Archeological ethics and cultural property: the debate of conservationist vs. repatriationist and perceptivity from philosophical perspectives

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Abstract

Throughout the course of human civilizations, archaeology is considered as a tool that can be manipulated to achieve certain kind of objectives. For centuries, people struggle for the rights of possession of certain artifacts with significant meanings to their collectivity. One of the main aspects of the debate in archaeology is ethics, and how it plays a big role in mapping out a state of difficulty that needs to be resolved. This thesis deals with the issues of cultural property rights, and evaluating some moral stands behind the argument, by looking at Lord’s Elgin marbles case as a starting point. Could the marbles be considered as stolen properties bought from Lord Elgin? Is repatriation indispensable? Do the Ottomans Empires and Lord Elgin have the right to dispose and bring home the marbles, respectively, at the first place? These questions would be analyze through both conservationist and “repatriationist” perspectives, Robert Nozick’s philosophical perspectives on cultural property rights and the cosmopolitanism’s views on dealing with antiquities and artifacts restitution. Despite the fact that cultural property rights issues can be a delicate matter, it is important to show that there is still hope for an overlapping consensus among conservationist and pro-restitution group.
Chapter 1: General Introduction

1.1 Ethics and Archeology

Archeology has an ability to yield its own impact towards certain communities; either it’s a negative or a positive one. Throughout the course of human civilizations, archaeology is considered as a tool that can be manipulated to achieve certain kind of objectives. It may be used to justify nationalistic aggression and ethnic or racial discrimination, to disfranchise people and damage their sense of cultural identity. It can also lead us back to our conscientiousness; promote environmental conservation and increases people’s awareness of place, history and continuity with their ancestors.\(^1\) Archaeology itself, through excavation process for instance, can be a hazardous yet effective way to learn and preserve past cultures. As the societies are now becoming more critical towards the field of archaeology, it also heightened the awareness of the potential for harm. Some archaeologist\(^2\) did their research in a good spirit, but has often done a poor job communicating the results of their research to the public that pays for it, and for instance, to the people whose ancestral remains are being excavated.\(^3\) Thus, it is not surprising that ethical issues have become more prominent in archaeology.

In this first chapter my concern is to touch upon the definition and the meanings of ethics, and the importance of studying it via archaeological perspectives.\(^4\) But first, before dealing with the ethics of archaeology, I would like to explain the definition of ethics. Ethics, or moral philosophy, according to Routledge Encyclopedia of Philosophy can be divided into four definitions.\(^5\) The first one is “the systems of value and custom instantiated in the lives of particular groups of human beings are described as the ethics of the particular groups”. Secondly, ethics is described “to refer to one in particular of these systems, ‘morality’, which involves notions such as’ rightness and wrongness, guilt

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\(^1\) Wilk & Pyburn, 1998, pp.198
\(^2\) The definition of archaeology will be touched upon later in this essay.
\(^3\) Wilk & Pyburn, 1998, pp.198
\(^4\) The ethics of archaeology is relatively new compared to other field of ethics. Thus, the intro serves the purpose of explaining ethics and archaeology. It is my intention to make this chapter to be more descriptive, by touching upon different perspectives (such as politics and ethnocentrism) and its link with archaeology. See subchapter 1.4 and 1.5.
and shame, and so on”, thirdly, it can refer to “actual moral principles” and lastly, ethics itself “concerned with the study of ethics in its other senses” (for example the ethics of biomedicine, or archeology itself), and rely much on other subdivision of philosophy, for instance the questions of metaphysical and empirical philosophy. In ethics, the questions linger around what you should do, rather than what you actually do, or members of the society generally typically do. Thus ethics itself is intended to articulate “a set of ideals” in order to evaluate existing practices, as well as in making decisions about how to go on when conflict arise or conventions are problematic.

In the seventeenth and eighteenth century, antiquarians were motivated to explore mounds, barrows, and other archaeological features by curiosity and the hope of finding treasures. Very little useful information beyond the recovery of material culture resulted from these excavations. Gradually, the more observant and thoughtful antiquarians began to realize that the archaeological record, if carefully studied, could yield important information about the past.6 This recognition that the archeological record is an important source of information about the human past probably represents the earliest stage of scientific archaeology and is reflected in the first careful systematic surveys and excavations.

Since archaeology nowadays is considered as multidisciplinary studies, ones must first look into the development of the study field, in order to understand the underlying ethical issues. The earliest archaeological ethics dealt with issues of site preservation, scientific study, and proper reporting of research results.7 It is unclear when archaeology first became a profession, but the earliest attention to what might be called ethics can be seen in the late nineteen-century concern over unscientific excavation of sites. Prior to this, excavation of archaeological sites was aimed primarily at the recovery of artifacts for personal use or for sale to museums or art collectors. This is particularly well illustrated in the first decades of the nineteenth century when many important archaeological monuments and artifacts were removed from sites and shipped to museums in Europe. The unscientific recovery of artifacts and architectural elements from important sites can be seen in the work of Giovanni Battista Belzoni, who became

6 Bahn, 1996, pp.12; Marsden, 1974, pp.55-65
7 Lynott, 2003, pp.25
well known for plundering the tombs and architecture of ancient Egypt\(^8\) and in the removal of portions of the Parthenon from the Acropolis at Athens, Greece by Lord Elgin, the British Ambassador to Turkey\(^9\) (This case will be analyzed further in this thesis.) Although many very important archeological objects excavated during this period have been preserved in museums and have become important icons of the archeological record, the debate about ownserships of these items started in the nineteenth century and is ongoing today. Consequently, the first debate about archaeological ethics swirled around the unscientific excavations of sites to recover artifacts for museums or collectors.

### 1.2 The ‘archeology’ of archeology: brief history on cultural property

The second part of this introduction is more descriptive, in which I will try to show that archaeology has been, and is still being used as a means to achieve certain objectives in the present day, such as glory and domination. I will explain briefly about the history and some issues concerning cultural property in archeology, using few examples. The earliest activity of archaeology has been developed since thousands of years ago, as human beings become interested in defining their characteristics. In the previous century, ancient Greek word *arkhaiologia* meant simply “a discourse about ancient things”, while today’s term “archaeology” indirectly suggest the study of artifacts and structural remains.\(^{10}\) Although the exact beginnings of archaeological exploration are unknown, the earliest examples of such activity appear to have been motivated by a desire for imperial legitimacy. Historical records from the sixth century BC indicate that the Babylonian king Nabonidus unearthed and subsequently restored the remains of a temple built nearly 2,000 years prior to his own reign. Inscriptions within the temple reveal that Nabonidus hoped to emphasize his noble lineage and in turn, garner increased support and respect for his own religious policies.\(^{11}\) The restored temple, as a concrete symbol of the past, would have undoubtedly reminded the early Babylonians of their prestigious history while also serving as a tribute to the strength and ability of their present ruler. Like many

\(^{8}\) Bahn, 1996, pp.48  
\(^{9}\) Greenfield, 1989, p.5-9  
\(^{10}\) Renfrew & Bahn, 2004, pp. 13  
\(^{11}\) Renfrew & Bahn, 2004, pp.22
of his early archaeological successors, Nabonidus also coveted the treasures and artifacts found during his excavations. Ancient accounts reveal that he prominently displayed these relics within the royal palace.\textsuperscript{12}

The exact role of archaeology within much of the ancient and medieval period continues to be a mystery to modern researchers. Although textual evidence seems to indicate an omnipresent interest in the past, few early sources indicate the presence of (or desire for) deliberate archaeological investigation. Thus, though the value and significance of ancient artifacts is evident, it appears that such remains most often were discovered randomly, or in the process of building an unrelated structure. In the second century BC, however, the Greek geographer and historian Pausanias became one of the first to link archaeological remains with known historical events. In his book \textit{Hellados Periegesis}, Pausanias describes a number of monuments in Greece, including several ruined temples. Having discussed the nature of these remains, he associates their destruction with the Persian invasion in the fifth century B.C.\textsuperscript{13} As Schnapp, director of the \textit{Institut National d'Histoire de l'Ar}, writes, Pausanias’ book, which “established a connection between tradition and material objects,” was distinguished by “its effort to interpret [and] the desire to put at a distance and explain.”\textsuperscript{14}

In later years, archaeological investigations became closely associated with the spread of Christianity. As priests and leaders entered new territory, they often “sought to learn the history of these lands, [in order to] better insinuate themselves into accepted tradition.”\textsuperscript{15} Thus, in the attempt to examine, evaluate, and incorporate regional beliefs, early Christian figures carefully studied the pagan remains of classical antiquity. By the eighth century CE, however, interest in the literature, architecture, and art of earlier civilizations spawned great public desire for decorative physical remains.

Medieval texts indicate that even the emperor Charlemagne, the king of the Franks from 768 to 814, requested permission to “excavate in Rome and to extract ‘marbles and columns’ to adorn Aix-la-Chapelle and Saint-Riquier.”\textsuperscript{16} Although the church officially discouraged the examination of pagan artifacts, the lure of beautiful

\textsuperscript{12} Ibid.
\textsuperscript{13} Bahn, 1996, p.59
\textsuperscript{14} Schnapp, 1993, pp.47-48
\textsuperscript{15} Ibid, pp.89
\textsuperscript{16} Ibid, pp.92
remains and valuable treasure continued to inspire archaeological examination throughout the Middle Ages.

1.3 Who is an “archaeologist”? 

The question is supposed to means, who is the real “archaeologist”? While there are many debates on the definition and the profession itself, it remains unclear. Despite the ongoing debate on clarification on the definition, Wildesen divides archaeologist into two separate groups, archaeologist as members of a peer group (the “guild”), and those who may lay some claim to being archaeologist but who are not accepted by the peer group. Therefore the answer seeks to distinguish between “archaeologist” and members of any of the following categories: amateur archaeologist, avocational; archaeologist, interested laymen, journalists, pot hunter, relic collectors, vandals, dealers, grave robbers, local “historians”, adventurers, and even movie stars. By implication, the question “Who is an archaeologist?” includes the question, “how can you tell?”

In the early days, the definition of archaeologist is much simpler: an archaeologist was one who did archaeology. And ‘doing archaeology’ was also defined simply: it consisted of finding exotic artifacts, bringing them home to put on display, and writing a book on one’s adventures. The “real” archaeologists of the past, like Lord Elgin and Belzoni, were being honored as an academicians and scientists and the discoverer of the “lost” cultures and civilizations during their time, but it would be otherwise nowadays, as they are considered as remarkable amateurs, and to some extend, grave robbers and thieves. Clearly, the answer to the question varies through time, with intellectual fashion and other factors.

