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Review Essay

Demokratia: Will the Greek Ideal Work in Greece's Favour to Return the Parthenon Marbles under International Law?

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Abstract

This article reviews the recent publications concerning the centuries-old dispute over the Parthenon Marbles. The discussion focuses on the application of international law to the question of the return of the Parthenon Marbles to Greece, and reviews Professor Catharine Titi's book *The Parthenon Marbles and International Law*, with reference to and comparison with Alexander Herman's book *The Parthenon Marbles Dispute*. This review specifically evaluates the question of whether there is a customary international law on the return of unlawfully removed cultural heritage, which would require States, and specifically the United Kingdom, to be bound to such a rule. The existence of this rule would strengthen the efforts of Greece to argue for the return of the Marbles, which Titi argues is best resolved through diplomacy, and not recourse to the European Court of Human Rights or the International Court of Justice. Despite a

* I declare that I have no competing interests that are not stated here.

growing global discussion about the need for repatriation of colonial-looted cultural objects, it remains to be seen whether it will have any impact, or indeed put pressure on, the Trustees of the British Museum or the UK Parliament which must pass an act to deaccession the Marbles from the national collection.

Keywords

restitution – British Museum – Greece – United Kingdom – Parthenon Marbles – cultural heritage – interstate dispute – ICJ – international arbitration

> And yet, why this vehement attack upon Verres? A single word will beat it off. "I bought the things," he tells us. O immortal gods, what a super defence! We have given the powers and the insignia of governor to a trader, and sent him to our province to buy up all the statues and pictures, all the gold and silver plate, all the gems and ivories, and leave nothing there for anyone! Yes, to every single charge of robbery he is evidently ready to reply that he "bought it."
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> – Cicero, *In Verrem*, 2.4.8, translated by L.H.G. GREENWOOD (1928).

On 1 December 2023, as many around the world began preparations for the upcoming Christmas season, global leaders attended the COP28 climate conference in Dubai. One leader in particular seemed to offer an unusual early Christmas gift to the Hellenic Republic – the United Kingdom's King Charles wore a tie depicting undulating Greek flags. Observers were quick to seize on the obvious reference to the actions of UK Prime Minister Rishi Sunak days earlier, who had refused to meet with Greek Prime Minister Kyriakos Mitsotakis and to attribute to the tie a show of support of the long-standing Greek demand for the return of the Parthenon Marbles located in the British Museum. For a monarchy which prides itself on staying out of politics as a matter of principle, this sartorial choice by a monarch with Greek ancestry, at a global diplomatic event like COP28, was a significant show of support for the Greek cause.

The very fact that this incident caused such a response in the international media, on the back of Sunak's diplomatic scandal, supports Professor Catharine Titi's argument, found in her recent book *The Parthenon Marbles and International Law,*[1] of the interstate character of the dispute over the ownership of the Parthenon Marbles, and the need for a diplomatic solution. In fact, she argues that customary international law has evolved to mandate

1 Catharine Titi, *The Parthenon Marbles and International Law* (Springer 2023).

that cultural heritage of particular importance, which was unlawfully removed from its place of origin, should be returned, thus necessitating that the British Museum return the Parthenon Marbles to Greece.

Professor Titi has essentially written the Greek Government's brief for why international law mandates that the Parthenon Marbles should be returned to Greece, with a clear, point by point dismissal of every argument, both legal and factual, that has been put forth by the British Museum and the UK Government for the Marbles' retention in London. Titi is very clear that she is arguing for one side, that of wholesale return, and makes little attempt to see the perspective from the other side. While her arguments are strong and there is nothing clearly wrong in this approach, especially from an experienced, international disputes academic and arbitrator, one can hardly help noticing that this positioning by the parties, and attacking the logic of the other side, has been the status quo for decades. Nevertheless, this is the most comprehensive, well-structured, published analysis of the Parthenon Marbles, which skillfully assesses the classic claims regarding the Marbles' acquisition, both in Greece and for the British Museum, and assesses the viability and likelihood of success for bringing this dispute to the International Court of Justice and the European Court of Human Rights, along with the law that would (or not) apply. From her analysis of the circumstances in which Lord Elgin "acquired" the Marbles, including demonstrating that the "firman" relied upon was no legal authorization, to the illegitimacy of the British Museum's assertion that they purchased the Marbles and thus were lawfully acquired. This review focuses more on the international law discussion than the facts of acquisition, which are generally well-known.

