 1 for a more in-depth examination of the principles of restitution as they have evolved from the time of imperial acquisition through World War II.

42. See Kowalski, *supra* note 23, at 36.

43. *Id.*

44. *Id.*

45. *Id.*

Vatican. . . but to the Heidelberg Library where that had been looted earlier during the Thirty Years War.”⁴⁶

Regarding the looting done by the Third Reich during World War II, the Nazis focused upon the “wholesale appropriation” of what they termed degenerate art.⁴⁷ What began as seizure of purely Jewish assets extended to the seizure of whatever high party officials desired.⁴⁸ Though there was no international prohibition in the time of Napoleon, at the time of the Nazi looting there was a well established prohibition in customary international law on the “confiscation of private property by aggressive occupying powers.”⁴⁹

The Nazi-era looting represents one of the most blatant violations of cultural property ownership in history.⁵⁰ The looting of art that occurred during the Nazi-era is possibly the largest that has ever occurred in history.⁵¹ The amount of art that was displaced, transported, and stolen is equivalent to the amounts “during the entire Thirty Years War or all the Napoleonic Wars.”⁵² In response to this theft of cultural property on such a massive scale, in 1943, the Allied Nations introduced measures of restitution that

46. *Id.*

47. MERRYMAN, *supra* note 24, at 7. “Their working definition of degenerate art – *entartete Kunst* – was broad enough to include works by many of the best contemporary artists, works by Jewish artists, and works in Jewish collections.” *Id.*

48. *See id.* at 6. Adolf Hitler carried this forth with the idea of establishing a museum in Linz, Austria, while Hermann Göring was adding to his extensive personal collection. *Id.*

49. *Id.* at 7. This prohibition was solidified in “[A]rt. 46 of the 1907 Hague Convention (Hague IV) on the Laws of War and in the Kellogg-Briand Pact of 1928, to both of which Germany was a party.” *Id.* at 8.

50. The Allies from the First World War, much in the way of other objects of reparation, imposed drastic measures upon the Germans at the end of the First World War. These actions included not only the return of objects looted from France and destroyed in Belgium, but the Allies—in the name of reparations—voided legal purchases that occurred prior to war in order to compensate the previously occupied nations. *See* KURTZ, *supra* note 24, at 9. Reparations included spoils from previous wars. In the Versailles Treaty, Article 245, Germany was required to return “trophies, archives, historical souvenirs, or works of art carried away from France by the German authorities in the course of the war of 1870-1871 and during the World War.” *Id.* at 8. Examples of the reparations involving objects acquired legally by Germany prior to WWI included panels from a Van Eyck altarpiece that were sold to King Frederick William III in 1821 and kept in the Kaiser Friedrich Museum in Berlin and “a triptych of the *Last Supper* by Dirk Bouts which had been legitimately purchased by German museums prior to 1914.” *Id.* at 9. *See also* Kowalski, *supra* note 23, at 39. Measures such as these by the Allies clearly establish that works of art could serve as reparations for other destroyed works of art. *See* KURTZ, *supra* note 24, at 9. Measures like this and those requiring restitution for previous conflicts infuriated Germany. *Id.* This was then manifested in the actions taken by the Germans toward art and other cultural property during the Second World War. *Id.*

51. Julia Parker, *World War II & Heirless Art: Unleashing the Final Prisoners of War*, 13 CARDOZO J. INT’L & COMP. L. 661, 662 (2005).

52. *Id.*

were reinforced again in 1944 and 1945.⁵³ From these beginning efforts, countries the world over have adopted various methods of restitution. The United States and France⁵⁴ are two countries that are raising awareness in the field, hoping to find claimants to these displaced treasures.⁵⁵ As a result of these atrocities, the international community took action to pass laws to further protect cultural property. These Conventions serve as the foundation for the modern international protection of cultural property.⁵⁶

A legal issue arises when there is no identifiable heir and there are multiple claimants to an object based upon its cultural background.⁵⁷ A number of different legal theories have been attempted by various countries to return art to its rightful claimants with mixed results. The latest endeavor to find claimants for Nazi-looted art involves the creation of a comprehensive international registry that will serve as the central registry.⁵⁸ While there have been many strides in the field to secure the return of art looted during the Nazi era, a lot of the work remains to be done.⁵⁹ Such efforts like the international registry have the chance for application to other fields of restitution beyond Nazi-looted art.

Truly the sheer volume of Nazi-era cultural restitution claims has prompted many countries to address the issue of cultural property restitution in general and has prompted debates, conferences, and outcomes that, when examined, offer a picture of what the most effective methods in the field of cultural restitution may be. While several cases have grabbed headlines in the field of cultural restitution in recent years, the focus has mainly been upon narrow legal points that offer broad precedent for resolving ongoing

53. See Kowalski, *supra* note 23, at 39-40. “[A]s early as 1943, restitution was announced in a special Declaration of the Allied Nations Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control. Later, its validity was stressed in . . . the Final Act of the Bretton Woods Conference of 1944 and, in particular, in the Final Act of the Paris Conference on Reparations of 1945.” *Id.* at 40.

54. See Parker, *supra* note 51. France, especially since 1995, has made some of the strongest efforts to find true owners of Nazi-looted art within its country and “has made a concerted effort to expose the wartime abuses of the collaborationist Vichy Regime.” *Id.*

55. *Id.* at 661-63.

56. See *infra* Part II.D.

57. See generally KURTZ, *supra* note 24.

58. *Id.*

59. Monica S. Dugot, *The Holocaust Claims Processing Office: New York State's Approach to Resolving Holocaust Era Art Claims*, in HOLOCAUST RESTITUTION 271 (Michael J. Bazylar & Roger P. Alford eds., 2006).

restitution claims.⁶⁰ In reality, such claims are not new but are in fact the re-opening of a legal problem, the problem of how to resolve claims of looted cultural property that the world has delayed in attempting to resolve.⁶¹

D. International Conventions and Other Efforts to Regulate Cultural Property

In the history of art collection, there has been a concurrent advancement of equality and rights assigned to individuals and the method of acquisition exercised over cultural property. In the modern day, with a greater recognition of cultural property as the property of all, the law has found the return of such art from a private collector to its place of origin a more acceptable practice. Numerous laws and conventions have been implemented at the national and supranational level to offer protection and methods of recovery for cultural objects that are either stolen or illegally exported outside of a country's borders.

There are several international conventions which cover the scope of illegally exported cultural objects. The most notable two are the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention⁶² of 1970 and the *Institut International pour L'Unification du Droit Prive*⁶³ (UNIDROIT) Convention of 1995.⁶⁴ The UNESCO Convention is seen as a foundation of international law regarding the illegal export of cultural property, and the UNIDROIT Convention is perceived as a

60. See Sue Choi, *The Legal Landscape of the Int'l Art Market After Republic of Austria v. Altmann*, 26 NW. J. INT'L L. & BUS. 167, 175-76 (2005). See also E. Randol Schoenberg, *Whose Art is it Anyway?*, in HOLOCAUST RESTITUTION 292 (Michael J. Bazylar & Roger P. Alford eds., 2006).

61. See Kowalski, *supra* note 23, at 31.

62. 1970 Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, Nov. 14, 1970, available at http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html. See COLIN RENFREW, LOOT LEGITIMACY AND OWNERSHIP, 93 (Duckworth Publishers 2000); Resolution 401, available at http://www.unesco.org/culture/laws/1970/html_eng/page1.shtml.

63. *International Institute for the Unification of Private Law*, UNIDROIT, <http://www.unidroit.org>.

64. See RENFREW, *supra* note 62, at 103; Resolution at 417, available at <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.htm>. To date there are sixty-one countries who are members of UNIDROIT including the United States, the United Kingdom, Egypt, Greece, and Italy. *Id.* As of 2003, however, the UNIDROIT Convention had only been ratified by seventeen countries, which did not include either the United Kingdom or the United States. Mark-André Renold, *Stolen Art: The Ubiquitous Question of Good Faith*, in RESOLUTION OF CULTURAL PROPERTY DISPUTES 251, 259 (Int'l Bureau of the Permanent Court of Arbitration ed., 2004). Even when not adopted, "the Convention has an indirect influence on the standards adopted by the courts." *Id.*

more recent supplement.⁶⁵ Though both conventions set forth strict guidelines, they require the signatory nations to adopt secondary legislation to give the rules domestic effect.⁶⁶ Therefore, until all nations are signatories and abide by the rules of the conventions, these initiatives will remain relatively weak in their effect. Further, the timing of the adoption of the conventions is just as critical. Since these conventions do not apply retroactively, the convention's laws will have full legal force only for objects illegally trafficked after their adoption.⁶⁷

For objects that were excavated long ago, it has been suggested that the appropriate measure is to use the year 1970 (the release of the UNESCO Convention) as the year from which provenance is required for all purchased antiquities.⁶⁸ Of importance within this Convention is both the emphasis placed upon dealers' actions and the provision of education to discourage the practice of illicit trade.⁶⁹ Because museums and dealers are aware of these conventions, there is the argument that they are on notice and should be held out to standards listed in the conventions as a minimum to satisfy due diligence.

The examples to be examined in this article, including the current dispute surrounding the Getty Bronze, fall under Article 5 of the UNIDROIT Convention of 1995, the return of illegally exported cultural objects.⁷⁰ Article 5 details the criteria upon which a State can call for the return of an object.⁷¹ The most pertinent criterion is subsection (d)—if the culture can

65. See RENFREW, *supra* note 62, at 66. UNIDROIT is seen as taking the ideas proposed in UNESCO further with stricter guidelines. *Id.*

66. *Id.* at 65.

67. The following countries of interest for this article have adopted the UNESCO Convention and are listed in the order when the convention came into force for them: Egypt (1973), Italy (1979), Greece (1981), United States (1983), and the United Kingdom (2002). UNESCO Convention, Ratifiers, http://www.unesco.org/culture/laws/1970/html_eng/page3.shtml.

68. See RENFREW, *supra* note 62, at 16.

69. See *id.* at 98. Article 10 (a) states that "State Parties to the Convention undertake" a dealer to "maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject." *Id.* Part (b) of Article 10 says the State shall undertake "to endeavor educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit imports." *Id.* See UNESCO Convention of 1970, Articles available at http://www.unesco.org/culture/laws/1970/html_eng/page2.shtml.

70. *Id.* at 96. See also Article 5 of the UNESCO Convention of 1970, available at http://www.unesco.org/culture/laws/1970/html_eng/page2.shtml.

71. See RENFREW, *supra* note 62, at 108-09. The criteria from Article 5 include:

establish that the removal of an object impairs a “significant cultural importance for the requesting State” then the object should be returned.⁷² This blanket provision likely can be interpreted to cover almost any object desired by a country for return. Article 6 states that:

[T]he possessor of a cultural object who acquired the object after it was illegally exported shall be entitled, at the time of its return, to payment by the requesting State of fair and reasonable compensation, provided that the possessor neither knew nor ought reasonably to have known at the time of acquisition that the object had been illegally exported.⁷³

Thefts of objects are occurring in the present day, even in developed countries that have an awareness of this problem and the potential means of protection.⁷⁴ Some countries have developed their own systems of identification and databases for tracking stolen art. Italy, for example, has had a special branch within its police force since 1969 to focus on the recovery of stolen art.⁷⁵ This specialized database can be accessed by art dealers and other law enforcement agencies via its website.⁷⁶ The first international “database” of looted art from World War II was created in 1956 by Ardelia Hall of the U.S. State Department.⁷⁷ Copies of this list were put on microfiche and sent to all claimant nations.⁷⁸ The purpose of this dissemination was the prevention of sale of “‘wanted’ art on the

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- (a) the physical preservation of the object or of its context;
 - (b) the integrity of a complex object;
 - (c) the preservation of information of, for example, a scientific or historical character;
 - (d) the traditional or ritual use of the object by a tribal or indigenous community, or establishes that the object is of significant cultural importance for the requesting State.

Id.

72. *Id.*

73. *Id.* at 109. With the Cultural Property Implementation Act, enacted in 1983, “articles of cultural property refer to archaeological material” and places a restriction on such property being imported into the United States. See *infra* note 142, at 130-31. One of the nine countries that is a signatory to this Act is Italy. *Id.* at 130. The more current version of this is the 1995 UNIDROIT Convention, which holds that objects, whether legally excavated or not, that are unlawfully retained “shall be considered stolen, consistent with the law of the State where the excavation took place.” *Id.* at 131.

74. Manus Brinkman, REFLEXIONS ON THE CAUSES OF ILLICIT TRAFFIC IN CULTURAL PROPERTY AND SOME POTENTIAL CURES, in ART AND CULTURAL HERITAGE: LAW, POLICY AND PRACTICE 64, 65 (Barbara T. Hoffman ed., 2006). The International Council of Museums (ICOM) “published a fourth volume in its One Hundred Missing Objects series, entitled One Hundred Missing Objects in Europe, that focuses on the theft of religious artefacts.” *Id.* Italy has reportedly suffered the destruction of 100,000 Apulian graves as a byproduct of such actions. *Id.*

75. *Id.* at 66.

76. *Id.*

77. Konstantin Akinsha, *The Temptations of the “Total” Database*, in RESOLUTION OF CULTURAL PROPERTY DISPUTES 159, 159-60 (Int’l Bureau of the Permanent Court of Arbitration ed., 2004).

78. *Id.* at 159.

