NOTE

OWNERSHIP BY DISPLAY: ADVERSE POSSESSION TO DETERMINE OWNERSHIP OF CULTURAL PROPERTY

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To rip the Elgin Marbles from the walls of the British Museum is a much greater disaster than the threat of blowing up the Parthenon . . . . I think this is cultural fascism. It’s nationalism and it’s cultural danger. Enormous cultural danger. If you start to destroy great intellectual institutions, you are culturally fascist.¹

[The Elgin Marbles] are the symbol and blood and the son of Greek people . . . . We have fought and died for the Parthenon and the Acropolis . . . . When we are born, they talk to us about all this great history, that makes Greekness . . . . This is the most beautiful, the most impressive, the most monumental building in all Europe and one of the Seven Wonders of the World.²

I. INTRODUCTION

Following his tenure as British Ambassador to the Ottoman Empire, Thomas Bruce, the seventh Earl of Elgin, secured a firman—a royal mandate—from the Ottoman Empire permitting him to remove “any sculptures or inscriptions which do not interfere with the works or walls of the [Parthenon].”³ Construing this mandate broadly,⁴ Lord Elgin removed significant portions of the frieze, metopes, and pediments of the Parthenon,⁵ the collection

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³ See id. at 297; Merryman, supra note 3, at 1882-84. There is legitimate debate concerning whether the firman Lord Elgin relied on passed good title to the friezes and marbles or whether Lord Elgin was aware that the firman authorized only access to the
now famous as the Elgin Marbles. Great Britain purchased the extracted sculptures and friezes in 1816 from Lord Elgin for £35,000. In its debate about whether to make the purchase, the British Parliament questioned the legality of the firman on which Elgin rested his claim to title. Although the British Parliament eventually voted to buy the Marbles from Lord Elgin, the Parliament’s original uncertainty regarding his claim in title strengthens Greece’s argument that the firman on which Great Britain heavily relies never conveyed legal title.

Greece formally requested that the United Kingdom return the Elgin Marbles in the early 1980s. The British government officially declined the request in 1984 and has refused to comply with subsequent demands. The United Kingdom has advanced several reasons why it should retain the Marbles based on the initial transfer, the present state of the law, and extra-legal concerns, including (1) that the firman conferred a rightful legal title to Lord Elgin, (2) that the display of the Marbles in London will spread information of classical studies, and (3) that the Marbles are safer in the United Kingdom than they would be in Greece.

Questions surrounding the legality of Lord Elgin’s firman aside, if temple to record and make models of the sculptures. See Jote, supra note 2, at 303-05; Merryman, supra note 3, at 1895-99. This Note assumes that the British Parliament took title to the objects in good faith regardless of whether Lord Elgin did.

6. The 1816 Act of British Parliament that purchased the collection from Lord Elgin also specifically designated that it would be “called by the name of ‘The Elgin Marbles’ . . . .” Jote, supra note 2, at 298 & n.179.

7. See id. at 298 n.179, 306. These pieces are currently displayed in the Duveen Gallery (Room 18) in the British Museum. See What are the ‘Elgin Marbles’?, http://www.britishmuseum.org/explore/highlights/article_index/w/what_are_the_elgin_marbles.aspx (last visited June 26, 2010).

8. See Rudenstine, supra note 1, at 72.

9. Id. at 73. The final vote in Parliament was eighty-two to thirty. Id. Thus, while there was some debate about the acquisition, the decision to buy the Marbles passed by a significant majority. See id.

10. See Jote, supra note 2, at 303; Rudenstine, supra note 1, at 73. The Greek government considers the firman additionally suspect since it was granted by the Ottoman Empire, and Greece does not recognize the Turkish occupation. See Jote, supra note 2, at 303. But see Merryman, supra note 3, at 1897.

11. See Jote, supra note 2, at 299; Merryman, supra note 3, at 1882. Arguments exist that the first official request was (1) in 1832 with Greece’s independence from Turkey, (2) in 1983 with the Greek Minister of Culture’s publicized request, or (3) in 1984 with Greece’s formal request through the IGC. Jote, supra note 2, at 299.

12. Jote, supra note 2, at 299; Merryman, supra note 3, at 1882.

13. See Jote, supra note 2, at 303.

14. Id. at 306.

15. Id. (acknowledging the British argument that the Marbles may be safer in Britain but recognizing that the opposite may be true given the rate of humidity and amount of pollution in London).
Greece continues to pursue its claim for ownership of the Marbles, the United Kingdom should be allowed to assert a defense based on its open and adverse possession\textsuperscript{16} of the Marbles for almost two centuries. While this dispute persists, the Marbles are still on display in the British Museum.\textsuperscript{17}

This Note explores the international goals of the International Institute for the Unification of Private Law (UNIDROIT) Convention On the International Return of Stolen or Illegally Exported Cultural Objects (UNIDROIT Convention) as well as the legal elements a state would need to prove to establish a claim of adverse possession in a situation involving cultural property removed from one state to another.\textsuperscript{18} Using the Elgin Marbles as a case study, this Note argues that permitting a defense of adverse possession, as opposed to a defense based solely upon the tolling of the statute of limitations, would provide sufficient legal remedy for both states involved in the dispute. The UNIDROIT Convention sets a statutory limit of fifty years for most claims seeking the return of cultural property that has been removed since 1995.\textsuperscript{19} This Note argues that when a museum has displayed cultural property and made the property accessible to the public at large, the museum should be permitted to raise a defense of adverse possession. Since this argument would, by definition, apply retroactively only to appropriated cultural property prior to 1995, museums and governmental institutions should be held to a heightened standard where they have to show both that they displayed the work openly and adversely and that it was publicly accessible. This heightened standard would balance the competing views in civil law and common law countries about the proper deference that should be granted to subsequent good faith purchasers of illegally-removed

\textsuperscript{16} The theory of adverse possession is also referred to as prescription, especially in civil law countries. This Note uses the term adverse possession rather than prescription because prescription is used both in the positive sense—acquisition of title through open and continuous possession—and in the negative sense—the effect of the lapse of time in creating or destroying rights over time. See \textit{Black's Law Dictionary} 1220-21 (8th ed. 2004). The claim addressed in this Note is one of positive vesting in title rather than just the expiration of a statute of limitations. Adverse possession, therefore, is a more appropriate term than prescription. \textit{Compare id.} at 59 (adverse possession), \textit{with id.} at 1220-21 (prescription).

