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BOOK REVIEWS

The Legality of Elgin's Taking: A Review Essay of Four Books on the Parthenon Marbles

DAVID RUDENSTINE*

William St. Clair, *Lord Elgin and the Marbles: The Controversial History of the Parthenon Sculptures*, Pp. xiv + 419. Oxford University Press, Oxford and New York 1998. ISBN 0-19-288053-5. B. F. Cook, *The Elgin Marbles*. Pp. 96. British Museum Press, London 1997. ISBN 0-7141-2134-7. Christopher Hitchens, *The Elgin Marbles: Should They Be Returned to Greece?* Pp. xiii + 138. Verso, London and New York 1998. ISBN 1-85984-220-8. Theodore Vrettos, *The Elgin Affair: The Abduction of Antiquity's Greatest Treasures and the Passions It Aroused*, Pp. xvi + 238. Arcade, New York 1997. ISBN 1-55970-386-5.

During the early morning light on July 31, 1801, a ship carpenter, five crew members, and twenty Athenian laborers "mounted the walls"¹ of the Parthenon and with the aid of ropes and pulleys detached and lowered a sculptured marble block depicting a youth and centaur in combat. The next day the group lowered a second sculptured marble from the magnificent temple. Within months, the workers had lowered dozens of additional marble sculptures, and within a few years, most of the rest of the Parthenon's priceless marbles were removed. This dismantling of the Parthenon was done at the behest of Lord Elgin, the British ambassador to the Ottoman Empire, which then ruled Greece. Except for the devastating Venetian bombing in 1687, the removal of these extraordinary sculptures from the Parthenon's edifice was perhaps the single most violent desecration of classical Greece's celebrated monument since its completion during the age of Pericles 2,200 years before.

Lord Elgin's taking of the world's single greatest collection of classical Greek sculptures has been defended and criticized by poets, artists, historians, politicians, lawyers, cultural leaders, diplomats, art dealers, art collectors, and museum

*Dr. Herman George and Kate Kaiser Professor of Constitutional Law, Benjamin N. Cardozo School of Law, Yeshiva University.

officials. Indeed, almost any book focusing on cultural property, the evolution of aesthetic tastes in Britain in the late eighteenth and early nineteenth centuries, English culture and society, or Greece under the Ottomans at least mentions the fight over the Parthenon marbles. The dispute also has been the subject of diplomatic negotiation and international efforts aimed at restricting the outflow of cultural property from art-rich countries. In fact, in January 1999, 339 of the 626 members of the European Parliament urged Britain to return the collection of figures to Greece. Yet Britain refuses to return them to Greece, and Greece refuses to accept that it cannot recover the marbles.

Those defending the taking and retention of the marbles do not claim that Britain is entitled to the marbles merely because it possesses them. They insist that the British Museum is entitled to the marbles Lord Elgin's agents stripped from the Parthenon because he had an unimpeachable legal title to them. They also argue that the marbles have been in Britain so long that they are now part of the British patrimony. Alternatively, they claim that the enduring significance of the world's great cultural treasures transcends the claims and attachments of any one people and that such legacies belong to all humankind. In this case, that means the British claim to the marbles is equal to that of the Greeks. They also assert that the return of the marbles would establish a precedent that would threaten the collections of the world's great museums. They emphasize that Elgin rescued the marbles from other collectors, and they are in better condition today than they would be if they had remained on the Parthenon, since they have been in a museum for the last 180 years. Lastly, they claim that not every wrong can be righted—assuming that the initial taking was a wrong—and that acceptance of the past requires accepting Elgin's dismantling of the Parthenon.

Not surprisingly, Greece takes exception to the British assertions. Greece has not forgiven, condoned, or accepted the taking. Greece insists that the Ottomans did not authorize the removal of the marbles or, alternatively, that the Ottomans could not legitimately alienate Greece's cultural property merely because the Ottoman military occupied the territory. If the Greeks lent any credence to the British claim that the marbles were part of the British patrimony, they would characterize the marbles as a British stepchild; they nonetheless remain one of Greece's own. If the Greeks admitted that the marbles were in better condition today because they have been in a museum, they also would emphasize that the Parthenon was in worse condition because of the brutal means used to remove them. While Greece concedes that it has never sued for the return of the marbles, it dismisses the suggestion as silly, since it could bring such a suit only in a British court. Instead, Greece demands that the British recognize that such a taking violates contemporary international norms and that the British honor the rule of law by returning the marbles.

The central battleground between the contending sides in the dispute over

the marbles is legal, moral, and equitable in character. Some of the critical questions are: Did the appropriate Ottoman authorities give Lord Elgin permission in advance to remove the marbles? Did the same officials, subsequent to the removal, permit the shipping of the marbles to Britain in such a manner that the permission to ship could be construed to imply approval of the initial taking? Did the bribes and threats employed by Elgin and his agents undermine the legitimacy of whatever permission Elgin may have secured to remove the marbles? What view did the Parliament have of Elgin's authority to remove the marbles? Is it just to wrench the marbles from the British Museum after so long a time? Does Greece's failure to initiate a timely suit against Britain for the return of the marbles undermine its moral claim for their return? Did Elgin remove the marbles with a pure heart—a desire to rescue the marbles from being nibbled to death by travelers in search of trophies? Or did he act in large measure because of unbridled arrogance mingled with an interior decorator's lust to fill out his Scottish manor with Greek prizes? Would the return of the marbles set a precedent that would threaten the collections of the great museums? And if so, is that an argument for or against the return of the marbles?

Although the answers to these questions provided by both sides embrace several disciplines, the major and dominant claims are legal in nature. On balance, they continually intersect with one overriding question: Did the appropriate Ottoman authorities give Lord Elgin permission to remove the marbles? Indeed, it almost seems as if the moral fervor that characterizes the dispute is largely—but not exclusively—dependent upon whether the Ottomans did or did not convey to Elgin legal title to the marbles.

No fewer than four books on the marbles have been published within the last two years, indicating how important the debate over the Parthenon marbles is to the parties directly involved in the dispute as well as to a much broader community.² Of the four, William St. Clair's *Lord Elgin and the Marbles* is by far the most serious, thoughtful, and important. This is the third edition of St. Clair's biography of Elgin. The first appeared in 1967, the second in 1983, and the third in 1998. This latest revision remains exceptionally sympathetic to Elgin and essentially follows the presentation of the earlier works, which commenced with Elgin's appointment as Ambassador Extraordinary and Minister Plenipotentiary of His Britannic Majesty to the Sublime Porte of Selim III, Sultan of Turkey, in 1799, and ended with his death in 1841. But in this latest edition, St. Clair adds four chapters that are not satisfactorily integrated into the overall narrative and argument. Instead, they abruptly shift the focus to the harmful cleaning of the marbles at the British Museum in 1938, the history of the Parthenon during the last two centuries, and the complicated question of whether the marbles should be returned to Greece.

