

The background of the book cover is a photograph of a museum gallery. In the center, two large white marble statues of seated female figures are displayed on a raised platform. Above them, several large marble fragments are mounted on the wall. To the right, a glass display case contains more artifacts. The lighting is soft, highlighting the sculptures.

Catharine Titi

The Parthenon Marbles and International Law

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 Springer

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For Anna

Foreword

Over the years, innumerable arguments have been rehearsed in favour of returning to their place of origin the fragments of marble that once formed part of the Parthenon temple in Athens, and equally many have been rehearsed against it. The aim of this book is not to collect and assess all these arguments (though it provides a vigorous overview), but to focus on the essential legal question: were these pieces legally acquired, and if not, is there a mechanism under current international law by which their return can be enforced?

The legal case does not constitute the most important argument for return, but it is fundamental to the debate. The overwhelming reason for return is that these exquisite specimens of marble carving, seen by many as the most beautiful products of ancient Greek art, form an integral element of a decorative programme of which only part can be seen in London. Above all the frieze, which once wrapped round the interior of the Parthenon temple, forms a continuous narrative, originally 160 m in length, with an unbroken depiction of the religious procession which was the high spot of the religious year of the cult of Athena Parthenos, the Virgin Goddess. Part of this frieze is in Athens, now housed in a purpose-built museum close to the Acropolis. There it can be seen in the bright Mediterranean light which shows it to best effect and displayed the right way round, as it was on the temple itself, not inside-out as in London's dull light. The overwhelming argument is that these uniquely important fragments belong together. It goes against all contemporary understanding of the importance of context to artworks to divorce them from their context, location and adjoining fragments.

Some would argue that all works of art, whether legally or illegally acquired, belong back in their country of origin. This viewpoint is extreme and highly questionable and risks the disintegration of the great museum collections of the world, which themselves represent high cultural values. It is not necessary to adopt this point of view to demand the return of the Parthenon marbles, nor would their return imply that this argument was valid. Historically, artworks have frequently established their validity in new contexts: the porphyry sculptures of four emperors at the corner of St Mark's in Venice, once looted from what was then

Constantinople, now 'belong' in Venice not Istanbul and their return would be pointless vandalism. But the Parthenon marbles are not like the porphyry tetrarchs, the original context of which no longer exists. They are an integral part of a still standing monument, itself regarded as one of the finest, if not the finest, examples of Greek architecture; and while returning them to that monument is no longer practicable, reuniting them with their sisters in Athens is indeed now practicable, and the long-standing desire of the Greek government which constructed a new museum to enable this move.

The problem is that such 'moral' arguments for restitution run up against a thicket of legal obstacles. The British Museum, which houses them, claims that it is not allowed to deaccession its holdings and insists moreover that they were legally acquired and cannot be legally removed. Such legal questions can only be resolved by legal experts, and it is therefore of critical significance that in this book Professor Titi, an international lawyer based in Paris, examines these issues with the scrupulous thoroughness which is needed to convince sceptics. Her argument is that the acquisition of the marbles was demonstrably illegal and admitted to be such by Elgin himself in billing the British government for the money spent in illegal bribes; and that recent developments in international law affecting such objects mean that there is now a very strong case to be brought before the appropriate international authorities, in her view the International Court of Justice. Whether or not the Greek government is prepared to take such a step, rather than pursuing the diplomatic channels which it has always preferred, awareness on the part of both the British Museum and the British government of the legal weakness of the case for retention must make them more open than they have been in the past to a diplomatic approach.

This is a book that must be read with attention by all parties to this debate; and it is my hope and belief that it will accelerate the process by which an art-loving and philhellenic Britain finds a consensual way to return to its ancient ally a collection of broken and decontextualised fragments which illuminate a moment two and a half millennia ago when the city that pioneered democracy created a monument of transcendent beauty which embodied the values that inspire us still.

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Andrew Wallace-Hadrill

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Correction to: Introduction C1

Abbreviations

ARPA	Archaeological Resources Protection Act
CAfA	Court of Arbitration for Art
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes (Annex 2 of the Agreement Establishing the World Trade Organization—WTO)
ECHR	European Convention on Human Rights
Hague Convention of 1954	Convention for the Protection of Cultural Property in the Event of Armed Conflict
ICJ	International Court of Justice
ICOM	International Council of Museums
ICPRCP (or Intergovernmental Committee)	Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
ILC	International Law Commission
ITLOS	International Tribunal for the Law of the Sea
NDPB	Non-departmental public body
NGV	National Gallery of Victoria
NSPA	National Stolen Property Act
PCA	Permanent Court of Arbitration

PCIJ	Permanent Court of International Justice
UN Charter	Charter of the United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organization
1970 UNESCO Convention	Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNIDROIT	International Institute for the Unification of Private Law
UNIDROIT Convention	Convention on Stolen or Illegally Exported Cultural Objects
UNSC	United Nations Security Council
V&A	Victoria and Albert Museum
WHO	World Health Organization
WIPO	World Intellectual Property Organization

Chapter 1

Introduction



1.1 Background

1.1.1 *From Verres to Elgin*

All roads, it is said, lead to Rome, and it is not unusual to consider the dispute about the Parthenon marbles in light of another case that arose more than two millennia ago in the late years of the Roman Republic.¹ Yet if the indictment against Caius Verres in the Roman Extortion Court in the seventieth year BC invites parallels to the Parthenon marbles dispute, the similarities between the two cases are nothing short of striking. The prosecution of Verres was of course a famous case. Verres was a Roman magistrate who, having become governor of Sicily, caused the once prosperous island to fall into ruin and desolation.² Roman officials were reputed for treating their governorships as opportunities to amass private wealth,³ and Verres' Sicilian stint took gubernatorial covetousness to altogether new heights. For three years, between 73 and 71 BC, Verres abused his office ravaging the province he was sent to govern.⁴ He was arraigned on charges of plunder of temples and statuary, thefts of private works of art, extortion of taxes, torture and execution without trial of Roman citizens—all in all a lengthy repertoire of crime complete with sex offences and bribes.⁵ Verres' crimes were surely memorable. But if history remembers the indictment as vividly as it does, this is not only on account of its ignominious

The original version of this chapter has been revised with few text corrections. A correction to this chapter is available at https://doi.org/10.1007/978-3-031-26357-6_13

¹E.g. Byron (1832) Note 6 to Canto II, 67. For other examples, see Robertson (2019) preface and Chap. 8; Miles (2011) 32.

