

THE MARBLES: ELGIN OR PARTHENON? IAL ANNUAL LECTURE, DECEMBER 2000

William G. Stewart

INTRODUCTION

The title of this paper – “The Marbles: Elgin or Parthenon?” was actually suggested by one of the organisers of the Institute of Art and Law Annual Lecture. Apparently it arose from the question as to whether the Marbles should be correctly referred to on the invitation as the Elgin Marbles or the Parthenon Marbles, and it gives me a peg on which to hang the arguments in this paper. In fact, Elgin or Parthenon seems obviously to depend on which side of the argument one stands. Those who want the Marbles to stay in the British Museum are Elgin Marble-ers, those who want them returned to Athens, and of course, the Greeks, are Parthenon Marble-ers. They are, as a matter of interest, the Elgin Marbles at the British Museum because the Act of Parliament of 1816 that purchased the Marbles enshrined that they “should henceforth be distinguished by the name or appellation of The Elgin Collection.” That may sound pretty straightforward, but I have to say that I once had the experience of asking someone, during a heated debate on ancient artefacts, whether he thought that the Parthenon Marbles should be returned to Greece, to which he answered: “No, if you send back the Parthenon Marbles, they’ll start up again about the Elgin Marbles.” In this paper I shall use both terms, but readers will be left in little doubt as to where my sympathies lie.

Since my Channel Four film on the Marbles in 1996, I have spoken or made presentations on different aspects of the Parthenon Marbles at the European Parliament in Strasbourg, UNESCO in Paris, at the Smithsonian in Washington and, most recently, in Athens in 2000. I now seek to encapsulate in one paper the real story of how the Marbles came to England, a history of the campaign for their return to Athens, and importantly, the present position, and how we got to it. But passionately though I feel about their return, what strikes me most as I talk to people, is the ignorance of the true story of how the Marbles came to Britain, and of the history of the campaign for their return. Most people I have spoken to simply believe that the 7th Earl of Elgin, whilst in Athens, saw the sorry state of the Parthenon and saved the Marbles for the world. This is simply not true. Most people also seem to believe that he actually paid for them. He didn’t! And I was struck by the assumption, even assertion, that if the Elgin Marbles were to be returned to Athens, it would open the floodgates, and the great museums of the world would be emptied.

What I set out to do, quite consciously, was to make a film that covered the issue of the Elgin Marbles so comprehensively, that in any future debate supporters of return might be able to ask, have you seen William Stewart's film? I hope that those people who did see my film will feel that I went at least some of the way to succeeding.

Before presenting my argument for the return of the Elgin Marbles to Athens, let me make two things clear. Firstly, I am absolutely not in favour of every work of art or ancient artefact being returned to its country of origin. I am happy that the cultures and histories of the nations of the world, as represented by their art, should be spread around the world. I do not want every Turner or Gainsborough back in Britain, nor do I want every Rembrandt and Leonardo in British galleries returned to The Netherlands and Italy. I am happy that many Henry Moore and Barbara Hepworth sculptures stand in public buildings and parks throughout the world. My point (and this will be considered in more detail below) is that the Elgin Marbles are different. However, consider the position if the great doors of Westminster Abbey were in a museum in Malibu? Or what if Hitler's Operation 'Sea-Lion', the planned invasion of Britain in World War Two, had been launched and been successful? Documents captured after the war show that it contained plans to remove Nelson's Column from Trafalgar Square in London to Berlin:

Ever since the Battle of Trafalgar, the Nelson Column represents, for England, a symbol of British naval might and world domination. It would be an impressive way of underlining the German victory if the Nelson Column were to be transferred to Berlin.

If Nelson's Column were standing in a square in Berlin, would the British people not want it back – even if we had to wait 200 years for the fall of the Third Reich? Secondly, I do not intend to paint Lord Elgin, the 7th Earl, as the villain of the piece. He is a much more romantic and interesting character than the crude plunderer he's often painted.

WHY SHOULD THE MARBLES BE A SPECIAL CASE?

The point about the Marbles is that, magnificent as they are, it is not their aesthetic value, nor just legal argument for their return that is at the core of this debate. The aesthetic value of the Marbles never has been in question. In fact, the Select Committee of 1816 spent some considerable time examining witnesses on their artistic value, using, especially the Apollo Belvedere as a comparison, and I would suggest that the legal argument is unlikely ever to be decided, and for the people of Greece, as the present Foreign minister, George Papandreu, told the House of Commons Select Committee of 2000, *ownership* of the Marbles is not now the main issue. The main issue now, is where the Marbles should be. What is important is what the Marbles mean to the Greek people. They are what Greece is about. The Marbles are the history of Greece, their Magna Carta, their Westminster Abbey, their Nelson's Column. *The Times* newspaper, in a leader on 6th April 1992 advocating return, described them as 'Greece's Crown Jewels'. And a leader in the *New York Times* in 1997, headed 'Let Greece Have The Marbles', described

them as 'part of Greece's birthright'. But what the Marbles mean to the Greek people is best expressed by Greeks. Melina Mercouri, on a BBC television programme in 1986, said of them:

... they are not sculptures. You speak like that because you are British and for you they are marvellous sculptures. For us it is our flag, our identity, our language.

And when I spoke to Mr Konstantinos Stephanopoulo (the President of Greece), he told me:

The Parthenon Marbles constitute a unique case, in that they form part of a unique historical monument, which for humanity, and international public opinion, symbolises civilisation and democracy, but for the Greek people they are more than that. For the Greek people they symbolise our history and the continuity of the Greek nation.

My point about not painting Lord Elgin as the villain of the piece is that although his bringing the Marbles to Britain is not something we would countenance today, the actions of men should be judged in a historical context. Thomas Jefferson, for example, chief draughtsman of the United States Declaration of Independence, himself kept slaves. And in Britain, in the nineteenth century, social reformers had their chimneys swept by ten-year-old children. Such practices have long been condemned, but in their day they were acceptable. What Lord Elgin did in respect of the Marbles was common practice at the time. And it has to be said that if Lord Elgin had not 'collected' what he did, the Marbles probably would *not* be safely where they are now, and *available* for return to Athens. But what Lord Elgin did should now be undone. It is not often given to men to be able to correct a wrong or an injustice 200 years after the event, but this one we could put right, and should.