\textsuperscript{17} \textit{See What are the 'Elgin Marbles'?, supra note 7.}

\textsuperscript{18} \textit{See UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects pmbl., June 24, 1995, 34 I.L.M. 1330 [hereinafter UNIDROIT Convention] (setting forth the goals of the Convention).}

\textsuperscript{19} \textit{Id.} art. 3(3).
Such a defense would further the convention's stated goals by making cultural artifacts more widely accessible, giving possessing countries incentive to care for and display the artifacts, and establishing title in order to avoid costly and prolonged litigation.  

II. DISCUSSION

A. Historical Background of Protection for Cultural Property

Currently, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention)\(^22\) is the only major global agreement that specifically protects cultural heritage during times of armed conflict.\(^23\) The Hague Convention is limited in scope. It mainly protects cultural property during wartime,\(^24\) and has primarily been used to protect property seized during World War II. It provides only limited protection,\(^25\) and is inapplicable to any property other than property removed during armed conflict, making it inapplicable to many current disputes.\(^26\) Since the adoption of the Hague Convention, there have been several international treaties addressing ownership issues of cultural property, culminating most recently with UNIDROIT Convention in 1995.\(^27\) Though not the first international agreement to recog-
nize the importance of cultural property, the Hague Convention was the first multilateral international agreement to announce the term "cultural property." Specifically, the Hague Convention made certain provisions for protecting such property prospectively during wartime, though it did not offer guidance on whether, and under what circumstances, cultural property should be returned.

After World War II, the United Nations formed the United Nations Educational, Scientific, and Cultural Organization (UNESCO). In 1970, UNESCO passed the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which, coupled with the 1972 Convention for the Protection of the World Cultural and Natural Heritage (collectively, the UNESCO Conventions), expanded the protections afforded to cultural property. While the UNESCO Conventions emphasize the importance of preserving cultural property, they also expressly avoid addressing the

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28. At the beginning of the twentieth century, both the 1899 and 1907 Hague Conventions recognized the importance of cultural property by forbidding all seizure, destruction, and willful damage to certain institutions, historic monuments, and works of art and science. See Hague Convention (IV) Respecting the Laws and Customs of War on Land art. 56, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631; Hague Convention (II) Respecting the Laws and Customs of War on Land art. 56, July 29, 1899, 32 Stat. 1803, 1 Bevans 247.

29. JOTTE, supra note 2, at 64, 313 ("The [Hague] Convention's most important contribution has been the introduction of the term cultural property in a legal context."). The Convention defines cultural property as:

(a) moveable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of an armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centres containing a large amount of cultural property as defined in subparagraphs (a) and (b), to be known as "centres containing monuments."

Hague Convention, supra note 22, art. 1.

30. See JOTTE, supra note 2, at 65-66 (noting that the major objectives of the Hague Convention are to safeguard and to ensure respect for cultural property).

31. See id. at 58-59.

32. See generally UNESCO World Heritage Convention, supra note 27; 1970 UNESCO Convention, supra note 27.

The question of who actually owns the property. The conventions' failure to make an express determination fueled both sides of the debate, each seeing it as an implicit finding that their position was supported by international law and mores.

"Cultural property" and "cultural heritage" are broadly defined in the UNESCO Conventions; it includes objects, sites, and monuments that may be appreciated for their historical, aesthetic, scientific, ethnological, paleontological, and anthropological value. The UNESCO World Heritage Convention called for the creation of a World Heritage List to protect prospectively cultural heritage threatened by "serious and specific dangers." The UNESCO World Heritage Convention provides a non-exhaustive list of possible dangers to these sites, recognizing that there are broader dangers facing cultural property than just war. Still, the UNESCO Conventions are limited by their power to address only those issues that arise after their adoption. This limited power has meant that many disputes have not clearly been dealt with or solved, and the continuing uncertainty has prompted the United Nations to act again, broadening its reach.

The United Nations adopted the UNIDROIT Convention in response to the limitations of the UNESCO Conventions and to "reduce illicit traffic in cultural objects by expanding the rights upon which return of such objects [could] be sought, and by widening the scope of objects subject to its provisions, in compar-

34. See generally UNESCO World Heritage Convention, supra note 27; 1970 UNESCO Convention, supra note 27.


36. See UNESCO World Heritage Convention, supra note 27, art. 11.

37. See id. art. 11(4). The UNESCO World Heritage Convention provides:

The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; . . . calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods, and tidal waves.

Id.

son to earlier conventions and treaties. The UNIDROIT Convention, unlike some earlier conventions primarily concerned with danger arising from war or natural disaster, specifically addresses the threat of illicit trade in cultural objects.

Article 1 of the UNIDROIT Convention establishes that the document applies "to claims of an international character for: (a) the restitution of stolen cultural objects; [and] (b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage." Like previous similar treaties, the UNIDROIT Convention is prospective: "the provisions [concerning Restitution of Stolen Cultural Objects] shall apply only in respect of a cultural object that is stolen after this Convention" is adopted. Additionally, the UNIDROIT Convention maintains a statute of limitations: most claims must be brought within fifty years from the time of theft or illegal exportation. Unlike earlier conventions, however, the UNIDROIT Convention acknowledges that, since the convention only applies prospectively, a significant amount of stolen cultural property is excluded from its scope. For example, if Lord Elgin had appropriated the Elgin Marbles after 1995, the UNIDROIT Convention would govern his

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39. Harold S. Burman, Introductory Note to UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 34 I.L.M. 1322, 1322.
40. See UNIDROIT Convention, supra note 18, art. 1. The last paragraph in the Preamble of the UNIDROIT Convention cites the 1970 UNESCO Convention and the progress it made in stopping the flow of illicit cultural property. Id. pmbl. This inclusion, though seemingly innocuous, was far from it. Not all of the signatories to the UNIDROIT Convention had adopted the 1970 UNESCO Convention supporting this stance. See Lyndel V. Prot, Commentary on the UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects 1995, at 20-21 (1997). The parties who had not signed the 1970 UNESCO Convention were uncomfortable including a cross-reference to it in the body of the UNIDROIT Convention. See id. By referring to the 1970 UNESCO Convention in the Preamble, the treaty's drafters reached a compromise on this issue. Id. While it was unrealistic to ignore the inroads that had been made in cultural protection, placing the statement in the Preamble allowed the drafters to exclude any express cross-reference in the body of the UNIDROIT Convention. See id.
41. UNIDROIT Convention, supra note 18, art. 1.
42. Id. art. 10.
43. See id. art. 3(3). But see id. art. 3(5) (allowing for a longer statute of limitations in certain situations).
44. See id. art. 10(3). The UNIDROIT Convention provides:

This Convention does not in any way legitimise any illegal transaction of whatever nature which has taken place before the entry into force of this Convention . . . nor limit any right of a State or other person to make a claim under remedies available outside the framework of this Convention for the restitution or return of a cultural object stolen or illegally exported before the entry into force of this Convention.