²Cicero, *In Verrem* 1.13. The book relies on various translations of *In Verrem*. The modern-day publication is identified when a word-for-word quote is used.

³Cicero, *In Verrem* 2.4.53.

⁴Cicero, *Divinatio* 11; Cicero, *In Verrem* 1.12.

⁵Cicero, *Divinatio* 11; Cicero, *In Verrem* 1.13, 1.14, and *passim*.

protagonist but also for engaging and confirming the politician who was to become Rome's foremost orator, Marcus Tullius Cicero.⁶

The Sicilians solicited Cicero's assistance, for they knew and appreciated him from his time as quaestor on the island.⁷ Little more than a provincial backwater,⁸ still largely Greek, Sicily stood united behind the indictment.⁹ Cicero must have immediately recognised the case as an opportunity, both on account of the unprecedented scale of Verres' crimes and for political reasons,¹⁰ seeing that the defence would be presented by the highly-acclaimed Quintus Hortensius, who was to be consul the following year. To enter the fray of this unexampled trial, Cicero had to abandon his traditional role of defender and act as prosecutor.¹¹ But he explained that this pleading of his that seemed to be an accusation was in effect not so much an accusation as a defence; a defence of 'many men, many cities, the whole province of Sicily'.¹² If he prosecuted one man, it was to defend the many whom he had wronged.¹³

Verres stole, and he stole on a grand scale. Cicero dedicated the fourth book of his second speech to the plunder. In it we learn that, besides stealing from many a private citizen, including a king, Verres despoiled Greek temples, monuments, and statues all over Sicily.¹⁴ Agrigento, Catania, Centuripe, Marsala, Segesta, Syracuse, Tindari are some of the cities that bore witness to his heists.¹⁵ Remarkably, by the time he became governor of Sicily, Verres had already accumulated a string of spoiliations.¹⁶ His earlier track record included the looting of temples at Delos, Samos, and Athens.¹⁷ We are told that he stole a considerable amount of gold from the Parthenon

⁶It is debated whether the Verres case would have been one of 'the minor events of the period' instead of 'the scandal of the century' without Cicero's involvement, Gruen (1971) 12; Alexander (2005) 60. The case was also a milestone in the history of Roman law, since it was the last to be decided by a jury composed only of senators. The senatorial monopoly on juries ended with the *lex Aurelia*, passed shortly afterwards, Balsdon (1938) 99, 106; Spencer (1916) 839; Vasaly (2009) *passim*.

⁷Cicero, *Divinatio* 2; Cicero, *In Verrem* 2.1.16-2.1.17.

⁸Sicily's modest claim to importance was that it served as the granary of Rome, Cicero, *In Verrem* 2.2.5.

⁹Cicero, *Divinatio* 11. Some doubt is permitted as to how united Sicily was, e.g. Cicero, *In Verrem* 2.4.136.

¹⁰Miles (2002) 29.

¹¹Cicero, *Divinatio* 1.

¹²Cicero, *Divinatio* 5; Cicero, *In Verrem* 2.4.82, describing himself as 'the defender of the Sicilians'. The translations used here are taken from Yonge (1903).

¹³Cicero, *Divinatio* 5. See also Cicero, *In Verrem* 2.4.2.

¹⁴Cicero, *In Verrem* 2.4.

¹⁵Cicero, *In Verrem* 2.4.

¹⁶Cicero, *In Verrem* 2.1.

¹⁷Cicero, *In Verrem* 2.4.71.

at Athens¹⁸—the same Parthenon in whose despoliation Elgin’s men would join in so enthusiastically all these centuries later.

Verres is certainly not a unique figure in the history of art plunder. But probably no man’s actions rivalled his in the way Elgin’s did. Like his Roman counterpart, Thomas Bruce, 7th Earl of Elgin, was a public official going about state business when he set in motion the machine to dismember the Parthenon. A Scottish representative peer, Elgin was appointed British ambassador to the Ottoman government and took up his position in 1799.¹⁹ This was a time when British influence over the Ottomans was at its apogee, for, after the defeat of the French in the battle of the Nile the previous year, the Sublime Porte looked to Britain to protect its interests against France.²⁰ Finding himself in a position of incomparable opportunity,²¹ Elgin claimed to have obtained an authorisation, a firman, from the Ottoman authorities allowing him to engage in an act of large-scale vandalism and plunder, stripping the Parthenon on the Athenian Acropolis of its most beautiful (and best preserved) sculptured marbles—and this before he had ever set foot in Ottoman-occupied Athens. The collection that he sold to the British government some years later included about fifty slabs of the frieze of the Parthenon, that is, 75 m (247 ft) of the original frieze,²² fifteen metopes,²³ and seventeen pedimental figures (for the position of the frieze, metopes, and pediments, see Fig. 2.1).²⁴ In the course of removing parts of the ancient temple, Elgin caused the monument to suffer serious damage.²⁵ Frieze slabs were sawn through to have their back cut off, which would make for easier transport, the cornice was removed to allow the metopes to be detached, and the entablature that held the metopes was broken.²⁶

Although we tend to associate Elgin with the destruction of the Parthenon, much like with Verres, his rapacity went further. He engaged in frenetic pillaging: everything he could lay his hands on must become his. Besides the Parthenon, Elgin stripped treasures off other monuments on the Acropolis, including bas-reliefs from the Temple of Athena Nike, a caryatid and part of the frieze of the temple known as

¹⁸Cicero, *In Verrem* 2.4.71.

