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Loosing Your Marbles and Trying to get Them Back
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Repatriation is an odd mix of property law when dealing with more modern cases, and personal injury law (where the person harmed is a country) when the case is based on what happened during the era of colonialism (Repatriation: A Modest Proposal). European countries, many of them former colonial power with wide-waging empires, acquired objects from other countries during the era of empire. Many of the countries now want these objects back. While some objects in American museums face repatriation, the situation is different because in most cases, the artifacts were acquired through purchases (They've Lost Their Marbles). A museum may buy stolen art because they want the prestige the item will add to their collection, and worry that if their institution does not buy it, another will and obtain the glory (The Role of Museums in Sustaining the Illicit Trade in Cultural Property). However, this attitude is changing as museums become aware of the potential legal problems and the bad press associated with the trade in stolen art and cultural artifacts (Conflicting Trends in the Flourishing International Trade of Art and Antiquities). During the 1960s, as many former colonies gained independence and sought to establish themselves as countries with a history to display, the United Nations Economic, Scientific and Cultural Organization, also known as UNESCO, encouraged voluntary repatriation (Occupiers' Title to Cultural Property). Egypt, Italy, Turkey, and other countries have cultural patrimony laws, which state that any:

artifact found within the country's land after a certain date is considered the possession of the government, not the person who found it or owns the land where it was found. In cases where these antiquities are eventually sold to museums, the government considers them 'stolen' (The Role of Museums in Sustaining the Illicit Trade in Cultural Property).

The goal is to keep ancient objects in the country of origin.

Two of the major museum associations in America are The American Association of Museums and the Association of Art Museum Directors. Both organizations are expected to know the ownership history of any objects from 1970, when a new international treaty was signed, onwards. In addition, museums are supposed to make information about any new acquisition available to the public (International Art and Cultural Heritage). This regulations do have a visible impact; in the early 2000s the Getty announced it would not buy undocumented antiquities that have surfaced for sale since 1970, and the British Museum will not accept any artifact unless there is proof that it left its country of origin prior to 1970 (Den of Antiquity, The Role of Museums in Sustaining the Illicit Trade in Cultural Property).

The Hague Convention of 1954 is credited with introducing the term cultural property in international law, and was the first treaty to exclusively deal with protecting cultural property (Finders Keepers? The Repatriation of Egyptian Art). Cultural property covers everything from historical monuments, religious and secular objects, or anything that is of great importance to a culture or country in defining who they are. (They've Lost Their Marbles). The treaty is limited in scope, prohibiting illegal export of cultural objects from territory occupied during a war, and calls for return of any stolen objects at the end of the war. What is important to note is that it only covers what happens during armed conflict, which limits its application (International Art and Cultural Heritage).

This basic concept of protecting cultural property was expanded on in the 1970 UNESCO Treaty and deals with stolen artifacts and their repatriation in peacetime situations (Finders Keepers? The Repatriation of Egyptian Art). The treaty protects “cultural property stolen from a

museum or a religious or secular public monument or a similar institution in another State Property,” provided that the institution can prove that it owned the object in question (U.S Art Museums and Cultural Property). The countries that signed it were required to pass laws so that the treaty could be enforced (The Role of Museums in Sustaining the Illicit Trade in Cultural Property). There are two flaws with UNESCO. The first is that each country is allowed to formulate its own unique definition of cultural property, which makes enforcement difficult (Conflicting Trends in the Flourishing International Trade of Art and Antiquities). The second is that it does not apply to objects that were exported before the treaty was ratified in 1970.

One of the longest and most publicized repatriation disputes is the Elgin or Parthenon Marbles. Parthenon was erected in the fifth Century BCE as a temple to Athena (The Deflowering of the Parthenon). The controversy is centered on:

a three foot high horizontal band carved in low relief, originally extended 524 feet around the Parthenon’s main inner chamber and depicted the Pantheiac Procession. Elgin acquired approximately 247 feet of the frieze. The metopes, a series of ninety-two four-foot square panels sculpted in high relief, surrounded the top of the Parthenon’s outer colonnade and recounted assorted historical and mythical battles. Elgin acquired fifteen metopes...The pediments, the low triangles at the ends of the building formed by the pitch of the roof, were filled with a series of sculptures in the round. Elgin acquired seventeen pedimental figures. In addition, he collected assorted architectural fragments from the Parthenon” (Thinking about the Elgin Marbles).