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American art market.”⁷⁹ These efforts took on a resurgence in the 1990’s as European nations and other organizations in Europe and the United States began to assemble relevant databases of Nazi-looted art.⁸⁰

Some countries have integrated search efforts with online databases for these Nazi-looted objects. Despite having the necessary infrastructure set up, lack of information from countries as to the practical details of missing objects make such online databases of historical interest, but little practical value.⁸¹ Researchers find specific databases covering certain collections or types of objects more useful than a “total” database that attempts to cover everything.⁸² Therefore, a database focused specifically upon antiquities or certain cultures of antiquity, with sufficient information regarding the objects, may prove an effective resource to discover objects that have been illegally exported.⁸³ Such a database, however, is heavily dependent upon identification, and as such, can only follow when adequate domestic procedures are implemented ensuring the security of excavation sites and the adequate cataloging of all objects removed from there. Such practices will be discussed later for their potential in providing a more effective solution to the problem.

To further enhance the effectiveness of these efforts, a number of cooperative actions have been taken by private organizations to protect cultural property. Auction houses and other sellers in the international art market have taken steps to insure that objects to be sold are given the chance to be identified as stolen and claimed by the proper owner when they are put on the market.⁸⁴ Additionally, an initiative was created in 1994 by

79. *Id.* at 160.

80. *Id.* at 161.

81. *Id.* at 162-63. One example is “the Central Registry of Information of Looted Cultural Property, 1933-1945...created by the Looted Art Research Unit working in London under the auspice of the Oxford Center for Hebrew and Jewish Studies.” *Id.* at 163. The author notes that a large volume of information “appears to have been published purely for the sake of the creation of quantity of data, giving the database an impression of volume.” *Id.*

82. *Id.* at 168.

83. There are currently databases that focus upon antiquities of specific countries. *See e.g.* The Portable Antiquities Scheme, <http://www.findsdatabase.org.uk/hms/home.php?publiclogin=1> (focusing upon antiquities discovered in Great Britain). There are currently no comprehensive databases for Greek or Italian antiquities. However, there is a plan by Greek archaeologists and journalists to catalog the thousands of Greek antiquities in foreign museums. *Archaeologists, Journalists Plan Vast Database of Greek Antiquities Abroad*, June 16, 2006, available at <http://msn-list.te.verweg.com/2006-June/005417.html>.

84. *Brinkman*, *supra* note 74, at 64. For auction houses this primary method is the Art Loss Register:

European and American antiquities dealers, called “The International Association of Dealers in Ancient Art,” with the aim “to actively encourage the protection and preservation of ancient sites.”⁸⁵

III. EXPLORING THE RESOLUTIONS OF CULTURAL PROPERTY DISPUTES THROUGH TWO MODERN EXAMPLES

A. *Elgin Marbles*

The Elgin Marbles are large portions of sculpture taken by Lord Elgin from the Parthenon at the beginning of the 19th century.⁸⁶ While the Acropolis was under occupation by the Ottoman Empire, the Turkish government gave Lord Elgin permission to remove blocks from the area of the Parthenon.⁸⁷ While the exact nature of the permission is debated,⁸⁸ the fact remains that Lord Elgin removed a large number of the remaining intact portions of the Parthenon that eventually were purchased by the British Museum.⁸⁹ In recent years, the Greek claim for possession of the Marbles has evolved. It is now no longer a claim for ownership, but that the Marbles should be returned to Greece because they are Greek.⁹⁰ The proposals by scholars for either the retention of the Marbles in London or their return to Athens have created a variety of thought-provoking arguments.

1. Arguments for Retention in London

On the side of the debate that the Marbles should remain in London, several compelling arguments have been put forward. One of the most well regarded proponents of this view is the attorney John Merryman, who published several works based upon his research and his support of this

One of the largest and best-known databases of stolen and missing art and cultural objects – to assist in provenance enquiries and help ensure that stolen or looted property is not circulated in the legitimate market. If an object is reported stolen in the archives of the Art Loss Register or Interpol, it will not appear in a Sotheby’s or a Christie’s catalogue.

Id. See also The Art Loss Register, available at <http://www.artloss.com/> (last visited Jan. 6, 2008); Interpol – Works of Art, available at <http://www.interpol.int/Public/WorkOfArt/Default.asp> (last visited Jan. 6, 2008).

85. *Id.*

86. JEANETTE GREENFIELD, THE RETURN OF CULTURAL TREASURES 42 (2d ed. 1996).

87. *Id.* at 55-59.

88. *Id.* at 55-56.

89. *Id.* at 59.

90. William St. Clair, *Imperial Appropriations of the Parthenon*, in IMPERIALISM, ART, AND RESTITUTION 65, 95-96 (John Henry Merryman ed., 2006).

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conclusion.⁹¹ He contends that there are several reasons the British claim for retention of the Marbles prevails. The arguments center upon the return and its potential importance for Greece, the world, and the objects themselves.

First, as to the importance for Greece, the claim is that since the objects are Greek, they belong among the Greeks. The claim by Greece is that “the present government of a nation should have power over artifacts historically associated with its people or territory.”⁹² However, Greece is not wanting for historical artifacts.⁹³ Merryman identifies that their museums are full of examples of their different periods of artwork.⁹⁴ Further, the British, in having the Marbles in the British Museum, are not in any way misappropriating their identity as being British.⁹⁵ The Marbles are proudly displayed as superb examples of Greek creation. If the Marbles were being represented as being British or being disguised under another point of origin, then a claim by Greece for their return would have more validity to ensure that the Marbles are displayed authentically, but that is not an issue here.⁹⁶

Finally, Merryman notes that cultural nationalism can have two sides.⁹⁷ On one side the Greek claim for possession is evident, but on the other, the Marbles have been in their British home since 1821.⁹⁸ For almost 200 years, the British have relied on the possession of the Marbles as part of their cultural identity, helping to “define the British to themselves, inspire British arts, give Britons identity and community, civilize and enrich British life, and stimulate British scholarship.”⁹⁹ Merryman contends that the Marbles, playing such an important role, make any nationalistic claims for possession “roughly equivalent.”¹⁰⁰

91. See, e.g., MERRYMAN, *supra* note 24; JOHN HENRY MERRYMAN, THINKING ABOUT THE ELGIN MARBLES: CRITICAL ESSAYS ON CULTURAL PROPERTY, ART, AND LAW (2000).

92. JOHN HENRY MERRYMAN, WHITHER THE ELGIN MARBLES?, in IMPERIALISM, ART, AND RESTITUTION 98, 102 (John Henry Merryman ed., 2006). Without a contextual history of their past, how will a culture be able to properly know their historical cultural identity and how it influences their modern identity?

93. *Id.* at 103.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. See MERRYMAN, *supra* note 92, at 103.

99. *Id.* at 103-04.

100. *Id.* at 104.

In the interests of the world, possession of the Marbles is characterized by Merryman under the categories of education, cultural enrichment, and better use.¹⁰¹ For education, the presence of the Elgin Marbles in Great Britain has had a significant impact upon the world outside of Greece.¹⁰² Regarding cultural enrichment, it is critical to note that the majority of learning is comparative.¹⁰³ In the British Museum, visitors have the opportunity to not only view a particular object individually, but can directly compare it with other objects and thus enrich their knowledge of other cultures.¹⁰⁴ The final category Merryman discusses is the “better use” of the Marbles.¹⁰⁵ According to Merryman, the “better use” of Greek art is to have Greek objects distributed throughout museums of the world rather than having hoards of Greek objects and artifacts languish in “Greece where they will never be accessioned, studied, published, or exhibited.”¹⁰⁶

Finally, in consideration of the best interests of the Marbles themselves, preservation, integrity, and distribution are primary concerns. Preservation is of unequalled importance because if the Marbles fall into ruin or are destroyed, no culture will be able to benefit from them.¹⁰⁷ The concern then is whether the Marbles will be better preserved in the British Museum in

101. *Id.* at 106-08.

102. *Id.* at 106-07. It is representative of the fact that nearly all aspects of Greek culture including “art, drama, literature, philosophy, and science permeate Western culture.” *Id.* at 107. The distribution of Greek culture, including the dispersion of its artistic history, has been vital to this development. *Id.* Had all Greek art remained in the possession of Greece merely because that was its point of creation, Western culture would have been deprived of untold benefits and advancements. *Id.*

103. *Id.* Merryman notes that, at a minimum, “what we know is enriched, acquires breadth and depth, by comparison.” *Id.*

104. See MERRYMAN, *supra* note 92, at 107. This type of comparison greatly enriches a person’s understanding not only of the past, but what forces brought about the present by being able to compare directly the changes each culture took by seeing how each responded to the challenges of their day. Had the Elgin Marbles been kept in a Greek museum, they would likely have been swallowed in a sea of aesthetically similar Greek art. This would offer some benefit to the most learned of scholars, but deprive the everyday visitor of their right to better understand who they are in the present by seeing and comprehending their cultural origins in the past. Therefore, little benefit in the area of cultural enrichment could be gained by giving Greece possession of the Marbles in the present. *Id.*

105. *Id.* at 107-08. The phrase “better use” is derived from the 1976 UNESCO Recommendation, which states “the interchange of cultural property ‘would also lead to a better use of the international community’s cultural heritage.’” *Id.* (quoting the 1976 UNESCO Recommendation). Since the drafters offer no guidance as to what “better use” means, Merryman posits that the “better use” of objects in the case of Greece refers to an exchange or sale of Greek art and objects from Greek museums for other countries in exchange for objects from these other cultures. *Id.* at 107-08.

106. *Id.* at 107.

107. *Id.* at 108.

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London or in a museum in Athens.¹⁰⁸ In the British Museum, the Marbles are “well mounted, maintained, and guarded.”¹⁰⁹ The true blemish on the British record of safekeeping is damage they sustained from the cleaning of the Marbles that took place from 1937-38.¹¹⁰ However, the history of Greek preservation of the other Parthenon marbles, the preservation of the Elgin Marbles by comparison clearly merits the Elgin Marbles continued preservation and residence in the British Museum.¹¹¹

Regarding integrity of the Elgin Marbles, it is important to consider the Marbles as part of a greater integrated work, the Parthenon. Merryman states that their return to Athens would be justified if the intention was to reintegrate them into the complete work of the Parthenon.¹¹² However, this proposal would be in direct conflict with the discussion concerning the preservation of the Marbles when exposed to the pollution of Athens.¹¹³ Consequently, the current claim by the Greek government is to have the Marbles transferred to Athens to have them placed in a museum.¹¹⁴ Merryman argues that, in the interests of integrity even a close proximity would not be good enough if the Marbles fail to be integrated into the Parthenon.¹¹⁵ While not a compelling reason for the Marbles to be kept in London, the integrity consideration fails to give Greece another reason to compel the return of the Marbles.

Merryman’s final consideration is the distribution of cultural objects so that the international community has access to their own cultural achievements as well as those of others.¹¹⁶ While Merryman acknowledges that some of the most well regarded Greek objects are abroad, Greece is not impoverished.¹¹⁷ The volume of Greek art within Greece makes Greece a

108. *Id.*109. *Id.*110. See MERRYMAN, *supra* note 92, at 108-09.111. *Id.* at 109. Merryman notes that with the damage sustained by the remaining pieces of the Parthenon that were left exposed to the elements, particularly the smog of Athens, their return to Athens for reinstallation at the Parthenon would be catastrophic for their preservation and merit they remain in London. *Id.* at 109.112. *Id.* at 109-10.113. *Id.* at 110.114. *Id.* This would place them closer to the Parthenon and within sight of it when the Acropolis Museum is completed. *Id.*115. *Id.*116. See MERRYMAN, *supra* note 92, at 110.117. *Id.*

draw for visitors to become immersed in the wealth of Greek culture.¹¹⁸ Though this consideration bears similarity to the “better use” consideration discussed above,¹¹⁹ Merryman highlights that the dispersion of Greek art abroad may in the long run help with its preservation. With the prevalence of “religious fundamentalism and international terrorism,”¹²⁰ it may make more sense to keep the Parthenon Marbles divided between London and Athens for the sake of their preservation against possible attack.¹²¹ The return of the Elgin Marbles to Greece then would not further the interests of the distribution of classic Greek art.¹²²

While the argument for dispersion has merit, it has been argued that greater respect and benefit can be had between cultures if their objects were returned and exchanges and loans could be organized through museums.¹²³ Artifacts could still be sold to other countries, but it could only be done through authorized channels “by the authorities in the country of origin.”¹²⁴ Further, Renfrew states that “there has been sufficient dissemination [of knowledge] throughout the world” about the world’s cultures via artifacts to the point that “most cultures are adequately documented today in museums well beyond those lands where their material remains are actually found.”¹²⁵ Additionally, it is argued that objects taken out of their context for viewing offer little knowledge of the past because they can only be properly evaluated when compared to similar objects that have “been found within a coherent context.”¹²⁶ As to current solutions to such illegal exportation,

118. *Id.*

119. *See supra* notes 90-92.

120. MERRYMAN, *supra* note 92, at 111. Merryman identifies several examples of cultural property destruction that resulted from such causes:

Serbs deliberately destroyed the Mostar bridge and other Islamic buildings and artifacts. The Taliban deliberately destroyed the Bamiyan Buddhas and thousands of other works...in Afghanistan, fully informed of their world importance and despite international appeals that they be preserved. An entire ajor collection of Rodin’s sculpture, including lifetime casts and unique works, was destroyed in the attack on the World Trade Center on September 11, 2001.

Id.

121. *Id.* at 111. Given the international profile of both cities, it makes sense to leave such a cultural wealth divided rather than concentrate all of the Marbles of one great monument by either moving the surviving Parthenon Marbles to London or returning the Elgin Marbles to Athens. *Id.*

122. *Id.* at 112.

123. *See supra* note 62, at 21.