¹⁹Smith (1916) 163–164.

²⁰Browning (2008) 11.

²¹Browning (2008).

²²British Museum, ‘The Parthenon Sculptures’ <https://www.britishmuseum.org/about-us/british-museum-story/objects-news/parthenon-sculptures>.

²³Although Elgin is often said to have removed fifteen metopes from the Parthenon, it appears that he removed fourteen metopes. The fifteenth metope, which he sold to the UK government, appears to have originally belonged to Auguste de Choiseul-Gouffier, the former French ambassador. The catalogue of what Elgin sold to the UK government lists only fourteen metopes, see Select Committee (1816) Appendix No 11, Catalogue of the Elgin Marbles, Vases, Casts, and Drawings xxix.

²⁴Select Committee (1816) Appendix No 11, Catalogue of the Elgin Marbles, Vases, Casts, and Drawings xxviii–xxxii.

²⁵See Sects. 3.5.1 and 6.3.1.2. See also St Clair (1998) 102–103, 110.

²⁶Smith (1916) 202; Browning (2008) 11–12.

the Erechtheion, a colossal statue from the Theatre of Dionysos, plus various columns and capitals.²⁷ Later, he deplored not having more time and deeper pockets to be able to remove yet more treasures.²⁸

Much of this hunt for antiquities was orchestrated from Constantinople. His eventual visit to Greece in 1802 afforded him another opportunity to hoard treasures.²⁹ ‘Everywhere he went’, we are told, he removed antiquities.³⁰ He sent a string of instructions to his agent, Giovanni Battista Lusieri, advising him that the ‘monasteries round Athens were to be searched, columns were to be taken from Daphne, and excavations were to be started at Eleusis’.³¹ He instructed further that ‘the feasibility of large-scale excavations at Olympia was to be looked at again’.³² At Mycenae, Elgin ‘was able to obtain some ancient pillars as well as some vases’.³³ On his way back to Constantinople, he ‘sailed round to Marathon, where he ordered more digging, and then set off across the Aegean, calling at several islands to pick up antiquities’.³⁴ Yet even this was not enough. When he was about to leave his post at Constantinople, still he urged Lusieri ‘to more removals and more excavations’.³⁵ When a prisoner in France, he sent again instructions to Lusieri that he must search for more archaeological treasures in Aegina, Argos, Corinth, Eleusis, Epidaurus, Megara, and Salamis.³⁶ Overall, Elgin removed from Greece a great many items including, in addition to those already mentioned, a large number of architectural fragments, detached heads, pieces of sculpture, marble, bronze and earthen urns, altars, sepulchral pillars, and inscriptions.³⁷ The objects were so numerous and they had been so carelessly hoarded that sometimes they were not even listed individually—much less were they described. Like bric-a-brac, in one case the items were collectively mentioned as ‘hundreds of’.³⁸

Such wide-ranging operations required of course assistance. Both Verres and Elgin employed agents to help them amass their collections. With Verres went two brothers, a sculptor and a painter, who assisted him in finding artworks³⁹—his

²⁷Select Committee (1816) Appendix No 11, Catalogue of the Elgin Marbles, Vases, Casts, and Drawings xxxiii-xxxiv.

²⁸St Clair (1998) 118.

²⁹Smith (1916) 209; St Clair (1998) 107.

³⁰St Clair (1998) 108.

³¹St Clair (1998) 108.

³²St Clair (1998) 108.

³³St Clair (1998) 108.

³⁴St Clair (1998) 109.

³⁵St Clair (1998) 118. See Elgin to Lusieri (8 October 1802), cited in Smith (1916) 234.

³⁶St Clair (1998) 138.

³⁷Select Committee (1816) Appendix No 11, Catalogue of the Elgin Marbles, Vases, Casts, and Drawings xxxiv-xli.

³⁸Select Committee (1816) Appendix No 11, Catalogue of the Elgin Marbles, Vases, Casts, and Drawings xxxvii.

³⁹Cicero, *In Verrem* 2.4.30ff.

art-hunters, we might call them. We learn from Cicero that Verres became excited not only by the treasures he saw but also by those he was told about,⁴⁰ so that whatever pleased his agents was certain to be grabbed.⁴¹ Elgin too had his agents, including the abovementioned Lusieri, a painter, Dr Philip Hunt, a chaplain of all things, and William Richard Hamilton, a fellow Harrovian,⁴² whom he had appointed as his private secretary⁴³—‘finders’ Byron would call them.⁴⁴ Elgin’s men went to Athens with the intention of drawing, modelling, and making casts,⁴⁵ but once there, they set covetous eyes on the Parthenon, and it took little effort to galvanize Elgin into changing the plan, with the result that we know. When Elgin visited Greece, the removal of the marbles was already well underway and many had already been boxed for dispatch to Britain.⁴⁶

Both Verres and Elgin had an explanation as to how the artefacts came to be in their possession. Verres claimed that he bought the treasures he had in fact removed by force.⁴⁷ Cicero fiercely disputed that he could have bought them. Roman governors were not allowed to make purchases in the provinces precisely because the interests of the provincials needed to be protected.⁴⁸ Some Sicilians appeared to have been forced to sell to Verres at significant undervalue.⁴⁹ The purchase price was so low, Cicero observed, that the adage was coined ‘I had rather buy it than ask for it’.⁵⁰ Verres was a governor with a military command, and he claimed to have bought every treasure on the island leaving nothing to anyone.⁵¹ Produce me a list, Cicero thundered, of the treasures you acquired in Sicily, from whom you acquired them and the price you paid for each item.⁵² Show me proof that any of the objects in your possession was purchased and you have gained your cause.⁵³ Verres had no accounts to present.⁵⁴

⁴⁰ Cicero, *In Verrem* 2.4.39.

⁴¹ Cicero, *In Verrem* 2.4.31.

⁴² Smith (1916) 324.

