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DID ELGIN CHEAT AT MARBLES?

When I answered my hotel telephone, the desk clerk said that my translators were waiting for me. I went downstairs quickly. After we had introduced ourselves, I expanded on what I had previously written them--that I wanted to find whatever I could about Lord Elgin's taking of the Parthenon marbles during the first decade of the nineteenth century. Within minutes we set off for the archives of the Ottoman Empire, walking through Istanbul's narrow, winding streets, across the historic Hippodrome and past the breathtaking Blue Mosque, the monumental Hagia Sophia, tantalizing restaurants and innumerable eye-catching rug stores. Within thirty minutes we arrived at the archival center, a low-lying, drab, post-World War II rectangular building.

I had made careful arrangements through an American lawyer with the director of the archives so that I, as a foreigner, would be given immediate access to the archives and not have to wait the customary two days while my application was processed. But as luck would have it, the director was unexpectedly in Ankara for a few days of meetings and his assistants knew nothing of my coming. Yet after an hour of conversation, telephone calls and a review of letters, I and my Turkish Ottoman translators were permitted access to the main reading room. We settled into some free desks, located the indexes to the archives and commenced working. This effort continued on and off till the end of June 1998. Subsequently I visited the Public Record Office in London, and I consulted with archivists at Parliament as I searched for additional documents bearing on Lord Elgin's taking of the world's greatest collection of classical Greek sculptures and the celebrated dispute between Greece and Britain over whether the British Museum should return the marbles to Athens. Acrimonious as the debate has been, when one scrutinizes its historical premises for what gave rise to them, what is to be found is, to say the least, surprising.

The fabulous marbles, sculpted during the age of Pericles under the guiding hand of Phidias out of fine white Pentelic marble quarried ten miles from Athens and hauled by oxcart to the Acropolis, remained on the high walls of the Parthenon until the first decade of the nineteenth century. At that time, a period of severe international disorder because of the Napoleonic Wars, the marbles were removed and shipped to London at the behest of Thomas Bruce, seventh Earl of Elgin and eleventh of Kincardine and the Ambassador Extraordinary and Minister Plenipotentiary of His Britannic Majesty to the Sublime Porte of Selim III, Sultan of Turkey in Constantinople.

Since then, Elgin's controversial taking has frequently been both criticized and defended

by poets, artists, cultural leaders, politicians, diplomats, lawyers and academics. Only recently, these marbles have again captured international attention. A year ago, the European Parliament urged Britain to return the collection, and at the end of 1999, President Clinton offered to mediate Greece's demand that Britain return the marbles. A conference last year at the British Museum, which focused on the improper and subsequently concealed cleaning--really scraping--of the marbles in the 1930s, became a forum for swapping charges and countercharges among those supporting retention or return, with the Greek representatives eventually walking off in anger.

The battleground over the marbles sweeps broadly across legal, moral, ethical and historical considerations. Those defending the taking and the retention of the marbles make several tenuous claims: Lord Elgin had impeccable legal title to the marbles because the Ottomans, who ruled Greece at the time, gave him permission to take them; Britain deserves the marbles because Elgin's taking of them preserved them from looters, collectors and air pollution; the marbles are now part of its patrimony; they are more accessible in London than they would be if they were in Athens; Greece is not prepared to take adequate care of the marbles; and returning them would set a bad precedent, resulting in the emptying of exhibition halls of the world's great museums.

The claims of those favoring return have been comparably strenuous: The Ottomans lacked moral authority to alienate public monuments; the removal of the marbles caused irreparable damage to the structure of the Parthenon; the return of the marbles to Athens will facilitate scholarly study; Greece is prepared to protect and preserve the marbles; and the great museums of the industrialized West cannot turn a deaf ear to all claims for the important remains of a heritage merely because such claims threaten established collections.