HOW THE MARBLES ARRIVED IN BRITAIN

The story of the *Parthenon Marbles* began in the Athens of Pericles in the fifth century BC. The story of the *Elgin Marbles* began in 1799 with Lord Elgin's appointment as British Ambassador to the Ottoman Empire, which then spread over large parts of the eastern Mediterranean, and included much of what is modern-day Greece, and the city-state of Athens. To counter the argument that Lord Elgin simply saw the sorry state of the Parthenon and decided to 'save the Marbles', I should like to spend a little time on how the Marbles *did* make the journey from the Acropolis to Bloomsbury.

The idea that he might use his time at Constantinople to further his interests in the classic arts and, at the same time, benefit the world of the arts in Britain, was put to him by a Mr Thomas Harrison, a Neo-classical architect, who was designing a new house for Lord Elgin in Scotland. He suggested that Lord Elgin should take a team of artists and moulders to Athens to draw and make casts of the finest pieces of ancient sculpture still in existence there. When Elgin set off for

inople his party included his chaplain, The Rev. Phillip Hunt, and his Private Secretary, William Richard Hamilton, both of whom were to play important parts in the acquisition of the Marbles.

Sicily Lord Elgin engaged the services of the Italian artist Giovanni Battista Piranesi, William Hamilton was left to engage the rest of the team required in the removal of the marbles, two moulers, and another painter. Lord Elgin went from Athens to Constantinople. Lusieri and the other artists arrived in Athens in August 1800. They immediately encountered difficulties with the Turks, and in 1801, "they had no access to the Acropolis except for the purpose of cleaning, and that at an expense of 5 guineas a day". One firman (or permission) was obtained to work on the Acropolis seems to have gone astray, and another was obtained. It is now that The Reverend Hunt really comes in to the story. If there is any doubt of the piece, he's my choice! But even that, in a historical context, might be questioned. The British Museum Historical Guide states:

hitherto, Elgin had had no intention of removing any sculptures or architectural elements, his sole purpose being to draw, measure and mould.

House of Commons Library Research Note on the Elgin Marbles:

Many Authorities (including the British Museum) see Hunt as instrumental in bringing about a change in the *modus operandi*.

was Hunt who had travelled widely in the area and seen others carrying off, especially the French, and also the parents of Lord Elgin's own wife, Lord Elgin to seek another firman, but this time, *and this is important*, or permission to remove and take away certain artefacts. The firman was and there is absolutely no doubt, from evidence given to the 1816 Committee that it was granted to Lord Elgin by the Turks in recognition of British services against France in Egypt. The interpretation of that firman has been a matter of dispute ever since. There is even dispute as to whether the document was an official document, or just a letter giving certain permissions. The text of the document was in Turkish with a translation in Italian. The original Italian document was kept in the possession of the writer William St. Clair. It contained instructions to draw, to make moulds of anything they wanted, to excavate, and to carry away any pieces of stone with old inscriptions or sculptures thereon. There was no mention of permission to operate outside Athens, nor to dismantle anything from the Parthenon itself. When Lord Elgin was asked in 1816 whether the firman related to specific stones or statues generally, his reply was: "No, I had never been to Athens and could not specify anything. I did not know anything of the state of the Parthenon". So Lord Elgin had no idea of what was being asked in his name. Mr. St. Clair, a former keeper of Greek and Roman Antiquities at the British Museum, in the Museum's own book (which he wrote):

It may be questioned whether the firman actually authorised even the partial dismantling of buildings in order to remove sculptures.

If the British Museum acknowledges that, it could start by returning those pieces which Lord Elgin's agents used saws and explosives to detach from the Parthenon. The letters between Elgin and his team identify many of them; much of the frieze, many of the Metopes and pieces from the East and West Pediments, including the magnificent head of one of the horses of Selene, Goddess of the Moon. But whatever the words of the document meant, Lord Elgin's team went to work to make up for lost time.

It was now the summer of 1801. It was not just a matter of collecting a few statues, or any parts of the frieze or the Metopes, that had fallen from the Parthenon. That was the easy part. This was the dismantling of a unique monument that had stood for over 2000 years. Yes, there had been considerable damage done to the Parthenon. Two explosions on the Parthenon, in 1645 and 1687, when the Turks were using the Parthenon as a powder magazine, had done much damage, and many pieces had been taken by others, usually by bribing the Turks. But there was much that remained securely in place on the Parthenon – and most of it now stands in the British Museum. Elgin's team worked feverishly to get it down, and did more damage in doing so (much more damage than the recent 'cleaning' scandal revealed) and it was a major operation. Elgin told Parliament: "I employed three or four hundred people a day". He even asked for (and was granted by the Turks) permission to pull down a house and excavate around it. In fact, two, possibly three, houses were demolished. And how they went about it! They started by erecting scaffolding on the Parthenon. But the story is best told, including Lord Elgin's true motives, from the letters that went between Lord Elgin, The Reverend Hunt, and the artist Lusieri.

Rev. Hunt to Lord Elgin: (July 1801):

Today succeeded in detaching and lowering down, one of the groups in the Metopes. Nothing can equal it for beauty and grace. A second, which adjoins it, is to follow it tomorrow.

Of the small temple of Pandrosos on the side of the Erectheum, Hunt wrote:

If your Lordship would come here in a large man-of-war, that beautiful little model of ancient art might be transported wholly to England. Nothing can exceed the exquisite beauty and delicacy of all its details.

The artist Lusieri to Lord Elgin: (September 1801):

Mr Hunt wrote to your Excellency on my behalf to send a dozen marble saws of different sizes to Athens. I should require three or four twenty feet in length to saw a great bas-relief (the central slab in the East frieze), that we could not transport unless we reduce its weight". Again, Lusieri: (October 1801) "They have seen a precious fragment of the cornice of the Temple of Neptune Erectheus (the Erectheum) and with the same saw they are now sawing a bas-relief, a part of the frieze of the Parthenon.