⁴³ St Clair (1998) 5-6, 24-25.

⁴⁴ Byron (1832) Note 6 to Canto II, 67. In fact, Byron employs the term when comparing Lusieri to one of Verres’ men (‘At Italian painter of the first eminence, named Lusieri, is the agent of devastation; and like the Greek *finder* of Verres in Sicily, who followed the same profession, he has proved the able instrument of plunder’, emphasis in original).

⁴⁵ Browning (2008) 11.

⁴⁶ St Clair (1998) 107.

⁴⁷ Cicero, *In Verrem* 2.1.60-61, 2.4.8ff.

⁴⁸ Cicero, *In Verrem* 2.4.9-10.

⁴⁹ Cicero, *In Verrem* 2.4.7-14.

⁵⁰ Cicero, *In Verrem* 2.4.12. The translation used is from Yonge (1903).

⁵¹ Cicero, *In Verrem* 2.4.8.

⁵² Cicero, *In Verrem* 2.4.35.

⁵³ Cicero, *In Verrem* 2.1.61.

⁵⁴ Cicero, *In Verrem* 2.4.36.

And how did Elgin come by ‘his’ marbles? He claimed that he received a firman allowing him to remove ‘some pieces of stone with inscriptions and figures’.⁵⁵ As we will see, there is no evidence either that a firman ever existed (although an order or letter addressed to the local officials at Athens possibly did) or that it authorised Elgin’s actions.⁵⁶ But even if, for the sake of argument, Elgin had obtained a permission allowing him to do what he did, still this does not explain on what grounds this was granted. Elgin’s account of what happened is garbled and contradictory. Sometimes he appeared to claim that the marbles were given him as a gift by the Ottomans. As British ambassador to the Ottoman government, Elgin may have been in a position to throw his weight about. But would the Ottomans agree to give him freely what they had denied everyone else?⁵⁷ Elgin maintained that he did not procure the marbles by pressing home the advantage of his ambassadorial position.⁵⁸ Why then would he be thus singled out? And if the marbles were a gift, why did the Ottoman officials at Athens fear prosecution from the central government?⁵⁹

And again, if the marbles were a gift, why did Elgin need also claim that he *bought* them? He did so in a letter to the prime minister, Spencer Perceval, in 1811.⁶⁰ There was but one snag. Like Verres, Elgin was unable to produce any proof of purchase. Conveniently, he maintained that he had destroyed his papers in France, but he was also evasive about what exactly was lost where.⁶¹ When he provided a list of expenses, he did not include a single pound for purchase.⁶² Why then would he tell the prime minister that the marbles had been ‘sold’ to him?

In fact, the answer to how Elgin was able to obtain the marbles lies elsewhere. Elgin’s accounts may have failed to corroborate his claim of a purchase, but they did reveal something else. According to the list of expenses he presented to the House of Commons, 21902 piastres was paid for ‘presents, found necessary for the local

⁵⁵Select Committee (1816) Appendix No 10, Translation from the Italian of a [Firman] or Official Letter. ‘Some pieces of stone’ is my translation of the Italian ‘*qualche pezzi di pietra*’. This is discussed in Chap. 3, text to nn 96-97.

⁵⁶See Sect. 3.3. See also Rudenstine (2001); Greenfield (2007) 74; Fincham (2013) 997-998; Fullerton (2016) Chap. 7.

⁵⁷Browning (2008) 11.

⁵⁸See in general Select Committee (1816). This is discussed in Sect. 4.5.3.

⁵⁹St Clair (1998) 110-111.

⁶⁰Elgin to Perceval (31 July 1811), cited in Hitchens (2008) 44.

⁶¹Select Committee (1816) 36 and Elgin to Long (1811; with a Postscript added February 1816) reproduced in Select Committee (1816) as Appendix No 5, xv.

⁶²E.g. Elgin to Long (1811; with a Postscript added February 1816) reproduced in Select Committee (1816) as Appendix No 5; Elgin to Bankes (13 March 1816), reproduced in Select Committee (1816) as Appendix No 6.

authorities, in Athens alone'.⁶³ In today's money, this would be £157500 in bribes.⁶⁴ The House of Commons was then fully aware that the marbles were obtained by *bribing* the *local* Ottoman officials at Athens⁶⁵—those same officials who were afraid of being prosecuted. No wonder, as soon as the deed was done, Elgin was anxious to remove the marbles from Ottoman territory.⁶⁶

A final point of similarity between Verres and Elgin is their intention to make personal use of the looted artworks. Verres' plundered treasures were used to decorate his house and those of his friends.⁶⁷ Elgin's intention too had been to decorate Broomhall, his Scottish mansion,⁶⁸ although later he devised loftier, albeit contradictory, motives. Having lived beyond his means for long years, he found himself distressed and unable to afford to run Broomhall, which remained in good part unfurnished.⁶⁹ His divorce in 1808 added to his financial troubles, since it deprived him of his wife's sizable fortune.⁷⁰ So instead of transporting the marbles to Scotland, he arranged for them to be displayed in his London residence at the corner of Piccadilly and Old Park Lane,⁷¹ which he aimed to convert into a 'private museum, to which the public would be admitted as paying customers'.⁷² What eventually put paid to this plan was that it turned out to be uneconomical.⁷³ Elgin resolved to sell his London house and the marbles were temporarily stored in the enclosure at the rear of Burlington House, then a private residence.⁷⁴ Debt-stricken, Elgin became anxious to sell the marbles to the UK government. He now claimed that he had removed them from Athens to improve the arts in Britain. But the stubborn reality remains that he did not donate the marbles to the nation. He made a sale to pay off his debts and he even haggled over the price. It is revealing that, at one moment, for part of his expenses alone, Elgin was asking £23,240 (£2.68 million

⁶³ Elgin to Long (1811; with a Postscript added February 1816) reproduced in Select Committee (1816) as Appendix No 5, xv; Elgin to Bankes (13 March 1816), reproduced in Select Committee (1816) as Appendix No 6, xix.