124. *Id.*

125. *Id.*

126. *Id.* at 22. One example Renfrew discusses is the discovery of the Tomb of Philip of Macedon, father of Alexander the Great. *Id.* at 22-23. The author notes that had the objects from the tomb been looted and sold off separately rather than having been discovered intact, a wealth of knowledge regarding a great ruler and culture would have been lost with the corruption of the

Renfrew suggests that the historical practice of *partage* has its merits in creating an equal division of cultural objects.¹²⁷

While admirable in their intent, these arguments deserve further scrutiny. Having exclusive sale of antiquities by authorized organizations may have the effect of concentrating the influence of purchasing power in a country into very few hands or institutions. This would all but affirmatively prohibit the private collector or small dealer from being able to sell private property to which they have legal title¹²⁸ or purchase property in a private market. Regarding the argument that today's cultures are already more well documented in museums than they are in their countries of origin, such an assertion perhaps gives more credibility for museum retention since a museum only undertakes such costly research efforts when they know they can count an object among their imported cultural assemblage. Finally, the inference that objects should be returned to their cultural home to be viewed and studied amidst objects of similar background discounts the modern research equipment and techniques a foreign museum may have at their disposal. It also ignores the necessity of object preservation. Though perhaps out of its original context, an object, through the efforts of a well-funded modern museum, will survive for the viewing and study of generations to come. Such arguments may not clearly outweigh the considerations raised by Renfrew, but they do merit consideration in contemplation of an object's future. Renfrew recognizes the system of

context of the tomb. *Id.* at 22-26. This infers that rather than having singular objects in a foreign museum, it might be better to have them returned to a museum of their cultural origin so they can be properly viewed and researched amidst similar objects.

127. *Id.* at 21.

128. Adam Goldberg, *Reaffirming McClain: The National Stolen Property Act and the Abiding Trade in Looted Cultural Objects*, 53 UCLA L. Rev. 1031, 1056 n.142 (2006) (citing *Andrus v. Allard*, 444 U.S. 51 (1979)). This restriction can be justified under certain types of property. For example, the sale of eagle feathers within North America is now illegal given the status of the animal as an endangered species and the threat such a trade would be to its existence. *Id.* Under such a law, it is not illegal to own the feathers since they were purchased before the date the law became effective, but it is illegal to engage in trade for them. *Id.* While this restriction on the freedom to trade may seem to run contrary to the natural law principles that a person is free to engage in an enterprise of their choice, it is clear that a government can place a greater importance on the preservation of a species than on the unfettered existence of such a right. When comparing the interest in preserving a species to curtailing illegal exportation of antiquities, it is arguably clear that the need to curtail the traffic of illegally exported antiquities rises to the importance of restricting a person's right by nature to engage in a trade or enterprise of their choice. This is given further support with the recent cooperation of museums and auction houses, and the enabling of international conventions prohibiting such traffic by new countries. See *supra* Part II.D.

partage as an effective means of division,¹²⁹ but as discussed in the next example, the Nefertiti bust, *partage* can bring about similar problems as to legality of export.

2. Arguments for Return to Athens

On the side of the debate that the Marbles should be returned to Athens, there are several strong counter arguments to the reasons discussed above. First, there is the response to the argument that the Marbles would suffer greater damage if returned to their original context in the Parthenon. This would certainly be the case if the returned Marbles were placed outside but this would likely not be the course Greece would take if given possession.¹³⁰ If the Marbles were returned, they would likely be placed in a museum alongside their companions for close viewing. However, the direct comparison of the Elgin Marbles to the other Parthenon Marbles may be a contrast the British Museum would not want to be seen.¹³¹

If the Marbles were placed side by side their Athenian brethren, the contrast would be stark and the public outcry over the actions of the British may become even further inflamed. This would reveal that the British “rescue” of the Marbles theory likely had no foundation at all.¹³² This lends a strong case for restitution of the Marbles to Greece.

On the other side, however, it cannot be said that the Elgin Marbles would have definitely survived if they were left in place. There is strong historical evidence that the majority of the sculptures of the Parthenon were destroyed while attempting to be removed by another explorer.¹³³ Additionally, during the centuries following Elgin’s removal of the stones up

129. See *supra* note 62, at 21.

130. See MERRYMAN, *supra* note 92, at 90-91. At the end of the 20th century, large portions of the remaining friezes were removed from the Parthenon to protect the stone from further environmental erosion and to allow researchers and the public for the first chance to examine the actual character of the art up close. *Id.* at 90. The resulting research was able to provide new information as to how the original marble appeared, and fostered a greater understanding of the narrative with researchers able to discern what colors were used on the stone. See *id.* at 88, 90-91. The removed portions were then replaced with replicas to retain the aesthetic integrity of the monument. *Id.* at 90.

131. In their attempt to clean the marbles and make them fit in with the ideal of classical form in appearing more “white,” the Marbles were subjected to severe cleaning processes in the first part of the 20th century. *Id.* at 86-87. The effect of this is that all of the trace evidence of color and subtle sculptural technique that have led to greater knowledge of the Parthenon from the pieces that were left *in situ* is all but lost from the Elgin Marbles. See St. Clair, *supra* note 90, at 90.

132. *Id.* at 89.

133. See GREENFIELD, *supra* note 86, at 45-46. General Francesco Morosini of the Venetian army attempted to “remove the horses and chariot of Athena” from the west pediment in 1678 but because the weight was misjudged the stones came to the ground and shattered. *Id.* at 46.

until the War for Greek Independence, the Parthenon was subject to piecemeal looting including by Turkish soldiers who sold important fragments as souvenirs to tourists.¹³⁴ With such actions occurring for 137 years after Lord Elgin's removal of the Marbles, there is no telling what state of disrepair or nonexistence the Marbles would be had they not been removed to Great Britain.

While the debate about the return of the Marbles to Greece is ongoing, it has yet to be determined whether the position of either the Greek or British government will change and what consequence that will bring for not only both parties, but the cultural heritage of the world.

3. Further Thoughts on the Elgin Marbles

Out of all the considerations advanced regarding the Elgin Marbles, there are several further considerations that deserve attention. First, perhaps the curiosity and romanticized image of Greece held by foreigners was the greatest enemy to the preservation of the Marbles.¹³⁵ While the argument that equal distribution to museums of a country's cultural heritage certainly receives praise under our modern ideals of historical preservation, it is an idea that comes too late in preserving the cultural record of other civilizations. The best use of such knowledge now is prospective in approach. The equal distribution of a country's cultural heritage to other major cities around the world is a theoretically sound way to ensure that many cultures are exposed to the cultural variety of other civilizations. But the problem remains that not too many countries, especially those that have been pillaged for millennia as a thank you for their creation of revered art and contributions to civilization, would be willing, let alone feel compelled, to surrender their people's past.

It is to this problem that modern technology proposes a viable solution. Recent developments in technology make it possible for objects to be replicated with near precision to its original.¹³⁶ If countries were willing to accept replicas of famous cultural objects for their permanent display, the artistic and historical value of an object would be able to be shared the world

134. *Id.* at 44-46.

135. *Id.* at 41-46.

136. See generally *The Normandy Liberty Bell – Replication from Direct Dimension*, available at http://www.dirdim.com/port_featuredprojects.php?fileName=fp_libertybell. This company creates three-dimensional replicas, including historical artifacts that allow for exact reproduction.
Id.

over. If such duplication technology becomes even more viable and cost effective, it may even provide an economic benefit to the host country.¹³⁷ While a court or arbitration may decide for the party who has ownership of the original, modern technology may allow at least some satisfaction to be attained by both parties while respecting modern ideals of cultural ownership.

A final argument worthy of consideration is that the claim by the British government is valid because the permission to remove the Marbles was made by the then occupying Ottoman Empire, rather than by a form of a Greek government. Normally with property, a decision by a ruling government would be the final say in the matter.¹³⁸ For the sake of quick resolution, the decision of the then ruling government should be regarded as final. However, with the cultural sensitivity that can be evoked from an entire people when it comes to cultural property, it is arguable that objects of cultural property be treated differently. But if sensitivity to the greater culture is given greater weight, then a flood of claims and lawsuits would inundate former imperial countries for conversion and misappropriation of the creating culture's property. While there is certainly merit to some claims along these lines, the reasons for retention by the holding country as

137. The country or museum could sell the right to have each duplicate made and sold to order. This purchasing right could then be used to support the museum's general funds in maintaining their own collection. This possible benefit does have a possible drawback as well. It is likely that such an economic right that could be profited from would further encourage countries that have had works that have been removed to foreign museums and subsequently become well known claim that either the object be returned, or failing that, the museum holding the piece merely possesses the right to the one piece they possess but that the right to have the object reproduced is a right of their cultural history, and as such should be of financial benefit to them. While this article will not explore this particular question too much further, I merely propose that an initial solution be that the possessor of the object being found to have the exclusive right since only upon their submission of the object to be replicated can exact replicas be reproduced or that in recognizing the cultural origin of the object, the financial benefit between the country of creation and the possessing country be divided evenly. If the process becomes truly cost effective, this may prove a viable financial avenue for countries or museums who could mass produce such replicas to be purchased by art lovers and collectors. While this is currently done by major museums for their most famous works, a cost effective duplication process could make almost any work available to be duplicated by order. Further, while current sales of souvenirs of this type are done in museums with particular appeal to the private market, the use of such a process by museums would elevate the importance that people would place on such objects if they were given an official endorsement (a major government commissioning one to be made to be kept in state museum) and that by ordering a duplicate from the host country, the purchaser was not only funding the continued preservation of the originals, they were also helping to dissuade disputes between countries in cultural property and in the long term reducing demand in the black market for looted art.

138. See *supra* Part II.D.

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discussed by Merryman above¹³⁹ are both broad and compelling enough to likely outweigh such claims.

B. *Bust of Nefertiti*

The bust of Nefertiti was discovered in an excavation of the city of Amarna in Egypt between 1912 and 1913 in the workshop of the artist Thutmose.¹⁴⁰ The bust was of immediate interest because its life-like depiction of the Egyptian queen and similar style to other works by Thutmose was different from the traditionally “rigid and formulaic nature” of other ancient Egyptian art.¹⁴¹ The removal of the bust of Nefertiti from Egypt to Germany came about through the system of *partage*.¹⁴²

Scholars still debate whether the rightful place of the bust is in Germany or in Egypt. In May 2007, Egypt made another request for the return of the bust.¹⁴³ Those in favor of its return to Egypt base their argument upon Egypt’s lack of awareness that the bust was taken out of Egypt until ten years after the fact, and international public law favoring that objects of strong cultural significance be returned and exhibited within the geographic territory where they were either created or discovered.¹⁴⁴

139. See *supra* Part III.A.1 – Arguments for Retention in London.

140. Tracy Musacchio, *Appendix I: The Bust of Nefertiti: An Annotated Bibliography*, in *IMPERIALISM, ART, AND RESTITUTION* 166, 166 (John Henry Merryman ed., 2006). The German excavation team, *Deutsche Orient-Gesellschaft*, was led by Ludwig Borchardt. *Id.*

141. *Id.*

142. Stephen K. Urice, *The Beautiful One Has Come – To Stay*, in *IMPERIALISM, ART, AND RESTITUTION* 135, 142 (John Henry Merryman ed., 2006). Under this system, the finds from an excavation were divided equally with both the host country and excavator deciding which objects would be in their share. *Id.* Per Egyptian law, title to objects that were not claimed by the Egyptian Antiquities Service were transferred to the holder of the excavation permit, in the case of this excavation, James Simon. *Id.* at 140. The bust of Nefertiti was selected for removal by the excavators and, apparently without objection from the Egyptian authorities at the time, was transported to Germany in 1913. *Id.* It was subsequently given by the owner, Simon, to the Prussian state via an inter-vivos gift in 1920. *Id.* Following World War II, the bust was originally in East Berlin, but remained in West Berlin from 1956 until the reunification of Germany in 1990, where the bust has since remained in the Berlin Museum. See Kurt G. Siehr, *The Beautiful One Has Come – To Return: The Return of the Bust of Nefertiti From Berlin to Cairo*, in *IMPERIALISM, ART, AND RESTITUTION* 114, 115-16 (John Henry Merryman ed., 2006).

143. MSNBC.com, *Egypt Wants Nefertiti Bust, Germans Say ‘Nein’* May 16, 2007 available at <http://www.msnbc.msn.com/id/18608193/> (last visited Feb. 27, 2008).

144. See *supra* notes 35-39 and accompanying text for a discussion of the territoriality principle. There are several important reasons that cultural property is given a special relationship to its country of cultural origin:

Additionally, Egypt qualifies as a state that has suffered under the veil of imperialism in its history.¹⁴⁵ While some scholars contend that all countries should be treated equally with respect to their rights and claims for property, others contend that special treatment should be afforded to those states that have struggled with decolonialization and independence.¹⁴⁶

Archaeological objects are more than any other pieces of cultural property attached to the territory of the country of origin. Most archaeological finds are connected with objects discovered on the same site or neighboring sites. Many archaeological objects were manufactured in the country of origin, are the expression of the local culture and are evidence of the history of the country of origin. In order to fight illegal excavations and to preserve the context of archaeology, preventive measures have to be taken; this is done by recognizing a territorial link to the country of origin more than for any other piece of cultural property.

See Siehr, *supra* note 142, at 129. As can be expected, source states that are rich in cultural property have strong protection for archaeological finds and within their domestic statutes state that “all archaeological finds are *ipso facto* and *ipso iure* state property.” See *id.* See *supra* note 142, at 130 n.57 citing the most recent statute passed in Europe on such matters, “the Greek Statute No. 3028 of 28 June 2002 on the Protection of Antiquities and the Cultural Heritage in General, 2002 *Ephimeris tis Kyberniseos* at 3003.” *Id.* Such policies of state property protection have been recognized widely in Europe as well as the United States. *Id.* at 130.