Id.
actions. As the convention is currently written, however, his removal of the Marbles is outside its scope.

One of the biggest concerns in the appropriation of cultural property is the loss of value when objects are removed from their context. For instance, one scholar noted the following:

Looting destroys the stratigraphic association and archaeological context not only of the highly marketable, unique pieces that make their way onto the international art market, but also of the many other types of less saleable objects, such as everyday pottery, faunal and floral remains, and other evidence of past life. Such objects appear in large numbers and without documented provenience on the international art market and subsequently in private and museum collections.

Antiquities are important not only for their beauty and aesthetic appeal, but also for the historical information they convey. “When looting occurs, the most important loss is often the loss of an entire body of contextual evidence that illuminates particular segments of history.” In the winter of 2007, Italy organized an exhibition at the Quirinale Palace displaying sixty-nine objects that were looted from Italian archeological sites and had been, until recently, on display at various museums and in private galleries across the world. In talking about these objects, Italy’s culture minister emphasized the importance of the connection between the cultural objects and the archeological context from which they came. When these objects were excavated “from the bowels of the earth,” he noted, they were “deprived of their identity” and “reduced to mere objects of beauty, without a soul.”

These concerns are part of the reason that prospectively-applicable conventions try to create penalties harsh enough to discourage removal of objects from their original location. The UNIDROIT Convention, for example, requires the return of goods to source nations upon reasonable compensation to market nations in cer-
taint situations. Under the present system, a possessor can require compensation in return for a cultural object if he can demonstrate that he made a reasonable effort to determine the object's true provenance at the time of acquisition. The burden is on the present possessor to demonstrate reasonable effort in finding the true owner.

The convention sets out factors that the court can consider in deciding whether the possessor exercised good faith and due diligence, including "the character of the parties, the price paid, [and] whether the possessor consulted any reasonably accessible register of stolen cultural objects . . . ."

The UNIDROIT Convention has two stated purposes: "the protection of cultural heritage . . . and the dissemination of culture for the well-being of humanity and the progress of civilization." The policy that "everyone has an interest in the preservation and enjoyment of all cultural property, wherever it is situated, from whatever cultural or geographic source," shared by the Hague Convention, both the UNESCO Conventions, and the later UNIDROIT Convention, recognizes that cultural property is universally important. Many older pieces of cultural property reflect a universally shared heritage for many people, not just those who live in the country where the property is located. The preamble of the 1970 UNESCO Convention reflects the balance between the protection of national cultural heritage and the international dissemination of culture. This balance is increasingly important as globalization results in rising immigration rates; people are increasingly less likely to live in the country of their ancestors.

The 1970 UNESCO Convention recognizes that there is a greater need to make cultural prop-

53. See id. art. 4.
54. Id. art. 4(1), (4) (setting forth the standard for reasonable effort as when the possessor "neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object."); see Stephanie Doyal, Implementing the UNIDROIT Convention on Cultural Property into Domestic Law: The Case of Italy, 39 COLUM. J. TRANSNAT'L L. 657, 669 (2001).
55. See Doyal, supra note 54, at 669.
56. UNIDROIT Convention, supra note 18, art. 4(4).
57. Id. pmbl.
58. Merryman, supra note 3, at 1916.
60. See 1970 UNESCO Convention, supra note 27, pmbl.
61. See Ashton Hawkins, David Korzenik & David Rudenstine, Who Is Entitled to Own the Past?, 19 CARDozo ARTS & ENT. L.J. 243, 251 (2001) (noting that the case for a balance may be particularly true in the United States where most citizens are immigrants or claim ancestry from another country).
B. Choice of Law Conflicts

One of the biggest problems in adjudicating cultural property claims comes at the beginning of the dispute when the courts try to determine what law to apply. The most commonly-used rule is “lex situs,” under which the court applies the law of the site of the transfer.\(^6\) Frequently, suits turn on the question of whether a subsequent good faith purchaser can take good title.\(^6\) Substantive property law concerning statutes of limitations and the ability of a thief to pass good title to subsequent good faith purchasers varies drastically among nations, and the conventions give little guidance on what law should be applied.\(^6\)

Many countries have laws asserting ownership of cultural property found within their boundaries.\(^6\) These laws are enforced inconsistently, as many states refuse to enforce the property and ownership laws of other states.\(^6\) Cultural property that has passed to various owners and to various jurisdictions implicates even more possibilities in determining the applicable law.\(^6\) In order to carry any weight, an international convention in this area would need to be adopted by a significant number of market and source nations. The introduction of the UNIDROIT Convention addressed the earlier failure of the 1970 UNESCO Convention to attract the support of enough countries.\(^6\) Over eighty states joined the 1970 UNESCO Convention, but it “has had only limited impact since, of the so-called ‘market’ states, only the United States, Canada and Australia have become parties.”\(^7\)

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63. Pecoraro, supra note 20, at 6-7, 11-38 (noting that “lex situs” is the majority rule but also noting several exceptions).
64. See id. at 3.
65. See, e.g., UNIDROIT Convention, supra note 18, art. 8; see also Pecoraro, supra note 20, at 10.
67. See, e.g., id. (“English Courts have no jurisdiction to entertain an action (1) for the enforcement, either directly or indirectly, of a penal, revenue or other public law of a foreign state; or (2) founded upon an act of state.”).
69. See Burman, supra note 39, at 1322.
70. Id.
The UNIDROIT Convention seeks to balance the competing interests of its signatories while trying to reduce the traffic in illegally exported cultural objects; it works to achieve this harmony by expanding the rights of source states to request the return of removed objects as well as by providing a broad definition of objects that may be brought under the convention's scope. The UNIDROIT Convention requires that a claim be brought within three years from when the original owner became aware of its current location and within fifty years of the alleged theft. The fifty-year statute of limitations is not always required, however; it can be waived if the removed object forms "an "integral part of an identified monument or archaeological site, or belong[s] to a public collection." In such a case, the statute of limitations only requires that the demand be made within three years after the original owner learned the identity of the present possessors and the location of the object.

Property law in common law countries does not permit a thief to transfer good title, even if the purchaser exercised due diligence and took title in good faith. Civil law countries, conversely, treat possession as title; subsequent bona fide purchasers, therefore, can take good title to the property. The UNIDROIT Convention does not solve the discrepancy between these two systems; rather it leaves the problem for the courts to address. Article 9 of the UNIDROIT Convention permits a court to apply rules that are "more favourable to the restitution or the return of stolen or illegally exported cultural objects." Consequently, a state seeking the return of goods that is able to bring suit in a common law country may be able to defeat a claim for title made by a subsequent good faith purchaser. Article 9 of the UNIDROIT Convention weighs in favor of restitution of cultural articles, and its implication provides an incentive to bring the suit in a civil law country.