⁶⁴ CPI Inflation Calculator <https://www.officialdata.org/uk/inflation/1816?amount=21902> (information correct as of November 2022). The price is inflation-adjusted using as reference 1816, the year the marbles were purchased by the UK parliament.

⁶⁵ E.g. Select Committee (1816) 142-143, 146-147; Elgin to Long (1811; with a Postscript added February 1816) reproduced in Select Committee (1816) as Appendix No 5, xii-xiii.

⁶⁶ St Clair (1998) 116.

⁶⁷ Cicero, *In Verrem* 2.1.57, 2.4.7.

⁶⁸ Elgin to Lusieri (10 July 1801), cited in Smith (1916) 191-192.

⁶⁹ St Clair (1998) 142-143, 173.

⁷⁰ St Clair (1998) 142-143.

⁷¹ This house, located on 137 Piccadilly, on the west corner of Old Park Lane, was later demolished and a new building was erected in its place, Weinreb and others (2008) 327. In the last fifty years, the address is better known as the home of Hard Rock Cafe London.

⁷² Smith (1916) 298-299, 303, 306; Hitchens (2008) 42; Meyer (1977) 175-176; Michaelis (1882) 138.

⁷³ Smith (1916) 307.

⁷⁴ Smith (1916) 313; St Clair (1998) 178-179, 214.

today)⁷⁵ for *interest*.⁷⁶ Ultimately, failing either to furnish his house, create the ‘Elgin Museum’,⁷⁷ or secure the price he hoped the marbles would fetch, he ensured that the collection that was henceforth to be entrusted to the British Museum would bear his name. The act of parliament passed on the occasion stipulated that the collection was to be referred to as the ‘Elgin Marbles’ and the ‘Elgin Collection’.⁷⁸ Elgin himself was made a trustee of the British Museum, a title that was to continue to be bestowed upon his descendants,⁷⁹ and the purchase price was set at £35,000,⁸⁰ that is, about £4 million in today’s money.⁸¹ So much for Elgin’s munificence and altruism.

Additional parallels can be drawn between Verres and Elgin. But this narrative of the similarities between the two cases now comes to an end. For the differences between them are no less staggering. And the most startling difference of all is this. Verres’ trial was a criminal case. Cicero prosecuted Verres before the Roman Extortion Court—a criminal court with the power to impose capital punishment. Verres fled into voluntary exile shortly after the first hearing,⁸² which was regarded as an admission of guilt.⁸³ An accused man who went into voluntary exile would be found guilty, ordered to make restitution or pay damages, and suffer banishment.⁸⁴ And so, Verres was dubbed by history the ‘corrupt governor of Sicily’, his name becoming a byword for reckless profiteering, rapacity, plunder, and abuse.⁸⁵

And what of Elgin? In contrast to Verres, Elgin never did face any kind of judicial review for the dismantling of the Parthenon. In 1816, a select committee of the House of Commons was convened to inquire into whether the UK government

⁷⁵ CPI Inflation Calculator <https://www.officialdata.org/uk/inflation/1816?amount=21902> (information correct as of November 2022).

⁷⁶ Elgin to Long (1811; with a Postscript added February 1816) reproduced in Select Committee (1816) as Appendix No 5, xiv.

⁷⁷ Smith (1916) 298–299, 303.

⁷⁸ An Act to vest the Elgin Collection of ancient Marbles and Sculpture in the Trustees of the British Museum for the Use of the Public, 56 George III (1816) c 99 (hereinafter British Museum Act 1816).

⁷⁹ British Museum Act 1816. This provision was reversed in 1963, see British Museum Act 1963 s 1(1).

⁸⁰ British Museum Act 1816.

⁸¹ CPI Inflation Calculator <https://www.officialdata.org/uk/inflation/1816?amount=21902> (information correct as of November 2022).

⁸² Verres attended only the first two days of the trial, Cicero, *In Verrem* 2.1.20. See further Balsdon (1938) 110; Spencer (1916) 850; Frazel (2004) 132. Little is known about Verres’ life in exile apart from the circumstances of his death: he died, like Cicero, during Mark Antony’s proscriptions of 43 BC, apparently for refusing to give up some of his Corinthian bronze, Pliny the Elder, *Natural History* 34.3; see also Seneca, *Suasoriae* 6.24.

⁸³ Livy, *The History of Rome*, 25.4; Smith, Wayte, and Marindin (1890), entry on ‘*exsilium*, banishment’.

⁸⁴ Spencer (1916) 839, 850. See also Plutarch, *Parallel Lives: Cicero* 8.1.

⁸⁵ Spencer (1916) 841; Gruen (1971) 10, 12; Miles (2002) 35–36.

should buy the marbles.⁸⁶ The committee's investigation into the apparently accessory matter of how Elgin came by the marbles can be described as cursory at best. On the issue of whether Elgin had permission to remove the marbles, the committee essentially relied on the witness statements of Elgin and his immediate entourage (Hamilton and Hunt). The accounts of these witnesses were contradictory and inconsistent. When asked about the content of alleged permissions, let alone their whereabouts, Elgin himself pleaded ignorance.⁸⁷ No original proof of the purported authorisation was adduced⁸⁸ and no attempt was made to seek information from the Ottoman government, from Ottoman officials, or from any Greeks. It is perhaps revealing that the select committee referred to the Greek population as a 'class of the natives'.⁸⁹ Neither was an attempt made to speak to any of the British ambassadors who succeeded Elgin in his post. Had the committee tried to do so, Robert Adair, former British ambassador to the Ottoman government, would have been able to repeat to them what he told everyone who was willing to listen and what he wrote to Elgin in 1811: 'the Porte absolutely denied your having any property in those marbles' (Fig. 3.1).⁹⁰

The select committee took Elgin's *word*—no original evidence of the crucial permissions was presented. Unlike Verres, Elgin made a profit from the marbles, his actions were rubber-stamped by parliament,⁹¹ and in 2019 British Museum director Hartwig Fischer had the temerity to praise his dismantling of the Parthenon as 'a creative act'.⁹² He was allowed to lead a comfortable life and, having remarried, he produced more offspring, including a son, James Bruce, 8th Earl of Elgin—better remembered by art historians for the destruction of the Old Summer Palace in Beijing during the Opium Wars.⁹³ 'Like father, like son', as an author has aptly put it.⁹⁴

History is written by the winners. Cicero, who had been able to deliver only his first speech in court, since Verres fled into exile, published the remaining five

⁸⁶Select Committee (1816).

