

## Protection of Moveable Cultural Heritage: Give Me Back My Marbles

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A current controversy is the question of whether the United Kingdom should return to the Republic of Greece a collection of marble sculptures and other items removed by Lord Elgin from sites atop the Acropolis in Athens including the Parthenon. As we explain, the removal of these items was a drawn-out affair occurring in dribs and drabs between the years 1801 and 1804. Eventually, Lord Elgin sold them to the British Museum where they remain to this day. The purpose of this paper is to explain the history of the Parthenon, the Marbles, their removal to the United Kingdom, the current dispute and its legal dimensions.

The construction of the Parthenon occurred in the second half of the fifth century BC whilst Pericles was the leading citizen in Athens. The circumstances of its construction were, like many modern infrastructure projects, attended by considerable controversy. Athens was the principal member of the Delian League which had been formed in around 478BC as a defensive alliance against the Persians.<sup>3</sup> The members of the Delian League were many and included a large number of city-states on the western seaboard of modern-day Türkiye.<sup>4</sup> The league was based on the island of Delos where its congresses were held in the Temple of Apollo. Until 458BC its treasury was also located in Delos and it was this treasury to which the members of the Delian League made contributions for their defence against the Persians.<sup>5</sup>

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<sup>3</sup> The conflict between the Achaemenid Empire and the Greek city-states ran from 499BC through to 449BC. The first Persian invasion of Greece under Darius the Great began in 492BC but was turned back at the Battle of Marathon in 490BC. The second invasion under Xerxes was stopped at the Battle of Salamis in 480BC and finally repulsed at the Battle of Plataea in the following year. Contrary to popular belief, it was not stopped at the Battle of Thermopylae in 480BC which was instead decisively won by the Persians who then marched upon and sacked Athens. In truth, Thermopylae is an example of what the French call *la gloire*: see Pierre Briant, *From Cyrus to Alexander: A History of the Persian Empire*, tr Peter T Daniels (Eisenbrauns, Indiana, 2002) 156-161, 525-542, 554-559, 569-582 [trans of: *Histoire de l'Empire perse* (1996)].

<sup>4</sup> Miletus, Byzantium, Lampsacus and Hallicarnassus to name but a few (respectively, the towns of Balat, Istanbul, Lapseki and Bodrum).

<sup>5</sup> Thucydides, *History of the Peloponnesian War*, tr Rex Warner (Penguin Classics, 1972) 92 (1.96).

In 454BC Pericles oversaw the relocation of the Delian treasury from Delos to Athens.<sup>6</sup> According to Plutarch, Pericles then used the contents of the treasury to fund the construction of an ambitious public works program in Athens.<sup>7</sup> This included the construction of the Parthenon which was designed by Callicrates and Ictinus under the supervision of Pheidias.<sup>8</sup> At the time this engendered domestic outrage from the opponents of Pericles:

‘The Greeks must be outraged’, they cried. ‘They must consider this an act of bare-faced tyranny, when they see that with their own contributions, extorted from them by force for the war against the Persians, we are gilding and beautifying our city, as if it were some vain woman decking herself out with costly stones and statues and temples worth millions of money’.<sup>9</sup>

The project proceeded despite the protests with Pericles’s answer being that the members of the League were obliged to contribute financially, the Athenians were obliged in turn to defend them against the Persians and, in effect, what the Athenians did with the money thereafter was their business.<sup>10</sup> It is worth noting this point at the outset to underscore that where questions of historical theft are concerned, the resolution of the issue may depend on how just how deep one is willing to dig into the past and how willing one is to define group identity by determinants that do not conform to the boundaries of modern day nation-states.

The Parthenon was constructed over the 16 years which followed 447BC although it borrowed from, and was partially built on the foundations of, a predecessor structure (the so-called Older Parthenon) which was razed mid-construction by the Persians in 480BC.<sup>11</sup> Pheidias was responsible for the statue

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<sup>6</sup> Plutarch, *The Rise and Fall of Athens: Nine Greek Lives*, tr Ian Scott-Kilvert (Penguin Classics, 1960) 177 (Pericles 12) [trans of: *Βίοι Παράλληλοι* (c. 100)] (hereinafter ‘Plutarch’s *Lives*’).

<sup>7</sup> Ibid. For a contrary view, see Lisa Kallet-Marx, ‘Did Tribute Fund the Parthenon?’ (1989) 8(2) *Classical Antiquity* 252.

<sup>8</sup> Plutarch’s *Lives*, 179, 181 (Pericles 13). Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 166-169.

<sup>9</sup> Plutarch’s *Lives* 177-178 (Pericles 12).

<sup>10</sup> Plutarch’s *Lives* 178 (Pericles 12).

<sup>11</sup> Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 136, 166; D M Lewis et al (eds), *The Cambridge Ancient History Volume V: The Fifth Century B.C.* (Cambridge University Press, 2<sup>nd</sup> ed, 1992) 215. The destruction of the temples on the Acropolis by Xerxes during the Persian Wars is recounted by Herodotus in *The Histories*, tr Aubrey de Sélincourt (Penguin Classics, 1<sup>st</sup> revised ed, 2003) 517 (8.53).

of Athena Parthenos (Athena the Virgin) which was housed within the Parthenon and it is possible, and indeed may be likely, that he was responsible for the sculptural elements which comprise the Parthenon Marbles.<sup>12</sup> Although it is sometimes said that the Parthenon was a temple to Athena Parthenos and there is no doubt that the structure shares many architectural features with Greek temples of the time, it is more likely that the Parthenon's primary purpose was to serve as the city's treasury and that the presence of a sculptural deity within it was merely incidental.<sup>13</sup> It does not appear to have been called the Parthenon in the fifth century BC.<sup>14</sup>

This is not the place to discuss the magnificent nature of the Parthenon nor the surrounding structures which were also part of the Periclean building program.<sup>15</sup> Instead, it is useful now to turn to those parts of the Parthenon which form part of the collection in the British Museum. On this topic, offence lurks around each corner particularly where nomenclature is concerned. As we will explain in due course, the precise nature of what was removed by Lord Elgin's agents and from where are themselves to an extent controversial. There has been a tendency to use the expression 'Parthenon Marbles' to refer to those elements taken by Lord Elgin's agents which came from the Parthenon itself but to use the expression 'Elgin Marbles' to refer to a wider set of objects including the Parthenon Marbles but also other elements removed from the environs on the Acropolis. Since this paper is largely concerned with the former rather than the latter, we will use the expression 'Parthenon Marbles' to signify those elements in the British Museum collection which come from the Parthenon itself.

The Parthenon Marbles consist of three distinct architectural elements. The first is a series of sculptures of Greek gods which were originally within the eastern and western pediments (that is to

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<sup>12</sup> Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 169. The nature of these elements is discussed later in this paper. Pheidias' statue of Athena Parthenos cost at least as much as the construction of the Parthenon itself: 168.

<sup>13</sup> Ibid 163-165. See also Mary Beard, *The Parthenon* (Harvard University Press, 2010) 45.

<sup>14</sup> Ibid 161-162.

<sup>15</sup> The most famous of these are the Citadel Walls, the Erectheion and the Propylaia. For an account of the structures present on the Acropolis during the fifth century BC, see *ibid* 154-221.

say, the gables). The second is a series of rectangular panels from beneath the pediment known as metopes which depict in relief a number of celebrated actual or mythical battles. The third is the Ionic frieze which decorated the horizontal course above the interior architrave and likely depicts a Panathenaic procession.<sup>16</sup> The Parthenon Marbles consist of 21 figures from the east and west pediments, 15 of the 92 metopes and 75 metres of the frieze.