According to Green, who explores the issues of ethics in archaeology, the key factor is the extent of formal education and training, for one to be qualified to call as an ‘archeologist’. None of the early archeologist mentioned above ever participated in graduate seminar on method and theory in archaeology, or took a summer field school. Thus none of them ever learned the ‘right’ way to do field archeology or to interpret their

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17 Wildesen, 1979, quoted in Green, 1984. p. 5
18 Ibid., p.5
findings. In fact, all of them did something other than archaeology for a living, and none of them were academicians.

There were, what we can considered nowadays as partly unacceptable, the “self-proclaimed” trend in the nineteenth century, where most of the ‘scientist’ were likely not the expert of the field. For example, in the premier issue of Science (July 3, 1880), was listed “well known and esteemed scientist” who supported the new publishing venture. Of these, only four were cited as “Dr.”, and it is likely that most of them were doctors of medicine rather than physics, chemistry, geology, or other “sciences”.19 The answers to the question of “who is an ___?” were largely self-centered. Mr. X was archaeologist because he said so; Mr. Y and Mr. Z were landscape architects for the same reason. Most of the 19th-century scholars whom we revere today were simply considered important thinkers in their time, not specialist in a particular discipline or practitioners of a specific method. Without benefit of the formal training, supervised experience, or professional organizations, these self-proclaimed scholars were basically in this category.

Nowadays, there are ways to distinguish legitimate from the illegitimate practitioner in archaeology and nearly every other related discipline. Clearly, level and type of formal education played an important role in this process. Concurrently, some disciplines has developed codes of professional standards, including state licensing programs monitored by professional societies whose members met the standards and held state license. But looters themselves, in some way did contribute to the development of the field, by exploring new archeological sites, although undeniably using a wrong method of excavations. This is one ethical question that I would like to explore in my thesis.

1.4 The political context in archaeology

The aim of this sub-chapter is to show that politics plays extensive, sometime excessive roles in the field of archeology. Archaeology is, to say at least, has a connection with politics. In last decade, there were so many cases that implicate the influence political interest has towards archeological research, despite of denial from the

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19 Green, 1984. p. 6
practitioners and the urge to keep the field as neutral as possible. It is not that archaeology ever was an exploration or discovery of the remains of the past free from political influence, though some would hold that it was and still can be. But it is distinctively the case, as there has emerged since the 1970s a significant, explicit and new acknowledgement of the political dimensions of archaeological work.

It is clear that archaeology and anthropology are central to the cultural development of the advanced capitalist nation states of the nineteenth century. Political revolution (Britain in the seventeenth century, France and the United States at the end of the eighteenth) and its threat accompanied the forging of a new form of political unity through the industrial nation state\(^{20}\). A crucial factor in ideas of national identity was the imperialist and colonial experience of travel and other cultures\(^{21}\). Archaeology provided material evidence of folk roots of the new state polities. This has been one of the main cultural successes of archaeology – to provide the new nation states of the eighteenth and nineteenth centuries with histories and origin stories rooted in the material remains of the past\(^{22}\). Myths of ancestries were articulated in new national narratives, stories of belonging and common community. Both archaeology and anthropology provided specific symbols and evidences used to create exclusive and homogeneous conceptions of identity rooted in national traditions, conceptions of race, ethnicity and language. Moreover archaeology provided an extraordinary immediacy apparently accessible without academic training – finds which could be displayed to speak for themselves in the new museums, the cultural treasure houses of imperial power. Many archaeologists around the world continue to perform this role of providing material correlates for stories and myths of identity and belonging.\(^{23}\)

Conceptions of modern identity are still dependent upon the idea of the nation state and upon the formation of nation states in the nineteenth century. But recently history seems to reveal its instability. They often have no obvious cultural justification in geography, history, race, or ethnicity. Nation states, as Anderson said, are social

\(^{20}\) Hobsbawm, 1990, pp.101-130  
\(^{21}\) Pratt, 1992, pp.72  
\(^{22}\) Diaz-Andreu & Champion, 1996, pp. 80  
\(^{23}\) Bahn, 1996. p. 7
constructions.\textsuperscript{24} Growing out of the demise of old empires, nation states have frequently been connected with enlightenment notions of human rights and rational government (democracy and representation), relying on these to unify people around a common story of their national identity. Such unified history and culture have always failed to cope with diversity. The distinction between nation and nation state has frequently collapsed into contention, with ideas of self determination and freedom, identity and unity colliding with the suppression of diversity, and relying on domination and exclusion that override a genuine egalitarian pluralism. This is a modern or modernist tension between enlightenment ideas of popular will and sovereignty, universal human rights and locally circumscribed nation states, each independent of similar polities on the basis of cultural identity and history.

But with international capital, global telecommunications and world military order, the nation state continues to be a major structural feature of this postmodern scene. It remains a major focus of regional cultural identity. The postcolonial state is heavily and ironically dependent upon notions of the state and nation developed in Europe, and so too it is dependent upon the same sorts of ideological constructions of national identity developed through history, archaeology and anthropology.\textsuperscript{25} Hence a key tension or contradiction in globalization is between the fluid free markets between nations, epitomized or exemplified in multinational and corporate capital and based upon “ideologies of the free individual operating beyond boundaries of any individual polity, and ideologies of difference, ideologies of local identity”.\textsuperscript{26} Here the nation, nation state and nationalism remain potent.

And here archaeology remains a vital cultural factor, in the context too of ideas of heritage. The issue here is how local communities see globalization, and the process of interaction between local and global culture “is a feature of modernity since at least the nineteenth-century.” It is not simply a one-way process of influence, control, dissemination and hegemony, with an American western homogenized culture taking over and supplanting local identity.\textsuperscript{27} It is not just top down dominance, but a complex

\textsuperscript{24} Anderson, 1991, pp. 20
\textsuperscript{25} Hobsbawm and Ranger, 1993, pp. 64
\textsuperscript{26} Shanks, 1999 p. 9
\textsuperscript{27} Ibid. p.10
interplay of hegemony, domination and empowerment.\textsuperscript{28} The key question or issue is the way external and internal forces interact to produce, reproduce and disseminate global culture within local communities.

Here then is a broad context for some of those issues on the archaeological agenda already illustrated. There is the part archaeology plays in the construction of national and cultural identities\textsuperscript{29}. A key is an encounter with materiality and regional focus, the ruins of a local past, setting the homogenization of processes like nationalism, colonization and imperialism against the peculiarities of history and geography. This is about the relation between local pasts and those global methods, frameworks and master narratives which “may suppress under a disciplinary and cultural uniformity the rich pluralism and multicultural tapestry of peoples and histories.”\textsuperscript{30} So what is now termed ‘world archaeology’, implies questions of whether genuine local pasts, implicit in local and distinct identities, are possible.

1.5 The exploitation and misinformation of Archaeology

In this part, I will elaborate more on the politics of archaeology and some exploitation and misinformation that surround it. Archaeology, as a field of study has long been plagued by instances of error, prejudiced interpretation, and manipulation. Influenced by notions of ethnic and national superiority, archaeologists and researchers have employed cultural property as evidence of historical entitlement and native inferiority. Even in the modern era, technological advances and increased cultural sensitivity do not alleviate such concerns. Today, questions of religious primacy and territorial boundaries often are tied closely to archaeological research. Drawing upon the powers associated with cultural remains, archaeologists and their sponsors have furthered political and social agendas at the expense of native inhabitants.

\textsuperscript{28} Hobsbawn and Ranger, 1993 pp.69
\textsuperscript{29} Rowlands, 1997, p. 130
\textsuperscript{30} Ibid, p. 137
1.5.1 Nationalism

Nationalistic aims have traditionally been a notable source of archaeological manipulation and fallacy. Because ancient remains indicated the lifestyle, character, and abilities of a certain people, nations have been eager to capitalize upon evidence that points to a unique and powerful state heritage. Although archaeological finds may indeed reinforce a justified and positive view of the nation in question, the link between nationalism and archaeological abuse is evident. As Philip L. Kohl and Clare Fawcett note in their article “Archaeology in the Service of the State: Theoretical Considerations,” rising totalitarian regimes often bolster their claims with the use of archaeological evidence. In their words, “National awakening […] is associated with political movements which were directed towards the construction of independent nation states or for more autonomy within such states. Throughout most of the world, archaeology has played and continues to play a critical role in the creation of national identities essential to these projects.”

Following in this tradition, archaeological fallacies in Nazi Germany serve as the most comprehensive example of overtly nationalistic archaeology. Hoping to prove the historical superiority of the Aryan race, Hitler ordered several prominent archaeologists and pre-historians to conduct state-sponsored research throughout Europe. Their primary mission—to find ancient support for Nazi ideals—led to blatant archaeological fiction. The researchers involved based their reports upon the flimsiest of archaeological evidence and often attributed accomplishments and remains of other ancient cultures to their own German ancestors. Moreover, as their armies conquered the countries surrounding Germany, Nazi archaeologists “took over […] and reorganized the collections [of these conquered nations] to reflect their own ideology.”

In more recent years, archaeological research has served as a basis for nationalism in the war-torn Balkan states. In the former Yugoslavia, state archaeologists excavate in hopes of finding symbols of historic accomplishment as well as evidence of ancient boundaries. Because recent events in the region have greatly upset previous notions of

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31 Kohl & Fawcett, 1995, p.4
political organization and social order, cultural evidence and remains offer a common, unifying platform upon which to create modern states. Unfortunately, however, the modern quest for national symbols still leads to archaeological manipulation and exploitation. In Croatia, for example, selective images of the past are employed routinely in the ongoing campaign for statehood. As Timothy Kaiser explains in an examination of the phenomenon, even Croatia’s currency is designed to imply an extended and successful existence within the region. By decorating their money with images of famous Croatian figures and known historical sites, the Croatian government is able to reinforce a sense of prolonged national identity in a particular, highly disputed geographic area.\(^{33}\) Moreover, by piecing together archaeological remains, Croatia and other Balkan states have come to view “contested parts of [the region] as having once been ethnically unmixed.”\(^{34}\) This conclusion—though based upon a very selective evaluation of history and archaeological remains—fuels Croatian nationalism and provides impetus for further nationalistic disputes.