⁸⁷E.g. Select Committee (1816) 36–37, 50.

⁸⁸See also Select Committee (1816) 141.

⁸⁹Select Committee (1816) 114.

⁹⁰Adair to Elgin (draft letter of 31 July 1811) (a scanned image of the letter is reproduced with the permission of the owner as Fig. 3.1 in this book). Abbott (1861) 327 (diary entry of 29 April 1811) ('Mr Adair [...] says that he was expressly informed by the Turkish Government that they entirely disavowed ever having given any authority to Lord Elgin for removing any part of his collection'. Notice the categorical tone of both statements: 'absolutely denied' and 'entirely disavowed ever having given any authority'). Upon receiving Adair's letter, Elgin wrote to the prime minister, repeating Adair's words to him, see Chap. 3, text to nn 154–155 and 160.

⁹¹British Museum Act 1816. See also Fincham (2013) 974.

⁹²Mark Brown, 'British Museum Chief: Taking the Parthenon Marbles Was "Creative" – Museum Director Sparks Anger by Saying Removing Sculptures from Greece Was "a Creative Act"', *The Guardian* (28 January 2019).

⁹³Newsinger (2002); Ringmar (2006) 917–933; Ringmar (2013).

⁹⁴Robertson (2019) Chap. 7 (unnumbered page).

speeches that he would have given, had the trial continued.⁹⁵ Even allowing for rhetorical hyperbole, there is little question about the basic truth of Cicero's arguments,⁹⁶ but we can never know the granular facts. By contrast, most of the facts surrounding the removal of the Parthenon marbles by Elgin are still verifiable—most of course apart from the existence of the permission: you can never prove that something does not exist. At any rate, in law it is the party that invokes a fact—the existence of a permit—that needs to prove it. Had it ever existed, it is clear that Elgin's mutilation of the Parthenon went plainly beyond its assumed terms.

More than two millennia separate us from Verres' famous trial, yet we still remember it as a showcase for art plunder and the punishment for it. If the case seems to be legally irrelevant or, to borrow Cicero's words, 'too ancient, and long ago obsolete',⁹⁷ the reader is encouraged to think twice. We cannot brush aside the Verres case as either ancient or obsolete. It is at the origin of some notion of customary international law on the return of cultural property unlawfully taken from its original context. Its relevance to the Parthenon marbles case is arresting. When Cicero addressing Verres declaimed 'Did you dare to lay impious and sacrilegious hands on that temple, so ancient, so venerated, so holy?',⁹⁸ he might just as well have been addressing Elgin and his moral successors throughout history.

This book is not an indictment of Elgin—that ship sailed more than two centuries ago. Nevertheless, how Elgin procured the marbles matters, because those who resist their restitution⁹⁹ do so, among others, on the ground that they were lawfully obtained. The UK government has been unwavering in its adherence to the view that the marbles were lawfully acquired.¹⁰⁰ In a 1983 debate in the House of Lords,

⁹⁵Gildenhard (2011) 1.

⁹⁶Miles (2002) 32.

⁹⁷Cicero, *In Verrem* 2.1.56. The translation used is from Yonge (1903).

⁹⁸Cicero, *In Verrem* 2.1.47, see also 2.1.48. The translation used is from Yonge (1903). The reference here was to the Delian Temple of Apollo.

⁹⁹Different terms can be used to refer to the return of a cultural object to the context or country from which it was removed. 'Restitution', 'repatriation', 'recovery', 'reunification', and 'return' are some of them. Different legal systems, specific statutes, and different authors treat these terms as distinct, Prott (2009) xxi-xxiv. In international law, 'restitution' presupposes that an internationally wrongful act has been committed, see Articles on State Responsibility of the International Law Commission (ILC) art 35. In that context, restitution is a form of reparation and it means the re-establishment of the status quo ante, the situation that existed prior to the commission of the wrongful act, see ILC Articles on State Responsibility arts 34-35; ILC Articles on State Responsibility, commentary, especially art 35, paras 1-2; Crawford (2013) 510-511. In the *Case concerning the Temple of Preah Vihear (Cambodia v Thailand)* (Merits Judgment) [1962] ICJ Rep 6, the International Court of Justice (ICJ) found that Thailand was under an obligation to 'restore' (as opposed to 'return') to Cambodia a series of objects that had been removed from the temple or the temple area, *ibid* 36-37. Because of the element of opprobrium attached to the term 'restitution', this book often prefers the more neutral term 'return' to cover both return without the acknowledgement of an internationally wrongful act and restitution following a wrongful act, although other terms, including 'restitution', are also used. For a different discussion on the terminology of 'return', 'restitution', and repatriation, see Kowalski (2001) Chap. 1; Stamatoudi (2011) 14-19.

¹⁰⁰Greenfield (2007) 73.

Richard Nugent, a member of that House, stated that ‘the legal ownership is beyond all doubt’.¹⁰¹ Latterly, similar statements were made by Boris Johnson, when he was the UK prime minister,¹⁰² in the House of Commons in March 2020¹⁰³ and in the House of Lords in February and in September 2022.¹⁰⁴ But, as Jeanette Greenfield cogently remarked, ‘no legal question is ever beyond all doubt, of course, and certainly not before it has been properly considered by a properly constituted legal authority’.¹⁰⁵ For over 200 years, possession of the marbles has proved to be nine tenths of the law and with the complacency that comes from the knowledge that the law against deaccession limits the British Museum’s freedom of action, the issue of the marbles’ return has been pushed forever to the Greek calends. But possession is *not* a title of ownership and national law cannot serve as an excuse to avoid compliance with an international obligation. The cultural heritage dispute whose origin lies in Elgin’s removal of the marbles persists today because of the continued retention of the marbles in the British Museum. And it is this dispute and the issue of the marbles’ return in light of contemporary international law to which this book is dedicated.