Before returning to the Marbles, it is worthwhile traversing some matters of intervening history between the Parthenon's completion in 438BC and the late 18<sup>th</sup> century when the French and the British began removing parts of it. It is fair to say that during this period quite a bit happened. In 426BC a powerful earthquake, one of the worst to ever strike Greece, caused the facades of the structure to move two centimetres north.<sup>17</sup> In 404BC Athens lost the Peloponnesian War following which the city was ruled by the Spartan-installed junta known as the Thirty Tyrants.<sup>18</sup> Although these were overthrown in 403BC and democracy restored, Athenian hegemony had been broken. By 338BC Athens was defeated by the Macedonian armies of Phillip II and it would remain quiescent in the face of subsequent conquests by his son Alexander the Great.<sup>19</sup> Thus Athens's influence began to wane though it nonetheless and with some justification 'liked to believe that it was a centre of moderation, civilization and humanity'; a classical Melbourne one might say.<sup>20</sup>

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<sup>16</sup> Jeffrey M. Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 169-186, 222-228. An alternative view is that the frieze depicts the sacrifice by King Erectheus of his daughters: see William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 51-57.

<sup>17</sup> Manolis Korres, 'The Parthenon from Antiquity to the 19<sup>th</sup> Century' in Panayotis Tournikiotis, *The Parthenon and Its Impact in Modern Times* (Melissa, 1994) 138.

<sup>18</sup> Xenophon, *Hellenica*, tr Carleton L Brownson (Harvard University Press, 1918) 114-115 [trans of *Ἑλληνικά* (c. 400BC)]; Simon Hornblower, *The Greek World 479-323 BC* (Meuthen, London, 1983) 182.

<sup>19</sup> See Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 9-24.

<sup>20</sup> HB Mattingly, 'Athens between Rome and the Kings, 229/8 to 129BC' in Paul Cartledge, Peter Garnsey and Erich S Gruen (eds) *Hellenistic Constructs: Essays in Culture, History, and Historiography* (University of California Press, 1998) 120, 120, quoted in Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 4.

Upon Alexander's death in 323BC, the cause of which is the subject of vigorous debate,<sup>21</sup> his generals (or Diadochi) fought over the carcass of his vast empire and in the midst of this turmoil Athenian democracy was restored for a period around 318BC.<sup>22</sup> However, this was short lived and the city ended up under the control of a rotating cast of Macedonian rulers.<sup>23</sup> One of these, Demetrius Poliorcetes, took up residence in the rear chamber of the Parthenon in around 304BC and promptly lost the hearts and minds of the pious Athenians by holding 'orgies with numerous courtesans and young men there'.<sup>24</sup> He further angered the locals by exacting a punishing tax of 250 talents only to give the proceeds to his favourite mistress (who Plutarch unkindly describes as being 'already past her prime') so that she could purchase soap.<sup>25</sup> Another such ruler, the tyrant Lachares, seems to have melted down the gold from the statue of Athena Parthenos to pay his mercenaries.<sup>26</sup>

There followed several wars involving the now ascending Roman Republic and after two of these in quick succession, the Fourth Macedonian War in 149-148BC and the Achaean War in 146BC (which included the sacking of Corinth by the Romans), Athens became nominally free but in effect a Roman client-state.<sup>27</sup> The city briefly fell under the sway of Mithridates VI of Pontus at the outset of the First Mithridatic War in 88BC before being laid siege to and reclaimed by the Roman General Sulla in 87-

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<sup>21</sup> See, e.g., Leo J Schep et al, 'Was the Death of Alexander the Great Due to Food Poisoning? Was it *Veratrum Album*?' (2014) 52(1) *Clinical Toxicology* 72.

<sup>22</sup> Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 31.

<sup>23</sup> Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 29-51, 71-124.

<sup>24</sup> Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 79. On Demetrius's activities in the Parthenon, the New Comedy poet Philippides memorably remarked that he had 'introduced to its virgin goddess his courtesans': Plutarch, *Lives Volume IX: Demetrius and Antony. Pyrrhus and Gaius Marius*, tr Bernadotte Perrin (Harvard University Press, 1920) 64 (Demetrius 26.3) [trans of: *Βίοι Παράλληλοι* (c. 100)].

<sup>25</sup> Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 79; Plutarch, *Lives Volume IX: Demetrius and Antony. Pyrrhus and Gaius Marius*, tr Bernadotte Perrin (Harvard University Press, 1920) 65 (Demetrius 27.4) [trans of: *Βίοι Παράλληλοι* (c. 100)].

<sup>26</sup> Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 89. There is some uncertainty, however, as to whether the ancient accounts of Lachares's treatment of Athena are merely apocryphal: see Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 262.

<sup>27</sup> Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 174-180; M Cary, *A History of the Greek World from 323 to 146BC* (Meuthen, 2<sup>nd</sup> ed, 1951) 203-205.

86BC.<sup>28</sup> During the siege, most of the city's fortifications, many of its homes and several structures on the slopes of the Acropolis were destroyed.<sup>29</sup> The Parthenon was not harmed.<sup>30</sup>

Over the next century, as the Roman Republic gave way to the Roman Empire, Athens played host to its leading figures including Pompey the Great, Caesar, Brutus, Cassius, Antony and Octavian.<sup>31</sup> The city was sacked in 267AD by the Heruli<sup>32</sup> during the reign of the Emperor Gallienus, of whom Gibbon said:

It is difficult to paint the light, the various, the inconsistent character of Gallienus, which he displayed without constraint as soon as he became sole possessor of the empire. In every art that he attempted his lively genius enabled him to succeed; and, as his genius was destitute of judgment, he attempted every art, except the important ones of war and government. He was a master of several curious but useless sciences, a ready orator, an elegant poet, a skilful gardener, an excellent cook and most contemptible prince. When the great emergencies of the state required his presence and attention, he was engaged in conversation with the philosopher Plotinus, wasting his time in trifling or licentious pleasures, preparing his initiation to the Grecian mysteries, or soliciting a place in the Areopagus of Athens. His profuse magnificence insulted the general poverty; the solemn ridicule of his triumphs impressed a deeper sense of the public disgrace. The repeated intelligence of invasions, defeats, and rebellions, he received with a careless smile; and singling out, with affected contempt, some particular production of the lost province, he carelessly asked, whether Rome must be ruined, unless it was supplied with linen from Egypt, and Arras cloth from Gaul? There were, however, a few short moments in the life of Gallienus when, exasperated by some recent injury, he suddenly appeared the intrepid

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<sup>28</sup> Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 195-215. For a recent reappraisal of the impact of the siege on Athens, see Dylan K Rogers, 'Sulla and the Siege of Athens: Reconsidering Crisis, Survival, and Recovery in the First Century BC' in Sylvian Fachard and Edward M Harris (eds), *The Destruction of Cities in the Ancient Greek World: Integrating the Archaeological and Literary Evidence* (Cambridge University Press, 2021) 288-313.

<sup>29</sup> Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 208-213; Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 263.

<sup>30</sup> Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 263.

<sup>31</sup> It is said that when the latter visited in 21AD as Augustus, protesters turned a statue of Athena atop the Acropolis (probably the one within the Erectheion rather than the Parthenon) westward and daubed it with red paint such that it looked to be spitting blood towards Rome: see *ibid* 263-264; Ian Worthington, *Athens After Empire* (Oxford University Press, 2021) 248.

