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Who Owns the Past? Turkey's Role in the Loss and Repatriation of Antiquities

KATHLEEN PRICE*

*“Every flower is beautiful in its own garden. Every antiquity is beautiful in its own country.” --Sign in Ephesus Museum lobby, quoted in **Lonely Planet Turkey** (11th ed.) at 60.*

*“History is beautiful where it belongs.”—OzgenAcar[Acar Erghan], imprinted on posters in Turkish libraries, classrooms, public buildings and shops and quoted in S. Waxman, **Loot** at 151; see also S. Waxman, *Chasing the Lydian Hoard*, *Smithsonian.com*, November 14, 2008.*

The movement of cultural property¹ from the vanquished to the victorious is as old as history. We are familiar with Alexander the Great's

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¹ The Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) describes cultural property as “property which on religious or secular grounds, is specifically designated by each State as being of importance for archeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;

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- (iii) original engravings, prints and lithographs;
 - (iv) original artistic assemblages and montages in any material;
 - (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
 - (i) postage, revenue and similar stamps, singly or in collections;
 - (j) archives, including sound, photographic and cinematographic archives;
 - (k) articles of furniture more than one hundred years old and old musical instruments.

Most of the litigated cases involve fine art or archeological artifacts, but the principles are the same for libraries. John Henry Merryman in *Law, Ethics, and the Visual Arts* (6th ed.) at 34 [hereinafter cited as Merryman] describes a 1940 incident in which Dr. Alexander Guttman was entrusted with Hebrew books and manuscripts from the Hochschule für die Wissenschaft des Judentums when leaving Berlin for the US; he placed these with Sothebys for sale in 1984; Sothebys was forced to settle a suit brought by the NY Attorney General with a recall of books from purchasers and a partial payment to Guttman. Similar cases, such as that of the Quindlinberg Treasure, church objects sent home to Texas by a serviceman and offered for sale by his heirs many years later, demonstrate the resort to settlement rather than litigation frequently found in these situations. Holocaust experts predict that more objects will find their way to market as those who secreted them die and unwitting heirs seek to sell them. The existence of the Art Law Register, IFAR database, Nazi-era Portal and numerous books and inventories with pictures of items “lost” during WW II should exist in their repatriation to state museums or restitution to private owners.

Cultural property need not be tangible. The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (<http://www.unesco.org/culture/ich/index.php?pg=home>) deals with oral traditions, including language; performing arts; social practices, rituals and festivals; traditional knowledge; and crafts. The best known Turkish item inscribed on the list is the Mevlevi Sema (Whirling Dervish) Ceremony, a Sufi Islamic dance/musicale dating back to 1273, prohibited during the period of secularization, and recently revived in public performances. The convention website is useful in providing slideshows and videos of inscribed items.

The 1972 UNESCO World Heritage Convention (http://whc.unesco.org/en/convention_text) identifies natural and cultural sites of significance to signatories. Turkish sites include:

Cultural

- Archaeological Site of Troy (1998)
- City of Safranbolu (1994)
- Great Mosque and Hospital of Divriği (1985)
- Hattusha: the Hittite Capital (1986)
- Historic Areas of Istanbul (1985)
- Nemrut Dağ (1987)
- Xanthos-Letoon (1988)

triumphal ventures as far east as Afghanistan; Napoleon's pillage of Egypt to the benefit of the Louvre; Hitler's removal of art from museums and private collections throughout Europe and the movement to the Soviet Union of cultural property, as well as factories, found in the Russian sphere of influence at the end of World War II.

