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## The Return of Cultural Treasures, By Jeanette Greenfield

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## BOOK REVIEW

### THE RETURN OF CULTURAL TREASURES.

By Jeanette Greenfield, PhD. New York:  
Cambridge University Press, 1989.

*Reviewed by Daniel C. Turack\**

What has been described as the largest art theft in history recently took place at the Isabella Stewart Gardner Museum on March 18, 1990.<sup>1</sup> This theft is not unique. The International Foundation for Art Research in New York reported that it had compiled information of about 5,000 art thefts in 1989 alone.<sup>2</sup> The cost of theft insurance for such a priceless collection would far exceed the Gardner Museum's annual operating budget of \$2.8 million.<sup>3</sup> The Greeks might take exception to this latest theft as being considered the "largest." They might reserve that designation for the Parthenon Marbles, also known as the Elgin Marbles, which are still the subject of unending debate over their ownership since their removal to England in the early 1800s. During the colonial period, a cultural calamity took place in all parts of the world as both bona fide archaeologist and negligent plunderer of antiquities alike beset peoples who were under the dominion of others. War often saw the destruction and removal of cultural artifacts as booty by the victors. Objects have been transported from their place of origin through valid

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<sup>1</sup> The eleven stolen paintings from the Gardner Museum in Boston, Massachusetts included works by Vermeer, Rembrandt, Degas and Manet as well as a Chinese bronze beaker from the Shang dynasty (1200 to 1000 B.C.). Butterfield, *Boston Thieves Loot a Museum of Masterpieces*, N.Y. Times, Mar. 19, 1990, at A1, col. 1.

<sup>2</sup> Yarrow, *A Lucrative Crime Grows Into A Costly Epidemic*, N.Y. Times, Mar. 20, 1990, at C20, col. 3.

<sup>3</sup> Butterfield, *Auctioneers Underwrite Reward in Art Theft*, N.Y. Times, Mar. 21, 1990, at C18, col. 1.

purchase, and removed uncontroversially and openly. However, there have been occasions when removal of objects has been clandestine or accompanied by suspicious circumstances. *The Return of Cultural Treasures* is interdisciplinary in nature. It compares inter-state regulatory differences and examines the relevant international legal issues concerning movable cultural property. The work also explores the factual circumstances of various cultural property removals and discusses the likelihood of return to particular places of origin.

The author of the book, Dr. Jeanette Greenfield, amasses numerous incidences of the removal of cultural artifacts. She develops the history behind the dislocations to bring into focus the political and legal issues that currently surround their possible return. Her investigation begins within a situation happily and equitably resolved, the return of *Flateyjarbok* (the Book of Flat-Island) and *Codex Regius* (the King's Volume). These two valuable Icelandic manuscripts of medieval literature, were returned by Denmark to its former colony after possessing them for 250 years. This case represents a positive international model for cultural restitution. More controversy surrounds the Parthenon marbles which are currently residing in the British Museum. Although this subject has been previously presented from various legal perspectives,<sup>4</sup> Dr. Greenfield presents a fascinating review of all the anthropological, archaeological, cultural, historical, legal and political arguments for their return. Of particular interest are the competing international principles that could be raised if the matter went before an international tribunal. Be that as it may, the marble statuary of the Parthenon rests well-protected in its present home, preserved from the deteriorating elements of nature and accessible to the public in a world class museum. However, its integrity in the context of cultural, historical and archaeological meaning remains displaced.

The reader should find of great interest the different national approaches taken by the United Kingdom, France, Belgium, the Federal Republic of Germany, the Netherlands, Italy and Denmark towards collectors of the major cultural treasures of the world, and the issue of cultural return vis-a-vis

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<sup>4</sup> See, e.g., Merryman, *Thinking About the Elgin Marbles*, 83 MICH. L. REV. 1881 (1985).

the Third World. With respect to the illicit movement of art treasures, the "European" approach demonstrates a reluctance "[t]o enforce a foreign state's protective legislation providing for forfeiture in the event of the illicit export of its [art] treasures, since such law would be a public law and amounts to an extra-territorial exercise of the foreign state's authority."<sup>5</sup> In addition to the various national approaches in Europe, Dr. Greenfield recounts the collective European position demonstrated by the Council of Europe and the European Economic Community as well as the impact of the UNESCO conventions. One theme that emerges is that despite the presence of universal and regional treaties, each dispute over cultural treasure needs to be examined on its merits. Dr. Greenfield elaborates on some of the more celebrated disputes to which the British are a central party. These include disputes with: Egypt, over the Sphinx's beard; Ghana, over golden Ashanti works; Nigeria, over the Benin bronzes; Pakistan and India, over the Koh-I-Noor diamond and the Maharajah Ranjit Singh's Throne; Sri Lanka, over various bronze statutes, ivories and manuscripts; Australia, over the Tasmanian aboriginal skulls; Zambia and Kenya, over the fossil remains of early "man;" Scotland, over the Stone of Scone; China, over the Aurel Stein Collection from Turnhuang; New Zealand, over the Maori's Taranaki panels and The Oritz Collection; and India, over the Pathur Sivapuram Nataraja.