As complicated and wide-ranging as this debate may be, both sides have taken as a starting point the assumption that the Ottomans gave Elgin permission to remove the marbles. After so many years of debate and animosity, it may be hard to imagine that there is anything new under the sun to say about this highly significant issue. But there is, and what is new is no small matter. Indeed, as things turn out (and as somewhat surmised by Christopher Hitchens in his book The Elgin Marbles) the assumption shared by advocates on both sides of the debate--that the Ottomans gave Lord Elgin permission to remove the marbles--is no more than a grand illusion.

The story preferred by the defenders of how Lord Elgin obtained the Parthenon marbles goes something like this: Lord Elgin was dedicated to improving aesthetic tastes in England and to saving the Parthenon marbles from destruction wrought by travelers who wanted them as trophies for their manors and Ottoman troops who used them for target practice and mortar. Taking advantage of Ottoman solicitude toward Britain in the wake of the 1801 British defeat of the French forces in Egypt, then part of the Ottoman Empire, Lord Elgin asked the highest officials in Constantinople for permission to remove the marble statuary from the Parthenon. Because the Ottomans were eager to have Britain return control of Egypt to them, the Ottomans, who had for decades denied the French, their ally, these exquisite sculptures, quickly consented to the British

ambassador's request. If Elgin exceeded the authority given him by taking marbles from the Parthenon walls--the metopes, the friezes and the free-standing statuary--as opposed to marble statuary on the ground or unearthed through excavation, Ottoman authorities subsequently approved of and condoned Elgin's stripping of the marbles. Although it has been unchallenged for the better part of two centuries, there is little truth to this story.

It is true that Lord Elgin told a parliamentary committee that he took the marbles from the Parthenon to rescue them and to improve aesthetic tastes in England. But Elgin made these statements in 1816, whereas he began taking the marbles in 1801. In that year, Elgin's reasons for collecting classical Greek marbles were far more personal. In July of 1801, Elgin wrote to Giovanni Battista Lusieri, an Italian painter he employed to coordinate his marble collection in Athens: "I should wish to collect as much marble as possible. I have other places in my house which need it, and besides, one can easily multiply ornaments of beautiful marble without overdoing it." In other words, at the dawn of that century Elgin was passionate about decorating his Scottish manor, not improving the aesthetics of England or saving the marbles from destruction.

Scottish Manor

The British claim that the Ottomans gave Lord Elgin prior permission to denude the Parthenon relies on an English document printed in the appendix of an 1816 report of a parliamentary committee convened to evaluate Elgin's request that the British government purchase the Parthenon marbles from him. (Parliament went on to vote, 82 to 30, to buy them and give them over to the British Museum.) The Parliament report presents this document as an accurate English translation of a July 1801 Ottoman document that, according to Elgin, authorized the removal of the marbles. Elgin told the committee that the original Ottoman document was given to Ottoman officials in Athens in 1801. Yet no researcher has ever located this Ottoman document, and when I was in Istanbul I searched in vain for it or any copy of it, as well as for any reference to it in other sorts of documents or a description of its substantive terms in any related official papers. Although a document of some sort may have existed, it seems to have vanished into thin air, despite the fact that the Ottoman archives contain an enormous number of other documents from the period.

Putting aside for the moment the all-important question of just what activities this English document might have authorized Lord Elgin to carry out, there are serious questions about the authenticity and reliability of this historically prominent piece of paper. The parliamentary record reveals that it was not Elgin himself but a young clergyman who worked for him, the Rev. Philip Hunt, who claimed that he had a copy of the 1801 Ottoman document. Hunt, who appeared as the committee's very last witness, told the committee that he had an Italian translation of the Ottoman original in Bedford, about sixty miles north of London. He explained that he did not have the document with him because, when he left Bedford, he did not know he was going to be a witness. The record also indicates that the English document printed in the report was forwarded to the parliamentary committee by Hunt, and that the committee never saw the Italian translation that Hunt claimed to possess. Thus, Parliament never assured itself that the English document sent by Hunt was a faithful translation of the Italian

document. A contemporary British historian, William St. Clair, who recently published a third edition of his biography of Lord Elgin, claims to possess Hunt's Italian document and vouches for the accuracy of the English translation.