Professor Titi was not the only individual to publish a book on the Parthenon Marbles in 2023. Alexander Herman, Director of the UK-based Institute of Art and Law, published *The Parthenon Marbles Dispute*.[2] Where Titi's book is focused strictly on methodically analyzing the legal arguments (and counterarguments) for the return of the Parthenon Marbles under international law, Herman's approach is to detail the negotiations, political machinations, and general diplomatic efforts of both sides (Greece and the UK Government/British Museum). Interestingly, he incorporates the views of curators, museum directors, lawyers, archaeologists, politicians, and others, from both London and Athens. In a way, the two books complement each other, for Herman's book provides the detailed support of the diplomatic efforts Titi argues should reign supreme as the dispute resolution method. At

2 Alexander Herman, *The Parthenon Marbles Dispute: Heritage, Law, Politics* (Bloomsbury 2023).

the same time, Herman's book undermines Titi's main argument of the need for a diplomatic solution. Rather, through Herman's extensive descriptions of the various personalities and political maneuvering behind the scenes, the reader is left with the impression that a diplomatic solution is futile. It would be unsurprising if members of the public who have followed this debate in the press for decades would conclude otherwise. As Herman shows, every few years since their acquisition by the British Parliament in 1816, one party makes a statement or a demand, which generates a response from the other party, and the issue briefly makes the news. And the cycle continues.

Nevertheless, Titi is adamant that this time is different. Titi's main argument is that "the two constitutive elements of customary international law, state practice and acceptance as law (*opinion iuris*), now support the view that cultural heritage of particular importance, unlawfully removed from its original context, may be subject to return to its place of origin – and this irrespective of the time of its removal, albeit subject to conditions, all of which are fulfilled in the case of the Parthenon Marbles."[3] This is an issue of both substance and procedure, since restitution requires first a determination that the object should be returned, either ethically or because it was acquired illegally, and second a matter of procedure, since many museums are subject to either internal ethical rules or laws which prohibit them from deaccessioning objects from their collection. While Titi's argument rests on the supposed evolution of customary international law and the international legal framework for the protection of cultural property, which allegedly require the return of the Parthenon Marbles to Greece, less than a third of the book is devoted to an analysis of the customary international law and the cultural property treaties. A significant amount of space is devoted to reviewing the facts and the history of the Parthenon, and of Lord Elgin's theft of the Marbles and their acquisition by the UK Government. In keeping with Titi's expertise in international arbitration, she then assesses the potential methods of dispute settlement, both diplomatic and legal, including questions of jurisdiction and admissibility in various fora. Specifically, she considers a possible case at the ICJ, the CJEU, and international arbitration. These are all well-trodden and established arguments. It is important to note that law is not retroactive,[4] so the international conventions concerning cultural property are inapplicable to Greece's claim for return, which Titi addresses instead by arguing for a change in attitudes and policy, barring the application of the treaties.

3 Titi (n 1) 20.

4 *See generally*, Island of Palmas case (*Netherlands v USA*) (1928) 2 RIAA 829.

Customary international law is in principle applicable to and binding on all States, regardless of whether they have participated in its creation.[5] It is also notoriously difficult to identify and to prove. The existence of the rules of customary international law depends on whether it can be empirically ascertained that they are considered binding by the international community, and whether they function in this way in the relationship between members.[6] International practice, specifically the general practice of States, and the acceptance of this practice as law (*opinio juris*), are necessary for the establishment of customary international law.[7] As the ILC's draft conclusions on identification of customary international law affirms, "practice without acceptance as law, even if widespread and consistent, can be no more than a non-binding usage, while a belief that something is (or ought to be) the law unsupported by practice is mere aspiration."[8]

Titi is focused not on the potential illegality at the time of the acquisition under customary law, but focuses instead on a new customary international law which binds the UK and necessitates the return of unlawfully removed cultural heritage, and the Marbles in particular. This would impose on States a "duty to return cultural heritage unlawfully removed from its original context, with no reference to the political situation in the sovereign territory at the time of the removal."[9] While admitting that rules of customary international law can only truly be identified once they have been fully formed, she argues that we are currently experiencing an evolution in the norms of cultural heritage law regarding ownership, which makes this moment (presumably she is thinking of the next 5–10 years) particularly ripe for resolution of the dispute, and ideally, the full return of the Parthenon Marbles to Greece. Confusingly, she believes that this developing rule "seems to already exist."[10]