Today, half of the marbles are in Greece as part of the Parthenon, and the other half are in the British Museum. The issue is complex, because there are areas of uncertainty. What is known is that Thomas Bruce, the seventh Earl of Elgin and British ambassador to the Ottoman government, took an interest in the Parthenon in 1801 (Hitchens 23). Elgin had a firman, or royal edict from the Ottomans to remove sculptures and inscriptions, if it could be done without damaging the walls of the Parthenon. He also had permission to draw and make plaster casts of

objects (The Deflowering of the Parthenon). There is some dispute over what Elgin did or did not have permission to do. The original document, which was written in Turkish and kept by Ottoman officials in Athens has been lost; what remains are Italian translations of the original Turkish (Thinking about the Elgin Marbles, They've Lost Their Marbles). Elgin did not speak Italian, so requesting the translation into Italian may have been to create ambiguity. The document, which originated in Turkish, was then translated into Italian, and after that translated into English (The Deflowering of the Parthenon). Some have speculated that since the Ottomans were ruling Greece from a distance, they did not know what was actually being removed (Occupiers' Title to Cultural Property). Elgin did damage the masonry when he removed the marbles from the wall of the Parthenon (Thinking about the Elgin Marbles). The Ottomans did give written orders to Athenian authorities, which allowed Elgin to ship the marbles to England, however they might have issued the orders after Elgin bribed them (Thinking about the Elgin Marbles). One reason he gave for possibly exceeding his orders was that he was worried that the Marbles were going to be destroyed by the Turks (The Deflowering of the Parthenon). This fear was not completely unfounded, as the Ottomans did store gunpowder in the Parthenon (Thinking about the Elgin Marbles). Through an act of Parliament, the British Museum purchased the marbles in 1816, after a debate in Parliament (Conflicting Trends in the Flourishing International Trade of Art and Antiquities).

As early as 1815 the marbles were a subject of dispute, when members of the House of Commons questioned whether or not Elgin had exceeded his authority, and noted that he had not consulted with the people of Athens before removing the marbles (Hitchens 55, 58). While 82 members of Parliament did vote in favor of purchasing the marbles, 30 voted against it. Those

who were not in favor of the purchase believed that Elgin had not had the authority to remove the marbles (Conflicting Trends in the Flourishing International Trade of Art and Antiquities, The Deflowering of the Parthenon) In 1890, the London magazine *The Nineteenth Century* featured an article by Fredric Harrison, which favored returning the marbles to Greece:

The Elgin Marbles stand upon a footing entirely different from all other statues. They are not statues: they are integral parts of a unique building, the most famous in the world; a building still standing, though in a ruined state, which is the national symbol and palladium of a gallant people, and which is a place of pilgrimage to civilized men (Hitchens 68).

What makes the Elgin Marbles unique is that they are part of a larger whole. It is as if a painting had been ripped in two, with half on display in one museum, and half on display in another.

Unification remained possible, because the original building was still standing.

Most of the points made by the British for keeping the marbles can be described as internationalism. It is easier for people to see the achievements of different countries and past civilizations if all cultural property is not housed in its place of origin (Finders Keepers? The Repatriation of Egyptian Art). There is something valuable in having works of many cultures permanently displayed side by side, and many curators believe this helps promote the understanding of different cultures (Who Owns History, U.S Art Museums and Cultural Property). Many countries do not have the money or expertise to care for artifacts, while large museums have the necessary resources, and see their work as benefiting the international community (They've Lost Their Marbles).

Those who support the return of the marbles to Greece believe in cultural nationalism. Cultural nationalism is based on the idea that cultural property is central to the identity of a people in a region or country (They've Lost Their Marbles). In many cases there is a link

between the ancient people who lived in a location, and its current occupants (Who Owns History). The objects help to tell the story of a country and its people, regardless of whether or not there are direct blood or kinship ties. Studying art and artifacts in their place or origin placed them in a wider geographic context, which is impossible to do in a museum hundreds or thousands of miles away (Conflicting Trends in the Flourishing International Trade of Art and Antiquities). There is also the economic argument, which is that people will go to see certain objects regardless of what country they are in, which could benefit the tourist trade and help the economy of the country in possession of the artifacts (Conflicting Trends in the Flourishing International Trade of Art and Antiquities).