1.5.2 Ethnocentrism

Closely related to nationalism, ethnocentrism has also inspired archaeological manipulation. Rooted in the ancient concept of “us versus them,” ethnocentrism involves an esteemed view of one’s own background and a derogatory perception of outside races, cultures, and traditions. With this in mind, archaeological findings have been used to support claims of both ethnic superiority and racial inferiority. Likewise, from an evolutionary standpoint, ethnocentric archaeology has also presented biased “evidence” regarding the sophistication of dominant cultures and the barbarism of minority groups. In turn, this distinction has provided certain cultures with an erroneous justification for conquest and violence.\(^{35}\)

In the early years of expansionism and manifest destiny, ethnocentric archaeology allowed government figures to assess “the state in cultural evolution reached by particular

\(^{33}\) Kaiser, 1995. pp.105
\(^{34}\) Ibid., pp. 109
\(^{35}\) Kehoe & Emmerichs, 1999. p.6
societies coming under the jurisdiction of the United States.” In many cases, archaeological researchers—downplaying the physical, social, and cultural achievements of the indigenous Native Americans—contributed to the belittling, ethnocentric views at the heart of violent and inequitable government policies. “The Myth of the Moundbuilders” is a prime example of this phenomenon. As European and American explorers headed west, they came upon a number of massive structures. Today these earthen mounds, in some instances over 1,000 feet in length, are rightfully attributed to various Native American tribes. At the time of their initial discovery, however, nineteenth-century American archaeologists did not entertain this possibility. Paul Bahn explains their reasoning as follows: If Indians were savages; their ancestors would not have had the necessary engineering skills. If such skills were conceded, the moral and intellectual superiority that European settlers took to be their justification for seizing Native American land would be manifestly undermined.

Thus, rather than acknowledging the abilities of the local Native American population, ethnocentric archaeologists and researchers propagated the so-called “Myth of the Moundbuilders.” In turn, they credited the design and construction of the mounds to “virtually anyone (lost tribes of Israel, Phoenicians, etc.) except the ancestors of living Native Americans, who were seen as too barbaric to have created such works.”

Together, nationalistic platforms and ethnocentric prejudices have allowed archaeological findings to serve as a distorted record of historical events. In the past, such transgressions have led to the promotion of damaging social beliefs and stereotypes. By erroneously laying claim to the physical remains of other societies, dominant states have stripped less powerful nations of their histories and, at the same time, deprived certain ethnic groups of evidence regarding their earlier accomplishments. In many cases, archaeologists have played a key role in this manipulation. Through inaccurate excavation techniques, misinterpretation, and selective publication, the personal views and beliefs of individual researchers have adversely affected large portions of society. Moreover, by tainting the validity of archaeological scholarship, previous excavators

37 Refrew & Bahn, 2004. pp.30-32
have forced modern archaeologists to confront numerous ethical burdens as well as indigenous hostility and distrust.

1.6 Aims and analytical questions

In this thesis, I would like to answer some ethical questions on the fields of archaeological ethics. Although the study of ethics in archaeology is relatively new compared to the other components of archeology itself, it has been debated since 1950’s, and in America alone there are currently more than 3 codes of ethics for American archaeologist39. My thesis will only focus on the aspect of cultural property rights and evaluating some moral stands behind the argument of cultural property rights. Some of the main questions that will be included/discussed in this essay deals with the issues of who actually owns the past. Is it the government, the people, the antiquities dealers, or the academician? To answer these questions, I would use Lord’s Elgin marbles case as a starting point, and try to analyze the issue first from the conservationist and “repatriationist”, which I defined as a group of people who demand the act of returning a cultural property to the country or place of origin perspectives. Few questions will be analyzed in this thesis. First, whether the marbles can be considered as stolen properties bought from Lord Elgin. Secondly, if the act of acquisition and its legality is doubtful, should the artifacts be returned back to the previous owner? Thirdly, I will try to analyze the rights of Ottoman Empires (as Greek occupier at that time) and Lord Elgin on disposing and bringing it back to England, respectively. From these three questions, I will deliberately discuss the issues from a cultural property rights perspective and the philosophical perspectives on property rights, which include Robert Nozick and John Locke’s view on property rights, and cosmopolitanism’s views on dealing with antiquities and artifacts restitution. Towards the end of this essay, I would like to highlight Kwame Appiah’s view on cultural property as an approach of conformity and later do some the ethical reflections of cultural property rights.

39 Lynott and Wylie, 2000, pp. 8-10
Chapter 2: Cultural property and the case of Elgin Marbles

This chapter deals with the current debate between the need for preservation, and the act of sending back the artifact to one's country of origin on the other hand. The long struggle of getting back artifact from one country, which is usually was a colonial masters, created a big wave of academic discourse, concerning law, culture and issues of morality. Despite all the solutions given so far, there are still reasons why both conservationist and “repatriationist” have not come into consent, on how to solve this problem. The classic example of the cultural property debate is the case of Lord Elgin’s marbles. I will use this case as a prime case to delve more into the topic of cultural property debate.

2.1 Lord Elgin’s Marbles: the case

"Every traveler coming added to the general defacement of the statuary in his reach: there are now in London pieces broken off within our day. And the Turks have been continually defacing the heads...It was upon these suggestions and with these feelings, that I proceeded to remove as much of the sculpture as I conveniently could; it was no part of my original plan to bring away anything but my models." (Lord Elgin).

The debate on Elgin’s marbles is one of the most interesting conflicts of cultural trade in the field of archaeology and international antiquities movement. When Lord Elgin took pieces of sculpture from the Athen’s Parthenon in 1801, he probably did not aware of the consequences of his act 200 years later. During that time, Greece was under the occupation of Ottoman Empires. It was the Turks, not the Greeks, who he had sought the permission to examine and study the artifacts, and later on remove the carvings and shipped it back to England. After the French surrendered Cairo to the British, the Ottoman government gave Lord Elgin a ‘firman’ (a Turkish administrative written instrument), ‘giving his crew the right to enter the Acropolis without hindrance or bribes and to erect scaffolding, draw, make molds, remove obstructions, excavate and to take
away anything of interest’. But he thinks that it is far more effective to ship it back to England, rather than just draw and make mould of it. Part of his argument was it is not just necessary to preserve it, but had they not taken it back, someone else would have done it anyway. For him, his act was clear, to save the marbles and the sculptures from further destruction, as more travelers were interested to have it as a souvenirs. Due to the financial difficulties Lord Elgin decided to sell the marbles to the British Government for a cost of 75,000 pounds, but he was paid 35,000 pounds instead. The acquisition of the marbles, by the government from Lord Elgin was done after a series of debate in House of Commons, and the marbles later on were placed in the British Museum, which can be seen nowadays. Some scholars argue whether the firman has ever existed, if it is not, then can we consider the marbles is stolen properties bought from Lord Elgin? This is partly one of the ethical questions that I would like to answer in this thesis, and I will elaborate more on this under the philosophical argument of cultural property rights in chapter 3.

2.2 The question of acquisition from legal perspectives

Since the most applicable law that can be applied in this case is the current law (we do not have the access to the law at the time of removal), there are two important issues from this case on the legitimacy of the acquisition of the marbles. Two fundamental questions can be posed:

a) whether the Ottomans government, occupier of Greece at that time, had the authority to dispose the marbles;

b) whether Lord Elgin was really authorized to remove the marbles and ship them back to England.

O’Connell (1956) mentioned that the Ottomans “had a solid claim to legal authority over the Pathenon because it was a public property, which the successor nation

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42 I will try to answer this question from a Nozickian perspectives on cultural property rights, in Chapter 3.
acquires on a charge of sovereignty”. However, according the Hague Convention, countries “in occupation of the whole or part of the territory of another (state)...shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.” Furthermore, it provides that the countries must also “undertake to prohibit, prevent and if necessary put a stop to...any acts of vandalism directed against cultural property”, and “the export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit.” Based on this argument, I will show that from the repatriationist view, the acquisition is illegitimate, and thus the marbles should be returned back to Greece. I will elaborate more on this in chapter 3.

The firman, given to Lord Elgin by the rulers of Ottomans Empire had never mentioned anything about the removal of the marbles, instead it gives permission to Lord Elgin and his workers to:

- a) to enter freely within the walls of the Citadel, and to draw and model with plaster the Ancient Temples there,
- b) to erect scaffolding and to dig where they (Elgin's working team) may wish to discover the ancient foundations,
- c) liberty to take away any sculptures or inscriptions which do not interfere with the works or walls of the Citadel.

Furthermore, Lord Elgin used his special position as British ambassador, as well as bribery, in order to obtain those marbles. Is he allowed to use his power and his resources (e.g.: money, the knowledge of art) to acquire those marbles, which he later claimed that it will be beneficial to the British and the advancement of art in the world, rather than to his own profit? To some, yes. The deepest effect of his sculptures is not mainly in the discipline of arts, but in the field of architecture. St. Clair, one of the

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44 The Hague Convention, 1954. Although the Hague convention was formulated after the Ottoman occupation, Irini argues that “the general principles found in it, which the Convention codified, create legal obligations because of the long-standing tradition of the States, which were also applicable to the situations before the Convention came into force”. See Irini, 1997 p.5
45 Ibid. p.6
46 Hunt & Smith, 1916, pp.35. There is no statement that grants Elgin to ship back the Marbles to England.
persuasive proponent of repatriation said, the rise of neoclassical design is partly influenced by these marbles, especially on the design of pediments, pillars, and decorative friezes, not just in Britain, but North America and all around the world in general.\textsuperscript{47} Beside, given the fact that he was close to bankruptcy and having huge financial debt until he died in 1841, he seemed to profit less from the marble.\textsuperscript{48} But given the claimed that he actually using bribes and the corruption of the Turkish employees to obtain those marbles, there come another question whether this act is permissible, in order to get hold of cultural property or artifact. John Boardman, an Emeritus Professor of Classical Archaeology and Art at Oxford University, said that “‘Bribery’ by Elgin can be dismissed as normal practice in Turkey and Turkish-occupied Greece of those years, just as it remains common practice in many places today (and not just the Third World), even with public money and with official sanction.”\textsuperscript{49} To advance our theory of human civilization’s knowledge, are we allowed to use whatever means (including bribery) to achieve our ends? Hence, does it still make the acquisition morally justifiable? Before we explore that, let us first reflect on the cultural property itself – the definition, and the struggle of two groups, conservationist and repatriationist.

