

A TALE OF THREE DOCUMENTS: LORD ELGIN AND THE MISSING, HISTORIC 1801 OTTOMAN DOCUMENT

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INTRODUCTION

The dispute between Greece and England over the Parthenon sculptures removed to the British Museum's permanent collection in the early nineteenth century is probably the most prominent cultural property controversy in the world today.¹ These fabulous marbles—sculpted out of fine white Pentelic marble under the guiding hand of Phidias during the age of Pericles, quarried ten miles from Athens, and hauled by oxcart to the Acropolis—had remained on the high walls of the Parthenon for 2200 years before they were removed.²

This dismantling of the Parthenon was done at the behest of Lord Elgin, who was formally known as Thomas Bruce, seventh Earl of Elgin, eleventh of Kincardine, and the Ambassador Extraordinary and Minister Plenipotentiary of His Britannic Majesty to the Sublime Porte of Selim III, Sultan of Turkey in Constantinople,³ which then ruled Greece.⁴ Except for the

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¹ See generally JEANETTE GREENFIELD, *THE RETURN OF CULTURAL TREASURES* (1989); KARL E. MEYER, *THE PLUNDERED PAST* (1973); LYNN H. NICHOLS, *THE RAPE OF EUROPA: THE FATE OF EUROPE'S TREASURES IN THE THIRD REICH AND THE SECOND WORLD WAR* (1994); *THE SPOILS OF WAR: WORLD WAR II AND ITS AFTERMATH: THE LOSS, REAPPEARANCE, AND RECOVERY OF CULTURAL PROPERTY* (Elizabeth Simpson ed., 1997).

² See IAN JENKINS, *THE PARTHENON FRIEZE* 9 (1994).

³ See WILLIAM ST. CLAIR, *LORD ELGIN & THE MARBLES: THE CONTROVERSIAL HISTORY OF THE PARTHENON SCULPTURES I* (3d ed. 1998) [hereinafter *ST. CLAIR, CONTROVERSIAL HISTORY*].

⁴ See generally RICHARD CLOGG, *A CONCISE HISTORY OF GREECE* (photo. reprint

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 most celebrated monument.⁵

From the moment the first sculpture—depicting a youth and centaur in combat—was lowered to the ground,⁶ Lord Elgin's taking of the world's greatest single collection of classical Greek sculptures has been defended and criticized by poets, artists, historians, politicians, lawyers, cultural leaders, diplomats, art dealers and collectors, and museum 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 at the time of Ottoman rule, mentions the dispute over the Parthenon sculptures, which are considered one of the crown jewels of the British Museum's exceptional collection.⁷

The debate over the original removal and the possible repatriation of Elgin's collection continues to be vigorous—the marbles were even the subject of recent international conferences in London and Athens.⁸ Recently, the dispute over the sculptures has been the subject of diplomatic negotiation and international efforts aimed at restricting the outflow of cultural property from art-rich countries. In January 1999, 339 of the European Parliament's 629 members urged Britain to return the collection to Greece,⁹ and after touring the Parthenon, President Clinton offered to mediate Greece's demands that Britain return the sculptures.¹⁰ In June 2000, Greek Foreign Minister George Papandreou even pressed his country's repatriation claim before the Culture Select Committee in the British House of Commons.¹¹

1995) (1992); C.M. WOODHOUSE, *MODERN GREECE: A SHORT HISTORY* (6th ed. 1998).

⁵ See Manolis Korres, *The Parthenon from Antiquity to the 19th Century*, in *THE PARTHENON AND ITS IMPACT IN MODERN TIMES* 136-61 (Panayotis Tournikiotis ed., 1994).

⁶ See Letter from Philip Hunt, to Lord Elgin (July 31, 1801), quoted in A.H. Smith, *Lord Elgin and His Collection*, 36 *J. HELLENIC STUD.* 163, 196 (1916) [hereinafter Hunt Letter].

⁷ See B.F. COOK, *THE ELGIN MARBLES* 5 (2d ed. 1997) ("The Elgin Marbles, as they have come to be known, were placed in the British Museum and have remained ever since one of the chief attractions to artists, scholars and millions of ordinary visitors.").

