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Trophies for the Empire: The Epic Dispute Between Greece and England Over the Parthenon Sculptures in the British Museum

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TROPHIES FOR THE EMPIRE

THE EPIC DISPUTE BETWEEN GREECE AND
ENGLAND OVER THE PARTHENON SCULPTURES
IN THE BRITISH MUSEUM♦

DAVID RUDENSTINE*

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INTRODUCTION

UPENDING CONVENTIONAL WISDOM

In the early morning light on July 31, 1801, a ship-carpenter, five crew members, and twenty Athenian laborers “mounted the walls” of the Parthenon and, using ropes and pulleys, removed from the Parthenon edifice a sculptured marble block depicting a youth and a centaur in combat and lowered it to the ground.¹ The next day the group lowered a second sculptured marble from the magnificent temple.² During the next few years, the workmen stripped 15 of the 92 square-carved plaques of Pentelic marble (metopes) and 247 feet of the original 524 feet of frieze from the Parthenon high walls, as well as 17 pieces of sculpture from the pediment.³ In time, the entire collection was shipped to London. Except for the devastating Venetian bombing of the Parthenon in 1687, the removal of these sculptures from the Parthenon’s edifice was the single most violent desecration of classical Greece’s celebrated monument since its completion during the age of Pericles 2,200 years before.

This dismantling of the Parthenon was done at the behest of Thomas Bruce, seventh Earl of Elgin and eleventh Earl of Kincardine, who was commonly known as Lord Elgin. Elgin was, to use his full title, the Ambassador Extraordinary and Minister Plenipotentiary of his Britannic Majesty to the Sublime Porte of Selim III, Sultan of Turkey in Constantinople. Or to put the matter in straightforward terms, Elgin was the

¹ A.H. Smith, *Lord Elgin and His Collection*, 36 J. HELLENIC STUDIES 163, 196 (1916).

² *Id.*

³ *The Parthenon Sculptures: Facts and Figures*, BRITISH MUSEUM ¶ 1.2 (2017) [hereinafter *Facts and Figures*], https://www.britishmuseum.org/about_us/news_and_press/statements/parthenon_sculptures/facts_and_figures.aspx [https://perma.cc/Q3LH-KJFB] (last visited Mar. 2, 2019).

British Ambassador to the Ottoman Empire, which ruled Greece at that time and had since 1463.

For more than two centuries now, British authorities—the British Museum, members of Parliament, and others—have insisted that Lord Elgin’s taking of the world’s greatest single collection of classical Greek sculptures was legal and that irrefutable historical evidence supports this position. Greece takes strong exception to the British position, and as the famous Greek actress, Melina Mercouri, the Greek Minister of Culture in the 1980s, told the British students at the Oxford Union, the Parthenon sculptures are Greece’s “noblest symbol of excellence,” they are a “tribute to the democratic philosophy,” and they constitute the “essence of Greekness.”⁴

This is an epic cultural property dispute of gargantuan proportions. Lord Elgin’s stripping of the sculptures has been defended and criticized by poets, artists, historians, politicians, lawyers, cultural leaders, diplomats, art dealers, art collectors, and museum officials. Indeed, almost any book focusing on cultural property, the evolution of aesthetic tastes in Britain in the late eighteenth and early nineteenth centuries, English culture and society, nineteenth century British imperialism, or Greece under the Ottomans at least mentions the dispute over the ownership of the Parthenon sculptures. Moreover, the Parthenon controversy has been, and continues to be, the subject of major news reports.⁵

The generally accepted narrative of Elgin’s taking of the marble sculptures from the Parthenon’s high walls begins with the assertion that Lord Elgin was moved by a public-spiritedness to secure permission from proper Ottoman authorities to remove the Parthenon sculptures so as to

⁴ Melina Mercouri, Minister of Culture, Greece, Speech to the Oxford Union (June 1986), <http://www.parthenon.newmentor.net/speech.htm> [<https://perma.cc/P8DR-N4XJ>].

⁵ For example, recently Greece has argued that the Brexit agreement should include a provision that requires the return to Greece of the collection. *Brexit a Good Time for Greece to Ask for Parthenon Sculptures Back*, GREEK CITY TIMES (Jan 17, 2020), <https://greekcitytimes.com/2020/01/17/brexit-a-good-time-for-greece-to-ask-for-parthenon-sculptures-back/> [<https://perma.cc/Q37W-VL47>]. Shortly before that China’s Prime Minister publicly urged Britain to return the collection. Jessica Yeung & Yong Xiong, *Xi Jinping Offers to Help Greece Retrieve Contested Parthenon Marbles*, CNN, <https://www.cnn.com/style/article/xi-jinping-greece-marbles-intl-hnk-scli/index.html> [<https://perma.cc/HPS6-WJ6Y>] (last updated Nov. 13, 2019). Looking back a score of years, in 1999, 339 of the 626 members of the European Parliament urged Britain to return the collection of figures to Greece, and at the end of 1999, President Clinton offered, after touring the Parthenon, to mediate Greece’s demands that Britain return the marbles. Derrick Fincham, *The Parthenon Sculptures and Cultural Justice*, 23 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 943, 950 (2013); Marc Lacey, *Clinton Tries to Subdue Greeks’ Anger at America*, N.Y. TIMES (Nov. 21, 1999), <https://www.nytimes.com/1999/11/21/world/clinton-tries-to-subdue-greeks-anger-at-america.html> [<https://perma.cc/G2K9-GUPV>]. President Clinton noted the importance of Athens and its cultural monuments: “We are all Greeks . . . We are all Greeks not because of monuments and memories but because what began here two and a half thousand years ago has at last, after the bloody struggles of the 20th century, been embraced all around the world.” *Id.* See also *Euro Vote Forms Basis for New Greek Request*, CAMPAIGN UPDATE, <http://www.parthenon.newmentor.net/campaign.htm> [<https://perma.cc/LPT3-ZRAU>] (last updated Feb. 10, 2002).

save them from neglect, disregard, and vandalism.⁶ Ottoman authorities gave Elgin the requested permission and that permission was embodied in an 1801 document in Ottoman (a version of Turkish influenced by Arabic and Persian grammar). That Ottoman-language document has never been found and there is no reference to it in the Ottoman Empire archives. But the widely accepted narrative asserts that the missing Ottoman document was translated into Italian and that the Italian-language document was made available to a Parliamentary Select Committee in 1816 by the Reverend Dr. William Hunt. That Committee's Report included in its appendix an English-language document that the Committee represented constituted an accurate translation of the Italian document, and it recommended that the British Government purchase Elgin's collection. The government did at the time purchase the collection for £35,000, and the collection was placed in the British Museum, where it remains and is considered among the Museum's "greatest treasures."⁷

On the face of it, the claim that the Ottomans gave Elgin prior written permission seems eminently plausible. After all, in the wake of the British military and naval victory over French forces in Egypt, the Ottomans hoped that if they pleased Elgin, Britain would return Egypt to their control.⁸ If the Ottomans had to choose between regaining control over Egypt from the British or protecting the Parthenon sculptures from being stripped from the walls and shipped to London, the outcome was obvious.

Nonetheless, the British Museum and its allies have recently supplemented that important and central claim with additional ones. For example, the Museum now asserts that some years after Elgin's artisans finished stripping the Parthenon walls of its prized sculptures, proper Ottoman authorities retroactively approved of all that Elgin's agents did on the Acropolis.⁹ The bribes Elgin extended to facilitate his Acropolis activities were simply payments required by custom that did not undermine the legality of Elgin's claim to his collection.¹⁰ Whatever objections may be registered against Elgin's Acropolis activities are outweighed by the fact that the transportation of the collection to London contributed (and continues to contribute) to the British appreciation of ancient culture, influenced British artistic tastes and development, and created political sympathy within Britain for the Greek war of independence. The importance of Elgin's collection to Greece's sense of its own cultural

⁶ *Facts and Figures*, *supra* note 3, at ¶ 10.2.

⁷ DAVID M. WILSON, *THE BRITISH MUSEUM: A HISTORY* 71 (2002). Mr. Wilson was the Director of the Museum from 1977–1991.

⁸ WILLIAM ST. CLAIR, *LORD ELGIN AND THE MARBLES: THE CONTROVERSIAL HISTORY OF THE PARTHENON SCULPTURES* 80–85 (3d ed. 1998) [hereinafter ST. CLAIR 3d ed.]; *see also infra* text accompanying notes 224–228.

⁹ *See discussion infra* Part IX.

¹⁰ *See discussion infra* Part VII & Section IX.C.

heritage must be discounted by the fact that the collection is now part of Britain's own cultural heritage. Any assessment of Elgin's Acropolis actions must be measured against the significance of the British Museum's effort to have a collection which seeks to document the story of humankind, or as Neil MacGregor, the former director of the British Museum, has stated: the Parthenon sculptures "have played a vital role in the Museum's purpose to be an encyclopedia of knowledge and a material record of human history, ancient and modern."¹¹

As numerous as these claims are, the British Museum puts forth still others. The British Museum's collection is unique, is free to the public, and is visited annually by millions.¹² Returning the collection to Greece will only result in transferring the collection from one museum to another since the sculptures cannot be restored to the walls of the Parthenon. Even then, uniting the sculptures in Athens will still leave some Parthenon sculptures in other countries.¹³

That is the argumentative landscape underlining this epic dispute: claim after claim layered on top of one another, all insisting on the British Museum's legal and ethical right to retain the Greek treasures. In appearance, it is an exquisitely tidy collection of justifications, which is precisely why it seems dubious. Because it is insisted that the multi-layered defense of Elgin's taking and of the Museum's retention is based on indisputable, rock-solid evidence, it is difficult to understand why so many for so long have insisted that Elgin was a rogue looter who engaged in "spoliation" of this unique historical treasure.¹⁴ Moreover, there is something else about this multi-layered narrative that unnerves common sense: historical evidence is almost always ambiguous, messy, and contradictory. It seldom lends itself to a one-sided, neat, and unambiguous narrative.

But that is what the British Museum posits and insists upon—an overwhelming narrative resting on unshakable evidence. The conventional narrative gives not one inch to the assertion that Elgin was less than a virtuous, public-spirited noble lord who was personally above reproach and whose Acropolis activities should be applauded. That places considerable weight on the historical evidence supporting the conventional view, and it suggests that there is not a scintilla of evidence that

¹¹ Neil MacGregor, *Director's Foreword* to IAN JENKINS, *THE PARTHENON SCULPTURES* 7 (2007).

¹² *The Parthenon Sculptures: The Position of the Trustees of the British Museum*, BRITISH MUSEUM [hereinafter *Position of the Trustees*], https://www.britishmuseum.org/about_us/news_and_press/statements/parthenon_sculptures/trustees_statement.aspx [https://perma.cc/DZ9Y-LZAF] (last visited Mar. 2, 2019).

¹³ MARY BEARD, *THE PARTHENON* 12 (Profile Books ed. 2004) (2002); JOAN BRETON CONNELLY, *THE PARTHENON ENIGMA* 344 (2014) (claiming that "more than 60 percent" of the Parthenon sculptures "are scattered across Europe, mostly in London, but also in Paris, Copenhagen, Vienna, Würzburg, Palermo, the Vatican, and Munich).

¹⁴ See *infra* text accompanying note 382.

undermines the British Museum's legal and ethical assertions. From that perspective, the British Museum's continued insistence recalls Shakespeare's famous line—"The lady doth protest too much, me thinks."¹⁵

Because the Parthenon controversy has continued for so long, one might fairly ask if there is anything new and significant to be said about it. It turns out, there is. A careful review of the relevant historical evidence provides powerful evidence that upends the conventional viewpoint promoted by the British Museum and its supporters. As a consequence, much of what has been taken as familiar and accepted is discredited and replaced by an account that recasts the controversy in a surprising way.

In presenting that recast narrative, this Article puts forth four significant claims. First, as surprising as it may be, there is no evidence to support the position that the Constantinople Ottoman officials gave Lord Elgin prior written permission to dismantle the Parthenon of its historic sculptures.¹⁶ Indeed, the available evidence establishes the contrary, that Elgin abused his authority as the British ambassador and utilized bribes to strip the Parthenon of its historic sculptures.¹⁷ Second, the 1816 British Parliamentary Committee that recommended the purchase of Elgin's collection by the British government altered a document then central—and still central—to whether the Ottomans granted Elgin permission to take the sculptures.¹⁸ Because of the precise character of the alteration, there is no doubt that the alteration was knowing and intentional and likely intended to blunt opposition to the government's purchase of Elgin's collection.¹⁹ As a result, fraud undermines the integrity of the 1816 Parliamentary vote to purchase Elgin's collection. Third, as much as the British Museum asserts that the 1816 Committee concluded that Lord Elgin's Parthenon activities were lawful, the Committee's Report does not make such a claim. And that failure was no oversight. The legality of Elgin's taking was a major focus of the Committee's questioning of Elgin, and its failure to conclude that Elgin's actions were legal is highly significant. Fourth, the British Museum misrepresents the historical evidence relevant to this epic cultural property dispute and hides the evidence that would reveal the misrepresentation. In so doing, it utilizes its prestige and prominence to wage an aggressive public relations campaign to defend its continued retention of the Elgin collection. By acting as such, the British Museum undermines the force of its equitable claims favoring its continued retention of the Parthenon sculptures.

¹⁵ WILLIAM SHAKESPEARE, *HAMLET* act 3, sc. 3, l. 2098.

¹⁶ See discussion *infra* Part VIII.

¹⁷ See *infra* Section V.A.

¹⁸ See discussion *infra* Part VIII.

¹⁹ See discussion *infra* Part VIII.

The consequence of this re-assessment of the historical evidence is to deprive the British Museum and its supporters of the coveted legal and ethical high ground. Whether this will prompt the British government to return the Parthenon sculptures to Athens is uncertain. What is certain is that it shifts the arguments dramatically in favor of returning the sculptures to Athens.

I. THE IMPLAUSIBLE

The Parthenon is the classic icon of ancient Greece, but it is so much more than a symbol of the past. Because Greece is considered the cradle of contemporary western European civilization, the Parthenon represents democratic values, literature, art, philosophy, political theory, and the dignity of the individual. As one authority put it: the Parthenon “is a distillation not only of the skills of the specific people who created it, but also of the political and philosophical thought of their society.”²⁰ In short, the Parthenon—“emblematic of its country, past and present,”²¹—has also become “the most important monument of Western civilisation,”²² and represents the best that the West has to offer the world.

No one speech can capture all that the Parthenon may symbolize. But a few words spoken by Pericles, who was the driving force behind the building of the Parthenon, deserve quoting. Here is what this man—dubbed as the “first citizen of Athens” by the historian Thucydides—said:

It is true that we are called a democracy, for the administration is in the hands of the many and not of the few. But while there exists equal justice to all and alike in their private disputes, the claim of excellence is also recognized; and when a citizen is in any way distinguished, he is preferred to the public service, not as a matter of privilege, but as the reward of merit. Neither is poverty an obstacle, but a man may benefit his country whatever the obscurity of his condition. There is no exclusiveness in our public life, and in our private business we are not suspicious of one another, nor angry with our neighbor if he does what he likes; we do not put on sour looks at him which, though harmless, are not pleasant. While we are thus unconstrained in our private business, a spirit of reverence pervades our public acts; we are prevented from doing wrong by respect for the authorities and for the laws, having a particular regard to those which are ordained for the protection of the injured as well as those unwritten laws which bring

²⁰ Panayotis Tournikiotis, *Foreword to THE PARTHENON AND ITS IMPACT IN MODERN TIMES* 13 (Panayotis Tournikiotis ed., Cox & Solman trans., 1994).

²¹ Jenifer Neils, *Introduction: A Classical Icon, in THE PARTHENON: FROM ANTIQUITY TO THE PRESENT 2* (Jenifer Neils ed., 2005).

²² Tournikiotis, *supra* note 20, at 13.

upon the transgressor of them the reprobation of the general sentiment.²³

Pericles celebrated democracy, equality before the law, the importance of meritocracy, public service, freedom, and cultural and societal values in strengthening civil society. That was Pericles' distillation of the essence of Athens, and the Parthenon, more than any other building, represented the city's identity.

Seeking to understand the controversy between Greece and Britain over the Parthenon sculptures without placing the dispute in its historical context distorts the dispute. Thus, an understanding of the contemporary quarrel requires a brief review of grade-school history. This is because the Parthenon did not emerge out of thin air, and its meaning goes far beyond the meaning of being an exquisite building.

For members of the generation that built the Parthenon, the Greek and Persian War was fresh in their minds and central to their consideration of the temple. As the prominent historian Mary Beard has concluded: the war between the Persians and the Greeks was "the single most significant event in the forging of classical Greek identity" and the "war had an enormous influence over the history of the next 100 years or more, and over almost every aspect of the Parthenon, including . . . its decorative scheme."²⁴

For two centuries, the Persian military forces dominated and stabilized the near east, and by the end of the sixth century BCE, they ruled a mammoth empire that stretched from "India and Central Asia to the Aegean, and embraced the southern shores of the Black Sea, the Nile valley, even with a foothold in Europe."²⁵ Now the Persians eyed the Greeks, but not because Greece was any kind of prize. Greece lacked natural resources such as tin, copper, and iron; it was no agricultural haven as its productive lands were limited; and Greece's winters were punishing, its summers hot, and its mountainous terrain impeded travel. No, the Persians focused on Greece because the Greeks had meddled in the internal affairs of the Persian Empire by aiding the rebellious Ionian cities. They now had to be taught a lesson.²⁶ Moreover, controlling Greece would allow the Persians to protect its underbelly if and when its military forces

²³ Thucydides, *Pericles' Funeral Oration*, UNIV. OF MINN. HUM. RTS. LIBR., <http://hrlibrary.umn.edu/education/thucydides.html> [https://perma.cc/3ND3-4LZJ].

²⁴ BEARD, *supra* note 13, at 37.

²⁵ JOHN BOARDMAN, PERSIA AND THE WEST 218 (2000).

²⁶ *Battle of Marathon*, HISTORY (Aug. 15, 2019), <https://www.history.com/topics/ancient-history/battle-of-marathon> [https://perma.cc/CL97-6E3F].

pushed westward into the Balkans and Europe, as well as to strengthen its control over the sea routes in the Aegean and Mediterranean Seas.

If warring against the Greeks was somewhat of a sideshow to the Persians, the threatening Persian forces constituted a life-threatening main event to the Greeks. The Persian advance directly threatened the independence of the Greek polis, the Greek way of life, and the Greek civilization. A Persian victory would result in a Persian occupation that ended Greek life as it was then known. But a Greek victory over the Persian Empire seemed totally improbable.

These were the dominant Persian and Greek perspectives when Persian King Darius and his superior force marched onto the plain of Marathon, northeast of Athens, in September of 490 BCE. The Greek force of nearly 10,000 was about one third the size of Darius's army.²⁷ Yet, after only hours of hand-to-hand combat, 6,400 Persians lay dead on the battlefield as compared to 192 Greeks.²⁸ This stunning and surprising victory provided grist for a myth-making mill that gave birth to the Greek miracle on the plains of Marathon.

Because an Egyptian revolt diverted the Persian forces, Darius never had the chance to avenge his humiliating defeat at Marathon before he died in 485 BCE.²⁹ Xerxes—his son and successor—was determined to restore Persian honor and to settle what he considered the “troublesome business of the Greeks.”³⁰

The size of the Xerxes's force is estimated to consist of between 100,000 and 200,000 soldiers and between 600 and 1,200 triremes.³¹ The large Persian forces required Greek unity, but Greece was divided among 700 independent city-states, which were fractured by antagonism, jealousy, bitterness, and warfare. Moreover, many city-states, especially in the north, were so terrified by the Persian forces that they submitted to Xerxes without a struggle.³²

Sparta, the strongest of the city-states, took the lead in trying to organize a united defense against Xerxes. It called a congress attended by

²⁷ See *Battle of Marathon*, WORLD HIST. ENCYCLOPEDIA (May 17, 2013), <https://www.ancient.eu/marathon/> [<https://perma.cc/QY2L-DQ5R>] (estimating the size of the Persian army at 90,000 men, with the actual number of fighting men being 20,000–25,000, and the size of the Greek army “between 10,000 and 20,000 but was probably nearer the lower figure”).

²⁸ *Id.*

²⁹ CHARLES FREEMAN, *EGYPT, GREECE AND ROME: CIVILIZATIONS OF THE ANCIENT MEDITERRANEAN* 157 (1st ed. 1996).

³⁰ *Id.*

³¹ CHRISTIAN MEIER, *ATHENS: A PORTRAIT OF THE CITY IN ITS GOLDEN AGE* 7 (Robert Kimber & Rita Kimber trans., Metropolitan Books 1998) (1993).

³² *Id.* at 7–8.

over thirty city-states which, in turn, gave it command of the Greek land and sea forces and agreed that the first effort to repulse the Persian army would be at the narrow pass of Thermopylae, east of the city of Trachis.³³ The first encounter suggested that the narrowness of the mountain pass might permit the much smaller Greek force to defeat the larger Persian army. But when the Persians navigated the mountain range and secured a position in the Greeks' rear flank, the Greeks were doomed. When the Spartan commander, Leonidas, discovered his predicament, he ordered his Peloponnesian allies to retreat. But he remained at the pass with his personal bodyguard to face the inevitable, which came the next day, when he and his men perished.

Once in control of the pass, the Persian forces streamed toward Attica. The Greek fleet withdrew, and Athens lay exposed, its destruction assured. As word spread of the approaching Persians, pandemonium swept through the Athenian streets and a chaotic evacuation followed. Nearly the "entire population, including men, women, children, and slaves," perhaps 100,000 people in total, loaded onto boats and fled across the Saronic Gulf to the Athenian-controlled island of Salamis, the island of Aegina, and the town of Troezen on the Peloponnesian peninsula, leaving behind homes, crops, temples, and graves of their ancestors.³⁴ Greek independence now seemed at an end. The Persians had defeated them at Thermopylae and had taken control of Athens. A total Xerxes victory seemed at hand.

But the implausible once again occurred. The Athenian Themistocles persuaded the Greek forces to tempt the Persian navy into the narrow channel off Salamis where the Greek superiority in ramming tactics could be exploited.³⁵ It worked. Once Xerxes was seduced into the trap and exposed his fleet to the treachery of the hazardous narrow channel, the main Greek fleet emerged from the hidden shelter of the shore and decimated the Persian vessels.³⁶ It was, as Christian Meier has written, not just the battle of a Greek David against a Persian Goliath but "the greatest military campaign of the fifth century B.C., the century of Athens—and one of the boldest, most unlikely, and most momentous campaigns in world history."³⁷

The Greek victory at Salamis did not end the war with Persia. In the wake of witnessing the decimation of his fleet off the shores of Salamis, Xerxes hurriedly returned home to assure that no one took the defeat as a

³³ *Id.* at 8.

³⁴ *Id.* at 3–4.

³⁵ FREEMAN, *supra* note 29, at 161.

³⁶ *Id.* at 162 ("One source claims the Persians had lost over 200 ships as against 40 for the Greeks.")

³⁷ MEIER, *supra* note 31, at 4–5.

sign of weakness inviting rebellion.³⁸ But he left a large land force under the command of Mardonios, as well as a fleet that was still larger than the Greeks' force.³⁹

During the winter, Mardonios's main hope was to take advantage of the "strains and stresses" among the Greeks and to persuade Athens to surrender and become a self-governing unit within the Persian Empire.⁴⁰ To induce assent to his proposal, Mardonios "offered [Athens] forgiveness of all past injuries" to the Persian Empire and to allow Athens to annex any lands it coveted.⁴¹ He threatened renewed occupation, devastation, and annihilation if the offer was refused.⁴²

The Athenians rejected the proposal.⁴³ Spring came, and Mardonios marched south toward Athens.⁴⁴ No Peloponnesian force arrived to help the Athenians repel the Persians, and the Athenians were compelled to evacuate the city for a second time.⁴⁵ Mardonios's troops systematically destroyed what remained of the city.⁴⁶ As one historian has concluded, the Persians left Athens "burned and leveled to the ground, with only a few houses standing. On the Acropolis, temples, monuments, and statues were thrown to the ground and smashed."⁴⁷ Nonetheless, the Athenians remained steadfast in refusing Mardonios's peace and surrender terms, and, according to A.R. Burn, "even lynched a Councillor who proposed discussing them."⁴⁸

The opposing forces soon met near Plataea. After several days of a standoff, Mardonios misinterpreted a strategic Greek retreat intended to protect food and water supplies as a flight and ordered an attack.⁴⁹ In a furious fight that A. R. Burn has termed the "greatest land battle of classical Greek history,"⁵⁰ the Greeks, under the leadership of Sparta, killed Mardonios, cut his "finest troops . . . to pieces,"⁵¹ and captured "the treasures of the Persian headquarters."⁵² That was followed by a successful Greek naval attack on the Persian fleet at Mycale, which destroyed the ships.⁵³ This was the end of the war.⁵⁴

³⁸ *Id.* at 25.

³⁹ FREEMAN, *supra* note 29, at 162.

⁴⁰ A.R. BURN, *THE PENGUIN HISTORY OF GREECE 188* (Penguin Books 1990) (1965).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 189.

⁴⁴ *Id.*

⁴⁵ *Id.* at 189–90.

⁴⁶ *Id.* at 190.

⁴⁷ DONALD KAGAN, *PERICLES OF ATHENS AND THE BIRTH OF DEMOCRACY 152* (1991).

⁴⁸ BURN, *supra* note 40, at 190.

⁴⁹ FREEMAN, *supra* note 29, at 163.

⁵⁰ BURN, *supra* note 40, at 191.

⁵¹ *Id.* at 192.

⁵² FREEMAN, *supra* note 29, at 163.

⁵³ BURN, *supra* note 40, at 192; FREEMAN, *supra* note 29, at 163.

⁵⁴ FREEMAN, *supra* note 29, at 163–64.

Once the Athenians re-entered their destroyed city and ascended the Acropolis, they discovered a “mess.”⁵⁵ The summit was littered with “fallen architecture, burnt timbers, smashed pottery and terracottas, bases robbed of their bronzes, and broken marble sculptures.”⁵⁶ The Athenians swept up much of the rubble and buried it.⁵⁷ It was exhumed in 1886.⁵⁸ The Athenians also discovered a few pieces that the Persians either overlooked or ignored, such as a “bronze lioness” and a “seated Athena by the Archaic sculptor Endoios.”⁵⁹ They hastened to strengthen the walls around the Acropolis and to rebuild the walls of the city, not only against another attack by the Persians, but also before Sparta might object to Athenian military fortifications.⁶⁰ In their haste to rebuild the Acropolis, they used material lying around the foundations and scattered about by the sack, including column drums and building blocks, and “tossed them helter-skelter into roughly constructed battlements”⁶¹

There is one extraordinary exception—the north wall boldly utilizes “scores of pieces from the two major temples destroyed by the Persians.”⁶² Northwest of the Erechtheion, “triglyphs, metopes, architrave blocks, and other parts of the *Archaios Neos* were built into a stretch of wall that is roughly as long as the temple from which they came,”⁶³ and which were plainly visible from the Agora. Near the top of the north wall, there is a conspicuous line of “twenty-nine unfluted column drums (as well as scores of other blocks) from the Older Parthenon.”⁶⁴ Russell Meiggs writes:

These [column drums] are not packed together at random; they are deliberately placed in line to catch the eye. The Athenians knew that these were to have been the columns of their new temple of Athena. [Their symmetrical placement in the north wall] was their war memorial, and on the top the ruined temple remained in ruins.⁶⁵

The rebuilt north wall of the Acropolis is a unique monument in the history of Greece, “a looming reminder of the impiety of the barbarians,”⁶⁶ and is, in the judgment of one scholar, “truly remarkable in its

⁵⁵ JEFFREY M. HURWIT, *THE ATHENIAN ACROPOLIS: HISTORY, MYTHOLOGY, AND ARCHAEOLOGY FROM THE NEOLITHIC ERA TO THE PRESENT* 141 (1999).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ KAGAN, *supra* note 47, at 152.

⁶¹ *Id.*

⁶² HURWIT, *supra* note 55, at 142.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Russell Meiggs, *The Political Implications of the Parthenon*, 10 *GREECE & ROME (SUPP: PARTHENOS & PARTHENON)* 36, 37 (1963).

⁶⁶ HURWIT, *supra* note 55, at 142.

understanding of the potential power of ruins upon the emotions and imagination of people.”⁶⁷

The significance of the great Greek defeat of the Persians differed enormously for the two opposing forces. For Persia, the defeat, while humiliating, had almost no immediate consequences for Persian control over its vast empire centered in the “heartland of the Near East.”⁶⁸ In retrospect, however, it is apparent that the Persian defeat at the hands of the Greeks put the empire on the defensive, commencing “a long period of decline.”⁶⁹ For Greece, the victory had a profound importance. As Chester G. Starr wrote: it “seems more than doubtful” that the “Greek civilization would have continued to progress under Persian rule.”⁷⁰ Or as Christian Meier has written: historiographers “prefer to think in terms of processes and are reluctant to admit that events may have the power to block such processes as the development of a civilization.”⁷¹ The Greek defeat of Persian forces meant that Greek culture could move ahead, not only “at an entirely new pace but was able to realize its potential differently, more comprehensively, and more prolifically than otherwise would have been possible.”⁷² As for the significance of that, Meier is expansive:

What happened in and to Athens during the fifth century B.C. was not just a new stage of development along the historical continuum, but the beginning of something fundamentally new and different. The lasting influence Greece exerted on the Roman Empire and Christian theology, on the Middle Ages and the modern era, in both direct and indirect ways, ultimately goes back to what took place in Athens during these decades.⁷³

Independent and loosely affiliated city-states had defeated the world’s mightiest power. It was a remarkable and implausible turn of events that burnished the memories of a generation and ushered in an era of intense—and perhaps unsurpassed—cultural accomplishments that is “credited,” in the words of Neil MacGregor, former Director of the British Museum, “with the invention of such aspects of modern western

⁶⁷ ROBIN FRANCIS RHODES, *ARCHITECTURE AND MEANING ON THE ATHENIAN ACROPOLIS* 33 (1995).

⁶⁸ CHESTER G. STARR, *A HISTORY OF THE ANCIENT WORLD* 295 (4th ed. 1991).

⁶⁹ FREEMAN, *supra* note 29, at 165.

⁷⁰ STARR, *supra* note 68, at 295.

⁷¹ MEIER, *supra* note 31, at 27.

⁷² *Id.* at 28.

⁷³ *Id.*

civilization as democracy, philosophy, history, medicine, poetry and drama.”⁷⁴

II. THE PARTHENON

The Parthenon was built as a sacred war memorial to the Greek gods, commemorating the Greek victory over the invading Persian forces and placing Athena, an ancient Greek goddess associated with war and wisdom, at its center. The distinguished Pericles championed a new temple, and in 447 BCE the construction of the Parthenon commenced.⁷⁵ Pericles recruited Ictinus and Callicrates to be the architects, with Ictinus exercising the dominant hand.⁷⁶ Phidias was the general sculptor and, according to Plutarch, “the general overseer.”⁷⁷ The main construction was completed in 438 BCE, although the exquisite decoration of the masterpiece continued for another six years.⁷⁸ One contemporary authority has written that the Parthenon was the “most technically advanced temple that had ever been constructed in Greece” and that it was “the masterpiece” of all of the “extraordinary new temples and related sacred buildings” that were “constructed on the Acropolis and in the major towns of Attica” in the mid-440s BCE.⁷⁹

The Parthenon is the largest completed Doric temple in the Greek world.⁸⁰ Its perimeter measures roughly 101 feet by 228 feet.⁸¹ It has eight columns along two sides and seventeen columns along the other two sides.⁸² Each column has a diameter of about 6 feet and a height of about 34 feet, and the columns are about 12 feet apart.⁸³ As a result, “the height, the width, and the length of the temple . . . are linked in proportions of 9:4,” and that proportionality gives the building “a coherence and harmony that is rooted in mathematics.”⁸⁴

The Parthenon is also the only Greek temple constructed entirely of marble,⁸⁵ and the marble was quarried on Mount Pentelicon, ten miles from Athens.⁸⁶ Because the transportation of the marble was difficult and costly, each marble block was cut to size at the quarry to minimize the

⁷⁴ MacGregor, *supra* note 11, at 7.

⁷⁵ Savas Kondaratos, *The Parthenon as Cultural Ideal*, in THE PARTHENON AND ITS IMPACT IN MODERN TIMES, *supra* note 20, at 24.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 25.

⁷⁹ JOSIAH OBER, THE RISE AND FALL OF CLASSICAL GREECE 205 (2015).

⁸⁰ Kondaratos, *supra* note 75, at 25.

⁸¹ SUSAN WOODFORD, THE PARTHENON 17 (1981).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Kondaratos, *supra* note 75, at 25.

⁸⁶ WOODFORD, *supra* note 81, at 19.

weight to be hauled.⁸⁷ As a result, as one scholar has observed, “no more stone was moved than was strictly necessary.”⁸⁸ The stone was hauled from the quarry to Athens by oxen-drawn wagons, and then pulled up the Acropolis slopes by mules.

The Parthenon’s proportions, size, and use of marble set it apart from other temples, but what made the temple live in history as no other was its statuary. The Parthenon’s sculptures were unique and have been celebrated throughout their long history.⁸⁹ Those who did the sculpting broke through old forms, shaped new aesthetic standards, and created art that continues to fascinate and stir admiration and respect. They are, in the words of a former Director of the British Museum, “famous throughout the world as great works of art from Classical Greece.”⁹⁰

The Parthenon’s center of attraction was the massive statue of Athena sculpted by Phidias—perhaps thirty-three feet high, which was housed in the darkened naos (the inner part of the temple), lit only from the door and two windows.⁹¹ As one authority has noted, “her face and arms and feet were veneered in ivory, her clothing thickly plated in gold, her eyes inset with precious stones.”⁹² Statues made in such a manner are called “chryselephantine.”⁹³

The Parthenon had ninety-two metopes—the Parthenon metopes are large rectangular marble blocks usually containing two figures that decorated spaces above the high columns.⁹⁴ Each metope was about four feet square, about fourteen inches thick and was set about forty feet above the Parthenon floor. Fourteen metopes were on the east and west sides of the Parthenon, and thirty-two were on the north and south sides.⁹⁵ As set forth by the Acropolis Museum:

[The metopes on] [t]he east side depicted the battle of the Olympian gods against the Giants, who tried to overthrow the order prevailing on Mount Olympus The west side [metopes] presented the fight of Athenian youths against the Amazons, who threatened even the Acropolis The theme of the south side was the fight of the Thesalian youths . . . against the Centaurs who attempted to abduct their

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ For a recent study that asserts that the Parthenon remains an enigma, see CONNELLY, *supra* note 13.

⁹⁰ MacGregor, *supra* note 11, at 7.

⁹¹ WOODFORD, *supra* note 81, at 39.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *The Metopes*, ACROPOLIS MUSEUM, <https://www.theacropolismuseum.gr/en/content/metopes-0> [<https://perma.cc/W8Z6-B22S>] (last visited Oct. 12, 2020).

⁹⁵ BEARD, *supra* note 13, at 26 fig.2.

women during a wedding celebration The north side [metopes] illustrated the Sack of Troy⁹⁶

A majority of the metopes were destroyed when the Parthenon was turned into a Christian church around the sixth and seventh centuries.⁹⁷ Fifteen removed by Elgin are in the British Museum, one is in the Louvre, some remain in the Parthenon, and others are in the Acropolis Museum.⁹⁸ The marbled Parthenon frieze—a long ribbon running 525 feet⁹⁹ with slabs about 40 inches high—was created to add a special dimension to the naos. Its theme is processional, and it contains horsemen, charioteers, youths, and animals. Its design was a challenge given its length, and its meaning remains debated today.¹⁰⁰ A majority of the frieze is now at the British Museum.¹⁰¹ The next largest collection of the frieze is at the Acropolis Museum followed by pieces here and there in about half a dozen other museums.¹⁰²

At either end of the Parthenon were the pediments, and they were the last to be decorated with sculptures. Because the Parthenon was eight columns wide, the pediment space available for sculptures was unusually large, and the many large figures that decorated each pediment “were carved fully in the round as if they were free-standing statues.”¹⁰³ The west pediment depicted the rivalry of Athena and Poseidon,¹⁰⁴ and the east pediment depicted the birth of Athena.¹⁰⁵ Most of the pediment sculptures were lost over the centuries.¹⁰⁶ Thus, by the seventeenth century, the center sculptures of the east pediment were lost, and while more sculptures on the west pediment existed when a drawing was made in 1674, only a few sculptures have survived to the present day.¹⁰⁷

The Parthenon has had an eventful history. A third-century AD fire destroyed the Parthenon’s roof.¹⁰⁸ Between 600 AD and the middle of the fifteenth century, the classical Greek monument “served the Christian

⁹⁶ *The Metopes*, *supra* note 94.