There is no doubt that Turks are aware of the significance of their seat at the crossroads from East to West and North to South; after all, that's the justification for the "push me, pull me" relationship the country has had with the EU for decades as Europeans point to its Central Asian religion as a reason to deny EU membership. Turkey has been home to 42 different civilizations from Neolithic times.² Anatolia has more than 3000 ancient cities: more ancient Greek cities than in Greece and more ancient Roman cities than in Italy. It is estimated to contain more than 25,000 burial mounds. Yet, if one wishes to see the riches of the past, she must venture to Britain (Lycean mortuary temple; Sphinx Column/Xanthos); Berlin (Pergamon's Altar); Italy (Statue of Hadrian's from Library at Ephesus); or Russia (Schliemann's treasures, Troy).³

Although Turkey's soil has yielded layers of civilizations, these are not necessarily cultures related to today's Turks whose ancestors were part of marauding bands that swept into the country from Central Asia in the 13th Century.⁴ If history is written by the victors who carry home treasures to their capitals, the Byzantine Empire which gathered in treasures from the civilized world and protected those of earlier civilizations, such as the Lydians of King Croesus' fame followed that path. The later Ottomans' more laissez faire attitude saw artifacts left in place that were carted off during the 19th Century by the variety of colonial powers listed above, *with or without the knowledge and acquiescence of the rulers*. It should be asked whether modern Turks consider themselves descended from the Ottomans and not the Kurds, Greeks, Armenians, Christians, Muslims, Jews, Persians, Central Asians and myriads of other civilizations that have flourished here. Or are they merely custodians for those who came before who should be grateful that foreign museums

Mixed

- Göreme National Park and the Rock Sites of Cappadocia (1985)
- Hierapolis-Pamukkale (1988)

² S. Waxman, *LOOT: THE BATTLE OVER THE STOLEN TREASURES OF THE ANCIENT WORLD*. NY: Times Books/Henry Holt 2008 at 139-40 [hereinafter cited as *LOOT*].

³ *Id.* at 138.

⁴ *Id.* At 142.

exposed their treasures to larger audiences and created their bustling tourist industry?

Some of those treasures came to rest in multiple capitals: examples include the Parthenon friezes represented in museums in Britain, the Vatican, and Sweden, as well as in numerous tourist collections. Schlieman's "Priam's Treasure" was dug up using private funds, spirited out of Turkey on US Navy gunboats, given by him to a Berlin Museum, hidden and presumed lost during World War II and emerged only recently in Russia. When Turkey demanded it back from Schliemann immediately after its removal, he dismissed the request in a letter now housed in the archeological museum that justifies his actions by the amount of personal funding he spent.⁵ The only other physical remains of this treasure that actually pre-dated Homer's Troy to be found in Turkey are photographs in the various coffee table books on the dig!⁶

The Turks were involved in both the most notorious case of cultural plunder – the Elgin Marbles episode – and the case that turned the public against such hoarding by so-called "universal museums." This paved the way for massive, continuing repatriation of cultural property.⁷

I. The Elgin Marbles⁸

In 1798 Thomas Bruce, the British Ambassador to the Ottoman Empire, became convinced of his duty to introduce his fellow citizens to the glories of ancient Greek art and architecture. He acquired a firman (permit) from the Ottoman government in Istanbul to study and draw the Parthenon, then a Turkish military outpost that had suffered significant damage over time from military bombardment, negligence, and the use of its stones by locals for building materials. Others, including Napoleon's representatives, had been denied access. But, through lucky timing, the British had defeated Napoleon's troops in Egypt and returned it to the grateful Ottomans who gave the English permission to enter the Acropolis to draw and model the ancient

⁵ Id. At 140-1.

⁶ *Hervé Duchêne*, GOLDEN TREASURES OF TROY: THE DREAM OF HEINRICH SCHLIEMANN, NY: Abrams, 1996; M. Wood, In Search of the Trojan War. NY: FACTS ON FILE, at 47-93.

⁷ *Turkey v. Metropolitan Museum of Art*, 762 F. Supp. 44 (S.D.N.Y. 1990).

⁸ The literature on the Elgin Marbles is voluminous and dates to the debates in Parliament over their acquisition. Among the sources are LOOT at 221-32; Merryman at 346-63; DuBoff and others, ART LAW CASES AND MATERIALS (NY: Hein 2003) at 84-6; Bator, "An Essay on the International Trade in Art," 34 STANFORD L. REV. 275,298,303.

temples; to erect scaffolding and dig to find foundations; and to take away sculptures or inscriptions. Bruce's overseer exceeded the terms of the permit and against the wishes of the local governor removed friezes and statues and loaded them on ships for transport to Britain. The Ottoman government in Turkey, probably bribed, twice ratified this illegal seizure.