2.3 On cultural property

“Property” (as a thing owned) is define in Cambridge Advanced Learner's Dictionary as 1) an object or objects that belong to someone; 2) a building or area of land, or both together; and 3) the legal right to own and use something. The adjective “cultural” refers to the name of the object concerned. “Cultural property” may be defined as objects that are an “expression and testimony of human creativity” and are “of archaeological, historical, scientific, or technical value or interest.”\textsuperscript{50}

\textsuperscript{47} St. Clair, p.260  
\textsuperscript{48} Lord Elgin thought that by selling his marbles to the British Museum, despite of being an owner or the collector of it, he could be at least an arts patron, although the price offered by British Museum was far below from what he expected. It is part of the agreement that the marbles bear his name. See Atwood, 2004, pp. 136-138.  
\textsuperscript{49} Boardman, 2000. pp.233  
Thompson defined cultural property as simple as “the property of collectivity”, before elaborating more as stated below 51:

Something is the cultural property of a collectivity if and only if a) it was legitimately acquired by the collective or its members — that is, not taken without consent or justification from others — or possession of it has been made legitimate by changes in circumstances; b) the item plays an important role in the religious, cultural or political life of people of the collectivity by functioning as a symbol of collective ideals, a source of identity for its members, as a ceremonial object, a focus of historical meaning, an expression of their achievements, or as a link with founders or ancestors. 52

Given those definitions, what is the role of cultural property in our society? Nowadays, issues of diversity and heritage have become important to contemporary notions of ethnic and national identity. Artifacts act as a medium where these identities are resemble, shaped, and identified by others. Because material artifacts reveal so much about their creators, “tangible cultural property manifests the cultural identity of a nation or a group disproportionate to other economic resources. The identity of these objects, even when separated from ownership, manifests the group’s history and tradition” 53.

The ownership of cultural property, in this sense, is tied in an implied manner to the control of both a nation’s “personal identity” and its external image. The possession of cultural property creates “a level playing field among powerful nations and weaker nations or minorities within nations” 54. In as much as social and ethnic groups have the ability to mold their respective identities, their cultural practices and lifestyles remain vibrant and secure. From another point of view, the loss of cultural property indicates a loss of autonomy and a dependency upon others for a basic notion of cultural identity. As pieces of cultural property fall into the hands of outside nations, collectors, and scholars, the practices, traditions, and beliefs of indigenous peoples fall pray to external exhibition,

51 I will later use this definition as a starting point for the cosmopolitan arguments against repatriationist.
52 Thompson, 2003 pp. 252
53 Barkan, 2002, pp. 175
54 Ibid., pp. 177
interpretation, and evaluation\textsuperscript{55}. In turn, “to the extant that the depiction is misleading, tears can appear in the fabric of a group’s cultural identity”\textsuperscript{56} Hence, for repatriationist, it is an obligatory for the artifacts to be returned back to their rightful owner.

2.4 Conservationist vs. repatriation: A struggle between borders

In any archeological excavations, any attempt to interpret the past is based on certain hypothesis. The only strong objective data are the physical features of the artifact, and the location where it was found. Despite of its objectivity, the location of an artifact or group of relics is the most vital source of controversy. Since majority of early archaeologists excavated in foreign lands, they made the unsurprising decision to transfer valuable and interesting finds to their countries of origin. It later becomes a commodity or a token of knowledge, given to museums, private collectors and academic institutions. In more recent years, numerous ethnic and social groups have approached museums and collectors regarding the return of cultural objects. Proponents of this process, known officially as repatriation, justify their requests in a number of ways. There are there common arguments by the repatriationist. First, in their eyes, foreign museums lack “interest and accountability…in providing accurate and appropriate representations” of sensitive cultural objects\textsuperscript{57}. Secondly, supporters of such claims also rely upon the concept of “aesthetic integrity”—or in other words, the notion that the removal of artifacts severely lessens the scholarly, artistic, and cultural benefits gained in their original setting\textsuperscript{58}. And third, most importantly, proponents of repatriation rely upon the belief that these remnants of cultural property were obtained in an unethical, if not illegal, manner.

Although many archaeologists and museum officials are sympathetic to such claims, they are reluctant to relinquish control and ownership of valuable, informative pieces. In response to repatriation requests, opponents point to three major counter-arguments: the “rescue argument,” the “scholarly access argument,” and “the humanity

\textsuperscript{55} Thompson, 2003. pp.255
\textsuperscript{56} Ziff and Rao, 1997 pp. 7
\textsuperscript{57} Nason, 1997.
\textsuperscript{58} Waren, 1999, pp.1-26
ownership argument”. These arguments employ cultural artifacts in an empirical manner, as tools needed for the understanding and analysis of society. In this sense, the rescue argument point out the many dangers posed to artifacts in their natural settings. Those who support this line of reasoning argue that the people and institutions that have saved relics from potential looting, destruction, and/or adverse environmental elements have the right to control the movement and placement of these pieces, hence the act of Lord Elgin as described earlier is acceptable. Proponents of the status quo also draw upon the scholarly access argument. From their perspective, the need for easily accessible academic data (along with the ensuing increase in cultural awareness) outweighs the benefits of repatriation. Together with the humanity ownership argument, which views cultural heritage as a ‘single universal concept’, these claims stress the necessity of learned analysis and careful preservation.

2.4.1 Cultural property and conservationist arguments

The return of the cultural treasures is a highly debated issue among archaeologist, anthropologist, historians and museum authorities, and between the scholastic world and that of collectors, dealers and the general public. In the case of Elgin Marbles, the issues stress on the legality of the initial acquisition of the marbles by Lord Elgin and their legal purchase in 1816 by the British government plus the British statute of limitations for the return of supposed stolen property (six years). Further, since 1832, when Greece made its first return request, Britain’s decision to keep the Parthenon sculptures in the British Museum have been based firmly on the stance that the marbles’ collection and care in the museum is a clear act of preservation of these treasures for all humanity (part of humanity ownership argument). For some scholars, this is nothing more than just national attitude, played in the cultural-property arena. Greenfield listed some artifacts that are now in Britain’s possession; the Sphinx’s beard, the Rosetta Stone, the Ashanti Gold of Ghana, the Benin Bronzes of Nigeria, the Aboriginal skulls of Australia, the early human

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59 Ibid.
60 Ibid.
61 To some, the concept of ‘World Heritage’ complies with this argument. I will discuss more on this in cosmopolitanism argument of culture.
fossil remains from Zambia and Kenya, the scrolls of Tunhuang Cave in China, and temple deity carvings from northern India.

In line with that, few questions that deal with ethical or moral issues can be touched upon. Is British government has the right to do so, even on the claim that they had legally acquired the artifacts from the past owner, a hundred years ago? Over the years, the Britain’s national museum have voiced their concerned opposed to the repatriation, arguing instead that the artifacts of great artistic and cultural worth are of international importance, that they are a part of world heritage and belong to all of humankind; as such they must be preserved intact for the future generations of researchers and museum visitors.63 It is also claimed that the artifacts collected during colonial era are now part of the heritage of the collecting nation as well as that the of the nation from which they originated, as Locke said “The effect on our culture of the acquisition and display of the exotic culture material has been enormous and is a very significant aspect of our cultural history. To this extent the material is our cultural property also.”64 As such, they should be preserved and displayed in the world’s greatest museums65 such as the British Museum in London, the Lourve in Paris, and the Metropolitan Museum in New York. Sir David Wilson, formerly director of British Museum, has warned that: “The British Museum…is a considerable element in the cultural heritage of the world; to start dismantle it by bowing to unthinking, if understandable, nationalistic demands would be to start a process of cultural vandalism which would make the politicization of art in the 1930s in Germany look like a petulant child’s destruction of its dinner.”66 He again made an interesting remarks on initial acquisition in 1981, stating that: ‘The British Museum was founded in 1753 and I think it is wise to remember that we have been collecting for 225 years…It has collected…legally in the light of the period which the material was acquired: so that in 1781 we were collecting legally, in 1881 we were collecting legally and in 1981 we are

65 The term of “the best” museum for me is ambiguous, since one has yet to define the best definition for it. One would ask, what is the criteria then: to have the vast collection of artifacts from all over the world or just simply good publicities and huge funding?
66 Wilson, 1990. p. 116
collecting legally. “67 The current director of British Museum, Neil MacGregor also said that “This museum’s argument has always been very clear, that (the marbles) have a purpose here which they can fulfill nowhere else, and that is to provide part of the universal story of the humanity which this museum exists to tell.”68

On the same matters, the act of removing Elgin Marbles from Parthenon itself is an act of restitution, as Boardman mentioned; if he had not taken them at the first place, the destruction from looting and due to war69 would have gone on unabated, and people “would probably have been obliged to base our study of the Parthenon’s sculptures largely upon the eighteen-century drawing.” Elgin’s original intention, to make drawings and cast, was “to use this information to improve contemporary art and design” and from his observation of the destruction of the marbles in Athens, it led him to infer that the only way to realize this aim was to remove them70 (part of scholarly access argument). But at the same time, according to artist, Lusieri, who was also in charge of the removals for Elgin, admitted that “I have been obliged to be a little barbarous”, given the fact that the process of removals do harm the marbles, especially on the remaining portion of the cornice on the south side of Parthenon, as St. Clair described it: “a series of jagged blocks sticking up like a broken teeth.”71 In fact, representatives from the British Museum have long argued that the sculptures are safer in London than in their native Athens. In order to further this claim, they have pointed to the high levels of pollution that continue to damage the stones of the Acropolis, as well as to detrimental Greek preservation and maintenance techniques employed early in the twentieth century. This is one of the “rescue arguments” that I had mentioned earlier.

Thus, this creates a few hypothetical questions for the act of conservationist that I will try to answer in the next chapter of cultural property rights:

68 Atwood, 2004, pp. 141
69 The Ottomans had used the Parthenon for storing weapons and gunpowder, and in 1687 a Venetian army, at war with the Ottoman Empire, had fired on the Parthenon. The explosion caused great destruction. Fearing further destruction of the sculptures by neglect or vandalism, Elgin secured permission from the Ottoman sultan to remove “any pieces of stone with old inscriptions or figures thereon.” See Boardman, 2000.
71 St. Clair, cited in Merryman, 1983, pp. 848
a) If the act of acquisition and its legality is doubtful, should the artifacts be returned back to the previous owner, or to the condition before the act took place?
b) In what condition that Lord Elgin’s act can be considered valid and legal?
c) And if it is legal, can it be considered morally acceptable?  

2.4.2 The pro-repatriation arguments

The focus of restitution arguments in Elgin’s marbles case is mainly on the question of acquisition and the legal authority of the current possessor. Irini Stamatoudi, a scholar in Elgin Marbles case, deliberately explained the legal and moral perspectives of the acquisition, and reasons why the marbles should be return back to Acropolis. As mentioned before, there are two basic questions; a) whether the Turks, conquerors of the Greeks at the time, had the authority to dispose of the Marbles, and b) whether Elgin was really authorized to remove the Marbles and ship them back to Britain. The Ottomans, as a dominating power, "had a solid claim to legal authority over the Parthenon because it was a public property, which the successor nation acquires on a change of sovereignty."  

However, the succession did not give the Ottoman the authority or right to dispose the marbles, since it is transferred in custody or safekeeping This is also contrary to the article 5 of the Hague Convention, where it is stated that countries "in occupation of the whole or part of the territory of another (State) ... shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property."  