1.1.2 The Parthenon Marbles and the Protection of Cultural Heritage

1.1.2.1 Why the Parthenon marbles?

The Parthenon marbles dispute is the most prominent interstate cultural heritage dispute concerning repatriation of looted antiquities, the Parthenon marbles that form part of the ‘Elgin Collection’ in the British Museum. The case has polarised observers since Elgin’s men hacked the marbles out of the ancient temple at the turn of the nineteenth century in Ottoman-occupied Athens. In 1816, a debt-stricken Elgin convinced the UK government to buy the marbles, which in turn entrusted them to the British Museum, where they have remained ever since under the appellation ‘the Elgin Marbles’. So it was that a dilettante like Elgin¹⁰⁶ managed to link his name to Pheidias, and the *cause célèbre* of cultural heritage disputes was

¹⁰¹ Hansard (1983) cc 399-422, 404. See also Hansard (1996) cc 701-702.

¹⁰² Venetia Rainey and Yannis-Orestis Papadimitriou, ‘Boris Johnson: The Elgin Marbles are Staying in their Rightful Home, the British Museum’, *The Telegraph* (12 March 2021).

¹⁰³ Hansard (2020), intervention by culture minister Caroline Dinenage.

¹⁰⁴ Hansard (2022a), interventions by the parliamentary under-secretary of state for arts, Stephen Parkinson; Hansard (2022b), intervention by Stephen Graeme Parkinson.

¹⁰⁵ Greenfield (2007) 73.

¹⁰⁶ Robertson (2019) Chap. 1 (unnumbered page).

born. As soon as Greece became an independent state, it asked for the return of the marbles and it has not stopped asking for them since.¹⁰⁷

Efforts have been made to resolve the case at the diplomatic level, but thus far Greece has drawn the line at judicial settlement. An attempt by Greece to mediate the dispute within the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP or Intergovernmental Committee) of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2013 was repulsed by the United Kingdom and the British Museum trustees in 2015.¹⁰⁸ At about the time of the British rejection, Greece considered legal action on the basis of international law, but this avenue was eventually not pursued.¹⁰⁹ In 2018, when the issue of the reunification of the marbles was discussed within the UNESCO Intergovernmental Committee, a number of states openly supported the Greek claim for return.¹¹⁰ Some states did not take a position, but none supported the marbles' retention in the British Museum.¹¹¹ UNESCO issued a recommendation that can be interpreted as favouring the Greek request for return.¹¹² A few months later, in August 2018, the Greek government invited the United Kingdom to engage in negotiations over the return of the marbles, in accordance with the UNESCO recommendation.¹¹³ The response, if any, to this request is unknown at the time of writing. With the Brexit negotiations, speculation started as to whether the Parthenon marbles would be part of the deal,¹¹⁴ but this opportunity too came and went. Then, in September 2021, the ICPRCP established for the first time that 'the obligation to return the Parthenon Sculptures lies squarely on the United Kingdom Government'.¹¹⁵

So what is it that makes this case unique? Why is this 'the ur-text of restitution controversies'?¹¹⁶ Many an element comes together to make the dispute about the

¹⁰⁷ See Chap. 5.

¹⁰⁸ See ICPRCP, 20th session, 29-30 September 2016, ICPRCP/16/20.COM/Decisions, 4. See Sect. 5.3.2.

¹⁰⁹ Liz Alderman, 'Greece Rules Out Suing British Museum Over Elgin Marbles', *The New York Times* (14 May 2015).

¹¹⁰ These were Argentina, Armenia, China, Cyprus, Egypt, Italy, Iraq, Mexico, and Turkey, ICPRCP, 'Final Report', 21st session, ICPRCP/18/21.COM/Report (May 2018), paras 6, 23.

¹¹¹ ICPRCP, 'Final Report', 21st session, ICPRCP/18/21.COM/Report (May 2018).

¹¹² ICPRCP, Recommendation 21 COM 7, ICPRCP/18/21.COM/Decisions (May 2018).

¹¹³ Jon Stone, 'Greece Demands UK Open Negotiations over the Return of the Elgin Marbles', *The Independent* (21 August 2018). The press release concerning the request for negotiations is available on the website of the Greek Ministry of Culture and Sports (in Greek only) <https://www.culture.gov.gr/el/Information/SitePages/view.aspx?nID=2338>.

¹¹⁴ Editorial, 'Opinion: The Guardian View on the Parthenon Marbles: Not Just a Brexit Sideshow', *The Guardian* (23 February 2020); Bruno Waterfield, 'Greece Demands Elgin Marbles for EU Trade Deal', *The Times* (19 February 2020).

¹¹⁵ ICPRCP, 22nd session, 27-29 September 2021, ICPRCP/21/22.COM/Decisions, Decision 22. COM 6, para 7.

¹¹⁶ Meyer (2006) 89.

Parthenon marbles like no other: the Parthenon, a nonpareil of historical, political, cultural, and artistic significance; the concatenation of circumstances surrounding the removal of the marbles, including the poignant fact that the events took place in the very final years of an almost four hundred centuries-long Ottoman occupation; the controversy over the purported firman; the disfigurement of the ancient temple, which had stood on the Acropolis for more than 2200 years and had not known similar destruction except when a Venetian shell landed on it in 1687; the opprobrium and the public outcry at the removal, Byron's eloquent lament; the botched investigation of the select committee; the 'cleaning' of the late 1930s and the general scandal that Joseph Duveen, an art-dealer of questionable professional ethics, has given his name to the Duveen Gallery in the British Museum; the efforts expended by a great many British people to achieve the return of the marbles to Athens; the buck-passing between the UK government and the British Museum as regards repatriation; the emotive and intense debate that the case has fuelled about the protection of our cultural heritage; and the fact that this dispute has appeared to be on the point of being resolved time and again, including at the moment of writing.