St. Clair provides the single most thorough contemporary presentation of the

position that the Ottomans gave Elgin permission to remove and ship the marbles. In fact, next to A. H. Smith's acclaimed but disorganized article "Lord Elgin and His Collection," published in the *Journal of Hellenic Studies* in 1916, St. Clair's biography of Elgin is perhaps the most cited and relied-upon history of the controversial taking. Because of the influence that St. Clair's biography has had on the debate over the marbles, what St. Clair has to say about Elgin's legal claim to the marbles is worthy of careful review. However, before turning to the evidence and arguments St. Clair offers to support his overall position that the Ottomans ultimately conveyed to Elgin legal title to the marbles, I will briefly comment on the other three books.

Theodore Vrettos's *The Elgin Affair*, published in 1997, is principally a biography of Elgin covering the seventeen years between his appointment as ambassador to the Sublime Porte and the British Museum's purchase of the marbles. The book adds nothing of significance to the legal and ethical dispute over the marbles. Moreover, there is some basis for doubting Vrettos's reliability as a historian,¹ and his writing style is often tedious and self-conscious.² Vrettos published *The Elgin Affair* as a new book, as opposed to a revised edition of an earlier effort, even though it is quite similar to his 1974 book entitled *A Shadow of Magnitude: The Acquisition of the Elgin Marbles*. In an author's note, Vrettos concedes that *The Elgin Affair* "follows roughly the same structure" as his earlier book, but he states that it is nonetheless proper to present the recent volume as a new book because it "contains at least thirty-five percent new material" and thus "completely supersedes" the earlier book.³ Perhaps Vrettos's new book does contain 35 percent new material, but that is not so apparent from the chapter titles, which are the same, or the bibliography, which is the same except for a few additions.

Christopher Hitchens's book is titled *The Elgin Marbles: Should They Be Returned to Greece?* and his answer to his question is yes. This book, initially published in 1987 and republished in 1997 without revisions, consists of three essays. Two are quite short, Robert Browning's "The Parthenon in History" and Graham Binns's "Restoration and the New Museum." They are informative and interesting. The third essay, which runs about eighty pages, is by Hitchens. By far the most interesting part of Hitchens's essay is the last twenty pages, in which he addresses six claims often asserted against the return of the marbles to Greece and which he summarizes as follows:

1. The removal of the marbles to Britain was a boon to the fine arts and the study of the classics.
2. The marbles are safer in London than they would have been in Athens.
3. The marbles are safer in London than they would be in Athens.
4. Lord Elgin acted in the spirit of a preservationist.
5. The return of the marbles would set a precedent for the denuding of the great museums and collections.

6. The Greeks of today are not authentically Greek and have no title, natural or otherwise, to Periclean or Phidian sculpture.⁶

Although Hitchens has identified important issues, he fails to discuss them thoroughly; consequently his discussion is not likely to change many minds.

B. F. Cook's *The Elgin Marbles* is a guide to the collection of Parthenon marbles assembled by Lord Elgin. Cook's book, first published in 1984 and republished in 1997 without changes, is short, running slightly less than 100 pages, and is divided into four parts: "Athena and Athens," "The Parthenon," "The Sculptures of the Parthenon," and "Lord Elgin and His Collection." The book, which does not break new ground, is aimed at visitors to the British Museum, where Cook was once the keeper of Greek and Roman antiquities. What makes the book worth noting is that the trustees of the British Museum hold the copyright to the book and the museum's press published it. Thus, the book comes as close as any could to being an official expression of the British Museum's position on the marbles.

Not surprisingly, Cook claims that Elgin had lawful title to the marbles. Although Cook concedes that it may be questioned whether an 1801 Ottoman directive granted Elgin permission to dismantle the Parthenon, he goes on to argue—following in St. Clair's footsteps—that later-in-time Ottoman documents constituted Ottoman ratification and approval of any earlier illegalities committed by Elgin and his agents with respect to removing marble sculptures from the Parthenon.⁷ In arguing the legal legitimacy of the British claim, Cook ignores the undisputed charges detailed in St. Clair's book that Elgin and his agents threatened and bribed Ottoman officials to get the marbles. Cook also ignores the controversy surrounding the improper museum cleaning of the marbles in the 1930s detailed by St. Clair.

Cook's preface sheds some light—perhaps unintended—on the brouhaha over whether the marbles should be referred to as the Elgin Marbles or the Parthenon Marbles.⁸ Cook states that his guide is a "descendant" of the earlier museum guides.⁹ The first of these guides, entitled *A Short Guide to the Sculptures of the Parthenon in the British Museum (Elgin Collection)*, was written by Arthur Hamilton Smith, who was the museum's keeper of Greek and Roman antiquities from 1909 to 1925. Smith's guide was revised in 1949 and again in 1962. The 1962 version, which marked the opening of the Duveen Gallery in which the marbles are exhibited, was titled *An Historical Guide to the Sculptures of the Parthenon*. Thus, through the first publication of Cook's guide in 1984, the British Museum referred to the marbles as the "Sculptures of the Parthenon." Although Cook claimed when he wrote his guide that the marbles have "come to be known" as the "Elgin Marbles,"¹⁰ he does not explain when this change in nomenclature occurred. But it may be that his decision to refer to the sculptures as the "Elgin" marbles was little more than a re-

action to the 1983 request—made by Melina Mercouri, the actress who was the Greek minister of culture at the time—on behalf of the Greek government that the marbles be returned to Greece.

As already noted, St. Clair's is the most important of the four books. He contends that Elgin's "claim to personal ownership and right to sell were valid in law."¹¹ In support of his overall conclusion, St. Clair gives legal meaning to several episodes that began in 1801 and ended in 1810. Because his interpretations of the evidence have been widely accepted, I will devote the balance of this essay to assessing St. Clair's use of the evidence and the persuasiveness of his conclusions.