71. See UNIDROIT Convention, supra note 18, pmbl.
72. See id. art. 3(3).
73. Id. art. 3(4).
74. Id.
75. See Pecoraro, supra note 20, at 39-40, 40 n.170.
76. See id. at 39 & n.169.
77. See UNIDROIT Convention, supra note 18, arts. 8-9.
78. Id. art. 9.
79. See id.
This same problem in harmonization of different state approaches arises in the creation of a statute of limitations. Article 3 of the UNIDROIT Convention sets forth the following proposed statute of limitations:

(3) Any claim for restitution shall be brought within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft. (4) However, a claim for restitution of a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection, shall not be subject to time limitations other than a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor. (5) Notwithstanding the provisions of the preceding paragraph, any Contracting State may declare that a claim is subject to a time limitation of seventy-five years or such longer period as is provided in its law. A claim made in another Contracting State for restitution of a cultural object displaced from a monument, archaeological site or public collection in a Contracting State making such a declaration shall also be subject to that time limitation. . . . (8) In addition, a claim for restitution of a sacred or communally important cultural object belonging to and used by a tribal or indigenous community in a Contracting State as part of that community’s traditional or ritual use, shall be subject to the time limitation applicable to public collections.

The UNIDROIT Convention thus begins with an absolute bar on claims when the item was stolen more than fifty years ago. It then carves out exceptions to the general rule and makes the fifty-year statute of limitations inapplicable for cultural objects used for traditional rites or that were taken from monuments, archeological sites, or public collections. Contracting states are also allowed to declare that the statute of limitations is seventy-five years or longer, but if they choose to do so, they must make a public declaration to that effect.

D. Elements of Adverse Possession

A plaintiff establishes a common law claim of adverse possession in personal property by proving hostile, actual, visible, exclusive,

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80. See Pecoraro, supra note 20, at 48-50.
81. UNIDROIT Convention, supra note 18, arts. 3(3)-(5), (8) (emphasis added).
82. See id. art. 3(3).
83. See id. art. 3(4), (8).
84. Id. art. 3(5)-(6) (requiring that a declaration be made at the time of signature, ratification, acceptance, approval, or accession).
and continuous possession. These elements are often difficult to prove because a current owner of personal property may display art or cultural artifacts privately in his home. As discussed below, a retroactively-applicable policy that only applies to certain public museums and government institutions would exempt private collections from its scope. Earlier treaties on cultural property have tried to include provisions applicable only to museums, which have posed definitional problems for the United States.

Common law nations protect the rights of the original owner and generally do not vest title in a bona fide purchaser of a stolen object. In contrast, civil law nations recognize adverse possession and generally confer good title on the bona fide purchaser, except in a limited number of circumstances. To promote commercial certainty, in civil law nations, a good faith, bona fide purchaser may rely on the statute of limitations as a bar to subsequent claims. Even within common law countries, there is a discrepancy in the application of adverse possession as a means of establishing title to chattel and moveable personal property. New York has a rule of "demand and refusal" in which the statute of limitations only begins to accrue once the true owner has made a demand to the possessor and it has been refused, provided that the claimant makes the demand "without unreasonable delay." In New Jersey, by contrast, the statute of limitations begins to run once the true owner should have been able to locate the property after a reasona-

86. See Burman, supra note 39, 1323 (noting that the United States' system of the majority of cultural property owned by private "non-profits" is unlike almost all other countries who have government controlled or financed institutions).
87. See Doyal, supra note 54, at 661 n.13, 668; Fox, supra note 85, at 228-29; Pecoraro, supra note 20, at 39-40. Common law nations generally follow the Latin legal principle of nemo dat quod non habet, which means that "no one can give that which he does not have." Doyal, supra note 54, at 661 n.13.
88. Pecoraro, supra note 20, at 39 & n.169.
90. See Fox, supra note 85, at 237-46 (discussing the use of a statute of limitations, the demand and refusal rule, adverse possession, the discovery rule, and due diligence in various U.S. jurisdictions).
91. Id. at 238; see, e.g., Solomon R. Guggenheim Found. v. Lubell, 569 N.E.2d 426 (N.Y. 1991) (considering "reasonable delay" both in terms of passage of time and steps required in the interim).
bly diligent search, even if the owner has not actually been able to locate the property at that point.\(^9\)

The UNIDROIT Convention addresses the notion of good faith by providing that the possessor of stolen cultural property "shall be entitled . . . to payment of fair and reasonable compensation" so long as he did not, in good faith, know that it was stolen and can prove that he exercised due diligence in the object's acquisition.\(^9\)

The UNIDROIT Convention does not provide specific guidance on how to measure the compensation, only that it ought to be fair and reasonable.\(^9\) The UNIDROIT Convention adopts a modified version of the civil law code by recognizing that possession provides the holder with an interest in the property;\(^9\) but it allows and encourages states to retain their own rules if those rules would be more effective to bring about restitution and return.\(^9\)

Earlier conventions have done an inadequate job of addressing the problem of cultural property that has already been removed from the source country, frequently ignoring the sizable body of cultural work displayed openly amid claims of disputed title.\(^9\)

This Note proposes a new convention, based on earlier international agreements, and the applicable law that would address the problem of works removed from source countries prior to adoption of any current convention.\(^9\)

An international convention allowing a retrospective claim of adverse possession would bring certainty to title disputes and advance the past conventions' goals of advocating for the spread of knowledge and dissemination of cultural heritage.\(^9\)

Inevitably, a retroactive convention raises concerns about due process and equity, but the complexity of a problem is a poor reason to ignore it.

\(^92\). See Fox, supra note 85, at 239-40 (discussing the impact of O'Keefe v. Snyder, 416 A.2d 862 (N.J. 1980)).

\(^93\). UNIDROIT Convention, supra note 18, art. 4(1).

\(^94\). See id.

\(^95\). See id.

\(^96\). Id. art. 9.

\(^97\). See generally id.; UNESCO World Heritage Convention, supra note 27; 1970 UNESCO Convention, supra note 27.

\(^98\). See discussion infra Part III.