Nonetheless, the failure of Parliament, which was running a worldwide empire at the time, to secure Hunt's Italian document, to obtain a verified copy of the Ottoman document in Athens or to secure a statement from Ottoman authorities in Istanbul that Lord Elgin had been officially allowed to remove the marbles certainly suggests that it was not all that eager to get to the bottom of this crucial question. In short, by failing to investigate with due diligence, Parliament protected itself from gaining more confidence about what actually happened and from obtaining documents that might support (or disprove) its findings of fact.

In addition to its startling failure to secure the best evidence it could pertaining to the strength of Lord Elgin's legal claim to the marbles, Parliament actually misled the public about the evidence it had concerning the authenticity of the document. The English document printed on page 69 of the committee's report has at its end the following words: "(Signed with a signet.) SEGED ABDULLAH KAIMACAN."

The plain suggestion inherent in the placement of this line at the end of the text in the report is clear: that the document examined by the committee had a signet and was signed by the Acting Grand Vizier at the time, thus giving it legal force and legitimacy. But the document examined by the committee--one purportedly translated from an Italian document that was supposedly translated from an Ottoman original--did not have a signet or signature on it at all. Moreover, St. Clair has told me that the Italian document he possesses has no signet either, nor is it even signed.

As much as these considerations undermine the legitimacy of this highly touted document, it has another flaw, this one deadly. The English-language document Hunt submitted to Parliament was not a completely faithful English translation of the Italian document Hunt said he possessed. The first sentence of the second paragraph of the text provided to Parliament by Hunt and printed in the committee's report 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, in order ..." But St. Clair has written that the Italian document he has actually indicates: "We therefore have written this letter to you and expedited it by N.N., in order ..."

St. Clair does not perceive any significance in this discrepancy. Perhaps he is correct. But that seems unlikely. The difference is so peculiar that it was certainly not accidental. No one would mistakenly substitute "Mr. Philip Hunt, an English Gentleman, Secretary of the aforesaid Ambassador," for the letters "N.N." Moreover, the context in which Hunt created the discrepancy suggests his reasons for doing so: By the time Hunt appeared before the committee, it had questioned Elgin at some length about whether he had authority to remove the marbles from the walls of the Parthenon. While Elgin consistently insisted he did have such authority, he also admitted that he had no papers to support his claim. Thus, when Hunt testified, he knew that the

committee was seriously concerned about the lack of documentation authorizing Elgin to take the marbles, and it seems likely that Hunt became a witness solely to provide the documentation the committee sought. When Hunt forwarded the English document to the committee, it would appear that he substituted "Mr. Philip Hunt, an English Gentleman, Secretary of the aforesaid Ambassador" for "N.N." in the hope that the alternative language would shore up the authenticity of his "evidence" and the circumstances as to how it was that he alone came to possess the critical document. In short, through the insertion of his name, Hunt put himself in a position in which he could simultaneously vouch for the authenticity of the document and explain why he alone had a copy of it fifteen years after he surrendered the original to Ottoman officials in Athens.

Although these considerations are sufficient challenge to the English document as a reliable basis for any legal claim by Britain, there is another factor that casts an even darker shadow over the proceedings. During his testimony before the committee on February 29, Elgin was questioned about whether the Ottomans gave him permission to remove the marbles. Elgin stated that the Ottomans gave him written permissions more than once, but that he had "retained none of them." At two other, separate moments during the examination, Elgin denied having a copy of any document granting him permission. Hunt appeared before the committee on March 13. The committee's second question to Hunt was, "Did you ever see any of the written permissions which were granted to [Lord Elgin] for removing the Marbles from the Temple of Minerva?" Hunt answered, "Yes." He then stated that the original document had been sent to Athens but that he had an Italian translation of the original. During his testimony, Hunt did not explain how it was that he remained the Italian document for fifteen years. Nor did Hunt state how it was that Elgin had known nothing about it when he had testified nearly two weeks beforehand.