In addition to this new rule which "requires the return of the Parthenon Marbles to Athens", she is confident that even the United Kingdom does not object to this rule. It is reasonable to agree that the former exists, but more difficult to agree with the latter argument, given that the UK Government has refused to change its laws regarding museum deaccessioning and

5 Titi (n 1) 263, *citing* Hugh Thirlway, *The Sources of International Law* (2nd edn, Oxford University Press 2019) 60.

6 Tullio Treves, *Customary International Law*, Max Planck Encyclopedias of International Law (2024) para 6.

7 *North Sea Continental Shelf* (Judgment) [1969] ICJ Rep 3.

8 International Law Commission, *Draft conclusions on identification of customary international law, with commentaries*, A/73/10, Part Two, 126 (2018).

9 Titi (n 1) 264.

10 Titi (n 1) 264.

cultural restitution. Domestic legislation is an important piece of evidence in determining State practice.[11] Even if a customary rule is developing, or at least a change in attitudes, it is hard to see how that applies to the Parthenon Marbles case and would bind the UK. Mental gymnastics are also required to conclude that a heritage object was "unlawfully removed" and thus necessitates return, while ignoring the context in the State at the time of removal. Indeed, a rule of customary international law "does not operate in a vacuum … it operates in relation to facts and in the context of a wider framework of legal rules."[12] Instead, a pure argument of ethics and morality, rather than a legal one, in favour of return, is much more convincing. This would avoid running up against the intertemporal law in the *Island of Palmas* case, which Titi agrees has been accepted by international courts and tribunals.

Conversely, Herman does not seem to agree that there is a new customary international law which would bind countries to return objects of cultural importance. In fact, while Titi wishes to ignore the context of the removal in favour of focusing on changing contemporary norms, Herman investigates customary international law regarding the return of cultural property at the time of the removal of the Parthenon Marbles. Through discussion of the Treaty of Paris in 1815 following the defeat of Napolean Bonaparte, wherein the allied governments had to decide what to do with all the cultural heritage that he had looted, it is clear that the allies' recovery of almost all of their spoliated art was generally accepted practice at the time, and accorded with natural law (later to be understood as *opinio juris*).[13] The allies found war spoliations as "contrary to the practice of civilized warfare … [and] every principle of justice."[14] By 1899, the custom was codified in Regulations to the Hague Convention (II) with Respect to the Laws and Customs of War on Land. Thus, Herman shows the existence of a customary international law for cultural heritage stolen during armed conflict, but this law does not extend to the relative peace during which Elgin stole the Parthenon Marbles (Ottoman occupation aside).

The skeptical academic would be quick to point out the difference between the examples of colonial restitution of the past few years which Titi recounts as evidence of widespread State practice and thus a new customary international

11 International Law Commission, *Draft conclusions on identification of customary international law, with commentaries*, A/73/10, Part Two, 126 (2018), *citing* Jurisdictional Immunities of the State (*Germany v. Italy*, Greece intervening), Judgment, [2012] ICJ Rep 123 para 55.

12 International Law Commission (n 10) 127 n 682 citing *Interpretation of the Agreement of 25 March1951 between the WHO and Egypt* (*Advisory Opinion*) [1980] ICJ Rep 76 para 10.

13 Herman (n 2) 109.

14 *Ibid.*

law, and the circumstance of the Parthenon Marbles. The heritage community is well acquainted with the efforts of French President Emmanuel Macron, whose 2017 commitment to returning cultural objects to Africa taken by French colonial troops has resulted in the return of cultural objects. It is not a stretch to say that Macron's speech lit the flame that has led to many other colonial repatriations, including the large repatriation of Benin artefacts to Nigeria from Germany last year. Certainly, the Marbles were not taken by colonial occupying forces, directly threatening military force, but by a peaceful third party. This puts the Marbles in a slightly different category for a discussion on "return", which makes it hard to compare like for like, or to truly show evidence of the State behaviour that is needed for the establishment of a customary law.

Of course, there are examples of returns of cultural property from State collections over the years which are not connected to colonial-era looting. Whether those actions rise to the level of a customary international law that a State feels bound to follow, however, is a different issue. Indeed, many of the bilateral treaties and memoranda of understanding which Titi cites actually concern import and export restrictions and agreements against looting from archaeological sites,[15] which is an entirely different situation than returning objects from museum collections. Categorizing the Parthenon Marbles as looted objects is a legally difficult argument to make. That being said, the decisions and recommendations of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP) are highly probative. But, Titi seems to admit that "to the extent that there is state practice, this state practice does not seem to be accepted as law,"[16] which is the necessary precondition for finding the existence of customary international law.