\(^99\). For support of the proposition that an international convention allowing a retrospective claim of adverse possession would advance past conventions' goals of advocating for the spread of knowledge and dissemination of cultural heritage, see UNIDROIT Convention, supra note 18, pmbl.
This Note proposes a convention that would apply retroactively, clearly vest title in good faith subsequent purchasers, and outline the elements required to meet a claim of adverse possession. The convention would apply to cultural property displaced and transferred prior to its adoption. The flexibility in choice of law allowed by earlier conventions has resulted in mixed precedent and uncertainty. Claims of adverse possession help settle legal title to objects and reduce uncertainty. To the extent that the procedural rules are left to the discretion of the country in which the claim is brought, the goal of certainty is hampered. In order to provide certainty to museums and other institutions that may assert a defense of adverse possession, it is imperative that the elements and the standards are well known. To achieve this harmonization, there must be some reconciliation between the interests of common law and civil law claims. Consequently, the flexibility sought by earlier conventions will be replaced by uniform rules governing title to all cultural property currently held by any nation other than the source nation.

A. Proposed Convention

(1) This Convention applies to cultural property that was removed from its source over one hundred years ago.

(A) Cultural property includes moveable or immovable property of great cultural heritage and importance to every people.
(B) The source of cultural property means either the state from which it was excavated; or, in the case that it was not excavated, the source is where the item was made or discovered.

(2) Definitions.

(A) Actual possession. The party must be able to demonstrate dominion and control over the item and cannot be held on loan or with permission from any other country.

(B) Open and notorious possession. The party must display ownership in a manner that gives actual notice to the global public at large by allowing the general public to view the items, publicizing the items as part of an exhibit, and otherwise disseminating information to the public to advertise ownership. Removing items for periodic cleaning or loans to other public institutions (domestic or foreign) will not destroy the open and notorious requirement.

(C) Adverse and hostile possession. The owner must claim complete and total ownership of the item and cannot give credit, admit borrowing the item, or otherwise indicate in any way that they are using the item with permission of the true owner.

(3) A public museum or governmental entity may establish good title in cultural property if it can establish a chain of good title for the past one hundred years. The museum or governmental body seeking to establish title must be able to establish that it has held title in accordance with the following conditions for no less than forty years.

(A) Possession of the item must be actual, open, and notorious. The item must have been displayed and accessible to the public. In order to best advance the goal of public dissemination of information, actual level of public awareness and accessibility may be determinative when deciding whether possession was open.

(B) Possession must also be adverse and hostile. The museum or governmental entity claiming possession should have made an effort to publicize its ownership. A museum will be able to satisfy this element even if the object was on display at another site for some of the time so long as ownership was clearly attributed to the entity seeking title by means of adverse possession. The court is
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The possessor of the property must have taken possession in good faith and must have held title in good faith at all times. Good faith can be established by consultation with registries of cultural property available at the time that title vested as well as reasonable consultation with new and updated registries arising since and after possession. Any information that would make a reasonable person question the validity of the title imposes an affirmative duty on the party in possession to make good faith attempts to contact the object's last known owner. Failure to attempt to contact the owner will result in a waiver of claim to title under this convention.

(4) The venue to establish title by means of adverse possession will be the state in which the item is currently located.

(A) Location of the property will be used to establish location of the proceedings. Vesting of title by means of adverse possession is neither a penal nor criminal law. As such the elements of adverse possession are to be those established by this Convention in section (2) rather than by the rules and laws of the forum country.\(^\text{109}\)

(B) In order to commence litigation, the possessor must file with UNIDROIT a statement of intent to establish full and undisputed title by means of adverse possession. Title will vest by means of adverse possession after the possessor has met all the requirements above and the property has remained on the list without challenge.

(C) UNIDROIT will keep a list of cultural property and will make public the list on annual basis.

(D) Challenges to a claim of adverse possession will commence in the state where the item is currently located and in any case must be brought within two years of listing the property with UNIDROIT.

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109. This rule is a significant change from the UNIDROIT Convention which allows a forum state to proceed with its own rules, rather than the rules of the Convention, if the state believes its own rules would be more effective in bringing about return and restitution. See UNIDROIT Convention, supra note 18, art. 9.
Great Britain’s primary defense against Greece’s attempts to reclaim the Elgin Marbles is that they were not stolen. Great Britain argues instead that the Sultan passed good title to the Elgin Marbles; England claims, therefore, that it validly possesses the Elgin Marbles and is their rightful legal owner. Cases such as this one cannot be decided under the UNIDROIT Convention; the terms of the document expressly limit its applicability to prospective cases. The proposed convention, conversely, would govern ownership of any cultural property held for more than one-hundred years, including the Elgin Marbles, which were acquired before the UNIDROIT Convention was passed. The proposed convention, however, permits states to raise a defense of adverse possession. So long as the state has displayed the removed articles openly and as the true owner for more than fifty years, legal title should vest in the possessing state. The United Nations should pass another convention addressing the problem of previously-appropriated cultural property. Alternatively, courts should permit countries to raise an adverse possession claim in accordance with the goals and policy set out in the UNIDROIT Convention.

The UNIDROIT Convention requires that an originating country raise its claim within fifty years of the object’s removal to establish title over it. Although there are exceptions to this rule, the fifty-year statute of limitations provides an appropriate starting point to determine what the statutory term should be for a retroactive adverse possession claim. Both common law and civil law countries recognize the claim of adverse possession when someone has held property openly as a true owner for some time, though the claim is given different weight and the burden changes from country to country. Similarly, the requirements that a purchaser

110. See JOTE, supra note 2, at 303; Melineh S. Ounanian, Note, Of All the Things I’ve Lost, I Miss My Marbles the Most! An Alternative Approach to the Epic Problem of the Elgin Marbles, 9 CARDOZO J. CONFLICT RESOL. 109, 120-21 (2007).
111. See JOTE, supra note 2, at 303.
112. See UNIDROIT Convention, supra note 18, art. 10.
113. See supra Part III.A(2).
114. See UNIDROIT Convention, supra note 18, pmbl.
115. Id. art. 3(5).
116. See id. art. 3(3)-(8).
117. See discussion supra Part II.D.
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must meet to satisfy due diligence differ among jurisdictions. To correct this obvious problem in how adverse possession might be applied, only museums or government institutions that were easily accessible to the public at all times during the claimed statutory period should be allowed to raise this defense. This heightened standard will limit the scope of articles that fall within the purview of the rule as well mitigate some of the due process concerns.

Though a retrospectively-applicable convention would allow a present possessor to raise the adverse possession defense, it would not automatically vest title of cultural property in any entity that held cultural property for the requisite period of time. In order to qualify under the safe harbor of the proposed convention, an entity would still have to meet the requirements for adverse possession. Presently, common law countries and civil law countries disagree on the elements that constitute adverse possession. To avoid forum shopping and inconsistent application of the convention, uniform rules should apply to these disputes, regardless of the jurisdiction of the case.