<sup>32</sup> Lamprini Chioti, 'The Herulian Invasion in Athens (AD 267): The Archaeological Evidence' in Sylvian Fachard and Edward M Harris (eds), *The Destruction of Cities in the Ancient Greek World: Integrating the Archaeological and Literary Evidence* (Cambridge University Press, 2021) 319-333.

soldier and the cruel tyrant; till, satiated with blood or fatigued by resistance, he insensibly sunk into the natural mildness and indolence of his character.<sup>33</sup>

In 396AD, the city was sacked again by the Visigoths (who would go on to sack Rome itself in 410AD).<sup>34</sup>

Taken together, and without knowing precisely the responsibility to be allocated to each, the Herulian and Visigothic incursions devastated Athens and caused significant damage to sites on and around the Acropolis.<sup>35</sup> Around this time the Parthenon suffered a massive fire which collapsed its roof and destroyed its east and west doors, though it is not known whether this was sparked by one of these invading forces or something else entirely.<sup>36</sup> It is known that the building underwent extensive repairs no later than the fifth century but it is unclear exactly when and by whose hand.<sup>37</sup>

Notwithstanding these invasions, Athens remained under Roman control. With the appearance of the Eastern Roman Empire under Constantine in around 330AD, Athens came to be governed from Constantinople as part of a Christian empire and this was reflected in the fortunes of the Parthenon. At some point during the fifth century the Parthenon was closed as an Athenian temple as a result of the repression of the pagans under the Emperor Theodosius II (who also established the Theodosian Walls around Constantinople).<sup>38</sup> Eventually, by the sixth century, the Parthenon was converted into a Christian church dedicated to the Virgin Mary (recalling that it was formerly dedicated to Athena the

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<sup>33</sup> Edward Gibbon, *The History of the Decline and Fall of the Roman Empire*, ed JB Bury (Meuthen, 1909) 294-295.

<sup>34</sup> Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 283.

<sup>35</sup> Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 285-287. See also Manolis Korres, 'The Parthenon from Antiquity to the 19<sup>th</sup> Century' in Panayotis Tournikiotis (ed), *The Parthenon and Its Impact in Modern Times* (Melissa, 1994) 138.

<sup>36</sup> Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 283-287; Manolis Korres, 'The Parthenon from Antiquity to the 19<sup>th</sup> Century' in Panayotis Tournikiotis (ed), *The Parthenon and Its Impact in Modern Times* (Melissa, 1994) 140-143.

<sup>37</sup> The competing schools of thought are conveniently summarised in Robert Ousterhout, "'Bestride the Very Peak of Heaven": The Parthenon After Antiquity' in Jenifer Neils (ed), *The Parthenon: From Antiquity to the Present* (Cambridge University Press, 1995) 299. For each of the arguments more fully, compare Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 285-287; Manolis Korres, 'The Parthenon from Antiquity to the 19<sup>th</sup> Century' in Panayotis Tournikiotis (ed), *The Parthenon and Its Impact in Modern Times* (Melissa, 1994) 140-143; Alison Frantz, 'Did Julian the Apostate Rebuild the Parthenon' (1979) 83(4) *American Journal of Archaeology* 395.

<sup>38</sup> Manolis Korres, 'The Parthenon from Antiquity to the 19<sup>th</sup> Century' in Panayotis Tournikiotis, *The Parthenon and Its Impact in Modern Times* (Melissa, 1994) 146.

Virgin).<sup>39</sup> This conversion did not entail significant structural alterations being made to the building, though at some point the metopes on the north, west and east facades were irretrievably defaced and the central sculptures from the east pediment detached, perhaps in an iconoclastic frenzy.<sup>40</sup>

Little is known about Athens in the centuries which followed. As the Byzantine Empire gradually weakened, the city may have been raided and even briefly captured by Saracens in the ninth and tenth centuries) though, if it was, Byzantine control was re-established.<sup>41</sup> Athens prospered as a medieval town in the 11<sup>th</sup> and 12<sup>th</sup> centuries during what is regarded as its high Byzantine period.<sup>42</sup> During this time, the Parthenon was extensively reconstructed.<sup>43</sup>

In 1204, in the aftermath of the Fourth Crusade, Athens became a duchy under the nominal control of the Latin Empire (recalling the earlier schism between the Orthodox and Latin Churches) and the Parthenon morphed into the Cathedral of Our Lady.<sup>44</sup> As is famously known, the Fourth Crusade was launched by Pope Innocent III to recapture Jerusalem from the Ayyubid Dynasty.<sup>45</sup> Things went awry when the Venetians, who made the ships for this caper, were not paid in full and the Doge suggested

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<sup>39</sup> Ibid; Robert Ousterhout, "'Bestride the Very Peak of Heaven": The Parthenon After Antiquity' in Jenifer Neils (ed), *The Parthenon: From Antiquity to the Present* (Cambridge University Press, 1995) 302-303.

<sup>40</sup> Robert Ousterhout, "'Bestride the Very Peak of Heaven": The Parthenon After Antiquity' in Jenifer Neils (ed), *The Parthenon: From Antiquity to the Present* (Cambridge University Press, 1995) 306-307; Manolis Korres, 'The Parthenon from Antiquity to the 19<sup>th</sup> Century' in Panayotis Tournikiotis, *The Parthenon and Its Impact in Modern Times* (Melissa, 1994) 147; Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 293-294. But see Anthony Kaldellis, *The Christian Parthenon: Classicism and Pilgrimage in Byzantine Athens* (Cambridge University Press, 2009) 40-41.

<sup>41</sup> Robert Ousterhout, "'Bestride the Very Peak of Heaven": The Parthenon After Antiquity' in Jenifer Neils (ed), *The Parthenon: From Antiquity to the Present* (Cambridge University Press, 1995) 307.

<sup>42</sup> Robert Ousterhout, "'Bestride the Very Peak of Heaven": The Parthenon After Antiquity' in Jenifer Neils (ed), *The Parthenon: From Antiquity to the Present* (Cambridge University Press, 1995) 307.

<sup>43</sup> Robert Ousterhout, "'Bestride the Very Peak of Heaven": The Parthenon After Antiquity' in Jenifer Neils (ed), *The Parthenon: From Antiquity to the Present* (Cambridge University Press, 1995) 310-314; Manolis Korres, 'The Parthenon from Antiquity to the 19<sup>th</sup> Century' in Panayotis Tournikiotis, *The Parthenon and Its Impact in Modern Times* (Melissa, 1994) 148.

<sup>44</sup> Manolis Korres, 'The Parthenon from Antiquity to the 19<sup>th</sup> Century' in Panayotis Tournikiotis, *The Parthenon and Its Impact in Modern Times* (Melissa, 1994) 148.

<sup>45</sup> For a brief summary, see Norman Housley, 'The Thirteenth-Century Crusades in the Mediterranean' in David Abulafia (ed), *The New Cambridge Medieval History Volume V: c. 1198 – c. 1300* (Cambridge University Press, 1999) 569-572.



as a form of debt relief that the Crusaders sack the Catholic city of Zadar (in Croatia) which they duly did in 1202.<sup>46</sup> The Crusaders were then contracted to facilitate an intra-Byzantine coup but this time it was they who were not paid, which led to their sack of Constantinople in 1204 and the division of Byzantine territory, including Athens, between Venice and the newly formed Latin Empire.<sup>47</sup> This was a degree of mission creep which Pope Innocent III had not envisaged and which instigated 800 years later a papal apology.<sup>48</sup>

Between 1204 and 1458 the Duchy of Athens passed through several hands: the Burgundians, the Aragonese mercenaries who constituted the Great Catalan Company and briefly the Florentines (who thoughtfully added a bell tower to the Acropolis<sup>49</sup>) with some interruptions by the Venetians.<sup>50</sup>

The Ottomans under Sultan Mehmed II captured Athens from the Florentines in 1456 but did not manage to dislodge the last Duke of Athens from the Acropolis for another two years.<sup>51</sup> On his triumphant visit in 1458, the Sultan was struck by the beauty of the ancient city and, in particular, the Acropolis.<sup>52</sup> Shortly after the Ottoman conquest of Athens, the Parthenon was converted into a mosque and its formal links to virginity were lost, though this apparently affected little change to the

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<sup>46</sup> Pope Innocent III was so infuriated by this attack on fellow Christians that he excommunicated the Crusaders: Jonathan Phillips, *The Fourth Crusade and the Sack of Constantinople* (Jonathan Cape, 2004) 107-126.