That was just the beginning of Bruce's downfall, however: he lost his wife to a colleague, his nose to syphilis, his freedom to the French who captured him on his way home, his fortune in an attempt to sell the treasure to the British government which paid less than half his costs, and his reputation as a result of a scathing poem by Lord Byron who fought with Greeks seeking independence and coined the term "elginism" for the looting of cultural objects. Although it appears clear that if they had gotten there first, the French would have seized these objects to add to those they had taken from Egypt for the Louvre.

The antipathy of the House of Lords and the British public to housing the cultural property of a territory involved in so romantic a revolution, has made them the symbol of the movement to repatriate cultural heritage items to the country of origin, actually, the provenience of current rest, whether or not descendents of the creators or earlier users still reside there. In this respect, we are in the ironic position of seeing Italians fight for Greek vessels recently dug up in Sardinia, French refuse export permits for Italian old masters, and the British claim that the Elgin Marbles, which are the centerpiece of the British Museum, are part of their own cultural heritage!

Despite the continuing requests of the Greek government begun immediately after Greece gained independence in 1821, the Brits are bolstered in their position by a law that denies de-accessioning of any object added to the collection of the national museum. They argue that the Greeks have benefitted from the larger number of visitors who have viewed the Marbles in London than they would in Athens; by British scholarship that, in extolling the superiority of Greek over Roman sculpture, secured Greece as a stopping point on the "Grand Tour," and by British protection of the marbles during the Greek civil war and later environmental degradation. Although the Greeks were forced to move the remaining friezes indoors when 20th Century pollution threatened to destroy them, the British Museum lost the high ground when an ill-conceived cleaning project led by Lord Duveen in the 30s destroyed their patina.

The Greeks have recently opened a critically-acclaimed museum adjacent to the Temple of Athena and continue to press for the return of the

marbles that are represented by plaster casts intermingled with the remaining friezes and fragments being returned by museums and collectors around the world. They had vainly hoped for the Elgin Marbles' return in time for the Athens Olympics. Currently, they are working with the British under the auspices of the UNESCO Intergovernmental Committee on Return of Cultural Property on long term loans.⁹

The Greeks have been successful in claiming looted objects from the Getty and other US museums, having piggy-backed on the change in international public opinion that has resulted from the end of colonialism and the renewed nationalism of "source countries,"¹⁰ the emphasis in the Hague Convention on "heritage of all mankind" that gives other countries a voice in protesting cultural imperialism,¹¹ the arguments of archeologists that objects must be studied and displayed "in situ,"¹² the disillusionment with the shady acquisition practices of "universal museums,"¹³ and the passage of national patrimony laws¹⁴ by source countries that grant ownership of objects both part

⁹ See, e.g. M. Kimmelman, *Elgin Marbles Argument in a New Light*, NYT 6/24/09 at C1.

¹⁰ B. Hoffman, *ART AND CULTURAL HERITAGE: LAW, POLICY AND PRACTICE*. NY: Cambridge, 2006 at 89 [hereinafter cited as Hoffman].

¹¹ Convention for the Protection of Cultural Property in the Event of Armed Conflict, www.icomos.org/Hague [hereinafter cited as Hague]. The current act dates from 1954 ; 2d protocol 1999; the US ratified on September 25, 2008.

¹² See ethics codes of major archeological associations; Neil Brodie, "An Archeologist's View of the Trade in Unprovenanced Antiquities," in Hoffman at 52 and *Loot, Legitimacy and Ownership* (2001); Patty Gerstenblith, "The Public Interest in the Restitution of Cultural Objects," 16 *CONN. J. INT'L L.* 197 (2001); and generally, *LEGAL PERSPECTIVES ON CULTURAL RESOURCES* (Richman and Forsyth ed.) [Hereinafter cited as *Perspectives*]. Walnut Creek: Rowman & Littlefield 2004.

¹³ See *Turkey v. Metropolitan Museum* below as a typical example. The universal museums have fought back; their most vociferous spokesman is James Cuno, *WHO OWNS ANTIQUITY?: MUSEUMS AND THE BATTLE OVER OUR ANCIENT HERITAGE* (2008).