The act of acquisition is also contradictory to the UN Universal Declaration of Human Rights, concerning article 18 and 19, which specifically provide that everyone

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72 In this context, there is a trade-off in the acquisition: something is gained, but something is also lost. The moral question is more problematic to resolve than the legal question; moral norms are imprecise and the applicability is controversial. See Merryman, 1985 pp.
73 O’Connell, 1956. p.228
74 As one of the initiatives of UNESCO to protect cultural property during times of war, the Hague Convention (or formally known as Convention for the Protection of Cultural Property in the Event of Armed Conflict) established the rights and responsibilities of military and occupying force, specifying that armies may only take as booty objects which were military in function, such as weapon, uniforms, military vehicles, etc. See Simpson, 2002.
75 Irini, 1997. p.7
has the right to conscience, religion and expression. The aspect of the self determination and intellectual integrity is corresponding as the contribution of cultural heritage; “the disposal of someone’s national patrimony, or eradication of what constitutes his history and culture can only be a violation of the right to his personality, religion, national and cultural identity.” Elgin Marbles, as part of the ancient cultural remains, is respected by the Greeks not because they were seen as part of the ancestral heritage, but because they were invested with supernatural properties. The angry reactions towards the destruction of antiquities is based on the beliefs that it would upset the supernatural spirits dwelling in the monuments, which would bring disease and other disasters to the population as punishment and retribution. At this point, “monuments and especially statues had acquired the identity of persons with human properties and emotional reactions.” Furthermore, as mentioned earlier before, the argument given by Sir David Wilson (that the acquisition is still legitimate even after 200 years) is rejected by the UNESCO’s Venice Committee of Experts to Study the Restitution of Works of Art which stated in 1976 that: “The present legal status of an object should not be an obstacle to negotiation for its return”.

Hamilakis approach the issue of the need of restitution from a cultural biography perspective. The emergence of the new social class of “European educated merchants” in Greece, lead to a new discovery of their ancestral heritage, and try to construct the imagined community of the ‘Hellenic Nation’, which according to him, was seen as a process of ‘national resurrection and regeneration’. This lead to the process of collecting and preserving the visible material proof of the national continuity: to form a newly constructed national memory. The return of the marbles back to its homeland will then bring a proper aesthetic appreciation of the entire monument.

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76 Article 18 of the Declaration of Human Rights says that “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance” and article 19 declare that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”
77 Irini, 1997, pp.10
78 Hamilakis, pp. 307.
Chapter 3: Philosophical perspectives on cultural property rights

Basically, there are few questions that I would like to answer in this chapter. First, can we consider the acquisition by Lord Elgin was illegitimate, and if it was, should it be returned back to the previous owner, that is the Greeks? Secondly, the questions will focus on whether the Ottomans government, occupier of Greece at that time, had the authority to dispose the marbles. And thirdly, I would like to delve the issue on whether Lord Elgin was really authorized to remove the marbles and ship them back to England, and if not, in what condition that Lord Elgin’s act can be considered valid and legal? All these questions will be looked into two main perspectives; Nozick’s libertarian approach and cosmopolitanism approach, respectively. My supposition is that, Nozick’s libertarian ideas were mainly used by the repatriationist as the foundation of their argument, while conservationist were basically adhered to cosmopolitan’s thoughts, such as the concept of “World Heritage” that I will discuss later.

3.1 Nozickian approach on the issue of property rights

Robert Nozick, one of the influential contemporary political philosophers in this era, has touched deliberately on property rights in his work, Anarchy, State and Utopia (1978) (henceforth ASU). His idea on property rights, like many libertarian, are based on the minimum interference of the government towards individual and private property. Although he did not specifically touch on ‘cultural property’ rights in his essay, I would like to observe the issues on cultural property from his perspectives, basically from the “Entitlement Theory”. Furthermore, I will elaborate more on self-ownership, and the principle of just acquisition to adopt the questions of cultural property rights.

3.1.1 The argument of “entitlement theory”

Before I go deeper into Nozick’s ideas, it is crucial to understand, as libertarian, Nozick promotes individual rights as something that should be protected. The foundational idea in ASU, as he laid out in the first sentence of his book, is that
“individuals have rights, and there are things which no individual or group can do to them (without violating these rights)”.

Nozick present his argument based on three principles in the “entitlement theory”. Those three principles are:

a) a principle of **transfer** – whatever is justly acquired can be freely transferred;

b) a principle of **just acquisition** – an account of how people come initially to own a thing which can be transferred in accordance with (a) (according to the Lockean proviso);

c) a principle of **rectification of injustice** - rectify violation of 1) and 2) by restoring holding to the rightful owner, by a “one-time general redistribution of resources” in accordance with Rawls’s difference principle.

Taking Elgin’s Marbles case as a problem, I posed a question earlier whether the acquisition by Lord Elgin’s itself is legitimate. The question of legitimacy of acquisition has been debated extensively by St. Clair, (he said that Elgin’s acquisition is illegitimate because of the bribery) thus it should be returned back to Greece. But this argument has been falsified by Boardman and Jenkins, as such payment “were unavoidable” during Ottoman occupation as part of the culture during that time. Lord Elgin did also present his financial statement before the British Parliamentary Committee, thus proving that his was accountable towards the purchase of the marbles. Suppose that the acquisition is legitimate at the first place, according to principle 1 – whatever is justly acquired can be freely transferred – the buying process by the British Government from Lord Elgin

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81 Lockean proviso is, using Kymlicka’s word, “the proper test of a legitimate appropriation: that it does not worsen anyone’s overall condition”. Lockean proviso, in a simple word means, our appropriation from the nature must be constrained by two conditions, 1) we must not take more than we can make use of, and 2) we must leave ‘enough and as good’ for others. See Kymlicka, 2002 and Wolff, 1996.
82 Ibid., p.112.
83 Boardman, 2000. pp.233
85 Ibid, pp. 19. In his footnote, Jenkins notes that in the report (Select Committee 1816, Appendix 5, xvi.), there is a phrase mentioning the amount of money that Lord Elgin had to pay to the local authorities - “‘Presents, found necessary for the local authorities, in Athens alone – 21,902 piastres’”. These are mentioned again in Appendix 6, xix. At the same enquiry to the question ‘Did it [the removal of sculptures from the Parthenon] appear to create any sensation either among the principal persons or the inhabitants of Athens? ’, W R Hamilton replied, ‘No unpleasant sensation whatever; they seemed rather to feel it as a means of bringing foreigners into the country, and of having money spent among them.’” See Jenkins, 2001, pp. 33.
seemed to be just. But the problems arise when we look at it from the acquisition by the
Turks, from the Greeks at the first place. The question now is does the Ottoman Empire,
occupier of the Greece at that time, have the authority to dispose the marbles? I had
discussed this question earlier in chapter 2, based on legal perspectives, and I argue that
the Ottoman Empire does not have rights to transfer it to Lord Elgin. Firstly, as I
mentioned earlier, based on The Hague Convention, “the export and transfer of
ownership of cultural property under compulsion arising directly or indirectly from the
occupation of a country by a foreign power shall be regarded as illicit”. Secondly,
Parthenon itself is considered as related to the Greekness and the Hellinistic society, thus
it indicates a strong cultural and identity of the people. To remove it as for me is
equivalent to the violation of right of the people themselves. Beside of that, the
signification of Parthenon and the site itself is considered as res extra commercium in
Roman law, which can be define as those “which are of common use and those destined
for serving public municipal, communal or religious purposes”.\textsuperscript{86} Thus, this enhanced the
public interest towards it, and it is considered as “untradeable” object, which are “not
subject to any legal commercial transaction” according to the Greek Civil Code.\textsuperscript{87} Hence,
from legal perspectives, principle 1 of Nozick entitlement theory in this case is
problematic, since Ottoman Empire did occupy the country, but that does not give it the
right to dispose the marbles. Thus the marbles were unjustly acquired by Lord Elgin, and
also by the British government.

\textbf{3.1.2 On self-ownership and cultural property}

In line with the three principles in his entitlement theory, Nozick present the idea
of self-ownership parallel with Kantian’s view on moral equality, to treat people as
rational beings, as an ‘ends in themselves’.

Basically, self-ownership argument can be simplified as follows:\textsuperscript{88}

1. If people are ends in themselves, then they may not be used without their
consent.

\textsuperscript{86} Irini, 1997, p.8
\textsuperscript{87} Ibid.
\textsuperscript{88} Johnson, 2005.
2. If they may not be used without their consent, then they own themselves.
3. If people own themselves, then they own their talents and abilities.
4. If they own their talents and abilities, then they own the products of their
talents and abilities
5. Thus, if they own the products of their talents and abilities, they are ends in
themselves.

Human beings are unique entity; hence they must be treated equal. To say that a
person is an end in herself is to say that she cannot be treated merely as a means to some
other end. What makes a person an end is the fact that she has the capacity to choose
rationally what she does, which is different from other beings like lower animals or
plants. Human beings, having the ability to direct their own behavior by rational decision
and choice, can only be used in a way that respects this capacity. And this means that
people can't be used by anyone unless they give their consent.

John Rawls, on the other hand, claimed that people’s talents do not belong to
them, contrary to what Nozick believes. Nozick argues that if I own myself, then I own
my talents, and that if I own my talents I own the products of my self-owned talents. The
notion of self-ownership has a reflexive significance — what owns and what is owned are
one and the same, the whole person. This is the main justification on why I have
absolute rights over my property. He is also against Rawls idea on using a product of a
talented to improve the condition of the disadvantaged as it violates self-ownership in
two ways; first, the talented ones will only benefits from their talents if this also benefits
the least advantage, according to Rawlsian principle of justice. Hence, in Nozick system,
this is a failure in itself, as it fails to treat people as equals, and to treat people as the ‘end
in themselves’.

Furthermore, does the trade by Elgin (the talented one) benefit, in this case, the
Greeks (the least advantaged)? Repatriationist would disagree with this, since firstly, the
bribes that Lord Elgin pays were for the corrupt Turks soldier, not for the Greeks. Even
though they were basically enjoying the influx of the foreigners to their country as a
means of improving their economics condition, this is not strong enough to make it as a

viable argument, for the fact that the Greeks benefited minimally from those marbles trade. Secondly, in the long run, the Greeks suffered from emotional and political burden due to the accession. For Hamilakis, Greeks were actually benefited (again, to a minimal degree) from the acquisition, since the marbles itself portray and enhance the image of Greeks and Hellenistic society in the world. But can it cure, what the Minister of Culture Melina Mercouri said as ‘barbarism by the British ambassador’ and the emotional damage of the Greeks? As I mentioned earlier, the averseness stand of the British government to repatriate the marbles is considered as act of ethnocentrism, and at the same time, deprived certain ethnic group (or country) of evidence regarding their earlier accomplishment.