<sup>47</sup> *Ibid* 127-141, 214-218, 235-280. Prince Alexius, an exiled claimant to the Byzantium throne, offered the Crusaders in exchange for their facilitation of the coup: 200,000 silver marks (enough to cover their debt to the Venetians), provisions, 10,000 men to accompany them to Jerusalem, and Orthodox subservience to Rome: 127.

<sup>48</sup> *Ibid* xiii.

<sup>49</sup> The so-called Frankish Tower is frequently misattributed to the Burgundians but was in fact built by the Florentines some time prior to 1400. It was controversially demolished in 1875: Jeffrey M Hurwit, *The Athenian Acropolis* (Cambridge University Press, 1999) 291, 299.

<sup>50</sup> Robert Ousterhout, "'Bestride the Very Peak of Heaven": The Parthenon After Antiquity' in Jenifer Neils (ed), *The Parthenon: From Antiquity to the Present* (Cambridge University Press, 1995) 314-316. For an overview of Greece in this period, see Peter Lock, *The Franks in the Aegean, 1204-1500* (Taylor & Francis, 1995).

<sup>51</sup> Manolis Korres, 'The Parthenon from Antiquity to the 19<sup>th</sup> Century' in Panayotis Tournikiotis, *The Parthenon and Its Impact in Modern Times* (Melissa, 1994) 150.

<sup>52</sup> Franz Babinger, *Mehmed the Conqueror and His Time*, ed William C Hickman, tr Ralph Manheim (Princeton University Press, 1978) 159-161 [trans of: *Mehmed der Eroberer und seine Zeit: Weltentürmer einer Zeitenwende* (1959)].

building.<sup>53</sup> Over the following two hundred years, Athens declined in significance and lost almost all contact with the outside world.<sup>54</sup> In the early 17<sup>th</sup> century, in response to claims of maladministration, Sultan Ahmed I put the city in the hands of a favoured concubine, Basilica, and then upon her death under the jurisdiction of the chief black eunuch of the Sultan's harem.<sup>55</sup>

Throughout this period, conflict sporadically raged between the Ottomans and the Venetians. It was in this context that the Ottomans began to store gunpowder in the Propylaea which in 1645 was struck by lightning and destroyed.<sup>56</sup> Perhaps reasoning that such misfortune was unlikely to strike twice, the Ottomans thereafter began using the Parthenon as their gunpowder magazine.<sup>57</sup> In 1686, during the Morean War, the Ottomans dismantled the Temple of Athena Nike to erect a canon battery.<sup>58</sup> Then, in September 1687 when the Acropolis was besieged, the Parthenon was struck by Venetian bombardment and exploded, leaving the building severely damaged and looking much like it looks today.<sup>59</sup> Between 200 and 300 people were killed as a result.<sup>60</sup> To rub salt into this wound, in their

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<sup>53</sup> Robert Ousterhout, "Bestride the Very Peak of Heaven": The Parthenon After Antiquity' in Jenifer Neils (ed), *The Parthenon: From Antiquity to the Present* (Cambridge University Press, 1995) 317-318; Manolis Korres, 'The Parthenon from Antiquity to the 19<sup>th</sup> Century' in Panayotis Tournikiotis, *The Parthenon and Its Impact in Modern Times* (Melissa, 1994) 150.

<sup>54</sup> Athens's fall from grace was so stark that in 1573 a German classicist was moved to make enquiries as to whether the city still existed: see Robert K Pitt, 'Early Travelers and the Rediscovery of Athens' in Jenifer Neils and Dylan Rogers (eds), *The Cambridge Companion to Ancient Athens* (Cambridge University Press, 2021) 438-439.

<sup>55</sup> Olga Augustinos, 'Eastern Concubines, Western Mistresses: Prévost's *Histoire d'une Grecque moderne*' in Amila Buturović and Irvin Cemil Schick (eds), *Women in the Ottoman Balkans: Gender, Culture and History* (IB Tauris, 2007) 24.

<sup>56</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 61.

<sup>57</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 61.

<sup>58</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 61.

<sup>59</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 61. Two eyewitness accounts survive, one from each side of the conflict: see Cristoforo Ivanovich, '[An Eyewitness Account of the Bombardment of the Acropolis]', tr Rodney Guirasch in Vincent J Bruno, *The Parthenon* (WW Norton, 1974) 124-128 [trans of: *Istoria della Lega Ortodossa contro il Turco* (c. 1688)] and Mary Beard, *The Parthenon* (Harvard University Press, 2010) 80-81.

<sup>60</sup> George Finlay, *A History of Greece From Its Conquest by the Romans to the Present Time, BC 146 to AD 1864*, ed HF Tozer (Clarendon Press, 1877) vol 5, 185; Mary Beard, *The Parthenon* (Harvard University Press, 2010) 77-80.

attempts to loot the still intact western pediment (including Athena, Poseidon and their respective chariots) the Venetians succeeded only in dropping and destroying them.<sup>61</sup>

The Venetians gave up Athens up on 9 April 1688, a few months before James II was deposed from the thrones of England and Scotland, in favour of Mary II and William of Orange.<sup>62</sup> Athens remained under Ottoman control until the outbreak of the Greek revolution in March 1821 which resulted in 1832 in the establishment of the Kingdom of Greece with a German, Prince Otto of Bavaria, at its head.<sup>63</sup> At this time the population of Athens had shrunk to around 4,000 people.<sup>64</sup>

That is a potted history of Athens and the Parthenon which brings us to the eighteenth century. By this time fragments of the Parthenon had become a souvenir of choice for travellers to Athens and had begun to disappear without a trace around Europe. Some would reemerge years later without explanation, including in locations as glamorous as Essex, but others remain lost.<sup>65</sup>

It is useful at this point to introduce the Comte de Choiseul-Gouffier, a French nobleman, and Louis-François-Sebastien Fauvel, a French painter. When Choiseul-Gouffier was appointed French Ambassador to the Ottoman Porte in 1784, he appointed Fauvel as his agent and gave unambiguous instructions: 'Take all you can. Do not neglect any opportunity to pillage anything that is pillageable in

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<sup>61</sup> The Venetians had to make do with a head from one of the pedimental figures (now in the Louvre), two heads from the southern metope (now in Copenhagen) and four lions including one from nearby Piraeus which stand guard at the entrance to the Arsenal of Venice to this day: George Finlay, *A History of Greece From Its Conquest by the Romans to the Present Time, BC 146 to AD 1864*, ed HF Tozer (Clarendon Press, 1877) vol 5, 187-188; William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 61.

<sup>62</sup> George Finlay, *A History of Greece From Its Conquest by the Romans to the Present Time, BC 146 to AD 1864*, ed HF Tozer (Clarendon Press, 1877) vol 5, 188. For the Glorious Revolution, see Tim Harris, *Revolution: The Great Crisis of the British Monarchy, 1685-1720* (Allen Lane, 2006).

<sup>63</sup> For the Greek revolution and War of Independence, see David Brewer, *The Greek War of Independence: The Struggle for Freedom from Ottoman Oppression and the Birth of the Modern Greek Nation* (Overlook Press, 2001).

<sup>64</sup> Anthony M Tung, *Preserving the World's Great Cities: The Destruction and Renewal of the Historic Metropolis* (Clarkson Potter, 2001) 260.

<sup>65</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 62-63.