⁹⁷ BEARD, *supra* note 13, at 55–57 (explaining that Christians believed the metopes to be “pagan sculpture” and therefore “systemically defaced [them] . . . until their subjects were unrecognizable”).

⁹⁸ *Id.* at 12.

⁹⁹ WOODFORD, *supra* note 81, at 31.

¹⁰⁰ BEARD, *supra* note 13, at 12 (proposing one interpretation that the frieze features “the men and women of fifth-century BC Athens engaged in some real-life Athenian ritual” and another theory that the frieze depicts “a preparation for human sacrifice, drawn from the repertoire of local Athenian myth”).

¹⁰¹ *Facts and Figures*, *supra* note 3, at ¶ 1.2 (reporting that the British Museum’s collection contains 247 feet of the original 524 feet of frieze).

¹⁰² B.F. COOK, *THE ELGIN MARBLES* 32 (2d ed. 1997) (1984); *Facts and Figures*, *supra* note 3, ¶ 2.1.

¹⁰³ WOODFORD, *supra* note 81, at 28.

¹⁰⁴ BEARD, *supra* note 13, at 25.

¹⁰⁵ WOODFORD, *supra* note 81, at 37.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 37–38.

¹⁰⁸ BEARD, *supra* note 13, at 151–52.

community of Athens, first as a Byzantine church and later as a Latin cathedral.”¹⁰⁹ In the mid-fifteenth century, Athens fell under the rule of Ottoman Turks, and in time, the Parthenon became a mosque.¹¹⁰ In 1687, during the war between the Ottoman Turks and the Venetians, Francesco Morosini led a Venetian attack on Athens during which a Venetian mortar round hit the Parthenon, which the Turks had used as a gunpowder magazine.¹¹¹ The result was the single biggest catastrophe theretofore in the Parthenon’s 2,100-year history. “Parthenon exploded when hit, sending the marble roof, most of the cella walls, columns from the north and south peristyles, and carved metopes and frieze blocks flying, crashing to the ground and smashed to smithereens.”¹¹² As if that were not enough for one building, Lord Elgin’s agents arrived about 120 years later, and within a short time they removed from the Parthenon 15 of the 92 metopes, 247 feet of the original 524 feet of frieze, and 17 pedimental figures.¹¹³

Elgin’s dismantling of the Parthenon of its artistic treasures had a devastating impact on the Parthenon’s core structure essential to its integrity and stability. Even Susan Woodford, a scholar who lectures at the British Museum and who has endorsed the British Museum’s position that Ottoman authorities granted Lord Elgin permission to “remove whatever he wished, so long as he did not interfere with any Turkish fortifications,”¹¹⁴ concluded that Elgin’s removal of the metopes “meant that much of the [Parthenon’s] superstructure had to be taken away before the metopes could be withdrawn.”¹¹⁵ As a consequence, she wrote, “Some of the architecture [of the Parthenon] was thereby destroyed.”¹¹⁶ So that Woodford’s important point was not a simple abstraction, she included two images—one of the Parthenon in 1801, before the removal of the metopes, and one shortly thereafter. The two images make apparent that the removal of the metopes caused the collapse of Parthenon walls.¹¹⁷

III. HOPES EXCEEDED

So much of history is the result of happenstance, and that is as true in this story as any. Elgin was not slated to become his family’s earl. William Robert, Elgin’s older brother, became the sixth Earl of Elgin when their father died in 1771.¹¹⁸ But William Robert died only months

¹⁰⁹ Neils, *supra* note 21, at 3.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 3–4.

¹¹³ *Facts and Figures, supra* note 3, at ¶ 1.2.

¹¹⁴ WOODFORD, *supra* note 81, at 45.

¹¹⁵ *Id.* at 46.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 45 figs.5.7 and 5.8.

¹¹⁸ Smith, *supra* note 1, at 163.

later, making Thomas Bruce the seventh Earl of Elgin shortly before his fifth birthday.¹¹⁹

As a young earl, Elgin attended many schools, initially studying at Harrow, and then at Westminster and St. Andrew's, before eventually finishing his education in Paris.¹²⁰ He entered the army in 1785, was elected a Representative Peer of Scotland in 1790, and in 1799—after a diplomatic tour of duty in Brussels and Berlin—he became Ambassador Extraordinary and Minister Plenipotentiary of his Britannic Majesty to the Sublime Porte of Selim III, Sultan of Turkey in Constantinople.¹²¹

It was Elgin's architect, Thomas Harrison, who initially piqued Elgin's interest in classical Greek art.¹²² Elgin had already employed Harrison to work on Broomhall, his "magnificent new country house" in Scotland,¹²³ when he was appointed the Ambassador to the Ottoman Empire. Harrison had "passed much of his life in Rome" and recommended to Elgin that, during his ambassadorship in Constantinople, he hire artisans to make "casts from the actual objects" in Athens.¹²⁴ Elgin embraced the suggestion, and after the British government denied his request to financially support the plan,¹²⁵ he decided to fund the endeavor himself.¹²⁶ At that point, Elgin asked J.M.W. Turner, the young but highly regarded painter, to direct the project.¹²⁷ Turner was interested, but Elgin considered his terms excessive—Turner wanted a salary of seven hundred to eight hundred pounds plus expenses, and he also "wished to retain a certain portion of his own labour for his own use."¹²⁸

En route to Constantinople, Elgin stopped in Sicily, staying as a guest of Sir William Hamilton, a British diplomat and antiquities collector. Hamilton recommended Giovanni Battista Lusieri¹²⁹—"a topographical draughtsman"¹³⁰—to direct Elgin's Athens project. Elgin accepted the advice, and after gaining the required approval from Sicilian authorities, he hired Lusieri.¹³¹

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ David Rudenstine, *A Tale of Three Documents: Lord Elgin and the Missing, Historic 1801 Ottoman Document*, 22 CARDOZO L. REV. 1853, 1853 (2001); Smith, *supra* note 1, at 163–64. In 1799, Elgin also married Mary, the only child and heiress of William Hamilton Nisbet of Dirleton and Belhaven, Co. Haddington. *Id.* at 164.

¹²² ST. CLAIR 3d ed., *supra* note 8, at 6.

¹²³ *Id.* at 4.

¹²⁴ Smith, *supra* note 1, at 166.

¹²⁵ *Id.*

¹²⁶ ST. CLAIR 3d ed., *supra* note 8, at 7.

¹²⁷ Smith, *supra* note 1, at 166.

¹²⁸ Testimony of the Earl of Elgin, MINUTES OF EVIDENCE TAKEN BEFORE THE SELECT COMMITTEE RESPECTING THE EARL OF ELGIN'S MARBLES, *infra* Appendix B, ¶ 2 [hereinafter Elgin Testimony].

¹²⁹ Smith, *supra* note 1, at 168.

¹³⁰ *Id.* at 169.

¹³¹ Elgin Testimony, *infra* Appendix B, ¶ 2.

Elgin arrived in Constantinople during the first months of 1800.¹³² Very shortly thereafter, Hamilton and Lusieri arrived, along with a painter, a molder, and a draftsman whom Lusieri wished to hire for the project.¹³³ Elgin approved of the hires, and by late August or early September, Lusieri was in Athens with a skillful team.¹³⁴ Elgin's charge to Lusieri was clear: the "first priority" was to measure, draw, and mold the Parthenon.¹³⁵ They were not, as Lord Elgin's biographer has stated, "to take anything away."¹³⁶ However, Ottoman officials in Athens did not permit Lusieri and his artisans to have access to the Acropolis, "even for the purpose of taking drawings, except by the payment of a large fee, which was exacted daily."¹³⁷

In May of 1801, the Rev. Dr. Philip Hunt, a member of Elgin's entourage, traveled to Athens.¹³⁸ From there, Hunt wrote to Elgin in Constantinople that the Ottomans finally relented and "opened to us the gates of the Acropolis and every recess of the superb buildings it contains."¹³⁹ But Hunt made clear in his letter that their access was limited only to touring the Acropolis; other activities such as drawing, measuring, and molding were prohibited. Hunt informed Elgin that he had to secure some kind of a written order from Constantinople officials "to enable the Architects and Modellers" to model and draw the "bas-reliefs on the frieze, and the Groupes on the Metopes."¹⁴⁰

That is where matters stood when Hunt arrived in Constantinople a month later.¹⁴¹ Although we do not know the details of the discussions among Elgin and others regarding his Parthenon project, we do know that a document dated July 1, 1801, and bearing Hunt's name, set forth the terms and conditions of an order Elgin should request from the Ottomans. Because this document reflected Elgin's hopes and expectations for what it was he hoped his artisans would accomplish in his name, it is worth quoting the complete text of this short memorandum:

PERA, *July* 1, 1801. Mr. Hunt recommends that a Ferman should be procured from the Porte, addressed to the Voivode and Cadi

¹³² Smith, *supra* note 1, at 174.

¹³³ *Id.* at 176.

¹³⁴ ST. CLAIR 3d ed., *supra* note 8, at 27.

¹³⁵ *Id.* at 64–65.

¹³⁶ *Id.* at 64.

¹³⁷ REPORT FROM THE SELECT COMMITTEE OF THE HOUSE OF COMMONS ON THE EARL OF ELGIN'S COLLECTION OF SCULPTURED MARBLES (Mar. 25, 1816), *infra* Appendix A, ¶ 10 [hereinafter SELECT COMMITTEE REPORT]. St. Clair offers a different set of facts. He claimed that in February of 1801 Elgin's artisans were permitted to enter the Acropolis for the first time, provided they paid five pounds for each visit, which they did. ST. CLAIR 3d ed., *supra* note 8, at 66. For several months, the artisans did their work of drawing and measuring. *Id.*

¹³⁸ Smith, *supra* note 1, at 186.

¹³⁹ *Id.* (quoting Letter from Philip Hunt to Earl of Elgin (May 22, 1801)).

¹⁴⁰ *Id.* at 188 (quoting Letter from Philip Hunt to Earl of Elgin (May 22, 1801)).

¹⁴¹ *Id.* at 189.

of Athens, as well as to the Disdar, or Governor of the Citadel; stating that the Artists are in the service of the British Ambassador Extraordinary, and that they are to have not only permission, but protection in the following objects:—

- (1) To enter freely within the walls of the Citadel, and to draw and model with plaster the Ancient Temples there.
- (2) to erect scaffolding, and to dig where they may wish to discover the ancient foundations.
- (3) liberty to take away any sculptures or inscriptions which do not interfere with the works or walls of the Citadel.

PHILIP HUNT¹⁴²

As is apparent, Hunt's short memorandum did not suggest that Elgin ask the Porte for permission to remove the sculptures from the Parthenon high walls. Indeed, the short memorandum makes it very clear that the "sculptures and inscriptions" that may be removed are ones that "do not interfere with the works or walls of the Citadel."

At that point Pisani—Elgin's interpreter or guide who was called a dragoman—drafted a document in Italian that set forth the scope of permission Elgin sought from the Ottoman authorities in Constantinople. This Italian document tracks Hunt's points. It provided that the artisans "meet no opposition in walking, viewing, or contemplating the figures and edifices they may wish to design or copy; or in any of their works of fixing scaffolding, or using their various implements."¹⁴³ It stated that artisans be permitted to engage "in modelling with chalk or gypsum the said ornaments and visible figures thereon; or in measuring the fragments and vestiges of other ruined edifices; or in excavating, when they find it necessary, the foundations, in search of inscriptions among the rubbish."¹⁴⁴ It requested that "no one meddle with their scaffolding or implements, *nor hinder them from taking away any pieces of stone . . . with inscriptions or figures.*"¹⁴⁵ It urged that the permission sought to engage in all of those activities should be granted "*particularly as there is no harm in the said figures and edifices being thus viewed, contemplated, and designed.*"¹⁴⁶

The original permit—a document written in Ottoman wherein Elgin claimed to have secured from Constantinople Ottoman officials in July of 1801—has never been found. Moreover, no one has discovered any

¹⁴² *Id.* at 190.

¹⁴³ TRANSLATION FROM THE ITALIAN OF A FERMAUN, *infra* Appendix D, ¶ 3 [hereinafter FERMAUN TRANSLATION].

¹⁴⁴ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 3.

¹⁴⁵ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 3.

¹⁴⁶ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 3 (emphasis added).

information in the Ottoman archives regarding exchanges between Elgin and the Constantinople Ottomans, nor has anyone found in the records of the British Foreign Office a similar reference.¹⁴⁷

All of this would seem to cast doubt on Elgin's claim that he did indeed receive an order of some kind from the Ottoman authorities in Constantinople in July of 1801. But there is other information—three contemporaneous communications—indicating that Elgin did, in fact, obtain a document from the Ottoman government in Constantinople addressed to Ottoman officials in Athens that pertained to the work of his artisans. On July 8, 1801, Hunt wrote Hamilton, who was then “on a special errand in Egypt,”¹⁴⁸ that he would leave Athens within days, and that he would “carry a Ferman to enable our Artists to prosecute without interruption their researches in the Acropolis of Athens.”¹⁴⁹ The next day, Elgin's wife, Mary Nisbet of Dirleton, Countess of Elgin, wrote her father that Pisani, Elgin's dragoman, “succeeded à merveille in his *firman* from the Porte.”¹⁵⁰ The day after that, Elgin, referring to the new Ottoman document, wrote to Lusieri in Athens, proclaiming, “[Y]ou have now the permission to dig”¹⁵¹

These documents support Elgin's claim that he received some kind of document from Constantinople officials and that it likely permitted Elgin's artisans to draw, paint, measure, and mold, as well as to erect scaffolds to facilitate these activities. Moreover, as Elgin wrote Lusieri, he now had permission “to dig” around the foundation of the Parthenon, presumably in search of buried sculptures. However, the fact that these communications do not explicitly state or even suggest that the removal of marble sculptures from the Parthenon walls was within the authority granted to Elgin by the Ottomans constitutes stunning evidence that no such authority was granted.

What happened to the document Hunt took to Athens is uncertain. Nonetheless, what is most likely is that an Ottoman official in Athens kept the document since it seems to have been addressed to him. After that, the document was probably lost or destroyed, either before or during the Greek War of Independence in the 1820s.

Thus, only a handful of matters is certain. Pisani prepared a document in Italian that set forth Elgin's request. That Italian document did

¹⁴⁷ Many have searched for the document, including myself. With the assistance of interpreters, I was not able to find even one reference to such a document in the Ottoman archives and, as far as I am aware, no one else who has searched the records has either.

¹⁴⁸ Smith, *supra* note 1, at 192.

¹⁴⁹ *Id.* at 194 (quoting Letter from Philip Hunt to Richard William Hamilton (July 8, 1801)).

¹⁵⁰ Rudenstine, *supra* note 121 (quoting Letter from Mary Nisbet to William Nisbet (July 9, 1801), in *THE LETTERS OF MARY NISBET OF DIRLETON COUNTESS OF ELGIN*, at 97 (Lieut-Colonel Nisbet Hamilton Grant ed., 1926)).

¹⁵¹ Smith, *supra* note 1, at 192 (quoting Letter from Earl of Elgin to Giovanni Battista Lusieri (July 10, 1801)).

not seek permission for Elgin's artisans to remove sculptures from the Parthenon walls. A document in Ottoman prepared by Constantinople officials responding to Elgin's request for a directive defining the scope of permission was taken by Hunt to Athens in July of 1801. No one—and many have searched—has found the original July 1801 Ottoman-language document, nor has anyone ever found even a copy of this document. And no one—including myself—has ever discovered a reference to it in the archives of the Ottoman Empire. All that we have is an Italian-language document prepared by Elgin's interpreter setting forth the scope of permission Elgin requested, and that document does not request permission to remove sculptures from the Parthenon's walls.

When Hunt gave the Voivode—the Ottoman official in Athens with whom he met—the Ottoman order defining what Elgin's artisans had permission to do on the Acropolis, he also gave the official bribes, and because he had the impression that the Voivode seemed willing “to gratify any wish of mine with respect to . . . Lord Elgin's artists,” Hunt additionally requested and received permission to remove a metope from the Parthenon walls.¹⁵²

This was, perhaps, the defining moment in this entire episode, and when it occurred, Elgin was in Constantinople and knew nothing about it.¹⁵³ When Hunt and Lusieri lowered the second and third sculptures, Elgin was still in Constantinople and ignorant of what was being done in his name.¹⁵⁴ Nevertheless, when Elgin did learn of these developments, he was surprised and pleased. As he wrote in a letter to Lusieri, the Parthenon activities “promise a success beyond our most ardent hopes.”¹⁵⁵ This “success” was the stripping of the Parthenon of its exquisite and incomparable sculptures, which continued for some years and was possible, in part, because Elgin provided bribes to officials in Constantinople and Lusieri did the same on Elgin's behalf in Athens.¹⁵⁶

In time, and over a dozen years, Elgin's collection was shipped from Greece to London. By the time the last shipment arrived in London, Elgin's artisans had removed more than half of the frieze, one sixth of the sculpture squares (metopes), and seventeen pedimental figures.¹⁵⁷

¹⁵² Testimony of Rev. Dr. Philip Hunt, MINUTES OF EVIDENCE TAKEN BEFORE THE SELECT COMMITTEE RESPECTING THE EARL OF ELGIN'S MARBLES, *infra* Appendix C, ¶ 6 [hereinafter Hunt Testimony].

¹⁵³ Smith, *supra* note 1, at 196.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 201 (quoting Letter from Earl of Elgin to Giovanni Battista Lusieri (Oct. 8, 1801)).

¹⁵⁶ See *infra* notes 315–320 and accompanying text.

¹⁵⁷ *Facts and Figures*, *supra* note 3, at ¶ 1.2 (reporting that the Elgin's artisans stripped 15 of the 92 metopes, 247 feet of the original 524 feet of frieze from the Parthenon walls, and 17 pieces of

Londoners gave an initial mixed response to the Greek marbles. As one historian has noted, if some were “enthused, others did not much like what they saw.”¹⁵⁸ To a few critics, some pieces were “battered” and others seemed “second rate.”¹⁵⁹ To one well-known collector, Richard Payne Knight, the sculptures were not fifth-century BCE Greek sculptures but “Roman additions to the Parthenon from the second century AD.”¹⁶⁰ In time, however, the Parthenon marbles were embraced by British society as sensational sculptures created during the heyday of Athens, and, as the 1816 Parliamentary Select Committee’s Report stated, “no country can be better adapted than our own to afford an honourable asylum to these monuments of the school of *Phidias*, and of the administration of *Pericles*.”¹⁶¹

IV. BANKRUPTCY

By the spring of 1811, Elgin’s life was in a downward spiral. Although he had divorced Mary Nisbet and married Elizabeth Oswald of Dunnikeir, a daughter of a neighboring landowner,¹⁶² he had lost his seat in the House of Lords; he failed to receive a new appointment as an ambassador;¹⁶³ and his nose—disfigured perhaps by syphilis—caused him to withdraw from society.¹⁶⁴ This collapse of his public life—a collapse that left him only to pursue the life of a “country nobleman”¹⁶⁵—was accompanied by the deterioration of his financial condition that brought him “close to bankruptcy.”¹⁶⁶ Thus, Elgin needed to raise funds, and one asset he possessed of value that he could sell was his Parthenon collection.¹⁶⁷

Elgin wrote a letter to Charles Long, the Paymaster-General, setting forth the expenses incurred in creating the collection.¹⁶⁸ The sum was impressive, or “huge,” as Elgin’s biographer has commented.¹⁶⁹ Elgin put his out-of-pocket expenses for workmen and artists, the storing of the collection in Malta, and the “salvaging of the *Mentor*” at £39,200.¹⁷⁰ Because much of the needed funds had been borrowed, Elgin included an interest charge of 5%, thus adding an additional £23,240.¹⁷¹ To that hefty

sculpture from the pediment).

¹⁵⁸ BEARD, *supra* note 13, at 19.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 73.

¹⁶² ST. CLAIR 3d ed., *supra* note 8, at 173.

¹⁶³ *Id.* at 142.

¹⁶⁴ *Id.* at 173.

¹⁶⁵ *Id.* at 142.

¹⁶⁶ BEARD, *supra* note 13, at 159.

¹⁶⁷ ST. CLAIR 3d ed., *supra* note 8, at 174.

¹⁶⁸ *Id.* at 177.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

sum, Elgin added another £6,000 for twice moving the collection in London, bringing the total to £62,440.¹⁷² Elgin then added a few items for which he did not fix sums, “perhaps hoping”—as his biographer speculated—that the “Government would round the sum up to £70,000.”¹⁷³

On the same day Elgin wrote to the Paymaster-General, he also wrote to the Prime Minister, Spencer Perceval, and raised the prospect of the government purchasing his collection.¹⁷⁴ Perceval—perhaps reacting to the financial burdens due to the war with France—quickly rejected Elgin’s request: “I must candidly say,” he wrote, “that I should feel it quite impossible to recommend any arrangement of that nature as connected in the remotest degree with the purchase of your Lordship’s collection.”¹⁷⁵ The Paymaster-General’s response was more positive, though surely disappointing. The Paymaster-General stated that he would recommend to the Parliament that Elgin’s collection be purchased for £30,000, less than half of what Elgin was seeking.¹⁷⁶ Elgin was put off by the exchanges and he did not pursue the Paymaster-General’s offer.¹⁷⁷

Four years later, Elgin once again approached the government about purchasing his collection. That overture triggered two brief discussions in the House of Commons. One was held on June 15, 1815, and the second on February 23, 1816. Those brief discussions are worth recalling because they demonstrate that our modern-day concerns over the acquisition of the sculptures—and cultural property more generally—are the same as those raised during Elgin’s time.

In the June 15, 1815, discussion, the Chancellor of the Exchequer endorsed the purchase on the grounds that “these marbles would be a great acquisition to the public,” and he recommended that Parliament determine the sum to be paid Elgin rather than have the treasury reach “a private bargain” with him.¹⁷⁸ He reassured the members that the “noble lord . . . did not desire an exorbitant remuneration;”¹⁷⁹ indeed, he told the assembled members that Elgin “threw himself entirely on the justice of Parliament.”¹⁸⁰

In the brief debate that followed, several points were made. The government already owned Elgin’s collection because Elgin had abused his position as the British ambassador in developing it, and that abuse should

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 178 (quoting from Perceval’s letter to Elgin).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* (Elgin believed Perceval’s offer to be “wholly inadequate either to the expenses incurred, or to the acknowledged value of the collection”).

¹⁷⁸ HC Deb (June 15, 1815) (31) cols. 828–29 (UK).

¹⁷⁹ *Id.* col. 830.

¹⁸⁰ *Id.*

affect the compensation Parliament paid Elgin.¹⁸¹ “[T]hese marbles . . . were more than half public property,” and Elgin had already rejected a “very liberal” offer from the government to purchase the marbles,¹⁸² referring to the Paymaster-General’s offer in 1811.¹⁸³ Elgin committed “the most flagrant acts of spoliation,” and Parliament should not purchase the collection because it “would evidently sanction acts of public robbery.”¹⁸⁴ Instead, it was recommended that Parliament conduct a “full inquiry . . . into the manner in which the collection had been acquired.”¹⁸⁵ Although the British Museum had previously stated that it lacked room for Elgin’s collection, it asserted that the “trustees were now determined to receive them.”¹⁸⁶ The entire matter was put over until February of 1816, when Parliament reconvened.

In the February 23, 1816, session, Parliament once again addressed Elgin’s proposed sale of the Parthenon marbles.¹⁸⁷ The Chancellor of the Exchequer, still favoring the purchase of the collection, brushed aside the controversy over Elgin’s embarrassing conduct because the “circumstances” were “so well known . . . he would not trouble the House at any length on the subject.”¹⁸⁸ He insisted that Elgin’s initial motivation was pure; all Elgin wanted to do was to advance the arts in England.¹⁸⁹ The Chancellor argued that Elgin’s attitude toward compensation was totally reasonable—Elgin would leave the sum to be paid to him to Parliament’s judgment.¹⁹⁰ The Chancellor warned that a failure to reach an agreement with Elgin would in “a short time” prompt Elgin to sell the collection to foreign buyers.¹⁹¹

Other MPs did not share the Chancellor’s unbridled enthusiasm. Lord Ossulston and Mr. Bankes charged that Elgin had abused his position as ambassador in developing the collection. Ossulston insisted that the Ottomans indulged Elgin not out of “respect paid to” him, but because of the “power and the greatness of the country which [Elgin] represented.”¹⁹² Ossulston said that Elgin should be compensated only for the “trouble and expense” he had incurred “in bringing over these marbles.”¹⁹³ Bankes repeated Ossulston’s substantive claim: Elgin had “availed himself of his character as an English ambassador to facilitate

¹⁸¹ *Id.* col. 829.

¹⁸² *Id.*

¹⁸³ See *supra* note 176 and accompanying text.

¹⁸⁴ HC Deb (June 15, 1815), *supra* note 178, col. 829.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* col. 830.

¹⁸⁷ HC Deb (Feb 23, 1816) (32) cols. 823–28 (UK).

¹⁸⁸ *Id.* col. 824.

¹⁸⁹ *Id.* col. 823–24.

¹⁹⁰ *Id.* col. 824.

¹⁹¹ *Id.*

¹⁹² *Id.* col. 825.

¹⁹³ *Id.*

the acquisition.”¹⁹⁴ But Bankes thought the collection “so unrivalled” he wanted Britain to have it and thus favored the purchase to avoid an intractable dispute and the possibility that a foreign government would get its hands on it.¹⁹⁵ Mr. Long echoed Bankes’s concern that the failure to act would cause Elgin to sell the collection to others.¹⁹⁶ Mr. Abercrombie agreed in principle that ambassadors should not take advantage of their lofty position to advance their personal gain: “[I]t was a matter of public duty not to hold out a precedent to [a]mbassadors to avail themselves of their situation to obtain such property, and then to convert it to their own purposes.”¹⁹⁷ But, Abercrombie continued, he had confidence that Elgin would establish that he did not abuse his power as ambassador to promote his private gain, and as a result, he favored a purchase.¹⁹⁸ Mr. Gordon opposed a purchase—he claimed the country could not afford a “set of marbles,” presumably because of the cost of the war with France and the state of the nation’s finances.¹⁹⁹ Mr. Brougham agreed: “This country ha[s] not the money to spend.”²⁰⁰

Mr. Tierney was in favor of establishing a committee to inquire into how Elgin developed his collection and what his actual expenses were.²⁰¹ He opposed, however, any inquiry into what artists believed the value of the marbles to be.²⁰² In support of his belief that the public already had a claim to the marbles, Tierney emphasized that Elgin had used “ships of war” to transport the sculptures to London.²⁰³

Mr. Preston opposed the appointment of a committee and believed that Elgin should give the marbles as a “present to the country.”²⁰⁴ Alternatively, Elgin should be compensated for his expenses only, not for the so-called “value” of the collection.²⁰⁵ Otherwise, Preston reasoned that “ambassadors [would be] encouraged to make these speculations, [and] many might return home in the character of merchants.”²⁰⁶ Sir John Newport agreed with Preston: no committee should be formed because Elgin used means to collect the Parthenon sculptures that prohibited the nation from purchasing them.²⁰⁷ Mr. Babington also suspected that Elgin’s means were condemnable and cautioned that the committee should be

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* col. 827.

¹⁹⁷ *Id.* col. 825.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* col. 826.

²⁰⁰ *Id.* col. 827.

²⁰¹ *Id.* col. 826.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* col. 827.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.* col. 828.

“careful in seeing that the whole transaction was consonant with national honour.”²⁰⁸ Mr. Crocker worried that a national purchase of the Elgin collection would stain the national reputation, and he urged a committee to assure that Elgin’s taking was “compatible with the noble lord’s and with the country’s honour.”²⁰⁹ The Chancellor—concerned that any delay might prompt Elgin to sell the collection to a buyer on the continent—favored ending the discussion and forming a committee.²¹⁰ And that was done.

V. TWISTING IN THE WIND

After years of indecision, delays, and false starts, official Parliamentary proceedings to consider the government’s purchase of Elgin’s historic collection of classical Greek sculptures commenced in late February of 1816, when the Select Committee of the House of Commons on the Earl of Elgin’s Collection of Sculptured Marbles (Select Committee) commenced hearings.²¹¹ Over a few weeks, this specially convened Committee took the testimony of seventeen witnesses.²¹²

A. Lord Elgin’s Testimony

Lord Elgin was the first, appearing before the Select Committee on February 29, 1816.²¹³ He was a shockingly ineffective witness. Elgin must have been anticipating this moment for a very long time—perhaps five years or more. His financial condition was desperate, and thus selling the collection to the government likely seemed to Elgin an imperative. In thinking about what he would say, Elgin surely knew that many were highly critical of what he had done to the Parthenon and of the possibility that the government might actually pay him for the collection. Thus, Elgin must have known that some members of Parliament thought that his agents had looted the Parthenon of its iconic sculptures by means of bribes and threats; that he, Elgin, had abused his position as the British ambassador to pressure Ottoman officials to accede to his requests; and that Elgin’s initial plan was to use the historic collection of sculptures to decorate his Scottish estate, Broomhall House, and not to promote the arts in Britain. As a result, Elgin likely approached this moment determined to convince the Committee members, as well as attentive observers, that his conduct in developing his collection of unique sculptures was beyond

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ SELECT COMMITTEE REPORT, *infra* Appendix A.

²¹² SELECT COMMITTEE REPORT, *infra* Appendix A, App. No. I.

²¹³ Elgin Testimony, *infra* Appendix B.

reproach. That is, his agents did what they did after Elgin had secured proper permissions and that his motives were honorable.

Yet, despite knowing what he must have known about what he would be asked about, Elgin was—as we will review in this Part—a totally ineffective witness who inflicted great harm on his own cause. The first question asked of him went to the heart of the matter: “Your Lordship will be pleased to state the circumstances under which you became possessed of this Collection, and the authority which you received for taking the Marbles from Athens?”²¹⁴ The Committee wanted to know how Elgin came to be in possession of this unique collection of historic sculptures. It wanted Elgin to explain who had given him permission to remove the sculptures from the Parthenon walls, when he received that permission, and what the precise wording of the permission was.

Elgin gave a lengthy answer that failed to address the question put to him. Elgin told the Committee that in 1799, an architect told him that British artists knew little of Athenian art and sculpture and suggested that Elgin take advantage of his time in Constantinople to arrange for the painting, molding, and drawing of Greek sculptures to further British exposure to this ancient and outstanding art.²¹⁵ He recounted that he took the suggestion to heart and approached the British government—represented by “Lord Grenville, Mr. Pitt and Mr. Dundas”—explaining that the painting, molding, and drawing of Greek art would be a project of “national importance,” and requesting that the government underwrite the expense of the endeavor.²¹⁶ Elgin told the Committee that the government refused on the ground that “the Government would not have been justified” in assuming such an “indefinite” expense.²¹⁷

Elgin’s unresponsive answer had a purpose. He knew that his claim of ownership of the collection was disputed by some who argued that the collection already belonged to the government and that the government should not compensate him for the collection. By reciting his exchange with Grenville, Pitt, and Dundas, Elgin hoped that the fact that he had used personal funds to support his Parthenon activities would persuade everyone that the collection belonged to him. But Elgin’s reasoning missed the point. No one claimed that the government had paid for Elgin’s assault on the Parthenon. The claim was that Elgin’s assault on the Parthenon was only possible because the Ottomans viewed Elgin’s request as a formal request by the British ambassador on behalf of the British government, and to many that meant that the collection already

²¹⁴ Elgin Testimony, *infra* Appendix B, ¶ 2.

²¹⁵ Elgin Testimony, *infra* Appendix B, ¶ 2.

²¹⁶ Elgin Testimony, *infra* Appendix B, ¶ 2.

²¹⁷ Elgin Testimony, *infra* Appendix B, ¶ 2.

belonged to the government.²¹⁸ To that point, Elgin's response was no response whatsoever.

Once the government declined to support Elgin's plans for the Parthenon, and after he decided to fund the endeavor personally, Elgin told the Committee that he asked the prominent landscape artist Joseph Mallord William Turner to take charge of the project and be its painter.²¹⁹ But Turner's terms—substantial compensation and a request that he retain “a certain portion” of his labor “for his own use”—were unacceptable to Elgin.²²⁰

At this juncture, Elgin told the Committee he solicited a recommendation from Sir William Hamilton, a Scottish diplomat who was the long-serving British Ambassador to the Kingdom of Naples. Hamilton recommended a Sicilian painter, Giovanni Battista Lusieri, who was then employed by the Sicilian government painting views of Sicily.²²¹ Elgin accepted the recommendation, and Hamilton asked the King of Naples to permit Elgin to “engage” Lusieri in Elgin's Athens project.²²² The King agreed, and within a short time Elgin succeeded not only in obtaining the services of Lusieri but also “two architects, two modellers, and one figure painter.”²²³

Elgin told the Committee that Lusieri and his hired artisans arrived in Constantinople in the middle of May of 1800.²²⁴ At that time, Elgin stated, “the French were in full possession of Egypt,” having recently taken control of this highly prized territory from the Ottomans.²²⁵ As a result, Elgin explained that he knew that “no attempts could be made” by Lusieri to gain access to the Acropolis, and that from August of 1800 to April of 1801, Lusieri and his artisans worked in what Elgin termed the “low town of Athens” and accomplished little on the Acropolis, except for some drawing, and then at the exorbitant charge of five guineas per day.²²⁶

Elgin then referred to a momentous international turn of events in the most obscure set of words. What he said was: “In proportion with the change of affairs in our relations towards Turkey”²²⁷ Elgin was referring to the British defeat of French military forces in Egypt, and the immediate aftermath in which Ottoman authorities were eager to respond favorably to British requests in the hope that the British would return to

²¹⁸ See discussion *supra* notes 181–182 and accompanying text.

²¹⁹ Elgin Testimony, *infra* Appendix B, ¶ 2.

²²⁰ Elgin Testimony, *infra* Appendix B, ¶ 2.

²²¹ Elgin Testimony, *infra* Appendix B, ¶ 2.

²²² Elgin Testimony, *infra* Appendix B, ¶ 2.

²²³ Elgin Testimony, *infra* Appendix B, ¶ 2.

²²⁴ Elgin Testimony, *infra* Appendix B, ¶ 2.

²²⁵ Elgin Testimony, *infra* Appendix B, ¶ 2.

²²⁶ Elgin Testimony, *infra* Appendix B, ¶¶ 2, 4.

²²⁷ Elgin Testimony, *infra* Appendix B, ¶ 4.

them control of this prized province. It was because of those altered circumstances, Elgin stated, that all previous problems that had kept his artisans from the Acropolis vanished, and as a consequence, Elgin's artisans were permitted to erect a scaffold and to excavate the ground in search of buried sculptures.²²⁸

It was here in his testimony that Elgin revealed his sensitivity to the charge that he received special favors from the Ottomans because the Ottomans calculated that a grateful ambassador would facilitate the British relinquishing control of Egypt. Thus, Elgin told the Committee that the Ottomans permitted not only Elgin's artisans access to the Acropolis, but "all English travellers."²²⁹ In other words, Elgin claimed that the Ottomans treated him no differently than ordinary English travelers, thus suggesting that his ambassadorship was irrelevant to his reception.

The Committee members must have been taken aback by Elgin's claim that the Ottomans did not extend to him any special favors and sought to pin down the meaning of Elgin's statement. Did Elgin mean to state, the Committee asked, that "the same permission to erect scaffolding and make excavations [was] given to other persons at Athens at that time?"²³⁰ Confronted with the ludicrous corner into which he had painted himself, Elgin quickly backpedaled and conceded that he did "not know of any such instance" in which anyone else had been given the permission he had received.²³¹ But Elgin did not want to leave matters there any more than he wanted it suggested that he had received special treatment because he was the British ambassador. Apparently undisturbed by the risk of undermining his own credibility as a witness, Elgin did another about-face. He now insisted, without offering any supporting evidence, that the "permission granted to [him] was the same in substance and in purport as to any other person"²³²

Letting Elgin's contradictory assertions stand for the moment, the Committee asked Elgin: "Did the permission specifically refer to removing statues, or was that left to discretion?"²³³ Elgin stated: "No," and explained that "[t]he permission was to draw, model, and remove; there was a specific permission to excavate in a particular place."²³⁴ But that was all he said at that moment. In other words, right at the beginning of his testimony, Elgin did not claim that he had permission to remove sculptures from the Parthenon walls.²³⁵

²²⁸ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶¶ 17–20.

²²⁹ Elgin Testimony, *infra* Appendix B, ¶ 4.

²³⁰ Elgin Testimony, *infra* Appendix B, ¶ 7.

²³¹ Elgin Testimony, *infra* Appendix B, ¶ 7.

²³² Elgin Testimony, *infra* Appendix B, ¶ 7.

²³³ Elgin Testimony, *infra* Appendix B, ¶ 8.

²³⁴ Elgin Testimony, *infra* Appendix B, ¶ 8.

²³⁵ Elgin Testimony, *infra* Appendix B, ¶ 8.