⁸ See David Rudenstine, *Did Elgin Cheat at Marbles?*, *THE NATION*, May 29, 2000, at 30 [hereinafter Rudenstine, *Did Elgin Cheat?*]; see also Warren Hoge, *On Seeing the Elgin Marbles, with Sandwiches*, *N.Y. TIMES INT'L*, Dec. 2, 1999, at A4.

⁹ See *Property Rites*, *N.Y. TIMES*, Jan. 19, 1999, at E1.

¹⁰ See Marc Lacey, *Clinton Tries to Subdue Greeks' Anger at America*, *N.Y. TIMES INT'L*, Nov. 21, 1999, at A6.

¹¹ See House of Commons, Culture, Media and Sport—Minutes of Evidence (Session 1999-2000), available at <http://www.parliament.the-stationary-office.co.uk>.

Although the complex and wide-ranging debate¹² over the removal of the sculptures crisscrosses historical, moral, cultural, aesthetic, and legal considerations, two assumptions are broadly shared regardless of how one judges the morality of the initial removal and the possibility of repatriation. First, it is assumed that the appropriate Ottoman officials gave Elgin either prior or subsequent permission to remove the sculptures.¹³ Although I

¹² Those defending the taking and retention of the marbles from the Parthenon do not claim that Britain is entitled to the marbles by mere virtue of their possession. Rather, they insist that the British Museum's entitlement to the marbles stems from Lord Elgin's 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 belongs to all humankind. 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 that they are in better condition today than they would be if they had remained on the Parthenon because they have been in a museum for a 180 years. Lastly, they claim that not every wrong can be righted—assuming that the initial taking was a wrong—and the acceptance of the past requires accepting Elgin's dismantling of the Parthenon.

Greece takes exception to the British assertions. Having not forgiven, condoned, or accepted the taking, Greece insists 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 are part of the British patrimony, they would characterize the marbles as a British step-child rather than one of Greece's own. If the Greeks conceded that the marbles are in better condition today because they have been in a museum, they also would emphasize that the Parthenon is 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 since it could only bring such a suit in a British court. Instead, Greece insists 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. See generally Rudenstine, *supra* note 8; David Rudenstine, *The Legality of Elgin's Taking: A Review Essay of Four Books on the Parthenon Marbles*, 8 INT'L J. CULTURAL PROP., at 256-76 (1999) (book review) [hereinafter Rudenstine, *Legality*].

¹³ The museum-going public assumes that Elgin's artisans removed the sculptures from the Parthenon walls only after Elgin had secured permission from proper Ottoman authorities. One can never know all the reasons why such a belief is so deeply embedded, but some reasons seem obvious. The sheer scope and magnitude of the removal was so enormous that it is difficult to imagine that such an undertaking could have commenced without permission. Moreover, because the Ottomans used the Acropolis as a military garrison it is inconceivable that the denuding of the Parthenon took place without some governmental approval. The stripping of the sculptures strikes the modern mind, a mind that has turned the Parthenon into a symbol of Western civilization, as such a desecration that it may seem improbable that such an event could have occurred without the approval of appropriate Ottoman authorities. The British Museum has placed its power, influence, and prestige behind the idea that the removal of the sculptures constituted an act of rescue condoned by the Ottomans. But no matter what combination of reasons explain the assumption that Elgin had permission to remove the marbles, there is little doubt that the assumption has wide currency. Thus, Harold Nicolson, who favored repatriation, wrote several decades ago: "Lord Elgin obtained from the Sultan a firman... expressly authorizing him to remove the statues: there was nothing illegal in what he did." Harold Nicolson, *The Byron Curse Echoes Again*, N.Y. TIMES, Mar. 27, 1949 (Magazine), at 12.

have concluded that there is no evidence to support this assumption—in fact, the available evidence points to a contrary conclusion—I do not address this important issue in this Article.¹⁴