Athens and its territory. Spare neither the dead nor the living'.<sup>66</sup> Fauvel duly delivered by acquiring in 1788 two metopes from the southern end of the Parthenon and in 1789 half a slab from the east frieze.<sup>67</sup> The frieze and one of the metopes were sent back to France but then compulsorily acquired in 1792 by the nascent First French Republic on account of Choiseul-Gouffier's royalist tendencies.<sup>68</sup> There are thus two parts of the Parthenon in the Louvre. The second metope has a more chequered history. It was acquired separately by Fauvel and smuggled from the Acropolis in a dung heap.<sup>69</sup> The metope remained in Athens until May 1803 when, at the behest of Napoleon himself, it was shipped by Fauvel to Tallyrand on a warship bound for Toulon.<sup>70</sup> Unfortunately for the French, this coincided with the British declaration of war and the corvette carrying the metope was seized by the *HMS Maidstone* as prize.<sup>71</sup> The metope and other antiquities were sent to London to be sold on the orders of Lord Nelson. A buyer could not be found until 1806 when none other than Lord Elgin purchased the collection for £24, incorrectly believing it to be his own.<sup>72</sup> Eventually, it became a part of the Parthenon Marbles which Lord Elgin sold to the British Museum. It is that episode to which we now turn.

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<sup>66</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 63; AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 163, 356.

<sup>67</sup> AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 163, 357.

<sup>68</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 64, 123, 257; Emma Payne, *Casting the Parthenon Sculptures from the Eighteenth Century to the Digital Age* (Bloomsbury, 2021) 27. This metope was returned to Choiseul-Gouffier upon his return to France from exile in 1802 and then after his death in 1817 sold back to the Louvre for 25,000 francs.

<sup>69</sup> Emma Payne, *Casting the Parthenon Sculptures from the Eighteenth Century to the Digital Age* (Bloomsbury, 2021) 48.

<sup>70</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 123-124; Emma Payne, *Casting the Parthenon Sculptures from the Eighteenth Century to the Digital Age* (Bloomsbury, 2021) 27, 48; AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 163, 357-359.

<sup>71</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 123-124; AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 163, 357-359.

<sup>72</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 123-124; AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 163, 359.

In 1798, Thomas Bruce, 7<sup>th</sup> Earl of Elgin (in Scotland), was appointed British Ambassador to the Ottoman Empire.<sup>73</sup> Lord Elgin had applied for the role at the suggestion of King George III (who was at this time at the height of his powers<sup>74</sup>) and in line with medical advice to seek warmer climes.<sup>75</sup> Before taking up his post, Lord Elgin approached British officials to inquire as to whether there was any interest on their part in having casts and drawings done of Athenian antiquities but was rebuffed.<sup>76</sup> Lord Elgin accordingly decided to carry out the work himself and recruited Giovanni Lusieri, a painter in the Sicilian court, for that purpose.<sup>77</sup> Lord Elgin's agents arrived in Athens in August 1800 but did not obtain access to the Acropolis until July 1801 (after the British had defeated Napoleon in Egypt, which the Ottomans were attempting to have restored to their empire).<sup>78</sup> Shortly afterwards, putting it neutrally at this stage, they began to remove material from the Parthenon and other structures on the Acropolis including the ruins of the Temple of Athena Nike.<sup>79</sup> This went on until early 1804 when, as a result of pressure from Fauvel and the French Ambassador, Ottoman officials ordered Elgin's agents to stop removing material from the Acropolis.<sup>80</sup>

The removed material was shipped out of Greece in instalments.<sup>81</sup> Although removals from the Parthenon stopped by 1804, it took until 1812 for the entire collection to make it to the United Kingdom. One of the ships involved in this endeavour, the *Mentor*, sank off the Greek coast in September 1802 with 17 cases of marbles onboard including fourteen pieces of the Parthenon frieze

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<sup>73</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 1-2.

<sup>74</sup> Recent research suggests the King's episodic illness was bipolar disorder, rather than acute intermittent porphyria as previously thought: see Timothy J Peters and Allan Beveridge, 'The madness of King George III: a psychiatric re-assessment' (2010) 21(1) *History of Psychiatry* 20.

<sup>75</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 1-2.

<sup>76</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 6-7.

<sup>77</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 24-25.

<sup>78</sup> Elgin's agents did briefly gain access to the Acropolis in February 1801 for the price of five guineas per day but this arrangement was halted by May 1801. Nothing was removed from the Acropolis during this period: William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 66, 88, 91; AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 163, 185-186.

<sup>79</sup> Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 66-68.

<sup>80</sup> William St Clair, *Who Saved the Parthenon?* (Open Book Publishers, 2022) 672; AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 163, 257-258.

<sup>81</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 107, 113-114; Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 66-69.

and four from the Temple of Athena Nike.<sup>82</sup> It took until October 1804 for all the marbles on board to be salvaged, though this perhaps has something to do with the divers recruited for the mission who were reportedly ‘of unstable character, and mostly drunk’.<sup>83</sup> Fragments of other antiquities continue to be pulled from the wreckage to this date.<sup>84</sup> One of the last ships to leave Greece with the Parthenon Marbles in April 1811, the *Hydra*, ironically carried then little-known Lord Byron, who would go on to be one of Elgin’s sharpest critics (see, most notably, *The Curse of Minerva*, which Byron had just finished writing at the time of the journey though he would be convinced not to publish it in his lifetime by a friend of Elgin’s).<sup>85</sup>

There was nobody to receive the earlier tranches of Marbles as they arrived in England and they were temporarily stored on various ducal estates.<sup>86</sup> This was because, in the midst of his agents working to remove the Marbles in Athens, Lord Elgin had been taken prisoner in Paris in May 1803 at the outbreak of war between the British and the French.<sup>87</sup> Apart from two short stints in gaol, his detention largely took the form of being forced to live a life of leisure in the Pyrenees.<sup>88</sup> Despite his best diplomatic efforts to secure his release from this nightmarish existence, the decision was in the hands of Napoleon himself and it was not until June 1806 that he saw fit to permit Elgin to return to Britain.<sup>89</sup>

Upon his return, Elgin acquired a house on the corner of Piccadilly and Park Lane, at the south east corner of Hyde Park, and the Marbles adorned his residence for a time.<sup>90</sup> However, by 1808 Elgin was going through a divorce on account of his wife having an affair with Robert Ferguson of Raith – one of

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<sup>82</sup> Elgin had demanded that the *Mentor* also be loaded with the larger pedimental sculptures but luckily for him had been unable to persuade the ship’s captain to do so: AH Smith, ‘Lord Elgin and His Collection’ (1916) 36 *Journal of Hellenic Studies* 163, 231-233; William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 116

<sup>83</sup> AH Smith, ‘Lord Elgin and His Collection’ (1916) 36 *Journal of Hellenic Studies* 163, 258-259.

<sup>84</sup> Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 88.

<sup>85</sup> Byron’s most famous work, *Childe Harold’s Pilgrimage*, was more subtly critical of Elgin’s ‘plunder from a bleeding land’: AH Smith, ‘Lord Elgin and His Collection’ (1916) 36 *Journal of Hellenic Studies* 163, 281; William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 160-161, 180-199.

<sup>86</sup> AH Smith, ‘Lord Elgin and His Collection’ (1916) 36 *Journal of Hellenic Studies* 163, 295-296.

<sup>87</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 120.

<sup>88</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 122, 125-131.

<sup>89</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 121-122, 125-131.

<sup>90</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 145-146.