After telling the Committee that the permission he received was written, but that he did not retain a copy of it, Elgin was asked again if the scope of the permission he received was the same as was given to others.²³⁶ In fact, the Committee tried to help Elgin escape from the corner into which he had placed himself by suggesting that what set Elgin apart from all others was that he had “employed [the permission] to a greater extent” than others.²³⁷ The suggestion was that everyone had the same permissions—only Elgin utilized them to a far greater extent. Elgin spurned the proposed escape route and rejected the very claim he had put forth—that others had received the same permission he had received. He sought to explain away the seeming contradictions this way: “[N]o other person had applied for permission to remove or model.”²³⁸ That was another assertion Elgin could not possibly substantiate because he could not have known what permissions all others may have sought. Thus, within minutes, Elgin had made several inconsistent claims: one, that the Ottomans granted him the same permission they granted others; two, that he received greater permission than others because he asked for greater permission; and three, that his permission was the same as the permission granted to Monsieur de Choiseul, a French minister.²³⁹

At that point, the Committee’s questioning returned to what Constantinople Ottoman authorities permitted Elgin to do. The Committee asked: “There seems to be a considerable difference between, to excavate and remove and to remove and excavate; the question was not, whether your Lordship was permitted to remove what you should find on excavation, but whether your Lordship was permitted to remove from the walls?”²⁴⁰ The question again spotlighted the central inquiry: did Elgin have permission from the proper authorities to remove sculptures from the Parthenon walls? Elgin responded: “I was at liberty to remove from the walls; the permission was to remove generally.”²⁴¹

Because Elgin had not previously said anything comparable to that assertion, the Committee probed further: “Was there any specific permission alluding to the statues particularly?”²⁴² Elgin stated that he did not know whether the permission he was granted pertained to “specified the statues, or whether it was a general power to remove.”²⁴³ When asked whether he retained “any of the written permissions that were given to

²³⁶ Elgin Testimony, *infra* Appendix B, ¶ 10 (“Does your Lordship suppose this to have been the same form of permission that had been given to other people . . . ?”).

²³⁷ Elgin Testimony, *infra* Appendix B, ¶ 10.

²³⁸ Elgin Testimony, *infra* Appendix B, ¶ 10.

²³⁹ Elgin Testimony, *infra* Appendix B, ¶ 11.

²⁴⁰ Elgin Testimony, *infra* Appendix B, ¶ 14.

²⁴¹ Elgin Testimony, *infra* Appendix B, ¶ 14.

²⁴² Elgin Testimony, *infra* Appendix B, ¶ 15.

²⁴³ Elgin Testimony, *infra* Appendix B, ¶ 15.

[his] Lordship?” Elgin again said he “kept no copies whatever; every paper that could be of use at Athens, was left there as a matter of course”²⁴⁴ And then to make certain that Elgin had no written evidence in England setting forth the scope of the permission, the Committee asked: “In point of fact, your Lordship has not in England any copy of any of those written permissions?” “None,” Elgin answered.²⁴⁵

Elgin was definitive. He did not keep any copies of whatever permission he claimed to have received, and he did not know of any copy of such permission then existing in England. In response, the Committee probed further. Picking up on Elgin’s statements that the written permissions he received were sent to Lusieri in Athens, the Committee asked: “Did the Committee understand you to say, that it is possible Lusieri has such copies?”²⁴⁶ “Certainly,” Elgin answered.²⁴⁷ “[T]hey will be at Athens, either in his possession or in the possession of the authorities there.”²⁴⁸

Having established that Elgin had no copies of the written permissions he had received, but having been led by Elgin to believe that he had sent the documents to Lusieri in Athens, Elgin was now asked whether he had “any distinct recollection of having had such copies of the authorities, and of having left them in Lusieri’s possession?”²⁴⁹ Although Elgin’s previous testimony suggested that he specifically recalled having documents granting him permission to do what he did and that the documents were in Athens, Elgin once again backtracked: “I cannot speak to the fact so precisely as the Committee may wish”²⁵⁰ In fact, Elgin immediately became vague about who obtained whatever document was prepared by the Constantinople Ottoman officials, who transported it to Athens (assuming it was transported to Athens), and who might have had possession of it in 1816. “[T]he authority itself was given over to the proper officer; and then Lusieri obtained from him any part of it that was necessary to be exhibited on any future occasion.”²⁵¹

In other words, as far as Elgin knew, one or more documents pertaining to his Acropolis operations might be available for inspection and possible retrieval if the Committee sent an envoy to Athens. There is no record of the Committee having taken any steps to contact Lusieri, or Ottoman officials in Athens or Constantinople, to advance its inquiry into

²⁴⁴ Elgin Testimony, *infra* Appendix B, ¶ 16.

²⁴⁵ Elgin Testimony, *infra* Appendix B, ¶ 17.

²⁴⁶ Elgin Testimony, *infra* Appendix B, ¶ 18.

²⁴⁷ Elgin Testimony, *infra* Appendix B, ¶ 18.

²⁴⁸ Elgin Testimony, *infra* Appendix B, ¶ 18.

²⁴⁹ Elgin Testimony, *infra* Appendix B, ¶ 19.

²⁵⁰ Elgin Testimony, *infra* Appendix B, ¶ 19.

²⁵¹ Elgin Testimony, *infra* Appendix B, ¶ 19.

what, if any, permission Elgin had that pertained to the work of his artisans in Athens.

The Committee must have been troubled by the fact that Elgin could be so uninformed about these basic facts and yet be so confident that he had obtained written permission to remove marbles from the walls. That may be why the Committee asked Elgin again whether he kept, for “[his] own satisfaction,” any copy of the “terms of those permissions?” Elgin again answered: “No, I never did.”²⁵²

In the opening moments of his testimony, Elgin made one implausible and inconsistent assertion after another. Elgin simultaneously claimed that he had permission to strip sculptures from the Parthenon walls, while admitting that he was uncertain as to the scope of the permission he received.²⁵³ He claimed that he did not receive special favors because he was the ambassador, while acknowledging that no one else put scaffolds up and around the Parthenon.²⁵⁴ He asserted that he was confident that he had obtained prior written permission to do what he did, while qualifying his unqualified claim with the statement that he did not know who obtained the permissions from the Constantinople Ottomans and did not know who carried whatever permission he secured from Constantinople to Athens. He claimed that what his artisans did in Athens was so uncontroversial that it never occurred to him that anyone would ever question the legality and appropriateness of what they did, when in fact he did know that their actions were not only controversial but unauthorized, and that he had bribed and threatened Ottoman officials to allow the removal of the sculptures. In his testimony to this point, Elgin single-handedly undermined his own credibility.

The Committee next returned to the issue of Elgin abusing his ambassadorial position. Elgin was asked to clarify his earlier claim that the Ottomans did not grant him any special permission because of his position as the British ambassador. Did Elgin mean, the Committee asked, when he stated that “the permission granted to your Lordship was the same that had been granted to other individuals,” that the Ottomans granted others “permissions to remove Marbles and carry them away . . . ?”²⁵⁵ Elgin had previously stated that the Ottomans had granted such permission to others. Now he denied that was the case, and he answered: “No.”²⁵⁶

²⁵² Elgin Testimony, *infra* Appendix B, ¶ 20.

²⁵³ Elgin Testimony, *infra* Appendix B, ¶¶ 14–15.

²⁵⁴ Elgin Testimony, *infra* Appendix B, ¶ 21 (“I did not receive more as ambassador than [others] received as travellers . . . I am not aware of any particular application being made for a specific leave that was not granted where a similar leave was granted to myself.”).

²⁵⁵ Elgin Testimony, *infra* Appendix B, ¶ 21.

²⁵⁶ Elgin Testimony, *infra* Appendix B, ¶ 21.

Elgin had put himself into an impossible position. He could not claim that others received the same permission he received; no one would believe that. But he could not claim that he received special permissions because he was the British ambassador without reinforcing the belief that the government already owned the collection. In trying to escape from the noose he had put around his own neck, Elgin became inscrutable. He stated:

[W]hat I meant to say was this, that as far as any application was made to the Turkish government through me, or to my knowledge, the same facilities were granted in all cases. I did not receive more as ambassador than they received as travellers; but as I employed artists, those permissions were added to my leave. I am not aware of any particular application being made for a specific leave that was not granted where a similar leave was granted to myself.²⁵⁷

What did Elgin mean? Elgin had already claimed that he had permission to remove the marbles and that the permission he received was no different than the permissions given to others.²⁵⁸ Then he denied what he had said and claimed that he did not mean to imply that others had been granted permission to remove the marbles.²⁵⁹ But having said that, he turned around in the very next sentence and claimed that “the same facilities [permissions] were granted in all cases,” without in any way acknowledging the fundamental inconsistency in his assertions.²⁶⁰

As a witness, Elgin was unraveling as he twisted and turned to preserve his right to sell his collection to the government. If the Committee concluded that the Ottomans gave Elgin permission to remove the marbles in his official capacity as ambassador, the Committee might conclude that there was no reason why the government should pay Elgin a penny for something it already owned. As a result, Elgin denied that he abused his position as ambassador, asserted that the Ottomans gave him permission (whatever permission that was) in his private capacity, and insisted that the same permission was granted to private “travellers,” a claim that was at odds with other statements he made to the Committee only moments before.²⁶¹

So how did Elgin seek to reconcile his contradictory assertions that, on the one hand, he received the same permission as was given to others to remove the sculptures, and on the other, no private traveler received the same permission as he received to remove the marbles? Here is what he said in his effort to make the contradiction vanish: “I am not aware of

²⁵⁷ Elgin Testimony, *infra* Appendix B, ¶ 21.

²⁵⁸ Elgin Testimony, *infra* Appendix B, ¶ 21.

²⁵⁹ Elgin Testimony, *infra* Appendix B, ¶ 21.

²⁶⁰ Elgin Testimony, *infra* Appendix B, ¶ 21.

²⁶¹ Elgin Testimony, *infra* Appendix B, ¶¶ 8, 21.

any particular application being made for a specific leave that was not granted where a similar leave was granted to myself.”²⁶² In other words, Elgin maintained that the Ottomans would have given to others the same permissions it gave him, if others had requested such permissions, but that others had not made such a request. This was an implausible position for Elgin to take since he could not have known if others had made a similar request, and he could not have known how the Ottoman authorities would have responded if such a request had been made.

Yet, that is what he said, and the Committee—tracking his testimonial missteps—asked a follow up question: “Your Lordship has stated, that no individual had applied for leave to remove?”²⁶³ Elgin responded: “To the best of my recollection no application had been made to remove.”²⁶⁴ And just to make certain that Elgin meant what he said, the Committee asked: “No application, either through you or to your knowledge?”²⁶⁵ Elgin only answered, “Yes”²⁶⁶

With those statements as a basis, the Committee asked Elgin to explain another blatant contradiction in his testimony: “Of course your Lordship means to except the permission that you stated before had been long antecedently given to Monsieur Comte de Choiseul?”²⁶⁷ Elgin, probably flustered, again answered: “Yes.”²⁶⁸ Then the Committee tightened the squeeze on Elgin: “Do you know, in point of fact, whether the same permission was granted to Monsieur Comte de Choiseul as was granted to you?”²⁶⁹ Elgin did not answer the question. Instead he said: “He exercised the same power.”²⁷⁰ The question focused on what permission Choiseul received, but Elgin described what Choiseul did.²⁷¹ The Committee did not let Elgin slither away with his squirmy answer. Elgin was asked yet again: “But you do not know whether he had the same permission?”²⁷² Elgin’s resistance gave way and he answered: “No.”²⁷³

To complete the point being made, Elgin was asked one more time to make crystal clear just what he wanted the Committee to understand his testimony to be: “Then within your Lordship’s knowledge there is no instance of a private individual having obtained such permission?”²⁷⁴ Elgin could have simply said, “Yes, that is correct. I have no knowledge.”

²⁶² Elgin Testimony, *infra* Appendix B, ¶ 21.

²⁶³ Elgin Testimony, *infra* Appendix B, ¶ 22.

²⁶⁴ Elgin Testimony, *infra* Appendix B, ¶ 22.

²⁶⁵ Elgin Testimony, *infra* Appendix B, ¶ 23.

²⁶⁶ Elgin Testimony, *infra* Appendix B, ¶ 23.

²⁶⁷ Elgin Testimony, *infra* Appendix B, ¶ 24.

²⁶⁸ Elgin Testimony, *infra* Appendix B, ¶ 24.

²⁶⁹ Elgin Testimony, *infra* Appendix B, ¶ 25.

²⁷⁰ Elgin Testimony, *infra* Appendix B, ¶ 25.

²⁷¹ Elgin Testimony, *infra* Appendix B, ¶ 25.

²⁷² Elgin Testimony, *infra* Appendix B, ¶ 26.

²⁷³ Elgin Testimony, *infra* Appendix B, ¶ 26.

²⁷⁴ Elgin Testimony, *infra* Appendix B, ¶ 27.

But he did not leave his testimony in such a plausible condition. Instead, Elgin said: “I have no knowledge of any individual having applied for it, and I do not know whether it has been granted or not; I do not know that there was any difficulty in the way of removing, by anybody.”²⁷⁵ Elgin’s testimony was a bundle of contradictions and he seemed unaware of them.

Elgin was then asked to explain why the Turkish government had initially objected to his request for permission to draw, mold, measure, and paint.²⁷⁶ Elgin’s explanation was that the Ottomans considered the British to be “Christian Dogs.”²⁷⁷ The Turkish government, he claimed, was hostile to his requests because of its “general jealousy and enmity to every Christian of every denomination, and every interference on their part.”²⁷⁸ To confirm that Elgin meant that the Committee to believe that the Turkish government refused previous efforts to draw, paint, and measure the marbles because of prejudice, Elgin was asked: “They rested it upon the general objection?” Elgin confirmed, but emphasized: “Upon the general enmity to what they called Christian Dogs.”²⁷⁹

Without realizing it, Elgin’s strong assertion of Turkish religious prejudice against Christians undercut his own claim that he did not abuse his British ambassadorial position. If the Ottomans considered Christians “Dogs” to whom no favor would be granted, and if Elgin was just another “Christian Dog,” then how did Elgin, a “Christian Dog,” persuade the Constantinople officials to grant him permission to do what they had not previously permitted?

The Committee knew that Elgin’s conundrum had one obvious explanation. The Ottomans wanted the British to return Egypt to their control and they believed that goal might be advanced by allowing Elgin’s artisans to paint, measure, and mold the Parthenon sculptures. To nail down its suspicions, the Committee asked Elgin if the Ottoman “objection” to allowing Elgin’s artisans access to the Acropolis “disappeared from the moment” the British defeated the French in Egypt?²⁸⁰ Elgin answered, “Yes,” and then he stated: “[T]he whole system of Turkish feeling met with a revolution, in the first place, from the invasion by the French, and afterwards by our conquest.”²⁸¹

The Committee next focused on Elgin’s claim that he rescued the sculptures. The Committee asked: “Your Lordship has stated in your Petition, that you directed your attention” to “rescuing” the sculptures from

²⁷⁵ Elgin Testimony, *infra* Appendix B, ¶ 27.

²⁷⁶ Elgin Testimony, *infra* Appendix B, ¶ 34.

²⁷⁷ Elgin Testimony, *infra* Appendix B, ¶ 35.

²⁷⁸ Elgin Testimony, *infra* Appendix B, ¶ 34.

²⁷⁹ Elgin Testimony, *infra* Appendix B, ¶ 35.

²⁸⁰ Elgin Testimony, *infra* Appendix B, ¶ 39.

²⁸¹ Elgin Testimony, *infra* Appendix B, ¶ 39.

vandalism and abuse.²⁸² The Committee wanted to know the steps he took “for that purpose.”²⁸³ Elgin emphasized that “it was no part of [his] original plan to bring away any thing but [his] models.”²⁸⁴

Elgin conceded that—given his original plan to measure, paint, and mold the sculptures—he had no intention of rescuing any of the classic fifth-century Greek sculptures from the vandals and travelers. Moreover, Elgin’s claim that he removed the sculptures to save them from abuse and deterioration is implausible. Elgin had never been to Athens, had never climbed the hill to the Acropolis, had never stood before the Parthenon, and had never walked around the Parthenon when Lusieri and Hunt watched the first sculptures being lowered from the Parthenon walls. Elgin had no idea what condition the sculptures were in when the first sculptures were removed. Thus, Elgin’s testimony in 1816 that he intended, back in 1801, to remove the sculptures from the Parthenon walls to rescue them for the benefit of the world is false.

Furthermore, if—and that is a big “if”—and when Elgin ever became concerned with the condition of the Parthenon in general and the sculptures in particular, he could have taken important steps to protect both without removing the sculptures and thus weakening the Parthenon’s infrastructure. The British defeat of French forces in Egypt gave the British in general and Lord Elgin in particular exceptional influence over the Ottomans, who were eager to regain control of Egypt. Elgin’s leverage would have made it possible for him to pressure the Ottomans to protect the Parthenon sculptures from damage. That would have left the sculptures in place on the Parthenon and it would have avoided the irreparable harm Elgin’s project inflicted on this historic monument. There is no evidence that Elgin ever considered such an approach.

Once again, the Committee returned to the central question: “In point of fact, did the Turkish government [in Constantinople] know that your Lordship was removing these statues under the permission your Lordship had obtained from them?”²⁸⁵ Elgin responded:

No doubt was ever expressed to me of their knowledge of it; and as the operation has been going on these seventeen years without any such expression, so far as I have ever heard, I conclude they must have been in the intimate knowledge of every thing that was doing.²⁸⁶

The Committee was unsatisfied with Elgin’s response and pressed him: “In point of fact, your Lordship does not know that they were ever

²⁸² Elgin Testimony, *infra* Appendix B, ¶ 40.

²⁸³ Elgin Testimony, *infra* Appendix B, ¶ 40.

²⁸⁴ Elgin Testimony, *infra* Appendix B, ¶ 41.

²⁸⁵ Elgin Testimony, *infra* Appendix B, ¶ 44.

²⁸⁶ Elgin Testimony, *infra* Appendix B, ¶ 44.

apprised of it?”²⁸⁷ Elgin replied: “It is impossible for me to have any doubt about it.”²⁸⁸ That did not end the inquiry. Elgin was asked again: “Did your Lordship ever apprise any of the Government of it in conversation?”²⁸⁹ A simple “yes” might have been convincing and ended the matter. But Elgin did not do that. He exaggerated to a point of not being believable: “The chance is, that I have done it five hundred times, but I cannot answer specifically when or how.”²⁹⁰ Elgin was at his wit’s ends and it showed. On the one hand, he said that the Ottomans did not express any concern to him, and on the other hand, he asserted that he told the Ottomans “five hundred times” about the project, though he was unable to recall “specifically when or how” he told the Ottomans.²⁹¹

Elgin was a disastrous witness. There were three main themes he had to present convincingly to the Committee. First, that Constantinople Ottoman officials gave him prior permission to remove sculptures from the high walls of the Parthenon. Second, that his intention was to protect the historic sculptures from ruin at the hands of vandals and Ottoman soldiers. Third, that the Ottomans gave him the permission in his capacity as a private person, as opposed to his official capacity as the British ambassador to the Ottoman Empire. With regard to each of these three points, Elgin’s testimony was frequently confused, contradictory, and implausible. Indeed, at moments, Elgin seemed on the verge of being not just an unreliable witness but also a witness who was close to becoming incoherent. Absent other totally unexpected evidence, it is difficult to think that the Committee could plausibly recommend that Elgin had permission to do what he did, and that the permission was given to him as a private individual and not in any meaningful way dependent on his position as the British ambassador.

B. Other Witnesses

Most of the other fifteen witnesses echoed one another as they stated that the Parthenon marbles constituted the “finest things that ever came to this country,”²⁹² or were “the finest works of art I have seen,”²⁹³ or were sculptures of the “first class.”²⁹⁴ But there were exceptions. For

²⁸⁷ Elgin Testimony, *infra* Appendix B, ¶ 45.

²⁸⁸ Elgin Testimony, *infra* Appendix B, ¶ 45.

²⁸⁹ Elgin Testimony, *infra* Appendix B, ¶ 46.

²⁹⁰ Elgin Testimony, *infra* Appendix B, ¶ 46.

²⁹¹ Elgin Testimony, *infra* Appendix B, ¶ 46.

²⁹² Testimony of Joseph Nollekins on Mar. 4, 1816, in REPORT FROM THE SELECT COMMITTEE OF THE HOUSE OF COMMONS ON THE EARL OF ELGIN’S COLLECTION OF SCULPTURED MARBLES 67 (Mar. 25, 1816) [hereinafter REPORT OF MARCH 25, 1816].

²⁹³ Testimony of John Flaxman on Mar. 4, 1816, in REPORT OF MARCH 25, 1816, *supra* note 292, at 70.

²⁹⁴ See, e.g., Testimony of Richard Westmacott on Mar. 4, 1816, in REPORT OF MARCH 25, 1816, *supra* note 292, at 80; Testimony of Francis Chantry on Mar. 4, 1816, in REPORT OF MARCH 25, 1816, *supra* note 292, at 84; Testimony of Richard Payne Knight on Mar. 5, 1816, in REPORT OF

example, the prominent Richard Payne Knight questioned whether all the marbles were sculptured during the age of Pericles.²⁹⁵ Charles Long reminded the Committee that Lord Elgin turned down Prime Minister Spencer Perceval's overture that the government purchase the collection for thirty thousand pounds.²⁹⁶ William Hamilton stated that "[a]ll communications" between Elgin and the Ottoman authorities "were carried on through the interpreter of the embassy,"²⁹⁷ thus making it appear to the Ottomans that Elgin's request pertaining to the Parthenon was a request being made on behalf of the British government. John Bacon Sawrey Morritt maintained that when he visited the Parthenon in 1795, it was "generally understood that the Government wished to prevent any thing from being removed, that the local governors of Athens, who were assailable by bribery, endeavoured to conduct the business as secretly as they could, whenever any thing was to be removed, even of the Marbles" which were already on the ground.²⁹⁸ Conversely, William Wilkins, a prominent architect, stated that, during his visit to Athens in the summer of 1802, the Turks gave him the impression that they possessed a "desire to deface all the sculpture within their reach"²⁹⁹ With regard to the important issue of whether the Ottomans would have given the permission they presumably gave to Elgin to any other individual, the Earl of Aberdeen said, "I do not think a private individual could have accomplished the removal of the remains which Lord Elgin obtained."³⁰⁰

C. *The Rev. Dr. Hunt's Testimony*

The Rev. Dr. Philip Hunt, a member of Elgin's entourage in Constantinople who had personal knowledge of the critical events, was an unscheduled witness even though he lived in Bedford, about sixty miles from London. Out of the blue, Hunt appeared as a witness before the Parliamentary Committee on March 13, 1816, about two weeks after Elgin testified.³⁰¹ The available historical evidence offers no clue into and explanation for his fortuitous appearance. Elgin's own testimony makes it plain that he did not anticipate that Hunt would be a witness. But, given

MARCH 25, 1816, *supra* note 292, at 93–94 (ranking the metopes in the "first class of relief," but ranking other pieces of the collection lower); Testimony of Alexander Day on Mar. 11, 1816, *in* REPORT OF MARCH 25, 1816, *supra* note 292, at 136.

²⁹⁵ Testimony of Richard Payne Knight, *supra* note 292, at 93.

²⁹⁶ See SELECT COMMITTEE REPORT, *infra* Appendix A, ¶¶ 48–49.

²⁹⁷ Testimony of William Hamilton on Mar. 1, 1816, *in* REPORT OF MARCH 25, 1816, *supra* note 292, at 56.

²⁹⁸ Testimony of John Bacon Sawrey Morritt on Mar. 8, 1816, *in* REPORT OF MARCH 25, 1816, *supra* note 292, at 129–30.

²⁹⁹ Testimony of William Wilkins on Mar. 5, 1816, *in* REPORT OF MARCH 25, 1816, *supra* note 292, at 109.

³⁰⁰ Testimony of Earl of Aberdeen on Mar. 8, 1816, *in* REPORT OF MARCH 25, 1816, *supra* note 292, at 122.

³⁰¹ Hunt Testimony, *infra* Appendix C.

what Hunt told the Committee, Elgin surely had a decisive hand in arranging for his former secretary's testimony.

Elgin made it clear in his testimony that he had no documents pertaining to the permission the Ottomans granted him.³⁰² That was a problem since the Committee was understandably interested in whether the Ottomans had granted Elgin permission to remove sculptures from the Parthenon walls. Then Hunt came along at the end of the hearing and told the Committee that he had an Italian translation of the "fermaun" that the Porte in Constantinople gave Lord Elgin.³⁰³ Hunt told the Committee that the Italian translation was in Bedford and that he would have brought the document to London had he known he would be "summoned by this Committee."³⁰⁴ In other words, Hunt agreed that the original Ottoman document was lost but asserted that he had an Italian translation of the missing document.

The Committee then asked Hunt to describe the substance of the fermaun granted to Elgin.³⁰⁵ Hunt's answer deserves quotation:

[I]n order to show their particular respect to the Ambassador of Great Britain, the august ally of the Porte, with whom they were now and had long been in the strictest alliance, they gave to his Excellency, and to his Secretary, and the artists employed by him, the most extensive permission to *view, draw, and model* the ancient Temples of the Idols and the sculptures upon them, and *to make excavations*, and *to take away any stones that might appear interesting to them*.³⁰⁶

Further, because the Committee was interested in knowing whether Elgin had permission to remove the sculptures from the high walls of the Parthenon, permission to view, draw, and model was not pertinent.

Nevertheless, the meaning of Hunt's statement that the Porte gave Elgin permission "to take away any stones that might appear interesting to them" was uncertain, and the Committee sought clarification: "Was the tenor of the second fermaun so full and explicit as to convey upon the face of it a right to displace and take away whatever the artists might take a fancy to?"³⁰⁷ Hunt responded: "Not whatever the artists might take a fancy to."³⁰⁸ But Hunt continued:

[W]hen the original was read to the Vaivode of Athens, he seemed disposed to gratify any wish of mine with respect to the pursuit of Lord Elgin's artists; in consequence of which I asked him permission to

³⁰² Elgin Testimony, *infra* Appendix B, ¶¶ 16–20.

³⁰³ Hunt Testimony, *infra* Appendix C, ¶ 2.

³⁰⁴ Hunt Testimony, *infra* Appendix C, ¶ 2.

³⁰⁵ Hunt Testimony, *infra* Appendix C, ¶ 3.

³⁰⁶ Hunt Testimony, *infra* Appendix C, ¶ 3 (emphasis added).

³⁰⁷ Hunt Testimony, *infra* Appendix C, ¶ 6.

³⁰⁸ Hunt Testimony, *infra* Appendix C, ¶ 6.

detach from the Parthenon the most perfect, and, as it appeared to me, the most beautiful Metope: I obtained that permission, and acted upon it immediately.³⁰⁹

And he further explained:

I had one [metope] carefully packed and put on board a Ragusan ship, which was under my orders, from which it was transferred to a frigate, and sent to England. The facility with which this had been obtained, induced Lord Elgin to apply for permission to lower other groups of sculpture from the Parthenon, which he did to a considerable extent, not only on the Parthenon, but on other edifices in the Acropolis.³¹⁰

Thus, although Hunt told the Committee that he had seen a fermaun that gave Elgin's artisans permission to remove "Marbles from the Temple of Minerva,"³¹¹ a few minutes later he qualified that remark when he told the Committee that the Ottomans did not give Elgin's artists the "right to displace and take away whatever the artists might take a fancy to."³¹²

But Hunt did not leave matters there. He then spoke of the bribes given and told the Committee that he gave the Vaivode of Athens "[p]resents . . . at the time of presenting the fermaun"³¹³ and that when the Vaivode read the document, "he seemed disposed to gratify any wish of [Hunt's] with respect to the pursuit of Lord Elgin's artists." It was because of this that Hunt asked the Vaivode for permission to remove a metope from a Parthenon Wall.³¹⁴

Hunt's further testimony makes clear that Hunt gave bribes—and Hunt identified the bribes as "brilliant cut glass lustres, fire-arms, and other articles of English manufacture"³¹⁵—to the Vaivode, and that the bribes induced the Vaivode to be "disposed" to grant any request Hunt may put forth.³¹⁶ But even that clarification did not put an end to the Committee's inquiry into the scope of permission awarded Elgin. The Committee asked Hunt if the fermaun gave explicit "permission to remove figures and pieces of sculpture from the walls of temples," or whether permission to remove such sculptures was a "matter of private arrangement with the local authorities of Athens?"³¹⁷

Hunt's answer was revealing: "That was the interpretation which the Vaivode of Athens"—the highest authority in Athens—"was induced to

³⁰⁹ Hunt Testimony, *infra* Appendix C, ¶ 6.

³¹⁰ Hunt Testimony, *infra* Appendix C, ¶ 6.

³¹¹ Hunt Testimony, *infra* Appendix C, ¶ 2.

³¹² Hunt Testimony, *infra* Appendix C, ¶ 6.

³¹³ Hunt Testimony, *infra* Appendix C, ¶ 9.

³¹⁴ Hunt Testimony, *infra* Appendix C, ¶ 9.

³¹⁵ Hunt Testimony, *infra* Appendix C, ¶ 32.

³¹⁶ Hunt Testimony, *infra* Appendix C, ¶ 6.

³¹⁷ Hunt Testimony, *infra* Appendix C, ¶ 30.

allow it to bear.”³¹⁸ In other words, Hunt conceded that the Constantinople officials did not grant Elgin’s artisans permission to remove sculptures from the Parthenon walls. Rather, he asserted that the Ottoman officials in Athens—whom he bribed—were “induced,” in Hunt’s words, to “extend”³¹⁹ the scope of permission to permit such removal, and that such an understanding was—in the phrasing of the Committee’s question—a “private agreement” between Hunt and “the local authorities of Athens.”³²⁰

The Committee next asked Hunt whether the Ottomans gave Elgin whatever permission he may have received in his capacity as the British ambassador or in his capacity a private citizen: “Do you conceive that a *fermaan* of such extensive powers would have been granted by the Turkish Government at any other period, to any British subject?”³²¹ “Certainly not; and if it had not been at so favourable a moment, I should not have thought of proposing many of the requests it contained.”³²² The committee pressed the question as to whether the so-called Elgin collection in fact already belonged to the British Government because whatever permission the Porte gave Lord Elgin was “given to Lord Elgin entirely in consequence of the situation he held as British ambassador[.]”³²³ Hunt replied: “I am inclined to think such a permission would not have been asked for by any person not an ambassador of a highly favoured ally, nor granted to any other individual.”³²⁴ But Hunt asserted that he “always thought” that the collection was the “property of Lord Elgin.”³²⁵

VI. ONLY PRICE MATTERS

The Select Committee released its Report on March 25, 1816, ten days after Hunt testified. The Report is short, and its content is surprising. It began with a statement of its charge:

The [Select Committee] appointed to enquire, whether it be expedient that the Collection mentioned in the [Earl of Elgin]’s Petition, presented to The House on the 15th day of [February] last, should be purchased on behalf of The Public, and if so, what Price it may be reasonable to allow for the same.³²⁶

At that point, the Report stated it was divided into four “principal Heads,” which were: “the Authority by which this Collection was

³¹⁸ Hunt Testimony, *infra* Appendix C, ¶ 30.

³¹⁹ Hunt Testimony, *infra* Appendix C, ¶ 31.

³²⁰ Hunt Testimony, *infra* Appendix C, ¶ 30.

³²¹ Hunt Testimony, *infra* Appendix C, ¶ 20.

³²² Hunt Testimony, *infra* Appendix C, ¶ 20.

³²³ Hunt Testimony, *infra* Appendix C, ¶ 22.

³²⁴ Hunt Testimony, *infra* Appendix C, ¶ 22.

³²⁵ Hunt Testimony, *infra* Appendix C, ¶ 23.

³²⁶ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 1 (capitalization and typeface altered).

acquired”; “the circumstances under which that Authority was granted”; “the Merit of the Marbles as works of Sculpture, and the importance of making them Public Property, for the purpose of promoting the study of the Fine Arts in Great Britain”; and “their Value as objects of sale[,] which includes the consideration of the Expense which has attended the removing, transporting, and bringing them to England.”³²⁷

The allocation of the fifteen pages in the published 1816 Report, among the four “principal” headings, indicates the Select Committee’s assessment of the importance of the four topics. The discussion of the authority “by which this Collection was acquired”—in other words, whether Elgin had appropriate permission from proper Ottoman authorities to do what he did, or whether he took advantage of circumstances and looted the Parthenon—is not quite two pages in length. The discussion of the “circumstances under which that Authority was granted”—in other words, whether Elgin leveraged his position as the British ambassador to advance his own self-interest—runs a little more than one page. The discussion of the merits of the collection is a little more than one page. Finally, the discussion of the value of the collection—how much the government should pay to Elgin if it were to purchase his collection—constitutes the bulk of the Report, running from page six to page fifteen. Plainly, by the time the Committee’s Report was written, the central issue was how much to pay Elgin for his collection.

The Report began by stating that Elgin’s “original intention” was to make a contribution “to the progress of the Fine Arts in Great Britain, by procuring accurate drawings and casts of the valuable remains of Sculpture and Architecture scattered throughout Greece, and particularly concentrated at Athens.”³²⁸ The Report asserted that, to promote that end, Elgin engaged Signor Lusieri, “a painter of reputation,” along with “two architects, two modellers, and a figure painter”³²⁹ But from August 1800 to May 1801, the Report continued, they could not gain access to Acropolis “except by the payment of a large fee, which was exacted daily,”³³⁰ which the Report attributed mainly to the “sort of contempt and dislike which has always characterized the Turkish government and people in their behaviour towards every denomination of Christians.”³³¹

³²⁷ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶¶ 3–6.

³²⁸ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 8.

³²⁹ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 9.

³³⁰ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 10.

³³¹ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 12.

At that stage, the Report noted the significant impact of the British defeat of the French forces in Egypt in creating a context in which Elgin's agents in Athens were able to dismantle the Parthenon: "The success of the British arms in Egypt, and the expected restitution of that province to the Porte," the Report stated, "wrought a wonderful and instantaneous change in the disposition of all ranks and descriptions of people towards our Nation. Universal benevolence and good-will appeared to take place of suspicion and aversion. Nothing was refused which was asked"³³²

Next, the Report addressed what permissions Lord Elgin had requested and obtained. The Porte gave Lord Elgin's artists "permission to draw, model, and remove; to which was added, a special license to excavate in a particular place."³³³ As a justification for the bribes Elgin's agents gave to Ottoman officials in Athens, the Report detailed that Lord Elgin had cautioned, "[A]ll permissions issuing from the Porte to any distant provinces, are little better than authorities to make the best bargain that can be made with the local [magistrates]."³³⁴

The Report made it explicit that the document Constantinople Ottoman officials gave Elgin setting forth the scope of permission was "delivered" to the "chief authorities resident at Athens" and that the Committee had "no opportunity of learning from Lord *Elgin* himself their exact tenor, or of ascertaining in what terms they noticed, or allowed the displacing, or carrying away of these Marbles."³³⁵ In short, Lord Elgin had no document that defined the scope of permission the Porte had given him, and though he had more than once characterized the scope of permission during his testimony, the Committee did not rely upon his claims.

Moreover, although the Committee might have delayed its Report while it sought the original or a copy of that document in Athens, it made no effort to obtain the document from Ottoman officials in Athens or to obtain any communication from Ottoman officials in Constantinople. The Report did not explain the Select Committee's failure to seek information from Ottoman officials in Constantinople or Athens.

It was here that the Report referenced the testimony of "Dr. Hunt," in which he asserted that he possessed an Italian translation of the original Ottoman document that defined the scope of permission the Porte gave Elgin.³³⁶ The Report stated that Hunt did not have the Italian translation

³³² SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 13.

³³³ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 13.

³³⁴ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 13.

³³⁵ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 13.

³³⁶ The Committee Report refers to this *fermaun* as the "second *fermaun*, which extended the powers of the first." SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 13. The first *fermaun* has never been recovered—nor has the second—and we do not know what it authorized. But the assumption is that it may have permitted Elgin's artists little more than access to the Acropolis and the capacity to measure and draw the sculptures. SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 13.

with him in London and then quoted Hunt's testimony about the scope of permission.³³⁷ What is particularly peculiar is that the Report quoted Hunt's testimony about the scope of permission Ottomans authorized, as opposed to quoting the Italian document itself, especially since the Committee published in its appendix an English translation of the Italian document³³⁸ (which, to avoid confusion, was said by Hunt to be a translation of the original Ottoman document).

This short section of the Report made other points. Relying on Hunt, it stated that "no remonstrance was at any time made, nor any displeasure shown by the Turkish government, either at Constantinople or at Athens, against the extensive interpretation which was put upon this *fermaun*[.]"³³⁹ The local Greek population and the "inhabitants of Athens"

³³⁷ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶¶ 13–20.

³³⁸ FERMAUN TRANSLATION, *infra* Appendix D.

³³⁹ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 20. The Select Committee's report referred to the English document published in the appendix as a firman. The Committee wrote: "Dr. Hunt, who accompanied Lord *Elgin* as chaplain to the embassy, has preserved, and has now in his possession, a translation of the second *fermaun* . . ." SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 13. The opening words of the Committee's introduction to the text of its English document were: "TRANSLATION from the Italian of a *Fermaun*, or Official Letter from the Caimacan Pasha . . ." FERMAUN TRANSLATION, *infra* Appendix D, ¶ 1. For a discussion of whether the 1801 Ottoman document was a firman or a letter, see Rudenstine, *supra* note 121, at 1878–80, 1879 n.105.

Although a chorus chants firman, the Select Committee's English document is not a firman. The quintessential requirement of a firman was that it was issued by the Sultan himself. An authority as familiar as any and as accessible as the Oxford English Dictionary (OED) offers a concise definition: a firman is "[a]n edict or order issued by an Ottoman or Middle Eastern ruler, *esp.* the Sultan of Turkey; a grant, license, passport, permit." *Firman*, OXFORD ENGLISH DICTIONARY ONLINE (dictionary updated Dec. 2020) (last visited Jan. 31, 2021). The English document published in the Select Committee's Report was not presented as though it was issued by the Sultan. Rather, the Report represented, quite incorrectly, in fact, that the document was signed by Seged Abdullah Kaimacan, who filled the office of the Grand Vizier while the Grand Vizier was in Egypt trying to re-establish Ottoman control over the territory. FERMAUN TRANSLATION, *infra* Appendix D, ¶¶ 1, 3. As powerful a figure as the Grand Vizier was within the structure of the Ottoman government, an unbridgeable gulf separated the Grand Vizier, an appointed official, and the Sultan, the sovereign.

The question of whether the 1801 document was a firman has not been considered carefully by those who sympathize with Elgin's initial taking or the retention by the British Museum. Consider two examples. William St. Clair, who went to some lengths to offer support for his claim that the Italian document he possesses was created in Constantinople in 1801, uses the word firman without explanation. In contrast, Merryman at least raises the question of what a firman is in an explanatory footnote. John Henry Merryman, *Thinking About the Elgin Marbles*, 83 MICH. L. REV. 1881, 1898 n.56 (1985) ("A firman (*firmaun*, *fermaun*) was an edict/order/decree/permit/letter from the Ottoman Government addressed to one of its officials ordering/suggesting/requesting that a favor be conferred on a person. See 4 OXFORD ENGLISH DICTIONARY 249 (1961)). What is surprising about Merryman's reference is that his definition of a firman is at odds with the definition contained in the 1961 OED, which he cites. The OED previously defined firman as "[a]n edict or order issued by an Oriental sovereign, *esp.* the Sultan of Turkey; a grant, license, passport, permit." Rudenstine, *supra* note 121 (quoting 4 OXFORD ENGLISH DICTIONARY 249 (1978)). The OED defines the word "firman" to be an edict or order issued by the Sultan. In contrast, Merryman states that a firman was issued by "the Ottoman government," a phrase broad enough to include the Grand Vizier or his designate. There is no apparent reason—and Merryman offers none—for Merryman to assume that the OED's statement that firmans were issued by the Sultan was intended to include the Grand Vizier. Moreover, whereas the OED limits a firman to an "edict or order," Merryman

seemed pleased with the project because it brought “foreigners into their country” who spent money.³⁴⁰ The Turks showed “a total indifference and apathy” to the preservation and protection of the Parthenon and its artwork.³⁴¹ It alleged that many “travellers and admirers of the Arts committed greater waste,” presumably by bribing the “soldiers” to “bring them down heads, legs or arms, or whatever other pieces they could carry off.”³⁴² Although some of the testimony presented to the Select Committee supported these claims,³⁴³ other testimony ignored by the Select Committee explicitly contradicted these claims.³⁴⁴ At no point does the Report conclude that the Ottoman authorities in Constantinople granted Elgin permission to remove sculptures from the Parthenon walls.

The Report next turned to the second major topic, namely the “circumstances under which that Authority was granted.”³⁴⁵ This discussion, only one page and a few lines in length, made several points. Lord Elgin asked government officials to support his request that his “intention of

expands the definition to include a “decree/permit/letter.” Although one might well think there was little difference between an “edict or order” on the one hand, and a decree or permit on the other—they all seem like formal, legal documents—that is not true for a “letter,” which can include a communication that is much less formal, and certainly less legally significant, in character.

The significance of the fact that the document sent to the Ottoman officials in Athens was a letter signed by the acting Grand Vizier as opposed to a firman signed by the Sultan is only partially clear. From the perspective of the officials in Athens, it may not have mattered whether they received a letter signed by Segeed Abdullah Kaimacan or a firman from the Sultan. They likely would have considered both documents, at least in theory, as valid binding orders requiring their obedience.

In contrast, it is not clear whether the Grand Vizier—or acting Grand Vizier—had the authority to act unilaterally to permit the dismantling of the Parthenon. Because the Ottoman government in Constantinople regarded the Parthenon with admiration and respect, it was possible that any activities involving the great monument required the Sultan’s approval. Accordingly, the fact that the acting Grand Vizier sent a letter to the Ottoman officials in Athens, as opposed to the Sultan sending a firman, may have had great legal significance depending upon the content of the letter, the scope of the acting Grand Vizier’s authority, and what the Sultan knew and did not know about the letter. Because we do not know the scope of the acting Grand Vizier’s authority as it pertained to the Parthenon and because we do not know what the Sultan knew and did not know about the July 1801 letter, we are unable to judge the ultimate legal significance of the fact that the July 1801 Ottoman document was a mere letter. What we do know is that the Select Committee sought to give its altered English document the polish of a firman, and in so doing it sought to enhance the authoritativeness of its English document.

³⁴⁰ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 20.

³⁴¹ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 20.

³⁴² SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 20.

³⁴³ Testimony of William Hamilton, on Mar. 1, 1816, *in* REPORT OF MARCH 25, 1816, *supra* note 292, at 54–66; Testimony of William Wilkins, on Mar. 5, 1816, *in* REPORT OF MARCH 25, 1816, *supra* note 292, at 104–14; Testimony of John Nicholas Fazakerley, on Mar. 8, 1816, *in* REPORT OF MARCH 25, 1816, *supra* note 292, at 133–36.

³⁴⁴ Testimony of William Wilkins, on Mar. 5, 1816, *in* REPORT OF MARCH 25, 1816, *supra* note 292, at 104–14; Testimony of John Bacon Sawrey Morritt, on Mar. 8, 1816, *in* REPORT OF MARCH 25, 1816, *supra* note 292, at 128–33.

³⁴⁵ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 4.

bringing home casts and drawings from Athens, for the benefit and advancement of the fine Art in this country . . . [be] carried into effect at the public expense,”³⁴⁶ but that suggestion was rejected. As a result, Lord Elgin “considered himself as having no sort of claim for his disbursements in the prosecution of these pursuits,” but that the “heavy expenses” he would then incur would make it “extremely inconvenient for him to forego any of the usual allowances to which Ambassadors at other courts were entitled.”³⁴⁷ Thus, Lord Elgin “looked upon himself” as acting in an entirely personal or private capacity in advancing his endeavors in Athens, a “character entirely distinct from his official situation.”³⁴⁸

The Committee noted that it was unable to determine whether the Ottoman officials viewed his requests as coming from a private individual who happened to be the British ambassador, or whether they understood the request as presented by the British government. In fact, the Committee noted that only the “Turkish ministers” could shed light on the matter—assuming they “are still alive”—and that it was likely that even those officials, if consulted, would be “unable to form any very distinct discrimination as to the character in consideration of which they acceded to Lord Elgin’s request.”³⁴⁹

Nonetheless, the Report made findings that established that the Ottomans thought of Elgin solely in his official ambassadorial capacity, thus suggesting that Elgin had abused his position in gathering his collection. The Committee stated that the British victory over the French in Egypt made the Turkish officials, “beyond all precedent, propitious to whatever was desired in behalf of the English nation,” and, therefore, they “readily . . . complied with all that was asked by Lord Elgin.”³⁵⁰ The Committee also noted that the Ottoman officials “granted the same permission to no other individual.”³⁵¹ The Report went on to note that “the only other piece of Sculpture which was ever removed from its place for the purpose of export was taken by Mr. Choiseul Gouffier, when he was ambassador from France to the Porte.”³⁵² Lastly, the Report made it clear that Mr. Hunt did not think that a private person could have obtained the order “of such extensive powers” that Elgin received from the Ottoman government and that Lord Aberdeen “did not think a private individual could have accomplished the removal of the remains which Lord Elgin obtained.”³⁵³

³⁴⁶ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 22.

³⁴⁷ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 23.

³⁴⁸ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 23.

³⁴⁹ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 23 (typeface altered).

³⁵⁰ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 23 (typeface altered).

³⁵¹ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 23.

³⁵² SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 25.

³⁵³ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 24 (typeface altered).

The third short section of the Committee Report addressed the merits of the collection and the importance of making it “[p]ublic [p]roperty, for the purpose of promoting the study of the Fine Arts in Great Britain.”³⁵⁴ In essence, the Committee concluded that “several of the most eminent Artists in this kingdom . . . rate[] these Marbles in the very first class of ancient art, some placing them a little above, and others but very little below the Apollo Belvidere, the Laocoon, and the Torso of the Belvidere.”³⁵⁵ Thus, the collection was deemed important and worthy of purchase.

The seven and a half pages that comprised the fourth part of the Report focused on the sum that the government should pay Elgin for the collection. The Report noted that if the government did not purchase the collection, there would be other seekers, likely other “Sovereigns of Europe” who would add the collection to their “great Galleries or national institutions.”³⁵⁶ The Report stated that Lord Elgin did not demand a specific sum and that it was left to Parliament to “fix its own valuation.”³⁵⁷ In that regard, the Report stated that Mr. Payne Knight had suggested the sum of £25,000;³⁵⁸ Mr. Hamilton had suggested the sum of £60,800;³⁵⁹ and the Earl of Aberdeen had suggested the sum of £35,000 “as a sort of conjectural estimate of the Whole, without entering into particulars.”³⁶⁰ After noting that eighty additional “cases” were added to the collection after 1811, and that there had been considerable inflation in recent years, the Committee found “[t]hirty-five thousand [p]ounds to be a reasonable and sufficient price for this Collection.”³⁶¹

The last paragraph of the Report observed that the “cultivation of the Fine Arts has contributed to the reputation, character, and dignity of every Government”³⁶² As important as that point was, it was followed by another. In evaluating “the importance and splendor” of such a “small [] republic as Athens,” which permitted the “genius and energy of her citizens” to flourish, it is “impossible to overlook how transient the memory and fame of the extended empires, and of mighty conquerors are,

³⁵⁴ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 5.

³⁵⁵ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 26.

³⁵⁶ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 34.

³⁵⁷ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 35.

³⁵⁸ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 40.

³⁵⁹ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 40.

³⁶⁰ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 41.

³⁶¹ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶¶ 49–51.

³⁶² SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 73.

in comparison”³⁶³ But that was not all. If it were true, and the Committee obviously thought it was, “that free governments afford a soil most suitable to the production of native talent, to the maturing of the powers of the human mind, and to the growth of every species of excellence, by opening to merit the prospect of reward and distinction,” then there was no country “better adapted than [Great Britain] to afford an honourable asylum to these monuments of the school of *Phidias*, and of the administration of *Pericles*.”³⁶⁴

What this all amounted to was very simple. The government would have to pay Elgin for his collection or risk lengthy legal proceedings on Elgin’s right to sell the collection to a buyer on the continent. With that in mind, the Committee recommended that the government purchase the collection for £35,000.

VII. AN EMPIRE ACQUIRES TROPHIES

The debate in Parliament occurred a few months later, on June 7, 1816.³⁶⁵ Thirteen members spoke, but only four spoke at any length, and the entire discussion occupies less than seven printed pages of the Parliamentary proceedings. What is so exceptional about the debate is how modern it all is. There is little said today about the ethics of collecting cultural property that was not said then.

Of the thirteen members who spoke, six supported the government purchasing the collection; seven opposed it. Although the motion to purchase the collection for £35,000 carried by a vote of 82 to 32,³⁶⁶ none of the supporters of the purchase argued that the Ottomans had granted Elgin permission to dismantle the Parthenon, nor did any of them deny that Elgin was only able to do what he did because he was the British ambassador. In short, the supporters of the purchase favored the purchase of the collection without arguing that Elgin had permission to do what he did and that he acted ethically as the British ambassador.

The supporters claimed that the purchase would “promote public taste, and public refinement”³⁶⁷ or, in the very least, that possession of “these precious remains of ancient genius and taste would conduce not only to the perfection of the arts, but to the elevation of our national character, to our opulence, to our substantial greatness.”³⁶⁸ Pandering to prejudices against the Ottomans, the supporters of the purchase hammered away at the idea that the Turks cared not one whit for the sculptures and

³⁶³ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 73.

³⁶⁴ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 73.

³⁶⁵ HC Deb (June 7, 1816) (34) cols. 1027–40 (UK).

³⁶⁶ *Id.* col. 1040.

³⁶⁷ *Id.* col. 1028 (emphasis omitted).

³⁶⁸ *Id.* col. 1034.

the Parthenon and that the ancient marbles were in a “state of constant dilapidation and danger.”³⁶⁹ Against that presumption, the supporters portrayed Elgin as a savior who did what was necessary to preserve these historic and celebrated sculptures. From this perspective, these advocates claimed that Elgin should be celebrated and thanked, and considered not just a lord, but a “noble lord”—a term that one of Elgin’s more passionate proponents used no less than seven times in making his remarks.³⁷⁰

Given the evidence, the supporters conceded that Elgin’s artisans were able to do what they did only because Elgin was the ambassador³⁷¹ and because the British had just wrestled control of Egypt from the French.³⁷² But to avoid the charge that Elgin had abused his ambassadorial position and had acted dishonorably, they made the indecipherable claim that Elgin did not act “solely as a British ambassador” in obtaining the collection.³⁷³ Elgin’s advocates also sought to argue that the bribes Elgin gave to facilitate the stripping of the Parthenon were entirely appropriate. The Turks, they argued, required bribes to do just about anything, even tasks that they were legally obligated to perform.³⁷⁴ The supporters thought the recommended price of the purchase of £35,000 was warranted.³⁷⁵ Five years before, the government offered £30,000, and since that time, Elgin’s collection had increased in size.³⁷⁶ Surely, the government could afford such a sum for a unique collection, and, as one member of parliament insisted: “the same opportunity might never recur.”³⁷⁷

The opponents of the purchase insisted that Elgin lacked permission to remove the sculptures. What he did, they argued, was plunder, pure and simple. They claimed that Elgin was able to accomplish what he did only because Britain was so powerful, that Elgin had abused his ambassadorial position, and that he had even utilized bribes.³⁷⁸ They contended that the assertion that the Turks did not protect the Parthenon and sculptures was false and was undermined by Elgin’s own testimony that the Ottomans were so protective of the ancient monument that his artisans were more or less prevented from mounting the Parthenon until the British gained control of Egypt.³⁷⁹ As for the collection advancing the

³⁶⁹ *Id.* col. 1029.

³⁷⁰ *Id.* col. 1034–35 (referring to Elgin as the “noble lord” or the “noble earl”).

³⁷¹ *Id.* col. 1028.

³⁷² *Id.* col. 1032.

³⁷³ *Id.* col. 1028.

³⁷⁴ *Id.* col. 1037 (“The firmaun could do nothing without bribery.”); *id.* col. 1039 (“Every person who knew the Turkish character must be sensible that when they gave any thing away it was with the view of receiving an equivalent.”).

³⁷⁵ *Id.* col. 1029.

³⁷⁶ *Id.* col. 1029–30.

³⁷⁷ *Id.* col. 1039.

³⁷⁸ *Id.* col. 1031–32.

³⁷⁹ *Id.*

public's artistic tastes, they dismissed that as a fairy tale. Rather, they maintained that "the purchase of these precious remains of antiquity was for the gratification of the few, at the expense of the many."³⁸⁰

The prominent Hammersley argued that the government should hold the collection in trust until it was appropriate for the collection to be returned to Greece.³⁸¹ In offering his proposal, Hammersley claimed that it was to be "regretted" that the government had not restrained Elgin in "this act of spoliation," but since it had been committed, the government should "exert" itself "to wipe off the stain, and not place in our museum a monument of our disgrace."³⁸² To translate his suggestion into action, Hammersley offered the following resolution, which is set forth in full:

That this committee having taken into its consideration the manner in which the earl of Elgin became possessed of certain ancient sculptured marbles from Athens, laments that this ambassador did not keep in remembrance that the high and dignified station of representing his sovereign should have made him forbear from availing himself of that character in order to obtain valuable possessions belonging to the government to which he was accredited; and that such forbearance was peculiarly necessary at a moment when that government was expressing high obligations to Great Britain. This committee, however, imputes to the noble earl no venal motive whatever of pecuniary advantage to himself, believes that he was actuated by a desire to benefit his country, by acquiring for it, at great risk and labour to himself, some of the most valuable specimens in existence of ancient sculpture. This committee, therefore, feels justified, under the particular circumstances of the case, in recommending that [£]25,000 be offered to the earl of Elgin for the collection in order to recover and keep it together for that government from which it has been improperly taken, and to which this committee is of opinion that a communication should be immediately made, stating, that Great Britain holds these marbles only in trust till they are demanded by the present, or any future, possessors of the city of Athens; and upon such demand, engages, without question or negotiation, to restore them, as far as can be effected, to the places from whence they were taken, and that they shall be in the mean time carefully preserved in the British Museum.³⁸³

In sum, Hammersley stated that, even assuming Elgin's intentions were honorable, Elgin took advantage of his position as ambassador at a time when the Ottoman government was beholden to the British government, the government should compensate Elgin for the collection in the

³⁸⁰ *Id.* col. 1039.

³⁸¹ *Id.* col. 1033.

³⁸² *Id.* col. 1032.

³⁸³ *Id.* col. 1032–33.

amount of £25,000, and that the government should hold the collection in trust until it could be returned to Athens.

Hammersley's proposal did not convince enough members of Parliament to vote his way. Nonetheless, Hammersley and the others who opposed the purchase in 1816 make it plainly evident that contemporary critics of Elgin do little more than repeat arguments made over two hundred years ago.

VIII. UNRAVELING A MYSTERY

At the core of the conventional narrative defending Elgin's taking of the Parthenon sculptures and the British Museum's continued retention of his collection is the claim that the Ottoman officials in Constantinople gave Elgin prior written permission to strip the sculptures from the high walls. And at the center of this assertion are three documents. First, there is the July 1801 Ottoman-language document Hunt took to Athens that the narrative insists authorized the stripping of the sculptures.³⁸⁴ Second, there is the Italian-language document Hunt told the Parliamentary Select Committee was an accurate translation of the Ottoman language document.³⁸⁵ Third, there is the English-language document published in the Appendix of the Parliamentary Select Committee's Report that the Committee represented was an accurate translation of the Italian language document.³⁸⁶

As previously noted, the Ottoman-language document is missing and was probably lost or destroyed a long time ago. The Italian document survives, and after decades of being lost in Hunt's papers retained by his descendants, it was passed on to William St. Clair, Elgin's biographer, who, in turn, transferred it to the British Museum.

With the Ottoman-language document lost, Hunt's Italian document is the central document in the continuing dispute between Greece and the United Kingdom. St. Clair expressed this viewpoint in unqualified terms in 1998: "All discussion of legality must start with the second Firman issued by the Ottoman government in July 1801"—and it is maintained that Hunt's Italian document is an accurate translation of this so-called second Firman—"under whose authority the Ottoman authorities in Athens permitted the first removals of sculptures from the Parthenon."³⁸⁷ This assertion was also set forth in a book entitled *Treasures of the British Museum*, which was published for the Trustees of the British Museum by the British Museum Press and authored by Marjorie Caygill.³⁸⁸ After

³⁸⁴ See *supra* Part III.

³⁸⁵ Hunt Testimony, *infra* Appendix C, ¶ 2.

³⁸⁶ FERMAUN TRANSLATION, *infra* Appendix D.

³⁸⁷ ST. CLAIR 3d ed., *supra* note 8, at vi.

³⁸⁸ MARJORIE CAYGILL, TREASURES OF THE BRITISH MUSEUM (1985).



Figure 1 Getty Images/Nick Brundle Photography



Figure 2 iStock.com/Lefteris_



Figure 3 iStock.com/MinistryOfJoy

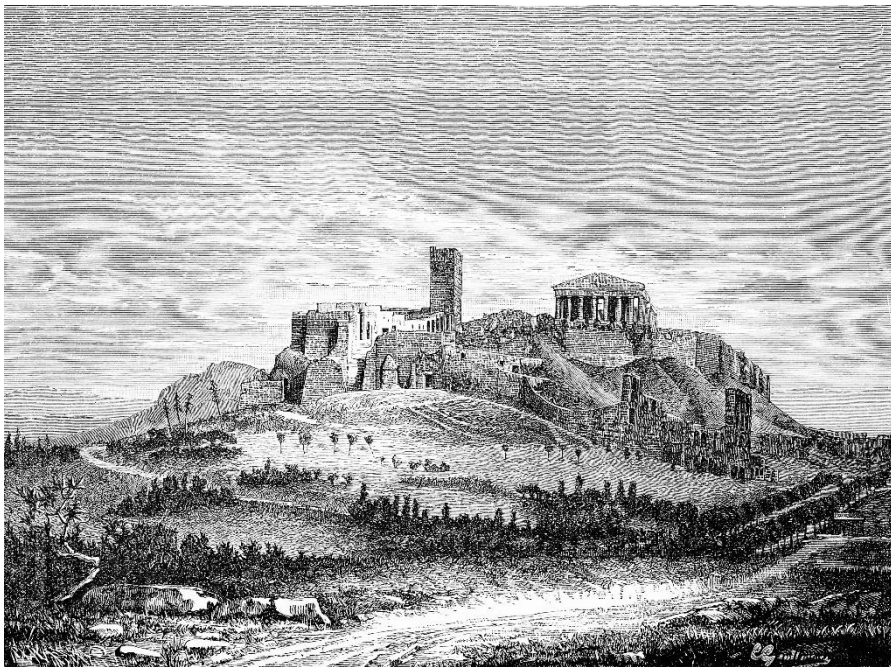


Figure 4 iStock.com/ilbusca

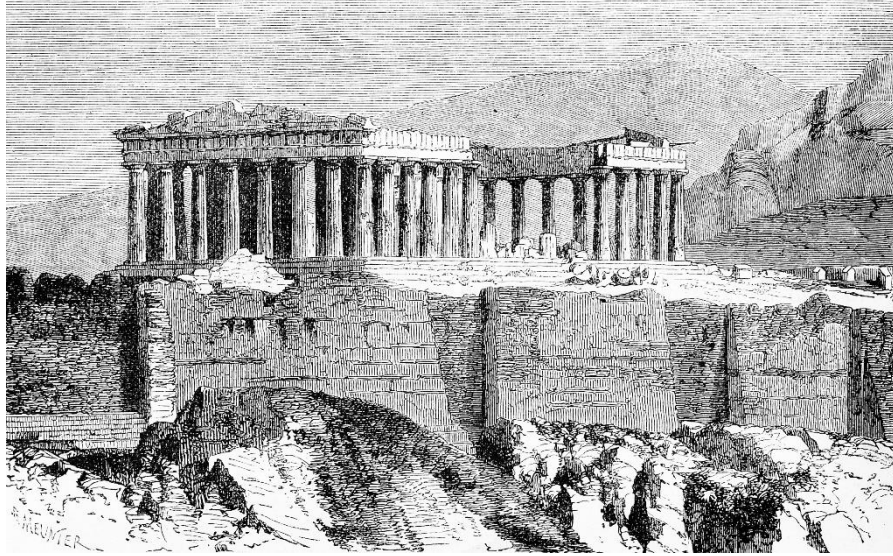


Figure 5 iStock.com/ilbusca



Figure 6 iStock.com/vale_1

stating that Elgin received a directive from Constantinople officials in July of 1801, and implying that the original Turkish document no longer exists, Caygill wrote, “An Italian version of this document still exists; it directed that no one should interfere with Elgin’s team in their sketching and scaffolding and that they might also ‘take away any pieces of stone with old inscriptions or sculptures thereon.’”³⁸⁹ The same claim is repeated in a recent Briefing Paper prepared under the auspices of the British House of Commons. This paper maintains that Elgin obtained a “firman” in Turkish from the “Sultan’s ministers,” which “has not survived” but which was translated into Italian at the time.³⁹⁰ The British Museum promotes the same view. It states that the original Turkish document has not survived, but it insists that an “Italian version [of the original document] is now in the British Museum.”³⁹¹

A. *The Italian Document*

The Italian document is a mystery, and the mystery begins with Elgin’s testimony before the Select Committee. Elgin was the Committee’s first witness, and during his lengthy testimony, the Committee asked him whether the permission he had obtained was ever written down.³⁹² Elgin answered: “It was . . . and I have retained none of them.”³⁹³ A few minutes later, Elgin was asked again: “[D]id not your Lordship keep any copy of any of the written permissions that were given to your Lordship?”³⁹⁴ Elgin’s response was unequivocal: “I kept no copies whatever.”³⁹⁵ Immediately after Elgin completed his answer, Elgin was queried again: “In point of fact, your Lordship has not in England any copy of any of those written permissions?”³⁹⁶ “None,” Elgin answered.³⁹⁷ The Committee then asked Elgin: “Did the Committee understand you to say, that it is possible Lusieri has such copies?”³⁹⁸ Elgin said: “Certainly; they will be at Athens, either in his possession or in the possession of the authorities there.”³⁹⁹ To make sure that Elgin had no writing of any kind that would shed light on the contents of the 1801 document, the Committee asked Elgin: “Did your Lordship, for your own satisfaction, keep any

³⁸⁹ *Id.* at 124.

³⁹⁰ JOHN WOODHOUSE & SARAH PEPIN, *THE PARTHENON SCULPTURES*, 2017, HC Library 02075 Briefing Paper, at 6 (UK).

³⁹¹ *Facts and Figures*, *supra* note 3, at ¶ 9.2.3.

³⁹² Elgin testified on Feb. 29, 1816. Elgin Testimony, *infra* Appendix B, ¶ 1, 9.

³⁹³ Elgin Testimony, *infra* Appendix B, ¶ 9.

³⁹⁴ Elgin Testimony, *infra* Appendix B, ¶ 16.

³⁹⁵ Elgin Testimony, *infra* Appendix B, ¶ 16.

³⁹⁶ Elgin Testimony, *infra* Appendix B, ¶ 17.

³⁹⁷ Elgin Testimony, *infra* Appendix B, ¶ 17.

³⁹⁸ Elgin Testimony, *infra* Appendix B, ¶ 18.

³⁹⁹ Elgin Testimony, *infra* Appendix B, ¶ 18.

copy of the terms of those permissions?”⁴⁰⁰ Elgin again answered without qualification: “No, I never did.”⁴⁰¹

Nearly two weeks after Elgin testified that he did not retain a copy of the Ottoman permission, the “Rev. Dr. Philip Hunt, LL.D. [was] called in [by the Committee], and Examined.”⁴⁰² The Committee’s second question to Hunt was: “Did you ever see any of the written permissions which were granted to [Elgin] for removing the Marbles from the Temple of Minerva?”⁴⁰³ Hunt answered, “Yes,” and that he had advised “Lord Elgin to apply to the Porte for a *fermaun*” defining the scope of permission he was seeking.⁴⁰⁴ Hunt claimed that he had “begged that [the *fermaun*] might be accompanied by a literal translation”; that in the end, “the *fermaun* was sent with a translation” to Athens; and that he, Hunt, now had the translation.⁴⁰⁵ Hunt told the Committee that he left the document in Bedford and had “no means of directing any person to obtain; [he] would have brought it if [he] had been aware [he] should have been summoned by this Committee before [he] left Bedford.”⁴⁰⁶ Although Hunt did not identify the language of the translation, it was in Italian and the Select Committee knew that it was by the time Hunt testified.

Hunt’s 1816 statement before the Committee that he had what he termed an Italian translation of the 1801 Ottoman document is the earliest record indicating that he—or for that matter, anyone else—had such a document. Once Hunt told the Committee he had such a document, the Committee shifted its focus to the substance of the document, and after a short period of time, the Committee excused Hunt as a witness and did not take the testimony of any additional witnesses.⁴⁰⁷

As is apparent, the repeated assertion that the Ottomans gave Elgin prior written permission to dismantle the Parthenon is at the controversy’s core, and that the document that allegedly supports the prior-permission claim is the Italian document that Hunt told the Committee he had in Bedford. This Italian document is the critical link between the original (now lost) document the Ottomans gave to Lord Elgin in July of 1801, the one that allegedly granted Elgin the disputed permission, and the English

⁴⁰⁰ Elgin Testimony, *infra* Appendix B, ¶ 20.

⁴⁰¹ Elgin Testimony, *infra* Appendix B, ¶ 20.

⁴⁰² Hunt Testimony, *infra* Appendix C (typeface altered).

⁴⁰³ Hunt Testimony, *infra* Appendix C, ¶ 2.

⁴⁰⁴ Hunt Testimony, *infra* Appendix C, ¶ 2.

⁴⁰⁵ Hunt Testimony, *infra* Appendix C, ¶ 2.

⁴⁰⁶ Hunt Testimony, *infra* Appendix C, ¶ 2.

⁴⁰⁷ SELECT COMMITTEE REPORT, *infra* Appendix A; Hunt Testimony, *infra* Appendix C.

document the Select Parliamentary Committee published in the appendix to its 1816 report.⁴⁰⁸

For a contemporary researcher, however, finding the Italian document was not straightforward. As it turned out, the Italian document more or less disappeared from public view from 1816 to 1967. What appears likely is that the Italian document became mixed up with Hunt's personal papers and was overlooked by Hunt's heirs as a document of potential historical significance for about 150 years. This changed in 1967, when Oxford University Press published William St. Clair's biography of Elgin. In the book's preface, St. Clair made clear that he possessed the Italian document: "By far my greatest debt of gratitude is to Mrs. A. C. Longland of Abingdon who unreservedly made me a present of a collection of papers which belonged to her great-grand-uncle, Dr. Philip Hunt."⁴⁰⁹ If this acknowledgment is then combined with an endnote in which St. Clair asserts that Hunt's 1816 Italian document "is among the Hunt Papers," it is evident that St. Clair, as of 1967, possessed Hunt's Italian document.⁴¹⁰

But knowing that the Italian document was in St. Clair's possession did not disclose St. Clair's whereabouts. Eventually a footnote in a law review article written by the widely respected art law professor, John Henry Merryman, suggested that Merryman himself had seen the Italian document.⁴¹¹ On September 17, 1997, Merryman confirmed to the author in a telephone call that he had seen a copy of the Italian document, and that he had returned the copy to St. Clair.⁴¹² Merryman had St. Clair's contact information in London.

Later, on September 17, 1997, St. Clair confirmed to the author in another telephone call that he possessed the Italian document.⁴¹³ But he refused to allow the author to examine the document if the author went to London (from New York) at a time convenient for St. Clair.⁴¹⁴

Nonetheless, St. Clair agreed to respond to questions. In the conversation that followed, St. Clair made the following points: although the

⁴⁰⁸ See generally FERMAUN TRANSLATION, *infra* Appendix D.

⁴⁰⁹ WILLIAM ST. CLAIR, LORD ELGIN AND THE MARBLES, at v (2d ed. 1983) [hereinafter ST. CLAIR 2d ed.].

⁴¹⁰ *Id.* at 289 n.4. It was not until the publication of the third edition of his Elgin biography that St. Clair explicitly stated that he had Hunt's 1816 Italian language document:

All subsequent accounts of Lord Elgin's activities before the publication of the first edition of the present book were dependent on this derived English version. The actual document remained in the family among the Hunt papers where I discovered it, and it is now in my possession. The official Italian version is published in full for the first time, 1998, in Appendix I.

ST. CLAIR 3d ed., *supra* note 8, at 88. In an endnote after the word "possession," St. Clair also claims that the "Hunt papers had been examined by various scholars and publishers but none had identified the document in Italian as the firman." *Id.* at 357 n.10.

⁴¹¹ Merryman, *supra* note 339, at 1898 n.58.

⁴¹² Telephone Interview with John Henry Merryman (Sept. 17, 1997).

⁴¹³ Telephone Interview with William St. Clair (Sept. 17, 1997).

⁴¹⁴ *Id.*

English translation of the Italian document published in the Select Committee's Report identified the Rev. Hunt as the courier who would take the document from Constantinople to Athens,⁴¹⁵ the *Italian* document did *not* identify Hunt or anyone else as the courier;⁴¹⁶ although the *English* translation published in the Parliamentary Report's appendix indicated that the Italian document was signed and that it had a signet affixed,⁴¹⁷ the *Italian* document was *not* signed and had no signet affixed; the Italian document was undated; and he was unable to explain the variances between the Italian and the English documents.⁴¹⁸

Although the 1816 Select Parliamentary Committee Report represented that the English document it published was an accurate translation of Hunt's Italian document, the English document was at variance with the Italian document, and the variances were significant. That raised the question as to how those variances came about. And that question led to other questions. Did Hunt make the Italian document available to the Parliamentary Select Committee to examine? Was the Committee responsible for translating the Italian document into English? Was the Committee responsible for the discrepancies between the two documents? As odd as it may seem, the available public evidence leaves the answers to these questions uncertain.

Hunt's testimony did not make it clear whether he gave the Committee the Italian document to examine or whether he gave the Committee an English translation of the document. And for its part, the Select Committee's report failed to resolve the ambiguity. At one point, the report stated, "A translation of the fermaun itself has since been forwarded by Dr. Hunt, which is printed in the [a]ppendix."⁴¹⁹ That sentence could be referring to an English translation of the Italian document which the Committee included in the appendix.⁴²⁰ It is equally plausible that the phrase is referring to the Italian document Hunt claimed was a translation of the original Turkish document, thus leaving it to the Committee to translate the Italian document into English.

The Committee's report contains another clue relevant to whether it examined the Italian document. The Committee stated the following in an unnumbered footnote below the English document it printed in the

⁴¹⁵ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 3.

⁴¹⁶ Telephone Interview with St. Clair, *supra* note 413.

⁴¹⁷ FERMAUN TRANSLATION, *infra* Appendix D.

⁴¹⁸ Telephone Interview with St. Clair, *supra* note 413.

⁴¹⁹ SELECT COMMITTEE REPORT, *infra* Appendix A, ¶ 21 (typeface altered).

⁴²⁰ St. Clair writes in a footnote: "In the translation given by Hunt to the Select Committee in 1816 . . ." ST. CLAIR 2d ed., *supra* note 409, at 90 n.*.

Appendix: “*N. B.*—The words in Italian rendered in two places ‘any pieces of stone,’ are ‘*qualche pezzi di pietra.*’”⁴²¹ This sentence, which permits the reader to assess the correctness of the English translation of a phrase by providing the phrase in Italian, leaves it unclear whether Hunt forwarded to the Committee at least this one Italian phrase because he thought it of special importance, or—and this seems more probable—whether the Committee examined the entire Italian document.

These uncertainties might be resolved by reviewing the original files of the Select Committee. Such files might contain draft reports, unprinted transcripts, unpublished notes, and documents. But on August 14, 1998, a few days before the author was scheduled to visit the archives for Parliamentary documents, a representative of the Records Office of the Houses of Parliament, Simon Gough, reported that all the original files of the Select Committee were destroyed in an 1830s fire.⁴²² Thus, the unanswered questions remain unanswered. Nonetheless, unless the Select Committee was willing to trust Hunt to provide it with an accurate translation, it seems likely that the Committee examined the Italian-language document and had it translated into English, or at least, verified the accuracy of an English-language translation Hunt may have provided.

B. *The Italian Document Is Not a Fraud*

Before exploring the discrepancies between the Italian and the English documents, it is important to assess the possibility that the Italian language document was a fraud. Although the Parliamentary Select Committee’s report gave the impression that the authenticity of the Italian document was not in doubt, the Committee had reason to be concerned that Hunt’s Italian document might be a fraud. The Committee must have realized that Elgin knew that the Committee was eager to examine a document issued by Constantinople Ottoman officials pertaining to Elgin’s activities.⁴²³ Elgin had told the Committee that he thought the only documentary records related to his Acropolis activities existed in Athens.⁴²⁴ The Committee knew that Elgin’s indebtedness made it imperative for him to sell his collection of antiquities, and that his desperate situation had made him an unreliable witness. Thus, to have Hunt then appear out of the blue, claiming to have in his possession a copy of the sought-after written permission, had to raise a doubt about the authenticity of Hunt’s document even in the most trusting of minds.

⁴²¹ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 4 (typeface altered).