In addition to showing that the statute of limitations has tolled, an adverse possessor would have to show that his possession of the property was actual: the government or museum laying claim to the object would have to show that the object was actually in their possession. Furthermore, the ownership of the cultural property would have to be both visual and open. A museum that displayed the objects and made them accessible to the public would meet this requirement. Whether an object that was in storage or had been removed from display to be cleaned met this standard would be determined on a case by case basis. Removing the object for occasional cleaning would not limit the ability of an entity to make a claim of adverse possession. Indeed, the careful

118. See Linda F. Pinkerton, Due Diligence in Fine Art Transactions, 22 Case W. Res. J. Int'l L. 1, 1-18 (1990) (discussing the different requirements to satisfy due diligence in different jurisdictions and for the different parties involved).
119. See Gardiner, supra note 103, at 122 (laying out all of the elements necessary to support a claim of adverse possession, of which duration of time is only one).
120. See supra Part III.A(3).
121. See supra Part III.A(4)(A).
122. See supra Part III.A(2)(A), (3)(A).
123. See supra Part III.A(2)(B), (3)(A).
125. See supra Part III.A(2)(B), (3)(A).
126. See supra Part III.A(2)(B).
127. See supra Part III.A(2)(B).
cleaning and extensive care that cultural property requires necessitates the object's removal from the public eye from time to time.\footnote{128} Anything concealed—either fraudulently or honestly—for a significant period of time could not be defended as adverse possession.\footnote{129}

Ownership would also have to be notorious.\footnote{130} The entity asserting adverse possession of the cultural property must have acted as a true owner.\footnote{131} The convention would have other provisions relating to the good faith of the owner and the earlier transfer of title. This consideration of the good faith ownership by a subsequent bona fide purchaser is the biggest distinction between the approaches of common law and civil law countries.\footnote{132} If a country has acted in good faith and has preserved the property and made it available to the public at large, title to the property should vest with that country at some discernable point. \"[T]he arts and sciences . . . are considered not as the peculium of this or that nation, but as the property of mankind at large, and as belonging to the common interest of the whole species . . . .\"\footnote{133} Mankind at large rather than members of any one particular country have an interest in having access to cultural property, and there is a greater claim to such property than that of a single country.\footnote{134}

Whether possession by the museum was hostile and adverse to ownership of anyone else would be a factual question for the court. One factor to consider would be the public's awareness that the museum is holding the removed possession.\footnote{135} A court should be more inclined to find in favor of a museum that widely advertises its collections compared to one that chooses not to do so. Such a policy would further one of the main policies underlying adverse possession: to vest title in owners who made use of the property.\footnote{136}

\footnote{128} Before moving the Elgin Marbles to the newly created Duveen Gallery, for example, the British Museum performed a controversial piecemeal cleaning of the Elgin Marbles in the late 1930s. \textit{See} Ian Jenkins, \textit{Cleaning and Controversy: The Parthenon Sculptures 1811-1939}, at 1-2 (2001), \textit{available at} http://www.britishmuseum.org/pdf/4.4.1.2%20The%20Parthenon%20Sculptures.pdf.

\footnote{129} \textit{See supra} Part III.A(2)(B), (3)(A).

\footnote{130} \textit{See} Gardiner, \textit{supra} note 103, at 122 (noting that notoriousness is one of the five elements of adverse possession); \textit{supra} Part III.A(2)(B)-(C), (3)(A).

\footnote{131} \textit{See} Gardiner, \textit{supra} note 103, at 122 (noting that one of the five elements of adverse possession is adversity to the true owner's interests).

\footnote{132} \textit{See supra} Part II.D.

\footnote{133} Wojciech W. Kowalski, \textit{Art Treasures and War} 24 (Tim Schadla-Hall ed., 1998).

\footnote{134} \textit{See id}.

\footnote{135} The amount of publicity and awareness that an object receives would show whether the display was open, visible, and adverse. \textit{See supra} Part III.A(2)(B), (3)(A).

\footnote{136} \textit{Cf} Gardiner, \textit{supra} note 103, at 122 (arguing that adverse possession of land promotes its efficient use, which serves economic and social goals).
In the case of cultural property, society as a whole benefits from the display and access that museums provide;137 this benefit is conferred, however, only to the extent that the public knows that the museum holds the property and has access to view it.

C. Changing Notions of Good Faith and Due Diligence Requirements

One problem with emphasizing the good faith and due diligence of the purchaser is that these elements must be considered according to the ethics, laws, and resources of the time the item was purchased or received.138 The UNIDROIT Convention attempts to reach a compromise with this problem by requiring the return of goods regardless of whether the current owner took title in good faith.139 While good faith does not affect the requirement to return the item, it does affect possible compensation.140 In order to mitigate the harm to good faith purchasers, the UNIDROIT Convention requires that the original owner pay a fair and reasonable compensation to the present possessor, provided that the possessor took the item in good faith after exercising due diligence.141 As societal recognition concerning the importance of cultural property grows, the availability and usefulness of clearinghouses and registries will expand the limits of diligence that a good faith purchaser will have to undertake.142 To ensure uniformity, a retro-

137. See Kowalski, supra note 133, at 24.
138. See generally Pinkerton, supra note 118, at 16-18 (outlining some considerations a court may use in determining the good faith and due diligence of the purchaser when making the factual determination of good faith). This approach, however, is difficult because "[t]he act of plundering in time of war is ancient, timeless, and pandemic," Rudenstine, supra note 1, at 71 (quoting Jeanette Greenfield, The Spoils of War, in The Spoils of War 34, 34 (Elizabeth Simpson ed., 1997)), and what constitutes reasonable due diligence has shifted over time and depends on the jurisdiction, see, e.g., Pinkerton, supra note 118, at 2-7.
139. See UNIDROIT Convention, supra note 18, art. 3 (providing that as long as the claimant brings the claim within the appropriate statute of limitations, "[t]he possessor of a cultural object which has been stolen shall return it").
140. See id. art. 4(1) ("The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object.").
141. Id.
142. See generally id. pmbl. (encouraging the development and use of registers), art. 4(4) (including consideration of what information is reasonably obtainable for purchasers in its analysis of due diligence); see also UNESCO World Heritage Convention, supra note 27, art. 11 (creating a World Heritage List, which is a positive development, but which is limited by consent and to monuments, groups of buildings, and sites).
actively-applicable claim of adverse possession should require that the purchaser of an object conduct due diligence upon taking title.