Second, it is assumed that the starting point for any inquiry into whether the Ottomans gave Elgin permission to remove the

¹⁴ See Rudenstine, *Did Elgin Cheat?*, *supra* note 8; Rudenstine, *Legality*, *supra* note 12. Contemporary researchers, even those partial toward the British retention of the Elgin collection, have also concluded that the Ottomans did not give Elgin prior permission to remove the sculptures. Consider three examples. First, John Henry Merryman, a prominent legal academic who generally favors an open market for cultural artifacts, including antiquities, wrote a frequently cited article in 1985 in which he favors the British Museum's retention of the marbles. See John Henry Merryman, *Thinking About the Elgin Marbles*, 83 MICH. L. REV. 1881 (1985). At one point in the article, after quoting a clause from the Select Committee's English document that is often cited to support the claim that the Ottomans gave Elgin prior permission to remove the sculptures, Merryman writes:

The language of this last clause, even when taken in context with that of the third paragraph of Elgin's request to the Sultan, is at best ambiguous. While it is possible to read the firman as a flowery concession of everything for which Elgin asked, it is more reasonable to conclude that the Ottomans had a narrower intention, and that the firman provides slender authority for the removals from the Parthenon. . . . The reference to 'taking away any pieces of stone' seems incidental, intended to apply to objects found while excavating. . . . It is certainly arguable that Elgin exceeded the authority granted in the firman.

Id. at 1898-99. Although his partiality favoring the British Museum's retention of the marbles is undisguised, Merryman can only conclude that the July 1801 document is "ambiguous," and offers "slender authority" for the removals.

Second, in his sympathetic biography of Elgin, William St. Clair reaches two somewhat contradictory conclusions regarding the meaning of the July 1801 document. On the one hand, St. Clair concludes that "[t]he firman confers no authority to remove sculptures from the buildings or to damage them in any way. . . . Nor is there (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." See ST. CLAIR, *CONTROVERSIAL HISTORY*, *supra* note 3, at 89. On the other hand, St. Clair claims that the document "becomes a little ambiguous at a crucial point," and concludes that the language is sufficiently ambiguous to permit an Ottoman official in Athens acting in good faith to interpret the 1801 document to permit the denuding of the Parthenon. See *id.* St. Clair writes: "Governments have only themselves to blame if they draft ambiguous instructions which are then misinterpreted by their officials." *Id.* But even St. Clair's claim of vagueness stops short of asserting that the clause permitted the denuding of the Parthenon.

Third, B.F. Cook's *The Elgin Marbles*, comes as close to being an official British Museum statement on the matter as is possible. See COOK, *supra* note 7. Cook is a former Keeper of Greek and Roman Antiquities in the British Museum, and his book is copyrighted by The Trustees of the British Museum and published by the British Museum Press. After quoting several sentences from the July 1801 document, including the language directing the Ottoman officials in Athens to assure that "no one meddle" with Elgin's workmen's "scaffolding or implements, nor hinder them from taking away any pieces of stone with inscriptions or figures," Cook writes: "Then Hunt asked for, and after some hesitation received, permission to remove a metope from the Parthenon itself. This was the crucial moment, and it may be questioned whether the firman actually authorized even the partial dismantling of buildings in order to remove sculptures." *Id.* at 72-74. Cook does not contend that the July 1801 document authorized the stripping of the marbles from the edifice's walls. He concedes that it is questionable whether the document authorized such actions and in the end fails to decide whether the July 1801 document permitted the removal of sculptures from the Parthenon walls. See *id.*

sculptures must commence with the missing, historic July 1801 Ottoman letter Elgin obtained from the acting grand vizier in Istanbul.¹⁵ For the better part of two centuries, it has been an article of faith that this July 1801 Ottoman document was translated into Italian in Constantinople in 1801; that the Italian document was translated into English in London in 1816; and that the English document, initially published in an 1816 report of a parliamentary committee, gave Lord Elgin permission to remove the Parthenon sculptures from the temple walls.¹⁶ This Article challenges for the first time the deeply embedded assumptions about the relationship among these three distinct documents; this Article challenges the existence of a provable, coherent documentary chain linking the Ottoman document to the English document through the Italian document.¹⁷