¹⁴ Many source countries have passed blanket ownership laws claiming all cultural property above or below ground discovered or undiscovered; examples are Italy, 1939, Mexico, 1972, Egypt, 1983, and Peru, 1985. US Courts require that objects must be found within the country's modern borders, that the law gives clear notice of ownership (not just export provisions that needn't be enforced by another jurisdiction) and that the jurisdiction seeking return enforce its law within its own borders, *Peru v. Johnson*, 720 F. Supp 810 (C.D. Cal 1089). Market nations criticize these laws as leading to thriving black markets and prefer screening laws, such as the UK's, that apply only to national treasures, provide for export permits, may give the government a limited time to match a price offered by a purchaser, and emphasize the importance of display in a public institution. Nina Teicholz, *ARCHEOLOGY ODYSSEY*

of the national inventory and newly-discovered to source countries and refuse export permits for them.

While the Greeks have a legitimate claim that the Marbles were removed illegally and that they have been consistent in their claims for repatriation, both Italy and Egypt have also jumped on the repatriation bandwagon with more questionable claims: Italy has used the bully pulpit of public opinion to pressure the Metropolitan Museum of Art and the Getty into returning recently looted objects in return for long term loans, despite its negligence in inventorying the country's patrimony and securing archeological sites.¹⁵ Egypt claims objects acquired lawfully by foreign museums through partage, which is the practice of dividing finds from archeological expeditions between the source country and those to whom it has granted firmans for particular sites.¹⁶ Zahi Hawass, secretary-general of Egypt's Supreme Council on Antiquities, organizer of the for-profit King Tut exhibit now circling the globe, and unsuccessful, if tireless, campaigner to have his boss, Farouk Hosny,¹⁷ named to head UNESCO despite earlier charges of anti-Semitism against Hosny, is leading an international campaign to have museums return cultural treasures to source countries no matter how

MAGAZINE (March/April 2001) quoted in Merryman at 223-6; John Henry Merryman, "The Antiquities Problem," 3 PUBLIC ARCHEOLOGY REV. 10-12 (December 1995) reprinted Merryman at 226-9.

Turkey's cultural property laws (Law No. 5226 for the Conservation of Cultural and Natural Property (2004) ("CCNP") and Law No. 2863 on the Protection of Cultural and National Assets (1983, as amended 1987) ("PCNA") provides for ownership of cultural property on state lands, registry of privately held cultural property, acquisitions by museums, limited temporary export and return of property not necessary for museums, www.ifar.org/country_title.php?docid=1180202246.

¹⁵ DuBoff at 87-88; Elisabetta Proledo, "Ancient Vase Comes Home to a Heroes' Welcome," www.nytimes.com/2008/01/19/arts/design/19bowl.html.

¹⁶ Merryman, "The Bust of Nefertiti: Partage," at 414-18.

¹⁷ Michael Kimmelman recently wrote a critical, extensive, NEW YORK TIMES article describing efforts of source countries to hold up western museums; he sees cultural patrimony as the only weapon Egypt could use to lash out at Hosny's enemies while simultaneously "pander[ing] to Egypt's... ruling elite" (Kimmelman, "Who Draws the Borders of Culture?" NYT, 5/9/10, at 1AR, 18). Egypt's priority is the return of the bust of Nefertiti from Berlin; it also wants the Rosetta Stone from the British Museum, and the statue of Ramses from the Turin Museum. He has cut off ties with the St. Louis Museum and the Louvre over a 3200 year old golden mask of a noblewoman and fragments illicitly chipped from a tomb, respectively. He has since patched relations with the Louvre upon return of the fragments," Egypt teams with 25 Nations to Return Antiquities," Associated Press, 4/8/10.

acquired.¹⁸ He pursues this course even as cultural and historic treasures sit in the basement of the Cairo museum without necessary air conditioning, proper preservation, or patrons to visit them. Unfortunately, it seems that modern Egyptians have little cultural affinity to the pyramid builders and little current interest in non-Islamic art.

