It is a privilege, albeit a self-conferred in my case, to be commenting on Geoffrey's marvellous book. As someone who grew up as part of the Greek diaspora in the Hellenic stronghold of Melbourne, I can tell you that there were two icons on the walls of practically every Greek home. One was an actual Byzantine-style icon of the Madonna and child; the other, a rendering of the Parthenon. *The two vital keys to modern Greek culture, both invested with overwhelming spiritual significance.*

So, as a member of that diaspora, I can only be grateful to Geoffrey for his important new book, although its significance extends well beyond even the Parthenon marbles, embracing all identity-defining cultural treasures, such as the Benin bronzes and the Rosetta stone, that are wrongfully detained in foreign museums, the 'museums of blood', as GR evocatively calls them.

Let me begin by putting my cards on the table. I have long been convinced that there is a strong moral argument for the return of the Parthenon marbles to Greece, one that has become unanswerable since the opening of the New Acropolis museum in 2009. GR's book contains an eloquent and powerful version of this moral argument.

But I want to focus on another key claim of GR's book, which is that a *legal* entitlement to the restitution of cultural works has emerged in international human rights law. As GR puts it in the book:

"an international rule [has] by now emerged requiring the restitution of cultural treasures of great national significance which had been removed illegally – either by looting or theft, or else by permission of an occupying power that had no right to give such permission".

I will set out some reservations I have about the legal case GR elaborates; and I will conclude by asking whether the recovery of the Parthenon marbles by Greece is best pursued through legal means. Sometimes, the worst thing to do with a dispute is to couch it in legal terms, let alone to take it to a court, even if you do have a strong legal claim. The Parthenon marbles may well be just such a case.

So, does there exist a rule of international law requiring the return of cultural treasures of great national significance?

As background, it is worth recalling that there are two main sources of international law. On the one hand, there are treaties or conventions, which bind only states that are parties to them. On the other hand, there is a more amorphous source of law, customary international law. Custom, for short, is based on a combination of two facts: state practice (consistent and widespread patterns of state conduct in conformity with the rule) and opinio juris (widespread belief among states that such conformity is legally required). The magic of custom is twofold: (a) it converts general belief and practice into a rule, and (b) this rule can bind a state that did not formally agree to it

Now, GR concedes that there is no treaty that explicitly incorporates his rule of restitution. The closest we come to such a treaty norm is the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural

Property. This places an obligation on states parties 'to take appropriate steps to recover and return cultural property illegally imported since 1970' (141-2)

GR's strategy in the book is to argue that something like this UNESCO norm has slipped its moorings in treaty law, and now forms part of CIL that is binding even on states that have not necessarily agreed to it.

I say 'something like' this norm has become custom, because GR's norm is both wider and narrower than the norm in the UNESCO convention. Wider, because it applies to cultural property taken before 1970. And narrower, because it does not apply to all cultural property, but only that which meets a threshold test of being of great significance.

The strategy is ingeniously pursued by GR in chapter 6, and it mirrors the process of reasoning in ICJ's famous judgment in the Nicaragua case. Norms of non-use of force and non-intervention are present in the UNC, but due to a technicality, they could not be invoked in the litigation between US and Nicaragua. The ICJ found that versions of these norms had become part of customary international law. Indeed, the suggestion was that they were not just customary norms, but jus cogens norms - binding on all states, even if they had explicitly and repeatedly objected to them.

Can a similar argument be advanced for GR's candidate norm? I can't do full justice to GR's multi-faceted argument. *but central to it are two moves.*

The first is the negative contention that the legal materials that go towards establishing state practice and opinio juris do not rule out the existence of a rule of restitution. I think he makes a compelling case for this negative move; but the problem is, from the fact that there is space for a rule of restitution, it doesn't follow that this space is actually occupied by anything.