Herman ignores these contemporary examples of return from other countries, instead looking to the example of Macron's proposed loan (not a permanent transfer) of the Bayeux Tapestry to a British museum in 2018 while it's French depository undergoes renovation. In England, cultural luminaries, the conservative press, Tory MPs, and Hartwig Fischer, the director of the British Museum, heralded the proposal as a "diplomatic masterstroke" and gesture of goodwill between the two nations during the fraught time of the Brexit vote.[17] Herman argues that the "success of such an exchange would occur precisely because it avoided all-or-nothing outcomes."[18] In this example,

15 Titi (n 1) 276.
16 Titi (n 1) 289.
17 Herman (n 2) 131.
18 *Ibid.*

Herman shows that Britain does not believe, as Titi argues, that there may be a duty under customary international law to return objects of cultural significance (of which the Bayeux Tapestry certainly qualifies). It demonstrates the diplomatic and political nature of these disputes, as the potential exchange was a reminder of "what unites countries, whether it be a shared system of values, an appreciation of artistry and aesthetics or a common history."[19] At no point in this discussion did either Macron or a representative of the British Government operate as if France had a duty under international law to return the Tapestry. In returning to the Marbles at issue, it must be noted that the British Museum is still discussing the possibility of a long-term loan and "Parthenon Partnership", further evidence of a lack of *opinio juris* regarding return.

Additionally, while Titi presents a strong argument that this custom is developing by pointing to returns from State collections around the world, her examples of returns of cultural property from institutions in the UK do not involve items from State collections or non-departmental public bodies. Rather, returns have only been made from municipal and university museums, like the Horniman Museum & Gardens and Jesus College at the University of Cambridge, with approval from the Charities Commission. This is an important distinction for two reasons. First, because these institutions are subject to different domestic legislation which allows for greater ease of deaccessioning, unlike the harder bar that is the British Museum Act 1963 and its required Act of Parliament. Second, because these museums are not national museums, their returns do not strictly count as evidence of State practice.

She imputes much significance to the proposed change to the Charities Act, by which section 106 was to be amended, thereby giving museum trustees the ability to make ex gratia applications for charity property, with authorization from the Charities Commission, Attorney General, or the court, regardless of other existing statutory restrictions.[20] In addition to the reality that the Department of Culture, Media, and Sport has decided to delay the implementation of this new provision until it understand the full consequences for national museums, remains via this provision would remain exceptional, as the deaccessioning decision still remains in the hands of the trustees. It seems extraordinarily unlikely that this provision would be used to quickly hand over the Marbles. Although unanimity of practice is not required, this very recent change by the UK Government is itself evidence of State practice. While initially lauded as a sign of the changing policy of the Government

19 *Ibid.*

20 Charities Act 2022, s 16.

regarding deaccessioning, it is hardly the beacon of hope claimed. The very fact that the Government quickly postponed implementing the change once it discovered the potential consequences demonstrates that the Government does not believe that it is bound by any customary international law to return cultural objects generally. Had the Government wanted to legalize all returns of unlawfully removed cultural objects, including the Parthenon Marbles, they would have done so. Additionally, the UK is the second largest art market in the world, and has some of the top museums in the world. To argue that there is *opinio juris* that is not followed by one of the top centres of culture in the world would negate the requirement for State practice to be representative and "of states whose interests are specially affected."[21]

In short, her argument as to the development of a new customary international law may be correct, but at this time her evidence seems only narrowly focused on objects taken due to colonial appropriation, not a wider law which binds all States to return all unlawfully removed cultural objects, of particular importance. Given the relative newness of even the return of colonial-looted objects, it would be more appropriate to call these examples a shift in attitude, as opposed to binding custom. The past decade of heritage policy can be characterized by calls to decolonize museums and art collections. Before that, the focus of the art and culture world in the 1990s and early 2000s was on the restitution of art stolen during the Nazi period. Despite numerous specific principles and institutions, such as the Washington Conference Principles on Nazi-Confiscated Art, the five spoliation panels established in the UK, Germany, Austria, the Netherlands, and France, and legislation extending the statute of limitations in which to bring a claim on this issue in the US,[22] there remains no customary international law applied by any court which would bind States to return Nazi-looted art, despite ongoing claims and returns. These examples demonstrate that despite various international developments promoting the return of art and cultural heritage, some more extensive than others, States are still working to establish general principles, and despite various phases of focus, nothing has yet been established to the level of a rule. Again, however, the example of Nazi restitution is not applicable here in order to assess contemporary customary international law. Nazi restitution follows the previously established custom against spoliation and looting of heritage during armed conflict, and does not seek to enforce current norms on an historic issue.