Egypt recently hosted an international meeting of source countries and their “friends” (including the US which has returned the most numerous items) to demand repatriation under the auspices of a more aggressive UNESCO convention to be drafted.¹⁹ Sending official delegates were Bolivia, China, Cyprus, Egypt, Greece, Guatemala, Honduras, India, Iraq, Italy, Libya, Mexico, Nigeria, South Korea, Spain, Sri Lanka and Syria.²⁰

II. Turkey v. Metropolitan Museum of Art²¹

As unsuccessful as Egypt’s Zahi Hawass’ aggressive demands and flamboyant pronouncements have been in securing the return of that country’s cultural objects from the Louvre and other museums in Europe and the US, the Turks have successfully used patience and diplomacy to recover many high profile objects.²² Foremost among these are the Lydian Hoard or Karun Treasure, the whereabouts of which were discovered from a disclosure by Usak province Tombolinos.²³ The Tombolinos are local grave robbers, disillusioned by the discrepancy between the prices they were paid and the well-publicized sums extracted from museums.

The “Lydian Hoard,” or Treasure of Croesus,²⁴ was purchased by the Metropolitan Museum of Art, which feebly disguised the artifact as being from “East Greece.” The repatriation of this artifact represents the culmination of sixteen years of pressure exerted by the Turkish government. At one point, Met Director Thomas Hoving had recommended that it be returned if the Turks could prove it. The Turkish claim for repatriation was based on the investigation of journalist Acar Erghan and recounted at length in LOOT. That the Turkish treasure was improperly acquired at a time when

¹⁸ Sharon Waxman devotes the first part of LOOT to his exploits, at 13-134.

¹⁹ Cairo Meeting to demand Return of National treasures, France 24, 7/4/2010, www.france24.com/en/20100407; Egypt hosts meeting on recovery of ‘stolen treasures,’ BBC 4/7/10, new.bbc.co.uk/2/hi/middle_east/8606458.stm.

²⁰ Id.

²¹ 762 F. Supp. 44(S.D.N.Y. 1990)

²² Loot at 152.

²³ Id at 147-50.

²⁴ Id at 149.

museums ignored provenance was admitted by Hoving in his biographical, *MAKING THE MUMMIES DANCE: INSIDE THE METROPOLITAN MUSEUM OF ART*.²⁵ Since the Turks were able to show conclusively during discovery that the treasure was properly theirs, the Met settled to avoid embarrassment.

The Treasure of Croesus case was not litigated, largely due to the Met's fears that a loss would lead to the emptying of the world's great museums. Thus, the door was left open to the resolution of ownership issues. The result has been litigation and grandstanding played out in the press, especially by Italian cultural officials. This has resulted in the trial of Marian True, antiquities curator of the Getty,²⁶ the return of the Euphronius Krater by the Met,²⁷ the harassment of collector Shelby White,²⁸ and the raiding of the cupboards of a number of US museums.²⁹

This case may be said to have marked the end of the hubris of universal museums,³⁰ also known as "the Big 5:" the Louvre, British Museum, the Berlin Museum, the Hermitage, and the Metropolitan Museum of Art. These institutions now fear the loss of objects from former colonies, battles, and purchases. They also face persistent criticism from less well-endowed peers in their own countries as well as UNESCO-inspired foreigners who have accepted the notion promulgated in the Hague Convention that cultural property belongs to all.

Following universal condemnation of the Taliban for destroying Afghanistan's Bamiyan Buddhas,³¹ the international community has felt free

²⁵ See Hoving's, *MAKING THE MUMMIES DANCE: INSIDE THE METROPOLITAN MUSEUM OF ART*, (Touchstone, 1994).

²⁶ Hugh Eakin, "Treasure Hunt: The downfall of the Getty curator Marion True," *The New Yorker*, December 17, 2007, at 62-75. The Getty has since revised its acquisitions policy to recognize November 17, 1970, the date of the UNESCO Convention, as the cutoff, after which un-provenanced antiquities could not be acquired; this has become internationally recognized and incorporated into the ethics codes of the various museum associations.

²⁷ See Proledo at 14.