While work continued on the Acropolis, the letters tell of Hunt and Lusieri busily collecting whatever else they could, from wherever they could away from Athens. In December 1801, the Reverend Hunt left Athens with some of the Marbles on the brig Constanza bound for Egypt. Reverend Hunt to Lord Elgin:

We reached the ancient Cnidus. There contrary winds gave me an opportunity to carry off some beautiful fragments of Ionic and Corinthian cornices.

From Lord Elgin (now as enthusiastic as Hunt) to Lusieri:

I name very specially, the temple of Pandrosos. I flatter myself that you have already thought of ways of transporting it. Perhaps you could get down the statues, one after another, and put them on my brig, and by degrees transport the whole to Zeal

Later, as his enthusiasm grows:

At Olympia assuredly excavation is of the greatest consequence. You would be the first, and history assures us, that there are statues, riches, monuments of all sorts, in such abundance that this dig is deserving of any effort that can be made there.

And where was all this treasure bound? Not for the British Museum. It was bound for Scotland, and the new house Lord Elgin was building. Lord Elgin writes to Lusieri of the house in Scotland that:

It occupies me greatly, and offers me the means of placing in a useful, distinguished and agreeable way, the various things that you may perhaps be able to procure for me.

and later, the damning line: "I shall regret nothing that assists my acquisitions in Greece".

I shall regret nothing that assists my acquisitions in Greece. Records are not complete but by March 1802 at least three shiploads of antiquities had left Greece. All this, everything I've been through, the work on the Parthenon, the collecting away from Athens, and the shiploads on their way to England (and again I refer you to the British Museum's own book), all of this happened before Lord Elgin himself had ever set foot on Greek soil, or clapped eyes on the Parthenon. He had never been in Greece! So let's lay to rest the fairytale that Lord Elgin was so appalled by the devastation he saw on the Parthenon, that he was moved to 'save' the Marbles. Remember that he told Parliament that at the time of the firman "I had no idea of the state of Athens". Let's also lay to rest the story that he paid for the Marbles. He didn't. He certainly spent a lot of money collecting them, £35,000 was his own estimate, and the present Lord Elgin has told me that there is no reason to doubt it. His extravagances ruined the Elgin family financially. When he died in 1841, he was £150,000 in debt, and it took the family decades to recover.

Elgin arrived in Greece for the first time, on 1st April 1802, and spent a total of just eleven weeks there. Once in Greece, he began travelling outside Athens, collecting as he went. While he was travelling, Lusieri kept him up to date with the work on the Acropolis: Lusieri to Lord Elgin:

Today I have also brought in the horse's head which was on the Parthenon pediment.

Even Lady Elgin caught the fever, and in a long letter in July 1802, while travelling by boat with Lord Elgin, wrote to her mother:

Elgin and his party visited the ruins of ancient Delos and the opposite island of Rhenea. That island is full of beautiful marble altars and sarcophagi. Elgin brought an altar on board.

That altar is now in the British Museum, not on display, but in store. Again, Lord Elgin to Lusieri:

...this opportunity will be the last for making secure my property from Greece. Continue your acquisitions, and add to my obligations – the lantern of Demosthenes.

My acquisitions, my property. Were those the words of a saviour? No, they were the words of an enthusiastic and energetic collector. Picking his pieces; a statue here, a column there, a marble chair, an altar! Whole buildings proposed! And every new acquisition announced with pride. Lusieri to Lord Elgin (16th September 1802):

I have, my Lord, the pleasure of announcing to you the possession of the 8th metope, that one where there is the Centaur carrying off the woman. This piece has caused much trouble in all respects, and I have even been obliged to be a little barbarous.

In October 1802 Lord Elgin sent Lusieri a long dispatch which reads almost like a shopping list:

The first on the list are the metopes, the bass-reliefs, and the remains of the statues that can still be found. In particular the figures on the pediment of the Parthenon, as many metopes as you can obtain, some further fragments of frieze and some ornaments. Would it be permissible to speak of a Caryatid? Do not forget some capitals on the Acropolis. To sum up, the slightest object from the Acropolis is a jewel.

He got most of what he wanted, including one Caryatid, which is now in the British Museum.

Lord Elgin began his journey home in January 1803, but the collecting and shipping went on for many years. Consignments were still arriving nine years after he left Constantinople. In 1812, Elgin told Parliament, 80 cases of marbles

In one letter, 18th May 1804, a year after Elgin had left, Lusieri even tells of a tomb, removing bones from a large bronze vase sitting inside a white vase seven feet in circumference:

I did not think there was any interest in keeping the bones. I collected them, placed them in an antique terracotta vase, put them back in the same place, and restored the tomb to its former state.

Marble and bronze vases went to the British Museum. The bones, one hopes, peace in Greece. One last word about the artist Lusieri: answering a letter from Lord Elgin as to his future plans, he wrote:

I wish to execute here the best works of my life, so that some barbarisms that I have been obliged to commit in your service may be forgotten.

As far as Lord Elgin, his letters do contain much that illustrates his genuine love and appreciation of Classical Greece. Their frankness illustrates, better than anything I can point to, that what he was doing was common practice at the time. There was nothing to hide. But I would suggest that the letters do, once again, dismiss the argument for Lord Elgin being hailed as a saviour.

DID (AND DOES) THE ELGIN COLLECTION COMPRISE?

As an appendix to the 1816 Parliamentary Committee Report lists the statues and metopes from the pediments of the Parthenon, the metopes, and the marbles of the frieze. This list also includes hundreds of pieces taken from Thebes, Mycenae, the Greek Islands, and from the plain of Attica. There are at least galleries at the British Museum dedicated to Greek antiquities, and a store - thousands of items. What the Greek people would like back, are the pieces taken from the Parthenon, and the Caryatid and the column from the Erechtheum. They were not free-standing statues or columns, they were integral to a building still standing. The hundreds of pieces that make up the rest of the Elgin Collection are spread throughout the museum, and the Greek people are not for them to remain there.