21 *See, e.g. North Sea Continental Shelf* (Judgment) [1969] ICJ Rep 3; *Colombian-Peruvian Asylum* (Judgment) [1950] ICJ Rep 266.

22 Holocaust Expropriated Art Recovery Act of 2016, 26 USC 1621 *et seq*.

As "in certain circumstances" the "practice of international organizations also contributes to the formation and expression of rules of customary international law",[23] both authors consider UNESCO recommendations and treaties, but ultimately focus on different evidence. Herman points to UNESCO's 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention), to which Greece and the UK are parties.[24] In particular, Belgian jurist and former ICJ judge Charles de Visscher argued in 1937 for the "principle of unity and integrity of a monument [the Parthenon] of such extraordinary and historic value [which] clearly outweighs any other consideration here."[25] This principle was affirmed in the World Heritage Convention, with integrity defined as "a measure of the wholeness and intactness of the property". Herman notes that the Convention's obligations belong to all States parties, since protection is the duty of the international community as a whole. In asking the reader whether this principle and the World Heritage Convention would impose a duty on the UK to provide assistance for the preservation of the Acropolis, Herman supports Titi's general argument for the Parthenon Marbles' return, and the argument for a customary international law in the same regard. For her part, Titi's argument is strongly supported by the decisions and recommendations of UNESCO's Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP). The ICPRCP in 2021 declared that the Parthenon Marbles should be returned to Greece, strong evidence of State practice from a group that was founded to assist with the repatriation of heritage that "has a fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State … which has been lost as a result of illicit appropriation."[26] Although the ILC specifies that international organizations are not States, and so their actions do not evidence State practice, where it is clear that the practice can be attributed to the States acting within the organization, that practice can have probative value in assessing

23 International Law Commission, *Draft conclusions on identification of customary international law, with commentaries*, A/73/10, Part Three, 130 (2018).

24 Herman (n 2) 113.

25 *Ibid*, *citing to* Charles de Visscher, *International Protection of Works of Art and Historic Monuments* (US Department of State 1949) 82, *quoted in* Jeanette Greenfield, *The Return of Cultural Treasures* (3rd ed Cambridge University Press 2007).

26 Titi (n 1) 277, *citing to* Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP Statutes), adopted by 20 C/Res 4/7.6/5 of the 20th session of the General Conference of UNESCO, Paris, 24 October-28 November 1978, arts. 3(2), 4.

customary law. In that regard, the ICPRCP's 2021 declaration of this developing law is merely probative, but insufficient without further evidence.

Despite the evidence presented as to the various State policies that have led to the return of cultural heritage, the more challenging task is to assess when policy transformed into obligation, which is required to establish a customary international law. Neither Titi nor Herman are able to demonstrate that there is binding obligation which would allow Titi to conclude that the law on returning cultural objects already exists. Herman references other international and domestic agreements which prioritize the principle of the integrity of monuments, but his evidence reinforces the gap in Titi's argument between policy[27]/attitude and customary law, which is why the ILC draft conclusions emphasize that the State practice must be "accepted as law" (*opinio juris*), which guidelines and general agreements are not. Herman references: 1) the Venice Charter for the Conservation and Restoration of Monuments and Sites of 1964, which is a set of guidelines, not legally binding, and reflects outdated views on reconstruction; 2) the European Convention for the Protection of the Archaeological Heritage of Europe, to which both the UK and Greece are parties, is binding, but its applicable section is in Article 1, stating the aim of the Convention to "protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study,"[28] a general statement that is hard to enforce for its lack of specificity; and 3) the International Council on Monuments and Sites (ICOMOS) which provides support for the integrity and preservation of monuments globally, but has no legal authority. While Herman concludes that most States' law validate this universally-accepted principle on the integrity of cultural monuments, this is rather different from a customary law mandating return.[29]