For Nozick, it is also wrong to impede someone from exercising his own self-ownership and property rights, as this will lead to the question of freedom of choice and possibilities in his life. As Scruton said, referring to Nozick’s Chamberlain’s case: ‘to forbid Chamberlain to play is to deny his right to make use of his talents, skills and training; to forbid us to pay the supplement is to deny us the right to use our money as we wish; to confiscate Chamberlain's profits is an act of expropriation; and so on.’ This is, for me, aligned with the demand of repatriationist in Elgin’s Marbles case. First, for it be in the possession of the British Museums, the Greeks were not treated as an ‘ends in themselves’ – they don’t own their product, thus don’t own their talents, thus don’t own themselves. This is therefore solidifying the argument of repatriationist on the arguments of identity and the national patrimony, thus the marbles should be returned back to the Greeks. Secondly, the act of holding the marbles from giving it back to Greece, is at the same time denying the question of “freedom of choice” and possibilities of the Greeks. This is reinforced by a statement of the current director of the British Museum, when he

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90 Hamilakis touch on the function of the marbles as commodity in the “transactions of cultural economy”. He explained that the community had been used in the “power dynamic process” between Athens, Ottoman Empires and British government. They were also been used to “repay Elgin’s financial debt to the British government, operating at the same time as a monument of British colonialism and – indirectly – nationalism.” Furthermore, Hamilakis also mentioned in the symbolic value of the marbles, as a “reminder to the West” of it “debt to the Hellenic heritage”. If it were to return to Greece, they may lose part of their value since they will have been removed from the international market of cultural economy, losing at the same time their ability to stand as metaphor for the negotiations of the “Hellenic Nation”. See Hamilakis, 1999, pp. 313-314.
91 Atwood, pp.140
92 See sub-chapter “enthocentrism” in page 12.
93 Scruton, 2002.
was asked whether there would still be an option of repatriation, the answer was negative.\footnote{Atwood, 2004. pp. 141} Since the acquisition, as I proved earlier, is illegitimate, the British government, not Lord Elgin, doesn’t treat the Greeks in line with Nozickian principle of self-ownership.

The basic idea here is that one doesn't really own oneself if others have a legitimate claim over what one produces by one's talents. And if only I have a legitimate claim over the products of my talents, then I have absolute property rights over them. Hence, Nozick argues for absolute property rights on the basis of the fact that people are ends in themselves. And distributive schemes such as Rawls', which allows people the products of their talents only to the extent that they benefit the less talented treats people as mere means to the enhancement of the less talented. Thus, to answer the third question, in which condition that the Elgin’s act can be considered legitimate, we should look at the principle of just acquisition.

### 3.1.3 Principle of just acquisition

In the second principle of justice proposed by Nozick, he mentioned about a principle of just initial acquisition. The right of initial acquisition is the power to acquire private property rights over things that are not already in privately owned by others. Like he mentioned earlier, if we own ourselves absolutely, therefore we own what we produce absolutely. Looking at Elgin’s case, the fact that the marbles were obtained through accession by the Ottoman empires, does not give them the right to hand it over to Elgin. As I mentioned earlier in Chapter 2, the occupier of a country, should in fact help the Turks safeguarding and preserving its cultural property, and beside that, the right is only to acquire things that are “not already” in possession by others. The Lockean proviso says; 1) we must not take more than we can make of us, and 2) we must leave “enough and as good for others”. In real-world, it is impossible to meet this proviso. Take a piece of land for example. To make the acquisition just, a person A, may appropriate as much land as he wants only if he leaves enough and as good for others, so basically she can only appropriate half of the land. And then there is B, which obviously, to meet the
proviso, she can take half of the half left by A, and then C, can take half of the half left by B, D half the half left by C, and so on through the alphabet. Till then one day, all occupiable land in the world day has been occupied, and patently Z would not get the same amount of land Y got. Z then would blame Y for not being just; Y would blame X, and so on. Thus Nozick re-interprets the proviso, to mean that if initial acquisition does not make anyone worse off \textit{who was using the resource before}, then it is justly acquired. In Elgin Marbles case, the Greeks were using the marbles before, as part of their ‘cultural signifier’. Then Lord Elgin appropriates it, before British Museum acquired the right to possess it till today. The acquisition could not be considered just since the first step of acquisition by Lord Elgin. It didn’t even comply with the Lockean proviso, neither Locke’s version nor Nozick’s rendition. Lord Elgin did not leaves “enough” and “good” for the Greeks, while British government did also the same things towards Lord Elgin. First, when the acquisition took place, as I mentioned earlier, Lusieri, as an artisan employed by Elgin to work on the acquisition admitted that the removals do harm the marbles, leaving the place look like “a series of jagged blocks sticking up like a broken teeth.”\textsuperscript{95} Secondly, the British government only paid 35,000 pounds instead of 75,000 pounds demanded by Elgin at the first place, leaving him “spending the rest of his life fleeing creditor”\textsuperscript{96}, for the fact that he could not cover the expenses and loan that he took during the whole process of acquisition. Thirdly, one of the crucial points for repatriationist’s claim is that British Museums hold most of the key artifacts that is much valuable (in terms of historical value) than what the Greeks has now. In addition, the damage to the marbles on board of the sinking “Mentor”, one of the ships that carried the marbles back to England, is irreversible. Thus, the answer to when the whole acquisition process can be considered valid and legal, are if a) Lord Elgin and his agents did a minimal damage to the landscape of Parthenon, using good and right archaeological method, b) the British government compensated the cost of Lord Elgin, and gave him the amount of money that he requested c) Lord Elgin consulted both the Greeks and Ottoman authorities before the acquisition, and d) the British government

\textsuperscript{95} See sub-chapter 2.3, pp.23
\textsuperscript{96} Atwood, 2004. pp.138
repatriated a certain numbers of the “key artifacts” back to Greece, as to make sure that there is “enough and good” for both parties.

3.2 Cosmopolitan approach in archaeology

Basically, there are group of people who believe that cultural property are belong to the whole mankind, regardless of where it come from, and what culture they are representing. This is what I might call a cosmopolitan view on cultural property right, and which later I will show that most of the arguments of the conservationist are actually aligned with the cosmopolitanism perspectives in cultural property rights. The main definition that I will use to define cultural property is by Thompson, which emphasize the term “the property of collectivity”. But before that, I would like to accentuate the third arguments given by conservationist – the “humanity ownership argument” – using the concept of “world heritage”.

3.2.1 Humanity ownership argument: the concept of “world heritage”

The idea of international ownership of artifact and cultural property was raised in 1976 during UNESCO 1972 World Heritage Convention by an American lawyer, Robert L. Meyer. He expressed the hope that objects of the world heritage would one day be transferred from the national state to the international community, reflecting the optimism common; at the time that globalization would encourage the progressive unification of human interest. This concept rests fundamentally on the idea that cultural heritage can be held in common, although the term common heritage not being used in the Convention text, but rather “world heritage of mankind as a whole”\(^ {97}\). The idea is founded on the notion of a relationship belonging between the preserver and the preserved, as the relationship between these two is stated by UNESCO: “as the duty of conserving the common property, mankind recognized its own oneness through time and space, through the centuries and the nations, and proclaims the unity of its destiny.”\(^ {98}\) There are few

\(^ {97}\) UNESCO 1960, 1970, and 1972a: Preamble
\(^ {98}\) UNESCO, 1970. pp.48
reasons why this concept is aligned with conservationist ideas on cultural property rights. Firstly, it enhances the concept of shared cultural resources, as it reveals itself as an interest of the world community to claim access to shared cultural resources. By having these claims on cultural property, it opens a possibility of creating an international fund, that should help the host countries to preserve and maintain these resources for the benefits of present and future generations of all mankind. Second, it functions as a means of democratizing the culture heritage, as for example, certain sites that were constructed just for the elites should become a common heritage and made accessible for tourists and ‘common people’. Although for some critics, tourism acts as a double-edge sword, on account of the wear and tear that it cause, visitors are actually protecting the site when they spend money at the site, while travels enhance cultural understanding. Thirdly, education about world heritage concept is often taken to have “dual roles of reinforcing cultural identities and imparting knowledge about other cultures.” 99 From this, it is also believed that the nation continues to be important, and designation of “World Heritage Sites” often reinforces national and local identities. And fourthly, the concept itself aims for higher end that is peace, in accordance with the ultimate purpose of UNESCO. 100 Whereas cultural seen from a national viewpoint tended to divide people, from an international one it is a force for uniting them.

3.2.2 Elgin marbles, conservationist and cosmopolitanism

To answer those three questions: 1) The legitimacy of acquisition, 2) the Ottomans empires’ authority of disposing the marbles, and 3) the condition which legalize and gives validity to Elgin’s act of acquisition, I would begin with Elgin’s quotation:

“The impulse which led me to the exertions I made in Greece was wholly for the purpose of securing to Great Britain, and through it to Europe in general, the most effectual possible knowledge, and means of improving, by excellence of Grecian art in sculpture and architecture. My success, to the vast extent it was

100 UNESCO, 1970, 1972a
affected, will never cease to be a matter of the most utmost gratification to me”\textsuperscript{101}

From this quotation, we can assume that Elgin’s intention of removing the marble is not privately for his own amusement, but for the sake of art, and preserving it for Great Britain, and Europe in general. This concept of preserving it for the sake of art and mankind is part of the reason why I said that the conservationists (and those who are pro-Elgin as well) have the same conception of the cosmopolitanism, towards cultural property rights. To answer the first question, from the conservationist perspectives, even if acquisition by Lord Elgin is legitimate, there are other factors that will override its repatriation. Recently, leading museums in Europe (British Museum is obviously one of it) and America “have recently issued the statement which declares that the ‘diverse and multifaceted’ collections of museums serves the people of all nations and should not be compromised for the sake of interest of one group of people.\textsuperscript{102}

The basic definition of cultural property by Thompson ensures the justification of collective control over cultural property rights, as individuals value their membership in the collectivity, they will also feel obliged to protect and preserve the property itself. While this provides a basic for cultural property claims, it also puts limit on what can be claimed. First, a collectivity cannot claim an artifact as its cultural property just because it was produced by its members. I will elaborate this later with Appiah’s argument. Second, the right of repatriation is superseded in the course of time. Collectivity’s right to restitution does not last forever; as according to Waldron, if the artifacts no longer bear significant importance to the group’s practice, then demand of repatriation is weak.