1801 DOCUMENT

St. Clair asserts that all "discussion of legality [of Elgin's actions] must start with the second firman issued by the Ottoman government in July 1801, under whose authority the Ottoman authorities in Athens permitted the first removals of sculptures from the Parthenon."¹² Since the original 1801 Ottoman firman has not been found,¹³ an inquiry into what activities the Ottomans authorized by it proceeds on the assumption that the English-language document (which is printed in the appendix of the Report of the Select Committee established by Parliament to review Elgin's request that the Parliament purchase the marbles from him) is an accurate translation of the missing firman.¹⁴ But if that assumption is made—and for the purpose of assessing St. Clair's arguments it is reasonable to do so—the central question becomes, what activities did the Ottomans authorize in this English document? Any claim that the English-language document printed in the Select Committee's report granted Lord Elgin permission to remove the metopes, friezes, and statues from the Parthenon must rest on a handful of words. Those words provide that no one should "hinder them [Elgin's agents] from taking away any pieces of stone with inscriptions or figures."¹⁵

For the most part, St. Clair concludes that the 1801 firman did not grant Elgin permission to remove the marbles from the walls: "The firman confers no authority to remove sculptures from the buildings or to damage them in any way. On the contrary it seems certain that the Ottoman government, if they considered the point at all, only intended to grant permission to dig and take away. . . . Nor is there is [sic] any indication that at the time either Elgin or any of his entourage believed that the firman gave permission to make removals from the buildings."¹⁶ St. Clair, however, does mount a modest retreat from this unequivocal judgment. He contends that the firman "becomes a little ambiguous at a crucial point"¹⁷ and then charges that "[g]overnments have only themselves to blame if they draft ambiguous instructions which are then misinterpreted by their officials."¹⁸ What St. Clair

means by this statement is uncertain. But one plausible construction is that the firman was so ambiguous that Ottoman officials in Athens could, in good faith, interpret it to permit Elgin's men to denude the walls of the Parthenon of the famous sculptures.¹⁹

The 1801 document is not that ambiguous. It certainly contains nothing explicit to support the contention that it authorized Elgin to remove marbles from the walls. Perhaps if the critical words quoted above were read in complete isolation from the rest of the document, their meaning might be stretched to authorize the removal of dozens of metopes, friezes, and statues from the Parthenon walls. But any interpretation of the meaning of a partial sentence that fails to take account of the entire document is unconvincing. When the entire document is reviewed, the assertion that this one line is ambiguous and arguably permitted Lord Elgin to remove the metopes, friezes, and statues from the Parthenon walls is neither defensible nor even plausible.

The document described the activities that Lord Elgin wanted his workers to conduct. They were limited to "fixing scaffolding round the ancient Temple of the Idols there; and in moulding the ornamental sculpture and visible figures thereon, in plaster or gypsum; and in measuring the remains of other old ruined buildings there; and in excavating when they find it necessary the foundations, in order to discover inscriptions which may have been covered in the rubbish."²⁰ As is clear, Lord Elgin did not ask for permission to remove the metopes, friezes, and statues from the walls. Indeed, there is not one word in the document suggesting, intimating, or implying that Lord Elgin sought permission to remove them. If there is any doubt that the authority to remove "any pieces of stone with inscriptions and figures" was limited to stones already on the ground or discovered while excavating, that doubt vanishes because of a line in the middle of the second paragraph. That line emphasizes that the local Athens officials should honor the firman given to Lord Elgin, "*particularly as there is no harm in the said figures and edifices being thus viewed, contemplated, and designed*" (emphasis added).²¹

In short, the 1801 document not only fails to support the claim that Elgin had good title to the marbles, but it actually negates the idea that the Ottomans gave Elgin permission to remove them. Any contention that the Ottomans permitted Elgin to denude the Parthenon must be based on something other than the 1801 document, and it must overcome the prohibition in the 1801 document that Elgin's workmen would inflict "no harm" on the marbles.²²

1802 RATIFICATION

St. Clair seeks to strengthen the legal position of the British Museum by arguing that subsequent to the removal of the marbles, Ottoman authorities ultimately ap-

proved of Elgin's denuding of the Parthenon. At the heart of St. Clair's argument is an alleged series of later-in-time directives or orders from Constantinople officials to Ottoman officials in Athens. What St. Clair asserts with respect to the last of these orders—which pertained to the shipping of the marbles from Greece to England—is representative of his attitude toward them all: "The granting of the firman allowing the marbles to leave Ottoman jurisdiction implied condonation, if not approval, of all the actions and abuses committed under the authority of other firmans granted earlier."²³

The first incident relied upon by St. Clair occurred in September or October 1802, shortly after Elgin returned to Constantinople from Athens. St. Clair describes this event twice, but in significantly different terms. St. Clair first writes:

On his return to Constantinople Elgin obtained from the Ottoman government letters which confirmed that the Government approved of all that the Voivode and Disdar had done. Elgin thus obtained an *official legitimation, after the event, of any illegalities perpetrated under the terms of the firman of July 1801*. Although in a constantly changing political situation there were no guarantees, the documents provided a measure of protection to the Voivode and Disdar that, if and when official policy changed, they would not be blamed, dismissed, imprisoned, sent to the galleys, summoned to Constantinople for public beheading, or quietly done away with by official assassins. Lusieri handed over the documents to the two men, much to their relief, in October 1802 (emphasis added).²⁴

St. Clair is more cautious in his second characterization of the letters Elgin obtained from the Ottomans:

In the autumn of 1802, when Elgin was preparing to leave Constantinople at the end of his appointment, he obtained two documents from the Vizier aimed at giving them [the voivode and the disdar] *some protection* if circumstances should change. *The exact status of these documents is unclear*. They were not, it would seem, firmans addressed to the officials concerned but letters to Elgin from the Ottoman government which commended the two officials for what they had done. They thus gave *some official approval* from the central government, after the event, to any stretching of the legal powers of the second firman with which they had co-operated. The two documents were sent by Elgin to Lusieri, who gave them to the officials concerned (emphasis added).²⁵

In the first passage, St. Clair claims that the two letters gave the officials in Athens "official legitimation . . . of any illegalities." In the second, however, St. Clair cuts the ground out from under the significance of these documents by stating that "[t]he exact status of these documents is unclear." And, although in the

first passage he unequivocally indicates that he believes that the later-in-time documents approve and condone all prior illegalities, his characterization of the meaning of these 1802 documents in the second passage is significantly weaker. There, St. Clair states that these 1802 documents offered the voivode and the disdar “some protection” for having permitted Elgin to remove the marbles and that they provided “some official approval” of the prior illegalities. Obviously, the phrases “some protection” and “some approval” are far more modest than the earlier “official legitimation . . . of any illegalities perpetrated under the terms of the firman of July 1801.”