Titi focuses her analysis on the return of the Parthenon Marbles via recourse to and analysis of international law, but she does not exclude domestic law. Rather, she points to domestic court decisions, such as the U.S. federal court decision *Autocephalous Greek-Orthodox Church v. Goldberg*,[30] to demonstrate that there is nascent customary international law concerning the return of unlawfully or unethically acquired culture property, and particularly as evidence of widespread and representative State practice. This decision

27 Defined here as a principle of action adopted or proposed by an organization; a deliberate system of guidelines.

28 European Convention on the Protection of the Archaeological Heritage (revised), Valetta, 1992, art. 1.

29 Herman (n 2) 114. In the UK, see the Ancient Monuments and Archaeological Areas Act 1979, and the Greek Law 3028 of 2002.

30 917 F.2d 278 (7th Cir. 1990).

is inappropriate, however, because it in no way deals with the issue of non-retroactivity of laws that is at the heart of the Parthenon Marbles issue.[31] Rather, *Goldberg* was a case concerning clearly stolen property, and was not an attempt to apply current law to past events. The latter scenario is always going to be at issue with regard to the Parthenon Marbles, since the fundamental issue rests on the illegality of the taking.[32] Additionally, it is unclear how the mosaics would meet her requirement for heritage with "particular cultural significance" that is necessary for the presumed customary law.

Specifically, domestic court decisions are evidence of State behaviour, which is a necessary element to finding the existence of customary international law. Domestic law, in the form of the retentionist British Museum Act, has also always been used as an excuse as to why the Marbles cannot be easily returned, as the Act requires an Act of Parliament. In any event, Titi argues that "possession is *not* a title of ownership and national law cannot serve as an excuse to avoid compliance with an international obligation,"[33] a long-standing tenant of international law. And yet, practically, again a long-standing challenge of international law, any determination as to title of the Marbles must be enforced domestically. Remedies from the ICJ are notoriously difficult to enforce, as Herman reminds us.[34]

The second key argument Titi makes, if very briefly, concerns equity. The equitable approach, Titi claims, would favour the return of the Marbles, "irrespective of the new customary law rule."[35] One of the considerations concerns the evolution of law and thus the issue of intertemporality, which was mentioned above, while the other sees value in the idea of "cultural justice" which can be met by considering the factual context and circumstances of the

31 Titi references Judge Cudahy's concurrence, which argues that while the US domestic implementing legislation for the 1970 UNESCO Convention prohibiting the illicit transfer of cultural heritage was not yet enacted (the Cultural Property Implementation Act of 1983, 19 USC §§ 2601–2613) when the mosaics were stolen, the policy that the Act embodies "is clear … we should not sanction illegal traffic in stolen cultural property." *Ibid* (concurring opinion Cudahy), citing 19 U.S.C. § 2601 (2)(C)(ii)(II) (1983). However, this is not the issue upon which the case was decided, nor is this dictum dispositive. Even if it were, recognition of policy is not the same as acceptance of general legal practice as needed for customary international law.

32 Titi tries to argue that the issue of the legality of the taking of the Marbles is distinct from the ethical question of whether the British Museum should return them, but it is unclear how these issues can be separated.

33 Titi (n 1) 11.

34 Herman (n 2) 115.

35 Titi (n 1) 297.

particular case, allowing the relevant facts to be balanced against eachother.[36] She makes the key distinction in her argument for the emergence of customary international law on return, namely that "while the removal of the marbles is subject to the law of the early nineteenth century, their continued retention in the British Museum must be viewed in light of contemporary international law." This distinction allows her to claim that a change in what is considered fair and just today means that return of the Marbles is equitable, as to hold on to them would be unjust. Thus, she flips the challenge of intertemporality on its head, from being a concept which would hurt her argument, since you cannot apply current law to an old set of facts, to a concept which helps the argument, making "retention" the current factual dilemma to which current law must be applied. Titi's own book, *The Function of Equity in International Law*, shows how the timeless principle of equity plays a large role in international adjudication,[37] and the treaties which reference equitable considerations,[38] although in the cultural heritage treaties, "equity" was related only to procedure and geographical distribution of resources.[39] Her book demonstrates that equity has been instrumental in addressing unresolved issues in a manner which may gain acceptance and compliance among the parties.[40] The argument for ethics (or a 'moral duty'), as a type of natural justice, to be the driving factor necessitating the return of the Marbles has been championed more and more as attitudes in the twenty-first century have shifted, and the legal case seemingly overly complex, with the UK and Greece disagreeing on key facts. There is a growing sense that return "is the right thing to do," but Titi does not refer to equity in this manner, sticking instead to the strictly legal, natural law sense of the term, instead of interchangeably with ethics and morals. In a sense, this latter usage was the intended purpose of the proposed change to the Charities Act, as it would allow Trustees of museums established as charities and those governed by statute to deaccession works