HISTORY OF THE CAMPAIGN FOR THE RETURN OF THE MARBLES

THE

Iron's description of the Elgin Marbles as "the last poor plunder from a foreign land" is famous enough to stand on its own. The first recorded "official" proposal for the return of the Marbles comes from the House of Commons debate of 1816, just three months after the Select Committee recommended that the Government should purchase the Marbles. A Mr Hugh Hammersley, having at length against the way in which Lord Elgin came into possession of the Marbles, proposed an amendment to the Bill which included these words:

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 meantime carefully preserved in the British Museum.

In 1816, 30 Members of the British Parliament voted against buying the Elgin Collection, and so it has gone on ever since, throughout the nineteenth century, and up to the present day.

The British Government has not always been unsympathetic to the idea of returning the Marbles. There was, early in the Second World War, a period during which Britain and Greece were the only two countries actively fighting Nazi Germany, and the world watched in admiration as that small nation fought Hitler's battalions in the mountains in defence of their country. Around this time, the Conservative MP, Thelma Cazalet, put down a Parliamentary Question:

To ask the Prime Minister whether he will introduce legislation to enable the Elgin Marbles to be restored to Greece at the end of hostilities, as some recognition of the Greeks' magnificent stand for civilisation.

The Foreign Office, who dealt with her question, based its position on:

Our present exceptional relations with Greece, and the interest now being taken in the question by the British public, as shown by the recent correspondence in *The Times*. Of the letters published, the great majority were in favour of the Marbles being restored to Greece.

One of that great majority of letters in support of return came from a surprising source: it was signed by Lord Belhaven and Stenton, and began:

Sir - I should like to support Mr Hamilton Fyfe's plea for the Restoration of the Elgin Marbles to heroic Greece at the end of the war. It was my grandfather, William Richard Hamilton (Under-Secretary of Foreign Affairs from 1809-22) who, as Lord Elgin's agent, fetched the Marbles to England.

In the Hamilton family things seem to have come full circle.

The Foreign Office then came up with these recommendations:

That the reply to Miss Cazalet's question should be to the effect that the present moment is inopportune for a final decision on a subject which raises several important issues. It should be decided, in principle, to return to Greece, the Elgin Marbles, including the Caryatid and the column from the Erechtheum on the following conditions: the Marbles should not be returned until after the war, before they are returned, adequate arrangements should be made for their proper housing, exhibition and preservation.

The official reply to Miss Cazalet's question came from the Deputy Prime Minister, Clement Attlee: "His Majesty's Government are not prepared to introduce legislation

for this purpose". But behind that non-committal reply, the recommendations are quite clear. The Foreign Office saw no reason why the Marbles should not be returned to Athens.

After the war, of course, both the United Kingdom and Greece had more on their minds than an immediate return to the subject of the Elgin Marbles. But the matter has come up in Parliament regularly ever since. In 1961, the then Prime Minister, Harold Macmillan, answered a question about it: "this is a complicated question. I will not dismiss it from my mind". Later in the same year, the then Mayor of Athens, sent identical telegrams requesting return of the Marbles to the Prime Minister (Mr Macmillan), the Lord Chancellor, and the Speaker of the House of Commons. Despite Foreign Office sympathy with the request, including an observation that returning the Marbles "would not necessarily constitute a precedent" and the view of Sir Roger Allen, the then British Ambassador in Athens, that "I should on balance favour the return of the Marbles", the British Museum would have nothing to do with the request and, in a single paragraph letter, told the Foreign Office that the Trustees of the Museum "are therefore not prepared to enter into discussions on the subject". The frustration of the Foreign Office with the British Museum is summed up by an internal memo which reads:

Mr Bridgewater's letter is rather impertinent and is typical of the Trustees of the British Museum, who rejoice in disregarding requests by foreign government, for loans of works of arts, even when these requests are backed by the Foreign Secretary.

And on and on through the 1970s and into the 80s and 90s.

There are many supporters for the restoration of the Marbles in both the House of Commons and the House of Lords, and that support crosses party lines.

THE UNESCO VOTE

The case for the return of the Marbles has also been to UNESCO, and in 1982, a UNESCO conference, after discussing the return of cultural property and "Considering it right and just that these Marbles should be returned to Greece", put the question of the return of the Marbles to put the vote.

(The return of the Elgin Marbles)

Countries in favour	52
Against	11
Abstentions	26

Unfortunately, at that time the United Kingdom was not a member of UNESCO. In 1983, the Greek Government presented the British Government with an official request for the return of the Marbles. When the British Government refused and the Greeks went back to UNESCO (in 1985) the British delegate, a Mr Arbutnot (in the position of observer) said that although the United Kingdom had rejected the Greek request, Britain "naturally remained ready to discuss the matter further with the Greek Government on a bilateral basis". So it wasn't, apparently, a 'no' for all time.

CONTEMPORARY DEBATE

In 1994, in a House of Commons debate on the return of Cultural Property, Mark Fisher, then shadow Minister for the Arts, committed the Labour Party to signing up to UNESCO, and working out what he called the "orderly return, of the Elgin Marbles" (Hansard). I asked Mark Fisher if he could elaborate on that, and he told me, in a filmed interview:

Since we've been out of government, I think that many of the obstacles which previously existed to a discussion of the return of the Parthenon Marbles, have or are being resolved. The Greeks have the designs for a very good international museum, their scholarship is better, they have political stability. So many of the problems of the last 40 years are in the process of being resolved.

The debate has continued in the media as well as in Parliament. In the 1980s, on radio and television, the Marbles were the subject of whole programmes, or major items on Question Time, The World at One, Omnibus, Newsnight, P.M., Today and The World Tonight. Every time it comes up it makes front-page news, and the leader-writers sharpen their pencils again. This question has been on the British conscience since the Elgin Collection came to England nearly 200 years ago, and is never going to go away.

WOULD THE MARBLES BE WELL LOOKED AFTER IN ATHENS?