In addition to these important inconsistencies, it seems as if the two documents St. Clair claims constituted approval of prior illegalities have not survived. Lusieri wrote to Elgin on October 28, 1802, stating that he “thought it necessary to give” the documents to the voivode and the disdar.²⁶ Thus, St. Clair’s claim that the specific content of these later-in-time documents is so compelling and of such unequivocal force that they constituted a complete and total ratification and approval of earlier illegalities is based on documents that he has not read and that may no longer exist.

Furthermore, St. Clair’s endnotes indicate that his knowledge of these documents is based entirely on Smith’s article in the *Journal of Hellenic Studies*. Thus, in support of his first statement that these 1802 documents constituted full approval of Elgin’s earlier actions, St. Clair refers to the above-mentioned letter from Lusieri to Elgin, which Smith quotes at page 235. In support of his second, more modest characterization of the documents, St. Clair again refers to Smith, this time at pages 235 and 236. But an examination of Smith’s study fails to reveal any support for St. Clair’s assertion that these 1802 documents constituted full approval of all prior illegalities. There is no indication in Smith’s study that Smith himself saw the original documents that Lusieri gave to the voivode and the disdar. Also, Smith makes no claim that the documents Elgin obtained constituted “official legitimation, after the event, of any illegalities perpetrated under the terms of the firman of July 1801.”

At page 235, Smith does characterize the letter from Lusieri to Elgin as indicating that Lusieri gave “thanks for the firmans and other documents” that Elgin had sent. On the next page, Smith, quoting Lusieri, writes: “The Voivode and the Disdar have been much pleased with the letters that your Excellency has procured and sent to them, and I have thought it necessary to give them to them today, in order to encourage them.” Obviously, the fact that the Athens officials were pleased indicates that the documents obtained by Elgin contained at least some words that gave the officials some reason to believe that they might not be subject to recriminations or criticisms—or worse—because they had permitted Elgin’s men to denude the Parthenon. But we do not know what the words were or how much comfort they in fact gave to the voivode and the disdar.

Also on page 235, Smith writes: "After explaining that the Neapolitan Minister has, so far as it lies with him, approved of Lusieri's further stay, Lord Elgin adds that a delay in sending the letter enables him to send documents for the protection of the Disdar and the Voivode. These included letters from the Vizier for each official, and other documents: 'You will make what use of them you like—you will be able either to shew them, or to present them—and to do either one thing or the other when you think suitable.'" ²⁷ Notice that although Smith writes that Elgin sent documents for the "protection" of the Athens officials, the word "protection" is Smith's not Elgin's. That of course does not mean that Smith improperly represented Elgin's characterization—assuming that Elgin's letter, dated October 8, 1802, in fact characterized the Ottoman documents. It does mean, however, that the only fact about which we can be certain is that Smith—not Elgin—states that the Ottoman documents offered "protection" to the Athens officials.

There is another passage in Elgin's letter to Lusieri that pertains to Elgin's efforts to protect the Athens officials. St. Clair, however, does not quote this passage. The complete passage reads: "The Disdar has nothing to fear on the part of P[rince] Dol[gorouki]. I have had some conversation with the ministers on these subjects since my return, and if the least threat is made (which I altogether doubt) be sure that the result will be favourable to him. The new ministers have spoken to me with much interest about my occupations and pursuits at Athens. I have the means of watching over his interests. So long as he is my friend he will have solid proofs of my friendship" (brackets in the original). ²⁸ This passage suggests that Elgin knew the disdar was in some danger because he had permitted the marbles to be removed from the edifice, and that he, Elgin, was taking steps to assure that ministers within the government would help protect the Athens officials if the occasion arose. It also plainly indicates that Elgin was aware that the disdar, because he was worried about his safety, might cease to cooperate with Lusieri, and that Elgin was willing to continue to bribe the disdar to assure his continued assistance.

If Elgin had enclosed with his letter of October 8 to Lusieri the documents that he believed gave "official legitimation, after the event, of any illegalities perpetrated under the terms of the firman of July 1801," as St. Clair asserts, it is most unlikely that Elgin would have referred to the possibility of future threats to the Disdar and his "means of watching over his interests." Instead, he more likely would have instructed Lusieri to reassure the Athens officials that the later-in-time documents gave them complete protection and left it at that. St. Clair's claim that the 1802 documents obtained by Elgin legitimated Elgin's past illegal acts is little more than speculation that even Elgin's own words make implausible.

1804 PROHIBITION

Another example of St. Clair's willingness to assert conclusions not adequately supported by the evidence concerns an 1804 Ottoman order prohibiting further removals by Elgin's agents. St. Clair characterizes this order as a rescission, stating: "[P]ermissions in the second [1801] firman under which removals from the buildings had continued, more or less continually, for several years were rescinded."²⁹ St. Clair further contends that the rescission "threw no doubt on the legality of the removals made previously."³⁰

St. Clair's interpretation of the 1804 order lacks evidentiary support. St. Clair concedes that he does not know the "form" of the Ottoman order, and he does not know if the order was issued by Ottoman officials in Athens or Constantinople. He writes, "But, to judge from the form of the ban on removing statues and columns which followed not long afterwards, it may have been a communication from the Ottoman government to the British Ambassador, who then passed it by letter to the British Consul Logotheti."³¹ Without knowing the specific content of the order or the identity and the intention of the person issuing it, it seems impossible for St. Clair to know whether the order was issued with the purpose of stopping Elgin's activities in Athens for the reason that they were never authorized or with the purpose of withdrawing permissions previously granted that authorized Elgin's activities. Furthermore, given the lack of evidence, St. Clair has no warrant to conclude that the person who issued the order intended to imply that Elgin's prior activities were legal.³²

1809 CONDEMNATION

St. Clair's effort to portray the Ottomans as having granted Elgin unquestionable legal title to the marbles runs up against another obstacle. In 1809 the Ottomans informed the British ambassador, Robert Adair, that, in the words of St. Clair, "Lord Elgin had never had permission to remove any marbles in the first place."³³ Although this statement would seem fatal to St. Clair's general position that Elgin had good, unchallenged legal title to the removed marbles, St. Clair brushes aside the Ottoman claim. He writes: "But such discussions [referring to Adair's efforts to secure permission from the Ottomans to permit the shipment of marbles collected by Elgin's agents, which were still in Greece] could always be relied upon to produce surprises. The Turks now declared that Lord Elgin had never had permission to remove any marbles in the first place. The activities of his agents at Athens that had been going on, with interruptions, for over eight years had, they declared, been illegal from the start."³⁴