A good contrast with the European experience is Dr. Greenfield's examination of both American and Canadian governmental policies, legislation and case law. The Canadian practice is shown to be the more liberal of the two in its responsiveness to the issue of returning cultural property to its site of origin. She singles out two U.S. bilateral agreements for specific treatment: the 1970 U.S.-Mexico Treaty providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties,<sup>6</sup> the first such agreement to provide for the return of stolen artifacts, and the 1981 U.S.-Peru Agreement Respecting the Recovery and Return of Stolen Archaeological, Historical and Cul-

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<sup>5</sup> J. GREENFIELD, *THE RETURN OF CULTURAL TREASURES* 125 (1989).

<sup>6</sup> The Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, July 17, 1970, United States-Mexico, 22 U.S.T. 494, T.I.A.S. No. 7088.

tural Properties.<sup>7</sup>

In a chapter on international and regional regulation of the removal and restitution of cultural property, the author provides a somewhat brief analysis of the principal international conventions by highlighting the more important aspects. She also details the recommendations and resolutions of UNESCO, the limited role of the United Nations, and the work of the Council of Europe, the Organization of American States and the Commission of the European Communities as well as the contribution by non-governmental international organizations such as the International Council of Museums.

Napoleon Bonaparte and Adolph Hitler were two principal actors who removed large quantities of art treasures for France and the Third Reich, respectively, as part of the plunder of war. Many of these art objects have never been returned to their rightful owners. Linked with the difficulties in protecting cultural property and its return is the broader prevalent problem of art theft and the global traffic in stolen antiquities, archaeological treasures and art objects. Dr. Greenfield presents a wide spectrum of instances of such occurrences and the legal inadequacies to effectively deal with the problem. Stringent national laws that have sought to totally ban the export of art, such as those existing in Turkey, have not prevented such art from being legally imported into other countries for example, the United States, the United Kingdom, France, the Federal Republic of Germany and Switzerland. She points out that the great auction houses like Sotheby's or Christie's in London and elsewhere<sup>8</sup> are subject to few legal controls. What comes across is that few countries where works of art are sold have changed their laws to prevent sales of smuggled works of art which were removed illegally from their country of origin. A typical example is Switzerland, where the sale of such works to bona fide purchasers creates a valid title in the purchaser under Swiss law; the purchasers then take these works on an odyssey to almost any-

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<sup>7</sup> Agreement for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, September 15, 1981, United States-Peru, 33 U.S.T. 1607, T.I.A.S. No. 10136.

<sup>8</sup> For a recent account and analysis, see V. Hagstrom, *Art and Antique Auctions and the Law*, 33 SCANDINAVIAN STUDIES IN LAW 95 (1989).

where in the world to find the highest bidder. At a time when a single painting can sell for \$40-50 million,<sup>9</sup> the rewards of attempting to sell high-priced objects of art are obviously worth the gamble because some private collector always appears to be available. Most nations, where collectors can buy openly on the market, have not been willing to take the necessary steps to alleviate the problem of international marketing of cultural objects, or to cooperate in the return of other countries' cultural heritage. Instead, with respect to the issue of return, most states choose to rationalize the retention of these treasures in their territory on numerous grounds, all of which transgress the ethic of collecting cultural property. At least the United States has made a partial effort to curtail the problem through treaties, legislation and the courts.<sup>10</sup>

In her conclusions, Dr. Greenfield prescribes many useful suggestions and outlines the shortcomings of mechanisms already in place. Presently, international and national laws are too porous to deter the ongoing market in antiquities. Repatriation of another people's culture still awaits cooperative resolution. This work by Dr. Greenfield demonstrates prodigious research, contains much historical fact that is not easily accessible and presents interesting anecdotal accounts.

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<sup>9</sup> In December 1989, Picasso's "Pierrette's Wedding" was sold to a Japanese developer, Tomonori Tsurumaki for \$51.3 million. Van Gogh's "Irises" was recently sold to the J. Paul Getty Museum by an Australian industrialist who acquired the painting from Sotheby's in New York in November 1987 for \$53.9 million. Kimmelman, *Getty Buys van Gogh "Irises," But Won't Tell Price*, N.Y. Times, Mar. 22, 1990, at C15, col. 1.

<sup>10</sup> Dr. Greenfield deals eminently with all of these measures. One recent case, probably too new for inclusion in this work, that is demonstrative of continuing U.S. efforts to return cultural property to its country of origin and to punish the unscrupulous dealer. See *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F.Supp. 1374 (S.D. Ind. 1989).