The second move is a positive one, intended to plug this gap, to show that there is evidence of state practice and opinio juris supporting the existence of a rule of restitution. But in chapter 6 he draws on an impressive array of legal materials to make the case for a rule of restitution. My worry is that this evidence is very patchy, with a lack of explicit endorsements of the rule of restitution. Instead, GR often falls back on a certain kind of inference: the claim that, as a matter of moral reasoning, certain established legal norms – such as the right to self-determination or the right to cultural participation – presuppose or imply a right to restitution. As GR puts it at one point: the right to restore wrongly taken cultural property "does not appear as such in human rights conventions… but it can nonetheless be inferred from their principles…' (154) But even if this is true as a matter of moral logic, it does not follow that states actually have endorsed this rule in sufficient numbers to constitute a new customary norm.

Consider an analogy: in the bad old days, when only men had a legal right to vote, one could have persuasively argued that this right rested on a moral broader principle, namely, that all those capable of participating in democratic politics should have a right to vote, and that this includes women. But from the fact that this broader principle is the best justification for

conferring a legal right to vote on men, it unfortunately does not obviously follow that you can infer that women also had a legal right to vote.

In short, I fear GR, places too much emphasis on what is morally desirable as opposed to what is legally established. And this is even before we factor in an important countervailing moral consideration affecting the desirability of the rule of restitution, which is the strong reluctance feel about seriously disrupting retrospectively long-established property arrangements.

Of course, as fans of jurisprudence know, there is a vexed issue here about the extent to which moral reasoning plays a role in identifying the law. I'm sympathetic to the thought that it can play a role. Still, there has to be a difference, at the end of the line, between the questions: what should the law be on this topic? And what is the law on this topic? To me, GR's argument veers to much towards a case for what the law should be – lex ferenda, as international lawyers call it – rather than what it is – lex lata. And indeed GR makes an excellent contribution to the question what the law should be on this topic in framing a more specific rule of restitution, one to be incorporated into a new treaty, in ch.8 of the book.

But let's say I'm wrong about all that. Let's agree with GR that the rule of restitution is a customary norm that binds states generally. We still have to overcome another obstacle. It is widely accepted that customary norms don't bind those states that have persistently objected to them during their emergence. And, given the UK's consistent rejection of claims to return the Parthenon marbles and other cultural treasures, it is reasonable to suppose that it is a persistent objector to any such rule, hence it is not bound by it.

As GR knows, the only way to avoid this conclusion is to argue that the rule of restitution has become norm of jus cogens, on a par with the norms against torture, genocide and apartheid. Jus cogens norms are not subject to exceptions carved out by persistent objection. *They bind all states without exception, even those who have persistently objected to them, as the ICJ found in the case of South Africa with respect to the norm against apartheid.*

But, I see little evidence that states have generally expressed the view that the rule of restitution is a *jus cogens* norm. Nor do I think that you can impute this status to the rule on the basis that all human rights are jus cogens norms, and the rule of restitution follows from the human right to cultural participation. *This is because it seems to me highly doubtful that all human rights, with respect to the totality of their normative content, are norms of jus cogens.*

To summarise so far: I find in GR's book a highly persuasive moral argument for the return of cultural treasures that are of great national significance; what I am sceptical about is the claim that the rule of restitution has achieved the status of customary international law, let alone jus cogens.

Now, I am well aware that there are international lawyers who will disagree with me and side with GR. International lawyers do disagree, even about fundamentals – after all, the UK

government was even able to dredge up a few who were willing to avow publicly that the invasion of Iraq was perfectly legal.

So let me proceed to the last point which is my scepticism about the strategy of pressing a legal case for the return of the Parthenon marbles.

This scepticism is shared by the Greek government. As GR notes, the Tsipras government in 2015 rejected his advice to pursue a case in the ICJ for the return of the marbles. It preferred, instead, to pursue a 'diplomatic and political' pathway for their return. GR calls the Tsipras government 'gumptionless', but I think this is too harsh.

Partly, this is because I am not so confident of the legal case. Partly, it is because international law has notorious problems regarding enforcement. Mostly, it is because I worry that a legal claim, should it fail, may lead to acrimony that poisons Greece's relations with Britain and irrevocably destroy any prospect of recovering the marbles.

But why should anyone suppose that 'one more heave' with the diplomatic strategy should yield a different result, after it has been tried for so many years? What has changed since 2015? Well, one thing that has changed is the Greek government, the Syriza leftists replaced by the conservative New Democracy party. *I don't think that makes a significant difference, although* It is perhaps conceivable that two conservative governments are more likely to reach agreement.