145. *Id.* at 131.

Egypt has been one of those states that suffered severely from Ottoman and European imperialism:

- ~1650 - 1551 B.C.: Invasion and rule of the Hyksos
- 525 - 404 B.C.: Province of Persia
- 332 - 30 B.C.: Macedonian and Ptolemaic rule
- 30 B.C. - 642 A.D.: Roman and Byzantine rule
- 639 - 868: Arab and Turkish rule
- 1517 - 1798: Rule by the Ottoman Empire
- 1798 - 1805: French Occupation. See *supra* notes 26, 41.
- 1805 - 1882: Muhammed Ali and successors as viceroys of the Sublime Porte
- 1882 - 1922: British occupation and protectorate.

Id. at 131-32. This timeline illustrates quite well the problems that can arise with attempts toward restitution. The crossover from occupation shows that very often there can be multiple claimants to a particular object if it is related to a territory. Further, with the advent of the nation-state, and reigns of occupation and protection that last for approximately 100 years, it can become difficult to consider the idea of ownership. For example, if a certain territory is occupied by the French but a British exploration excavation team makes a discovery, both will attempt claim the find for the sake of their presence or their labor and luck respectively. The notion of returning a cultural object to its point of origin by territory eliminates a lot of the difficulty in determining ownership by linking the right of ownership to a geographic locus rather than one that is abstract or political and consequently less tangible and more transient.

146. See Siehr, *supra* note 142, at 131. One of the problems that comes with a state succeeding a former occupying power is the state’s role in relation to other nations with respect to how cultural property is treated. *Id.* at 132. For example, two multilateral conventions on state succession deal with problems with treaties, “state property, archives, and debts.” *Id.* (referring to the Vienna Convention of 23 August 1978 on Succession of States in Respect of Treaties, 1946 U.N.T.S. 3; 17 *International Legal Materials* at 1488 (1978)). There are, however, “no special provisions on cultural property in general and even fewer on cultural objects removed in times of occupation and dependence.” *Id.* at 132. These are circumstances where the general protection via international

For example, Egypt-post occupation would be well within its rights under international law to ask for the return of the Nefertiti bust, an object that was sold and removed from the territory while it was under foreign occupation.¹⁴⁷ Further, to support such newly independent fledgling nations, “some international conventions on the return of stolen or illegally exported cultural property require only ‘just’ or ‘reasonable’ compensation because newly independent states and developing countries cannot afford to pay full compensation.”¹⁴⁸ Such an approach not only offers support to a fledgling economy but also recognition and respect for the cultural identity that the new nation is beginning to craft.

But the facts reveal a different tale. Under the system of *partage*, the Egyptian government apparently approved of the bust being taken by the discoverer.¹⁴⁹ There is additional evidence that Egypt was on notice of the missing bust.¹⁵⁰ Even if the Egyptian government was somehow subverted by the excavator Borchardt, the bust, subsequently, was in a black and white photo published in a scholarly journal¹⁵¹ in 1913 that would have been seen by Egyptian authorities involved with the Antiquities Service.¹⁵² This reveals there were two opportunities for the Egyptian authorities to reclaim the bust. In the instance where the items discovered were divided per the requirements of *partage*, and second, when the authorities were placed on notice that the bust was in Germany when a photo of the bust was published in a scholarly journal nine months after its discovery.¹⁵³

Although under this analysis it seems that Germany has a valid legal claim to the bust, there may be some situations where restitution is allowed. In light of this evidence, Germany can argue they have a valid legal claim to the bust. However, although Germany may have a valid claim, there are instances where Egypt may be deserving of restitution despite a valid legal claim.

conventions comes into play. *Id.* at 133. Overall, these facts leave the newly independent states to form their own policies regarding how they wish to treat cultural property. *Id.*

147. *Id.*

148. *Id.* at 133.

149. *See* Urice, *supra* note 142, at 143.

150. *Id.* at 140, n.30, 52 (citing *Mitteilungen der Deutschen Orient-Gesellschaft zu Berlin* 43 illus. 19 (1913)). “Although the image is only a partial, it sufficiently demonstrates the quality and significance of the bust.” *Id.*

151. *Id.*

152. *See* Urice, *supra* note 142, at 140.

153. *Id.* at 143.

1. Essential Propinquity Test

Stephen K. Urice cites a test from John Merryman for determining whether an object is of such significance that it should be returned even if it would run contrary to legal claim. This concept, called essential propinquity, “provides a justification for cultural property retention (and by extension an imperative for return).”¹⁵⁴ To establish essential propinquity requires two criteria: “First, the culture that gave the object its cultural significance must be alive. Second, the object must be actively employed for the religious or ceremonial or communal purposes for which it was made.”¹⁵⁵ The focus of this concept is upon objects of special nature requiring the “highest level of sensitivity and scrutiny in cultural property disputes.”¹⁵⁶

Under this concept, the Nefertiti bust could remain in Berlin. First, the dynastic culture of Akhenaton is not alive today. The current culture occupying is the democratic state of Egypt. The bust does not hold any present significance for the modern state of Egypt beyond the representation of an object of its ancient past.¹⁵⁷ As such, Egypt’s claim for the return of the Nefertiti bust stems more from the rest of world’s association of the bust with Egypt rather than with a tangible cultural link between the bust and modern Egyptian culture.¹⁵⁸

154. *Id.* at 153.

155. *Id.* at 153-54 (quoting John Henry Merryman, *The Retention of Cultural Property*, 21 U.C. DAVIS L. REV. 477 (1988)). This test touches upon the same concerns for cultural sensitivity that were later adopted in the UNIDROIT Convention of 1995. *See* UNIDROIT art. 5 (3)(d) (establishing that an object is subject to return if the removal impairs the ritual use of an object by an indigenous community), and art. 7 (2) (stating that an exemption will not apply concerning a cultural object serving a ritual purpose for an indigenous group).

156. *See* Urice, *supra* note 142, at 154.

157. *Id.* at 153. “The former was pagan; the latter is predominantly Muslim; the former was a monarchy, the latter is a democratic state. . . .” *Id.* “There are no cultural, religious, political, social, or economic values of the Eighteenth Dynasty that find resonance in modern Egypt.” *Id.* Urice may be making too broad a statement here. While the bust has no direct correlation, the realistic style in which the bust was done may find a connection to modern Egypt via any modern Egyptian artists or art movements that were inspired directly by either the style in which the bust was done or by the culture of Akhenaton during the time the bust was created and the life-like style developed. For example, if it could be shown that the life-like style from Amarna was the birthplace of this style in Egypt, and was continued through to the present day with artists attributing the origin of their life-like style to this point in Egyptian history, a possible cultural link to the present could be found. Even if such a link were not strong, it would prove to have more of a foundation under essential propinquity than a claim by Egypt for the Nefertiti bust merely because it is a beautiful example of art created in their ancient past.

158. Informing this point may be the first official demand by Egypt for the return of the bust in 1923, after it went on display in Germany and began garnering international attention for the Egyptian Museum in Berlin. *See* Siehr, *supra* note 142, at 116.

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Further, Egypt already has a large number of works representative of the Amarna period in its museums.¹⁵⁹ Since Germany and other Western European nations have few such examples, the benefit of seeing this rare style via the Nefertiti bust should allow the bust to remain in Germany, for the sake of European tourists and researchers who may not be able to travel to Egypt for either financial or safety reasons.¹⁶⁰

2. *Ensemble* Test

Those dealing with antiquities ranging from archeologists to politicians have long recognized that pieces that were acquired from a common location as part of a group or *ensemble* of objects should remain together to best retain the artist's intentions, and those objects that have been separated from such a group should be reunited.¹⁶¹ If the artist made the object—though manufactured in connection with a group—as an independent object, then there is less of a reason for the object to be shown with the group. Given the Nefertiti bust's discovery in a collection from the workshop of Thutmose of Armana¹⁶² lends strength to the argument that the bust should not be shown in isolation. However, given the record of the excavation, the bust appears to be an independent work and not part of an *ensemble*.¹⁶³ As such, its separation from other works by Thutmose should not be an affront to the artist's intentions since, as an independent work, it does not deprive other objects of their full meaning.¹⁶⁴

Unfortunately, there is no body of authority to resolve the question of whether the Bust is part of an ensemble or not.¹⁶⁵ One proposal is that such a decision is best left to the country of origin since it would have the best information about *ensembles* of its cultural property and hold the principal interest in having a piece separated from an *ensemble* restored.¹⁶⁶ However, this point does not address the original intention of the culture creating the work of art. While it would be reasonable for our modern society to group

159. See Urice, *supra* note 142, at 150.

160. *Id.* at 150-51.

161. Siehr, *supra* note 142, at 127.

162. *Id.* at 126. The bust of Nefertiti is known to have come from the workshop of Thutmose of Armana. *Id.*

163. See Urice, *supra* note 142, at 139-40.

164. *Id.*

165. See Siehr, *supra* note 142, at 128.

166. *Id.* at 128.

objects from the same workshop together in one collection to be viewed as a whole, it would be a presentation of uniformity reflecting one style of art or craftsmanship created by a culture. It discounts that the original intention of creation of such artwork is that the piece itself may have been intended to be disbursed to other lands to reflect the quality of the creating culture (in this case Egypt). Under this view the Nefertiti bust could have been intended not only to represent the beauty and power of this former Egyptian ruler, but also as an ambassador of the quality of work that was being produced in Egypt to further the reputation of Egyptians among the trading world.¹⁶⁷

3. Return Request

The most recent request by Egypt for the return of the Nefertiti bust is for a loan in a new museum slated to open in 2012. However, the Chief of Egyptian Antiquities, Zahi Hawass, has stated that he will make efforts to prove the bust is stolen in order to have the bust returned for good.¹⁶⁸ The posture of this situation stands undecided with both parties in adversarial positions. The arguments discussed above for and against the return of the bust will continue to come into play as these parties work toward a solution, and will likely have application to other disputes as well.

C. Additional Considerations

In addition to considerations in the above exemplary cases, there are two additional concepts that merit discussion in the case of the Getty Bronze. These are museum retention and wholesale restitution. They will add a

167. There is a further reason such sculptures would not have been meant to remain in one location – the cultural context and consequential belief of the culture attached to such an object. The Egyptians believed that soul, or ka, of the person represented lived on in the sculpted embodiment of their image. It was common then for an invading force or new dynasty to demonstrate their triumph over the conquered order by destroying these embodiments, thus destroying them as vessels for the person's spirit to survive. It would therefore be in the best interests of a sculptor to distribute his works to other locations to lessen the likelihood of destruction of a sculpture believed to be the embodiment of the person's spirit for the sake of destroying the sculpture as a vessel. Karl Kilinski, Introduction to Western Art I, Lecture, S. Methodist Univ. (Fall 2003). See also ANNE R. BROMBERG & KARL KILINSKI, GODS, MEN, AND HEROES: ANCIENT ART AT THE DALLAS MUSEUM OF ART (Dallas: The museum in ass'n with Univ. of Wash. Press) (1996). Akhenaton, ruling king who took Nefertiti as his queen, suffered such a fate. In moving the capital of Egypt to Amarna and introducing a "solar monotheism" to challenge the "powerful class of priests" representing the traditional polytheistic belief, most traces of Akhenaton's reign were erased. See Siehr *supra* note 142, at 114-15. It is because so little evidence of the culture that existed during his reign is available that makes the bust of Nefertiti not only a piece more significant artistically, but also historically.

168. See MSNBC.com, *supra* note 143.

further dimension to the considerations already discussed before applying all of these considerations to the Getty Bronze dispute.

1. Museum Retention

There are significant advantages and altruistic motivations for keeping cultural objects in museums. The museum is a place that is responsible for the preservation of “objects of human cultural and artistic manufacture—for all time.”¹⁶⁹ This responsibility for the museum is a moral one and a museum in the United States possesses such a responsibility in trust.¹⁷⁰ The purpose rests in more than just a place to house objects where they can be passively viewed. Those who run museums have the expectation to further learning and foster a refinement and discrimination of a visitor’s judgments “between what is true and what is false.”¹⁷¹ This requires access to objects representative of the world’s diverse cultures. However acquisitions by museums have had a dramatic decline since 1970.¹⁷² With the morality of such acquisitions called into question further, the inclusion of antiquities within the political sphere of cultural property has caused policy to run counter to the principles upon which museums were created.¹⁷³

With the exception of the passage of legislation by the U.S. Congress in 1983,¹⁷⁴ acquisitions in the United States have been further curtailed by the U.S. State Department and U.S. courts. In verifying that acquisitions are

169. See Cuno, *supra* note 8, at 15.

170. *Id.* at 15-16. The beginning of the British Museum began with the trust created by “physician and collector” Sir Hans Sloane. *Id.* at 16. Sloane, along with French contemporaries Denis Diderot and Jean le Rond D’Alembert, “held that access to the full diversity of human industry and natural creation would promote the polymathic ideal of discovering and understanding the whole of human knowledge and thus improve and advance the condition of our species and the world we inhabit.” *Id.* “The principle that underlays the formation of the British Museum—that its collections are a force for understanding, tolerance, and the dissipation of ignorance, superstition, and prejudice—underlies the purpose of U.S. museums.” *Id.* at 17. The same spirit is embodied in museums throughout the world. In the United States, since the museums are also held in trust, the trustees and staff members are “obliged to preserve and advance their collections for the benefit of the public.” *Id.*

171. *Id.* at 17.