Although St. Clair's meaning in this passage is not as clear as it might be, he

seems to reject the Ottoman claim that Elgin never had permission to remove the marbles for two reasons. First, he rejects the Ottoman claim because “discussions” with the Ottomans “could always be relied upon to produce surprises.”³⁵ What St. Clair means by this statement is uncertain. But the most plausible interpretation of St. Clair’s words is that because discussions with the Ottomans could “always be relied upon to produce surprises,” the Ottomans were being deceitful when they made this charge. But St. Clair offers no evidence to support such an implication. He offers no examples of other Ottoman “surprises,” and he does not allege or prove that Adair was surprised by the Ottoman charge or that Adair believed that the Ottomans made the charge in bad faith.

Second, St. Clair implies that the Ottomans’ charge that Elgin had acted without authority cannot be taken seriously because they had notice “for over eight years” that Elgin had been removing the marbles.³⁶ This contention obviously rests on the assumption that high Ottoman authorities in Constantinople knew in some detail what Elgin’s agents did to the Parthenon. This assumption may well be true, but St. Clair offers no evidence to support it. For example, St. Clair provides no Ottoman documents to support his conclusion that the highest officials in Constantinople knew in some detail that Elgin’s agents had taken sculptures off the Parthenon walls. He presents no communications from Ottoman officials in Constantinople indicating that the Constantinople officials were aware that Elgin had removed the metopes, friezes, and statuary. He offers no references to any written minutes or written summaries of meetings among high Ottoman officials in Constantinople indicating that they had specific and concrete knowledge of what Elgin’s agents had done. And, he fails to refer to any evidence that the Ottoman officials in Athens ever reported on the work of Elgin’s agents to the Ottoman officials in Constantinople.

Instead of evidence of this character that would buttress his arguments, St. Clair offers more speculation. In the fall of 1802, as St. Clair reports, “a high official, [M]ou [B]ashir, from Constantinople accompanied by Engineer Calfi, arrived in Athens to inspect the defences of the Acropolis.”³⁷ Although St. Clair makes clear that “[s]uccessive Voivodes and Disdars had repeatedly pleaded that repairs were urgently needed” (thus indicating that inspection might well have been for the sole purpose of evaluating the military defenses), St. Clair states that it is “fair to conclude” that the visit of Mou Bashir and Engineer Calfi to the Acropolis had an additional purpose—namely, to allow “the Ottoman government in Constantinople to obtain first-hand information about what exactly Elgin’s agents were doing in Athens.”³⁸ Why is it “fair” to reach such a conclusion? St. Clair does not explain. Of course, St. Clair’s assumption may be correct, but it is no more than an unsupported assumption. And in making this assumption, St. Clair seems oblivious to the fact that the Ottoman empire was under great stress during the first decade of the nineteenth century, and that the activities of Elgin’s agents on

the Acropolis may well have been of truly minor importance to the Constantinople officials in comparison to their efforts to hold together a disintegrating empire.

1810 SHIPPING PERMIT

The last major episode central to St. Clair's argument that Elgin eventually obtained legal title to the marbles occurred in 1810. In February of that year, the British ambassador to the Sublime Porte, Robert Adair, wrote to the Foreign Secretary in London: "I have at length succeeded in obtaining an order from the Caimacam to the Voivode of Athens, for the embarkation without further detention of the antiquities collected by Lord Elgin and now lying at Athens."³⁹ St. Clair further states that to secure this order Adair gave "[p]resents amounting to 1,480 piasters, over £100 . . . to Ottoman officials in addition to a present to the Kaymacam the size of which is not recorded."⁴⁰

St. Clair puts great emphasis on this order and claims, as already noted, that Adair's obtaining of the order "allowing the marbles to leave Ottoman jurisdiction implied condonation, if not approval, of all the actions and abuses committed under the authority of other firmans granted earlier."⁴¹ Within a page of this declaration, St. Clair goes even further and offers a sweeping conclusion: "Although the actions of the various Ottoman officials were, to a large extent, arbitrary, politically driven, and, in many cases, decisively influenced by threats and by bribery, modern experts in international law who have studied the case have usually agreed that Elgin's actions were probably technically lawful in the circumstances of the time, that his claim to personal ownership and right to sell were valid in law, and that any action by Greece, as successor government, to try to recover the marbles in an international court would probably fail."⁴²

Several important issues are presented by the order obtained by Adair and St. Clair's comments on it. First, it must be noted that St. Clair does not claim to have read the order itself, which may not have survived. The only document available to St. Clair is Adair's brief letter, which in substance states that he obtained an order permitting the shipment of the Athenian antiquities that Elgin collected. Thus, St. Clair's claim that the order "implies condonation, if not approval of all the actions and abuses" Elgin committed is nothing more than St. Clair's surmise, unsupported by any words or phrases in Adair's brief letter. There is certainly nothing about the isolated fact that the Ottomans permitted the shipment of marbles that had already been removed that implies or suggests that the Ottomans condoned or approved of the removal. The only fact that is certain is that the Ottomans permitted the shipment to England once faced with the fait accompli that Elgin's men had already removed the marbles from the Parthenon.

Second, the legal importance of the order obtained by Adair depends on what

the caimacam knew about the antiquities. If the caimacam was deceived or misled as to the nature and scope of the shipment, that fact would undermine the utility of the permit as a vehicle for strengthening Elgin's legal title. St. Clair does not establish what the caimacam knew about the shipment. Instead, he assumes that the caimacam knew that the permission sought by Adair to ship antiquities pertained to as many as fifty crates, or roughly one-half of Elgin's total collection. St. Clair may be correct in making this assumption, since the caimacan was a powerful figure with resources that enabled him to know about the empire he administered. Nonetheless, it is an assumption that St. Clair fails to support with any evidence. Moreover, it is quite plausible that the caimacan was unaware of the magnitude of the shipment. The Ottoman officials in Athens had no incentive to provide a detailed report of the antiquities in question, given their fear that they had gone too far in permitting the removal of the marbles. Adair had no incentive to provide the caimacan with a complete catalogue—assuming he had one—of the antiquities in question. The caimacan may have had little time for this issue given the truly enormous issues of state with which he was confronted. Thus, a serious question exists as to whether the caimacan was fully aware of the nature and scope of the antiquities shipment he permitted when he gave Adair the requested order.