Elgin's oldest friends and godfather to one of their children – and had fallen into financial difficulties.<sup>91</sup> These forced him in 1811 to sell his London home and relocate the Marbles temporarily to Burlington House, where many of them were left in a courtyard at the mercy of the English weather.<sup>92</sup> By this time, Elgin had come to accept that he would also need to sell the Marbles and he set about forcefully courting their purchase by the UK government.<sup>93</sup> His starting price - £62,440 and a British peerage – was rejected out of hand by then Prime Minister Spencer Perceval.<sup>94</sup> The government counter-offered £30,000 which Elgin considered 'wholly inadequate.'<sup>95</sup> Negotiations took a further blow in 1812 when Perceval was assassinated in the House of Commons' lobby.<sup>96</sup> The matter then lay dormant until negotiations were reopened by Elgin in 1815.<sup>97</sup> Whilst the UK government initially remained reluctant to purchase the Marbles, it slowly warmed to the idea when Crown Prince Ludwig of Bavaria emerged as a potential buyer.<sup>98</sup> In early 1816 a parliamentary select committee was convened to consider whether the Parthenon Marbles should be purchased by the government and, if so, their value.<sup>99</sup>

In their report, the select committee briefly considered the legality of Elgin's removal of the Marbles.<sup>100</sup>

Whilst not expressly resolving the question, the committee accepted the evidence of Elgin and his

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<sup>91</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 129, 141-142. Elgin brought against Ferguson an action in the since-abolished tort of criminal conversation and sought £20,000 in damages. Liability having been admitted, counsel for the defendant was able to persuade the jury to award half this amount including by the courageous submission that Ferguson's responsibility was diminished because 'few perhaps would have had virtue enough to have withstood the temptation': *An Authentic Account of the Proceedings Under a Writ of Enquiry of Damages in an Action in the Court of King's Bench in which The Right Hon. The Earl of Elgin Was Plaintiff and Robert Ferguson, Esq. Defendant, for Criminal Conversation with the Plaintiff's Wife* (J Hatchard, 1808) 93. See also *The Trial of RJ Ferguson, Esquire, for Adultery with the Countess of Elgin, Wife of the Earl of Elgin* (J Day, 1807).

<sup>92</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 214; AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 313-316.

<sup>93</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 174; AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 307-313.

<sup>94</sup> AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 163, 309-313; William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 176-178.

<sup>95</sup> AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 311.

<sup>96</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 179.

<sup>97</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 218.

<sup>98</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 225.

<sup>99</sup> United Kingdom, *Parliamentary Debates*, House of Commons, 23 February 1816, vol 32, cols 823-828.

<sup>100</sup> *Report from the Select Committee on the Earl of Elgin's Collection of Sculptured Marbles* (25 March 1816) 4-5.

agent, Philip Hunt, that in the summer of 1801 they had been issued a *firman* by the Ottoman authorities that granted access to the Acropolis and permitted them 'to draw, model, and remove'.<sup>101</sup> Although provided with a translation of the firman, the select committee did not express a view as to whether its permissions entailed the removal of the Parthenon Marbles.<sup>102</sup> But evidently the committee did not consider the terms of the firman to present a barrier to the government's acquisition of the Marbles and it went on to recommend their purchase for £35,000.<sup>103</sup> This was considerably less than the £74,240 (approximately £6,000,000 today) Elgin estimated he had spent on acquiring and storing the Marbles.<sup>104</sup>

Following the publication of the report, the motion to purchase the Marbles was debated by the UK Parliament and carried by 82 votes to 30.<sup>105</sup> Proponents argued that the Marbles would 'enlighten and improve the taste of the people', that the Turks and Greeks did not want them and, worse, would allow their destruction over time.<sup>106</sup> Opponents argued that the expense could not be justified in the economic climate of the day, that the firman did not authorise Elgin to remove the Marbles, that he had taken advantage of his position as Ambassador and the British position after their defeat of the French in Egypt, and that he had bribed Ottoman officials.<sup>107</sup> The result was the *British Museum Act 1816*, which provided that the Marbles would be purchased for the recommended price on the condition that they be kept together in the British Museum, open for inspection by the public and

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<sup>101</sup> Ibid 4.

<sup>102</sup> Ibid 5.

<sup>103</sup> Ibid 10.

<sup>104</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 247. It has recently come to light that this figure did not include customs tax, from which the Marbles were exempted after the intervention of then Foreign Secretary, Viscount Castlereagh: Esther Addley, 'Lord Elgin paid no British customs tax on Parthenon marbles, letters suggest' *The Guardian* (online, 7 October 2022) <<https://www.theguardian.com/artanddesign/2022/oct/07/lord-elgin-paid-no-british-customs-tax-parthenon-marbles-letters-reveal>>.

<sup>105</sup> United Kingdom, *Parliamentary Debates*, House of Commons, 7 June 1816, vol 34, cols 1027-1040.

<sup>106</sup> See, for example, *ibid* cols 1027-1029, 1035.

<sup>107</sup> See, for example, *ibid* cols 1030, 1031-1033, 1037, 1039. Interestingly in light of modern debates, one opponent proposed amending the motion such that the government would hold the Marbles in trust for the rulers of Athens until such time as their return was demanded: *ibid* cols 1032-1033.



thereinafter referred to as ‘the Elgin Marbles’.<sup>108</sup> The Act also provided for Elgin and his successors to be trustees of the British Museum.<sup>109</sup>

After regaining its independence in 1832, Greece began calling for the return of the Parthenon Marbles as soon as 1833 and made its first formal request for their return in 1836.<sup>110</sup> This was roundly rejected by then Foreign Secretary, Lord Palmerston.<sup>111</sup> The Greek government has consistently requested the return of the Marbles since then, except between 1967 and 1974 when the country was ruled by a military junta.<sup>112</sup>

Over the years there has been prominent support within the UK for returning the Marbles including from the Foreign Office and, perhaps unexpectedly, Boris Johnson before he became Prime Minister.<sup>113</sup> Despite this, each of Greece’s requests, including for mediation, has been rejected by the UK government on the principal bases that: i) Elgin’s acquisition of the Marbles, and therefore the government’s, was lawful; ii) the Marbles were better able to be preserved and seen by a global audience in the British Museum; iii) the return of the Marbles would precipitate demands for other parts of the British Museum’s collection to be returned to their countries of origin; iv) slightly disingenuously, the government could not interfere in the affairs of the British Museum; and v)

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<sup>108</sup> *British Museum Act 1816*, 56 Geo 3, c 99, ss 1-3.

<sup>109</sup> *British Museum Act 1816*, 56 Geo 3, c 99, s 4. This arrangement was brought to an end in 1963: *British Museum Act 1963* (UK) s 1, sch 4.

<sup>110</sup> Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 126-127; Geoffrey Robertson, *Who Owns History? Elgin’s Loot and the Case for Returning Plundered Treasure* (Knopf, 2019) 102-103.

<sup>111</sup> Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 127.

<sup>112</sup> Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 127-129; Geoffrey Robertson, *Who Owns History? Elgin’s Loot and the Case for Returning Plundered Treasure* (Knopf, 2019) 103-109.