This is a question asked by people on both sides of the argument, and the answer is 'yes'. No-one denies the pollution problem in Athens. The pollution problems of major cities around the world would prohibit the Marbles being displayed outdoors, in Los Angeles, Tokyo, Rome, Athens, and even London. The Houses of Parliament, which spent ten years in scaffolding throughout the 1980s and 90s, have had to be cleaned approximately every 30 years, and they are only 150 years old, not 2500. Of course the Marbles would have to be housed in a museum. However, major building projects are not easy in Athens. Put a shovel anywhere into the ground in the city, and the chances are that you will hit a new archaeological site. That's why the building of the new underground system has taken so long, and why plans for the first New Acropolis Museum had to be abandoned. Excavations for its foundations exposed private and public buildings spanning the period from the second century BC to the mid Byzantine era of the twelfth century AD - and hundreds of artefacts and coins. Plans for the second Museum are now well advanced.

WOULD RETURN OF THE MARBLES EMPTY THE GREAT MUSEUMS?

In answer to the question of whether the return of the Elgin Marbles to Athens would set a precedent that would empty the great museums of the world, there is no evidence to support that argument. Firstly, Greece itself has stated that it has no other claims for the return of anything from antiquity, presently in any other

museum, in the United Kingdom or the rest of the world. And what at museums of the world? ICOM, the International Council of Museums, in London, in 1983, overwhelmingly passed a Resolution that urged its members, including British Museums, "to initiate dialogues and a shared attitude concerning requests for the return of cultural property." In early 1996, 1,000 delegates who voted on that resolution, there were no abstentions, five of them from the British delegation. Before little evidence to suggest that returning the Elgin Marbles to "empty the great museums of the world."

THE BRITISH MUSEUM IN ALL THIS?

disputing the status of the British Museum. It is respected around the world for its collection and its scholarship. From pieces of broken pottery to the great statues from Egypt, that collection comprises some 6.5 million objects. But, for all the respect in which the Museum is rightly held, there is a blind spot about the Elgin Marbles. Of course one can see the great museum not wanting to part with a collection like the Elgin Marbles, but their reaction to any suggestion of negotiation is now a wall of silence. I rang the Head of Press and Public Relations at the Museum, I was told that, in the light of experience, which included a previous Director of the Museum who had been put up as an Aunt Sally (his words), the Museum would be reluctant to provide anyone to appear on my film. The former Director was Sir John Elliott, who, in a filmed interview for the BBC, had this to say about the Elgin Marbles from the walls of the British Museum is a much greater threat than the threat of blowing up the Parthenon, and on the matter of the Act of Parliament to return the Marbles: "Oh, well, anything can be said," what Hitler said. That's what Mussolini said when he got the Italian people on time." When asked if he was serious about drawing that parallel, David Wilson:

am! I think this is cultural fascism. It's nationalism, and it's cultural nationalism; and enormous cultural danger. If you start to destroy great intellectual institutions you're culturally fascist. It's like burning books -- that's what I did!

fully the Museum is now in more enlightened hands than that, and the Elgin Marbles have gone when those advocating the return of the Marbles to Athens can be seen as being culturally fascist.

ated out to the British Museum that it might be the keeper of many of the Elgin Marbles, but not the keeper of the nation's conscience. I then wrote to the British Museum and Public Relations, and my letter contained these words:

My argument for the return of the Marbles to Athens is not one which I would expect the Museum, as an institution, to support, but I would not like to make it without a distinguished member being present to listen to my argument, have a chance to refute any point or fact I might make, and put the Museum's position.

His answer was that:

The British Museum's views on this subject are unequivocal and well-known, we do not, therefore, wish to offer a contribution to your programme.

A PROPOSAL FOR RESTORATION

One of the problems, I think, with the return of the Marbles, has been that although requests for restoration have been made, no particular plan has ever been laid out, apart from Thelma Cazalet's proposal of "at the end of the hostilities". So in my 1996 film for Channel 4, I made a proposal as a starting point for discussion:

1. That the Elgin Marbles should be returned to Athens -- but not yet.
2. The year 2001 will be the 200th anniversary of the year in which the first Marbles left Athens. It will also be the first year of the new century. Nations across the world would be looking for imaginative ways in which to celebrate the Millennium. Exhibitions, celebrations, and exchanges and gestures of friendship between nations and peoples. Britain's return of the Elgin Marbles to Greece, in the year 2001, would be an imaginative gesture to the world. It would be a gesture admired and applauded around the world.
3. The return should not be seen as part of a general package of returns or exchanges. The Elgin Marbles are a very special case, and their restoration to Athens should be a bilateral agreement between the UK and Greece, an agreement which could be reached through UNESCO.
4. There would be conditions:
 - i) The Marbles would not go back to Athens unless, and until, The New Acropolis Museum is complete and ready to receive them.
 - ii) All costs for the return of the Marbles, and for a complete set of copies of the Marbles to remain in London, should be met by Greece.
 - iii) Greece acknowledges that its claim is for the Marbles that once adorned the Parthenon and the Caryatid and column from the Erechtheum only, and that it has no other claims for the return of ancient artefacts presently in any other museum or collection in the United Kingdom.

When I put this proposal to the President of Greece in Athens, asking whether the proposal and pre-conditions would be acceptable to the people of Greece, he said:

I think that these are very reasonable pre-conditions that every Greek would readily accept. As it is reasonable to expect that four to five years will be

required for the completion of the museum, there is no reason why we should not accept this five-year arrangement.

With special reference to other claims that Greece might make, the President told me:

We are asking for the Parthenon Marbles, one Caryatid missing from the Erechtheum and one column from the colonnade on the same building, this is what we ask for, nothing more.

I then went back to Mark Fisher, the Shadow Arts Minister, later Minister in the 1997 Labour Government, and asked if it were the sort of proposal that he'd feel able to discuss with the Greek Government? His reply was:

Yes, it is a very encouraging proposal. Because undoubtedly the key issue in which any British Government would want to be reassured is that the Greek Government only want the return of the Parthenon Marbles, and that this won't create a precedent and lead to a sort of tidal wave of international claims from around the world, and it is that fear that has inhibited discussion in the past

And on the President's response, he said that it was very reassuring, "...a good starting point, and dissolved and resolved many of the barriers." This was the Shadow Arts Minister, speaking on the record, just over a year before the 1997 Labour Election Victory.