Third, St. Clair makes it clear that Adair obtained the shipping order by giving presents, and at least the one to the caimacam was of a dimension "not recorded." Whether the bribes—and bribes were critical throughout Elgin's entire operation—tainted the 1810 shipping order (or earlier orders) so as to undermine its legitimacy as a vehicle for conveying valid legal title to Elgin is an important and complicated question. St. Clair does not entirely skip over this question, but he does pass by it quickly by merely deferring to others: "modern experts in international law who have studied the case have usually agreed that Elgin's actions were probably technically lawful in the circumstances of the time."⁴³ In endnote 18, page 365, St. Clair offers the following reference for his statement that contemporary international law experts have concluded that Elgin's actions, including the bribery, were legal: "See especially the various books and articles by John Henry Merryman noted in the Bibliography." St. Clair's bibliography lists five articles authored by Merryman and one book he coauthored. Merryman's article, titled "Thinking About the Elgin Marbles," does include statements that are in accord with St. Clair's assertion. Referring specifically to the Parthenon marbles, Merryman writes, "The Ottomans who were bribed were the responsible officials. Whatever their motivation may have been, they had the legal authority to perform those actions. At a time and in a culture in which officials routinely had to be bribed to perform their legal duties (as is still true today in much of the world), the fact that bribes occurred was hardly a significant legal consideration."⁴⁴ In support of his contention that "the fact that bribes occurred was hardly a significant legal consideration," Merryman notes: "The text statement of course refers to the law in force at the time. Recent

legal developments would make the use of bribery a more serious issue, at least in the United States. See *Jiminez v. Aristeguieta*, 311 F.2d 547 (5th Cir. 1962); Foreign Corrupt Practices Act, 15 U.S.C. Sec. 78dd-2 (1982).⁴⁵ What is important to notice about Merryman's footnote is that it offers no support for the conclusion that "the fact that bribes occurred was hardly a significant legal consideration."

Thus, St. Clair relies upon Merryman to support his claim that legal experts have concluded that British bribes of Ottoman officials pertaining to the Parthenon marbles were legally insignificant. Merryman's "Thinking About the Elgin Marbles" does contain the assertion that the bribes were legally insignificant, but it fails to provide any support for this proposition.⁴⁶ The result is that St. Clair's major contention relies upon an unsupported claim by Merryman.

Of course, the fact that neither St. Clair nor Merryman supports his assertion that the acknowledged bribes were of no legal significance does not mean that the assertion is incorrect, but it does mean that neither supported it. Moreover, the claim itself—"the fact that bribes occurred was hardly a significant legal consideration"—is ambiguous. It could mean that (1) the person extending a bribe to an Ottoman official did not violate Ottoman criminal law; (2) the Ottoman official accepting a bribe in his official capacity violated no Ottoman criminal law; (3) for purposes of Ottoman civil law, a bribe was legally insignificant in terms of affecting the legality of the transaction or transfer it induced; or (4) British law would recognize as lawful a transfer or a transaction induced by a bribe offered by a British official to an Ottoman official.

It is possible that giving or accepting a bribe was not a crime under either Ottoman or British law at the time. It is also possible that Ottoman or British authorities or both would recognize the validity of a transaction or transfer induced by a bribe, but Merryman does not so state. Instead of parsing out these important issues and supporting his conclusions with references, Merryman assumes, as does St. Clair, that both the Ottomans and the British considered bribery legally insignificant and therefore of no relevance to whether good title was passed in a transfer induced by bribery. Perhaps an investigation into Ottoman and British law at the time would yield evidence to support such positions, but neither St. Clair nor Merryman presents such evidence.

FORFEITURE OF TRUSTEESHIP

After more than two hundred pages protecting and defending the legality and the moral integrity of Elgin's removals and the subsequent sale of the marbles to the British Museum, St. Clair does an about-face in his last chapter, titled "The Question of Return." In his very last paragraph, St. Clair writes: "The time seems ripe for another shift. With the building of a new museum in Athens, the opportunity

exists to correct what some regard as the worst aspect of the present situation, the fact that the surviving pieces of the Parthenon, which are fragmentary enough, cannot be seen or studied together. Now that the British Museum's stewardship of the Elgin Marbles turns out to have been a cynical sham for more than half a century, the British claim to a trusteeship has been forfeited."⁴⁷ What lies behind St. Clair's charge that the British Museum has forfeited its trusteeship is his claim that the museum allowed an improper cleaning of the marbles to occur in the 1930s, then used its powers to hide the misdeed from the public.

St. Clair describes the improper cleaning and the museum's cover-up in a chapter titled "The Damage Is Obvious and Cannot Be Exaggerated." He makes a powerful case that the 1930s cleaning was improper and resulted in permanent damage to the marbles. He also details his efforts to gain access to the museum's records pertaining to the cleaning and the museum's appalling efforts to keep them confidential. But no matter how persuasive a case St. Clair makes that the cleaning and the cover-up were improper, his conclusion that the museum's conduct has caused it to forfeit its trusteeship is hardly self-evident.

Having devoted the bulk of his book to arguing that the Ottomans ultimately granted Elgin legal title to the marbles, which in turn permitted Elgin to transfer good title to the British government, St. Clair concludes his book by stating that the "British claim to a trusteeship has been forfeited."⁴⁸ St. Clair never explains when, in his mind, the museum's possession of the marbles was converted from one of ownership to one of trusteeship, or in what way the improper cleaning and the cover-up constituted such a violation of the trustee's responsibility as to warrant forfeiture.

St. Clair shows no recognition of the fact that his positions are inconsistent. The British cannot have good title to the marbles and be their trustee at the same time. Or, to put the same matter somewhat differently, if the British government holds the marbles as trustee, it does not own them; if it owns the marbles, it has a much greater claim to them than would a mere trustee. Because St. Clair fails to acknowledge and explain the inconsistencies of his position, neither of his conclusions—that the British government has good title or that it is a trustee whose conduct has caused it to forfeit the marbles—is persuasive.