²⁸ Lee Rosenbaum, "Shelby White and the 'Why Me?' Antiquities Defense UPDATED," www.artsjournal.com/culturegirl/2008/Shelby_White_and_the_why-me_an.html.

²⁹ Foremost among them is the Getty which has returned items to both Greece and Italy.

³⁰ *Supra*, note 12.

³¹ Francisco Francioni and Federico Lenzerini, "The Obligation to Prevent and Avoid Destruction of Cultural Property: From Bamiyan to Iraq," in Hoffman at 28-

to campaign for repatriation of cultural property to source countries whether or not they have the know-how, facilities or security to protect it. This policy had sad consequences for the Turks. Rather than place the returned Lydian Hoard in the Topkapi or another secure, if largely unvisited, Istanbul museum, the treasure was placed in the local museum in Usak, adjacent to the location from which it was excavated by tomb robbers. It was later discovered that the pride of the collection, the Hippocampus Brooch, was replaced with a forgery, allegedly by the museum director. The wisdom of repatriation was once again called into question.³²

III. Who should own the past?³³

Although a number of authors have described methodologies for determining whether cultural property should reside with a source country from which it was removed or remain with the market country in which it now resides as a result of purchase, gift, or war, Sherry Hutt's discussion is representative.³⁴ Since Hutt uses the Elgin Marbles as the example, it is particularly useful. Hutt places the protagonists in six categories:

1. Moralists, who would determine the "right" location through a process of discussion and consensus building that would take account of the differences in power between current owners and indigenous/minority/ or less developed jurisdictions. This theory may not provide consistent answers in every situation but relies on good will. Joseph Saks is generally regarded as principal spokesman for this concept. Source countries seeking return, sharing, or long term loans have based their cases upon moral theory and claimed that it results in "win-wins." This is the argument Hawass and his followers pursue.
2. Internationalists/Paternalists, such as John Henry Merryman and the US before the Hague Convention ratification, believe that cultural property should be in the hands of those who can best care for it, the market nations and universal museums that can preserve, display and popularize it. Merryman would leave pre-1970 objects in the collections in which they now reside.

40; James Cuno, "Beyond Bamiyan: Will the World Be Ready Next Time?" in Hoffman at 41-6.

³² LOOT at 152-74.

³³ Sherry Hutt, "Cultural Property Law Theory: A Comparative Assessment of Contemporary Thought, in PERSPECTIVES at 17-36.

³⁴ See, e.g., Chapter 2, LEGAL PERSPECTIVES ON CULTURAL RESOURCES [Richman and Forsyth, eds., 2004]).

3. Nationalists, who look only at provenience, the physical location where an object has come to rest, whether or not that jurisdiction has the facilities and know-how to preserve it.
4. Property legalists, who rely upon settled principles of local property law, even if it results in winners and losers. Common and civil law jurisdictions may differ because of treatment of *bona fide* purchasers in the two systems. In the US, for example, an innocent purchaser for value can never obtain good title from a thief. In jurisdictions ratifying the UNIDROIT Convention, England and civil law systems, title can be quieted after tolling a statute of limitations. These differences have made federal diversity litigation in New York's Second Circuit popular, especially since a "demand and refusal rule," allowing litigation to be brought within three years after discovery of goods, request for return, and refusal of that request may prevent the statute of limitations from tolling indefinitely.
5. Scientists, who want access to study objects, rather than assign permanent ownership. Archeologists have become especially aggressive in campaigning for *in situ* display of objects as they believe that context, rather than reliance on artistic importance, gives meaning to objects. They generally favor source countries, although their continuing rights to excavate may make them biased participants in the debate.
6. Market theorists, who believe that unregulated markets should determine ownership. They care about the authenticity of objects and would allow purchase by individual collectors even if the public then loses the ability to see and appreciate objects.

Most disputes involve more than one of these theories.

Internationalists and marketers may be natural allies, as may be moralists and nationalists. Scientists may be able to work with any others. Moralists who seek win-win solutions and property theorists may be at odds. More and more, we see adverse parties attempt to settle cases as adverse precedents may have devastating international repercussions.