Existing international laws will not help Greece, because most treaties related to cultural property are not retroactive (Thinking about the Elgin Marbles). Britain took the additional step of withdrawing from UNESCO, rather than return the Marbles, and there is no consequence for not complying with the treaty (The Deflowering of the Parthenon). The legal system offers no relief, even if what Elgin did was illegal; the statute of limitations has expired (Thinking about the Elgin Marbles).

What set the theft of artworks that occurred during Nazi era Germany and the occupied territories from previous wars was the scale and how methodical the process was (Alford iii). The Nazis had assistance of “museum directors, art dealers, and art-historians” (Kurtz 31). Professionals in their field were using their skills, by force or by choice to aid the Nazi regime. Unlike previous wars, where theft was based on taking something valuable and meaningful, Nazi art theft had a far more sinister purpose, because it fit into the larger persecution of Jews and

others the Nazis deemed undesirable (Piotrovsky 29). Most of the cases surrounding stolen artwork fall into the following categories:

removal of pictures from museum collections on the grounds that they were degenerate, confiscation of Jewish-owned property by Nazi looting agencies, forced sales to fund emigration or pay discriminatory taxes, property that was 'Aryanized' as Jewish-owned art galleries were taken over by Nazi-approved administration, naturalization at the end of the war under Communist regimes, or pictures exchanged for exit visas by Jewish owners in order to export other artworks to safety and avoid plunder by the Nazis. Many other losses occurred as Art objects were carried off as war booty by British, French, or American troops (Jackson 222).

As a result of these actions the pieces of artwork were dispersed all over the world, in museums and private collections (The Role of Museums in Sustaining the Illicit Trade in Cultural Property). After the war reuniting the artwork with its legitimate owner proved extremely challenging, partly because there was a lack of centralized authority (The Role of Museums in Sustaining the Illicit Trade in Cultural Property). Other factors making it difficult to determine the proper owner of an artwork was that:

objects are bought and sold anonymously; past owners die without disclosing where they obtained the works in their collections; art dealers may not wish to reveal their sources; and the records of the dealers and auction houses are frequently lost or destroyed...cities were demolished; and both systematic and opportunist looting were commonplace (Rubin 200).

These situations do not take into account the massive dislocation and loss of life caused by World War II.

As early as 1933, Hitler had plans to establish an art museum larger and more impressive than the Louvre in his hometown of Linz (Jungblut 99). In October of 1937, 5,000 paintings had been confiscated from 101 museums, and this was only the beginning (Jungblut 17). In June of 1940, Hitler gave an order to secure the art of the French state and individuals who were enemies

of the Reich (Jungblut 91). One month later the Nazis created a new department, Jewish and Emigrant Property Administration, which was tasked with making an an inventory of all Jewish property. These items later confiscated and sold (Jungblut 22). By October Jews were forced to sell their business to Aryans, or liquidate the business (Anglade 106). In addition, many Jews were forced to sell paintings as a way to earn money for exit visas, which was later seen as equivalent to looting (Jungblut 104). In France, artwork stolen from Jews was placed in German museums (Anglade 104). What is especially significant about Paris is that in addition to being one of the centers in the western world for art, many of galleries were owned by Jews (Anglade 107). In occupied France, an estimated 100,000 works of art were removed from the country (Kalfon 80).

By the 1943 the Allies were aware of the problem of stolen art, if not its scope, and issued a declaration that stated that they would not recognize any changes of ownership, which occurred during the Nazi occupation (Boylan 68). During May of 1945, a French armored division opened fire on train cars carrying artwork which had found its way into Goring's collection, and the population of a town near the train station proceeded to go through the contents of the train, and take home valuable objects (Alford 33). This situation was repeated in different places toward the end of the war (Alford 64).