THE PRESENT GOVERNMENT POSITION

The present Labour Government's declared policy is that the Marbles should remain in the British Museum. But, despite what the present Secretary of State, and Arts Minister, both say, for most of the long years in Opposition, Labour policy was in favour of returning the Marbles. The former Labour leader, Michael Foot, was and still is, a great supporter of the campaign. And Neil Kinnock's famous promise to Melina Mercouri, that a Labour Government would return the Marbles, must have sent a signal to the Greek people that all they had to do was to sit back and wait. So what went wrong? How did Labour Opposition support for *return* become Labour Government policy *against*?

The best place for me to start, is my own television programme made in 1996. Knowing that the British Museum could probably always count on a Conservative Government to refuse return, and remembering Michael Foot and Neil Kinnock, I expected some encouragement from the Labour Opposition, and I got a great deal of encouragement. Chris Smith, the present Culture Secretary, was Shadow Heritage Minister as it was then called. I wrote to him twice in 1995, outlining my plans for a programme on return. I told Mr Smith that I had read *Hansard* of 14th February 1994, in which the Shadow Arts Minister, Mark Fisher, had said that, having rejoined UNESCO, a Labour Government would be able to work out the orderly return of the Elgin Marbles. It should be emphasised that this

was not a casual off-the-cuff remark to a journalist, or a line taken out of context, but an answer to a question from the Labour Front Bench, in a Parliamentary Debate. (*Hansard* 14th Feb 1994), so Mr Smith clearly knew that Labour in Opposition was sympathetic to return. In reply, Mr Smith told me: "Our general position, however, is that these issues cannot be addressed in isolation – they have to be part of a more general discussion under the auspices of UNESCO, which a Labour Government would want to rejoin". A point that Mr Fisher had, of course, made in his House of Commons answer.

Following a further letter in which I made it quite clear that my programme would be "advocating return of the Marbles to Athens", Mr Smith referred me to Mark Fisher, adding "I am sorry not to be more help, and I wish you every success with the programme". I'm going into this much detail simply because I want to tie down the moment at which Labour policy changed, and how it changed. I would remind you that Mark Fisher told me that he found the responses of the Greek President to my proposals "very reassuring". He also said: "We certainly would want to get into discussions early in a Labour Government, both with the Trustees of the British Museum, but also with the Greek Government". It's all on record! I have to say that it would take a magician of an attorney to argue that support for returning the Marbles, was not, at that time, Labour Policy. So what happened?

It started in April 1996, two weeks before my programme was broadcast, with an interview Mark Fisher, still Shadow Arts Minister, gave to a national newspaper, *The Daily Telegraph*, in which he said: "it would be foolish and internationally churlish not to hold proper talks with the Greek Government". The next day a headline in the *Financial Times*, announced: 'Blair Says The Marbles Must Stay'. The story below the headline included the words: "Mark Fisher had absolutely no authority to say that, said one of Mr Blair's aides. We have never had a policy that they should go back to Greece." I immediately rang Mr Blair's office, to ask whether they were aware of Mark Fisher's 1994 House of Commons statement. Mr Blair's assistant told me: "I didn't know that". I then rang Jack Cunningham's office. He was now Shadow Heritage Secretary, Mr Smith having moved to shadow the Health Department. An assistant told me that they were unaware of Mr Fisher's words in the House of Commons, but that Labour's policy on the Arts was under review. I wrote a long detailed letter to Jack Cunningham asking for clarification, but never got an answer. In fact, I wrote three times.

What had happened was an example of the great British cock-up! It was simply that when the *Financial Times* rang Mr Blair's office, the person they spoke to didn't know the official Labour policy so understandably rang the Shadow Heritage Department. Unfortunately it was a Friday, and Mark Fisher, who could have told Mr Blair's assistant that Labour Policy was, at the very least, sympathetic to return, wasn't available, he was in his constituency. As no-one knew of his words in the House of Commons in 1994, nor of the interview he gave to me in February 1996, the reply given to Mr Blair's office was the opposite of the facts! So Labour policy changed, from being in favour of return, to being on the side of the British Museum. I wrote again to Jack Cunningham, asking him to try to watch my programme, and the interview given by Mark Fisher, but received no reply.

raightforwardly, the present Government's position on the Parthenon Marbles about by default, and the hopes of the Greek people were dashed by two aides who didn't know their own party's policy.

Following the General Election of May 1997, Chris Smith found himself Heritage, but now as Secretary of State. Unfortunately he faced the issue of the Elgin Marbles on what must have been his first major radio interview following his appointment. The impression given was that, in his first few days in office, he received an official request from the Greek Government for return, and said, "I understand it, a Greek journalist asked the Greek Minister for Culture the prospect for return now that Britain had a Labour Government. The Minister replied that the Greeks would, at some time, be approaching the Government and that was interpreted as an official request. Faced with this, Chris said: "No, the Marbles stay in Britain." What he should have said is what he said in a letter later in the year, that: "Discussions on the issue of the Parthenon Marbles will take place when appropriate and in the appropriate place." What he should have said is *when* is appropriate, and *where* is the appropriate place. In his letter to Mr Smith, he did find himself in a very uncomfortable position.

Mr Fisher's 1994 statement in the House of Commons was made during the time that Mo Mowlam was Shadow Heritage Secretary, and one could reasonably say that she knew of it, and as Mr Fisher was never taken to task over it, it had no support. I have, in fact, written to Dr Mowlam several times, three times in the last six months, asking her whether or not Labour policy was in line with what her Minister had said in the House. So far I haven't had a reply! So the Marbles remain Dr Cunningham, who managed to avoid all my enquiries. I have asked Mr Smith and the present Arts Minister, Alan Howarth, on the issue, but their letters are, I suppose understandably, very carefully worded and defensive. Howarth, for example, told me, in a letter dated 10th February 1999, that the Government: "Having considered the issue of the Parthenon Sculptures very fully over a number of years, ... believes that they should remain at the British Museum". Over a number of years? When Mr Howarth wrote that letter the Government had been in office for less than two years. The previous Conservative Government may well have considered it over the years, but then Mr Howarth was, in those years, a member of the Conservative Party. The truth is that the Labour Party, in Opposition, got itself into a fix over this issue, and hasn't the courage to admit the mistake.