This is the biggest cultural heritage dispute, and it lies deep in every statement about repatriation: from the undercurrent of regret expressed by British-Egyptian novelist Ahdaf Soueif at the British Museum's response to the debate on restitution, leading to her resignation from the museum's board of trustees in 2019;¹¹⁷ to a 2020 warning sent by the culture secretary Oliver Dowden to top UK publicly funded museums that they must not remove artefacts or they must risk losing taxpayer support.¹¹⁸ And it has certainly helped dictate the British Museum's riposte that it has 'no intention of removing controversial objects from public display'.¹¹⁹ While that ministerial missive was triggered by a controversy over the British Museum's display of a bust of Hans Sloane, its slave-owning founding father¹²⁰ (the bust was

¹¹⁷ Ahdaf Soueif, 'On Resigning from the British Museum's Board of Trustees', LRB Blog (15 July 2019); Geraldine Kendall Adams, 'Trustee Resigns from British Museum over its Stance on Sponsorship and Repatriation', Museums Association (16 July 2019).

¹¹⁸ Letter from the Culture Secretary Oliver Dowden on HM Government Position on Contested Heritage INT2020/19838/DC (22 September 2020) <https://www.gov.uk/government/publications/letter-from-culture-secretary-on-hm-government-position-on-contested-heritage>. See also Sect. 8.3.1.

¹¹⁹ 'British Museum "Won't Remove Controversial Objects" from Display', BBC News (28 September 2020).

¹²⁰ 'British Museum "Won't Remove Controversial Objects" from Display', BBC News (28 September 2020). In a comment published in *The Telegraph*, Dowden expressed concern about 'a cancel culture whereby a small but vocal group of people claim to have the monopoly on virtue, and seek to bully those who dare to disagree'. Viewed in this light, the case did not directly relate to the marbles. However, in that same comment Dowden wrote: 'Confident nations face up to their history. They don't airbrush it. Instead, they protect their heritage and use it to educate the public about the past. They "retain and explain", rather than "remove or ignore".' See Oliver Dowden, 'Comment: We Won't Allow Britain's History to Be Cancelled', *The Telegraph* (15 May 2021). While this may seem appropriate for Sloane's bust, and it was rightly 'retained and explained' (and we may argue about what comes next for the streets and square named after him),

ultimately removed from its pedestal, placed in a glass cabinet, and Sloane was labelled a ‘slave owner’),¹²¹ the admonition that museums should not remove artefacts speaks volumes to the Parthenon marbles case, the *most* ‘controversial’ treasure that the British Museum—or any museum—holds.

1.1.2.2 The protection of cultural heritage

There is an additional reason why the Parthenon marbles case is particularly topical. The dispute falls within an evolving legal framework in international law. Attitudes to the protection of cultural property are changing dramatically and the evolution of customary international law makes some view it as a test case for the return of important cultural property to its place of origin.¹²² Loud as the old guard may shout, the inescapable truth is that the nascent customary international law on the return of cultural property means that the retentionists’ arguments lie on shaky ground.

To start with, the plunder of cultural property in wartime, including in an occupied territory, had already been illicit according to international law back when Elgin removed the marbles. In the wake of Waterloo in 1815, just a year before the UK government purchased the marbles from Elgin, British foreign secretary Robert Stewart (aka Viscount Castlereagh) and the Duke of Wellington clamoured for and obtained the return to European countries of Napoleon’s loot that had adorned the Louvre.¹²³ The horses of San Marco and the Laocoön were among the masterpieces to make their way back to Italy.¹²⁴ The arguments employed by the French to resist restitution at the time are of the same kind as those that the UK

the principle is not applicable to the Parthenon marbles. In this case, surely, facing up to history can only mean one thing: facing up to past wrongs and making amends.

¹²¹ Craig Simpson, ‘British Museum Removes Bust of Slave-owner Founder Sir Hans Sloane’, *The Telegraph* (24 August 2020).

¹²² Robertson (2019) conclusion (unnumbered page).

¹²³ Note delivered by Viscount Castlereagh to the Allied Ministers, and placed upon their Protocol, Paris, 11 September 1815; and Dispatch from the Duke of Wellington to Viscount Castlereagh, Paris, 23 September 1815, both reprinted in von Martens (1818) 606ff and 616ff respectively. See further St Clair (1998) 22; Miles (2008, 2010) 329; Goodwin (2008) 679–680; de Visscher (1949) 824; Scovazzi (2011) 344, 347. However, not all of Napoleon’s plundered treasures found their way home. Some had been scattered across the country, and the French did their best to avoid giving them back, Cohan (2004) 21; Farah Nayeri, ‘The Masterpieces that Napoleon Stole, and How Some Went Back’, *The New York Times* (9 June 2021). It appears, however, that other acquisitions were ‘legalised’ as part of the terms of peace treaties, Quynn (1945) 459. A note of caution: although Napoleon’s loot from his European campaigns was to be returned, the 1815 arrangement did not affect Napoleon’s Egyptian loot, which had been ceded to the combined British and Ottoman army a few years earlier—think Rosetta Stone. This happened with the French capitulation in 1801, see Articles of Capitulation (30 August 1801), reproduced in Wilson (1803) 346–353, art 16. In addition, while Castlereagh appeared anxious to send Napoleon’s loot home, he was helping Elgin import his loot duty-free, see Esther Addley, ‘Lord Elgin Paid No British Customs Tax on Parthenon Marbles, Letters Reveal’, *The Guardian* (7 October 2022).

¹²⁴ Greenfield (2007) 238.