After so many years of acrimonious debate, it may be hard to imagine that there is anything new to say about this highly significant controversy. But there is, and what is new is no small matter. This Article concludes that the assumption of a provable, coherent, documentary chain establishing the English document's status as an authentic and accurate translation of the original Ottoman document is unproven, and in light of new evidence, probably false. It suggests that the actual relationship among these three documents is fundamentally different in character than has been previously presumed, and, further, that the traditional conception of the relationship among these three documents became viable only because of misrepresentation and deceit within the parliamentary proceedings of 1816.

Laying bare this deceit and correcting this important erroneous historical claim is no mere academic exercise. Toppling a fundamental premise central to the contemporary debate over the fate of the Parthenon sculptures, as well as making apparent the parliamentary deceit that misled international opinion for two centuries as to the legality of Elgin's removal of the sculptures, should alter the substantive context in which the contemporary debate is situated. It may also cause shifts not only in positions asserted in the international dispute, but also in comparative moral advantages that may eventually affect the ultimate question of repatriation.

¹⁵ See ST. CLAIR, *CONTROVERSIAL HISTORY*, *supra* note 3, at vi.

¹⁶ See *id.* at 88; COOK, *supra* note 7, at 72; Merryman, *supra* note 14, at 1898.

¹⁷ See SELECT COMMITTEE ON THE EARL OF ELGIN'S COLLECTION OF SCULPTURED MARBLES, REPORT ORDERED BY THE HOUSE OF COMMONS, Mar. 25, 1816, at 5, 69 [hereinafter REPORT OF MARCH 25, 1816]. COOK, *supra* note 7, at 71-73; ST. CLAIR, *CONTROVERSIAL HISTORY*, *supra* note 3, at vi, 88; Merryman, *supra* note 14, at 1898.

I. THREE DOCUMENTS

In July 1801, Lord Elgin obtained a document from the Ottoman government in Constantinople.¹⁸ This document, now missing, defined the activities Elgin's artisans could conduct on the Acropolis.¹⁹ The second document is in English and published in a report prepared by a parliamentary committee in 1816.²⁰ The committee claimed that the English document was an accurate translation of the missing 1801 Ottoman document. The third document, in Italian, came to light through Philip Hunt, a member of Elgin's entourage in Constantinople, who testified before the parliamentary committee in 1816 that he had the Ottoman document translated into Italian when he was in Constantinople in July 1801, and that he still retained the Italian translation.²¹ Because Parliament's English document was derived from Hunt's Italian document, the Italian document is the critical link in the documentary chain connecting the missing 1801 Ottoman document and the 1816 English document. The tale of these three documents, in light of evidence now available, establishes that the actual relationship among them is quite different from the previously unchallenged conception.

A. *The Ottoman Document*

By the spring of 1801, Elgin's artisans had been stationed in Athens for months.²² At times, local Ottoman officials permitted them regular access to the Acropolis. At other times, their access was limited, and the work they were allowed to do was unpredictable.²³ As a result, when the Reverend Philip Hunt—a youthful minister who was part of Elgin's entourage—returned to Constantinople from Athens in June 1801, he urged Elgin to ask the Porte for an order that carefully defined the activities Elgin wanted them to conduct.²⁴

The archives of the British Foreign Office and the Ottoman Empire contain no information with regard to the exchanges between Elgin and the Porte over Elgin's request for a new order.²⁵

¹⁸ See Letter from Mary Nisbet, to William Nisbet (July 9, 1801), in *THE LETTERS OF MARY NISBET OF DIRLETON COUNTESS OF ELGIN*, at 67 (Lieut-Colonel Nisbet Hamilton Grant ed., 1926) [hereinafter *NISBET LETTERS*].

¹⁹ I searched the archives of the Ottoman Empire in Istanbul with the assistance of translators in 1998 but was unable to find the 1801 document.

²⁰ See *REPORT OF MARCH 16, 1816*, *supra* note 17, at 69.