What is important to note is that while efforts were made, art repatriation was not the top priority of the Allied forces in the early post-war period, but some steps were taken (Kurtz 73). After the Germans surrendered, there were hundreds of thousands of works of art, which needed to be returned to their rightful owners (Jungblut 34). The artwork was brought to three major collection points, at which attempts were made to distinguish country of origin; one collection

point had one million objects (Alford 110). In April 1946, the Military Government passed a law that required Germans to report whether they possessed stolen property (Kurtz 142). The Office of Military Government, United States (OMGUS) in 1946 set up a system where individuals could file a claim if they had lost artwork during the war. What is significant is that German citizenship was not required, which acknowledged the scope of the problem, and that many people, especially Jews, had changed their citizenship during or after the war (Kurtz 148). In 1947 OMGUS limited the scope of recovery and declared that items did not have to be turned into Allied authorities unless the artwork was in the possession of a suspected war criminal (Kurtz 160).

There was also the problem of heirless property, 95% of which belonged to Jews (Kurtz 160). Many direct heirs of Jews were no longer European citizens, and in many cases there was no one left alive to claim the property (Krejcová 59). The Jewish Cultural Reconstruction published lists of original owners of artworks, and gave heirs two years to file a claim (Kurtz 167). By the end of the year, plans were made with how to handle artwork that remained unclaimed; 40% for Israel, 40% for the US, 5-7% for Britain, 5-7% for South Africa, 5-7% for Canada, and 5-7% for Argentina (Kurtz 165).

Little work on repatriation was done during the Cold War. Recovering lost artwork was not a priority for most Holocaust survivors (The Role of Museums in Sustaining the Illicit Trade in Cultural Property). In many cases, individuals or their heirs did not have ownership documents; sometimes the closest thing to an ownership document was a photograph of the painting in the house or apartment they lived in before the war (The Role of Museums in Sustaining the Illicit Trade in Cultural Property). The country of Italy had a list of over 2,000

objects believed stolen by the Nazis, but did pursue the claims because it wanted to stay on positive terms with West Germany (Conflicting Trends in the Flourishing International Trade of Art and Antiquities).

After the Cold War ended, there was a tremendous increase and improvements in repatriation efforts (Kurtz 210). Archives in former Soviet Union countries were opened up to the west, in addition to declassification of other documents (Kurtz 211, *The Role of Museums in Sustaining the Illicit Trade in Cultural Property*). Because the international repatriation process is so complicated, The Holocaust Claims Processing Office (HCPO), a division of a New York City agency whose primary function was regulating finances, has become the closest thing to a clearinghouse for information on stolen artwork for this time period that has ever existed (Rubin 194). The HCPO has “cordial working relationships with archival and historical commissions, financial institutions, trade associations, and governmental colleagues at the federal, state, and local levels in many different countries” (Rubin 195). One of the biggest obstacles to repatriation has been the number of organizations involved, and the difficulty in obtaining the necessary information. In Germany there are forty institutions dealing with questions of repatriation of lost art (Jungblut 113). The Netherlands, France, and other countries each have their own rules and procedures for dealing with repatriation (Jungblut 124). Stolen artwork is often discovered by accident, such as when Landesmuseum Mainz noticed a J on the back of some paintings, and through research in museum records found out the paintings had been acquired during the Nazi era (Jungblut 114). In many cases, the heirs will have to wait until 2020 to have access to the records needed. While the painting may have been listed in an auction catalogue, for reasons of privacy, the records were classified for eighty years (Piotrovsky 27). During the Washington

Conference of 1998, many countries signed a declaration saying they would help recover works of art confiscated by Nazis and help to return the artwork to the original owner (Jungblut 53).

This kind of international cooperation is important because the statute of limitations has run out, so in many cases it is seen as a moral issue and not a legal issue.

The internet has been a very useful tool in repatriation issues (Issac 205). Items posted online fall into two main categories. One category consists of “objects that were looted from individuals or organizations that missing [such as Trace Looted Art]...The second category is objects that were looted from individuals or organizations that are currently housed in museums or government buildings and the original owners are unknown.” Individuals are posting that they are missing something, and museums are posting that they have gaps in provenance and have questions on whether or not the item was looted during the Nazi era (Issac 207). Dealers and auction houses, which have objects for sale, are checked against Trace’s database to see if a match can be found (Issac 208). Another similar website, the Art Loss Register, has located over 150 paintings (Jackson 224).