One of the considerations in the due diligence standard set out in the UNIDROIT Convention is the existence of registries of stolen goods. To the extent that the proposed convention applies prospectively, this duty appropriately rests with the museum or the government. Subsequent purchasers should be required to conduct due diligence and consult any applicable registries. Once a purchaser traces the history of an object and establishes ownership for one hundred continuous years, the proposed convention would guarantee ownership. If the due diligence raises concerns that the cultural property was stolen or otherwise fraudulently conveyed to the previous owner, the purchaser would be under an affirmative duty to contact the last known true and good faith owner. Purchasers who can show they have satisfied the due diligence requirement by establishing true and good faith ownership for the past one hundred years would meet this element of the adverse possession defense. By conducting this type of reasonable search, purchasers will be able to establish that they took the item in good faith. A retroactively-applicable claim would almost certainly refer to a time prior to the publication of any registry; as such, purchasers’ good faith should be considered based on what was reasonable due diligence at the time the property was originally acquired.

This standard will necessarily require the court to determine the applicable standard at the time the property was transferred. Once an entity can demonstrate that it has held the property for at least one hundred years in uninterrupted, open and notorious possession, such a good faith due diligence will become moot. The claim, however, should be available to any possessors who can establish that they meet all the elements of adverse possession and took the item at least forty years earlier in good faith and exercised due diligence when they received title. This compromise puts the burden on the possessors to establish that they performed due diligence; once they can establish good faith, good title in the prop-

143. See UNIDROIT Convention, supra note 18, art. 4(4).
144. See Hawkins, Korzenik & Rudenstine, supra note 61, at 252.
145. See supra Part III.A(3).
146. See supra Part III.A(3).
147. See generally Pinkerton, supra note 118, at 17 ("A buyer’s good faith is a fact question.").
148. See supra Part III.A(3).
property vests in them, even though the property may have been stolen originally.

D. Dissemination of Cultural Information

The UNIDROIT Convention provides a good starting point for determining global norms concerning the appropriation of cultural property. Drafted in 1995, it serves as a global barometer for the competing values regarding the repatriation of various cultural properties. The UNIDROIT Convention defines the term "cultural objects" broadly and almost identically to the 1970 UNESCO Convention's definition of "cultural property"; it covers all objects that are traditionally important and significant either to a particular group or to global society in general. This definition, understandably, includes a broad scope of objects and archaeological artifacts. The UNIDROIT Convention seeks a "balance between protection of national cultural heritage and the international dissemination of culture."

While Great Britain has possessed the Elgin Marbles, it has cared for them and made them accessible to the public, helping to further this goal. The protection of cultural heritage at the national level "often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific, and technological resources of the country where the property to be protected is situated." Greece has proposed creating a museum within the vicinity of the Parthenon—about two hundred yards from the temple itself—to house the Marbles. There may be a benefit to placing the Marbles so close to the original location of the temple, as the context of the location may help

149. See UNIDROIT Convention, supra note 18. This convention is the most recent international body regarding cultural property that is widely recognized and adopted.
150. See generally id.
152. See UNIDROIT Convention, supra note 18, art. 2, Annex.
153. See id.
155. Since 1816, the Elgin Marbles have been on public display at the British Museum, with piecemeal absences for cleaning. See Jeannette Greenfield, The Return of Cultural Treasures 63 (2d ed. 1996); Jenkins, supra note 128, at 1-2.
156. UNESCO World Heritage Convention, supra note 27, pmbl.
157. See Rudenstine, supra note 1, at 77.
visitors learn, understand, and appreciate the marbles in way they may not in Britain.158

Uncertainty in ownership may restrain museums from displaying their collections, so any benefit gained by advocating for the return of property to its original location must be weighed against the likelihood that such a policy would create an incentive for museums to horde antique cultural property. The incentive to horde would irreparably harm worldwide dissemination of cultural knowledge. It is preferable to vest title with certainty and make cultural property accessible, even if such a policy means that some cultural property will not be returned to its source.

The UNIDROIT Convention compensates purchasers that exercised due diligence and took title in good faith.159 This provision is an attempt to encourage museums and other buyers to conduct due diligence when they purchase cultural property.160 It is also recognition that in some cases, it is inequitable to return cultural property to the source nation without compensating the museum or government that was holding the property in good faith. Though this provision exists, it is not easily met; it requires “fair and reasonable compensation,” which may place too high of a burden on source countries.161 The convention is silent on what action is required if the source nation cannot pay restitution costs.162 Given that the UNIDROIT Convention explicitly states that the current possessor is entitled to compensation “at the time of [the cultural object’s] restitution,” this provision allows the possibility that the current holder of an object could refuse to return it until the claimant provides fair and reasonable compensation.163 One potential solution is the establishment of an international fund to reimburse present possessors of cultural property who are required to return property.164 Though the creation of such a fund is far from certain, the mere possibility that such a fund may be formed eventually encouraged third world source nations—who

158. See Jote, supra note 2, at 308 (“[T]he return of cultural property to its location affords scholars the best opportunity of studying it in its cultural and natural environment.”). See generally Povoledo, supra note 49.
159. UNIDROIT Convention, supra note 18, art. 4(1).
160. See Prott, supra note 40, at 41.
161. Id. at 42.
162. See id. at 41-44.
163. UNIDROIT Convention, supra note 18, art. 4(1).
164. See Prott, supra note 40, at 42-43.
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may otherwise have found the compensation provision as imposing too large a burden—to sign the UNIDROIT Convention.  

From an archaeological perspective, the harm caused by removing the objects is inapplicable to the set of works in question here because they have already been moved from their location.  

Under this proposal, a defense of adverse possession would only be permissible for works that had been held by the present possessor for at least forty years and for which they could establish good faith, bona fide possession of at least one hundred years. The considerations that should govern a retroactively-applicable convention would necessarily be different from considerations of the drafters of the UNIDROIT Convention.  

In order to assert a defense of adverse possession, a cultural institute would have to already be in possession of an article for at least forty years. Any archeological evidence that could be gained from keeping the artifacts at the site of discovery would be long since lost.

The stated goal of the UNIDROIT Convention is the dissemination of information.  

This goal is advanced when cultural artifacts are displayed openly to the public. In the context of adverse possession, this goal is best served by considering the public's access to the disputed cultural property. A museum or institution that can establish that the global community had open and easy access to the objects, particularly a museum that participates in lending programs with other institutions, will show that their actions were consistent with this policy. By loaning objects to other institutions, a museum indicates both its intention to spread knowledge of the cultural object and its ownership over the lent object.

The defense of adverse possession is legitimized, at least partially, by the theory of care and dominion—an open and true

165. *Id.* at 43.

166. *See* GREENFIELD, *supra* note 155, at 76 ("Much of the building will remain a mystery: there is so much of it which is destroyed and lost."). *But see* JOTE, *supra* note 2, at 308 ("[T]he return of cultural property to its location affords scholars the best opportunity of studying it in its cultural and natural environment.").

167. *Cf.* UNIDROIT Convention, *supra* note 18, pmbl., art. 10 (establishing the goals of the convention and stating that the convention applies only to objects removed after it enters into force).