I have written several times to the present Minister for the Arts asking him to categorically state that Mark Fisher was wrong to say what he did say in 1994. I also asked both Mr Howarth and Chris Smith to deny my claim about how the Policy changed in 1996. Neither feels able to do so.

I have suggested to Mr Howarth that he was party to a cover-up and that he has been more forthcoming when, earlier this year, he appeared before the Select Committee examining the issue of ancient artefacts and faced a question from the Labour MP, Derek Wyatt. I even suggested to Mr Howarth that it could be that he knowingly misled the Select Committee. I think he did! Derek asked Mr Howarth: "In Opposition the Labour Shadow Arts Minister, Mark Fisher, was in favour of returning the Elgin Marbles. I assume that was Labour

Party Policy until 1st May 1997? Is it Government policy?" The truth is that Mr Wyatt's question allowed Mr Howarth a loophole. Labour policy by 1st May 1997, was that the Marbles should remain in Britain. It had changed in April 1996 and Mr Howarth's carefully worded answer began with the words: "my understanding is that your proposition is not correct". Of course Mr Wyatt's proposition was not correct, he had the date wrong, he should have asked about February 1994 and April 1996. If Mr Wyatt had asked Mr Howarth whether returning the Marbles was Labour Policy in 1994, when Mark Fisher made his House of Commons statement, Mr Howarth would have had to answer, yes, or explain why not!

I also challenge Mr Howarth's evidence to the Select Committee that:

From 1992, when John Smith became Leader of the Labour Party, it was consistently the policy of the Labour Party not to return the Elgin Marbles.

That statement is just not true. And I reject Chris Smith's claim that the Shadow Secretaries of State from 1992-97 outlined Labour Party policy of keeping the Parthenon Sculptures in the British Museum. Well there is no record of either Dr Mowlam or Jack Cunningham having done so. If they did, they did so without telling their Shadow Arts Minister. And Chris Smith himself didn't. He told me "When I was Shadow Heritage Secretary, the Party made no policy-statements on the matter", and: "I am afraid I am unable to comment on the policy making process on this topic during the period during which I was shadowing Social Security and Health".

John Smith, of course, succeeded Neil Kinnock who had promised Greece that the Marbles would be returned, and Labour policy did not change at that time. What changed was not the policy, but the approach to the issue. The mantle of leadership had passed from a fiery Welshman to a cautious Scot, and Mark Fisher has told me that John Smith wanted things taken more gently, he wanted things done by negotiation and agreement, but that he, John Smith that is, assumed that negotiations would not hit any serious obstacles, and Mark Fisher has also told me that he cleared what he said in the House of Commons in 1994 with John Smith. Is it conceivable that an experienced and highly respected Labour Spokesman, who served under three Party Leaders, Neil Kinnock, John Smith, and Tony Blair, and under three Shadow Secretaries, Mo Mowlam, Chris Smith, and Jack Cunningham, could have said what he did say in the House of Commons in 1994, without reprimand, and could consistently commit a future Labour Government to negotiations with Greece when it was against Party policy?

SO WHERE ARE WE NOW?

The argument of "precedent" won't hold. Precedent is, in any case, often used as a fall-back position by those whose arguments are exhausted or flawed. Though it may take courage to do so, it is right that a thing should be done, it should not be left undone because others might use it as a precedent. A recent example: when Elton John's Princess of Wales version of Candle in the Wind went on sale in Britain, the amount of VAT received was not retained by the Treasury, but paid into a Memorial Fund in her name. This has not set a precedent in Britain, and nor

should it. No floodgates were opened after the Conservatives quietly returned the Stone of Scone to Scotland, or a museum in Glasgow returned a Ghost Dance Shirt to the Lakota Native Americans. In the case of the Parthenon Marbles, I would remind you the President of Greece is on record as saying that all the Greek people want returned are the 90 pieces of marble in the Duveen Gallery, and the column and caryatid from the Erechtheum.

There is also nothing in the argument often put forward (most recently in a memo from a Culture Department press officer), that the British Museum cannot, by law, return the Marbles. Any Government has the power to alter the conditions of any Act of Parliament made by a previous Government. In fact, the Act of Parliament of 1816 that authorised the purchase of the Marbles from Lord Elgin, also enacted that the then Lord Elgin, and all the Earls of Elgin to follow, should be Trustees of the British Museum. Well the present Earl of Elgin isn't a Trustee of the British Museum. Why not? Because the British Museum Act of 1963 struck out that right. And what about an empty Duveen Gallery at the British Museum? Well, with the new Tate Modern in London, I think we British have shown that we know how to fill empty spaces! The British Museum, understandably, would not want to replace the Marbles presently in the Gallery with copies, but there are other alternatives: of the more than 6.5 million items in the collection of the British Museum, there are enough in store to fill the Duveen Gallery several times over. In fact, there is probably enough of the original Elgin Collection, purchased in 1816, still in store, to fill it. That funeral vase dug up by Lusieri, and the altar Lady Elgin mentions in her letter home.

There are other more imaginative ideas, exchanges, visiting exhibitions, that might involve other countries, as well as Greece and Britain. Take, for example, the arrival in London recently of treasures from the Hermitage in St Petersburg, here at Somerset House as a permanent exhibition, one of several outstations being set up round the world by the Hermitage. The Greek Foreign Minister touched on this point when he addressed the Select Committee in June. What about the copies left in London? Laser technology now available produces copies so good that from a few feet it is very difficult to tell the difference between copies and the real thing. The real Parthenon Marbles, returned to Athens, would be housed in the planned New Acropolis Museum. My suggestion for Athens, would be that they could be erected in a London Park (or in some other city) at the same height as they are now in the British Museum, but in their correct positions relative to each other: with the pieces from the East and West pediments facing outwards, and the metopes and friezes viewed from the outside and inside respectively, as they were on the Parthenon itself. With an imaginative large-scale model outlining the history of the Parthenon, such a display would enable many more people than ever visit the Duveen Gallery to enjoy the Marbles as they were meant to be seen – at all times of the year, at all times of the day (and floodlit at night) and in all weathers.