172. See UNESCO Convention of 1970, *supra* note 62, at 16.

173. See *supra* notes 68-69 and accompanying text.

174. See Cuno, *supra* note 8, at 18. This legislation implemented the UNESCO convention with the purpose of preserving “the right of U.S. museums to acquire antiquities under certain circumstances and for the benefit of U.S. citizens.” *Id.*

legal “U.S. museums must practice ‘due diligence’ when acquiring antiquities.”¹⁷⁵ This requires museums to consider:

[T]he circumstances of the acquisition, including the character of the parties, the prices paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any relevant information and documentation which it reasonably could have obtained, and whether the possessor consulted accessible agencies or took any steps that any reasonable person would have taken in the circumstances.¹⁷⁶

Another consideration for museum retention is the environmental impact of returning cultural objects to their point of origin. It can be argued that the greater volume of pollution in countries like Greece,¹⁷⁷ and the pollution’s incidental effects like acid rain, make it questionable for important objects of cultural significance to be left exposed to the elements.¹⁷⁸ However, sometimes the treatment by a more “advanced” culture can be just as debilitating.¹⁷⁹ As a result, the case can be made that cultural objects will be given the best preservation when they are kept in the best museums. If a museum is keeping an object in optimal conditions and the country asking for the object’s return lacks such facilities, it would be better for the object and the international community if it is kept where it will remain unaffected by the elements despite even a valid legal claim.

Such an argument begs the question: If this were the outcome determined, what would stop wealthy nations from purchasing looted items from countries without the means of advanced preservation and placing them in optimal conditions? There are two possible approaches to this. First, international conventions like UNESCO and UNDRIOIOT expressly prohibit this kind of acquisition today.¹⁸⁰ Second, a country that was being looted in such a way could respond by restricting cultural exports to the country acquiring the looted objects, deny permits for scientific endeavors into the country, and even marshal support from its sovereign neighbors who have the financial means to compete with the looting country to take similar action. These consequences would so inhibit the further gathering of information about cultural objects, it is not unlikely that scientists and scholars from within a looting country would accept such a national policy given the possible outcome.

175. *Id.* at 22.

176. *Id.* at 23 (quoting the Final Act of the Diplomatic Conference for the Adoption of the Draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects, June 24, 1994).

177. See MERRYMAN, *supra* note at 92, at 109.

178. See St. Clair, *supra* note 90, at 90.

179. See, e.g., the example of the Elgin Marbles, *supra* note 131. See also St. Clair, *supra* note 90, at 86-87.

180. See *supra* Part II.D.

Further consideration for museum retention is whether an object is of such significant cultural value that it be displayed for the benefit of all in a museum rather than allowed to return to a private collection. The answer is subjective and it may be that it should not happen at all. But when the object is of an intrinsic value¹⁸¹ recognized by a majority of laypersons and not just experts, the answer might be less clear. The monetary value of a cultural object is often determined by several factors, including who created the object and the scarcity of comparable objects.¹⁸² Museums make the argument that the protection, care, and widespread availability they can offer to valuable cultural objects justifies the retention of the object in a museum.¹⁸³

A final consideration in favor of museum retention is the degree of importance to the international community. A specific culture can claim an antiquity by right, but often antiquities of masterful craftsmanship take on a broader appeal. They can be seen as important for their craftsmanship due to creation in a particular time period. In either case, the claim by any one culture may be superseded by a claim from the international community that the object is an example of high human achievement.¹⁸⁴ This would call into question whether the debate should be limited to only the two countries

181. Here, the intrinsic value refers not just to monetary worth, but also the immediate value of an object by its characteristics. The more intrinsically valuable each of these characteristics are, it is likely the market will bear a similar high value monetarily.

182. *E.g.*, in the examples described above the Elgin Marbles, while unique in regard to each stone making up the composition of the collective group, is divided in two major collective groups between Athens and London. The Nefertiti bust by comparison is not part of a larger collection and is an independent work. The Nefertiti bust then is more valuable arguably by the degree of scarcity relative to the two collective groups of Parthenon Marbles.

183. See MERRYMAN, *supra* note 24, at 12. This is where the difference may lie with the final decision of who should have the property in the end—what that person or institution will do with the property should be an important factor of consideration. In the case of a private person, they may be keeping it for their own collection for private use. The benefit to be experienced of the cultural property then as a symbol of a static moment of a particular people would then be limited to either that person alone or to the persons the owner allowed to view or study the piece. When the piece of cultural property is in the hands of an institution like a museum however, it is available to the public, either for free or for a small price of admission, and to researchers at large to experience the full cultural and scientific value of the object.

184. “The international interest is expressed in the premise, stated in the preamble of the 1954 Hague Convention, that cultural property is ‘the cultural heritage of all mankind.’” JOHN HENRY MERRYMAN, *Whither the Elgin Marbles*, in IMPERIALISM, ART, AND RESTITUTION 98, 100 (John Henry Merryman ed., 2006) (quoting the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, in UNESCO, *Conventions and Recommendations of UNESCO Concerning the Protection of the Cultural Heritage* 13 (1985)).

disputing the cultural property, or if the international community deserves a voice as well.¹⁸⁵ The concept of an object's importance being greater than a country's valid legal claim supports the proposition that an object of high cultural value should be kept in a museum in lieu of a private collection, and that it should be kept in a museum that offers the best chance for preservation and the widest audience in lieu of a museum in the object's country of origin that cannot offer the same level of protection and audience.

2. Wholesale Restitution

Wholesale restitution refers to the idea that all cultural property should be returned to its place of origin.¹⁸⁶ However, if the ideal of the museum were discouraged and this principle championed—requiring the return of all cultural property to its place of origin—the results would be disastrous. While a number of objects would probably be returned and hopefully set up in appropriate museums closer to their historical context, it is more likely that such an agenda would set off a massive wave of hoarding of cultural objects by private institutions. Since anything made public would be liable for return to its cultural homeland, such hoarded objects would be kept away in private collections and away from public inspection.

This would result in a restriction on the free flow of information and learning and a virtual standstill in research efforts with the scientific purpose of greater understanding of a culture by studying their creations. Researchers would be left with only objects of their own country which had been returned, or worse, forced to negotiate individually with every private collector or institution in order to secure the right to research. Even then, the published results would have to maintain the confidentiality of the cultural object's owner as a precondition for the research. This not only places the scientific researcher in a legally awkward position (by having to deny disclosure to a government agency if they published about their research object) but also prevents other researchers from carrying out similar analyses and arriving at confirming or differing results. This type of result would work against the purpose of a museum, and also the idea of comparative learning for education and cultural advancement.¹⁸⁷

185. See MERRYMAN, *supra* note 92, at 98, 100. There is some merit to the argument since the claiming culture's only relation to an antiquity is that they currently occupy the geographic location where the antiquity was either created or discovered. See *supra* note 21 for examples.

186. *Id.* at 110-12.

187. *Id.* at 107.

IV. FACTS OF THE GETTY BRONZE AND APPLICATION OF ARGUMENTS

This section will address the how the arguments discussed in the examples above can be applied to the case of the Getty Bronze. This section will begin with the facts surrounding the discovery and purchase of the Victorious Youth by the Getty and the origin of the current Italian claim. Then, the arguments pertaining to the Elgin Marbles and the Bust of Nefertiti will be discussed and analyzed according to the facts of the Getty Bronze controversy. While not a direct comparison, each of the examples offers unique insights into how to assess and evaluate an ancient cultural object claimed for restitution in the present day.

A. *Origin and Known Facts of the Getty Bronze*

The Statue of the Victorious Youth, also known as the Getty Bronze, was created by an unknown artist and is Greek in origin.¹⁸⁸ The statue is made of bronze from the lost wax process.¹⁸⁹ Based upon contemporary descriptions from the period, it is thought that thousands of statues like this one stood outside major buildings, were in public spaces, and may have been kept in private gardens and sanctuaries.¹⁹⁰ Statues similar to the Victorious Youth would have been numerous in “honoring victors in numerous cities and sanctuaries.”¹⁹¹ Though some have tried to identify the identity of the

188. See Press Release, *supra* note 7.

189. See MATTUSCH, *supra* note 24, at 21.

190. *Id.* at 26-27. The author highlights that a great deal of what we know of the layout of cities in ancient times comes from descriptions chronicled by travelers to the cities. *Id.* at 26. In Greece during the second century A.D., Pausanias made a journey there and wrote of his journey in his “ten volume work, *Description of Greece*, in which he describes the regions, cities, and sanctuaries of Greece, covering topography, history, religion, and local customs and beliefs, as well as buildings and monuments.” *Id.* Later travelers made use of this work to such a degree that at least nine copies have survived to the present day. *Id.*

191. *Id.* at 36. The author, quoting Pliny of later statues of victors, writes:

It was not customary to make effigies of human beings unless they deserved lasting commemoration for some distinguished reason, in the first case victory in the sacred contests and particularly those at Olympia, where it was customary to dedicate statues of all who had won a competition; these statues, in the case of those who had been victorious three times, were modeled as exact personal likenesses of the winners.

Id. at 45.

Youth, he is “surely best read as the familiar face of victory, the idealized honoree.”¹⁹²

The Victorious Youth was discovered in the Adriatic Sea in international waters in 1964.¹⁹³ Italian courts determined there was no property interest by Italy in the Statue of the Victorious Youth in 1977.¹⁹⁴ The recent claim by the Italian government that the Getty Bronze was illegally exported and that Italy had a property interest came as a surprise to the Getty and for good reason. While the Statue of the Victorious Youth was discovered in 1964, Italian authorities kept it within Italy until 1977 determining its provenance, and the Getty only purchased the Bronze when it was released for sale by the Italian government when it was determined that Italy had no property interest in it.¹⁹⁵

192. *Id.* at 41. The dimensions of the statue are 59 5/8 x 27 9/16 x 11 inches. See Getty Museum, *supra* note 1. The legs of the statue are torn just below the knee possibly as a result of being removed from its fixed stone base. See MATTUSCH, *supra* note 24, at 44. Among the remaining bases of statues at Olympia, one was found with a foot intact from the statue that had been torn off. *Id.* Mattusch suggests that in such a case the bulk of the bronze may have been torn off “for sale as scrap metal to a Roman art collector abroad” and a similar fate may have caused the missing feet of the Getty bronze that is seen today. *Id.* The bronze is rich with a dark green layer of paratacamite. *Id.* at 20. The Youth is in the nude as was common for Greek athletes in competition. The Greek athletes competed in the nude for the sake of greater mobility. *Id.* at 45. Romans however, disapproved of this custom as recorded by Plutarch. *Id.* He has been crowned by a wreath of olive leaves or has his hand raised in the act of crowning himself, making him a *autostephanoumenos*. *Id.* at 50, 84. His left hand and arm are in such a posture to suggest that at one time he held a palm frond, a common award to victors in the games. X-rays of the Getty Bronze have been used to determine which portions of the statue were from the original model from the workshop and which features might have been added or individualized after the model was made. *Id.* at 70. From the X-rays, it can be determined that the “nose, ears, and hair . . . were modeled by hand to individualize the head and face before casting.” *Id.* at 71-72. The head was therefore an original compared to the rest of the statue. *Id.* at 72.

Based upon dating of the style of the statue and the core organic core material removed from within it, it is suggested that the statue was cast sometime “between the second quarter of the fourth century B.C. and the beginning of the second century B.C.” *Id.* at 76. However, this offers little concrete evidence since works of any particular style would have continued to be produced as long as they were in demand. *Id.* at 77. The style in which the Getty bronze was done was known to be popular. *Id.* at 78. See additional designs of the *autostephanoumenos* design in antiquities. *Id.* at 84-85.

Since the statue was likely created in honor of a victor during the Olympic Games, a brief discussion of the Olympics is used for context. The Olympics began in 776 B.C. and possibly lasted until the early fifth century A.D. *Id.* at 36. They were held every four years. *Id.* “The games were dedicated to Zeus” and by legend are said to have been started by the hero Herakles. *Id.* at 43.

193. See MATTUSCH, *supra* note 24, at 1. The discovery was made in 1964 “some distance from the shore by fisherman from Fano [Italy], a resort town on the Adriatic Sea.” See *id.* at 20.

194. See Press Release, *supra* note 7.

195. *Id.* The Getty purchased the bronze in 1977 for almost four million dollars. See MATTUSCH, *supra* note 24, at 199.

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The Getty Bronze was found in a shipwreck off the Adriatic Sea, most likely bound for a destination in Rome, but the final destination is unknown.¹⁹⁶ In 1977, the Getty purchase of the bronze was contingent on the fact that Italian courts declared that the statue was not the property of Italy.¹⁹⁷ However, the status of the statue is in question because recently the Italian authorities claim that the statue was illegally exported and therefore could not be sold to a person outside of the country.¹⁹⁸ Currently, talks over the return of the Getty Bronze have been suspended by agreements of both parties, and on November 20, 2007 an Italian court cleared the Getty of any wrongdoing with the statue.¹⁹⁹ This decision is being appealed by “prosecutors and Italian heritage bodies” who are appealing the sentence to Italy’s highest court of appeal.²⁰⁰ The Italian government was waiting on this decision to decide how to proceed on a legal claim for the return of the Getty Bronze. If the judgment stands then Italy will not be able to pursue a claim for return as a criminal matter and will have to attempt another course.²⁰¹ If the judgment of the Italian court stands that the Getty engaged in no wrongdoing in their acquisition of the Getty Bronze, the Italian government has an uphill battle if it still desires to pursue a claim of restitution. Thus far, the Italian government has taken no further action.