The debate over the Parthenon marbles has a long history, and much of it has been premised on the assumption that Elgin had legal title, which he conveyed to the British government. St. Clair's book offers the single best presentation of that position. But, as this essay has made plain, the facts and arguments set forth by St. Clair in support of Elgin's legal claim fall far short of being persuasive and convincing. Thus, a major premise underlying this enduring controversy—that the Ottomans gave Elgin legal title to the marbles which he then transferred to the British government—is certainly not established and may well be false.

NOTES

1. Letter from Philip Hunt to Lord Elgin, July 31, 1801, as quoted in A. I. Smith, Lord Elgin and His Collection, 36 *Journal of Hellenic Studies* 196 (1916).
2. The widely respected American legal scholar John Henry Merryman has written: “[We] care about the Elgin Marbles for three reasons. First, they are monuments of human culture, an essential part of our common past. They tell us who we are and where we come from, give us cultural identity. Second, we enjoy them as great art. Like literature and music, they enrich our lives. Third, . . . [t]he Elgin Marbles symbolize the entire body of unrepatriated cultural property in the world’s museums and private collections. Accordingly, the preservation and enjoyment of the world’s cultural heritage and the fate of the collections of the world’s great museums are all in some measure at stake in a decision about the Marbles. Thinking About the Elgin Marbles, 83 *Michigan Law Review* 1895 (1985).
3. For example, in the last paragraph of the chapter entitled “Sicily,” Vrettos writes: “Elgin and the others returned to the Phaeton around three in the afternoon. He had a wild look in his eyes, and with impassioned words, declared that he had gone to Capitan Pasha and asked if he could have the two marble seats from the church at Yenicher. ‘Permission was duly granted,’ he exclaimed, ‘and I dispatched the full complement of the Phaeton to Yenicher. At first, the Greek priests wailed and tried to prevent the crewmen from taking away the seats, but when they realized that I had received permission from Capitan Pasha, they withdrew in tears.’” Vrettos, *The Elgin Affair* 26. A comparison of this paragraph with the paragraph that appeared in the 1974 version reveals inexplicable factual discrepancies. In 1974, Vrettos wrote that Elgin returned to the Phaeton alone at five o’clock and that he had a “strange look on his face which frightened his young wife.” In contrast, in 1997 Vrettos wrote that Elgin returned to the vessel with “others” and that he had a “wild look in his eyes”; Vrettos made no mention of what impact Elgin’s look had on his wife. The 1974 paragraph presents the quotation as if written by someone other than Elgin: “Permission was granted immediately and Elgin dispatched the full complement of the Phaeton to Yenicher.” The 1997 paragraph presents the quote as if Elgin himself reported the event: “Permission was duly granted and I dispatched the full complement of the Phaeton to Yenicher . . . [W]hen they realized that I had received permission from Capitan Pasha, they withdrew in tears.” Vrettos, *A Shadow of Magnitude: The Acquisition of the Elgin Marbles* 40 (G. P. Putnam’s Sons, New York 1974). Obviously, these factual discrepancies involve insignificant details, but the failure to accompany the discrepancies with an explanation is problematic for anyone trying to decide how reliable Vrettos is on more weighty matters.
4. Consider how Vrettos begins his chapter titled “Sicily”: “The Sicilian sky was on fire when HMS Phaeron dropped anchor off Palermo at noon. Inside the stifling bowels of the frigate’s only stateroom, the young bride trickled more vinegar into her silk handkerchief and dabbed it weakly over her face and wrists.” Vrettos, *The Elgin Affair* 3. Consider also Vrettos’s opening sentence in his next chapter: “A thousand minarets jabbed at the cloudless sky, while in the bustling harbor of Constantinople vessels of all sizes and description surrounded the Phaeton and saluted her with steady cannon fire.” *Id.* at 27.
5. *Id.* at viii.
6. Christopher Hitchens, *The Elgin Marbles* 72.
7. With respect to the 1802 documents, Cook writes: “On his return to Constantinople Elgin obtained documents from the Turkish Government approving all that the Voivode and the Dis-

dar had done in Athens to assist Lusieri's work on behalf of Elgin. Lusieri seems to have handed them over to the two officials and no copies have survived. Had they done so, they would no doubt support Elgin's claim that everything he did had been approved by the Turkish authorities." Cook, *The Elgin Marbles* 75. With respect to the 1810 shipping permit, Cook writes: "Early in the following year a firman was obtained to ship the crates. This firman to remove the marbles must imply that any irregularities that may have occurred in interpreting the powers granted by the previous document were at least condoned if not fully approved." *Id.* at 79.

8. An example of the flame throwing that occurs over nomenclature recently warmed the pages of the *Times Literary Supplement*. Mary Beard, who teaches classics at Cambridge, reviewed Vrettos's book, mentioned herein, in the *TLS* June 12, 1998, at 5. Vrettos responded: "Mary Beard (who should know better) . . . continues to call them the 'Elgin Marbles' . . . This unwillingness to bend with the tide reveals her true position in the age-long controversy" (July 3, 1998, at 15). Mary Beard fired back a few weeks later: "Theodore Vrettos objects to my use of the term 'Elgin', rather than 'Parthenon', Marbles . . . Odd, seeing that (apart from a smattering of 'Parthenon's towards the end) 'Elgin' Marbles is the term he himself uses throughout his own book" (August 14, 1998, at 17).

9. Cook, *supra* note 7 at 4.

10. *Id.* at 5.

11. St. Clair, *Lord Elgin and the Marbles* 157.

12. *Id.* at vi.

13. Despite the assistance of interpreters, I was unable to find the July 1801 Ottoman firman in the archives of the Ottoman Empire in Istanbul during two trips in 1998.