⁴²² Telephone Conversation with Simon Gough, Records Office, Houses of Parliament (Aug. 14, 1998).

⁴²³ Elgin Testimony, *infra* Appendix B, ¶¶ 8–9, 16–20 (inquiring whether Lord Elgin received permission in writing and whether Elgin retained a copy of this document).

⁴²⁴ Elgin Testimony, *infra* Appendix B, ¶ 18 (“[Written permissions] will be at Athens, either in [Lusieri’s] possession or in the possession of the authorities there.”).

The Committee could have reduced the risk of fraud in two ways. First, and most simply, it could have asked Hunt questions about the Italian document. Questions such as: Since neither Hunt nor Elgin were fluent in Italian, why was Hunt's translation in Italian? If Hunt did not make the translation, who did? In whose handwriting was the document? When and where was the translation done? How could Hunt be certain that his translation accurately reflected the substance of the Ottoman document? If the purpose of the translation was to ensure that local Athenian-Ottoman officials honored the terms of the Ottoman document, why did Hunt—and not Lusieri, who was in Athens overseeing the work—have the document? How is it that Elgin did not know that Hunt had the translation? Lastly, how was it that Hunt became a witness two weeks after Elgin was repeatedly asked for a written permission he did not have? The Committee's failure to ask Hunt these and related questions stands in contrast to the far more searching examination the Committee conducted of Elgin.⁴²⁵

Second, the Committee could have sought verification of the Italian document in Constantinople. Since Hunt claimed that the Italian translation was prepared in Constantinople at his request, he most likely could have identified who had translated it and who handwrote the document. If Hunt had been asked those questions, he almost certainly would have identified that person as Pisani, Elgin's dragoman. With that information in hand, the Committee could have tried to verify Hunt's claim through its ambassador in Constantinople, who might have secured a statement from the translator (Pisani, if it were he and if he were still living), as well as confirmation that the handwriting of other documents in Constantinople prepared by Pisani was sufficiently similar to establish the veracity of Hunt's testimony. But the Committee failed to take sensible steps to confirm that the document was not fraudulent. Thus, it did not ask Hunt questions about the document, and it failed to secure any verification from Constantinople.

Perhaps the Committee's failure to guard against fraud is best explained by the fact that the Committee was committed to purchasing Elgin's collection, and it wanted a record that supported that outcome. As a result, the Committee was eager to accept Hunt's document as authentic and as expressive of the scope of permission the Ottomans gave Elgin.

The question of whether Hunt's Italian document was a fraud was addressed and rejected by Elgin's biographer, William St. Clair. St. Clair claimed that the Italian document is on paper that was available in Constantinople in 1801. Even so the same paper could have been available in

⁴²⁵ It may be that the Committee asked Hunt these questions in private, but there is no evidence that supports such speculation.

London in 1816, and then used to create a document in London.⁴²⁶ St. Clair also stated that a notation—he terms it a “file note”—on the outside of the document is “in the hand of Philip Hunt.”⁴²⁷ Whether Hunt wrote the file note does not prove the claim that the document was created in Constantinople in 1801. Hunt could have written the file note at any time in any place. Furthermore, St. Clair contends that the handwriting of the document “appears to be that of Pisani,” Elgin’s dragoman in Constantinople.⁴²⁸ If the document is in his handwriting, that would establish at minimum that it was prepared in Constantinople or Athens, but St. Clair’s support for this claim is unconvincing. Instead of having handwriting experts compare the Italian document he possesses with documents known to have been written by Pisani, St. Clair, who first posited this assertion in 1967, seems to have made the critical judgments himself.⁴²⁹ Perhaps St. Clair has had sufficient experience in comparing handwriting to forego the assistance of acknowledged authorities, but he makes no such representation. Moreover, although it is possible that St. Clair had access to many documents he knew were in Pisani’s handwriting and which he used as a basis of comparison, St. Clair does not state that he did, and it is not self-evident that St. Clair would have access to such documents.⁴³⁰

In addition, St. Clair expresses his point that the document is in Pisani’s handwriting in a highly qualified way. What he states is that the “handwriting *appears* to be that of Pisani.”⁴³¹ The word “appears” is usually used when a person making a claim believes that an assertion is more likely true than not, while conceding that there is reasonable probability that the claim is untrue. Although the use of the word “appears” might have been unintentional on St. Clair’s part, that seems unlikely given that St. Clair’s understanding of the important difference between a qualified and unqualified assertion is evidenced in the very same sentence when he asserts without reservation, “A file note on the outside of the document in the hand of Philip Hunt notes ‘Kaimacam’s Letter N[o]. 2. To the Governor of Athens.’”⁴³² Presumably, St. Clair, who possesses a body of documents in Hunt’s handwriting against which he could compare the

⁴²⁶ St. Clair’s evidence for this assertion is a watermark on the paper which he describes as “three hats, with an unidentified symbol between them, and a V G countermark.” ST. CLAIR 3d ed., *supra* note 8, at 337.

St. Clair identifies the watermark as belonging to the papermaker Valentino Galvani and writes that Galvani “is known to have possessed paper mills in the Veneto and in northern Italy in the 1790s and to have exported to the Levant.” *Id.* St. Clair supports his assertion with a reference to a book by Georg Eineder. Georg Eineder, THE ANCIENT PAPER-MILLS OF THE FORMER AUSTRO-HUNGARIAN EMPIRE AND THEIR WATERMARKS (1960).

⁴²⁷ ST. CLAIR 3d ed., *supra* note 8, at 337.

⁴²⁸ *Id.*

⁴²⁹ ST. CLAIR 2d ed., *supra* note 409, at 289 n.4.

⁴³⁰ ST. CLAIR 3d ed., *supra* note 8, at 337.

⁴³¹ *Id.* (emphasis added).

⁴³² *Id.*

handwriting of the file note, had far more confidence that the file note was written by Hunt than he did that the Italian document was written by Pisani. In addition to these shortcomings, there are gaps in St. Clair's evidence. St. Clair presents no evidence as to whether the ink used to prepare the document was ink found in Constantinople. St. Clair fails to determine whether other documents prepared by Pisani on or about July 8, 1801—the date St. Clair claims the document was prepared—used paper with same watermark and ink of the same chemical composition. If such evidence could be established, that would constitute more than convincing evidence in support of the claim that the Italian document was prepared by Pisani in Constantinople in July 1801.

Although these considerations do not resolve the fraud question, two factors not discussed by St. Clair support the authenticity of the Italian document. First, if the document was created in England to reassure the Select Committee that Elgin did have some kind of written permission, there is no reason why it would have been written in Italian. An English document would have been perfectly acceptable and unquestioned because it was prepared for Elgin and Hunt, who did not speak Italian. Second, and even more importantly, if Hunt had conspired with Elgin to create a fraudulent document, they would have most likely created one that unequivocally authorized Elgin to remove sculptures from the Parthenon walls. After all, Elgin claimed that he had permission to do this and the Select Committee made it crystal clear to Elgin that it wished to see a writing that permitted this activity.⁴³³ If Elgin and Hunt were going to commit fraud, it would seem that they would have created a document that gave the Committee what Elgin knew it wanted: a document that granted Elgin permission to denude the Parthenon. But, as discussed later, the Italian document not only failed to authorize the removal of sculptures from the Parthenon walls, but it was premised on the assumption that the work done by Elgin's artisans would not harm the sculptures.⁴³⁴ Thus, it seems inconceivable that Elgin and Hunt would engage in fraudulent conduct that failed so dramatically to achieve the very purpose of the fraud. As a result, it seems extremely likely that Hunt's Italian document was created in Constantinople in 1801.

C. *The Italian Document Is a Draft*

Putting the fraud question to one side redirects attention to the Italian-language document and the discrepancies between it and the English-language document. In the British Museum's telling of the story, the lost Ottoman-language document of July 1801 was translated into Italian, and

⁴³³ See, e.g., Elgin Testimony, *infra* Appendix B, ¶¶ 8–9, 16–20.

⁴³⁴ See discussion *infra* Section VIII.E.

an English translation of that Italian document was published in the Parliamentary Select Committee's Appendix. That makes Hunt's Italian document the critical link connecting the Ottoman document Hunt delivered in Athens and the English document the Select Committee published in its appendix. It is that linkage that gives rise to the conventional view that the substance of the original Ottoman document is known because that document was translated first into Italian and then into English.⁴³⁵ But the evidence undermines that narrative.

The first sentence of the third paragraph of the Select Committee's English document begins with the following words: "We therefore have written this Letter to you, and expedited it by Mr. Philip Hunt, an English gentleman, Secretary of the aforesaid Ambassador"⁴³⁶ But those are not the words in Hunt's Italian document. Hunt's Italian document states: "We therefore have written this letter to you and expedited it by N.N."⁴³⁷ The letters N.N. were likely an abbreviation for the Latin *non nullus*, loosely translated to mean "someone," and it was a conventional way of indicating in a draft document that the name of a specific person would be inserted at a later time when a final version of the document was rendered.⁴³⁸

No one would accidentally or unintentionally mistakenly substitute "Mr. Philip Hunt, an English gentleman, Secretary of the aforesaid

⁴³⁵ In a chapter entitled "The Firman," St. Clair provides an English version of Hunt's document that differs from the Select Committee's English version. Compare ST. CLAIR 2d ed., *supra* note 409, at 89–90, with FERMAUN TRANSLATION, *infra* Appendix D. For example, St. Clair's English version states: "We therefore have written this letter to you and expedited it by N.N." ST. CLAIR 2d ed., at 90. After the letters "N.N.," St. Clair places a footnote that states in full: "In the translation given by Hunt to the Select Committee in 1816, Hunt rendered this 'by Mr. Philip Hunt, an English gentleman, Secretary of the Aforesaid Ambassador.'" *Id.* at 90 n.*. Since the Select Committee's report gave no indication that Hunt's Italian document did not identify Hunt as the courier, the only way that St. Clair could have known that the Italian document used the letters "N.N.," as opposed to identifying Hunt as the courier, is if he had examined the Italian document. Furthermore, on the same page of his text, St. Clair adds a footnote that begins with the words "This part reads," and is then followed by sixteen words in Italian. *Id.* at 90 n.†. Since the Select Committee had provided only four of these sixteen Italian words, FERMAUN TRANSLATION, *infra* Appendix D, ¶ 4, St. Clair could have added the additional twelve Italian words only if he had had access to the Italian document. Lastly, at the end of his English version of the Ottoman document, St. Clair refers to an endnote, which provides in relevant part: "An Italian version of the firman, in the handwriting of Pisani the British interpreter at Constantinople, is among the Hunt Papers. Clearly this is the document from which Hunt provided the translation for the Select Committee." ST. CLAIR 2d ed., at 289–90 n.4. The Select Committee's report made no reference to the handwriting of Hunt's Italian document. The only basis St. Clair would have had for asserting that the Italian document was in Pisani's handwriting was if he had examined it.

In an endnote after the word "possession," St. Clair also claims that the "Hunt papers had been examined by various scholars and publishers but none had identified the document in Italian as the firman." ST. CLAIR 3d ed., *supra* note 8, at 357 n.10.

⁴³⁶ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 3.

⁴³⁷ ST. CLAIR 2d ed., *supra* note 409, at 90.

⁴³⁸ By the time St. Clair revised the biography in 1998, he believed he had solved the "N.N." riddle. He stated that "N.N." was a "conventional way of showing that the name of an individual is to be inserted later." ST. CLAIR 3d ed., *supra* note 8, at 340. My own investigation led to a similar conclusion.

Ambassador,” for the letters “N.N.” By representing that the Italian document identified Hunt as the courier, the English document provided a basis in the text itself for concluding that the Italian document was a translation of the final version of the Ottoman document sent to Athens, and, by implication, it provided an explanation as to how Hunt came to possess a translation of the critical Ottoman document fifteen years after he surrendered it to officials in Athens.

The second discrepancy is equally startling. The Select Committee printed the English document as if it were signed and had a signet attached. At the bottom of the document were the following words: “(Signed with a signet.) SEGED ABDULLAH KAIMACAN.”⁴³⁹ The implication is clear: The Committee examined the Italian document and it had a signet and was signed by the Acting Grand Vizier.⁴⁴⁰ But the Italian document is not signed and it has no signet.⁴⁴¹ Mr. St. Clair confirmed these discrepancies to the author in a telephone call.⁴⁴² Accordingly, given these discrepancies, the question arises: what is the Italian document?

The answer must take account of several factors. First, there is the use of the “N.N.” in the text of the Italian document. As noted, “N.N.” was used in draft documents to indicate that the name of an individual was to be inserted in a final version of the document.⁴⁴³ If the Italian

⁴³⁹ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 3.

⁴⁴⁰ When St. Clair included the text of the Italian document in his 1998 revised biography of Elgin, he placed the words “/Sotto^{to}/Sejid Abdullah Kaimmecam” at the end of the text, which also gave the impression that the Italian document was signed by Sejid Abdullah Kaimmecam. ST. CLAIR 3d ed., *supra* note 8, at 339.

Immediately following the Italian language text, St. Clair included an English language translation of the Italian document, which ends with the following statement: “Signed [*in the translation given in the Select Committee’s report the phrase used is ‘signed with a signet’*] Seged Abdullah Kaymacam.” *Id.* at 341 (alteration and italics in the original).

⁴⁴¹ St. Clair was present at a conference in Athens in May 2000 when I stated that the Italian-language document was unsigned and lacked a signet, and although he commented on other points I made in my lecture, he did not contradict or contest my statement that the Italian language document was unsigned and lacked a signet. St. Clair has known for years that the Italian document in his possession was unsigned and lacked a signet. Only he can explain why he presented the Italian document as signed when he knew it was not. Whatever explanation he might offer for his conduct should be measured against the admirable standard he has set for his own writings on this subject. “[M]y intention,” St. Clair has written in reference to his biography of Lord Elgin, “has always been to present an accurate, dispassionate and demystified historical account of what actually happened.” Letter by William St. Clair, *TIMES LITERARY SUPP.*, July 10, 1998, at 17. How St. Clair, who states that he is committed to presenting an “accurate, dispassionate and demystified historical account of what actually happened,” could indicate that the Italian document was signed or could fail to correct the Select Committee’s misrepresentation that the English document actually had a signet as well as a signature when it had neither, is, to say at the very least, perplexing. The reasons behind St. Clair’s conduct may be mysterious, but there can be no doubt about their significance. The presentation of the Italian-language document as if it were signed by the acting Grand Vizier, Seged Abdullah Kaymacam, insulated it from questions regarding its authenticity. But if the Italian-language document is not signed (as it is not), and if it lacks a signet (as it does), then its relationship to the Ottoman-language document is open to question and reconsideration.

⁴⁴² Telephone Interview with St. Clair, *supra* note 413.

⁴⁴³ See discussion *supra* notes 436–438 and accompanying text.

document was meant to be a literal translation of the Ottoman document, and if the Ottoman document had Hunt's name in it—as Hunt claimed it did—there would be no reason whatsoever for Pisani to substitute “N.N.” for Hunt's name.⁴⁴⁴

Second, if the Italian document was a translation of the Ottoman document intended to help Hunt or Elgin ensure that Ottoman officials in Athens honor the terms of the Ottoman document, why was it in Italian? Neither Elgin nor Hunt read Italian. Even assuming Pisani was far more comfortable translating Ottoman into Italian rather than English, nothing prevented Hunt or others from sitting down with Pisani in Constantinople and translating the Italian document into English before Hunt departed for Athens. That would have made the translation Hunt took useful to Hunt, whereas leaving the Italian document untranslated failed to fulfill the very purpose Hunt later claimed prompted him to have a translation in the first place. Of course, an Italian document might have helped Lusieri, Elgin's overseer, in Athens. But that explanation for why the document was in Italian is doubtful since Hunt kept the Italian-language document and took it to England.⁴⁴⁵

Third, the Italian document lacked a date. It is inconceivable that the original Ottoman document lacked a date. Thus, if the Ottoman document was dated when Pisani supposedly translated it into Italian, it is likely he would have noted the date on the Italian translation. Lastly, the Italian document is not signed, and it lacks a signet.

These considerations unravel the British Museum's claim that the Italian document was a translation of the Ottoman. Whatever the Italian document was, it was not a translation of the document the Ottomans gave Elgin in July of 1801. Yet if the Italian document is not a translation of the Ottoman document, what was it? Or, how to put the known facts together so that they make sense?

Because of the force of the conventional narrative, the answer resisted revelation. Once revealed, however, the answer seems obvious, if

⁴⁴⁴ Even if Pisani was intent on translating only the critical aspects of the Ottoman document—only the terms of the order that defined the activities that Elgin's artisans could conduct—that approach cannot explain the use of “N.N.” given the entire first paragraph of the English document. That entire paragraph describes the activities Elgin wished his artisans to be able to conduct, not the activities for which permission was granted. FERMAUN TRANSLATION, *infra* Appendix D, ¶ 2. Those activities are defined in the second paragraph of the document. FERMAUN TRANSLATION, *infra* Appendix D, ¶ 3. Thus, if Pisani's approach was to translate only the critical terms of the document that defined the permitted activities, he would not have translated the entire first paragraph, which constituted about one half of the entire document. *Cf.* FERMAUN TRANSLATION, *infra* Appendix D, ¶¶ 2–3.

⁴⁴⁵ St. Clair seeks to explain the use of Italian on the ground that it was the “lingua franca of the eastern Mediterranean” at the time. ST. CLAIR 3d ed., *supra* note 8, at 88. Assuming that Italian was the lingua franca of the eastern Mediterranean, that fact nonetheless fails to explain why this particular document was in Italian. How could a document in Italian help Hunt determine whether Ottoman officials in Athens complied with its terms if he did not read Italian? St. Clair's explanation is unpersuasive when weighed against the avowed purpose of the translation.

not self-evident. The Italian document was *not* a translation of the Ottoman document given to Elgin in July of 1801, as the British Museum and others maintained. Instead, it was a proposed draft directive prepared by Elgin's Italian dragoman, Pisani, which set forth the scope of permission Elgin requested from the Ottomans.

Identifying the Italian document as a document drafted at Elgin's direction that spelled out the permission he requested, explains everything. Thus, it explains why Hunt is not identified as the courier, why it was not signed, why it lacked a signet, why it was not dated, and why it was in Italian. Understanding the Italian document to be a proposed draft directive totally undoes the British Museum's assertion essential to the traditional narrative—that the Italian document is an accurate translation of the original Ottoman document that spelled out the scope of permission the Constantinople officials granted Elgin.

D. The Discrepancies: Who Knew and Why

Once the Italian document is understood as a draft document setting forth Elgin's proposed scope of permission, it is important to ask: How and why did it happen that the English-language document identified Hunt as the courier and was printed as if it were signed with a signet? Or, to put the matter more starkly: Who was responsible for the fraud? Because Parliament represents that there are no surviving files of the 1816 Select Committee deliberations because of a nineteenth-century fire, it is not possible to arrive at a definitive set of answers to these questions. But a review of what is known suggests several plausible conclusions.

First, consider what Hunt may have known of the discrepancies. Did Hunt knowingly participate in a process that resulted in the discrepancies between his Italian document and the Select Committee's English document? There was only one way that Hunt might have been uninformed of the discrepancies prior to the publication of the Select Committee's report. That is, if Hunt had submitted the Italian translation to the Committee, and if the Committee did not discuss with Hunt the alterations prior to publication, then Hunt would not have known of the alterations in advance. But was that likely? It is implausible that the Committee would have replaced "N.N." with Hunt's name unless Hunt had provided the Committee with that information. Thus, it seems a certainty that Hunt was the source of the information that led to that alteration and that he likely facilitated the others.

Next, what did Elgin know at the time? Was Elgin aware of the deception? Only a very naïve person would think Elgin was an innocent bystander to the deceit. Hunt was the Committee's last witness, and as he explained to the Committee, his appearance before the Committee was a

surprise to him.⁴⁴⁶ So how did Hunt become a witness? Elgin must have facilitated it. Elgin was the party in interest. He knew that the Committee was eager to examine a document that purported to grant Elgin permission to strip the sculptures from the Parthenon. Although no records exist that recount how Elgin learned that Hunt was in London and that he had a document that might assist his efforts, and although no documents indicate how Elgin got Hunt before the Committee, it is implausible to think that Elgin did not play a central role in bringing Hunt to the witness table. And if Elgin was critical to bringing Hunt before the Committee, he must have known what Hunt would say. Otherwise, why would he extend himself to facilitate Hunt's testimony if there was a possibility that Hunt might make statements that were contrary to Elgin's interests? Thus, although no evidence directly establishes what Elgin knew about Hunt's document, it seems utterly naïve not to assume that he was familiar with every significant detail of Hunt's testimony and the discrepancies.

Lastly, was the Select Committee aware of the discrepancies? Or to put the question bluntly, was the Select Committee an innocent victim of Elgin and Hunt's deceit? The Select Committee would have been unaware of the discrepancies between the English document it published and the Italian document only if: (1) Hunt had submitted the altered English document to the Committee; (2) Hunt did not inform the Committee of the alteration; and (3) the Committee did not insist on examining the Italian document. Although the possibility of these circumstances actually existing must be allowed, it remains highly implausible that they did.

Furthermore, a review of the Committee's examination of Hunt provides additional support for the claim that the Select Committee was aware at the time it questioned Hunt that the English document it eventually published differed from the Italian document. Remember, the Committee asked Hunt no questions whatsoever about his "translation." This failure to seek any information about the Italian document was in sharp contrast with the thoroughness of the Committee's examination of Elgin.⁴⁴⁷ So, why did the Committee deliberately refrain from asking Hunt questions about the Italian document? One answer might be that its competency was razor thin. But given its probing questioning of other witnesses, that explanation is entirely unpersuasive.

Another possibility is that the Committee was intentionally covering up the discrepancies between the Italian and the English documents to buttress Elgin's claim. To commit such deceit, the Select Committee had

⁴⁴⁶ "[The Italian translation] is left at Bedford, and I have no means of directing any person to obtain it; I would have brought it if I had been aware I should have been summoned by this Committee before I left Bedford." Hunt Testimony, *infra* Appendix C, ¶ 2.

⁴⁴⁷ Compare Elgin Testimony, *infra* Appendix B, ¶¶ 8–9, 16–20, with Hunt Testimony, *infra* Appendix C, ¶¶ 2–11.

to be highly motivated. And it was. Elgin's collection was incomparable. If Parliament did not buy it, it was destined for the continent.⁴⁴⁸ Many in England prized the collection and wanted it to remain in London. The British Museum wanted Elgin's collection of antiquities to enhance its status and reputation as an internationally prominent and important institution. Furthermore, the Committee knew that opposition to the purchase existed in the Parliament, and it is hardly far-fetched to imagine that the Committee gauged that the fraud might lend support to the legality of Elgin's claim and that additional support would enhance the chances that Parliament would eventually approve the purchase.

The immediate consequences of the Select Committee's hiding of facts that could be used to challenge the purchase was to mislead the Parliament to which it reported and to assure that Elgin's collection remained in England. The long-term consequence was the fabrication of a claim of legitimacy that directly impacts the contemporary debate over the iconic sculptures.

E. Scope of Permission

In the end, the acceptance of the discrepancies and the undermining of the conventional linkage of the three documents (the lost Ottoman document, Hunt's Italian document, and the Committee-published English document) puts into focus the scope of permission the Ottomans gave to Elgin. In considering this question, one thing seems certain. Whatever the scope of activities permitted by the 1801 Ottoman document, there is no reason to assume that they were more extensive than those Elgin requested, and his requested permission is set forth in Hunt's Italian document. Thus, while the missing Ottoman document might have imposed greater limitations on Elgin's artisans than those defined in the Italian document, it is implausible to assume that it broadened that authority.

So, what was the scope of permission requested in the Italian document? As may be recalled, Elgin asked that his artisans in Athens be permitted "*to examine and view, and also to copy the figures remaining there . . .*"⁴⁴⁹ The next statement provided that Lord Elgin had requested "an Official Letter . . . ordering" that as long as Elgin's painters were in his employ, they be permitted: (1) to go in and out of the "citadel of Athens"; (2) to fix "scaffolding round the ancient Temple of the Idols"; (3) to mold "the ornamental sculpture and visible figures thereon, in plaster or gypsum"; (4) to measure "the remains of other old ruined buildings there"; and (5) to excavate "when they find it necessary the foundations, in order to discover inscriptions which may have been covered in the

⁴⁴⁸ SELECT COMMITTEE REPORT, *supra* Appendix A, ¶ 34.

⁴⁴⁹ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 2 (emphasis added).

rubbish.” Elgin’s artisans were to be permitted to do all this without “interruption . . . nor any obstacle thrown in their way by the Disdar (the commandant of the citadel) or any other person” and that “no one . . . meddle with the scaffolding or implements they may require in their works.”⁴⁵⁰

The Parliamentary Select Committee italicized the clause “*that when they wish to take away any pieces of stone with old inscriptions or figures thereon, that no opposition be made thereto.*”⁴⁵¹ It did so because it was relying on these words to support the claim that Elgin had permission to strip the Parthenon walls of its sculptures. This is an implausible construction of these words, and its implausibility is made crystal clear by another set of words the Parliamentary Select Committee did not italicize. Those words emphasized—and I do put them in italics—to the Ottoman officials in Athens that they should permit Elgin’s artists to measure, draw, erect scaffolds, and mold “*particularly as there is no harm in the said figures and edifices being thus viewed, contemplated, and designed.*”⁴⁵² As is apparent, there is not one word in the proposed directive to indicate that Elgin was requesting permission to climb a scaffold, saw off historic sculptures from multi-ton marble blocks, lower the sculptures, and transport them to London. Not one word. Indeed, the document contained words that explicitly provided that Elgin’s artisans would not harm the sculptures on the Parthenon walls.

The narrow scope of permission set forth in the Italian document is entirely consistent with the short memorandum Hunt gave Elgin that described the parameters of the authority Hunt wanted Elgin to request from the Ottomans.⁴⁵³ That authority included the capacity to measure, to mold, to draw, to paint sketches of the Parthenon, and to dig around the footings of the Parthenon in search for buried sculptures. Moreover, this narrow scope of permission is in accord with Elgin’s understanding of the authority he was granted. Thus, when Elgin wrote to Lusieri in July of 1801 celebrating the grant of authority, the action he emphasized was the power to dig.⁴⁵⁴ No one in their right mind would celebrate the power to dig for buried sculptures if the Ottomans had given Elgin a license to strip sculptures from the Parthenon walls.

IX. THE BRITISH MUSEUM

At the center of the international dispute over the ancient Greek Parthenon sculptures is the esteemed, respected, and admired British

⁴⁵⁰ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 2.

⁴⁵¹ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 2.

⁴⁵² FERMAUN TRANSLATION, *infra* Appendix D, ¶ 3 (emphasis added).

⁴⁵³ Smith, *supra* note 1, at 190.

⁴⁵⁴ *Id.* at 192; see discussion *supra* note 151 and accompanying text.

Museum, a museum that has been called the “oldest and greatest publicly funded museum in the world.”⁴⁵⁵ Famous and prominent, the Museum rides a high wave of public regard as it seeks to be “a museum of universal knowledge, embracing within itself all human knowledge and representative of all human achievement.”⁴⁵⁶ With all of its prominence and influence, the Museum defends its retention of the sculptures against any and all critics.

The British Museum’s public webpage sets out a broad defense of its continued possession of Elgin’s collection.⁴⁵⁷ The arguments are a collection of legal, historical, and ethical claims that are woven together to make it appear that there is no plausible claim that its retention of these classic sculptures is questionable on legal or ethical grounds. But, upon close examination, the British Museum’s defenses disintegrate.

A. *The Permission Elgin Never Sought*

We start with a claim central to the Museum’s overall narrative of events, although that claim is more implicit than explicit in the Museum’s telling of the Elgin story. This implicit premise is the foundation of a position the Museum does explicitly put forth, namely that proper Ottoman authorities granted Elgin written prior permission to strip the Parthenon of its sculptures.⁴⁵⁸ Now, the unexpressed and hidden historical assumption is that Elgin requested permission to remove the historic sculptures from the Parthenon walls. After all, no one—not even the British Museum—claims that the Ottomans granted Elgin permission he did not request. As a result, whatever permission the Ottomans granted Elgin was certainly no greater than what he requested and quite possibly less than what he requested. But as forcibly as the British Museum maintains its position, the historical evidence establishes that Elgin did not seek permission to remove sculptures from the Parthenon walls.

Recall the July 1, 1801, memorandum Hunt provided Elgin, which set forth the scope of the permission Hunt recommended Elgin request of the Ottoman authorities.⁴⁵⁹ Hunt wrote that Elgin should seek permission that would allow the artisans to “enter freely within the walls of the

⁴⁵⁵ WILSON, *supra* note 7, at 8.

⁴⁵⁶ CAYGILL, *supra* note 389, at 11.

⁴⁵⁷ *The Parthenon Sculptures*, BRITISH MUSEUM, <https://www.britishmuseum.org/about-us/british-museum-story/objects-news/parthenon-sculptures> [<https://perma.cc/QX4Y-4TWA>] (last visited Mar. 31, 2021).

⁴⁵⁸ The British Museum states:

Lord Elgin . . . successfully petitioned the authorities to be able to draw, measure and remove figures. He was granted a permit (*firman*), and . . . acting under the oversight of the relevant authorities, Elgin removed about half of the remaining sculptures from the ruins of the Parthenon.

Id.

⁴⁵⁹ Smith, *supra* note 1, at 190.

Citadel,” “to draw and model with plaster the Ancient Temples there,” “to erect scaffolding, and to dig where they may wish to discover the ancient foundations,” and to be free to “take away any sculptures or inscriptions which do not interfere with the works or walls of the Citadel.”⁴⁶⁰ Notice that Hunt made no mention of removing sculptures from the Parthenon walls.

After Hunt prepared his short memorandum, Pisani, Elgin’s dragoon, restated Hunt’s items in the Italian-language document. As already emphasized, Pisani’s Italian document makes no mention of removing sculptures from the Parthenon walls. Thus, in addition to itemizing the request to draw, model, measure, and erect scaffolds, Pisani’s document requests that no one “hinder” Elgin’s artisans in “taking away any pieces of stone with inscriptions or figures” already on the ground or unearthed by digging because the artisans will not “harm” the “figures and edifices being thus viewed, contemplated, and designed.”⁴⁶¹ Those two documents make the British Museum’s assumption that Elgin requested prior written permission to remove sculptures from the Parthenon walls untenable. But, those documents do not exhaust the available historical evidence relevant to this matter.

Once Elgin, who was in Constantinople, obtained whatever permission he in fact received from the Ottoman officials, he wrote Lusieri in Athens. In so doing, the permission that caught Elgin’s attention and that he emphasized and celebrated in his letter to Lusieri was the “permission to dig.”⁴⁶² As Elgin wrote, “you have now the permission to dig.”⁴⁶³ Dig! Dig for what? Dig for pieces of sculpture that had broken off the sculptures high up on the Parthenon. If the sculptures were the prize being sought and the Ottomans had granted him permission to remove sculptures from the Parthenon walls, why would Elgin celebrate the power to dig for them? Elgin’s emphasis to Lusieri on the power to dig only reaffirms the fact that Elgin did not request—and did not receive—the permission the British Museum asserts he received, which is critical to the Museum’s historical narrative. But even that decimating hammer blow to the British Museum’s position is not the end of the documentary evidentiary trail that unravels the Museum’s assumption.

When Hunt and Lusieri lowered the first sculpture from the Parthenon walls, Elgin was in Constantinople and unaware of what they were doing.⁴⁶⁴ When they lowered the second and the third, Elgin was in

⁴⁶⁰ *Id.*

⁴⁶¹ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 3 (emphasis omitted).

⁴⁶² Smith, *supra* note 1, at 192.

⁴⁶³ *Id.*

⁴⁶⁴ *Id.* at 196.

Constantinople and knew nothing of what they did.⁴⁶⁵ When Elgin did learn of these developments, he sent a letter to Lusieri that the Parthenon activities “promise a success beyond our most ardent hopes.”⁴⁶⁶ If Elgin had sought and received permission to remove sculptures from the Parthenon walls, the news from Hunt and Lusieri that they had removed sculptures from the high walls would have merely confirmed the permission requested and received. That news might have been reassuring, rewarding, and exciting, but it would not have exceeded “our most ardent hopes.”

B. *The British Museum’s Central Claim*

Now let us turn to what the British Museum does explicitly maintain. The British Museum claims that the Ottomans gave Lord Elgin prior written permission to strip the Parthenon of its sculptures and that it did so in an Ottoman document Hunt took from Constantinople officials to those in Athens.⁴⁶⁷ Although the Museum states that the original Ottoman-language document “has not been located in the Ottoman archives,” it maintains that an Italian-language translation—an Italian document that was for decades in the possession of Hunt’s descendants, who then gave it to William St. Clair, and who in turn passed it on to the British Museum—is now in the British Museum.⁴⁶⁸

The Museum’s position is composed of two assertions: that the Italian document now in the British Museum is an accurate translation of the original document Elgin received, and that the Italian translation granted Elgin prior permission to remove sculptures from the Parthenon walls. Both assertions are false. As already carefully reviewed, the Italian document has all the earmarks of a proposed draft directive—a document prepared by Elgin’s dragoman, Pisani, which set forth the scope of permission Elgin requested. If it were an accurate translation of the Ottoman document given to Elgin in July of 1801, the Italian document would include the name of the courier—in this case it would have been Hunt’s name—instead of the Latin abbreviation “N.N.”; it would provide the date on the original document; it would provide the name of the government official who signed the document; and it would indicate that a signet or seal was affixed.

But the Italian document lacks these numerous characteristics. To ignore the fact that these characteristics are missing is no accident, no innocent oversight, and no good faith mistake. And yet, that is what the British Museum has done—it ignores and overlooks them as it continues

⁴⁶⁵ *Id.*

⁴⁶⁶ Smith, *supra* note 1, at 201.

⁴⁶⁷ *Facts and Figures*, *supra* note 3, at ¶ 9.2.3.

⁴⁶⁸ *Id.*

to maintain in the court of public opinion that the Italian document is an accurate translation of the original Ottoman document.

The second part of this essential claim that the Ottomans gave Elgin prior permission in writing to dismantle the Parthenon rests on the assertion that the Italian document granted Elgin the disputed permission. Here, too, the scope of permission defined in the Italian document has previously been set forth in detail, and that permission contains not one word stating that Elgin's artisans had permission to climb a scaffold, saw off historic sculptures from multi-ton blocks, lower the sculptured faces to the ground, load them onto a vessel, and ship them to London.⁴⁶⁹ To be sure, the Italian document does state that the Athenian officials should make "no opposition" to Elgin's agents should they "wish to take away any pieces of stone with old inscriptions or figures thereon."⁴⁷⁰ But to convert those words aimed at allowing Elgin's artisans to collect bits and pieces of sculptures that had fallen to the ground into a wholesale permission that allowed Elgin's craftsmen to strip the Parthenon walls of sculptures constitutes a distortion in meaning well beyond anything that might conceivably be plausible. Moreover, the Italian document urged the Athenian Ottoman officials not to hinder Elgin's artisans from doing what the document permitted because nothing that was permitted would "harm" the "said figures and edifices being thus viewed, contemplated, and designed."⁴⁷¹

The British Museum's defense does not rest solely on the Italian document. It claims that in 1816, the Parliamentary Select Committee—which it asserts "thoroughly investigated" Elgin's claims that he obtained his collection lawfully—concluded in unqualified terms that "Elgin's activities" in Athens were "entirely legal."⁴⁷² Yet this assertion suffers from a devastating problem. There is no paragraph, no sentence, and no phrase in the Parliamentary Select Committee's report stating that the Committee concluded that Elgin's activities were "entirely legal."⁴⁷³ Indeed, there is no conclusion that Elgin's activities were "legal." The British Museum's assertion is false. But it is more than just false. Because there is nothing in the Parliamentary Select Committee's report that provides a basis for this conclusion, the British Museum's assertion is an intentional misrepresentation.

The British Museum's current effort to cover-up the truth—a truth that undermines its extraordinary public relations effort to protect its

⁴⁶⁹ See FERMAUN TRANSLATION, *infra* Appendix D.

⁴⁷⁰ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 2 (emphasis omitted).

⁴⁷¹ FERMAUN TRANSLATION, *infra* Appendix D, ¶ 3.

⁴⁷² *Position of the Trustees*, *supra* note 12. The Director of the British Museum for fourteen years (1977–1991), David M. Wilson, stated in his history of the British Museum that the Parliamentary Select Committee "vindicated Elgin's actions as totally legal . . ." WILSON, *supra* note 7, at 73.