The second question, whether the Ottomans empires had the authority of disposing the marbles can be seen from another example of cultural property case. In the eighteenth century, a Danish scholar traveled around Iceland, and bought some of the thirteenth-century manuscripts on Norse history from the local people and villagers. He later devised it to the University of Copenhagen, and a century later, Icelanders regard the manuscripts as their cultural property and demanded them back. The university agreed to

\textsuperscript{101} St. Clair, pp.260
return them back. It is considered as “one of the successful example in restitution” by Greenfield.\textsuperscript{103} But to Thompson, it is not even restitution. The problem is that the manuscripts were not cultural property of this community at the time they were sold and taken away, since it receives the acquired symbolic importance after the demand. A claim to cultural property “cannot be made retrospectively.”\textsuperscript{104}

This is the same case for Elgin Marbles. There was no evidence that the Greeks, during the removal process by Lord Elgin and his agents, regarded it as a cultural property. Although I did mention earlier that the Greeks believed that removal of the marbles would bring bad luck to them, and those “monuments and especially statues had acquired the identity of persons with human properties and emotional reactions”, but the Greeks did not express this whole idea during the removal process. No protest were made, instead they welcomed more foreigners as this would increase their economy. Besides, the glory of ancient Greeks was irrelevant to them, as the independence from Turkish occupation is much considered as more important ends.\textsuperscript{105} Given this argument, the question of whether Ottoman empires had or had not, the authority of disposing it, is irrelevant to conservationist, since it’s is not considered as cultural property during that time.

In the case of when the act can be considered valid and legal, I believes that on this questions, conservationist might share the same hypothesis as repatriationist. Yet for conservationist, although Lord Elgin might be wrong for not consulting the Greeks, this could not be the strong reasons for the repatriation, for the arguments that I mentioned earlier is enough to justify the acquisition by him.

\subsection*{3.3 Cultural property rights and value of humanity}

Thompson, a scholar in cultural property, tells a story (which might be apocryphal) of one Japanese multi-millionaires “who bought one Van Gogh’s masterpieces and then made arrangements to have it buried with him”. Supposed that that will be a new trend among the rich people; they will get all the nice and beautiful arts that

\textsuperscript{103} Greenfield, 1996, pp. 12  
\textsuperscript{104} Thompson, 2003, pp. 256.  
\textsuperscript{105} Hobsbawm, 1992, pp.77
money can buy, and get them buried or cremated together once they die. Most of the art communities will condemn the act as so depriving other from enjoying the great works of art. In that case, there should be a limit of what owners can do with their property or possession.

The question is, should we agree that ownership rights over works of art or artifacts ought to be limited or superseded by the interests of humankind? The following case, inspired by real examples, might give us pause. A Native American tribe has a practice of burying its member with specially constructed wooden representations of the gods. It is important to their religious tradition that the figures remain with the bodies and that they, like the bodies, eventually decompose and return to the earth. However, when archaeologists excavated a former graveyard in an area no longer inhabited by the tribe they found that some of the carvings were relatively well preserved. They rescued them and put them in a museum where they are now admired as contributions to the cultural heritage of humankind. But members of the tribe are demanding their return. They intend to rebury them, thus removing them forever from the scrutiny of humankind.106

In recent years, the Americans realized the need for preserving such culture, and American law supports the tribe’s point of view. The Native American Graves Protection and Repatriation Act (NAGPRA) prohibit removing items from Native American graves and require that bones or artifacts removed in the past be returned to the appropriate tribal group.107 If the people of this group want to rebury the thing in question they are, according to the legislation, they could do so. The Act was the result of a long campaign by Native Americans and their supporters, and the right of tribal or cultural groups to use their cultural property as they see fit and to resist demands of those who regard themselves as guardians of, or contributors to, the cultural or scientific heritage of humankind has strong advocates among legal scholars, experts on cultural studies, and philosophers.108

How can we make our views about rights over cultural property consistent? If we support the right of the tribe to dispose of their artifacts as they please, then it seems that we must also support the right of the millionaires to do the same. Affirming this right

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106 Thompson, 2005.
108 Thompson, 2005.
would not prevent us from trying to persuade them not to do so, but if they are not persuaded, then how can we justify interference? Alternatively, if we want to restrict what the millionaires can do with their possessions, then it seems that we must also insist that the tribe should be similarly restricted. This is, in fact, the position taken in a recent declaration of directors of what are sometimes called “universal museums” in response to demands by cultural and tribal groups for the return of cultural property. Such museums, the directors say, are agents in the development of culture and the pursuit of knowledge and they would be doing their visitors a disservice by giving into demands for repatriation. The implication is that the universal values that the museums serve override the right of possession of the claimants.

However, there are many people who want to maintain that the millionaires have no right to destroy, or permanently take out of circulation, the great works of art that they own, but that the members of the tribe do have a right to use their artifacts according to their customs and can legitimately claim, use, and even destroy, at least some of the carvings which are now held in museums. This position, for me, is consistent and correct.

3.4 The limits of property rights

If it is possible to justify restrictions on the right of multi-millionaires to use their works of art as they please while affirming the right of a tribe to claim and use their artifacts according to their customs, then we should be able to find our reasons either in the arguments that philosophers and others have used to defend rights of property, or in arguments for restricting property rights. There are three obvious possibilities. First, some defenders of property rights stress the special relationship between an object and its maker, and insist that by making something a creator acquires rights over it. The tribes we are considering are the creators of the artifacts that they claim. People in the tribe, past and present, made the wooden carvings. The multi-millionaires did not make the works of art that they want to bury or destroy. But suppose that the people of the tribe acquire their wooden carvings through trade from a neighboring tribe that specializes in

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110 Thompson, 2005
this kind of work. It seems unlikely that this information about the origin of the carvings should undermine their repatriation claim or their right to use the artifacts according to their customs. So why should, the fact that the multi-millionaires were not the creators of the works of art, undermine their right of use? An appeal to the property rights of a creator does not, at least by itself, put restrictions on the activities of those who legitimately acquire the created objects by sale, gift, or trade.\textsuperscript{111} However, we might attempt to justify such restrictions by appealing to a moral right of an artist, the control that the artist should be able to retain over the use of her creations even after they have been sold or given to others. In some countries artists have legal recourse against activities that could destroy the value of their works, disfigure them, or undermine their artistic intentions.\textsuperscript{112}

Yet, where such laws do not exist, we might anyway insist on an artist’s moral right to prohibit destructive activities. Since being lost forever in a burial vault is not what most artists intend for their works, the behavior of the millionaires seems to violate this right. At the same time, the creators of the wooden carvings, whether members of the tribe or not, expect their works to be destroyed by burial and this activity does not undermine their intentions.

According to Janna (2005) there are two kinds of reasons for recognizing a moral right of artists. One is that such a right has ‘instrumental value’. Protecting the works of artists may give society a mark of creativity and serve artists by protecting their reputations and the value of their works. If we allow that a society should be concerned about behavior that discourages artistic creativity, then it is reasonable for it to want to prevent millionaires from buying up large numbers of works by living or recently dead artists. But it is not obvious that adverse effects on creativity would occur if they confined their purchases to works of the more distant past, or to some, but not all, works of great artists.\textsuperscript{113} Living artists, and their beneficiary, have an understandable concern about their reputation or standing, and thus a legitimate interest in preventing certain uses of their works of art. But it is doubtful that this interest exists in the case of artists of the more distant past, or artists whose identity is unknown.

\textsuperscript{111} This argument is parallel to the conservationist argument in the previous chapter.
\textsuperscript{112} Merryman, 2000.
\textsuperscript{113} Thompson, 2005 pp. 547
The second way of defending a moral right of artists depends on the notion that an artist or author is a special kind of creator whose work is an expression of his or her innermost self: “the most sacred, the most inalienable, and the most personal of all properties.” Distortion, destruction or misuse of such creations counts as disrespect for the creators, and thus a violation of their rights as persons. This way of supporting the moral right of an artist or author can be held to exaggerate the special nature of artistic creations. Not all artists at all times have regarded their works as sacred or intimately personal, let alone inalienable. In any case, it is not obvious that this reasoning would apply to artists long dead.

The most common defense of the right of tribal members to claim their cultural artifacts and use them as they see fit consists of an appeal to the meaning that they have for the members of their group. According to Rudenstine, there are some things that are “so basic and fundamental to a society, a people, a civilization that its alienation would be unthinkable and would result in a loss so great that nothing could compensate for it.” James Cuno, the director of Harvard University Arts Museums, believes that cultural patrimony is not owned by a people but is part of them. Other authors stress that the recognition of aboriginal ownership and control of artifacts is essential for the revival and flourishing of aboriginal cultures. All of the defenses of the right of members of a people or a culture to possess and use artifacts according to their traditions stress the close relationship between the objects and the survival of things that they highly value. To refuse this right is not only to demonstrate disrespect for the people of a culture. It also undermines their ability to maintain values and practices which are of great importance to them. There seems to be no comparison between the desire to maintain a practice of cultural significance and the eccentric or selfish whim of a millionaire to take something of value with him to the grave.

The defenses of tribal rights over cultural property can be understood as conjure up a familiar idea about why property rights are morally defensible and ought to be respected. The ability of an individual or group to have an independent existence, to

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114 Piriou, 2005, quoted from Thompson, 2005.
115 Rudenstine, 2001, pp. 76
117 Thompson, 2005 pp. 548
pursue goals, or in the case of members of a group, to protect a culture and develop a common life, depend on being able to secure and maintain control over relevant resources. Given that individuals or groups have acquired their possessions in a legitimate way, such considerations give them the right to use them according to their own values or the values of their society. The fact that others do not agree with their values or do not like what they are doing is for me, not a reason for interference. However, this justification of property rights seems to apply to the millionaires as much as to the people of a tribe. For one thing, we cannot assume that their desires are just mere impulse. We might imagine that they are “ardent converts to a new religion that stresses the importance of being accompanied to the afterlife by great works of art”. But the rights of the millionaires do not have to depend on this supposition. If we think that rights of property are justified by reference to the autonomy of individuals and groups, the interest that they have in pursuing their own good in their own way, then it is wrong to interfere with the rights of people just because their values are not align with ours. Even if the activities of the millionaires are motivated by nothing more than the desire to participate in a trivial celebrity fashion, the considerations which underwrite property rights seem to rule out interference.