<sup>113</sup> During his time as President of the Oxford Union, Johnson wrote that ‘there is absolutely no reason’ that the Marbles ‘should not be returned immediately...to their rightful home in Athens’ and that the UK’s refusal to do so was ‘unacceptable to cultured people’: Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 130-131. See also Geoffrey Robertson, *Who Owns History? Elgin’s Loot and the Case for Returning Plundered Treasure* (Knopf, 2019) 103-109.

confusingly in light of iv), the British Museum is prohibited by s 3(4) of the *British Museum Act 1963* (UK) from disposing of the Marbles.<sup>114</sup>

In 1984 Greece listed the dispute with the United Nations Educational, Scientific and Cultural Organisation ('UNESCO') and the matter has been on the agenda of its Intergovernmental Committee for Promoting the Return of Cultural Property ever since.<sup>115</sup> In that time, the Committee has adopted eight resolutions calling on the UK to negotiate and a further seven resolutions indicating that the Marbles should be returned, most recently in 2021.<sup>116</sup> Each of those resolutions, including an offer from UNESCO to mediate the dispute in 2013, has been rejected by the UK.<sup>117</sup>

From 2009 the newly built Acropolis Museum in Athens has exhibited the surviving Parthenon sculptures as they originally stood alongside plaster copies of the marbles held in the British Museum and elsewhere.<sup>118</sup> But this too has not shifted the UK's stance and it remains a politically sensitive topic. Most recently, in November 2023, it will be recalled that then UK Prime Minister Rishi Sunak cancelled a meeting with the Greek Prime Minister over remarks he had made about the Marbles.<sup>119</sup> Comments from the chair and director of the Museum suggest it is open to lending the Marbles to the Greek government though the inclusion of a clause which recognises the Museum's title to them remains a sticking point.<sup>120</sup>

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<sup>114</sup> Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 141-146, 157-172. Subject to presently irrelevant exceptions, s 3(4) of *British Museum Act 1963* (UK) prevents the disposition of the British Museum's collection even where there is a moral obligation to return them: *Attorney-General v Trustees of the British Museum* [2005] EWHC 1089.

<sup>115</sup> Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 130; Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, *Decisions*, 22<sup>nd</sup> sess, UN Doc ICPRCP/21/22.COM/Decisions (27-29 September 2021) 3.

<sup>116</sup> Geoffrey Robertson, *Who Owns History? Elgin's Loot and the Case for Returning Plundered Treasure* (Knopf, 2019) 108-109; Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, *Decisions*, 22<sup>nd</sup> sess, UN Doc ICPRCP/21/22.COM/Decisions (27-29 September 2021) 2-3.

<sup>117</sup> Geoffrey Robertson, *Who Owns History? Elgin's Loot and the Case for Returning Plundered Treasure* (Knopf, 2019) 109-112.

<sup>118</sup> Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 57-58.

<sup>119</sup> Brian Wheeler and Nick Beake, 'PMQs: Rishi Sunak accuses Greek PM of grandstanding over Elgin Marbles', *BBC* (online, 30 November 2023) <<https://www.bbc.com/news/uk-politics-67567544>>.

<sup>120</sup> Amy Gibbons, 'George Osborne hopeful Elgin Marbles deal will go ahead despite museum thefts', *Financial Times* (online, 27 August 2023) <<https://www.ft.com/content/1048ff74-43a9-453f-8484-438279436836>>;

Turning then to the legalities, the situation is messy to say the least. Much of the debate turns on the status and terms of the purported firman procured by Elgin in 1801 (which, it will be recalled, was briefly considered by the select committee). It can now be accepted, based on contemporaneous correspondence, that in early July 1801 Elgin's private secretary *did* obtain a document from Ottoman officials in Constantinople and arrange for its translation into Italian, being the lingua franca of the eastern Mediterranean in that period and spoken by both Elgin and Hunt.<sup>121</sup>

The original document is lost to history. We know it was taken from Constantinople to Athens to be shown to local Ottoman officials and that those officials, likely with the encouragement of bribes and the exertion of Elgin's political influence, were persuaded to interpret it in a manner which permitted the removal of the Parthenon Marbles.<sup>122</sup> However, the original document has not been found in Greek, Ottoman or British archives nor in the papers of Elgin or Hunt.<sup>123</sup> Nor has any reference to the document been found in the Ottoman archives.<sup>124</sup> All that remains is the Italian translation which was retained by Hunt.<sup>125</sup> It is not clear whether Hunt provided this Italian translation to the select committee which then procured an English translation or whether Hunt himself obtained the English translation and provided it to the committee.<sup>126</sup> In any event, an English translation was appended to the committee's report and was relevantly in the following terms:

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Madeline Sherratt, 'New British Museum boss opens door to Parthenon marbles return with 'lending library' model', *Independent* (online, 18 July 2024) <<https://www.independent.co.uk/news/uk/home-news/british-museum-parthenon-marbles-sculptures-artefacts-b2581828.html>>.

<sup>121</sup> Dyfri Williams, 'Lord Elgin's Firman' (2009) 21(1) *Journal of the History of Collections* 49, 49, 64-65 [PDF pages 1, 16-17]; William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 88.

<sup>122</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 91-95.

<sup>123</sup> David Rudenstine, 'A Tale of Three Documents: Lord Elgin and the Missing, Historic 1801 Ottoman Document' (2001) 22 *Cardozo Law Review* 1853, 1860; Edhem Eldem, 'From Blissful Indifference to Anguished Concern: Ottoman Perceptions of Antiquities, 1799-1869' in Zeynep Çelik, Edhem Eldem and Zainab Bahrani (eds), *Scramble for the Past: A Story of Archaeology in the Ottoman Empire, 1753-1914* (SALT/Garanti Kültür 2011) 287.

<sup>124</sup> David Rudenstine, 'A Tale of Three Documents: Lord Elgin and the Missing, Historic 1801 Ottoman Document' (2001) 22 *Cardozo Law Review* 1853, 1860.

<sup>125</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 88.

<sup>126</sup> The select committee's papers were subsequently lost in a fire so this mystery may never be solved: David Rudenstine, 'A Tale of Three Documents: Lord Elgin and the Missing, Historic 1801 Ottoman Document' (2001)

We therefore have written this Letter to you, and expedited it by Mr Phillip 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 you 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 occupation; or in fixing 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

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22 *Cardozo Law Review* 1853, 1863-1864. Cf Dyfri Williams, 'Lord Elgin's Firman' (2009) 21(1) *Journal of the History of Collections* 49, 54 [PDF page 6].

implements, *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

N.B. – The words in Italian rendered in two places “any pieces of stone” are “qualche pezzi di pietra.”<sup>127</sup>

The British Museum now hangs its hat on the statement that Elgin’s agents were not to be hindered from ‘taking away any pieces of stone with inscriptions’. Controversy attends this aspect of the translation from Italian to English as ‘qualche’ is a slightly ambiguous word that is usually translated to mean ‘some’ or ‘a few’, rather than ‘any’.<sup>128</sup> More fundamentally, there is disagreement as to whether the permission to remove pieces of stone (in whatever quantity) entailed permission to remove sculptures that were still in situ on the Parthenon or was limited to what could be found lying in the rubble.<sup>129</sup> Though not determinative of the issue, it is clear that Elgin, Hunt and the Vaivode did not initially interpret the firman as permitting the removal of the Parthenon Marbles and that the Vaivode had to be ‘induced...to extend rather than contract the precise permissions’ of the firman.<sup>130</sup> There are also lively disputes as to whether the document is a firman given that it was not issued by the Sultan or is in fact some other lesser instrument such as a *buyuruldi* (a decree from the Kaimakam) or a *mektub* (an official letter).<sup>131</sup>

From these debates arise questions as to who had the legal power to authorise the removal of the Parthenon Marbles. Would a *buyuruldi* from the Kaimacam have been sufficient? Or, even if the terms

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<sup>127</sup> *Report from the Select Committee on the Earl of Elgin’s Collection of Sculptured Marbles* (25 March 1816) 69.

<sup>128</sup> Edhem Eldem, ‘From Blissful Indifference to Anguished Concern: Ottoman Perceptions of Antiquities, 1799-1869’ in Zeynep Çelik, Edhem Eldem and Zainab Bahrani (eds), *Scramble for the Past: A Story of Archaeology in the Ottoman Empire, 1753-1914* (SALT/Garanti Kültür 2011) 286; Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 72.