⁴⁷³ See *generally* SELECT COMMITTEE REPORT, *infra* Appendix A.

claim that its retention of the Elgin collection is lawful and ethical—is not the Museum’s first cover-up of highly embarrassing facts involving the Parthenon sculptures. Elgin’s biographer, William St. Clair, reported in his 1998 revised biography that, during eighteen months in 1937 and 1938, Museum officials “scraped” the Parthenon sculptures “with metal tools and smoothed with carborundum in an effort to make them appear more white,” and that as a consequence “the historic surfaces of most of the sculptures were severely and irreparably damaged.”⁴⁷⁴ In support of his assertion, St. Clair quoted from the Museum’s own, suppressed report on the scraping: “the surface of the sculptures, showing the evidences of two thousand years of exposure to the climate of Greece, was a document of the utmost importance . . . as authentic masterpieces of Greek work of the fifth century B.C.”⁴⁷⁵ The report further stated that as objects of study, the sculptures “are of inestimable value,” but that as a result of the scraping—and then the concealment of the truth about the scraping—“scrupulous archaeologists who believed that they were dealing with untouched original works” were misled, thus distorting their research and findings.⁴⁷⁶ St. Clair further stated that the Museum “repeatedly denied” him access to the Museum’s official records pertinent to the incident until 1996.⁴⁷⁷ As a result, St. Clair claimed that his 1998 biography presented “the first full account of the circumstances in which the disaster occurred, and of the extent of the damage, which the official inquiry of the time, hitherto suppressed, said ‘cannot be exaggerated.’”⁴⁷⁸ To make certain that the reader fully appreciated the British Museum’s effort to cover-up the truth and to resist the disclosure of the information he set forth in detail in his biography, St. Clair wrote, “I also describe the measures subsequently taken by the British Museum authorities to cover up, quite literally, the effects of the mistreatment, and then, by unlawfully denying access to the relevant public documents, to prevent the full facts from becoming known until now.”⁴⁷⁹ As is apparent, the British Museum’s conduct regarding the Parthenon sculptures is not the first time this internationally respected cultural institution has concealed the truth to protect itself from criticism. This shocking conduct eats away at the Museum’s effort to argue that its continued possession of Elgin’s collection is above reproach.

⁴⁷⁴ ST. CLAIR 3d ed., *supra* note 8, at vi.

⁴⁷⁵ *Id.* at vii.

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.* at vi.

⁴⁷⁸ *Id.* at vi–vii.

⁴⁷⁹ *Id.* at vii.

C. The British Museum's Recent Claim

The Museum's legal defense of its collection takes one more turn. Although the British Museum never once concedes that there is any basis to doubt that the Ottomans granted Elgin prior written permission to do what his agents did, it insists on a second line of legal argumentation to support its continued possession of the Parthenon sculptures. This claim rests on the assertion that in 1810 the British ambassador to Constantinople received permission to ship to London crates of sculptures then in Greece that ultimately formed part of Elgin's collection and that this permission to ship constituted retroactive approval of all of the unlawful acts Elgin's agents committed.⁴⁸⁰

The key document is a short communication sent to Lord Wellesley, the Foreign Secretary in London, by Robert Adair, the British ambassador to the Sublime Porte: "I have at length succeeded in obtaining an order from the Caimacam to the Voivode of Athens, for the embarkation without further detention of the antiquities collected by Lord Elgin and now lying at Athens."⁴⁸¹ Adair's communication made reference to an order—an order that has never been found—permitting the shipment of the remaining sculptures that would in time become part of Elgin's collection to London, and it was that order that is claimed to condone Elgin's stripping of the sculptures from the Parthenon walls. The British Museum explains:

[A] final firman was secured by Sir Robert Adair (Ambassador in Istanbul) in February 1810 from the same authority as the earlier firman. This instructed the authorities in Athens to allow the embarkation of all the remaining antiquities collected by Lord Elgin. The existence of this second firman makes it very clear that the Ottoman authorities (the legal authorities of the day) had indeed approved Elgin's actions.⁴⁸²

The lack of evidence supporting the retroactive ratification theory is only its most obvious problem. At least twice during the first decade of the nineteenth century, Ottoman officials in Constantinople condemned activities of Elgin's artisans on the Acropolis. In 1804 and then again in 1809, Constantinople officials ordered Elgin's workers to cease work and asserted that the work done was done without permission.⁴⁸³

⁴⁸⁰ See *Facts and Figures*, *supra* note 3, at ¶ 9.2.3. In preparing Section IX.C, *The British Museum's Recent Claim*, I relied upon a previously published article, *Lord Elgin and the Ottomans: The Question of Permission*, 23 CARDOZO L. REV. 449, 461–70 (2002).

⁴⁸¹ ST. CLAIR 3d ed., *supra* note 8, at 156 (quoting Letter from Robert Adair to Lord Wellesley (Feb. 27, 1810)).

⁴⁸² See *Facts and Figures*, *supra* note 3, at ¶ 9.2.3.

⁴⁸³ We know little about these two incidents. Nonetheless, St. Clair's discussion of them provide an example of how supporters of the British Museum make unsupported historical assertions to advance the Museum's overall position. Without offering supporting evidence regarding the 1804 incident, St. Clair maintains that the person who issued the order implied that Elgin's prior activities

Several additional important issues arise out of the claim that the order obtained by Adair constituted retroactive ratification of all actions committed by Elgin's artisans. First, Adair's brief letter to London certainly contained no words, as St. Clair maintains, that the embarkation firman "implied condonation, if not approval, of all the actions and abuses" Elgin committed.⁴⁸⁴ There is certainly nothing about the isolated fact that the Ottomans permitted the shipment of marbles—which had not only been removed from the Parthenon but had resulted in the destruction of the structural supporting walls—that implies or suggests that the Ottomans condoned or approved of the removal. The only fact that is certain is that the shipment to England was permitted.

Second, the legal significance of the order referred to by Adair is uncertain and depends on what the Caimacam knew about Elgin's collected antiquities still in Greece. If the Caimacam was deceived or misled as to the nature and scope of the shipment, that fact would undermine the utility of the permit as a vehicle for strengthening Elgin's legal title. It is quite plausible—if not very likely—that the Caimacam was unaware of the magnitude of the shipment. After all, the Ottoman officials in Athens had no incentive to provide an accurate detailed report of the antiquities in question given the fact that Parthenon sculptures had been removed without prior permission. For his part, Adair certainly had no reason to provide the Caimacam with a complete catalog—assuming he even had one—of the antiquities in question. Whether the Caimacam had time for this matter given the truly monumental issues of state with which he was confronted, is certainly doubtful. As a result, the idea that Adair's brief communication to London resolved all outstanding legal questions regarding Elgin's collection mocks the idea that legal claims resting on factual assertions require evidence and the role of critical reasoning in assessing that evidence.

Third, the British Museum's presentation of the retroactive ratification theory ignores the bribery that was essential to Elgin's endeavor in putting together his collection and making the 1810 shipment. As St. Clair has written, Adair gave "[p]resents amounting to 1,480 piasters, over £100 . . . to Ottoman officials in addition to a present to the Kaymacam the size of which is not recorded."⁴⁸⁵

The prominent scholar John Henry Merryman met the issue head-on as to whether bribes so tainted Elgin's entire operation, including the

were lawful, and that the rescission "threw no doubt on the legality of the removals made previously." ST. CLAIR 3d ed., *supra* note 8, at 136. Regarding the 1809 incident, when the Ottomans informed the British Ambassador, Robert Adair, that, in the words of St. Clair, "Lord Elgin had never had permission to remove any marbles in the first place," St. Clair dismisses the Ottoman claim as an example of Ottoman "surprises." *Id.* at 155.

⁴⁸⁴ *Id.* at 156.

⁴⁸⁵ *Id.*

1810 shipping order, so as to undermine its legitimacy as a vehicle for conveying valid legal title to Elgin. The analysis is instructive, for it discloses how contrived and unsupportable the arguments are that seek to diminish, if not to disregard, that condemnable bribes were critical to the entire Elgin affair. Merryman stated:

The Ottomans who were bribed were the responsible officials. Whatever their motivation may have been, they had the legal authority to perform those actions. At a time and in a culture in which officials routinely had to be bribed to perform their legal duties (as is still true today in much of the world), the fact that bribes occurred was hardly a significant legal consideration.⁴⁸⁶

St. Clair reached a similar conclusion: “[M]odern experts in international law who have studied the case have usually agreed that Elgin’s actions were probably technically lawful in the circumstances of the time.”⁴⁸⁷

In reaching his conclusion, St. Clair relied solely upon Merryman,⁴⁸⁸ and Merryman offered no support for the conclusion that “the fact that bribes occurred was hardly a significant legal consideration.” As a result, we have a circumstance in which one commentator relies upon another whose references provide no support for the proposition in question.

The legal claim asserted by Merryman and St. Clair is not only unsupported, but it is also quite limited. Merryman and St. Clair only claim that the bribing of officials within the Ottoman Empire to induce them to perform otherwise lawful acts was legally insignificant under Ottoman law. What they seem to mean by this claim is that it was no crime under Ottoman law for a person to bribe an Ottoman official to perform an otherwise lawful act. Note that Merryman and St. Clair do not claim that a bribe to induce an illegal act was legally insignificant. Nor do they seem to claim that the bribing of Ottoman officials to induce an otherwise lawful act was legally insignificant under British law at the time.

Moreover, the claim itself—“the fact that bribes occurred was hardly a significant legal consideration”—is ambiguous and could mean at least five different things. First, it could mean that the person extending a bribe to an Ottoman official to induce the performance of an otherwise lawful act did not violate Ottoman criminal law. Second, it might mean that the Ottoman official accepting a bribe in his official capacity as an inducement to perform an otherwise lawful act did not violate Ottoman criminal law. Third, it could plausibly mean that for purposes of Ottoman

⁴⁸⁶ Merryman, *supra* note 339, at 1902.

⁴⁸⁷ ST. CLAIR 3d ed., *supra* note 8, at 156.

⁴⁸⁸ *Id.* at 365, n.18 (“See especially the various books and articles by John Henry Merryman noted in the Bibliography.”).

civil law, as opposed to its criminal law, a bribe was legally insignificant in terms of affecting the legality of the transaction or transfer it induced, provided that the bribed Ottoman official had the legal authority to perform the transaction in question. Fourth, it might mean that British criminal or civil law considered a bribe offered by a British official or citizen to an Ottoman official that induced a transaction as legally insignificant, even assuming that the bribed official had the legal authority to perform the act in question. Fifth, it could mean a combination of some or all of the above. In the end, Merryman simply assumed that bribery was legally insignificant and thus irrelevant to the legality of Elgin's claims to the collection.

While that may have been the case under Ottoman law, British law, during the first decades of the nineteenth century, did not consider bribery legally insignificant.⁴⁸⁹ Moreover, Merryman does not claim otherwise, and, more importantly, it was a premise of the Select Committee Report of 1816 and the subsequent debate in Parliament that it was improper for Elgin to use bribes to accomplish an end not authorized by proper Ottoman authorities. Thus, the idea that British law at the time turned a blind eye towards a British ambassador tendering a bribe to a foreign official to motivate an official to approve an act that furthered the ambassador's private gain is directly inconsistent with the parliamentary debate at the time over whether the government should purchase Elgin's collection.

There is yet one more fundamental flaw with Merryman's analysis. Merryman assumes that the Ottomans who were bribed "had the legal authority to perform those actions." There is no reason to grant Merryman his assumption. Some of the bribed Ottoman officials were in Athens and we know that they did not believe that they had the authority to permit the denuding of the Parthenon. So, while they permitted the destruction of the temple, they did so because they accepted bribes and, subsequently, feared for their lives,⁴⁹⁰ a reaction they would not have had if they had had authority to permit the dismantling of the Parthenon. Other bribed officials were in Constantinople, and as to them, except for the Grand Vizier, we do not know (and neither does Merryman) who they were or their positions within the government or the scope of their authority. How one can claim with unqualified certainty, as Merryman does, that these officials had the legal authority to permit the stripping of sculptures from the Parthenon walls in the absence of more information is, to put it gently, a mystery.

As for the Grand Vizier, it is possible that he had, as Merryman wrote, "the legal authority to perform those actions." But even in this

⁴⁸⁹ Rudenstine, *supra* note 480, at 467 n.81.

⁴⁹⁰ See discussion *supra* notes 313–320 and *infra* notes 499–501.

case, which might be considered an easy one, there is doubt. The Parthenon and the other classical Greek structures on the Acropolis were respected by the Ottoman officials in Constantinople, and it is possible that within the matrix of the Ottoman government their fate lay solely with the Sultan. If that were the case—and it seems at least as likely to have been the case as not—then the Grand Vizier did not have, as Merryman assumed, “the legal authority to perform those actions.” Since Merryman’s claim that bribes were legally insignificant is based entirely on his explicit assumption that the bribed officials had the legal authority to permit Elgin to denude the Parthenon, the vitality of Merryman’s legal analysis of the significance of the undisputed bribery is totally dissipated with the recognition that the bribed Ottoman officials lacked the authority Merryman assumed they possessed.

The British Museum is not alone in promoting the argument that the Ottomans retroactively approved of all that Elgin’s artisans did in stripping the Parthenon of its sculptures. And because these advocates add to the argumentative web the British Museum weaves to support its retention of the Parthenon sculptures, it is instructive to assess some of these claims carefully. For example, two commentators, citing two incidents not relied upon by the British Museum, advocate for the retroactivity argument. The first incident relied upon allegedly occurred in September or October 1802, shortly after Elgin returned to Constantinople from his first trip to Athens. B.F. Cook, former Keeper of Greek and Roman Antiquities in the British Museum, sets forth the position:

On his return to Constantinople Elgin obtained documents from the Turkish Government approving all that the Voivode and the Disdar [local Ottoman officials in Athens] had done in Athens to assist Lusieri’s work on behalf of Elgin. Lusieri seems to have handed them over to the two officials and no copies have survived. Had they done so, they would no doubt support Elgin’s claim that everything he did had been approved by the Turkish authorities.⁴⁹¹

St. Clair, agrees with Cook. Although St. Clair’s initial approach to the subject matter is cautious and states that the 1802 documents merely provide the Voivode and the Disdar “some protection,” or “some official approval” of the prior illegalities,⁴⁹² and although he concedes that the “exact status of these documents is unclear,”⁴⁹³ he quickly abandons cautious qualifications and states in unqualified terms that the missing letters gave the officials in Athens “official legitimation . . . of any

⁴⁹¹ COOK, *supra* note 102, at 75.

⁴⁹² ST. CLAIR 3d ed., *supra* note 8, at 135–36.

⁴⁹³ *Id.* at 136.

illegalities.”⁴⁹⁴ St. Clair then gives in to unrestrained adoption of the retroactivity assertion, unequivocally concluding that “all the activities of Elgin’s agents which took place over many years in Athens and elsewhere, including the many abuses, were thus officially legitimated after the event by the government that held the responsibility at the time.”⁴⁹⁵

Given that Cook’s and St. Clair’s claim—that Elgin secured subsequent permission that was retroactive as well as prospective in nature—is based on “documents,” one would expect that they would have read the documents. But neither Cook nor St. Clair ever saw the documents on which they rely, and they do not claim to have read the documents.⁴⁹⁶ Besides not having read the documents in question, it is also clear that they are seriously uninformed about the documents they maintain provide convincing support for their position. Thus, they do not know who signed the documents in question, whether the author of the documents was informed about the full nature of the activities of Elgin’s artisans, and whether the documents actually approved of what had been done. And yet, Cook asserts that Elgin “obtained” documents “approving all that the Voivode and the Disdar . . . had done,” and St. Clair maintains that the documents “officially legitimated” Elgin’s Acropolis activities. Furthermore, we have no summary of the content of these documents or any surviving secondary source that claims to quote critical language from them. It is likely we will never know any more than we know now—which is essentially nothing—because Lusieri gave the documents to the Voivode and the Disdar in Athens, and the documents probably were destroyed long ago.⁴⁹⁷

Cook and St. Clair base their claim that these later-in-time documents were so compelling and of such unequivocal force that they constituted a complete and total ratification and approval of earlier illegalities on A.H. Smith’s centennial article in *The Journal of Hellenic Studies* published in 1916.⁴⁹⁸ Although Smith’s article does not qualify as a primary source when trying to assess what happened in Athens and Constantinople during the first decade of the nineteenth century, the article is treated with respect by researchers at least in part because Smith quoted, at times at length, pertinent original documents. But Smith did not quote the particular documents on which Cook and St. Clair rely, and he made no claim to have examined these documents, presumably because they had long been missing. What Smith did do was characterize a letter from

⁴⁹⁴ *Id.* at 110.

⁴⁹⁵ *Id.* at 337.

⁴⁹⁶ *Id.* at 136 (“[T]he exact status of these documents is unclear”); COOK, *supra* note 339, at 75 (“[N]o copies have survived.”).

⁴⁹⁷ Smith, *supra* note 1, at 236.

⁴⁹⁸ Smith, *supra* note 1.

Lusieri to Elgin dated October 28, 1802, as indicating that Lusieri gave “thanks for the firmans and other documents” which Elgin had sent.⁴⁹⁹ Smith also quoted Lusieri as having written: “The Voivode and the Disdar have been much pleased with the letters that your Excellency has procured and sent to them, and I have thought it necessary to give them to them today, in order to encourage them”⁵⁰⁰

If Lusieri’s characterization is credited as accurate, the fact that the officials in Athens were pleased indicates that the documents obtained by Elgin may have contained at least some words of reassurance for the officials in Athens. But we do not know what the words were or how much comfort they in fact gave. More importantly, Smith, on whom Cook and St. Clair rely exclusively, made no claim at all that these missing documents constituted a form of retroactive ratification of all the unauthorized activities conducted by Elgin’s artisans.

But that is not the end of the matter. Relying on Lusieri’s few words in a letter is precarious. Lusieri was up to his neck in his effort to please Elgin as he dismantled the Parthenon stone by stone by providing bribes and making threats to the Ottoman officials in Athens. As a result, he had every reason to reassure Elgin that the arrangement with the local officials was stable and permitted the continued dismantling of the Parthenon.

In case a doubt regarding the evidence lingers, there is more evidence to unravel the retroactivity claim. The degree to which these missing letters may have in fact provided some measure of security to the Voivode and the Disdar is undermined by a revealing letter written by Elgin to Lusieri, dated October 8, 1802. That letter strongly suggests that Elgin knew that the Voivode and the Disdar had been, and continued to be, in danger for having permitted Elgin’s artisans to strip the sculptures from the Parthenon walls. The relevant passage provides:

The Disdar has nothing to fear on the part of P[rince] Dol[gorouki]. I have had some conversation with the ministers on these subjects since my return, and if the least threat is made (which I altogether doubt) be sure that the result will be favourable to him. The new ministers have spoken to me with much interest about my occupations and pursuits at Athens. I have the means of watching over his interests. So long as he is my friend he will have solid proofs of my friendship.⁵⁰¹

Elgin knew that the Disdar was in danger because he had permitted Elgin’s artisans to strip the Parthenon of its historic sculptures. But Elgin wanted the dismantling to continue and he needed the cooperation of the

⁴⁹⁹ *Id.* at 235.

⁵⁰⁰ *Id.* at 236.

⁵⁰¹ *Id.* at 234 (brackets in original).

Disdar to make that happen. Moreover, the Disdar also knew that he was in danger, and he was evidently worried about his safety. As a consequence, Elgin tried to stiffen the Disdar's spine by lining his pockets with bribes.

D. Judging Elgin by the Standards of His Time

In at least two places, the British Museum insists that the actions of Lord Elgin must be judged “by the standards of his own day.”⁵⁰² Thus, at one point, the Museum, under the heading termed “Common [M]isconceptions,” insists that “Elgin was a man of the European Enlightenment and his actions must be judged according to the times he lived in.”⁵⁰³ In another passage, after noting that Elgin has been attacked for what the Museum states was his “intervention”—an “intervention”⁵⁰⁴ it insists saved the sculptures from decay, vandalism, and deterioration to which they would otherwise have been subjected—it contends that “Lord Elgin can only be judged by the standards of his own day.”⁵⁰⁵ This is not an uncommon line of argumentation offered to defend past actions from contemporary criticism. The argument states that contemporary critics seek to impose upon the past ethical standards current among modern critics but unknown at those historic times being scrutinized. It does seem patently unfair and improper for modern critics to judge harshly past actors for past conduct that was beyond moral or ethical reproach at the time the conduct was committed.

However, the viability of the British Museum's argument depends entirely on the values and norms current during the times in question. For its part, the British Museum makes no claim that “looting” or “stealing” cultural property was justified when Elgin's agents dismantled the Parthenon. Nor does the Museum make the claim that it was proper for a British ambassador to abuse ambassadorial prestige for personal gain or to bribe foreign officials to act inconsistently with a lawful directive. Nor could the Museum plausibly make these claims.

Any review of the witness testimony before the Parliamentary Select Committee, or the Committee Report, or the opinions offered by members of Parliament during the debate over whether the government should purchase Elgin's collection, establishes that no one argued that looting, plundering, or spoliation was justified. Furthermore, with the defeat of Napoleonic forces at Waterloo in 1814, the British, along with others, insisted that the cultural property that Napoleonic forces took to

⁵⁰² *Facts and Figures*, *supra* note 3, at ¶ 10.2.

⁵⁰³ *Id.* ¶ 9.2.2.

⁵⁰⁴ *Id.* ¶ 10.2.

⁵⁰⁵ *Id.*

France—and which included the prized four horses of Saint Mark’s Basilica—be returned.⁵⁰⁶

Thus, there can be no doubt that Elgin’s dismantling of the Parthenon was, in the words of the historian Mary Beard, “immediately controversial.”⁵⁰⁷ After reviewing the 1816 House of Commons debate, a recent House of Commons Briefing Paper concluded:

The debate reflected the arguments between those who thought the expenditure a waste of money, and those who thought Elgin had saved the sculptures from wanton destruction; between those who saw his activities as spoliation, and as an abuse of his status as ambassador, and others who justified his actions as interfering with nothing which was not already in ruins.⁵⁰⁸

So, what is the purpose of the Museum’s contention that Elgin’s conduct be judged by the standards of his day? Although the Museum does not concede that Elgin plundered the Parthenon, it is seeking to protect its rear guard in the event that some observers conclude that Elgin was indeed nothing but a plunderer. Accordingly, the Museum aims to convince a trusting public that looting cultural property was acceptable during Elgin’s times, and that modern critics who condemn such looting and bribing are inappropriately applying contemporary ethical standards to past events. The Museum advances that strategy by asserting a claim it knows is false.

E. *The Parthenon Was Already a Ruin*

The British Museum offers yet another argument aimed at disarming Elgin’s attackers: Elgin could not possibly have harmed the Parthenon and its sculptures because the Parthenon was already a “ruin.”⁵⁰⁹ Yes, that is another argument put forth by the Museum—the Parthenon was already a ruin by the time Elgin’s men stripped its sculptures from the walls, and because it was already a ruin, Elgin’s artisans could not possibly have inflicted any damage of any note on this historic structure. The British Museum argues that the Parthenon had been a “ruin” since 1687, “[w]hen the city was under siege by the Venetians,” and the gunpowder

⁵⁰⁶ See generally Paige S. Goodwin, Comment, *Mapping the Limits of Repatriable Cultural Heritage: A Case Study of Stolen Flemish Art in French Museums*, 157 U. PA. L. REV. 673 (2008); Margaret M. Miles, *War and Passion: Who Keeps the Art?*, 49 CASE W. RES. J. INT’L L. 5 (2017).

⁵⁰⁷ BEARD, *supra* note 13, at 14.

⁵⁰⁸ WOODHOUSE & PEPIN, *supra* 390, at 7.

⁵⁰⁹ *The Parthenon Sculptures*, BRITISH MUSEUM [hereinafter *General*], https://www.britishmuseum.org/about_us/news_and_press/statements/parthenon_sculptures.aspx [<https://perma.cc/3X37-UCGV>] (last visited Mar. 2, 2019) (“A huge explosion blew the roof off and destroyed a large portion of the remaining sculptures. The building has been a ruin ever since.”).

the Turks stored in the Parthenon “blew the roof off” and “destroyed a large portion of the remaining [Parthenon] sculptures.”⁵¹⁰

There is no doubt that the 1687 explosion was the single most devastating event in the long history of the Parthenon. But that explosion did not reduce the Parthenon to being such a ruin that the harm inflicted by Elgin’s activities was insignificant. In fact, there is nothing about the Museum’s position that is remotely obvious. After all, by the Museum’s own accounting, Elgin’s agents removed 247 feet of the original 524 feet of frieze and 15 of 92 metopes that were embedded into the Parthenon’s high walls and formed part of the core structure of the historic building.⁵¹¹ In addition, they removed seventeen pieces of sculptures from the two walls.⁵¹² In the course of denuding the Parthenon, these workmen sawed off huge marble blocks that were fitted into the Parthenon structure and then had the blocks tossed off the wall, only to crash on the steps forty feet below.⁵¹³ More importantly, the removal of the metopes and the frieze destroyed the internal structure of the Parthenon, thus causing much of it to collapse.

The Museum’s effort to deny the irreparable harm Elgin’s activities inflicted on the Parthenon is even rejected by an independent scholar associated with the Museum, one who accepts the Museum’s claim that Elgin had permission to remove the sculptures.⁵¹⁴ After studying photographs of the Parthenon before and after Elgin’s assault, this scholar concluded that Elgin’s removal of the metopes “meant that much of the [Parthenon’s] superstructure had to be taken away before the metopes could be withdrawn,” and as a result some of the Parthenon’s architecture was destroyed.⁵¹⁵ To prove her point, she provides images in her book of the Parthenon before and after Elgin’s men removed the metopes, and those images make it plain that the removal caused the partial collapse of Parthenon walls.⁵¹⁶

F. *The British Museum and Historical Facts*

The British Museum’s qualified relationship to truth is further highlighted by its description of the 1687 Parthenon explosion. The Museum’s website describes the 1687 Venetian bombing of the Parthenon as follows: “When the city was under siege by the Venetians in 1687, the

⁵¹⁰ *Id.*

⁵¹¹ *Facts and Figures*, *supra* note 3, at ¶ 1.2.

⁵¹² *Id.*

⁵¹³ *Id.* The author was given a tour of the reconstruction of the Parthenon and the official in charge of the reconstruction stated that Elgin’s workmen tossed off the wall the sawed-off marble blocks that were fitted into the Parthenon structure. The official showed the author the damaged Parthenon steps where the large stone blocks crashed.

⁵¹⁴ WOODFORD, *supra* note 81, at 45–46.

⁵¹⁵ *Id.* at 46.

⁵¹⁶ *Id.* at 45 figs.5.7 & 5.8.

Parthenon itself was used as a gunpowder store. A huge explosion blew the roof off and destroyed a large portion of the remaining sculptures. The building has been a ruin ever since.”⁵¹⁷ From these short statements an ordinary reader would conclude that during a Venetian siege of the Athens, Turkish soldiers carelessly and recklessly stored gunpowder in the Parthenon and that the gunpowder accidentally exploded, blowing the roof of the Parthenon. But that is not what occurred. The gunpowder did not simply explode. Instead, a Venetian mortar round fired from the Hill of Philopappos blew up the gunpowder magazine, destroying part of the building.⁵¹⁸

The Museum’s omission of the Venetian bombing of the Parthenon is surely no oversight. Consider the precise words once more: “[T]he Parthenon itself was used as a gunpowder store. A huge explosion blew the roof off and destroyed a large portion of the remaining sculptures.”⁵¹⁹ No one would write that the Turks stored gunpowder in the Parthenon without then stating that a Venetian mortar round hit it, causing an explosion, unless one wished to hide the fact that Venetians bombed the Parthenon.

Why would the British Museum distort this undisputed known historical incident? Although one might, with excessive charity, presume that the Museum is ignorant of the key facts, that perspective is not only implausible given how well-known the 1687 incident is, it is also betrayed by the fact that the Museum’s own book on Greek and Roman Art stated that “a shell fired by the Venetian admiral Morosini . . . set fire to the gunpowder that the Turkish garrison had stored” within the Parthenon.⁵²⁰ What seems likely is that the Museum’s censorship of the fact that the Venetian mortar round caused the explosion is in service of a Museum effort to cast the Turks as reckless caretakers of the Parthenon and its sculptures, and to paint Elgin as a savior who protected the sculptures from being destroyed due to Ottoman disregard. The Museum’s distortion of the 1687 incident is just another example of the Museum’s willingness to hide the historical evidence as it seeks to maintain and strengthen public support for its retention of the Elgin collection.⁵²¹

⁵¹⁷ *General*, *supra* note 509.

⁵¹⁸ Even a recent Briefing Paper prepared by the Library of the House of Commons that claimed that Elgin “legitimately acquired” the sculptures states that the gunpowder stored by Turkish officials in the Parthenon exploded because “it was hit by a canon ball.” WOODHOUSE & PEPIN, *supra* 390, at 3, 5.

⁵¹⁹ *General*, *supra* note 509.

⁵²⁰ LUCILLA BURN, *THE BRITISH MUSEUM BOOK OF GREEK AND ROMAN ART* 62 (1991).

⁵²¹ As of March 2, 2019, the British Museum’s official website stated that a “Turkish powder-magazine in the temple exploded after a direct hit by the besieging Venetians.” *Facts and Figures*, *supra* note 3, at ¶ 9.4.1. Since then, the website has removed reference to “besieging Venetians” and now explains the incident as follows “[The Parthenon] has sustained significant damage throughout its long history, in particular as a result of an explosion while it was in use as an ammunition store in 1687.” *The Parthenon Sculptures*, *supra* note 457.

G. The British Museum's Other Claims

The British Museum's willingness to put forth claims in service of justifying its continued possession of the Elgin collection seems boundless. Thus, its website offers a grab bag of assertions of various degrees of relevance and plausibility. The British Museum argues that the Parthenon sculptures are now located "in museums in six countries"⁵²² and that it is generally agreed that the removed sculptures "could never be re-attached" to the Parthenon.⁵²³ As a result, the Museum states that "all the Parthenon sculptures have now become museum objects."⁵²⁴ Given that, the Museum emphasizes in support of its continued possession of the collection that the Elgin collection has been on "public display in the British Museum since 1817"; that admission to the Museum is "free of charge"; that the collection is "seen by a world audience"; and that the Parthenon sculptures are "actively studied and researched by an international community of scholars, to promote understanding both of ancient Greek culture and its role in the cultures of the world."⁵²⁵ The Museum insists that it is a "unique resource for the world," for its collection "tells the story of cultural achievement throughout the world, from the dawn of human history over two million years ago, until the present day."⁵²⁶ The Museum is correct. The collection has been on public display in London for a long time, admission to this outstanding museum is free, a worldly audience does enter the museum, and the Museum's collection "tells" a story of humankind. But the significance of these considerations is unclear.

The sculptures were in Athens for much longer than they have been in London. The new Acropolis Museum in Athens also has an international audience.⁵²⁷ Since the British Museum recommends that the Greek government be satisfied with the casts "provided by the British Museum to represent all the Parthenon sculptures in London and elsewhere,"⁵²⁸ those same casts should be an adequate substitute for the actual stone sculptures in London, assuming the British government returned the sculptures to Athens. In short, the British Museum's reasoning has merit,

⁵²² *Position of the Trustees*, *supra* note 12. One scholar claims that "more than 60 percent" of the Parthenon sculptures "are scattered across Europe, mostly in London, but also in Paris, Copenhagen, Vienna, Würzburg, Palermo, the Vatican, and Munich." CONNELLY, *supra* note 13, at 344.

⁵²³ *General*, *supra* note 509.

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ *Position of the Trustees*, *supra* note 12.

⁵²⁷ ACROPOLIS MUSEUM, A HIGHLIGHTS REPORT 2, 5–6 (June 2012–May 2020), https://e.is-suu.com/anonymous-embed.html?u=theacropolismuseum&d=acropolis_museum_annual_report_en_2020 (last visited Feb. 6, 2020) (reporting that, despite the global COVID-19 pandemic, attendance at the museum remained high, attracting over one million visitors from countries including the United States, United Kingdom, France, Germany, Canada, Spain, Italy, China, and Australia).

⁵²⁸ *Facts and Figures*, *supra* note 3, at ¶ 9.10.1.

but it cuts both ways. It thus fails to advance the Museum's equitable claim.

The Museum offers yet another claim that Elgin was a noble man in pursuit of a laudable public purpose. On this score, the Museum walks on thin ice. In considering Elgin's integrity, ethics, and purposes, there is no reason to villainize Elgin. But the evidence establishes that Elgin did not initially authorize or even encourage the removal of the sculptures from the Parthenon walls. His hope was to have the artisans paint, draw, or mold the sculptures. It was, as discussed above, the Rev. Hunt who gave what the Parliamentary Committee termed bribes to the Ottoman officials in Athens and who was responsible for removing the first sculptures from the Parthenon walls. Elgin was in Constantinople when Hunt arranged this and only learned of dismantling of the Parthenon weeks later when he received letters. Thus, the British Museum's claim that Elgin was motivated to remove the sculptures from the Parthenon walls in order to save and preserve them for posterity is more fairytale than fact. As discussed already, Elgin's initial purpose in gathering his collection was to decorate his private home.

Last but not least, the British Museum repeats the frequently asserted claim that the sculptures belong to everyone: The Parthenon sculptures "are a part of the world's shared heritage and transcend political boundaries."⁵²⁹ In another passage, the Museum maintains that "the sculptures are part of everyone's shared heritage and transcend cultural boundaries."⁵³⁰ The implication is that the sculptures are part of western European heritage, and thus belong to everyone in the west. The main thrust of this line of argumentation is to undermine a Greek claim that contemporary Greeks have a distinct and overpowering claim to sculptures made by Athenians over 2,400 years ago.

While the sculptures are of broad cultural significance, and while the British Museum suggests that the Parthenon sculptures belong to everyone, the Museum does not mean that the sculptures really do belong to all. If authorities in Rome or Paris or Berlin suddenly asserted a claim to the sculptures on the ground that the people of Rome and Paris and Berlin are as much a part of western civilization as the British, and that the sculptures are in London only because of the contingency of imperial history—and not because the British have a superior claim—such a claim would be dismissed out of hand. The claim that the sculptures are of significance to all certainly is meritorious but fails to resolve the question of where they should be located.

⁵²⁹ *Position of the Trustees*, *supra* note 12.

⁵³⁰ *General*, *supra* note 509.

CONCLUSION

UNEARTHING THE PAST IN THE PRESENT

The British Museum's defense of its continued retention of the Elgin collection rests heavily on untenable legal and ethical claims. Elgin requested permission from the proper Constantinople officials to remove sculptures from the Parthenon walls. Constantinople officials gave Lord Elgin such prior written permission. Elgin did not abuse his position as the British ambassador in securing this prior permission. Elgin did not improperly bribe Ottoman officials. Elgin was motivated to save the famous sculptures from vandalism and deterioration. Elgin did not inflict irreparable harm on the structure of the Parthenon. Constantinople officials not only gave Elgin prior permission to strip the sculptures from the Parthenon walls, but also in 1810 approved of the stripping retroactively. In 1816, the Parliamentary Select Committee concluded that Elgin's Acropolis activities were entirely legal.

These meritless claims are essential to the British Museum's public defense of its continued retention of the Elgin collection. Indeed, the available evidence establishes that Elgin did not request permission to remove the historic sculptures from the Parthenon walls and that he did not receive permission to do so; that Elgin did abuse his position as ambassador and that he gave bribes to further the development of his collection; that he intended the collection for his private Scottish home; that his agents inflicted irreparable harm on the Parthenon structure; and that the Parliamentary Select Committee made no finding that Elgin's Acropolis activities were legal.

Revising our collective understanding of these historical considerations dramatically reframes the relevant arguments in this epic dispute. No longer is the British Museum able to assert as its essential contention that Elgin's Acropolis activities were authorized by proper Ottoman authorities. Nor can the Museum claim that Elgin did not abuse his ambassadorial position to improperly pressure officials in Athens, and that the bribes he provided to facilitate the hemorrhaging of the Parthenon were legally inconsequential. Removing from the British Museum's arsenal of arguments these central legal and ethical claims does more than steal the ground out from under what might otherwise be a formidable array of claims: it reveals the extraordinary lengths to which the Museum has gone and continues to go to distort or hide the truth.⁵³¹

⁵³¹ Another prominent incident in which the British Museum went to extraordinary lengths to hide the truth concerns the so-called cleaning of the Parthenon sculptures by Museum officials in the 1930s. The original episode and the effort to disclose the cover-up is described in detail by St. Clair, who unearthed the cover-up and made it public in his biography of Elgin. ST. CLAIR 3d ed., *supra* note 8, at 281–313. *The Guardian* reported on a 1999 conference at which St. Clair presented his findings, and its lead paragraph to the report stated: "The British Museum orchestrated an 'illegal

No one at this time knows how this dispute will be resolved. Perhaps it will just fester and go on, year after year, decade after decade. That will certainly be the situation if the position of the British Museum's Director from 1977–1991 is representative of the Museum and the British government. In a 1985 *BBC* interview, David M. Wilson stated the “[t]o rip the Elgin Marbles from the walls of the British Museum . . . is a much greater disaster than the threat of blowing up the Parthenon,” and that those who support the return to the collection to Athens are engaged in “cultural fascism.”⁵³² Wilson continued, “It’s nationalism and it’s cultural danger.”⁵³³ He even went as far as to compare the return of the collection to “what Hitler did,” noting that “it’s like burning books.”⁵³⁴ Wilson’s views were undoubtedly extreme, and perhaps shared by very few today. And while the contemporary British Museum’s views on this matter are more nuanced, complex, and varied, even these more subtle and carefully expressed claims may not withstand serious erosion in the face of powerful historical winds.