Regardless of the theories applied, John Henry Merryman³⁵ has suggested that a law of repose apply that would allow items currently housed in museums to remain there; however a populist movement headed by Zahi Hawass of Egypt aggressively repudiates this longstanding policy. He and representatives of sixteen other cultural ministries have challenged this notion

³⁵ "Thinking About the Elgin Marbles," 83 MICH.L.REV. 1881, 1917 (1985).

and requested that all cultural artifacts, whether legally or illegally acquired, be returned to their country of origin. If this group prevails, could Turkey reclaim artifacts such as “Priam’s Treasure,” removed long ago?³⁶

Heinrich Schliemann, 19th Century genius, “father of archeology,” and self-proclaimed “braggart and... bluffer” was obsessed with finding historical proof of Homer’s Trojan War which he traced to the Turkish Hill of Hisarlik (Troy/New Ilium) and Greek Mycenae (Agamemnon’s tomb). Having accumulated a fortune in such dubious pursuits as cornering the market on saltpeter, an ingredient of gunpowder in the Crimean War; purchasing California gold rush gold from prospectors; and speculating in cotton during the US Civil War, Schiemann sought academic recognition through excavation. In the process, he helped raise the study of antiquities to the new science of archeology.

Unable to forego devious dealing, Schliemann’s postdating of his journals after smuggling the “Treasure of Priam” from Turkey led to charges even during his lifetime of salting his sites with black market purchases and/or forgeries. While he may actually have found Homeric Troy, he destroyed that stratum to dig deeper and appears to have mistakenly identified a grave between Troy II and III, rather than Troy VI. “The resulting theft and destruction of the site in violation of the conditions of his firman (partage with the Turkish archeological museum, ruins returned to their original condition, structures left intact and self-financing) has left Turkey distrustful of foreign archeologists to the present day. His later dig at Mycenae, long known as the site to which Agamemnon retreated after the Trojan War, resulted in his belief that he had found the general’s tomb with its rich gold accoutrements, thus cementing his reputation. He followed Lord Elgin (who relied on his Parthenon firman to find friezes and fragments of a bull relief now housed in the British Museum) to this site; later British scholars working in Mycenae developed the standards for less destructive modern archeological standards.

Although Schliemann presented his finds to the Berlin Museum, they were spirited to Russia after World War II where they have recently resurfaced. Russia has been adamant in claiming objects in German Museums in the Eastern Zone as reparations for damage suffered during the Siege of Leningrad, regardless of public or private ownership by Germany, a third country or private parties. While museums in other countries may be

³⁶ Wood, *supra* note 6.

shamed into relinquishing custody, Russia, France, and until recently, England have resisted such claims.³⁷

Regardless of legality, source countries are enjoying increasing success at recovering their cultural property. The current tilt of UNESCO toward their interests and the well-publicized success of countries such as Italy and Turkey in recovering artifacts are harbingers of the future already recognized by museums. The Met's return of the Euphronius Krater and the aborted draft agreement between the Yale Museum and Peru may have set the terms for the future:

- avoid reputation-damaging litigation and negotiate long term loans;
- argue that items on museum inventories before 1970, the date of the UNESCO Convention, remain in place;
- enter into agreements to co-sponsor exhibits;
- train local curators;
- educate tomb robbers about the importance of protecting cultural heritage; and
- support efforts to raise money to improve the facilities of source country museums.

The rise of the Internet, which allows the depiction of cultural objects, sets the stage for virtual exhibits that make the universal museums' losses less traumatic. Although Turkey has played a major part in changing public attitudes, it seems unlikely that it will pursue claims against impossible odds, both because thefts from the Lydian Hoard has made it reluctant to obtain what it cannot protect and because so much remains to be discovered in the country.

³⁷ UK. House of Commons Library, Holocaust (Stolen Art) Restitution Bill, Bill no. 111, Research Paper 09/59, 23 June 2009; Harvard Law School Arts&Literature Law Society et. al., *Spoils of War v. Cultural Heritage: The Russian Cultural Property Law in Historical Context*, February 8-9, 2008; workshop, www.law.harvard.edu/faculty/martin/art_law/russian.law.htm. The recent return of illicitly removed fragments from Egypt may indicate a softening in the French position.