36 *Ibid* 295. Relevant circumstances here include: 1) those surrounding the removal of the contested cultural property; 2) its context (historical, archaeological, etc.); 3) importance of the contested cultural property to the requesting State; 4) the passage of time; 5) the cultural heritage protection record of the requesting State; 6) its political context. *Ibid.*

37 Especially given the legal principle in arbitration of *ex aequeo et bono* ('from equity and conscience').

38 The book classifies treaties as but one source of equity, and can be found in customary international law, general principles of law, and general principles of international law. Catharine Titi, *The Function of Equity in International Law* (Oxford University Press 2021) 113–114.

39 *Ibid* 120.

40 *See generally ibid.*

from their collection which the Trustees feel "compelled by a moral obligation to make a transfer of charitable property,"[41] without authorization from the Charities Commission. However, this modification would only be applicable to low value items, and thus would almost certainly not apply to the Parthenon Marbles, which would still require Commission approval.

Titi shines when she analyzes whether Greece's claim could be brought to the International Court of Justice and the European Court of Human Rights, and its potential success. While at times her approach appears quite rote, her skill at clearly applying the law to the facts is valuable. Both Titi and Herman argue that the best approach to using the international system of dispute resolution would be to seek an advisory opinion from the ICJ, although both reject this as an ideal solution. Her extensive knowledge of ICJ jurisprudence and sources of international law is a welcome addition to cultural heritage scholarship which tends to focus more exclusively on jurisprudence that has a cultural heritage element, as opposed to general principles of international law which add depth to the argument.

There is much to be gained from reading Professor Titi's book, especially for those seeking to understand the possible dispute resolution mechanisms for ill-gotten cultural heritage, or simply to understand international dispute resolution and its various idiosyncrasies and challenges through the lense of one specific, if long-running, dispute. If one seeks a strictly legal, doctrinal approach, this would be sufficient. But there is even more to be gained by reading the book in conjunction with others like Herman's and even Patty Gerstenblith's recently published *Cultural Objects and Reparative Justice: A Legal and Historical Analysis*, which provides a case study of the Parthenon dispute along with other historical claims still at issue, like the Benin Bronzes. What Titi's book lacks in broader historical context, philosophical approaches, and behind-the-scenes narratives can be found in these other two recent books.

Although Titi touches upon it briefly, and it is implicit in her argument as to why the Marbles should be returned to Greece, in denouncing the "rescue narrative", she fails to elaborate upon what is so fundamentally important about placing all of the pieces of the Parthenon in one location, and at the Acropolis Museum, at the base of the rocky citadel in particular. She largely takes it for granted that the reader agrees that the Marbles should be returned to Greece, and rehearses the established retentionists' arguments. Contextualism, which emphasizes the original location of works of art and the importance of the understanding that derives from that context, is also fundamental to

41 Charities Act 2011, section 106.

the argument, as Gerstenblith explains. Citing authors like Byron, the French traveller the Vicomte de Chateaubriand, and the writings of the French critic of Napoleon, Antoine-Chrysostôme Quatremère de Quincy, Gerstenblith demonstrates concerns, both historic and contemporary, with treating art as a "transportable object or a possession"[42] and disconnecting it from the identity of the local people, the specifical architectural or natural site, and ignoring the connection between tangible and intangible cultural heritage. Indeed, the Parthenon Marbles were created for a specific building for the purpose of a specific cultural event (which both Titi alludes to and Herman details), and thus "lose the essence of their meaning, purpose, and cultural significance when they are removed and placed in isolation in a museum."[43] Even Herman, on visiting with Greek citizens to discuss the Parthenon, recounts the importance of ancient Greek history and heritage to contemporary Greek society.