If there is one durable lesson from history, it is that the future will surprise the present, just as much as the present has upended the past. Against that pattern, it is plausible—if not likely—that in time the claims of fairness and justice favoring Greece will gain supporters and strength. If that in fact occurs, these fairness and justice considerations will likely prompt the British government to return the Parthenon sculptures to Athens.

and improper’ cover-up for 60 years of the irreparable damage inflicted on the Elgin Marbles under its stewardship, according to a report published today by a senior academic.” Jamie Wilson & David Hencke, *Elgin Marbles ‘Cover up’ by Museum*, THE GUARDIAN (Nov. 28, 1999), <https://www.theguardian.com/uk/1999/nov/29/jamiewilson.davidhencke> [<https://perma.cc/9UTP-PWF9>].

⁵³² Kwame Opoku, *The Amazing Director of the British Museum: Gratuitous Insults as Currency of Cultural Diplomacy?*, MODERN GHANA, <https://www.modernghana.com/news/229958/the-amazing-director-of-the-british-museum-gratui.html> [<https://perma.cc/5NVN-LGFA>].

⁵³³ *Id.*

⁵³⁴ *Id.*

APPENDIX A

REPORT.

1. THE SELECT COMMITTEE appointed to enquire, whether it be expedient that the Collection mentioned in the EARL of ELGIN's Petition, presented to The House on the 15th day of *February* last, should be purchased on behalf of The Public, and if so, what Price it may be reasonable to allow for the same.
2. CONSIDER the Subject referred to them, as divided into Four principal Heads ;
3. The First of which relates to the Authority by which this Collection was acquired :
4. The Second to the circumstances under which that Authority was granted :
5. The Third to the Merit of the Marbles as works of Sculpture, and the importance of making them Public Property, for the purpose of promoting the study of the Fine Arts in Great Britain ;—and
6. The Fourth to their Value as objects of sale ; which includes the consideration of the Expense which has attended the removing, transporting, and bringing them to England.
7. To these will be added some general Observations upon what is to be found, in various Authors, relating to these Marbles.

I.

8. WHEN the Earl of Elgin quitted England upon his mission to the Ottoman Porte, it was his original intention to make that appointment beneficial to the progress of the Fine Arts in Great Britain, by procuring accurate drawings and casts of the valuable remains of Sculpture and Architecture scattered throughout Greece, and particularly concentrated at Athens.
9. With this view he engaged Signor Lusieri, a painter of reputation, who was then in the service of the King of the Two Sicilies, together with two architects, two modellers, and a figure painter, whom Mr. Hamilton (now Under Secretary of State) engaged at Rome and despatched with Lusieri, in the summer of 1800, from Constantinople to Athens.
10. They were employed there about nine months, from August 1800 to May 1801, without having any sort of facility or accommodation afforded

to them : nor was the Acropolis accessible to them, even for the purpose of taking drawings, except by the payment of a large fee, which was exacted daily.

11. The other five artists were withdrawn from Athens in January 1803, but Lusieri has continued there ever since, excepting during the short period of our hostilities with the Ottoman Porte.

12. During the year 1800, Egypt was in the power of the French : and that sort of contempt and dislike which has always characterized the Turkish government and people in their behaviour towards every denomination of Christians, prevailed in full force.

13. The success of the British arms in Egypt, and the expected restitution of that province to the Porte, wrought a wonderful and instantaneous change in the disposition of all ranks and descriptions of people towards our Nation. Universal benevolence and good-will appeared to take place of suspicion and aversion. Nothing was refused which was asked ; and Lord Elgin, availing himself of this favourable and unexpected alteration, obtained, in the summer of 1801, access to the Acropolis for general purposes, with permission to draw, model, and remove ; to which was added, a special license to excavate in a particular place. Lord Elgin mentions in his evidence, that he was obliged to send from Athens to Constantino-ple for leave to remove a house ; at the same time remarking that, in point of fact, all permissions issuing from the Porte to any distant provinces, are little better than authorities to make the best bargain that can be made with the local magistracies. The applications upon this subject, passed in verbal conversations ; but the warrants or fermauns, were granted in writing, addressed to the chief authorities resident at Athens, to whom they were delivered, and in whose hands they remained : so that your Committee had no opportunity of learning from Lord Elgin himself their exact tenor, or of ascertaining in what terms they noticed, or allowed the displacing, or carrying away of these Marbles. But Dr. Hunt, who accompanied Lord Elgin as chaplain to the embassy, has preserved, and has now in his possession, a translation of the second fermaun, which extended the powers of the first : but as he had it not with him in London, to produce before your Committee, he stated the substance, according to his recollection, which was

14. “That, in order to show their particular respect to the Ambassador of

15. “Great Britain, the august ally of the Porte, with whom they were now

16. “and had long been in the strictest alliance, they gave to his Excellency

17. “and to his Secretary, and the Artists employed by him, the most ex-

18. “tensive permission to view, draw and model the ancient Temples of the

19. “Idols, and the Sculptures upon them, and to make excavations, and

20. “to take away any stones that might appear interesting to them.” He stated further, that no remonstrance was at any time made, nor any displeasure shown by the Turkish government, either at Constantinople or at Athens, against the extensive interpretation which was put upon this fermaun : and although the work of taking down, and removing was going on for months and even years, and was conducted in the most public manner, numbers of native labourers, to the amount of some hundreds being frequently employed, not the least obstruction was ever interposed, nor the smallest uneasiness shown after the granting of this second fermaun. Among the Greek population and inhabitants of Athens it occasioned no sort of dissatisfaction : but, as Mr. Hamilton, an eye witness, expresses it, so far from exciting any unpleasant sensation, the people seemed to feel it as the means of bringing foreigners into their country, and of having money spent among them. The Turks showed a total indifference and apathy as to the preservation of these remains, except when in a fit of wanton destruction they sometimes carried their disregard so far as to do mischief by firing at them. The numerous travellers and admirers of the Arts committed greater waste, from a very different motive, for many of those who visited the Acropolis tempted the soldiers and other people about the fortress to bring them down heads, legs or arms, or whatever other pieces they could carry off.

21. A translation of the fermaun itself has since been forwarded by Dr. Hunt, which is printed in the Appendix.

II.

22. UPON the Second Division, it must be premised, that antecedently to Lord *Elgin*'s departure for Constantinople, he communicated his intention of bringing home casts and drawings from Athens, for the benefit and advancement of the fine Art in this country, to Mr. *Pitt*, Lord *Grenville*, and Mr. *Dundas*, suggesting to them the propriety of considering it as a national object, fit to be undertaken, and carried into effect at the public expense ; but that this recommendation was in no degree encouraged, either at that time or afterwards.

23. It is evident, from a letter of Lord *Elgin*, to the Secretary of State, 13 January 1803, that he considered himself as having no sort of claim for his disbursements in the prosecution of these pursuits, though he stated, in the same despatch, the heavy expenses in which they had involved him, so as to make it extremely inconvenient for him to forego any of the usual allowances to which Ambassadors at other courts were entitled. It

cannot, therefore, be doubted, that he looked upon himself in this respect as acting in a character entirely distinct from his official situation. But whether the Government from whom he obtained permission did, or could so consider him, is a question which can be solved only by conjecture and reasoning, in the absence and deficiency of all positive testimony. The Turkish ministers of that day are, in fact, the only persons in the world capable (if they are still alive) of deciding the doubt ; and it is probable that even they, if it were possible to consult them, might be unable to form any very distinct discrimination as to the character in consideration of which they acceded to Lord *Elgin*'s request. The occasion made them, beyond all precedent, propitious to whatever was desired in behalf of the English nation ; they readily, therefore, complied with all that was asked by Lord *Elgin*. He was an Englishman of high rank ; he was also Ambassador from our Court : they granted the same permission to no other individual : but then, as Lord *Elgin* observes, no other individual applied for it to the same extent, nor had indeed the same unlimited means for carrying such an undertaking into execution. The expression of one of the most intelligent and distinguished of the British travellers, who visited Athens about the same period, appears to your Committee to convey as correct a judgment as can be formed upon this question, which is incapable of being satisfactorily separated, and must be taken in the aggregate.

24. The Earl of *Aberdeen*, in answer to an inquiry, whether the authority and influence of a public situation was in his opinion necessary for accomplishing the removal of these Marbles, answered, that he did not think a private individual could have accomplished the removal of the remains which Lord *Elgin* obtained : and Doctor *Hunt* who had better opportunities of information upon this point than any other person who has been examined, gave it as his decided opinion, that "a British subject not in the situation of Ambassador, could not have been able to obtain from the Turkish Government a *fermaun* of such extensive powers."

25. It may not be unworthy of remark, that the only other piece of Sculpture which was ever removed from its place for the purpose of export was taken by Mr. Choiseul Gouffier, when he was Ambassador from France to the Porte ; but whether he did it by express permission, or in some less ostensible way, no means of ascertaining are within the reach of your Committee. It was undoubtedly at various times an object with the French Government to obtain possession of some of these valuable remains, and it is probable, according to the testimony of Lord *Aberdeen* and others, that at no great distance of time they might have been removed by that government from their original site, if they had not been taken away, and secured for this country by Lord *Elgin*.

III.

26. THE Third Part is involved in much less intricacy : and although in all matters of Taste there is room for great variety and latitude of opinion, there will be found upon this branch of the subject much more uniformity and agreement than could have been expected. The testimony of several of the most eminent Artists in this kingdom, who have been examined, rates these Marbles in the very first class of ancient art, some placing them a little above, and others but very little below the Apollo Belvidere, the Laocoon, and the Torso of the Belvidere. They speak of them with admiration and enthusiasm ; and notwithstanding the manifold injuries of time and weather, and those mutilations which they have sustained from the fortuitous, or designed injuries of neglect, or mischief, they consider them as among the finest models, and the most exquisite monuments of antiquity. The general current of this portion of the evidence makes no doubt of referring the date of these works to the original building of the Parthenon, and to the designs of the Phidias, the dawn of every thing which adorned and ennobled Greece. With this estimation of the excellence of these works it is natural to conclude that they are recommended by the same authorities as highly fit, and admirably adapted to form a school for study, to improve our national taste for the Fine Arts, and to diffuse a more perfect knowledge of them throughout this kingdom.

27. Much indeed may be reasonably hoped and expected, from the general observation, and admiration of such distinguished examples. The end of the fifteenth and beginning of the sixteenth centuries enlightened by the discovery of several of the noblest remains of antiquity, produced in Italy an abundant harvest of the most eminent men, who made gigantic advances in the path of Art, as Painters, Sculptors, and Architects. Caught by the novelty, attracted by the beauty, and enamoured of the perfection of those newly disclosed treasures, they imbibed the genuine spirit of ancient excellence, and transfused it into their own compositions.

28. It is surprising to observe in the best of these Marbles in how great a degree the close imitation of Nature is combined with grandeur of Style, while the exact details of the former in no degree detract from the effect and predominance of the latter.

29. The two finest single figures of this Collection differ materially in this respect from the Apollo Belvidere, which may be selected as the highest and most sublime representation of ideal form, and beauty, which Sculpture has ever embodied, and turned into shape.

30. The evidence upon this part of the inquiry will be read with satisfaction and interest, both where it is immediately connected with these Marbles, and where it branches out into extraneous observations, but all of

them relating to the study of the Antique. A reference is made by one of the witnesses to a sculptor, eminent throughout Europe for his works, who lately left this Metropolis highly gratified by the view of these treasures of that branch of art, which he has cultivated with so much success. His own letter to the Earl of *Elgin* upon this subject is inserted in the Appendix.

31. In the judgment of Mr. *Payne Knight*, whose valuation will be referred to in a subsequent page, the first class is not assigned to the two principal statues of this Collection ; but he rates the Metopes in the first class of works in High Relief, and knows of nothing so fine in that kind. He places also the Frize in the first class of Low Relief ; and considering a general Museum of Art to be very desirable, he looks upon such an addition to our National collection as likely to contribute to the improvement of the Arts, and to become a very valuable acquisition ; for the importation of which Lord *Elgin* is entitled to the gratitude of his Country.

IV.

32. The directions of the House in the order of reference imposes upon your Committee the task of forming and submitting an opinion upon the Fourth Head, which otherwise the scantiness of materials for fixing a pecuniary Value, and the unwillingness, or inability in those who are practically most conversant in Statuary to afford any lights upon this part of the subject, would have rather induced them to decline.

33. The procedure of this Collection, if it should be brought to sale in separate lots, in the present depreciated state of almost every article, and more particularly of such as are of precarious and fanciful value, would probably be much inferior to what may be denominated its intrinsic value.

34. The mutilated state of all the larger Figures, the want either of heads or features, of limbs or surface, in most of the Metopes, and in a great proportion of the Compartments even of the larger Frize, render this Collection, if divided, but little adapted to serve for the decoration of private houses. It should therefore be considered as forming a Whole, and should unquestionably be kept entire as a School of Art, and a Study for the formation of Artists. The competitors in the market, if it should be offered for sale without separation, could not be numerous. Some of the Sovereigns of Europe, added to such of the great Galleries or national Institutions in various parts of the Continent, as may possess funds at the disposal of their directors sufficient for such a purpose, would in all probability be the only purchasers.

35. It is not however reasonable nor becoming the liberality of Parliament to withhold upon this account, whatever, under all the circumstances, may be deemed a just and adequate price ; and more particularly

in a case where Parliament is left to fix its own valuation, and no specific sum is demanded, or even suggested by the Party who offers the Collection to the Public.

36. It is obvious that the money expended in the acquisition of any commodity is not necessarily the measure of its real value. The sum laid out in gaining possession of two articles of the same intrinsic worth, may, and often does vary considerably. In making two excavations, for instance, of equal magnitude, the labor, a broken Bust or some few Fragments may be discovered in the one, and a perfect Statue in the other. The first cost of the broken Bust and of the entire Statue would in that case be the same ; but it cannot be said that the value is therefore equal. In the same manner, by the loss, or detention of a Ship, a great charge may have been incurred, and the original outgoing excessively enhanced ; but the value to the buyer will in no degree be affected by these extraneous accidents. Supposing again, Artists to have been engaged at considerable salaries during a large period in which they could do little or nothing, the first cost would be burdensome in this case also to the employer, but those who bought would look only at the value of the article in the market where it might be exposed to sale, without caring, or inquiring how, or at what expense it was brought thither.

37. Supposing, on the other hand, that the thirteen other Metopes had been bought at the Custom House sale at the same price which that of Mr. Choiseul Gouffier fetched, it could never be said, that the value of them was no more than twenty-four or twenty-five pounds a piece.

38. It is perfectly just and reasonable that the seller should endeavor fully to reimburse himself for all expenses, and to acquire a profit also, but it will be impossible for him to do so, whenever the disbursements have exceeded the fair money price of that which he has to dispose of.

39. Your Committee refer to Lord *Elgin's* evidence for the large and heavy charges which have attended the formation of this Collection, and the placing of it in its present situation ; which amount, from 1799 to January 1803, to £. 62,440, including £. 23,240 for the interest of money ; and according to a supplemental account, continued from 1803 to 1816, to no less a sum than £. 74,00, including the same sum for interest.

40. All the papers which are in his possession upon this subject, including a journal of above 90 pages, of the daily expenses of his principal artist Lusieri (from 1803 to the close of 1814) who still remains in his employment at Athens, together with the account current of Messrs. Hayes of Malta, (from April 1807 to May 1811) have been freely submitted to your Committee ; and there can be no doubt, from the inspection of those accounts, confirmed also by other testimony, that the disbursements were very considerable ; but supposing them to reach the full sum

at which they are calculated, your Committee do not hesitate to express their opinion, that they afford no just criterion of the Value of the Collection, and therefore must not be taken as a just basis for estimating it.

41. Two Valuations, and only two in detail, have been laid before your Committee, which are printed ; differing most widely in the particulars, and in the total ; that of Mr. *Payne Knight* amounting to £. 25,000, and that of Mr. Hamilton to £. 60,800.

41. The only other sum mentioned as a money price, is in the evidence of the Earl of *Aberdeen*, who named £. 35,000, as a sort of conjectural estimate of the Whole, without entering into particulars.

42. In addition to the instances of prices quoted in Mr. *Payne Knight's* evidence, the sums paid for other celebrated Marbles deserve to be brought under the notice of the House.

43. The *Townley* Collection which was purchased for the British Museum in June 1805, for £.20,000, is frequently referred to in the examinations of the witnesses, with some variety of opinion as to its intrinsic value ; but it is to be observed of all the principal Sculptures in that Collection, that they were in excellent condition with the surface perfect ; and where injured, they were generally well restored, and perfectly adapted for the decoration, and almost for the ornamental furniture of a private house, as they were indeed disposed of by Mr. *Townley* in his life time.

44. In what proportion the state of mutilation in which the *Elgin* Marbles are left, and above all the corrosion of much of the surface by weather reduce their value, it is difficult precisely to ascertain ; but it may unquestionably be affirmed in the words of one of the Sculptors examined (who rates these Works in the highest class of Art) that “the *Townleyan* Marbles being entire, are, in a commercial point of view, the most valuable of the two : but that the *Elgin* Marbles, as possessing that matter which Artists most require, claim a higher consideration.”

45. The *Ægina* Marbles which are also referred to, and were well known to one of the Members of Your Committee, who was in treaty to purchase them for the British Museum, sold for £. 6,000, to the Prince Royal of Bavaria, which was less than the British Government had directed to be offered, after a prior negotiation for obtaining them had failed ; their real value however was supposed not to exceed £. 4,000, at which *Lusieri* estimated them. They are described as valuable in point of remove antiquity, and curious in that respect, but of no distinguished merit as specimens of Sculpture, their style being what is usually called Etruscan, and older than the age of *Phidias*.

46. The Marbles at *Phigalia*, in *Arcadia*, have lately been purchased for the Museum at the expense of £. 15,000, increased by a very unfavourable

exchange to £. 19,000, a sum which your Committee, after inspecting them, venture to consider as more than equal to their value.

47. It is true that an English gentleman, concerned in discovering them, was ready to give the same sum ; and therefore no sort of censure can attach on those who purchased them abroad, for our national gallery, without any possible opportunity of viewing and examining the sculpture, but knowing them only from the sketches which were sent over, and the place where they were dug up, to be undoubted and authentic remains of Greek artists of the best time.

48. When the first offer was made by the Earl of *Elgin* to Mr. *Perceval*, of putting the Public in possession of this Collection, Mr. *Long*, a member of your Committee, was authorized by Mr. *Perceval* to acquaint Lord *Elgin*, that he was willing to propose to Parliament to purchase it for £. 30,000, provided Lord *Elgin* should make out, to the satisfaction of a Committee of the House of Commons that he had expended so much in acquiring, and transporting it.

49. Lord *Elgin* declined this proposal, for the reasons stated by him in his evidence : and until the month of June 1815, no further step was taken on either side ; but at that time a petition was presented, on the part of Lord *Elgin*, to the House, which, owing to the late period of the Session, was not proceeded upon. Eighty additional cases have been received since 1811, the contents of which, enumerated in Mr. *Hamilton's* evidence, now form a part of the Collection. The Medals also, of which the value is more easily defined, were not included in the proposal made of Mr. *Perceval*.

50. Against these augmentations must be set the rise in the value of money, which is unquestionably not inconsiderable, between the present time and the year 1811 ; a cause or consequence of which is the depreciation of every commodity, either of necessity, or fancy, which is brought to sale.

51. Your Committee, therefore, do not think that they should be justified, in behalf of the Public, if they were to recommend to the House any extension of Mr. *Perceval's* offer to a greater amount than £. 5,000 : and, under all the circumstances that they have endeavoured to bring under the view of the House, they judge Thirty-five thousand Pounds to be a reasonable and sufficient price for this Collection.

52. Your Committee observing, that by the Act 45 Geo. III, c. 127, for testing the *Townleyan* collection in the Trustees of the British Museum, § 4, the proprietor of that Collection, Mr. *Townley Standish*, was added to the Trustees of the British Museum, consider the Earl of *Elgin* (and his heirs being Earls of *Elgin*) as equally entitled to the same distinction, and recommend that a clause should be inserted to that effect, if it should be

necessary that an Act should pass for transferring his Collection to the Public.

53. It may not be deemed foreign to this subject, if Your Committee venture to extend their observations somewhat beyond the strict limit of their immediate inquiry, and lay before the House what occurs to them as not unimportant with regard to the age and authenticity of these Sculptures. The great works with which Pericles adorned, and strengthened Athens, were all carried on under the direction and superintendence of Phidias ; for this, there is the authority of various ancient writers, and particularly of Plutarch ; but he distinctly asserts in the same passage, that Callicrates and Ictinus executed the work of the Parthenon ; which is confirmed also by Pausanias, so far as relates to Ictinus, who likewise ornamented or constructed the temple of Apollo at Phigalia* : from whence, by a singular coincidence, the Sculptures in high relief lately purchased for the British Museum, and frequently referred to in the evidence, were transported.

54. The style of this work, in the opinion of the Artists, indicates, that it belongs to the same period, though the execution is rated as inferior to that of the *Elgin* Marbles. In the fabulous stories which are represented upon both, there is a very striking similarity ; and it may be remarked in passing, that the subjects of the Metopes, and of the smaller Frize, which is sculptured with the battle of the Amazons, correspond with two out the four subjects mentioned by Pliny, as adorning the shield and dress of the Minerva ; so that there was a general uniformity of design in the stories which were selected for the internal, and external decoration of the Parthenon. The taste of the same artist, Ictinus, probably led him to repeat the same ideas, which abound in graceful forms, and variety of composition, when he was employed upon the temple of another divinity at a distance from Athens.

55. The statue of Minerva within the temple, was the work of Phidias himself, and, with the exception of the Jupiter which he made at Elis, the most celebrated of his productions. It was composed of ivory, and gold ; with regard to which, some very curious anecdotes relating to the political history of that time, are to be found in the same writers : the earliest of which, from a passage in a contemporary poet, Aristophanes, proves that the value of these materials involved both Pericles and the director of his

* The penultimate syllable should be pronounced long ; Phigalia closes two hexameter verses, one of which is quoted by Pausanias, and the other by Stephanus Byzantinus, from Rhianus, a poet of Crete.

works in great trouble, and jeopardy ; upon which account the latter is said to have withdrawn to Elis, and to have ended his days there, leaving it doubtful whether his death was natural, or in consequence of a judicial sentence : but Plutarch places his death at Athens, and in prison, either by disease, or by poison.

56. It has been doubted whether Phidias himself ever wrought in Marble ; but, although, when he did not use ivory, his chief material was unquestionably bronze ; there are authorities sufficient to establish, beyond all controversy, that he sometimes applied his hand to Marble. Pliny for instance, asserts that he did so, and mentions a Venus ascribed to him, existing in his own time in the collection (or in the portico) of Octavia. Phidias is called by Aristotle a skilful worker in Stone ; and Pausanias enumerates a Celestial Venus of Parian Marble, undoubtedly of his hand ; and the Rhamnusian Nemesis, also of the same material. Some of his statues in bronze, were brought to Rome by Paulus Æmilius, and by Catulus.

57. His great reputation, however, was founded upon his representations of the Gods, in which he was supposed more excellent than in human forms, and especially upon his works in ivory, in which he stood unrivalled.

58. Elidas the Argive is mentioned as the master of Phidias ; which honour is also shared by Hippias. His two most celebrated scholars were Alcamenes an Athenian of noble birth, and Agoracritus of Paros ; the latter of whom was his favourite ; and it was reported, that out of affection to him, Phidias put his scholar's name upon several of his own works : among which the statue called Rhamnusian Nemesis is particularized by Pliny, and Suidas.

59. In another passage of Pliny, Alcamenes is classed with Critias, Nestocles, and Hegias, who are called the rivals of Phidias. The name of Colotes is preserved as another of his scholars.

60. The other great Sculptors, who were living at the same time with Phidias, and flourished very soon after him, were Agelades, Callon, Polycleetus, Phragmon, Gorgias, Lacon, Myron, Pythagoras, Scopas, and Perelius.

61. The passage in which Pausanias mentions the Sculptures on the pediments is extremely short, and to this effect ; “ As you enter the temple, which they call Parthenon, all that is contained in what is termed the (*Eagles*) Pediments, relates in every particular to the birth of Minerva ; but on the opposite or back front is the Contest of Minerva and Neptune for the land ;—but the statue itself is formed of ivory and gold.” The state of dilapidation into which this temple was fallen, when Stuart visited it in 1751, and made most correct drawings for his valuable work, left little

opportunity of examining and comparing what remained upon that part of the temple with the passage referred to : but an account is preserved by travellers, who about 80 years earlier found one of these pediments in tolerable preservation, before the war between the Turks and Venetians, in 1687, had done so much damage to this admirable structure. The observations of one of these (Dr. Spon, a French Physician) may be literally translated thus:

62. “ The highest part of the front which the Greeks called “the Eagle,” and our architects “ the Fronton,” is enriched with a groupe of beautiful figures in marble, which appear from below as large as life. They are of entire relief, and wonderfully well worked. Pausanias says nothing more, than that this Sculpture related to the birth of Minerva. The general design is this:

63. “ Jupiter, who is under the highest angle of the pediment (fronton) has the right arm broken, in which, probably, he held his thunderbolt : his legs are thrown wide from each other, without doubt to make room for his eagle. Although these two characteristics are wanting, one cannot avoid recognizing him by his beard, and by the majesty with which the sculptor has invested him. He is naked, as they usually represented him, and particularly the Greeks, who for the most part made their figures naked ; on his right is a statue which has its head and arms mutilated, draped to about half the leg, which one may judge to be a Victory, which precedes the car of Minerva, whose horses she leads. They are the work of some hand as bold as it was delicate, which would not perhaps have yielded to Phidias, or Praxiteles, so renowned for (representing) horses. Minerva is sitting upon the car, rather in the habit of goddess of the sciences, than of war; for she is not dressed as a warrior, having neither helmet, nor shield, nor head of Medusa upon her breast : she has the air of youth, and her head dress is not different from that of Venus. Another female figure without a head is sitting behind her with a child, which she holds upon her knees, I cannot say who she is ; but I had no trouble in making out or recognising the two next, which are the last on that side ; it is the emperor Hadrian sitting, and half naked, and, next to him, his wife Sabina. It seems that they are both looking on with pleasure at the triumph of the goddess. I do not believe that before me, any person observed this particularity, which deserves to be remarked : “ On the left of Jupiter are five or six figures, of which some have lost the heads ; it is probably the circle of the gods, where Jupiter is about to introduce Minerva, and to make her be acknowledged for his daughter. The pediment behind represented, according to the same author, the dispute which Minerva and Neptune had for naming the city, but all the figures are fallen from them, except one head of a sea-horse, which was the usual

accompaniment of this god ; these figures of the two pediments were not so ancient as the body of the temple build by Pericles, for which there wants no other argument than that of the statue of Hadrian, which is to be seen there, and the Marble which is whiter than the rest. All the rest has not been touched. The Marquis de Nointel had designs made of the whole, when he went to Athens ; his painter worked there for two months, and almost lost his eyes, because he was obliged to draw every thing from below, without a scaffold.”—(Voyage par Jacob Spon ; Lyons, 1678; 2 tom, p. 144.)

64. Wheler, who travelled with Spon, and published his work at London (four years later) in 1682, says “ But my companion made me observe the next two figures sitting in the corner to be of the emperor Hadrian and his empress Sabina, whom I easily knew to be so, by the many medals, and statues I have seen of them.” And again, “ But the emperor Hadrian most probably repaired it, and adorned it with those figures at each front. For the whiteness of the Marble, and his own statue joined with them, apparently show them to be of a later age than the first, and done by that Emperor’s command. Within the portico on high, and on the outside of the cella of the temple itself, is another border of basso relievo round about it, or at least on the North and South sides, which without doubt, is as ancient as the temple, and of admirable work, but not so high a relievo as the other. Thereon are represented sacrifices, processions and other ceremonies of the heathens worship ; most of them were designed by the M. de Nointel, who employed a painter to do it two months together, and showed them to us when we waited on him at Constantinople.”

65. Another French author, who published three years earlier than Spon, a work called “ Athenes Ancienne & Nouvelle, par le S’ de las Guilletiere a Paris,” 1675,—says, “ Pericles employed upon the Parthenon the celebrated architects Callicrates and Ictinus. The last, who had more reputation than the former, wrote a description of it in a book*, which he composed on purpose, and which has been lost ; and we should probably not now have the opportunity of admiring the building itself, if the emperor Hadrian had not preserved it to us, by the repairs which he caused to be done. It is to his care that we owe the few remains of antiquity which are still entire at Athens.”

66. In the Antiquities of Athens by Stuart, vol. ii. p. 4, it is said, “ Pausanias gives but a transient account of this Temple, nor does he say whether Hadrian repaired it, though his statue, and that of his Empress Sabina in the western pediment, have occasioned a doubt whether the

* Ictinus and Carpion were jointly concerned in this work, for which we have the authority of Vitruvius, lib. 7. præfat.

sculptures, in both, were not put up by him. Wheler and Spon were of this opinion, and say they were whiter than the rest of the building. The statue of Antinous, now remaining at Rome, may be thought a proof that there were artists in his time capable of executing them, but this whiteness is no proof that they were more modern than the Temple, for they might be made of a whiter marble ; and the heads of Hadrian and Sabina might be put on two of the ancient figures, which was no uncommon practice among the Romans ; and if we may give credit to Plutarch, the buildings of Pericles were not in the least impaired by age in his time ; therefore, this temple could not want any material repairs in the reign of Hadrian.”

67. With regard to the works of Hadrian at Athens, Spartian says, “ that he did much for the Athenians[♦] ;” and a little after on his second visit to Athens, “going to the East he made his journey through Athens, and dedicated the works which he had begun there : and particularly a temple to Olympian Jupiter, and an altar to himself.”

68. The account given by Dion Cassius, is nearly to the same effect, adding, that he placed his own statue within the temple of Olympian Jupiter, which he erected^{*‡}.

69. He called some other cities after his own name, and directed a part of Athens to be styled Hadrianopolis :[†] but no mention is made by any ancient author, of his touching, or repairing the Parthenon. Pausanias who wrote in his reign, says, that “ the temples which Hadrian either erected from the foundation, or adorned with dedicated gifts and decorations, or whatever donations he made to the cities of the Greeks, and of the Barbarians also, who made application to him, were all recorded at Athens in the temple common to all the gods.”[‡]

70. It is not unlikely, that a confused recollection of the statue which Hadrian actually placed at Athens, may have led one of the earliest travellers into a mistake, which has been repeated, and countenanced by subsequent writers : but Mr. Fauvel, who will be quoted presently, speaks as from his own examination and observation, when he mentions the two statues in question ; which, it is to be observed, still remain (without their heads) upon the pediment of the entrance, and have not been removed by Lord *Elgin*.

71. An exact copy of these drawings, by the Marquis de Nointel’s painter, is given in M. Barry’s works ; which are rendered more valuable on account of the destruction of a considerable part of the Temple in the Turkish war by the falling of a Venetian bomb, within a short time after the year in which they were made ; which, however, must have been prior

♦ Folio Edit. Paris, 1620. p. 6 * B. 69, c. 16. † Spartian, p. 10. ‡ Paus. Att. p. 5. Ed. Xyl.

to the date of 1683, affixed to the plate in Barry's works (2 vol. p. 163. London, 1809.)

72. Some notes of Mr. Fauvel, a painter and antiquarian, who moulded and took casts from the greatest part of the Sculptures, and remained fifteen years at Athens, are given with the tracings of these drawings ; in which it is said, with regard to these pediments, " These figures were adorned with bronze, at least if we may judge by the head of Sabina, which is one of the two that remain ; and which, having fallen, and being much mutilated was brought to Mr. Fauvel. The traces are visible of the little cramps which probably fixed the crown to the head. The head of the emperor Hadrian still exists. Probably this group has been inserted to do honour to that emperor, for it is of a workmanship different for the rest of this Sculpture."

73. Your Committee cannot dismiss this interesting subject, without submitting to the attentive reflection of the House, how highly the cultivation of the Fine Arts has contributed to the reputation, character, and dignity of every Government by which they have been encouraged, and how intimately they are connected with the advancement of every thing valuable in science, literature, and philosophy. In contemplating the importance and splendor to which so small a republic as Athens rose, by the genius and energy of her citizens, exerted in the path of such studies, it is impossible to overlook how transient the memory and fame of extended empires, and of mighty conquerors are, in comparison of those who have rendered inconsiderable states eminent, and immortalized their own names by these pursuits. But if it be true, as we learn from history and experience, that free governments afford a soil most suitable to the production of native talent, to the maturing of the powers of the human mind, and to the growth of every species of excellence, by opening to merit the prospect of reward and distinction, no country can be better adapted than our own to afford an honourable asylum to these monuments of the school of *Phidias*, and of the administration of *Pericles* ; where secure from further injury and degradation, they may receive that admiration and homage to which they are entitled, and serve in return as models and examples to those, who by knowing how to revere and appreciate them, may learn first to imitate, and ultimately to rival them.

March 25, 1816.

A P P E N D I X.

No. I.—MINUTES OF EVIDENCE.

W I T N E S S E S:

The Earl of Elgin	-	-	-	-	-	-	17
Right Honourable Charles Long (a Member)	-	-	-	-	-	-	25
William Hamilton, Esq.	-	-	-	-	-	-	ibid.
Joseph Nollekens, Esq. R. A.	-	-	-	-	-	-	30
John Flaxman, Esq. R. A.	-	-	-	-	-	-	31
Richard Westmacott, Esq.	-	-	-	-	-	-	34
Francis Chantry, Esq.-	-	-	-	-	-	-	36
Charles Rossi, Esq. R.A.	-	-	-	-	-	-	37
Sir Thomas Lawrence, Knt. R.A.	-	-	-	-	-	-	ibid.
Richard Payne Knight, Esq.	-	-	-	-	-	-	39
William Wilkins, Esq.	-	-	-	-	-	-	43
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APPENDIX B

MINUTES OF EVIDENCE
 Taken before the Select Committee, respecting
 The Earl of ELGIN'S MARBLES.

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1. N. B.—*The Theseus and Hercules are used in the Evidence with reference to the same Statue, which was at first called Theseus; and the appellation of Ilissus or The River God, is also given indifferently to another Statue, which was sometimes called Neptune.*
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Jovis, 29 die Februarii, 1816.

HENRY BANKES, Esquire, in The Chair.

—
 The Earl of *Elgin*, called in, and Examined.

2. **Y**our Lordship will be pleased to state the circumstances under which you became possessed of this Collection, and the authority which you received for taking the Marbles from Athens?—The idea was suggested to me in the year 1799, at the period of my nomination to the Embassy at Constantinople, by Mr. Harrison, an architect, who was working for me in Scotland, and who had passed the greater part of his life in Rome ; and his observation was, that though the Public was in possession of every thing to give them a general knowledge of the remains of Athens, yet they had nothing to convey to Artists, particularly to Students, that which the actual representation by cast would more effectually give them. Upon that suggestion, I communicated very fully with my acquaintances in London. I mentioned it to Lord Grenville, Mr. Pitt and Mr. Dundas, upon the idea that it was of such national importance as that the Government might be induced to take it up, not only to obtain the object, but also to obtain it by the means of the most able artists at that time in England. The answer of Government, which was entirely negative, was, that the Government would not have been justified in undertaking any expense of an indefinite nature, particularly under the little probability that then existed of the success of the undertaking. Upon that understanding, I applied to such artists here as were recommended to me

as likely to answer the purpose, in particular to Mr. Turner, to go upon my own account. Mr. Turner's objection to my plan was, that as the object was of a general nature, and that the condition I insisted upon was, that the whole results of all the artists should be collected together and left with me; he objected, because he wished to retain a certain portion of his own labour for his own use ; he moreover asked between seven and eight hundred pounds of salary, independently of his expenses being paid, which of course was out of my reach altogether ; therefore nothing was done here preparatory to the undertaking at all. When I went to Sicily, I met Sir William Hamilton, to whom I explained my views ; he encouraged my idea, and applied to the King of Naples for permission for me to engage his painter Lusieri, who was at that time employed in picturesque views of Sicily for the Sicilian government ; who went with Mr. Hamilton to Rome, and, upon the plan arranged with Sir William Hamilton, engaged the five other artists, who accompanied him ultimately to Turkey; those five persons were, two architects, two modellers, and one figure painter. Lusieri was a general painter. They reached Constantinople about the middle of May 1800, at the time when the French were in full possession of Egypt, and of course no attempts could be made with any prospect of general success. I sent them to Athens, however, as soon as an opportunity offered ; for several months they had no access to the Acropolis, except for the purpose of drawing, and that at an expense of five guineas a day ; that lasted from August 1800 till the month of April 1801.