The difference between Western and indigenous ways of viewing property can be overstated. Indigenous people are often prepared to give away or sell some of their artifacts, and people from Western cultures sometimes identify with their possessions and regard them as having spiritual or symbolic value. However, the very fact that individuals or groups can have strong attachment to their things reinforces the case for recognizing individual and group rights of property. It is not a reason for thinking that they have no application when dealing with people from a different culture. But if such rights support the claims of the tribe, then how can they not support the practices of the millionaires? If great works of art are destroyed, then people who do, or could, enjoy much works, which include future people, will be deprived and thus harmed. Though philosophers differ substantially in their views about property rights and their limitations, they generally agree that harm to others can be a reason for limiting what owners can do with their property.118 The crucial questions are whether the harm done to actual or potential lovers

118 Thompson, 2005 pp. 548
of art is great enough to justify restrictions on what the millionaires can do with their property, and whether there is a relevant difference between the harmful effects of the practices of the millionaires and the practices of the tribe. How substantial the harms have to be is a matter of debate, but let us assume, as do many liberal philosophers, that property rights can be restricted in order to ensure that others are able to acquire basic goods and live decent lives. However, having the opportunity to enjoy great works of art is not what most people regard as a basic good. In fact, not all individuals feel the need to enjoy such things or would regard themselves as deprived if they could not do so. How, then, can we use the idea of harm to others as a reason for opposing the activities of the millionaires?

The case might be made as follows. Being exposed to great art and learning to appreciate it is life-enhancing experience, which contributes profoundly to an individual’s experience and self-development, and the experience is particularly profound if individuals are able to experience the works themselves, as opposed to reproductions or photographs. Societies ought to provide individuals with the opportunity to have these experiences. In a reasonably wealthy society, it could be said that individuals have a right to such opportunities, and if so, individuals who act in a way which deprives others of rich sources of life enhancing experiences are acting wrongly, and can reasonably be prevented from causing this harm.

One problem with this appeal is that the crucial distinction between mundane and life-enhancing experiences seems too subjective to bear the weight of justifying significant social restrictions. But even if the distinction can be made in an objective way, it is not obvious that it supports restrictions. A wealthy society has many sources of life-enhancing experiences, with new ones continually being produced. Why should we make a fuss about the removal of a few of them? Let us assume that we can overcome these objections and that we have made a good case for limiting the activities of the millionaires. Would it exempt the people of the tribe from restrictions on the way that they use their artifacts? If the carvings are masterworks, comparable to the paintings of Rembrandt or Picasso, as far as their value as works of art are concerned, then, according to the above argument, it seems that we should resist their demands or impose restrictions on their activities. Their right to do what they like with their property would be
overridden by the importance of giving other individuals the opportunity of experiencing the carvings. But let us assume that the artifacts, though beautiful and interesting, are not regarded as having great artistic value. Does this mean that the tribe can be allowed to use and destroy them according to its customs?

One reason for not agreeing is that views about artistic value are subject to change. Another is that even less valuable objects can play an important role in valued activities. It should be noted that the museum directors in the Declaration on the Value and Importance of Universal Museums argue for the importance of retaining less significant items in their collection as a potential contribution to knowledge. The opportunity to acquire knowledge is widely regarded as valuable and enriching, for researchers themselves and for the whole of their society, and if so, then, according to the argument from harm, the museum directors may be right to oppose repatriation.
4.0 Conclusions and implications

4.1 Cultural patrimony: Appiah’s approach as conformity

Kwame Appiah, in one his beginning lines of a chapter in his book “The Ethics of Identity” mentioned on the “shaping of minds and the materials lives of people in other regions, with objects and ideas from far away.”\(^{119}\) Although Appiah himself is a cosmopolitan, his argument of cultural property rights, for me is suitable in finding a consensus between conservationist and repatriationist, from all the arguments that has been debated above. He argues that, since the process of globalization is spreading vastly, ideas, materials and peoples present everywhere than they have ever been. A cosmopolitan, according to Appiah, should be someone who thinks that the world is our shared hometown, our “global village”.\(^{120}\) Yet, the interesting concept of cultural property, according to Appiah is the concept of cultural patrimony, which refers to “work of art, religious relics, manuscripts, crafts, musical instruments, and the like.” On the other hand, it refers to “product of culture: the group from whose conventions the objects derives its significance.” The objects are understood to belong to “a particular group from which the conventions of the objects derive its significance.”\(^{121}\)

For instance, the cultural patrimony of the Norwegian is not just considered as the contribution to the world culture, but to “a civilization of the universal.” This is where the indirect consensual derives. As Norwegians is continually exist, the cultural patrimony, to the ends, belong to them, no matter how much we awe it. Suppose that all the cultural patrimony belongs to those people who are no longer exist, and nobody can established an existing claims, thus it is the Norwegian government responsibility to take care of it. It is better to think that such cultural patrimony belongs to the mankind, although the government obviously (and reasonably) exercises their trusteeship in behalf of Norwegian.

As cosmopolitans, he mentioned that what matters most is the artifacts, and the ability for people, not peoples to enjoy and appreciate it. When he mentioned people, it

\(^{119}\) Appiah, 2000, pp. 215
\(^{120}\) Ibid.
means “men and women”, all mankind, regardless of their nationality or ethnicity. Given that argument, it is not an issue whether for instance, Elgin’s Marbles to be in England, or Malaysian artifacts to be in America, it is still a contribution to the world heritage, as long as people can appreciate it. But according to Appiah, it must be, at one place, at any particular time. This is again, for me, makes the consensus possible. The logic of “cultural patrimony”, however, would call for the marbles to be shipped back to Athens, whose cultural patrimony it is.

Appiah also emphasized on the concept of cultural property, from a legal perspectives, “as an institution, created largely by laws, which are best designed by thinking about how they can serve the human interests of those whose behavior they govern.” The human interest, means everyone’s interest. Thus, given this fact, the British Museum claims over the Marbles, as to serve human interest in arts and architecture, not just for British, can be acceptable. The claims then, according to Appiah, must be expressed vigorously, not just by displaying it in London, but elsewhere, through “traveling collections, publications and world wide web.”

Although repatriation is not obligatory (as proven before from the cosmopolitan’s view), the act of repatriation is something that Appiah considered as a “fine gestures”. But for the repatriation to happen, the party whom you should give the artifact to must be capable of and responsible for taking care of it. Few conditions must be looked into, such as their financial condition and the maximization of utility, for it to yield more (or at least as equal as before the repatriation) benefits to the mankind.

Appiah later argues that under certain conditions, repatriation is obligatory, such as where objects were stolen from people “whose name we know, whose heirs would want the artifact back.” This is the same case as the Native Americans and the looting of King Kofi Karikari of Kumasi, Ghana by Major Baden-Powell in 1874. but more important reasons, for him, is the appreciation of world art that has been possessed by European Museums through colonization, by giving back the decent collection of art

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123 Ibid.
124 Baden Powell described this mission in his book, *The Downfall of Prempeh: A Diary of Life with the Native Levy in Ashanti, 1895-96*. The act was considered as “collecting”, not looting as the inventorying and removal of cultural of these treasures under the orders of British officer was legitimate transfer os property. See Appiah, 2006. pp.38.
from around the world. The urge to understand our past history is basic instinct. By having the artifact in front of you, even if you will not be permitted to touch, create a symbolic connection – “the connection to art through identity – is powerful.”\textsuperscript{125} But the most forgotten part of cultural patrimony, for him, is the differences in us. Wondering at others work of art, make us realize the different imagination that we have. This actually creates a human link, as he said “the connection through a local identity is as imaginary as the connection through humanity.”\textsuperscript{126}

### 4.2 Ethical reflection from the issues of cultural property right

As the “Myth of the Moundbuilders\textsuperscript{127}” indicates, outside observers are often unable to understand the significance of foreign artifacts and unfamiliar structures. Because time obscures the meaning, use, and importance of early relics, archaeologists are forced to employ guesswork in a variety of situations. Even in domestic excavations, archaeologists “are confronted with unknown and unrecognizable remains”\textsuperscript{128}. Thus, the potential for misinterpretation applies to both foreign and local archaeologists. However, in a code of ethics adopted in 1996, the Society for American Archaeology specifically addresses the issue of foreign misrepresentation. In principle number four, the code advises archaeologists to: 1) Enlist public support for the stewardship of the archaeological record; 2) explain and promote the use of archaeological methods and techniques in understanding human behavior and culture; and 3) communicate archaeological interpretations of the past.

Thus, part of the ethical reflection of issues in the cultural property rights that I would like to emphasize here are:

\textsuperscript{125} Appiah, pp.41
\textsuperscript{126} Ibid.
\textsuperscript{127} As European and American explorers headed west, they came upon a number of massive structures. Today these earthen mounds, in some instances over 1,000 feet in length, are rightfully attributed to various Native American tribes. At the time of their initial discovery, however, nineteenth-century American archaeologists did not entertain this possibility, since they believed that Indians would not have such engineering skills. In turn, they credited the design and construction of the mounds to “virtually anyone (lost tribes of Israel, Phoenicians, etc.) except the ancestors of living Native Americans, who were seen as too barbaric to have created such works. See Bahn, 2004. pp. 23
\textsuperscript{128} See Krajcik, 2004.
1. to reassess for the artifacts that testify to the identity of a community or nation, the relative weight of the imprint placed originally on the object by the community’s artisan(s), and the property relations into which the object subsequently enter outside the group.

2. to allow, in the case of sacred or revered objects the right of access on the part of the community that had used them in rituals and ceremonials to take precedence over the property rights of persons who later obtained them for other purposes; and

3. to recognize, with respect to objects of major symbolic significance for a culturally distinct group, the limitations of the modern, market-oriented law of property.

4.3 On the issues of location and values

It is undeniably true that museums serve as the best place for cultural property education, for it will have greater impact on educating the public and preserving the aesthetic values of the artifacts. Notwithstanding, there are some situations where the aesthetic values is much higher if the artifacts were to be returned to their place of origin. In the case of Elgin’s Marbles, Hitchens make the following remark:

“Either all the marbles could be assembled in one museum in London, or they could be marshalled in a museum in Athens next to the Parthenon. But to keep them in two places, one of them quite sundered from the Parthenon and its context, seems bizarre and irrational as well as inartistic.”

Aesthetic values is believed to increase once we put back the artifact to its original place, while at the same time, advanced the scholarly value, as reenactment of in-situ condition of the artifacts gives richer educational experience, and deeper sense of appreciation than seeing it in a museum. But the case for return must be realistic and practical as has been argued throughout this thesis. Sometime, location can make no difference at all to the value of an object, especially to those artifacts like ornaments, stone tools, statue etc. Restoration itself, under some condition, is not possible. Even if it is possible, there is no direct indicator on how displaying them in its place of origins.

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enhances their aesthetic worth. It is also unpractical, if the repatriation of artifact make it less accessible than before the repatriation took place. For the best policy of the museum and the governments, the conservationist and repatriationist, on dealing with cultural property rights issues, is to treat any appeals towards cultural is by trust, as Randall H. McGuire recently wrote “at the dawn of the twenty-first century, ethics in archaeology are not simple. They are very complex, conflicted and confusing. Today, ethical question and dilemmas are more about relations among people than about things.”130

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