Where Herman is leaner on the law, he excels in understanding the uniqueness of the British cultural sector, from its structure to its personalities. As such, he is able to pinpoint the specific challenges with this dispute, which often seem insurmountable when considering other similar cultural heritage disputes over the years which have since been resolved.[44] Professor Titi, using traditional international law analysis, characterizes the British Museum, a non-departmental public body as stated by the British Government, with the majority of the museum's trustees appointed by the executive, and the State providing the bulk of funding,[45] as formally part of the State, and not an "arms' length" institution.[46] This characterization is fundamental to Titi's argument as to the interstate nature of the dispute and why it needs to be resolved State to State. There is little doubt that this approach makes for a cleaner solution, one which cleaves the issues of trusteeship and internal Museum politics as one distraction too many, and allows for those in the executive to focus on the "real issue."

While Titi's analysis of the dispute is technically true from a legal standpoint, Herman argues that the very character of the British Museum as a *museum*, not

42 Patty Gerstenblith, *Cultural Objects and Reparative Justice: A Legal and Historical Analysis* (Oxford University Press 2023) 84.

43 *Ibid* 85.

44 *See e.g.* The Temple of Prea Vihear (*Cambodia v. Thailand*) (Preliminary Objections) [1961] ICJ.

45 *But* note British Petrolum's large, longstanding sponsorship of the Museum, which was only ended in June 2023 after public protests. Esther Addley, "British Museum Ends BP Sponsorship Deal After 27 Years", The Guardian (2 June 2023), https://www.theguardian.com/culture/2023/jun/02/british-museum-ends-bp-sponsorship-deal-after-27-years.

46 Titi (n 1) 228–229.

simply a bureaucratic organ of the State, is relevant to the discussion, as is the differing approach to culture between the two States. As Herman argues, "[c]ulture in Britain has traditionally been a matter in which government should play a very limited role, while in Greece it is quite the opposite. In Britain, the matter should be museum-to-museum; in Greece it is state-to-state. In Britain, the sculptures are pieces in a museum collection; in Greece they are symbols of national identity."[47] It is this "institutional disconnect" that Herman argues is stymying discussion. Museums are well-versed in moving their collections among each other, whether for loans or joint exhibitions, and between the curators and registrars, knowledge of the material and documentation allows for creative solutions. Herman presents an interesting exchange with Dr. Ian Jenkins, the long-time senior curator in the British Museum's Greek and Roman Department and British expert on the Marbles. Dr. Jenkins explained that the Museum has "made considerable loans to Greek institutions, including to the Acropolis Museum", but that the Greek museums refuse to lend to the British Museum, "almost certainly for political reasons."[48] As Herman explains, "the Greek refusal and the British Museum's self-imposed embargo are highly unusual without the larger context of the global lending network."[49] These loans are themselves evidence of State practice and diplomacy, especially as national museums imputed to their States. Comments over the years from politicians have shown the limitations of their knowledge of the subject matter itself, which unfortunately results in a limited policy. Additionally, as Herman notes, governments come and go, as does their willingness to resolve the dispute, another disadvantage of the State-centric approach. That being said, ever since the crusade of former Greek Culture Minister Melina Mercouri in the 1980s for the return of the Marbles, the issue has remained the number one priority of all subsequent Greek Culture Ministers. Concurrently, it is challenging to find any statement from a British Culture Minister in support of their return, so the policy has not exactly changed with the various administrations. It remains to be seen whether the current politicians, Greek Prime Minister Mitsotakis and former Chancellor of the Exchequer and Chair of the British Museum, George Osborne, having recently claimed "there is a deal to be done," will undermine or meaningfully support the discussions given their fundamentally opposing perspectives.

47 Herman (n 2) 124–125.
48 *Ibid* 141.
49 *Ibid.*

The Parthenon Marbles and International Law is a work deserving of attention for its sober and comprehensive analysis of the Greek claim for the return of the Parthenon Marbles to Greece. Professor Titi demonstrates the irrationality and problems in logic with many of the arguments for retaining the Marbles in the British Museum. Whether or not a customary international law for mandating the return of all unlawfully removed cultural heritage has actually developed, she has presented a strong case for their return, and assessed the best legal avenues to do so. However, it seems clear that equity and politics will have a greater chance in successfully returning the Marbles to Greece than a legal argument. In reading other recent books on this topic, one gets a full picture of the unique challenges and complexities of the dispute, from the structure of national museums in the UK to the political personalities in both countries. It is clear that this dispute is ripe for solution, and there is cause for optimism that the time is now, when there is a broad discussion of the return of cultural heritage objects and an appetite for creative solutions.