It is of course possible that Hunt possessed an accurate Italian translation of an original Ottoman document. But look at the chronology: Elgin appears, denying ever having a copy--in any language--of a relevant document. It is plain from his testimony that he knows of none possessed by others; by the time he completes his testimony, however, he sees that the committee is eager to view some sort of written authorization for the removal of the marbles from the Parthenon walls. In a fortnight, Hunt appears and claims to have an accurate translation of the original order. Is this chain of events enough to make anyone a tad suspicious? There is no suggestion in the testimony as to how it came to pass that Hunt became a witness before the committee.

Let's assume the authenticity of the English, document printed in the committee s report, for a moment, just to take another approach to the issue. Did this document authorize Elgin to remove marble statuary from the Parthenon walls? The British claim that it did rests on a handful of words. They provide that no one should "hinder them [Elgin's agents] from taking away any pieces of stone with inscriptions or figures." But by themselves theses few words fail to authorize removal of marble statuary from the Parthenon edifice. Moreover, when they are read in the context of the entire document, the assertion that they permitted Lord Elgin to remove metopes, friezes and statues from

the Parthenon walls is specious. The document describes the activities that Lord Elgin wanted his workers to conduct, and those were limited to measuring, drawing, painting, excavating and making molds. There is not one word.in the document suggesting, intimating or implying that Elgin sought permission to remove marbles from the walls. In addition, the document itself emphasizes to the local Ottoman officials in Athens that they should honor the permission given to Lord Elgin, "particularly as there is no harm in the said figures and edifices being thus viewed, contemplated, and designed." In short, even by its own terms, the 1801 document fails to support the claim that Elgin had good title to the marbles; it actually negates the idea that the Ottomans gave Elgin permission to remove them.

Even Lord Elgin did not interpret any July 1801 exchange with the authorities as granting him permission to remove marbles from the Parthenon walls. On July 10, 1801, just a few days after he received the Ottoman directive, Lord Elgin wrote to Lusieri: "Besides, you have now the permission to dig, and there a great field is opened for medals, and for the remains both of sculpture and architecture." What Elgin considered "extraordinary" about the permission he had secured was that his artists now had permission to "dig," or to excavate, which meant that they might discover buried marble sculptures. If Elgin believed that his men had been given a green light to denude the Parthenon Of famous antiquities, he would have celebrated that power, not the prospect of digging for buried unknowns.

Although this evidence alone is more than sufficient to overcome the claim that the 1801 document gave Elgin prior permission, there is yet more. In July 1801, Elgin sent the young minister Philip Hunt to Athens. When Hunt arrived, he promptly visited the Voivode, the local Ottoman official. Using threats and bribes, he persuaded the Voivode to permit Elgin's artists to enter the Acropolis for the limited purposes of drawing, measuring, painting and molding. A few days later Hunt met the Voivode again and, struck by the Voivode's favorable attitude toward Britain now that Britain controlled Egypt and the degree to which the Voivode appeared intimidated by the power of the British ambassador (Lord Elgin), Hunt then requested permission to remove a marble sculpture from the Parthenon walls. The Voivode agreed. In the early morning of July 31, a ship's carpenter, five crew members and twenty Athenian laborers mounted the walls of the Parthenon and removed the first metope. The next day they lowered a second. During the weeks following, Lusieri and his men lowered many other marble sculptures.