B. Possible Outcomes under International Law

Under the primary conventions of international law there are several possible outcomes. Under the UNESCO Convention of 1970, which both

196. *Id.* at 60. The Adriatic Sea is the body of water off the eastern coast of the Italian peninsula and the continent of Europe. Given its discovery in the Adriatic Sea, consultation of a map reveals that somewhere in Italy was the likely destination. Although remote, it may be considered possible that the destination was a Greek town or colony in Italy. See discussion on Getty bronze display, Malibu, CA. Reasonable guesses as to the purpose of the Victorious Youth suggest public display, private display in a collector’s home, or even for use as scrap. See MATTUSCH, *supra* note 24, at 60. “Had the Getty bronze reached its final destination in Italy, instead of being lost at sea, it would surely have been, if intended for further use, a candidate for restoration of the legs and insertion of a new set of naturalistic eyes . . .” *Id.* at 53.

197. See Press Release, *supra* note 7.

198. In Italy it is legal for a private person to own cultural property as long as it remains within the country’s borders. See *supra* note 92, at 98-114.

199. Getty Bronze – Latest, available at <http://www.atrium-media.com/roguiclassicism/Posts/00007402.html> (citing Ansa Mediterranean (ANSA) (last visited Feb. 23, 2008)).

200. *Id.*

201. *Id.*

the United States and Italy have ratified domestically, a court could compel the United States to return the Bronze. But under Article 7 (b)(ii), Italy would be required to pay just compensation for the piece if the judgment stands that the Bronze was not stolen.²⁰² Under the UNIDROIT Convention of 1995, since the Getty had no knowledge of wrongdoing if any had indeed taken place, the Bronze would not be considered stolen. If a court were to use UNIDROIT as a basis for its decision, it would have to find that the absence of the Bronze from Italy met one of the criteria to compel its return.²⁰³

The application of these international conventions, despite being the most widely recognized among those that could be applied, remains very weak because the application appears to be purely subject to judicial discretion.²⁰⁴ As such, an outcome contingent upon prevailing international conventions cannot effectively be determined. A more accurate forecast of judicial outcome can likely be found by examining the facts of the Getty case in light of other arguments made by the two preceding examples of the Elgin Marbles and the bust of Nefertiti.

One possible barrier to Italian restitution is the statute of limitations in bringing the restitution claim. It is likely invalid under the current law of both UNESCO and UNIDROIT.²⁰⁵ Under both international conventions, there is no statute of limitations on recovery for objects that were illegally exported.²⁰⁶ Whether the purchaser, in this case the Getty, had knowledge of whether or not the transaction was illicit does not affect the ability of Italy to bring the claim and correctly assert that it is not barred by time.²⁰⁷ Therefore, in regard to a statute of limitations, the Italian government is not prohibited from bringing its claim for restitution. If the Italian government presents proof that the Getty Bronze was in fact illegally exported, under the principles of restitution discussed above, the Italian government would likely find support of a modern claim of restitution through the conventions of UNESCO and UNIDROIT.²⁰⁸

202. See *supra* note 62, available at http://www.unesco.org/culture/laws/1970/html_eng/page2.shtml.

203. See RENFREW, *supra* note 71, for the list of criteria.

204. See *supra* Part II.D.

205. For an interesting discussion of the statutes of limitations among nations and whether a universal solution should be created, see Michael H. Carl, *Legal Issues Associated with Restitution – Conflict of Law Rules Concerning Ownership and Statutes of Limitation*, in RESOLUTION OF CULTURAL PROPERTY DISPUTES 185 (Int'l Bureau of the Permanent Court of Arbitration ed., 2004).

206. *Id.* at 188.

207. *Id.* at 186-87.

208. See *supra* Part II.D.

C. *Elgin Marble Arguments Applied*

The issue of the Elgin Marbles as applied to the Getty Bronze is different than a normal legal dispute. With Greece no longer claiming legal ownership but claiming that the Marbles should be returned because they are Greek and it would be the just course of action under modern society's present set of values, the argument becomes more a debate of principle rather than a debate of fact-based legal arguments or justifications.²⁰⁹ Applying the arguments from the Elgin Marbles, the Getty Bronze can be examined in the context of what would be the just course of action to be taken regardless of past legal claims and precedents.

1. Italian Claim

In pursuing the just course of action, the Italian claim of restitution would likely be barred by the defense of estoppel due to the actions of the Italian courts from 1977 in their determination that the Italian government had no property interest in the statue. Given that the Getty Bronze was discovered in international waters and was not the creation of an Italian artist, there is no sufficient link for an Italian claim of ownership under the arguments put forward by the Elgin Marbles. Further, any claim that Italy might have had was likely surrendered upon an Italian court ruling that Italy had no property interest in the Bronze and that it could be sold to the Getty in 1977. Thus, Italy likely has no rightful claim to the Getty Bronze. There is, however, a reasonable claim of property ownership that could be made by Greece.

2. Greek Claim

There is also the strong opportunity for a Greek claim of restitution when examining the arguments discussed with the Elgin Marbles. In the case of the Elgin Marbles, Greece is demanding possession because the objects are Greek so they belong in Greece. Here, the Getty Bronze has been determined to have been created by a Greek artist so it is possible that Greece could claim the object was of Greek origin since thousands of such statues existed in Greece during the period the statue was created. However, while the bronze has been determined to have been done by a Greek artist,

209. See St. Clair, *supra* note 90, at 95-96; see generally *supra* notes 136-44.

there is no evidence that the object resided in Greece or that the object was not created in Greece at the behest of an Italian patron.

A counterargument could be that since there is no historical foundation for an Italian claim of ownership, what little that can be known about the statue should be controlling for determining the statute's point of origin. There is some substance to this argument under the "territory principle."²¹⁰ Under the "territory principle," the point of the object's creation may offer enough evidence to determine ownership.²¹¹ While it is unlikely a court has ruled that in the absence of known ownership the object's territory of creation is considered the territory of ownership, there is the chance that such an argument may stand with compelling extrinsic evidence.

In the case of the Getty Bronze however, the success of such a claim would be doubtful. First, while thousands of statues of this sort are thought to have existed in Greece—justifying the Getty Bronze's provenance—it is equally well known that the height of Greek craftsmanship and its consequential popularity make it just as likely that the object was made for someone in another country. This possibility is given further credibility by the discovery of the Getty Bronze amidst a shipwreck in the Adriatic Sea headed for an unknown destination.²¹² While it is possible the Bronze was made in one part of Greece and was shipped to another part of the country, there is an equal possibility that it was shipped to a country other than Greece. This gives no strength to a Greek claim of restitution.

Another argument in favor of Greece is that the Getty Bronze, commemorating a Victorious Youth crowned with a wreath, was made to honor a victor in the Olympic Games. Since the Olympics were only open to the Greek city-states from their creation in 776 B.C. until their end in ancient times until the "late fourth or early fifth century A.D.,"²¹³ there is substance to the argument that the statue was meant to remain in Greece. This is because the purpose is almost certainly in honor of the uniquely Greek invention of the Olympic Games. If a court adheres to the notion that cultural property belongs in its place of origin, the fact that not only the artist's origin but the purpose of the Bronze was to commemorate something uniquely Greek may be a compelling enough argument.

Further, while Merryman makes a strong case for the distribution of Greek culture pertaining to the Elgin Marbles,²¹⁴ it may not pertain to something as unique as the Victorious Youth. With the Marbles, there are

210. See generally MERRYMAN, *supra* note 92, at 98-114.

211. *Id.* at 102-06.

212. See *supra* note 196 and accompanying text.

213. See MATTUSCH, *supra* note 24, at 36.

214. See *infra* pp. 54-56; see also MERRYMAN, *supra* note 92.

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pieces in Athens and pieces in London. With an object like the Getty Bronze, there are historical accounts that thousands of similar objects existed in antiquity, but very few have been discovered up to the present day.²¹⁵ If there are few or no examples of this type of bronze in Greece this may be a reasonable basis for arguing that such a unique sculpture be returned to Greece.²¹⁶ If the other examples of such sculptures or bronzes are indeed in Greek museums already, this would be a reason to compel retention by the Getty for the reasons discussed by Merryman.²¹⁷

3. The Getty's Claim

While the interests of Greece in the statue are evident, the interests of the Getty deserve attention as well. Just as the British Museum attributes part of its total identity to its possession of the Elgin Marbles, so the Getty attributes part of its identity to its possession and display of the Getty Bronze. In fact, it is because the object is so unique and became so closely associated with the Getty museum that the Statue of the Victorious Youth came to be known as the Getty Bronze. The Statue is unquestionably part of the Getty's cultural identity as a museum and consequently part of the cultural offering available to those who reside in and visit Southern California. As the fifth largest economy in the world,²¹⁸ Southern California is an attraction to visitors the world over, and the residence of the Getty Bronze here shows that the area matches in cultural worth what the rest of the territory holds in economic worth.

Further, the Getty Bronze is not misappropriated. Just as the British Museum clearly and openly discusses that the Elgin Marbles are Greek in origin, so too does the Getty make it clear to its researchers and visitors that the Getty Bronze is Greek in origin.²¹⁹ The Getty Villa, where the bronze is

215. See MATTUSCH, *supra* note 24, at 23-24.

216. If the only concern is that an object that is Greek and of great importance be kept by the Getty, the Greek government may be able to arrange the return of the Victorious Youth statue by offering an object of which they have multiple examples in their museums of comparable value in exchange. The problem with this however, is that there are reportedly so few examples of statues like the Getty Bronze that it is in fact unique and nothing could be found of comparable value to be exchanged.

217. See *supra* Part III.A.1.

218. LEGIS. ANALYST'S OFFICE, CAL. FACTS: CALIFORNIA'S ECONOMY BUDGET IN PERSPECTIVE (Dec. 2002), available at http://www.lao.ca.gov/2002/cal_facts/econ.html (last visited Feb. 28, 2008).

219. See *supra* note 7 for a discussion of the Getty Bronze background.

kept on permanent display, goes quite a bit further than that. The Getty Villa is a museum whose entire collection is dedicated to Greek and Roman objects.²²⁰ As such, it is a museum that does not comport with Merryman's ideal museum layout that represents a diversity of cultures,²²¹ but instead focuses its collection upon Greece and Rome, the two cultures responsible for the creation and dissemination of Western civilization respectively.²²² With a focus upon Greco-Roman objects, the museum gives the unique opportunity to place the viewer in the context of what buildings and life resembled in antiquity.²²³ So it can be argued the Getty treatment of the bronze, by placing it in a museum that's intended purpose is to create a realistic ancient environment serves well the purpose, not of cultural comparison as Merryman proposes, but of cultural immersion for those whom a visit and tour of the lands of antiquity would be geographically and financially prohibitive. The Getty Villa would thus satisfy Merryman's consideration for retention by the Getty by comparison to the interests of Greece, the interests of the world and the interests of the object itself.

D. Bust of Nefertiti Arguments Applied

The two tests raised in the discussion of the Nefertiti bust deserve consideration in evaluating the outcome of the Getty Bronze. First, under the essential propinquity test, the two elements required for a claim of restitution to trump a valid legal claim are whether the creating culture is still alive and whether the object has a religious purpose within the culture. Italy, in not being the creating culture for the Getty Bronze, would not be found to be a living culture that created the Bronze, so it would fail the first element. Additionally, Italy's claim would fail on the second element

220. The Getty Villa, <http://www.getty.edu/visit/events/villa.html> (last visited Feb. 28, 2008).

221. See MERRYMAN, *supra* note 92, at 106-07.

222. *Id.* at 98-114.

223. One difference in the contrast between the Getty Villa and standard museums are its use of color. Since the museum was created for the unique purpose of recreating the ancient environment, the Getty Villa is awash of colorful designs on the exterior and detailed frescos on the interior. While the actual objects from antiquity remain untouched, this context places the museum visitor in a much more realistic position of what ancient life was like. This realistic portrayal is a contrast to the starkly different beliefs during the first half of the 20th century that all objects and buildings from antiquity were intended to be white. See *supra* note 131 and accompanying text.

Arguably, Greek museums could not fully reconstruct monuments and villas as they originally were without destroying ruins as they are currently preserved. Even if Greece created a museum in a manner similar to the Getty Villa, it likely would be in a location away from a site of an original ancient building and so would offer little value more than the Getty Villa save the fact that the location of it would be in Greece, the object's territory of origin.

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because the statue did not serve a religious purpose for the surviving Italian culture.

Again however, Greece may have a reasonable basis for a claim. First, the bronze is arguably of Greek origin and the Greek culture still exists today, which satisfies the first element. Second, it may be argued that the bronze has a religious purpose in that the Olympics were created to honor the Greek god, Zeus. However, a further examination into the statue's purpose reveals that it likely does not satisfy a religious purpose in the present day.

Where the bust of Nefertiti represents an ancient Egyptian queen of a long ago dynasty, the Victorious Youth is believed to commemorate victory in the Olympics, the height of athletic achievement. Where the Nefertiti bust may not find a present day connection,²²⁴ the commemoration of athletic excellence embodied in the Olympics carries through to the present day. Though adapted to modern day cultural norms²²⁵ the Olympics were revived at the end of the nineteenth century and continue today. As a result, it could be said that the modern Olympics are direct descendants of the ancient Olympic games. Consequently, the Victorious Youth, as a symbol embodying the principles of the predecessor of the modern Olympics, deserves the treatment and protection of an object of ancient origin of a continued modern practice.

Originally, the Greeks conducted the Olympics in celebration not only of athleticism but also to honor Zeus.²²⁶ Arguably this could support a "religious purpose." However, where in ancient times the primary reason for the Olympics was the celebration of Zeus,²²⁷ in the present day the Olympics are for the purpose of celebrating human endeavor and triumph in athletics, separate from acknowledgment of pagan deities.²²⁸ If the

224. See discussion in *supra* note 81.

225. Changes in the Olympic games included the change from all male to female involvement, from all nude to clothed, from involving only the Greek city states to the entire world.