The other thing that has changed is Brexit, and it was notable recently that the Greek government has renewed its campaign to retrieve the marbles by making Brexit a focal point. Greek Culture Minister Lina Mendoni has said "the fact that Britain is distancing itself from the European family… means that conditions have been created for their permanent return". The idea is that other European states will, as a result of Brexit, back Greece in pressing for the return of the marbles in any future deal between Britain and the EU.

I'm doubtful that the EU will expend its leverage to help Greece in this way. But I also think this is an unimaginative way of approaching Brexit, as something that alienates the UK from a country like Greece or from whatever is good in European values.

Now, of course, GR himself shares this negative take on Brexit. Early in his book, Brexit figures as part of a contemporary rogues' gallery of political developments:

"populism, that far-right feeling that has produced Trump and Brexit and Modi and Orbán and Bolsonaro, and has left white, English-speaking 'progressives' having to choose, if they want to live under a good government, between Canada and New Zealand (p.xiii)

Of course, I well understand where GR is coming from; many people legitimately fear the re-emergence of nationalist movements, *given the heinous crimes committed by nationalists in the 20th C. But, of course, this dark reading of the origins and motives of Brexit is not compulsory. We can, instead,* adopt a more charitable approach in interpreting Brexit, one that takes seriously the talk of attachment to a national culture and solidarity with one's fellow citizens, of the importance of a people enjoying the self-determination to stake out

their own trajectory in the world, and of the sacred value of democratic self-rule*, as opposed to rule by technocrats, including judges, however benign they may be.*

The key point here is that attachment to one's nation, self-determination, and democracy are not inherently chauvinistic or exclusionary ideas. On the contrary, if I recognise the importance of my own culture and society, *cultural attachments, the self-determination of my own people, the value of democracy in my society,* then I am logically compelled to recognise that these things are valuable for people belonging to different cultures and societies.

Indeed, one of the great virtues of GRs book is that it takes all of these values seriously: after all, for GR the right to restitution is grounded in the "great national significance" possessed by certain cultural treasures, *crystallizing the cultural inheritance which their rights to cultural participation and collective self-determination helps them enjoy and protect.* Surely one lesson that Geoffrey's book teaches us, it is that "nation" is not a dirty word, *and that artworks can have such great significance for a people that they are entitled to their return no matter how long they have languished in foreign museums.*

One of the most powerful strategies in politics, is to engage with others in terms of the basic values they themselves espouse. *Their failure to live up to those values risks publicly exposing them as liars and hypocrites.* I believe this is the strategy the Greek government should pursue – to say that if Britain values its own culture, its self-determination, its democracy, it must also respect other countries' pursuit of those values. And, in the case of Greece, the marbles are not only deeply emblematic for the national culture, they are also integral part of the history of a momentous democratic experiment that took place in ancient Athens. The return of the marbles would be one way to affirm what is positive in Brexit , a spectacular and disarming gesture of generosity *that could work miracles in cleansing the UK of many of the isolationist and colonialist aspersions that have been cast against this country in the aftermath of the Brexit vote.*

This general case, I think, can be buttressed in two further ways that are specific to the Parthenon marbles. The first is that opinion polls have consistently shown that the British people are favour of the return of the marbles at a rate of about 2 to 1; the case for their retention seems largely an elite project. The second is the long and positive relationship between the UK and Greece – this includes the powerful influence of Greek culture in shaping British institutions and sensibilities in so many domains; the vital role that British philhellenes, like Lord Byron, played in the Greek war of independence, whose 200th anniversary is celebrated next year; and the lonely and heroic stand that Greece and Britain made in 1941 against the forces of fascism in Europe.

In other words, I think the key to the return of the Parthenon marbles is the recognition that the UK stands to gain a tremendous amount by relinquishing them. But to achieve those gains – the gains of acting and being seen to act in accordance with one's deepest values – it must give them up freely, generously, and in the spirit of friendship, not one darkened by the shadow of legal obligation.