

Report on the Conference: Imperialism, Art and Restitution

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March 26–27, 2004, in St. Louis, Missouri, the Washington University School of Law’s Whitney R. Harris Institute for Global Legal Studies and the School of Art hosted the *Imperialism, Art and Restitution Conference*. The conference brought together many of the world’s leading experts on art and antiquities law, museum policy, and the larger cultural context surrounding these fields. The conference organizers chose several particularly controversial case studies to generate debate and discussion around the issues of whether Western states and their museums should return major works of art and antiquities, acquired during the Age of Imperialism, to the countries of origin. The case studies included the Elgin/Parthenon Marbles, the Bust of Nefertiti, and objects protected by the Native American Graves Protection and Repatriation Act (NAGPRA).¹ The format produced a lively, interdisciplinary, and sometimes passionate debate that helped crystallize issues and expose complexities but certainly produced no consensus around a simple solution of *return* or *retain*.

The debate was launched by James Cuno’s keynote address, “View from the Universal Museum.” Cuno, at the time director of the Courtauld Institute in London, is currently president and director of the Art Institute of Chicago. He called for an end to the retentionist policies of source nations in favor of promoting museums that bring together comprehensive collections, displaying objects in greater context or in a place more readily accessible to many viewers. Cuno argued that the concept of antiquities as part of the cultural heritage of narrow, particular groups is overly simplistic and that the better view is to consider antiquities as part of the culture of humanity. Through his internationalist perspective, Cuno highlighted how by following laws that control illicit trade, world-class museums help support greater protection of cultural heritage. He questioned whether the laws of importing and exporting nations are becoming too restrictive and, thus, actually hindering international trade in antiquities without solving the problems of pillaging

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and theft. He suggested that museums and archaeologists join to protect the world's cultural patrimony by opposing the retentionist laws of exporting and source nations. He called for reviving the system of *partage* that gives highly trained archaeologists incentives to work in the field for the mutual benefit of the source nation and the global community by sharing any finds between the source country and the archaeologists' home institutions.

Responding with a view from a source nation was Talât Halman, a professor and chairman of the Department of Turkish Literature at Bilkent University, and the first minister of culture of the Turkish Republic. Halman, although recognizing the wrongs committed against source nations in times of imperialism and calling for the correction of such wrongs, nevertheless urged support for an "optimistic internationalism." Specifically, he called for (1) a world inventory of the holdings of all museums to be supervised by UNESCO (United Nations Educational, Scientific, and Cultural Organization), (2) international amnesty for all cultural objects acquired by certain museums prior to a certain date; (3) repatriation of all objects illegally acquired by museums after the amnesty date; (4) stronger anti-smuggling laws through new international measures and national legislation; (5) museum-to-museum exchanges and sales of art and antiquities, (6) an international ban on tampering with authenticity and integrity of archaeological sites; (7) creating an art and archaeological fund with income derived from a percentage of gross receipts from the world's museums, fees and penalties for illegally acquired objects, and the income and profits of world museums; and (8) the use of the aforementioned funds for the creation and renovation of the world's museums, restoration of archaeological sites and objects, and international traveling exhibits or cyber-exhibitions.

The themes struck in the opening addresses continued through the debates on the case studies. John Henry Merryman, Sweitzer Professor of Law Emeritus at Stanford University, and William St. Clair, Senior Research Fellow at Trinity College, Cambridge University, joined issue over Greece's claim on Britain for the return the Elgin/Parthenon marbles, currently displayed in the British Museum. St. Clair began by casting doubt on the legal case made by Lord Elgin who originally obtained the marbles in Athens in the nineteenth century and brought them to Britain. St. Clair also countered the argument that the marbles are safer in London, explaining how the marbles had already been badly damaged when Elgin removed them from the Parthenon and later in an attempt to scrub the brownish marble white at the British Museum. St. Clair particularly argued that if context is important in the display of antiquities, the proper context for the marbles exists in Athens.

Merryman took the internationalist view and argued in favor of Britain retaining the marbles for their protection and greater availability to the world. He revisited the legal case but pointed out that returning the marbles to Athens would in itself put the marbles at risk. Moreover, once in Athens, the marbles could not be displayed outdoors in the Parthenon itself because of Athens' destructive air

pollution. The marbles would end up in another museum. On balance, Merryman argued for leaving the marbles in the British Museum, accessible to millions.

In the debate over the Bust of Nefertiti, Kurt Siehr, long-time professor of law at the University of Zurich and now an associate of the Max-Planck-Institute for Foreign Law and Private International Law in Hamburg, joined issue with Stephen Urice, Director of the Project for Cultural Heritage Law and Policy associated with the Philadelphia Museum of Art and the University of Pennsylvania Law School. Siehr had the assignment of arguing in favor of returning the bust to Cairo from Berlin. He, too, analyzed the legal case for retention in Berlin, finding several flaws, but he also argued in favor of displaying antiquities in the proper context of their country of origin. Further, repatriation would support Egypt as a country recovering from imperialism.

Urice argued that the bust should remain in Germany because neither the facts of the legal case nor current law provides Egypt with a cognizable claim for return and because all relevant nonlegal claims and values argue against repatriation. In particular, Urice acknowledged the importance of the bust and other works of antiquity, remaining within the accessible reach of current artists and the public. He made his point by showing a video of an artist's work inspired by the bust. Urice argued that this new work was possible because the Nefertiti was displayed in Berlin.

The last case studied involved Michael Brown, Professor of Anthropology and Latin American Studies at Williams College, and David Hurst Thomas, curator of anthropology at the American Museum of Natural History in New York, in an examination of the impact of NAGPRA on American museums holding Native American artifacts. Brown listed the problems surrounding NAGPRA, including the fact that it is an unfunded mandate that places heavy burdens on museums and Native American tribes. According to Brown, the legislation is textually vague, poses a threat of transforming—rather than helping to support—Native American traditions, and provides a new set of idioms or language for disputes.

Thomas traced the history of the “Great American Skull Wars”² and illustrated how NAGRPA can result in conflicts over repatriation. However, he held out the promise of scientists, archaeologists, museums, and Native Americans entering into a mutual dialogue aimed at discovering the goals and priorities of each community and using that discourse to create individual solutions and resolutions to repatriation claims.

In addition to the case studies, archaeologists, anthropologists, museum directors, art educators, lawyers, and others spoke in an open forum on various issues of retention and return. The conference was an occasion for diverse communities concerned about cultural heritage to come together, share perspectives, and come away better informed about important issues. The organizers advanced the dialogue through the selection of well-informed, articulate, and provocative speakers and the choice of a dynamic format. No consensus was reached on the core question of restitution, but no one left the conference without having examined presuppositions. Many were inspired to consider compromise solutions that give

support for all of the competing but important values of access, protection, context, reconciliation, and respect for all cultures and cultural claims.

ENDNOTES

1. The organizers had also hoped to include the Code of Hammarabi presently in the Louvre in Paris and claimed for Iraq.
2. Thomas, *Skull Wars*.

BIBLIOGRAPHY

Thomas, David Hurst, *Skull Wars: Kennewick Man, Archaeology, and the Battle for Native American Identity*. New York: Basic Books, 2000.