3. That limited access lasted about nine months?—Yes.

4. The fee of five guineas was one usually demanded from strangers?—There were so few strangers there I do not know, but in the instances which came to my knowledge, it was so. During that period my artists were employed in the buildings in the low town of Athens. In proportion with the change of affairs in our relations towards Turkey, the facilities of access were increased to me and to all English travellers ; and about the middle of the summer of 1801 all difficulties were removed ; we then had access for general purposes. The same facilities continued till my departure from Turkey in January 1803, at which period I withdrew five out of the six artists ; and having sent home every thing that was in the collection, till the year 1812 Lusieri remained, with such instructions, and such means, and such powers, as enabled him to carry on the same operation to the extent that then remained to make it, as I concluded, more perfect : but from that period of 1803 till the present day, during my imprisonment in France, and during the remaining years, he has acted without any interruption, in the enjoyment of the same facilities,

with a renewal of the same authorities ; he has incurred the same expenses and done the same as before.

5. Where is he now?—Remaining there still ; he was not there during the war, but he has obtained a renewal of the same authorities since.

6. Your Lordship has stated, that when the change took place in the political relations between this country and Turkey, a facility of access was continued to you and all your artists?—Yes.

7. And in 1801 all difficulties were removed which applied to the erecting scaffolding and making excavations ; was the same permission to erect scaffolding and make excavations given to other persons at Athens at that time?—I do not know of any such instance ; other persons made use of the same scaffolding of course. I do not know that any specific permission of this kind was applied for ; I believe the permission granted to me was the same in substance and in purport as to any other person, with the difference of the extent of means, and an unlimited use of money. There was nobody there, I believe, who was doing any thing but draw.

8. Did the permission specifically refer to removing statues, or was that left to discretion? —No ; it was executed by the means of those general permissions granted ; in point of fact, permission issuing from the Porte for any of the distant provinces, is little better than an authority to make the best bargain you can with the local authorities. The permission was to draw, model, and remove ; there was a specific permission to excavate in a particular place.

9. Was the permission in writing?—It was, and addressed by the Porte to the local authorities, to whom I deliver it ; and I have retained none of them. In a letter I addressed to Mr. Long in the year 1811, I made use of these words :— “That the ministers of the Porte were prevailed upon, after much trouble and patient solicitation, to grant to me an authority to remove what I might discover, as well as draw and model.”

10. Does your Lordship suppose this to have been the same form of permission that had been given to other people ; and that you Lordship employed it to a greater extent than other people?—It was so far different, that no other person had applied for permission to remove or model.

11. Does your Lordship know whether any permission had been granted to any other person to remove or model?—Monsieur de Choiseul had the same permission ; and some of the things he removed are now in my collection.

12. He removed them while he was minister at the Porte?—Yes.

13. Had that permission ever been granted to excavate and remove, before Monsieur Choiseul had it?—I do not know.

14. There seems to be a considerable difference between, to excavate and remove and to remove and excavate ; the question was not, whether

your Lordship was permitted to remove what you should find on excavation, but whether your Lordship was permitted to remove from the walls?—I was at liberty to remove from the walls ; the permission was to remove generally.

15. Was there any specific permission alluding to the statues particularly?—I do not know whether it specified the statues, or whether it was a general power to remove. I was obliged to send from Athens to Constantinople, for permission to remove a house.

16. That was a house belonging to the Turkish government ; did not your Lordship keep any copy of any of the written permissions that were given to your Lordship?—I kept no copies whatever ; every paper that could be of use at Athens, was left there as a matter of course, because Lusieri continued there : the few papers I brought away with me, were burnt on my detention in France ; my private papers I mean, and all my accounts, which I had brought away from Turkey.

17. In point of fact, your Lordship has not in England any copy of any of those written permissions?—None.

18. Did the Committee understand you to say, that it is possible Lusieri has such copies?—Certainly ; they will be at Athens, either in his possession or in the possession of the authorities there.

19. Has you Lordship any distinct recollection of having had such copies of the authorities, and of having left them in Lusieri's possession?—I cannot speak to the fact so precisely as the Committee may wish; the authority itself was given over to the proper officer ; and then Lusieri obtained from him any part of it that was necessary to be exhibited on any future occasion.

20. Did your Lordship, for your own satisfaction, keep any copy of the terms of those permissions?—No, I never did ; and it never occurred to me that the question would arise ; the thing was done publicly before the whole world. I employed three or four hundred people a day ; and all the local authorities were concerned in it, as well as the Turkish government.

21. When your Lordship stated, that the permission granted to your Lordship was the same that had been granted to other individuals, with the difference only of the extent of means, did you mean to convey to the Committee, that permissions to remove Marbles and carry them away had been granted to other individuals?—No ; what I meant to say was this, that as far as any application was made to the Turkish government through me, or to my knowledge, the same facilities were granted in all cases. I did not receive more as ambassador than they received as travellers ; but as I employed artists, those permissions were added to my leave. I am not aware of any particular application being made for a specific leave that was not granted where a similar leave was granted to myself.

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22. Your Lordship has stated, that no individual had applied for leave to remove?—To the best of my recollection no application had been made to remove.

23. No application, either through you or to your knowledge?—Yes ; as far as I can recollect.

24. Of course your Lordship means to except the permission that you stated before had been long antecedently given to Monsieur Comte de Choiseul?—Yes.

25. Do you know, in point of fact, whether the same permission was granted to Monsieur Comte de Choiseul as was granted to you?—He exercised the same power.

26. But you do not know whether he had the same permission?—No.

27. Then within your Lordship's knowledge there is no instance of a private individual having obtained such permission?—I have no knowledge of any individual having applied for it, and I do not know whether it has been granted or not ; I do not know that there was any difficulty in the way of removing, by anybody.

28. Was it necessary that those powers should be renewed after your Lordship came away, and that the artists already employed by you are employed ostensibly by the ministers there?—I do not know what distinction there is between Lusieri and any other artist.

29. Is he acting under the permission your Lordship obtained?—There has been war since.

30. Has it been renewed to your Lordship, or individually to themselves?—They have made the application through the channel they thought proper ; what it was I do not know ; but it was probably the same permission that Lord Aberdeen had, and many other travellers that have been there.

31. Your Lordship does not know whether it was renewed to your Lordship or to Mr. Liston, or whether they are acting under a permission granted to him, or individual permissions granted to the artists?—I do not know what the detail is ; I conclude they are acting exactly as any other traveller there is: there is no advantage from the ambassadorial title that I had then, that can apply to them now, because there has been war since.

32. Have they power to excavate, model, and remove?—They have removed a great deal from thence.

33. And you do not know in what shape those powers have been renewed since the war?—No, I do not.

34. In the letter to Mr. Long, which you have stated, you speak as having obtained these permissions after much trouble and patient solicitation ; what was the nature of the objections on the part of the Turkish government?—Their general jealousy and enmity to every Christian of every

denomination, and every interference on their part. I believe that from the period of the reign of Louis the Fourteenth the French government have been endeavouring to obtain similar advantages, and particularly the Sigean Marble.

35. They rested it upon the general objection?—Upon the general enmity to what they called Christian Dogs.

36. That was not the manner in which they stated their objection?—No ; but that is the fact ; it was always refused.

37. Without reasons?—Without reasons assigned ; every body on the spot knew what those reasons were, that they would not give any facility to any thing that was not Turkish.

38. All your Lordship's communications with the Porte were verbal?—There was nothing in writing till an order was issued.

39. The objection disappeared from the moment of the decided success of our arms in Egypt?—Yes ; the whole system of Turkish feeling met with a revolution, in the first place, from the invasion by the French, and afterwards by our conquest.

40. Your Lordship has stated in your Petition, that you directed your attention in an especial manner to the benefit of rescuing from danger the remains of Sculpture and Architecture ; what steps did you take for that purpose?—My whole plan was to measure and to draw every thing that remained and could be traced of architecture, to model the peculiar features of architecture ; I brought home a piece of each description of column for instance, and capitals and decorations of every description ; friezes and moulds, and, in some instances original specimens ; and the architects not only went over the measurements that had been before traced, but by removing the foundations were enabled to extend them and to open the way to further enquiries, which have been attended since with considerable success.

41. You state, that you have rescued the remains from danger?—From the period of Stuart's visit to Athens till the time I went to Turkey, a very great destruction had taken place. There was an old temple on the Ilissus had disappeared. There was in the neighbourhood of Elis and Olympia another temple, which had disappeared. At Corinth, I think Stuart gives thirteen columns, and there were only five when I got there ; every traveller coming, added to the general defacement of the statuary in his reach: there are now in London pieces broken off, within our day. And the Turks have been continually defacing the heads ; and in some instances they have actually acknowledged to me, that they have pounded down the statues to convert them into mortar: It was upon these suggestions, and with these feelings, that I proceeded to remove as much of the sculpture as I

conveniently could ; it was no part of my original plan to bring away any thing but my models.

42. Then your Lordship did not do any thing to rescue them, in any other way than to bring away such as you found?—No ; it was impossible for me to do more than that ; the Turkish government attached no importance to them in the world ; and in all the modern walls, these things are built up promiscuously with common stones.

43. It has been stated, that in the despatch from Turkey, at a very early period after your Lordship went out, that you Lordship had an occasion to write to His Majesty's government concerning your public appointment as a minister, and that you stated some circumstances distinctly to them at that time, which showed your understanding and their understanding, that your proceedings in Greece were entirely upon your own private account ; is that statement correct, that there is a document in existence, dated in the year 1803, which will prove that fact?—There is, precisely what is alluded to in a despatch at the period of my leaving Turkey.

44. In point of fact, did the Turkish government know that your Lordship was removing these statues under the permission your Lordship had obtained from them?—No doubt was ever expressed to me of their knowledge of it ; and as the operation has been going on these seventeen years without any such expression, so far as I have ever heard, I conclude they must have been in the intimate knowledge of every thing that was doing.

45. In point of fact, you Lordship does not know that they were ever apprised of it?—It is impossible for me to have any doubt about it.

46. Did your Lordship ever apprise any of the Government of it in conversation?—The chance is, that I have done it five hundred times, but cannot answer specifically when or how.

47. Did not the Committee understand your Lordship to say, that they must have so well understood it that in one instance your Lordship got a special order to remove a particular thing?—There was a special permission solicited for the house ; when I did excavate in consequence of getting possession of that house, there was not a single fragment found ; I excavated down to the rock, and that without finding any thing, when the Turk to whom the house belonged came to me, and laughingly told me, that they were made into the mortar with which he built his house.

48. Then the permission was to buy the house?—To pull it down.

49. Since 1803 has Lusieri continued to remove things?—I can answer that question by a fact of considerable importance. When I was in Paris a prisoner, in the year 1805, living in Paris perfectly tranquilly with my family, I received a letter from an English traveller, complaining of

Lusieri's taking down part of the frieze of the Parthenon. The next morning a common gens d'arme came and took me out of bed and sent me into close confinement, away from my family. Such was the influence exercised by the French to prevent this operation.

50. Your Lordship attributed it entirely to the French?—Yes ; the French sent me that way down to Melun.

51. In reference to what was stated in a passage of your Lordship's Petition, will your Lordship be so good as to say whether you have ever heard of the Turkish government taking any care that the works of art should not be destroyed?—Certainly not ; within my knowledge nothing of the sort was ever done ; the military governor of the Acropolis endeavoured to keep them, after people had appeared anxious to get them away.

52. So that the hesitation on the part of the Government your Lordship attributes to a dislike to the Christians?—The general apprehension of doing any act displeasing to the French operated at the time the French were in Egypt.

53. Has your Lordship any knowledge of any particular application made to the Turkish government by any individual, and granted, of an equal extent, with your Lordship's?—I have not any knowledge of what has passed since, except the details of Lusieri's own operations.

54. From an observation in part of your Lordship's evidence, the Committee concluded that your Lordship has, since 1812, received several of these Marbles?—In the year 1812 about eighty cases arrived.

55. Have there been any received subsequently?—I believe there have ; but I am not very certain, having been out of the country myself.

56. Did Monsieur Choiseul take down any of the metopes and the frieze?— One piece of the metope and some of the frieze ; the metope I bought at a public sale at the custom-house. It was at the time I returned from France ; my things were dispersed all over the country ; and my agent told me of some packages in the custom-house, without direction ; and I gave four or five-and-twenty pounds for them at a lumber sale.

57. Thinking those packages to be your Lordship's?—Yes.

58. When your Lordship heard of those cases being to be sold at a rummage sale, did your Lordship make any application to the Government, stating that they had any interest in it; and that therefore you ought not to be obliged to purchase?—No ; certainly not.

59. It was a matter of private purchase?—Yes ; these things had been left at Athens during the whole of the French Revolution. Buonaparte allowed a corvette to call and bring these things for Monsieur Choiseul, who was an intimate acquaintance of Monsieur Talleyrand's: from the delay which occurred they did not get away in time to escape our cruizers. Monsieur Choiseul applied to me to make interest with Lord Nelson, and

I wrote to him, and he directed them to be sent home ; and applied to Lord Sidmouth and Sir Joseph Banks, wishing Government to make such a purchase as to secure the captors, but at the same time to restore the articles to Monsieur Choiseul. When I left Paris Monsieur Choiseul remained in the belief that they were still at Malta, consequently I had no clue to guess there were his at the time of the purchase in the year 1806 ; but I immediately wrote to him, to state what these things were, as I had no doubt they were his by the metope ; and in the year 1810 he wrote to me, stating that his were still at Malta: when I went over to Paris last year I took a memorandum with me for him, and satisfied him they were his ; but he has never yet sent about them, and I do not know what he means to do at all ; but there they are, marked among my things as belonging to him.

60. Does your Lordship know, that subsequent to your coming away, and during the time we were at war, any similar permission was applied for, and obtained by the French?—I do not know any thing about that ; but in point of fact, my cases were at the harbour during the whole of the war ; and if the French government had had any thing that they could have put afloat they would have taken them.

61. Did that seizure apply to the property of all English characters; or, did it apply to your Lordship's as a public character, and therefore the property of the country?—Besides the boxes at the harbour, Lusieri's magazines were filled in the town of Athens ; and immediately after his flight they broke those open, and sent them to Yanana, and from thence to Buonaparté.

62. Was not Lusieri considered as an agent of your Lordship's in your public character?—No ; certainly not.

63. Your Lordship had applied for him to do what he was doing ; and was he not in that way considered as your Lordship's agent, and therefore subject to the same liability as your Lordship was, to have whatever was in his possession seized? —He was considered as an English subject, as far as his connection with me went ; but his property was stolen in fact: he property and mine was promiscuously taken, they did not do it officially.

64. Was any objection made by the chief magistrate of Athens, against taking away these Marbles, as exceeding the authority received from Constantinople?—There was no such objection ever made.

65. Was ever any representation made of any kind?—None that I ever heard of.

66. Does your Lordship believe, to the best of your judgment, that you obtained, in your character of ambassador, any authority for removing these Marbles, which your Lordship would not have obtained in your

private capacity, through the intervention of the British ambassador?—I certainly consider that I obtained no authority as given to me in my official capacity (I am speaking from my own impression ;) the Turkish government did not know how to express their obligation to us for the conquest of Egypt, and for the liberality that followed from Government, and of course I obtained what I wanted ; whether I could have obtained it otherwise or not, I cannot say, Lusieri has obtained the same permission seventeen years, in the course of which time we have been at war with Turkey. Monsieur De Choiseul had permission, under very different circumstances ; but, in point of fact, I did stand indebted to the general good-will we had ensured by our conduct towards the Porte, most distinctly I was indebted to that ; whether Monsieur Choiseul's example could be quoted or not, is matter of question.

67. In your Lordship's opinion, if Lord Aberdeen had been at Constantinople at the time your Lordship was ambassador there, could you have obtained the same permission for Lord Aberdeen as an individual, that you did as ambassador obtain for yourself?—I can only speak from conjecture. The Turkish government, in return for our services in Egypt, did offer to the British government every public concession that could be wished. They were in a disposition that I conceive they would have granted any thing that could have been asked : I entered upon the undertaking in the expectation that the result of our expedition for the relief of Egypt would furnish opportunities of this sort.

68. Then the result of the impression on your Lordship's mind would be, that other advantages granted by the Turkish government were on the same principle as the permission to your Lordship to remove these Marbles, and rather out of public gratitude for the interference of England?—I believe it was entirely that and nothing else ; I was not authorized to make any application in the name of Government for this; but I wish it to be distinctly understood, that I looked forward to this, as that which was to enable me to execute the plan ; and to that I am indebted for it. Whether under other circumstances I could have obtained the facilities Monsieur Choiseul had had before I cannot answer.

69. When your Lordship received this, which you considered as a proof of the public gratitude of the Turkish government to England, did your Lordship mention the circumstance in any of your despatches to Government?—I should suppose not in any other dispatch than that which has been alluded to.

70. That was upon leaving turkey, was not it?—Yes.

71. If your Lordship considers it as a mark of the public gratitude of the Porte to Great Britain, does not your Lordship consider that mark of gratitude essentially connected with your character of representative of the

Court of Great Britain at the Porte?—I did not ask it in that character, nor did I ask it as a proof of the disposition of the Porte ; but I availed myself of that disposition to make the application myself.

72. Does your Lordship suppose, that if that application had been made at that particular period by any other person than the ambassador of Great Britain, it would have been granted?—In my own mind I think it would, if he had had means of availing himself of it ; that is to say, if he had determined to risk his whole private fortune in a pursuit of such a nature.

73. When your Lordship mentioned that general disposition of the Turkish government, do you mean that it was as well to individuals in their private capacity, as to any demand made by the Government?—To every body,

74. In short it was a disposition of goodwill towards Englishmen?—Of cordiality towards Englishmen, to an extent never known before.

75. In making the application to the Turkish government for permission to remove these Marbles, did your Lordship state to them the objects you had in view in so removing them, whether for the purpose of collecting an assemblage of these things as matter of curiosity for yourself, or for the purpose of bringing them to this country for the improvement of the arts?—In explanation it must have been so stated ; whether there was any formal application bearing upon your question, I cannot undertake to say.

76. Was it or not stated to the Turkish government, that it was for the purpose of forming a private museum, or for public uses?—I am afraid they would not have understood me, if I had attempted a distinction.

77. In what way did your Lordship distinguish, in your applications to the Turkish government, between your private and public capacity?—I never named myself in my public capacity, not having any authority to do so ; this was a personal favour, and it was granted quite extra officially to me.

78. And asked as such?—Asked as such, and granted as such.

79. The Fermauns granted to your Lordship, were not, as the Committee collect from your statement to-day, permissions to take particular pieces, one from the city and one from the citadel, and so on?—No ; I had never been at Athens, and could not specify any thing.

80. In point of fact the Fermaun was not so?—It was not ; there could not have been an application for specific things.

81. Suppose the transaction had passed in this way, that your Lordship was anxious to have some of these Marbles, the Government were willing to grant you a limited permission to take one or two pieces?—Certainly it was not so ; it must have been quite general.

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82. Your Lordship has no certain recollection how it was?—No ; only that I did not know any thing of the state of Athens, and consequently my application must have been general.

MINUTES OF EVIDENCE BEFORE SELECT COMMITTEE

Veneris, 1 die Martii, 1816

HENRY BANKES, Esquire, in The Chair.

The Earl of *Elgin*, again called in, and Examined.

83. WILL your Lordship be pleased to state the view under which the Collection was made?

[The Earl of Elgin, in answer, delivered in the following papers, which were read.]

84. “A letter dated London, 14th February 1816, signed Elgin, addressed to the Right honourable Nicholas Vansittart.”

85. “A memorandum as to his Lordship’s exclusive right of property in the Collection, dated February 1816.”

86. “A memorandum as to the delay in transferring the Earl of Elgin’s Collection to the Public.”

87. Has your Lordship any account from which you can state to the Committee the actual sums which your Lordship has paid in obtaining these Marbles, and in transporting them to this country?

[His Lordship handed in a copy of a letter addressed to Mr. Long on the 6th of May 1811, with a postscript dated 29th February 1816, addressed to the Chairman of this Committee; which was read.]

88. Has your Lordship any paper which exhibits the total?—No other than as it is stated in the that letter, which I do not offer as a precise account, but it is merely to inform the Committee what was the nature of the expense.

89. Was any specific offer as to price, for obtaining those Marbles for the Public, made to your Lordship by Mr. Perceval, and in what year?—

Yes ; believe it was a few days after the date of the above letter to Mr. Long, in the name of Mr. Perceval, he did intimate to me, as I understood, that Mr. Perceval would be disposed to recommend the sum of £. 30,000 to be given for the Collection as it then stood.

90. What passed in consequence of that offer?—I believe it is mentioned in the memorandum which I have given in, accounting for the delay—paper marked No. 3—and which exactly states the grounds on which I declined the offer ; it follows immediately after the extract from the *Dilettanti* publication, in these words:—“So that when Mr. Perceval, in 1811, proposed to purchase this collection, not by proceeding to settle the price, upon a private examination into its merits and value, but by offering at once a specific sum for it ; I declined the proposal as one which, under the above impressions, would be in the highest degree unsatisfactory to the Public, as well as wholly inadequate either in compensation of the outlay occasioned in procuring the collection, or in reference to (what has since been established beyond all doubt) the excellence of the sculpture, and its authenticity as the work of the ablest artists of the age of Pericles.

91. Mr. Vansittart never made any specific offer on the part of the Public?—No, never, except in what passed last year, which was afterwards dropped.

92. What further has passed relating to the transfer of those Marbles to the Public, since 1811?—In the spring of 1815, Burlington House having been sold, Lord George Cavendish intimated a desire that I should remove the Marbles from thence in consequence. I applied to the Trustees of the British Museum to take them in deposit, considering that the circumstances of the times might not make it convenient for the Public to enter upon the transfer. In reply, the British Museum rejected my proposal as not being consistent with their usual mode of proceedings, and they appointed three of their Members to enter into negotiation with me for the transfer ; which nomination, after some discussion, led to the Petition which I presented to Parliament in the month of June following.

93. Is there any price, in your Lordship’s estimation of these Marbles, lower than which you would not wish to part with them?—No ; there is no standard fixed in my mind at all.

94. Are there any persons by whom this Collection has been valued?—Not any one, to my knowledge.

95. Are the gentlemen mentioned in the list you have delivered in, designed on your Lordship’s part to be examined as to the value of the Collection?—I gave in that list as thinking them proper persons, without consulting them on the occasion ; they are the individuals best acquainted with the subject ; and I fancy would be satisfactory to the Public that they should be examined.

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96. Are there any and what additional articles now offered, that were not included in the offer to Mr. Perceval, in 1811?—To the best of my knowledge about eighty additional cases of Architecture and Sculpture have been added, and also a collection of Medals.

APPENDIX C

Mercurii, 13^o die Martii, 1816
HENRY BANKES, Esquire, in The Chair

Rev. Dr. *Philip Hunt*, LL.D. called in, and Examined.

1. IN what year were you at Constantinople, and in what character?— I went out with Lord Elgin, as his chaplain, and occasionally acting as his secretary.
2. Did you ever see any of the written permissions which were granted to him for removing the Marbles from the Temple of Minerva?—Yes ; I found on my first visit to Athens that the fermauns which had been granted to Lord Elgin's artists were not sufficiently extensive to attain the objects they had in view, that their operations were frequently interrupted by the Disdar or military governor of the Citadel, and by his Janizaries, and other considerable obstacles thrown in their way, by sometimes refusing them admission and destroying their scaffolding : on my return therefore to Constantinople, in 1801, I advised Lord Elgin to apply to the Porte for a fermaun embracing the particular objects I pointed out to him ; and as I had been before deceived with respect to the pretended contents of a fermaun, I begged that this might be accompanied by a literal translation ; the fermaun was sent with a translation, and that translation I now possess. It is left at Bedford, and I have no means of directing any person to obtain it ; I would have brought it if I had been aware I should have been summoned by this Committee before I left Bedford.
3. What was the substance of that fermaun?—It began by stating, that it was well known to the Sublime Porte that foreigners of rank, particularly English noblemen and gentlemen, were very anxious to visit and examine the works of ancient art in Greece, particularly the Temples of the Idols ; that the Porte had always gladly gratified that wish ; and that in order to show their particular respect to the Ambassador of Great Britain, the august ally of the Porte, with whom they were now and had long been in the strictest alliance, they gave to his Excellency, and to his Secretary, and the artists employed by him, the most extensive permission to view, draw, and model the ancient temples of the Idols and the sculptures upon them, and to make excavations, and to take away any stones that might appear interesting to them.
4. Was this fermaun granted after the conquest of Egypt by the British arms?—It was after their first successes.

5. Was the obstruction, which you mentioned in your former answer, before the success of the British arms?—It continued to be shown till I arrived with the second fermaun.

6. Was the tenor of the second fermaun so full and explicit as to convey upon the face of it a right to displace and take away whatever the artists might take a fancy to?—Not whatever the artists might take a fancy to ; but when the original was read to the Vaivode of Athens, he seemed disposed to gratify any wish of mine with respect to the pursuit of Lord Elgin's artists ; in consequence of which I asked him permission to detach from the Parthenon the most perfect, and, as it appeared to me, the most beautiful Metope : I obtained that permission, and acted upon it immediately : I had one carefully packed and put on board a Ragusan ship, which was under my orders, from which it was transferred to a frigate, and sent to England. The facility with which this had been obtained, induced Lord Elgin to apply for permission to lower other groupes of sculpture from the Parthenon, which he did to a considerable extent, not only on the Parthenon, but on other edifices in the Acropolis.

7. Was this under the authority of the same fermaun?—It was.

8. Was there any difficulty in persuading the Vaivode to give this interpretation to the fermaun?—Not a great deal of difficulty.

9. Was there any sum of money given to the Vaivode, anterior to his interpretation of the fermaun?—Presents were given to him at the time of presenting the fermaun ; but I am not aware of any money being given.

10. Do you recollect what was the essential difference of the two fermauns?—I never saw any translation of the first, but found it had been inefficient.

11. Have you any idea of the difficulty and expense of obtaining the fermauns from the Porte?—I am not aware of difficulty or expense being incurred at Constantinople in obtaining that fermaun.

12. Did you ever hear of any negotiations with the servants of the Sultana Validè?—I recollect none ; but that negotiation might have taken place without my knowledge, and if it did, it must have been through the agency of the dragoman of the British embassy.

13. Have you any information to give the Committee with regard to the expense incurred in the way of bribes, either in obtaining the fermaun at Constantinople, or on acting upon it at Athens?—Nothing sufficiently precise, to enable me even to conjecture the amount.

14. Did Lord Elgin's local expenses at Athens pass through your hands?—No ; I merely gave the presents to the local authorities on my audience.

15. Can you give any information to the Committee respecting the subsequent expenses incurred by Lord Elgin in the operation of removing the Marbles, and bringing them to England?—No, I cannot.

16. Was there any interference used by any persons to prevent the removal of these Marbles?—Not that I recollect ; as the permission to lower the Metope was given me by the Vaivode, who has the highest authority at Athens.

17. Was any opposition shown by any class of the natives?—None.

18. Did you continue at Athens after the removal of the first Metope?—I remained there a few weeks, and revisited Athens subsequently.

19. Did Lord Elgin experience any difficulty in removing his Marbles from Turkey?—Interruptions were given by some of the Janizaries residing in the Acropolis, from fear of their houses being injured by the operations of his Lordship's artists ; but those houses were bought by his Lordship and pulled down, and excavations made where they had stood ; no subsequent opposition was given on the part of the Turkish Government, and I found the common inhabitants of Athens always very ready to act as labourers in removing the sculptures.

20. Do you conceive that a fermaun of such extensive powers would have been granted by the Turkish Government at any other period, to any British subject?—Certainly not ; and if it had not been at so favourable a moment, I should not have thought of proposing many of the requests it contained.

21. Do you think that any British subject, not in the situation of ambassador, would have been able to obtain from the Turkish Government a fermaun of such extensive powers?—Certainly not.

22. In your opinion, was this permission given to Lord Elgin entirely in consequence of the situation he held as British ambassador?—I am inclined to think such a permission would not have been asked for by any person not an ambassador of a highly favoured ally, nor granted to any other individual.

23. Does it appear to you, that the permission under which Lord Elgin acted, was granted as a private favour to himself, or as a tribute of respect and gratitude to the British nation?—I cannot presume to explain the motives of the Porte, but I think it was influenced by great personal respect to the ambassador, as well as gratitude for the successful efforts of our army in Egypt ; but I always thought the objects so to be obtained, were to be the property of Lord Elgin.

24. Did you see any particular fermaun granting authority to purchase and pull down a house?—No ; I am confident no such permission was in the fermaun I took to Athens, though it contained general permission to excavate near the temples.

25. In what year did you return to Athens?—I was there at different times, and sailed from thence, with the ambassador, at the termination of the embassy, having procured for him, at different visits, most of the inscriptions and many detached pieces of sculpture.

26. When you finally left Athens, were all the Marbles now in Lord Elgin's collection, removed or lowered from their original places?—I believe most of them were.

27. Were all the large figures lowered?—There had been, during my absence from Athens.

28. Was one of the Caryatides removed at that time?—I think it was.

29. Do you know whether the removal of that piece of sculpture created any discontent or sensation among the people of Athens?—I had no personal knowledge that it did ; no such discontent was ever expressed to me.

30. Do you imagine that the fermaun gave a direct permission to remove figures and pieces of sculpture from the walls of temples, or that that must have been a matter of private arrangement with the local authorities of Athens?—That was the interpretation which the Vaivode of Athens was induced to allow it to bear.

31. In consequence of what was the Vaivode induced to give it this interpretation?—With respect to the first metope, it was to gratify what he conceived to be the favourable wishes of the Turkish Government towards Lord Elgin, and which induced him rather to extend than contract the precise permissions of the fermaun.

32. Can you form any idea of the value of the presents which you gave to the Vaivode?—I cannot now ; they consisted of brilliant cut glass lustres, fire-arms, and other articles of English manufacture.

33. Can you form any estimate of the expense incurred by Lord Elgin in forming this Collection of Marbles and bringing them to England?—I have no data on which to form any accurate idea of the expense of procuring them and putting them on board ship ; but it must have been very considerable, both in procuring them, and the great local difficulties he met with in taking them to the Piræus.

34. Do you know the weekly or monthly expenses incurred on Lord Elgin's account during your stay at Athens?—I do not ; but it must have been very considerable, owing to the expense of the salaries and maintenance of his numerous artists, and the continued presents that were given to the Turkish officers at Athens, and the numerous labourers employed in transporting the heavy masses of Marble.

35. Do you know the weekly sums paid in salaries to the artists or the labourers employed by Lord Elgin?—I do not ; I believe all pecuniary

disbursements on his Lordship's account at Athens were made by Signior Lusieri, his principal artist.

36. Can you conjecture whether, upon the whole, Lord Elgin's expenses are likely to have exceeded the sum of 30,000 *l.* ?—I have no means of forming any opinion upon that subject : His Lordship was indefatigable in his researches, not only at Athens and its neighbourhood, but throughout the Morea and Proper Greece, and the shores of Asia Minor, in endeavouring to procure whatever might tend to the improvement of the arts, particularly in sculpture, architecture, and medals, as well as ancient inscriptions, tending to elucidate the progress of the Greek language from the Βχςροφηδον mode of writing, through all its changes to the latest periods of Greece ; he also procured specimens of the different order of architecture, such as capitals and bases, &c. from the earliest to the latest styles.

APPENDIX D

No. 10.

1. T R A N S L A T I O N from the Italian of a *Fermaun*, or Official Letter from The Caimacan Pasha, (who filled the office of Grand Vizier at The Porte, during that Minister's absence in Egypt) addressed to The *Cadi* or Chief Judge, and to The *Vaivode* or Governor of Athens, in 1801.*
2. AFTER the usual introductory compliments, and the salutation of Peace,—“ It is hereby signified to you, that our sincere Friend his Excellency Lord Elgin, Ambassador Extraordinary from the Court of England to the Porte of Happiness, hath represented to us, that it is well known that the greater part of the Frank (i. e. Christian) Courts are anxious to read and investigate the books, pictures or figures, and other works of science of the ancient Greek philosophers: and that in particular, the ministers or officers of state, philosophers, primates and other individuals of England, have a remarkable taste for the drawings, or figures or sculptures, remaining ever since the time of the said Greeks, and which are to be seen on the shores of the Archipelago and in other parts ; and have in consequence from time to time sent men to explore and examine the ancient edifices, and drawings or figures. And that some accomplished *Dilletanti* of the Court of England, being desirous to see the ancient buildings and the curious figures in the City of Athens, and the old walls remaining since the time of the Grecians, which now subsist in the interior part of the said *place* ; his Excellency the said Ambassador hath therefore engaged five English painters, now dwelling at Athens, to examine and view, and also to copy the figures remaining there, *ab antiquo*: And he

* The English document set forth below appeared in the Appendix to the Select Committee's 1816 Report. The Select Committee represented that the English document was an accurate translation of an Italian document provided to the Committee by the Reverend Hunt, and that the Italian document was a translation of the lost Ottoman document that set forth the permissions that the Ottomans gave Lord Elgin for his Acropolis activities. But the Select Committee's representation was unwarranted. Chapter 9 discusses the important differences between the Italian document and the English document the Select Committee published in the Appendix. In summary the discrepancies are the following. First, in the third paragraph below, the Report indicates that Mr. Phillip Hunt was the courier. But the Italian document uses the initials, N.N. The letters N.N. were likely an abbreviation for the Latin *non nullus*, loosely translated to mean 'someone,' and it was a conventional way of indicating in a draft document that the name of a specific person would be inserted at a later time when a final version of the document was rendered. Second, although the English document indicates that the Italian document was signed by an Ottoman official, and that it had a signet attached to it, the Italian document is not signed by an Ottoman official and it has no signet affixed to it. Lastly, if the Italian document was the translation of a finally executed Ottoman document it would have a date indicating when it was signed and executed. But the Italian document is not dated.

hath also at this time expressly besought us that an Official Letter may be written from hence, ordering that as long as the said painters shall be employed in going in and out of the said citadel of Athens, which is the place of their occupations ; and in fixing scaffolding round the ancient Temple of Idols there ; and in moulding the ornamental sculpture and visible figures thereon, in plaster or gypsum ; and in measuring the remains of other old ruined buildings there ; and in excavating when they find it necessary the foundations, in order to discover inscriptions which may have been covered in the rubbish ; that no interruption may be given them, nor any obstacle thrown in their way by the Disdar (or commandant of the citadel) or any other person: that no one may meddle with the scaffolding or implements they may require in their works ; and *that when they wish to take away any pieces of stone with old inscriptions or figures thereon, that no opposition be made thereto.*

3. We therefore have written this Letter to you, and expedited it by Mr. Philip Hunt, an English gentleman, Secretary of the aforesaid Ambassador, in order that as soon as you shall have understood its meaning, namely, that it is the explicit desire and engagement of this Sublime Court endowed with all eminent qualities, to favour such requests as the above-mentioned, in conformity with what is due to the friendship, sincerity, alliance and good will subsisting *ab antiquo* between the Sublime and ever durable Ottoman Court and that of England, and which is on the side of both those Courts manifestly increasing ; particularly as there is no harm in the said figures and edifices being thus viewed, contemplated, and designed. Therefore, after having fulfilled the duties of hospitality, and given a proper reception to the aforesaid Artists, in compliance with the urgent request of the said Ambassador to that effect, and because it is incumbent on us to provide that they meet no opposition in walking, viewing, or contemplating the figures and edifices they may wish to design or copy ; or in any of their works of fixing scaffolding, or using their various implements ; It is our desire that on the arrival of this Letter you use your diligence to act conformably to the instances of the said Ambassador, as long as the said five Artists dwelling at Athens shall be employed in going in and out of the said citadel of Athens, which is the place of their occupations ; or infixing [sic] scaffolding around the ancient Temple of the Idols, or in modelling with chalk or gypsum the said ornaments and visible figures thereon ; or in measuring the fragments and vestiges of other ruined edifices ; or in excavating, when they find it necessary, the foundations, in search of inscriptions among the rubbish ; that they be not molested by the said Disdar (or commandant of the citadel) nor by any other persons, nor even by you (to whom this letter is addressed ;) and that no one meddle with their scaffolding or implements,

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nor hinder them from taking away any pieces of stone with inscriptions or figures. In the above-mentioned manner, see that ye demean and comport yourselves.

(Signed with a signet.)

SEGED ABDULLAH KAIMACAN.

4. *N. B.*—The words in Italian rendered in two places “any pieces of stone,” are “qualche pezzi di pietra.”