Repatriation issues also occur on the national level, and do not always involve multiple countries. The United States is unique because it is the only country with laws concerning repatriation of local indigenous material. The Native American Graves Protection and Repatriation Act (NAGPRA) was signed into law on November 16 1990 (From Stone to Brass). NAGPRA requires federal agencies, and institutions that receive federal money to return important cultural artifacts of Indians, native Alaskans or Hawaiian peoples in collections to the tribes or their decedents. NAGPRA applied to national parks, state parks and historical societies (Curation and Repatriation of Sacred and Tribal Objects). There are exemptions to NAGPRA,

such as objects found on state-owned or federal land after 1990, items acquired in private collections before 1990, and items in the Smithsonian. The Smithsonian is exempt because they are covered by a 1989 law dealing with the same issue (Grave Injustice).

Before NAGPRA was signed, there were penalties established in a 1988 law relating to removing Native American objects from public land without a permit. Any objects found with a permit were the property of the United States. The objects were supposed to be given to a scientific or educational institution to be preserved and studied (Grave Injustice). The Zuni tribe believes that removal of special statues called *Ahayu:da* caused war, violence, and natural disasters. No shrine is supposed to be removed from their shrine, so any *Ahayu:da* in a museum is there illegally. The Zuni had a documented history of their belief, and as a result most pre-NAGPRA requests for return were not contested in court. During the 1980s The Denver Art Museum, three museums in New Mexico, and two institutions in Iowa and Oklahoma returned *Ahayu:da*. In 1987 Smithsonian returned *Ahayu:da* and left negotiations about other Zuni artifacts in its collection for a future date. One year later, they successfully blocked Sotheby's from auctioning an *Ahayu:da*. Like many tribes, the Zuni had a long-term goal of establishing their own museum dedicated to their heritage and culture. By 1996, all the statues had been returned, or were in the process of negotiating for their return (Repatriation at the Pueblo of Zuni).

After NAGPRA, many museums had to make a through inventory of Native American objects in their collection. The first step after the inventory was to contact tribal leaders (Curation and Repatriation of Sacred and Tribal Objects). The National Museum of the American Indian in New York City returned bundles and medicine bags, because the

Potawatomi believe that medicine bundles should be buried with their owners (Curation and Repatriation of Sacred and Tribal Objects).

Many felt that NAGPRA went too far or was too vague in places. One criticism was that the term “sacred objects” was not clearly defined and could be applied to any object that was part of a museum’s Native American collection (Grave Injustice). Another complaint was the assumption that Native American religious beliefs did not change over time, so something that was considered sacred during one time period may not have been in an earlier time period (Another View on Repatriation). While other countries have laws protecting cultural heritage, they are designed so that the government can prohibit objects from leaving the country of origin, so that they can be studied and preserved, whereas under NAGPRA objects can be “reburied, secreted, or turned over to ‘descendants’” (Another View on Repatriation). Many tribes are extinct, so there are no descendants to care for the objects. What often occurs in cases like this is that the tribe that currently lives on the land or in the region will claim the object (Curation and Repatriation of Sacred and Tribal Objects). Many see NAGPRA as a loss to science and think it is “unquestionably anti-intellectual to use ‘religion’ as a basis for denying the study of museum objects, secreting them and disallowing even viewing of them, and destroying them through reburial” (Another View on Repatriation). An object, which may have important information about the history of the tribe, is unavailable to scholars and other scientists.

Repatriation can be a complicated issue, which takes many different forms. Over the years the concept has evolved. One of the most well known cases of attempted repatriation involves the Elgin Marbles, which were taken by Lord Elgin from the Parthenon in the early 1800s and were remain on display in the British Museum, despite the continued efforts of the

Greek government to recover them. While the Nazis were able to systematically artworks from museums in much of Europe, and those owned by Jews, returning the artwork proved to be a much greater challenge. Repatriation efforts are often frustrating to scientists who want to study the disputed objects, such as objects covered under the Native American Graves Protection and Repatriation Act.

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