168. *See* supra Part IIIA(3).


170. This statement requires that the borrowing museum give credit to the lender museum as the owner of the piece in question. To the extent that ownership was not credited to the lending museum, it could lead to confusion and may serve to weaken the present possessor's defense of adverse possession.

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The owner must invest some time and energy into the maintenance of the object possessed.\textsuperscript{171} The parties to the UNIDROIT Convention considered and rejected a provision that “would have allowed a forum state to refuse to return a [sic] object on the basis that it had as close a relationship with the object as did the requesting state.”\textsuperscript{172} Whereas a “close relationship” with an object under this standard could have been interpreted in a variety of ways, a “close relationship” under adverse possession only permits title to vest when the object has been openly displayed for many years. It is in this vein that Great Britain argues that the Elgin Marbles are an important piece of cultural heritage for people throughout the world, not merely for those residing in Greece.\textsuperscript{173}

Illicit trading on the black market is harmful “to the cultural heritage of national, tribal, indigenous or other communities, and also to the heritage of all peoples.”\textsuperscript{174} This statement emphasizes that the UNIDROIT Convention was enacted to protect the heritage of the world.\textsuperscript{175} Unique cultural property can only be displayed one place at a time. It is important, therefore, to consider the people who may be deprived of cultural objects by their removal as well as those who will benefit from the collection’s display in museums and the exhibition around the world.

Cultural heritage is common to all mankind and there is a universal interest in the preservation and continued health of existing cultural heritage.\textsuperscript{176} The UNIDROIT Convention was not fueled by the belief that all Western art collectors, dealers, and museums were greedy and out to rob poor and defenseless countries of their antiquities.\textsuperscript{177} By focusing on world heritage instead of “internationalism” versus “retentionism,” the drafters of the UNIDROIT Convention tried to avoid any opposition between industrialized states (which tend to be market nations) and third world countries (which tend to be source nations).\textsuperscript{178}

E. **Statute of Limitations**

A major aspect of any retroactively-applicable convention would be the determination of what constitutes an appropriate statutory

\textsuperscript{171} See Gardiner, supra note 103, at 122.

\textsuperscript{172} Burman, supra note 39, at 1324.

\textsuperscript{173} See Greenfield, supra note 155, at 105.

\textsuperscript{174} UNIDROIT Convention, supra note 18, pmbl. (emphasis added).

\textsuperscript{175} See Prott, supra note 40, at 19.

\textsuperscript{176} Jote, supra note 2, at 311.

\textsuperscript{177} Prott, supra note 40, at 19.

\textsuperscript{178} See id. at 19-20.
period for a claim of adverse possession. The UNIDROIT Convention provides a starting point: a “claim for restitution shall be brought within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft.” Though global movement and communication have become significantly less burdensome over the past several years, it is important to remember that the dissemination of information was not always so seamless. In considering a retroactively-applicable convention, it is also important to remember that communication and travel likely posed considerable burdens for the original owner. For example, art and other cultural artifacts appropriated by the Third Reich during World War II constitute a significant percentage of the materials at the heart of debate over legal title of cultural property.

To minimize due process concerns, the statutory period should be long enough to exclude items seized during World War II. Such an action is consistent with the prevailing considerations at the end of World War II, as evidenced by the peace treaties signed that specifically provided for the restitution of cultural property. The UNIDROIT Convention establishes fifty years as the appropriate statute of limitations. Following this standard, museums and other cultural institutions should be able to establish a successful defense of adverse possession for an article that has been on display consistently for one hundred years. Such a collection need not have been on display in a single museum; as collections are transferred to different institutions, the statute of limitations would continue to run so long as the objects were continually displayed and their presence was publicized.

Unlike a claim of adverse possession of real property, minimal breaks in the public display of an item, especially those necessary for cleaning and maintenance, should not restart the statutory period. A significant portion of the required one hundred years

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179. UNIDROIT Convention, supra note 18, art. 3(3).
181. See JOTE, supra note 2, at 269.
182. UNIDROIT Convention, supra note 18, art. 3(3).
183. See Gardiner, supra note 103, at 122 (including “open” and “continuous” as elements necessary to establish adverse possession).
184. See supra Part III.A(2)(B).
of ownership should be actual display.\textsuperscript{185} Although the display does not have to be continuous, the objects should be on display for more than half of the time. There is no magic percentage of time that the object would need to be displayed to meet the statute of limitations threshold, but the court should factor in both actual display and total time of ownership when considering the issue. The burden of proof would remain primarily with the holder of the object to establish that it was adequately cared for and accessible to the public. If a museum could establish that it possessed the item for the requisite amount of time, took it in good faith, and adequately cared for it for the appropriate time, legal title would vest with the museum as an adverse possessor.\textsuperscript{186}

\textbf{IV. Conclusion}

The overarching policy behind the UNIDROIT Convention is to balance two competing interests: first, disseminating cultural heritage and property throughout the global community; second, facilitating the return of cultural property to source nations.\textsuperscript{187} There are only a finite number of historic, cultural objects; in many cases these objects are unique. As their importance springs from this uniqueness, the holding of an object by one country occurs to the exclusion of all other states.\textsuperscript{188} Because of this situation, states have competing interests with regard to removed objects, and the existence of different rules in different jurisdictions likely leads to general uncertainty about what is sufficient to establish a claim as well as forum shopping when a party brings a complaint.\textsuperscript{189} Adopting a universal defense of adverse possession for present possessors would provide a greater degree of certainty about ownership. This would encourage museums and governments to display their collections to the public, thereby furthering the goal of the dissemination of cultural heritage.

\textsuperscript{185} See supra Part III.A(3)(A). Actual display also helps further the policy of dissemination of cultural information.

\textsuperscript{186} See supra Part III.A(3).

\textsuperscript{187} See UNIDROIT Convention, supra note 18, pmbl.

\textsuperscript{188} See, e.g., British Museum Act, 1963, c. 24, \S 5 (Eng.) (setting forth the condition that a trustee may sell, exchange, give away, or otherwise dispose of an object if it is a duplicate of another object).

One theory behind adverse possession is that it is meant to reward the productive use of an object by encouraging people to use it effectively and efficiently. International adoption of a convention furthering these goals and expressly validating the vesting of title through adverse possession would encourage museums to display their collections and publicize their holdings. If museums will not accept gifts of items for fear of later prosecution, art and artifacts will remain on the black market and the public will not have access to them and will not be able to see them. By minimizing the burden on museums and encouraging them to display their items, the goal behind the conventions is more likely to be realized and the public is more likely to benefit.

190. See Gardiner, supra note 103, at 122.