14. Report From the Select Committee of the House of Commons on the Earl of Elgin's Collection of Sculptured Marbles, printed on March 25, 1816, at 69. The following is a summary of what we know about the 1801 Ottoman firman. On February 29, 1816, Lord Elgin appeared as the first witness before the Select Committee, established by Parliament to review his request that Parliament purchase the marbles from him. In response to the Select Committee's inquiries regarding whether "permission" had been granted him by the Ottoman authorities "in writing," Elgin answered, "It was, and addressed by the Porte to the local authorities, to whom I delivered it." *Id.* at 18. Two weeks later, the Reverend Philip I Hunt, who had been part of Elgin's ambassadorial entourage, appeared before the Select Committee. The Select Committee's first question to I Hunt was, "Did you ever see any of the written permissions which were granted to him [Elgin] for removing the Marbles from the Temple of Minerva?" *Id.* at 55. I Hunt answered, "Yes," and remarked: "[O]n my return therefore to Constantinople, in 1801, I advised Lord Elgin to apply to the Porte for a fermaan embracing the particular objects I pointed out to him; and as I had been before deceived with respect to the pretended contents of a fermaan, I begged that this might be accompanied by a literal translation; the fermaan was sent with a translation, and that translation I now possess. It is left at Bedford, and I have no means of directing any person to obtain it; I would have brought it if I had been aware I should have been summoned by this Committee before I left Bedford." *Id.* at 56. Some days after I Hunt testified, the Select Committee received from I Hunt an English-language document that it accepted as an accurate translation of the 1801 Ottoman firman and that is printed in the appendix attached to its report. As the Select Committee stated in its report: "A translation of the fermaan itself has since been forwarded by Dr. Hunt, which is printed in the Appendix." *Id.* at 5. In a four-

line introductory note that appears at the top of the page in the appendix in which the English-language document is printed, the committee stated, "TRANSLATION from the Italian of a Fermaan. . . ." This suggests that the committee knew that the English-language document forwarded by Hunt was a translation of the Italian document, which in turn—according to Hunt—was a translation of the original Ottoman document. *Id.* at 69. As noted, no Ottoman original of this document—the so-called second firman of July 1801—has ever been found. There is no evidence that the Select Committee compared the English translation provided by Hunt with the Italian document to assure itself of the accuracy of the translation. As for the Italian document, St. Clair states that it "remained in the [Hunt] family among the Hunt papers where I discovered it, and it is now in my possession." St. Clair, *supra* note 11 at 88. See also *id.* at 357 n. 10. St. Clair states his reasons for his belief that the document was prepared in Constantinople in 1801 in his appendix 1. *Id.* at 337. St. Clair also states that the English-language document published in the appendix to the Select Committee's report is an accurate translation of the Italian document except "in some minor respects." *Id.* at 88.

15. Report from the Select Committee, *supra* note 14 at 69. St. Clair offers the following English translation of the phrase: "Nor make any opposition to the taking away of some pieces of stone with inscriptions, and figures." St. Clair, *supra* note 11 at 341.

16. St. Clair, *supra* note 11 at 89. See also p. 337, where St. Clair states: "As described in Chapters 9 and 10, Lord Elgin's agents by a mixture of cajolery, threats, and bribes, persuaded and bullied the Ottoman authorities in Athens to exceed the terms of the key second firman and to permit removals from the Parthenon and other buildings."

17. *Id.* at 89.

18. *Id.* at 90.

19. At another point in his text, St. Clair seems to imply that the 1801 firman constituted legitimate legal authority for the removal of the marbles. He writes that in 1804 "the permissions in the second firman under which removals from the buildings had continued, more or less continually, for several years were rescinded." St. Clair, *supra* note 11 at 136. One cannot be certain what St. Clair means by this statement. But one plausible interpretation is that since the removal of the marbles was done "under" the "permissions in the second firman," the removal of the marbles was authorized by the second firman, and that the permission to remove embedded in the 1801 firman was rescinded in 1804.

20. Report from the Select Committee, *supra* note 14 at 69.

21. *Id.*

22. Even the Parliamentary Select Committee did not conclude that the English-language document provided by Hunt granted Elgin permission to strip the marbles from the edifice of the Parthenon. The committee repeatedly asked witnesses whether the Ottomans had given Elgin permission to remove the marbles. Although Elgin and Hunt assured the committee that the Ottomans had granted such permission, and although the committee accepted the English-language document as an accurate translation of whatever Ottoman document Elgin was given, the Committee did not conclude that the English language document it printed in the appendix of its report authorized Elgin to remove the marbles from the walls. *Id.* at 3–5.

23. St. Clair, *supra* note 11 at 156. St. Clair is not alone in arguing that the later-in-time orders or directives constituted full and complete approval by the Ottomans of what Elgin had done. For example, John Henry Merryman makes the same point: "Together these two events make

a strong case for ratification of the removal, even if it exceeded the authority given in the original firman. If the removal was so ratified, then as a matter of international law the removal was legal, and Elgin was able to transfer title in the Marbles to the British Museum." Merryman, *supra* note 2 at 1899. Cook asserts a similar position. Cook, *supra* note 7 at 79.

24. St. Clair, *supra* note 11 at 110–111.

25. *Id.* at 135–136.

26. Smith, *supra* note 1 at 236.

27. *Id.* at 235.

28. *Id.* at 234.

29. St. Clair, *supra* note 11 at 136.

30. *Id.*

31. *Id.*

32. A few pages after St. Clair discusses the 1804 rescission, St. Clair writes: "In 1806 forty cases containing many of the best of the Parthenon sculptures as well as the results of all Lusieri's labours in 1804 and 1805 lay at Piraeus, a perpetual invitation to Fauvel [a French archaeologist] and to any other person who thought he could organize the necessary mixture of political influence, local permission, threats, briberies, and shipping, Lusieri dutifully mounted guard over this second Elgin collection." St. Clair, *supra* note 11 at 139. Apart from the fact that St. Clair is focused in this passage on 1806 and not 1804 and 1805, and apart from the evident concern about a theft by private parties, St. Clair implies that the legal status of the crated marbles was sufficiently in doubt and that Lusieri was worried that Ottoman officials might take possession of the crated marbles or grant permission to a third party to do so. Such acknowledged legal ambiguity hardly fits comfortably alongside St. Clair's assertion that the Ottomans gave Elgin legal title to the marbles.

33. St. Clair, *supra* note 11 at 155.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* at 111.

38. *Id.*

39. *Id.* at 156.

40. *Id.*

41. *Id.*

42. *Id.* at 157.

43. *Id.*

44. Merryman, *supra* note 2 at 1902.

45. *Id.* at 1902 n. 75.

46. Merryman makes other claims about the substance of international law in the early nineteenth century in his article "Thinking About the Elgin Marbles," *supra* note 2, that he also

does not support. Thus, he writes: "Under the international law of that time, the acts of Ottoman officials with respect to persons and property under their authority were presumptively valid. Even though their actions might seem regrettable, unsound, or unfeeling, one would not question their legality, except in the most unusual circumstances." *Id.* at 1897. One sentence later, Merryman writes: "It seems clear that under the international law of the time the Ottomans *could* give Elgin the right to remove the Marbles." *Id.* Merryman offers no references to support these statements.

47. St. Clair, *supra* note 11 at 336.

48. *Id.*