Lord Elgin was in Constantinople at the time and had no idea that Hunt had secured permission from the Voivode in Athens to remove marbles from the Parthenon walls; nor did he know that metopes were lowered from the Parthenon in his name on July 31 or August 1. In fact, Lord Elgin did not learn of this development until mid-August, when letters from Hunt and Lusieri arrived in Constantinople. Elgin's glee in response to the news is captured in a letter he wrote to Lusieri dated October 8, 1801. He told Lusieri of his "infinite pleasure" when he learned of the marbles and confessed to Lusieri that taking marbles from the walls "now seems to promise success beyond our

most ardent hopes."

As is evident, Elgin did not request or receive permission to remove the marbles, and seems to have had no prior intention of denuding the Parthenon. The deed was initiated by Hunt--who fifteen years later would produce for Parliament the document on which so much has since hinged--and made possible by intimidated and bribed Ottoman officials in Athens, who in any event lacked authority to permit the desecration that ensued.

If Elgin did not receive prior permission, the British claim in addition that the Ottomans gave him approval to remove the marbles after the fact. First, as the British Museum's guide to the Parthenon collection states with regard to events the following year, 1802:

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.

As is readily conceded, these 1802 documents are missing. In Istanbul, I searched without success for them, too, or for copies of them, or for some reference to them, among other papers in the Ottoman archives. As with the 1801 documents, there is no trace--as if the whole affair had never occurred. Thus, no one knows who wrote these documents, whether any such author knew the full details of what Elgin's agents in Athens had done or whether the documents' author was even authorized to grant retroactive ratification. We have no summary of the content of these documents, nor any surviving secondary-source claim to quote critical language from them. These are surely fatal flaws to the contention that the missing documents retroactively approved of or condoned the removal of the marbles and were a vehicle for passing to Elgin good legal title.

Second, it is asserted that since the Ottomans permitted Elgin to ship his collection to London, they must have condoned the taking. Again, the British Museum's guide to the collection states the position with unabashed clarity:

This firman to remove the marbles must imply that any irregularities that may have occurred in interpreting the powers granted by the previous document were at least condoned if not fully approved.

As with the 1801 and the 1802 documents, though, no order permitting the shipment of the marbles has survived, or at least been found. I was unable to locate one, a copy of one or any reference to one in the voluminous Ottoman archives.

Even if we assumed such a document did exist--yet again, that is--the mere shipping of the marbles does not establish that informed, appropriate Ottoman officials condoned

Elgin's removal of the marbles. There is much that we don't know; yet what we do know is that the British ambassador's agent at the time gave bribes to Ottoman officials to facilitate the shipment of the marbles out of Greece. Such bribes would seem to poison any claim of legitimacy that might otherwise be imputed to permission to ship.

Although possession is often nine-tenths of the law, this is one dispute in which more than possession matters. Because the longstanding Greek claim for the return of the marbles has broad international support, the European Parliament's being only the latest and most prominent, Britain has never defended its possession of the marbles by claiming that it is keeping them merely because it prizes them. Instead, Britain has consistently tried to strengthen its political position by asserting that it has no moral or legal obligation to Greece because the Ottomans gave Elgin permission to make off with Phidias' handiwork. No one expects Britain to roll over and play dead with the undermining of the moral and legal high ground it has sought to occupy. But correcting historical misconceptions and fallacious legal judgments does strengthen Greece's hand in the debate. Indeed, the information detailed in this article is to be presented later this month in Athens at a UNESCO-sponsored scholarly conference on the Parthenon sculptures and the repatriation issue.

Of course, the conventional wisdom is that Britain will never return the marbles. But few imagined that Britain would surrender India to an old man clothed in a sheet, either. The odds, from my point of view, are that Britain will eventually repatriate the marbles to Greece, and when it does so, it will be acknowledging, whether it wishes to or not, that what was acceptable during the age of empire must give way to the demands of an ever-shrinking world that aspires to the rule of law.

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By David Rudenstine

David Rudenstine, who teaches at the Benjamin N. Cardozo School of Law, will spend next year as a fellow in Princeton University's law and public affairs program working on his book, Trophies for the Empire: The Tale of the Parthenon Marbles.

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