<sup>129</sup> Cf Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 72-73; Dyfri Williams, ‘Lord Elgin’s Firman’ (2009) 21(1) *Journal of the History of Collections* 49, 68 [PDF page 20].

<sup>130</sup> *Report from the Select Committee on the Earl of Elgin’s Collection of Sculptured Marbles* (25 March 1816) 57.

<sup>131</sup> Dyfri Williams, ‘Lord Elgin’s Firman’ (2009) 21(1) *Journal of the History of Collections* 49, 68 [PDF page 20].

of the purported firman did not go so far, did the Voivode or Disdar in any event have the power to authorise the removal of the Marbles?<sup>132</sup>

The picture is complicated by the later issue in October 1802 of letters from Constantinople to the Voivode and Disdar and in March 1810 of a second firman which authorised the shipment of the marbles that then remained in Athens. Either or both of these instruments are claimed by some to have ratified post facto the decision to allow the removal of the Parthenon Marbles.<sup>133</sup> The 1802 letters have never been located and nothing is known of their content or author.<sup>134</sup> What little is known comes from letters exchanged between Elgin and Lusieri in October 1802, the import of which seems to be that the Voivode and Disdar were anxious that they would be punished for allowing Elgin's agents to remove what they had and were given comfort by the letters Elgin had obtained for them from Constantinople.<sup>135</sup> Beyond this, the evidence does not go.

The 1810 firman was recently discovered in the Ottoman archives along with a letter from the Grand Vizier to the Sultan requesting its issuance. The Grand Vizier's letter refers to a request by the then English ambassador that permission be granted to transport 'a few pieces of image-bearing stones which...Lord Elgin had purchased in Athens'.<sup>136</sup> The Sultan granted the firman which has been translated into English as follows:

Concerning the matter of the transport of some broken marble pieces and earthen pots decorated with figures, which the Englishman by the name of Lord Elgin, who previously resided in the Abode of Felicity as ambassador, had obtained in Athens and placed in crates in order to be transported to his country, upon your previous communication that opposition was raised when the man sent by the

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<sup>132</sup> William St Clair, *Lord Elgin and the Marbles* (Oxford University Press, 3<sup>rd</sup> ed, 1998) 95.

<sup>133</sup> See especially John Henry Merryman, 'Thinking About the Elgin Marbles' (1985) 83(8) *Michigan Law Review* 1881, 1899-1900.

<sup>134</sup> Catharine Titi, *The Parthenon Marbles and International Law*, (Springer, 2023) 75.

<sup>135</sup> AH Smith, 'Lord Elgin and His Collection' (1916) 36 *Journal of Hellenic Studies* 163, 233-236.

<sup>136</sup> Edhem Eldem, 'From Blissful Indifference to Anguished Concern: Ottoman Perceptions of Antiquities, 1799-1869' in Zeynep Çelik, Edhem Eldem and Zainab Bahrani (eds), *Scramble for the Past: A Story of Archaeology in the Ottoman Empire, 1753-1914* (SALT/Garanti Kültür 2011) 292.

aforementioned [ambassador] tried to take these objects, it was written and communicated to you that permission should not be granted to allow their transport and passage before you received a noble edict and a letter emanating from the Sublime State. The ambassador of England presently residing in the Abode of Felicity having presented a petition requesting the transport and passage of the aforementioned stones, and as stones of this kind, decorated with figures, are not held in consideration among Muslims, but are appreciated by the Frankish states, there is no harm in granting permission for the transport and passage of the said stones, and this letter [is written so that] no impediment be offered to the transport and passage of the said stones that have been placed in the crates located there.<sup>137</sup>

It is notable that the language of the Grand Vizier's request ('a few pieces') seems to reflect that of the 1801 firman (on one view of the latter's proper English translation, at least) and that it proceeds on the incorrect premise that Elgin had purchased the marbles in his possession.<sup>138</sup>

Clearly, then, the situation is not tidy. Whether Lord Elgin obtained good title would turn on questions of Ottoman law and questions of fact. These include the proper construction of the first firman; whether the payment of bribes mattered under Ottoman law; and the ratifying effect, if any, of the 1802 letters and the firman of 1810.

There are of course similar disputes involving many different countries.<sup>139</sup> There is the Bust of Nefertiti, the wife of the Pharaoh Akhenaten, which was removed from Egypt to Germany in 1913 in contravention of Egyptian law and then displayed from 1924 in the Egyptian Museum in Berlin. The Egyptian government has been demanding its return ever since.<sup>140</sup> Other famous works in a similar

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<sup>137</sup> Edhem Eldem, 'From Blissful Indifference to Anguished Concern: Ottoman Perceptions of Antiquities, 1799-1869' in Zeynep Çelik, Edhem Eldem and Zainab Bahrani (eds), *Scramble for the Past: A Story of Archaeology in the Ottoman Empire, 1753-1914* (SALT/Garanti Kültür 2011) 293.

<sup>138</sup> Edhem Eldem, 'From Blissful Indifference to Anguished Concern: Ottoman Perceptions of Antiquities, 1799-1869' in Zeynep Çelik, Edhem Eldem and Zainab Bahrani (eds), *Scramble for the Past: A Story of Archaeology in the Ottoman Empire, 1753-1914* (SALT/Garanti Kültür 2011) 293-294.

<sup>139</sup> See generally Geoffrey Robertson, *Who Owns History? Elgin's Loot and the Case for Returning Plundered Treasure* (Knopf, 2019) 167-216.

<sup>140</sup> *Ibid* 180-185.

position include the Rosetta Stone in the British Museum, the Dendera Temple Zodiac in the Louvre, the Bust of Ankhaf in the Boston Museum of Fine Arts and, perhaps most controversially, the 105.6 carat Koh-i-Noor diamond which forms part of the Crown Jewels (picked up by the East India Company following the Second Anglo-Sikh War and the annexation of the Kingdom of Punjab).<sup>141</sup> More recently a dispute about whether Russia or Ukraine owns Crimean treasures has played out before the Dutch courts.<sup>142</sup>

Turning then to the legal framework, the short answer is that private law can provide no answer to the problem of the Parthenon Marbles. Were a suit commenced and were it to succeed, it would not be possible to enforce that judgment against the British Museum which by domestic law is prohibited from parting with the Marbles.<sup>143</sup> In other cases, particularly where objects have been moved pursuant to an agreement as with the Crimean treasures, private law may provide an answer. Interesting questions may arise where the asportation is very ancient; for example, the removal of Egyptian obelisks from Luxor by the Romans or all the Greek art in Rome.

Public international law also provides no answer. The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) imposes an obligation on States Parties to not permit exportation of cultural property from their territory without an export certificate (Art 6) and to prevent their museums from acquiring cultural property illegally removed from another State Party after the entry into force of the Convention (Art 7). The export certificate regime is intended to permit museum collections to go on tour. Article 15 permits States Parties to reach agreements to 'conclude special agreements among themselves...regarding the

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<sup>141</sup> Ibid 179-180, 197-201.

<sup>142</sup> Nina Siegal, 'After 9 Years in Limbo, Treasures from Crimea Return to Ukraine', *New York Times* (online, 27 November 2023) <<https://www.nytimes.com/2023/11/27/arts/design/crimea-gold-treasures-return-ukraine.html>>.

<sup>143</sup> See above n 115.



restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention'.

The bottom line is that the Convention does not impose any obligation on the United Kingdom, or any other country, to return cultural heritage acquired before the Convention came into force. Plainly, any new form of convention which would result in the rearrangement of the world's museum holdings is unlikely to secure the consensus needed to bring it into force. Hence, there is no reason to think that any international convention will come into force having effect on events arising before 1970.

Just how the return of antiquities such as the Parthenon Marbles is to be handled therefore seems to be more of a political question than a legal one.