BRITISH MUSEUM SURVEY

A brief word about the number of visitors to the Duveen Gallery each year. The British Museum makes great play of the magical figure of 6 million visitors to the

Museum each year, and equates that with the number of people who see the Marbles. Chris Smith, on a recent visit to Australia, used the same figure for the same purpose. He made the point that 6 million people freely view the Marbles each year at the British Museum, an accessibility he describes as: "difficult to replicate" at the Parthenon or anywhere else. Earlier this year, with the knowledge of the Museum authorities, I conducted a survey at the Duveen Gallery. If you divide the figure of 6 million by 360, the number of days the British Museum is open during the year, you'll have the figure of 16,666, the average daily attendance, and the British Museum's claim, of the number of people who see the Marbles. It would be reasonable, I think, to assume that the figures for the height of the summer and the tourist season would be higher, and for the winter months, December, January, February, much lower. To avoid the accusation of selective sampling, I chose four days at the height of the tourist season, Wednesday 28th June to Saturday 1st July. On those four days, the number of visitors to the Duveen Gallery was pretty consistent. Nothing approaching 16,000, but 4,441, 4,246, 4,526, and, on the Saturday, 5,311. A total over the four days of 18,524, an average daily figure of 4,631. Multiply that by 360, and you get a figure of not 6 million, but 1,667,160. I would suggest that, allowing for a much reduced attendance in the off-peak months, that figure could realistically be reduced to well under 1.5 million.

And the number of visitors to Athens and the Acropolis? 2.5 to 3 million visitors *pass through* Athens each year, 1.5 million visitors *stay over* in Athens, and 1.5 million visit the Acropolis. Possibly *more* than actually visit the Duveen Gallery. So there's not much real evidence that more people see the Marbles in the Duveen Gallery than would in Athens.

So What Now?

There is so much support in Britain for the return of the Marbles that, with the exception of the Trustees of the British Museum, and a large chunk of the Conservative Party, a decision to, at the very least, open discussions with the Greek Government, would be a popular one. Over the past twenty years, on every one of the dozens of television and radio programmes on the Marbles on which there has been any kind of write-in or 'phone-in vote, there has been a majority in favour of return. The 'phone-in vote that followed my own television programme in 1996, conducted independently by BBC Audio-Call, resulted in 99,340 calls in two hours, and 91,822 (92.5%) were in favour of return. The MORI Poll commissioned in 1998, indicated that the British Public, by a margin of 2:1, would support return. That MORI Poll also showed that a majority of Members of Parliament (47% to 44%) were also in favour of return. A poll conducted, and published, by the Economist, in March 2000, showed that MPs supported return by 66% to 34%. In 1996 and 1999, two Early Day Motions in Parliament, put down by the Member of Parliament, Eddie O'Hara, each attracted more than 100 signatures. The first, in 1996, included the signatures of several MPs who were later ministers in the new Labour Government. People such as Tony Banks, and Paul Boateng. The second, in 1999, included the signature of Mark Fisher. There have also been two major votes in the European Parliament. In 1996, 252 MEPs,

from across the fifteen Member States, voted in support of return, and in a vote in 1999, a majority in the European Parliament voted in support. Both these Declarations were put down by Alf Lomas, the former Labour MEP.

There is also wide support from around the world. When I spoke at the Smithsonian in Washington in 1997, I was surprised at the encouragement given by non-Greek Americans. There is also wide support in many Commonwealth countries, particularly Australia. However, having said that, I would not like to feel that Britain would have to bow to outside pressure to resolve the issue. There is an opinion, indeed it was part of Labour's policy, that it should be dealt with through UNESCO, but I think the Parthenon Marbles are such a special case that it would be nice if Mr Smith could pick up the telephone to the Greek Minister, Mr Venizelos, and say "Let's have a chat about the Parthenon Marbles". But if it has to be through UNESCO, fine.

I once asked Jules Dassin, the distinguished film-director husband of Melina Mercouri, whether she really believed that the Marbles would one day be returned to Athens, and he told me that she had said, "I believe with all my heart that England will find its moment of grace." I hope that one day soon we will find our moment of grace. It could start with Mr Smith picking up the telephone and dialling Athens 003 01 820 1648, the office of the Greek Minister of Culture.

COPYRIGHT AND THE 'IDEA/EXPRESSION DICHOTOMY'

Simon Stokes*

On 23 November 2000, the House of Lords gave judgment in the long running UK copyright case of Designers Guild Ltd v Russell Williams (Textiles).¹ Few copyright cases concerning artistic works have been heard by the House of Lords. The case concerned painted designs for fabrics and is important in showing the current approach of the English courts to the question of copyright infringement of artistic works. In particular Lord Hoffmann reconsidered the application of the 'idea/expression dichotomy' (that copyright does not protect ideas as such but only the form in which they are expressed).

FACTS

The plaintiff, the Designers Guild Ltd, is a designer and manufacturer of wallpaper and fabrics. In September 1995 it launched a new range of fabric designs under the name 'Orientalis'. One of those designs ('Ixia') was a striped pattern with flowers scattered over it in a somewhat impressionistic style. It was a successful design achieving sales of £171,000 in its first year. The Ixia fabric design was produced from a design painted by Helen Burke, a designer employed by the plaintiff. I was inspired by the 'handwriting and feel' of Matisse.

In September 1996 the defendant Russell Williams (Textiles) Ltd exhibited trade fairs in Belgium and the Netherlands a striped design ('Marguerite') consisting of scattered flowers, also in a somewhat impressionistic style.

The plaintiff took the view that the defendant's design 'Marguerite' had copied from Ixia and commenced proceedings on 24 December 1996. The defendant accepted subsistence and ownership of copyright in the painting but denied infringement. The issue at trial was therefore whether for the purposes of section 17 Copyright, Designs and Patents Act 1988 (CDPA) the defendant had copied from the Ixia design and thereby indirectly copied a substantial part of the pair

* Solicitor, Tarlo Lyons, London.

1 [1998] F.S.R. 803, Ch.D.; [2000] F.S.R. 121, C.A.; [2001] 1 W.L.R. 2416, H.L.