226. See MATTUSCH, *supra* note 24, at 47.

227. There is evidence that sculptures similar to the Getty bronze were created with the purpose of a dedication to Zeus. Alongside larger statues at Delphi and Olympia, smaller statues were found "inscribed with the tribute 'I belong to Zeus.'" See MATTUSCH, *supra* note 24, at 47. With this historical evidence it may be possible to assume that the statement was referring to the statue being created in offering to Zeus, or the victory of the athlete for the honor of Zeus. Either way the intent of the sculpture was for the purpose of a pagan god.

228. For the purpose of not only the celebration of athleticism, but also for the greater goal of athletic competition in lieu of armed conflict. Hon. Bruce Einhorn, War Crimes Class, Lecture, Pepperdine Univ. School of Law (Fall 2007). Though this latter purpose was not one of the original

Olympics are considered using these criteria, the example more closely relates to the outcome of the Nefertiti bust. Where ancient Greece was pagan, modern Greece is predominantly monotheistic.²²⁹ Therefore, there would not be a tangible religious purpose to require return of the sculpture. The return of the Bronze would fail under Merrryman's essential propinquity test since the Statue would likely not be used for its intended religious purpose of serving as a tribute to Zeus. Therefore, the evidence likely weighs in favor of the Bronze remaining in the Getty.²³⁰

The second test discussed under the bust of Nefertiti which has application here is the *ensemble* test.²³¹ The test turns on whether an object is part of a larger collection of objects which give the individual pieces greater context. Although the bust of Nefertiti came from the same workshop of other known works, it was still found to be an independent work and not part of an *ensemble*. Therefore it was not required to not be given back to Egypt under the ensemble test. Here, while it is certainly the work of a Greek creator, there is no evidence that it is part of an ensemble.²³² Therefore Greece could also not require the return of the Bronze under the ensemble test. Where the bust of Nefertiti was found to be an independent work, the Getty Bronze is viewed by researchers as an independent work as well.

V. PURSUING FORMS OF ALTERNATIVE DISPUTE RESOLUTION TO RESOLVE THE DISPUTE OF THE GETTY BRONZE

Litigation can give rise to a myriad of problems; more than it was intended to resolve. Litigation often requires the outlay of vast resources for

intentions, an examination of the wartime practices of the ancient Greeks and their rules forbidding conflict during the time of the Olympics bears a striking parallel to the modern motivation for the Olympic Games. *Id.*

229. See BBC News Service, Country Profile: Greece, available at http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1009249.stm (last visited Feb. 10, 2008).

230. The only considerations that may place this contextual evidence in favor of returning the Bronze to Greece would be if the court considered the intense preservation and propagation of ancient Greek culture in the present day or if the court found the systems of government between ancient and modern Greece comparable.

231. See Siehr, *supra* note 142, at 126-28.

232. The contents of the shipwreck in which the Getty Bronze was found reveal no evidence that it was part of a greater collection. See generally MATTUSCH, *supra* note 24. Though even individual pieces in groups of statues may have been individualized, there is no direct evidence that the Getty bronze was part of such a group, with scholars concluding that he was an individual Olympic runner. *Id.* at 63, 81. Further, it cannot be accurately determined if the Bronze came from a famous workshop or not. *Id.* at 79-81. Scholars who zealously debate this point fail to reach a consensus. *Id.*

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attorneys and experts in proceedings that can drag out for years.²³³ Publicity can make an issue in litigation even worse. Since litigation makes public the matter in dispute, it may bring shame or discredit to parties involved and may even create division between parties on the same side.²³⁴ Litigation is adversarial by nature and rarely leaves parties after a judgment in a better relationship than before.²³⁵ Further, courts have a limited range of remedies they can offer parties.²³⁶ Facing such possible risks, the ADR becomes a very attractive option to parties in dispute over cultural property interest.

With litigation in the courtroom, the outcome is less than favorable for parties that are involved in a cultural property dispute.²³⁷ Even years after judicial proceedings, parties have turned to alternative methods of resolution to achieve a semblance of closure with a dispute.²³⁸ With high costs, an adversarial setting, publicity, and the chance of a decision leaving both parties dissatisfied as the starting foundation for future disputes, alternative dispute resolution (ADR) offers several more attractive avenues of success.

This section will discuss the solutions that are presently being used for cultural property disputes relevant to prevention and resolution outside of the courtroom. This includes greater identification of objects upon discovery for the prevention of looting and illegal sale, alternative dispute resolution, and the most popular form of ADR used in cultural property disputes, arbitration. While each does offer certain advantages, their overall drawbacks fail to comprehensively address the problems that arise in cultural disputes and would seem to fail to offer an adequate solution for the case of the Getty Bronze.

A. *Identification: Dispute Prevention*

There is still a large support of the market for illegal exportation of cultural objects that stems from a lack of effective identification of objects within each country. Therefore, one of the key elements in the prevention of cultural property disputes is an effective system of identification. Article 10 of UNESCO “obliges . . . dealers” to maintain a register of each item of

233. Norman Palmer, *Litigation, the Best Remedy?*, in RESOLUTION OF CULTURAL PROPERTY DISPUTES 265, 272 (Int’l Bureau of the Permanent Court of Arbitration ed., 2004).

234. *Id.*

235. *Id.* at 273.

236. *Id.*

237. *See generally* Palmer, *supra* note 233.

238. *Id.* at 269.

cultural property.²³⁹ Even international recognition of a site for its cultural value to the world will not automatically ensure its protection by the international community. The placing of a site on the UNESCO World Heritage List does not guarantee protection of the site from theft and looting.²⁴⁰ Manus Brinkman concludes that the best method of protection for cultural sites begins with proper identification and documentation tying a particular cultural object to its country of origin.²⁴¹ This is an important first step since without proof that an artifact originated from an alleged country of origin, it cannot be repatriated on the claim alone.²⁴²

The Getty Information Institute has already taken steps to implement an identification system. In 1993, they began a project to develop a standard of international documentation for "information needed to identify cultural objects."²⁴³ A context with international application was discussed above concerning aggressive acquisition and the restitution of Nazi-looted objects.²⁴⁴ Based upon the experience of that type of restitution, where cultural property is dispersed to collectors throughout the world, the recommended solution is a system of international registry through which museums and major collectors would take part.

The application of such a system can be applied to cases of suspected illegally exported cultural property that lacks a record of provenance. Such a registry would not only allow the identification of an original owner, but would also be able to create a provenance where one might not have existed before with previous owners able to catalog their history of purchase and resale and the dates they were in possession of an object. It would serve not only newly discovered objects, but would also bolster the validity of legally purchased objects that were acquired under circumstances similar to the Getty Bronze dispute as described above.²⁴⁵ The proper identification, combined with a specific database focused upon antiquities would prove an effective measure in preventing illegally exported works from being sold. While effective identification and the potential of an international registry of

239. See *supra* note 69 and accompanying text.

240. See Brinkman, *supra* note 84, at 66. The author cites the example of Nepal, where the Katmandu valley was placed on the World Heritage List with little change in the looting taking place that left no temple in the valley untouched. *Id.*

241. *Id.*

242. *Id.*

243. Thomas Wessel, *Who Wins the War Against Booty and Art Theft?*, in RESOLUTION OF CULTURAL PROPERTY DISPUTES 177, 178 (Int'l Bureau of the Permanent Court of Arbitration ed., 2004). The international standard, Object ID, became part of the Council for the Prevention of Art Theft (CoPAT), a UK charity, in 1999. Object ID, <http://www.object-id.com/about.html>.

244. See *supra* note 24 and accompanying text.

245. See *supra* Part IV.

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antiquities may serve the goal of prevention and minimize the chances of a cultural property dispute from manifesting, ADR serves the purpose of effectively resolving the dispute for the benefit of the disputing parties as well as the interests of the international community.

B. Alternative Dispute Resolution

Alternative Dispute Resolution is an avenue that can have great appeal in the area of cultural property disputes. Given the high cost of litigation, especially with cases involving systems of law from multiple countries, negotiation outside of the courtroom offers substantial benefits.²⁴⁶ There are some benefits to private ordering obtained through methods of ADR. Resolution through this private method results in parties identifying their respective interests and a favorable resolution for those interests through “a mutually agreeable solution.”²⁴⁷

For all parties in a dispute to profit from the use of ADR, they must all feel that the end result is not worse than they would have received had the issue gone to court.²⁴⁸ If one party must be the “loser” at the end, it would ultimately discourage participation in ADR.²⁴⁹ Private ordering is a great option for parties that have enjoyed a history of strong economic relations and are eager for their partnership, at least commercially, to last into the future.²⁵⁰ A strong example of this is the relationship between the United States and Italy. Not only are there strong cultural ties between the European nation and the United States, but there are strong economic ties as well. These ties exist not only with the country independently, but also through the membership of Italy in the European Union.²⁵¹

246. ISABELLE FELLRATH GAZZINI, CULTURAL PROPERTY DISPUTES: THE ROLE OF ARBITRATION IN RESOLVING NON-CONTRACTUAL DISPUTES 59 (2004).

247. *Id.* at 62. Through private ordering:

There is no constraint of a strict application of the law following an adversarial procedure—there is no real procedural safeguard either—nor is there any requirement to respect the coherency of any particular case law. This, in turn, tends to secure a high rate of spontaneous compliance, and hence saves further enforcement costs and delay.

Id.

248. *Id.* at 63.

249. *Id.*

250. *Id.*

251. European Union, *Member States of the EU*, http://europa.eu/abc/european_countries/index_en.htm (last visited Jan. 10, 2008).

Though a private resolution using ADR where both parties comply with the final decision is ideal, there are problems that can arise. At times there may be circumstances, even where the decision is supported by the parties and endorsed by the court, where the decision to consent to ADR was based upon false pretenses.²⁵² Further, since the outcome was private and negotiated “in the shadow of the law” there is no precedent to apply to subsequent cases and it “guarantees no uniform interpretation and application of international and national legal rules.”²⁵³

1. ADR - Arbitration

Within ADR, arbitration is one of the methods most commonly adopted for cultural property disputes.²⁵⁴ The international community has seemed to embrace this method for the resolution of cultural property disputes.²⁵⁵ The advantages of arbitration are discussed in the 1995 UNIDROIT Convention²⁵⁶ and the use of arbitration has largely been unchallenged by experts and State representatives.²⁵⁷ One of the primary reasons arbitration is so attractive to parties involved in cultural property disputes is the privacy and confidentiality normally associated with such proceedings.²⁵⁸ Parties who have their financial interests and reputations on the line in a dispute regarding cultural property are very often willing to waive their “entitlement

252. See GAZZINI, *supra* note 246, at 63. Examples given by the author include “error, willful deception or duress.” *Id.*

253. *Id.*

254. *Id.* at 66-67.

255. *Id.* at 39-59.

256. UNIDROIT, Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995), <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.htm> (last visited Jan. 10, 2008). UNIDROIT, the International Institute for the Unification of Private Law, “is an independent intergovernmental organization . . . [whose] purpose is to study the needs and methods for modernising, harmonising and co-ordinating private, and in particular, commercial law as between States and groups of States.” UNIDROIT, *International Institute for the Unification of Private Law (UNIDROIT)*, <http://www.unidroit.org> (last visited Jan. 10, 2008). See Cuno, *supra* note 8, at 23 for an overview of the policy of acquisitions U.S. museums apply from the UNIDROIT Convention.

257. See GAZZINI, *supra* note 246, at 65-66. The 1995 UNIDROIT Convention stipulates that “the parties may agree to submit disputes [relating to restitution/return of stolen or illegally exported cultural property] to Court or any other authority or to arbitration.” (emphasis added) *Id.* at 65.

258. *Id.* at 67-68. Both privacy and confidentiality were “repeatedly invoked throughout the drafting process of the 1995 UNIDROIT Convention’s provision. Privacy is widely acknowledged, explicitly or implicitly, in the various international arbitration rules, and in national legal systems; it is largely undisputed in practice.” *Id.* at 68.

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to a public hearing in court proceedings” for the avoidance of harmful publicity.²⁵⁹

Despite such prevalent thoughts regarding the benefits of arbitration in cultural property matters, the system is not without its fundamental flaws. In reality, there are few written mentions of required confidentiality, and the assumed confidentiality has been called into question as of late.²⁶⁰ Even the International Criminal Court (ICC) in its rules regarding arbitration failed to create a written provision for confidentiality, fearing “it would be dangerous to have the ICC set out mandatory rules of conduct, including a general obligation of confidentiality, which the ICC would, ultimately, have no power to enforce and which might conflict with relevant national laws.”²⁶¹ Against such insecurities with current ADR in cultural property disputes, and in light of the arguments examined with the Elgin Marbles and the bust of Nefertiti, there is a modified application of ADR that would not only be useful for the Getty Bronze case, but also as a blueprint for cultural property disputes to come.

C. Solution Proposal for the Getty Bronze through a Modification of Current ADR

In light of the cultural property examples above,²⁶² and the possible resolutions discussed through those examples,²⁶³ and ADR in general,²⁶⁴ perhaps the best solution for the Getty would involve an integration of these ideas. The possibility for a breach in the purpose of engaging in ADR merits a practical solution to not only resolve current disputes, but to also lay the groundwork to speed the resolution of future disputes as well. When dealing with the return of property that has a significant cultural value to both parties, emotions can, and often do, run high.²⁶⁵ Under such circumstances,

259. *Id.* at 74.

260. *Id.* at 69.

261. *Id.* The contrast to this is the 1994 WIPO Arbitration Rules which include an obligation of confidentiality that extends to the existence of the arbitration with third parties. *Id.* Other rules “impose a duty of confidentiality upon the members of the arbitration tribunal and any administrators, and upon experts and witnesses.” *Id.* at 70.

262. *See supra* Part III.A-B.

263. *See supra* Part IV.C-D.

264. *See supra* Part V.B.

265. This is especially the case if the country demanding the return of the object is either a direct descendant of the culture from whom the object was appropriated, or the object was taken during the tenure of an imperially imposed government.

it may be hard for parties to sit down together and reasonably discuss the circumstances under which the object was taken and the reasons for and against its possible return. Abiding by the modern trend of civility and respect given to cultural objects today, ADR offers the advantage for this to be carried out in the most non-adversarial setting possible, while allowing both parties to maintain the dignity of their positions and minimize the additional costs and stresses that would stem from traditional litigation.²⁶⁶

One possible solution to help ensure the outcome is fair would be to have ADR function as it currently does, but have the decisions from such cases examined by attorneys who have worked in the cultural property field.²⁶⁷ Such attorneys could be employed by an international organization, possibly the U.N. through UNESCO. These attorneys would review the decisions and draft potential legislation for the purpose of correcting existing laws and statutes that permitted the cases to arise in the first place. These potential changes would then be presented to the proper legislative body either at an international level, or to a country involved in the dispute, along with any additional findings or comment the group wishes to make.²⁶⁸ The result is the effect of a case that would normally be kept completely private under ADR would be made public to a legislative body as to the outcome of the case only. The private parties involved and the exact issue or object in dispute would remain confidential. Publication of an ADR result in this manner has roots in arbitration. There have been cases of arbitration that have come close to such ends where the proceedings themselves were not

266. Compare the pitfalls of litigation (adversarial position, high costs, and stress) with ADR. Arbitration has been shown to have its benefits and pitfalls, *see supra* Part V.B.1 for a general discussion. Through mediation, both parties are allowed to participate in the process, and both get to contribute and feel that it is not out of their hands. For a discussion on the general benefits *see generally* CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT* (3d rev. 2003).

267. The involvement of persons whose expertise and knowledge is focused upon the practice of cultural property law will be essential. Such involvement is necessitated by the evidence of past failures to involve those with knowledge of the field. *See* KURTZ, *supra* note 24, at 11. Leading up to the Second World War, efforts were being made to produce a new draft convention, prompted by the urging of the "International Committee on International Cooperation for the Year 1937-8" concerning the legal questions of public and private cultural property and reparations. *Id.* at 10-11. The International Museums Office, part of the League of Nations, appointed a committee to draft the new convention. *Id.* Amazingly, the committee, composed of legal and military experts, included not one person involved with the fine arts. *Id.* at 11.

268. *See* GAZZINI, *supra* note 246, at 71. This publication of the best change to be made to the law, and the not the outcome of the case, bypasses the normal unanimous consent needed by both parties for the publication of an arbitration award. *Id.* The best approach for this is to make the parties aware that the result of their dispute will remain confidential, but for the benefit of the cultural property field the result will have to be made known to the group recommending legislative changes. *Id.*

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intrinsically confidential.²⁶⁹ Also, the confidentiality of arbitration proceedings in the past has been excepted where matters of public policy assume a position of greater importance.²⁷⁰ Such a system would allow the confidentiality often prized in ADR to be maintained, while at the same time allowing the efforts expended in such cases to have more than just a singular effect upon the parties involved and the object in dispute.²⁷¹

There is the tangible fear that with the information prompting the proposed changes being held in confidence, certain members of the recommending group might be able to exercise a personal agenda and propose changes outside of those necessitated by the results of ADR. The best check against such a problem lies in the selection of the persons for the group and their number. Having lawyers with experience employed in the field necessitates that persons of a high ethical obligation will be analyzing the ADR outcomes and placing their names on the legislative recommendations as being the best changes to be made based upon the ADR case results they have reviewed. As to the number of members of the group, it is important that they be numerous and diverse enough in their origins and experience to maintain a check against any members who may wish to promote an agenda of recommendation contrary to the results of the cases analyzed.

With an international system of dispute resolution keeping all countries accountable for their actions, the primary focus of such an initiative can be implemented first with the United States, a country that is a major purchaser of antiquities and cultural objects, and Italy, a country rich with cultural objects that despite a special branch of police force dedicated to art theft,²⁷² is still the victim of illegal sales and exportation of Italian cultural

269. *Id.* at 76. The *Esso/BHP v. Plowman* case is an example that though the arbitration proceedings exclude outsiders, it is a contractual duty that would be required to secure confidentiality and so would require an express provision in the arbitration agreement. *Id.*

270. *Id.* at 77. Some examples of necessitating the excepting of confidentiality include the disclosure of the proceedings for use by a court related to the award, support of a *res judicata* claim, purposes of an insurance claim, and the “protection of an arbitrating party’s rights and legitimate interests *vis-à-vis* a third party.” *Id.* at 77-78.

271. A settlement, like arbitration, requires the consent of the parties. *Id.* at 63. The insertion of an intermediary between the decision in ADR and the publication of the suggested draft proposals to a legislative body maintains the confidentiality of the agreement since no specifics would be used. This would likely involve the complete prohibition of disclosure of details relevant to a particular case in the event a member of the legislative body desired further information for a draft proposal. This would be especially important if a member of the legislative body originated from a country involved in the original cultural dispute.

272. See BRINKMAN, *supra* note 74.

property.²⁷³ Further, if such an international system begins with the United States it will set a precedent for other museums in the nation to take a unified stand behind the principles of proper identification and return if the results of analysis bear out such an end.²⁷⁴

273. For a listing of the objects the Getty is returning, see Press Release, *Italy and Getty Joint Statement* (Sept. 27, 2007), available at http://www.getty.edu/news/press/center/italy_getty_joint_statement_092507.html. It is also noted that aside from money and systems in place to protect cultural property, awareness among the local population is necessary to protect objects found within sites of cultural heritage. See BRINKMAN, *supra* note 74, at 64, 67. In efforts to raise such awareness, "ICOM has organi[z]ed training workshops for police and customs officers in Africa, the Middle East, and Southeast Asia to provide them with some basic knowledge about protected objects and the seriousness of the illicit traffic therein." *Id.* at 67.

274. Through such a system, it is likely the United States and Italy could come to a fair resolution regarding the Getty Bronze. In addition to the Getty Museum, the Metropolitan Museum of Art (Metropolitan) in New York City and the Boston Museum of Fine Arts have each faced questions regarding the provenance of objects within their collection and have returned a number of objects. On September 28, 2006, the Boston Museum of Fine Arts agreed to turn over thirteen objects that cultural officials say were looted from their country. Elisabetta Povoledo, *Boston Museum Returns 13 Ancient Works to Italy*, N.Y. TIMES, available at <http://www.nytimes.com/2006/09/29/arts/design/29mf.html>. Malcolm Rogers, the director of the Museum, expressed his commitment to help stem the tide of "illicit trade in archaeological works of art." *Id.* In late 2005, the Metropolitan began negotiations for the return of some twenty-one cultural objects to Italy. Richard Lacayo, *Who Owns History?*, TIME, Feb. 21, 2008, available at <http://www.time.com/time/magazine/article/0,9171,1715290,00.html>.

The Metropolitan in New York City and the Boston Museum of Fine Arts have come under scrutiny in the past for the acquisition of unprovenanced antiquities. See RENFREW, *supra* note 62, at 27. Both museums have been suggested to be "well known" for using a "no questions asked acquisitions policy." *Id.* at 34, quoting Yemma and Robinson 1997; Robinson 1998a and 1998b. A number of museums hope to gloss over the questionable provenance of their objects by publishing them in volumes carrying the air of legitimacy. This practice is referred to as "provenance through publication." *Id.* at 35. "The production of an impressive, lavishly illustrated catalogue of an exhibition of the collection held at some complaisant institution, such as the Metropolitan Museum of Art. It is widely recognised in the antiquities trade that such an exhibition adds greatly to the commercial resale value of a privately-owned collection." *Id.* "The titles of these lavish and often highly subsidised volumes often give off an aura of discernment, discrimination and good taste." *Id.* The reasons compelling such practices are the increased esteem for a museum's collection and a private donor often receives a significant tax incentive for such a donation. See *id.* at 37. As part of the agreement between Italy and the Metropolitan, the Italian Ministry of Culture will loan, four years at a time (this is the time permitted by Italian law) "works of art of equivalent beauty and importance to the objects being returned." Press Release, The Metropolitan Museum of Art, Agreement with Italian Ministry of Culture (Feb. 21, 2006), available at http://www.metmuseum.org/press_room/full_release.asp?prid={F9704AC3-297B-4704-999B-111ACC8E6804. The director of the Metropolitan, Phillipe de Montebello, noted that the solution the museum reached was appropriate to "a complex problem" and he was grateful the positive relationship could continue. *Id.* The relationship of continued loans and cooperation between the Metropolitan and the Getty are examples of the kind of cooperative efforts researchers have been calling for in the field of ADR.

In addition to its return of objects, the Getty Museum has implemented a more stringent acquisitions policy that assures that any objects acquired by the Museum in the future will have

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With this type of ADR in mind, in light of the unique facts of the case of the Getty Bronze, the question remains whether the outright return of the cultural objects to Italy was indeed the best final outcome. Italy was in possession of the objects and they were removed from their excavation sites and illegally exported. In this circumstance, one answer would be that the Getty should return the objects, as they have done, and suffer the loss of not only what they paid for the objects, but also the effect on their reputation of acquiring cultural property illegally. This is likely the same answer if the property were taken during World War II as part of Nazi expropriation from rightful owners.

The answer would likely be different if analyzed from the perspective of the Elgin Marble example. Experts in that case disagree on the appropriate result, since at the time, the then controlling Turkish government offered permission, which was ambiguous in its language and later contested, for the Marbles to be removed, and they were then legally transported back to England at the time for Lord Elgin's private use without contestation by either the Turkish or Greek governments. The Getty Bronze, however, was recovered in international waters in 1964. Though questions of its origin were in dispute for a number of years, the Italian government ruled through its courts that there was no Italian property claim on the statue in 1977. Therefore, the Getty's purchase of the Bronze should stand as valid to any claim by Italy that it was illegally exported.

Additionally, the arguments for museum retention and the downfall of wholesale restitution suggest that the Getty should keep the Bronze. However, should it be determined that the Getty Bronze be returned to its country of origin, a replica could be made and kept by the Getty. In this case the country of origin would likely be Greece. With such an array of Greek artifacts already in Greece, however, it makes sense to allow the Getty to keep an original example of Greek art.

accurate and valid documentation verifying its provenance. Press Release, The Getty Museum, J. Paul Getty Museum Announces Revised Acquisitions Policy, Getty Press Room (Oct. 26, 2006), *available at* http://www.getty.edu/news/press/center/revised_acquisition_policy_release_102606.html (detailing the Getty's new policy of adopting the UNESCO Convention of 1970). The Getty Museum, the Metropolitan Museum of Art in New York, and the Boston Museum of Fine Arts have all taken a necessary step that will hopefully inspire other museums and institutions to show that they hold themselves accountable and that through a system of ADR they can come to a quick and mutually prosperous conclusion of disputed property matters with the countries of origin. *See, e.g.,* AFP, *supra* note 4.

VI. CONCLUSION

The current return of cultural items from the Getty Museum and Getty Villa in California to Italy is an agreement that has taken nearly nine years to arrive.²⁷⁵ In the end, the Getty reached an agreement with the Italian Ministry of Culture for the return of forty objects and for further discussions to be held on additional objects and collaboration on current research projects.²⁷⁶ In the press release announcing the agreement and return of the objects the Getty's director stated that two of the reasons behind the agreement were for the forging of a tougher acquisitions policy²⁷⁷ and to "focus on building even stronger collaborations with Italy."²⁷⁸

The deal struck by the Getty with the Italian government includes a cultural collaboration involving both "long-running loans of significant artworks and joint exhibitions and projects."²⁷⁹ This type of agreement, the honest surrender of objects in light of new evidence questioning provenance, represents a step forward allowing the greater exchange of cultural property in the future. In turning over the objects that had originally been looted, the Getty is creating the necessary foundation to not only receive long-term loans of cultural objects they may not have been able to negotiate before but also with joint exhibitions to be able to share the enormous costs of such an endeavor with their exhibiting partner. By standing firm on the claim by Italy for the Getty Bronze, the Getty is showing they demand evidence justifying such a return and will not give in to unsubstantiated demands following the successful restitution of some forty other objects to Italy. If the Getty did give in to such pressure, it would likely result in an outcome toward Wholesale Restitution.²⁸⁰

Evaluating this in terms of the overall benefit to be gained by a society through the sharing of cultural wealth and making it available to the world at large, and respecting the means with which cultural property is treated, and the basic rights of ownership under systems of international law, the solution reached by the Getty and the Italian government is perhaps the best balance that could be achieved under the current system. With the resolution of the Getty Bronze dispute and with the promise of greater Italian treasures to come, the Getty will in the future likely house some of the most significant treasures from Italian history and make them available to both the public and

275. See BBC News, *supra* note 4.

276. *Id.*

277. See PALMER, *supra* note 233, at 265, 272.

278. See BBC News, *supra* note 4.

279. See AFP, *supra* note 4.

280. See *supra* Part III.C.2.

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the researcher, who may never before have had the chance to view them outside of a photograph.

With a strong policy of identification and international registration, and with an effective system of ADR focused upon the unique interests of cultural property, concerns about provenance will be minimized and disputes over the Getty Bronze and other objects in the future will be resolved quickly, efficiently, and with a spirit of cooperation. Having the results of ADR disputes available to benefit future legislation minimizes such disputes in the future and allows the focus to remain upon the international public to enjoy, learn, and benefit from the collective cultural history of humankind.