²¹ See *id.* at 55.

²² See *ST. CLAIR, CONTROVERSIAL HISTORY*, *supra* note 3, at 66.

²³ See *id.* at 66-67.

²⁴ See *id.* at 55-58.

²⁵ I searched the relevant archives of the Public Records Office in West London and of

However, evidence dating from July 1801 establishes that Elgin obtained a document from the Ottoman government in Constantinople, in Ottoman,²⁶ addressed to Ottoman officials in Athens, which pertained to the work of his artisans. On July 8, 1801, Hunt wrote Richard William Hamilton, Elgin's private secretary, while he was "on a special errand in Egypt,"²⁷ that he would leave Athens within days, and that he would "carry a Ferman to enable our artists to prosecute without interruption their researches in the Acropolis of Athens."²⁸ The next day, Elgin's wife, Mary Nisbet of Dirleton, Countess of Elgin, wrote her father that Pisani—Elgin's dragoman, who functioned not only as an interpreter but as a negotiator—"succeeded à merveille in his *firman* from the Porte."²⁹ The day after, Elgin, referring to the new Ottoman document, wrote Giovanni Battista Lusieri—an Italian landscape painter whom Elgin had employed to supervise his artisans in Athens—proclaiming, "you now have the permission to dig."³⁰

Surviving records, including letters, British embassy documents, and Ottoman Empire documents, dating from the summer of 1801—as opposed to testimony given by Elgin and Hunt before a Parliamentary Select Committee in 1816³¹—provide no information about the substance of the 1801 Ottoman document. Thus, we cannot determine from sources dating from 1801 the following: who prepared the document; whether the document was an informal letter requesting cooperation or a more formal order embodying a directive; how long it was; to whom it was addressed; or what it provided. The only point that can be made with confidence is that the Porte gave the document most likely to Pisani,³² on July 8, the date of Hunt's letter to Hamilton.

the Ottoman Empire in Istanbul for evidence of such exchanges, but to no avail.

²⁶ For purposes of this Article, the language used by Ottoman officials during the first part of the nineteenth century shall be "Ottoman" as opposed to Ottoman Turkish or Turkish. This was a designation used by the author's translators when they worked together in the archives of the Ottoman Empire in Istanbul. The accuracy of this designation is also supported by Andrew Looker. See e-mail from Andrew Looker (April 4, 1998, 12:58:54 EST) (on file with author). My translators were Süleyman Çelik, Birol İlkesen, and Gultekin Yaldiz.

²⁷ See Hunt Letter, *supra* note 6, at 192.

²⁸ *Id.* at 194. The word *firman* is spelled different ways. The Oxford English Dictionary prefers "firman," and that is the form adopted in this Article except when the term is spelled differently in a document that is being quoted. There the spelling adopted by the author of the material quoted is respected. See 4 OXFORD ENGLISH DICTIONARY 249 (1978).

²⁹ See NISBET LETTERS, *supra* note 18, at 97.

³⁰ Hunt Letter, *supra* note 6, at 192.

³¹ See REPORT OF MARCH 16, 1816, *supra* note 17, at 17-23, 55-58.

³² See NISBET LETTERS, *supra* note 18, at 97.

When Elgin testified before the Parliamentary Select Committee in 1816, he claimed that he took the missing Ottoman document to Athens and personally gave it to the local Ottoman authorities: "It was . . . addressed by the Porte to the local authorities," he said, "*to whom I delivered it.*"³³ But that was not true. Letters written by Hunt and Lusieri in July and August 1801 indicate that the Ottoman document arrived in Athens in July 1801 while Elgin was in Constantinople. Indeed, Elgin visited Athens for the first time only in the spring of 1802. Instead of Elgin taking the Ottoman document to Athens, it was the young minister, Philip Hunt, who was the courier. Shortly after he arrived in Athens, Hunt referred to the Ottoman document when he wrote Elgin that the Voivode, the Ottoman governor in Athens with whom Hunt had met, "read the letters."³⁴

What happened to the Ottoman document once Hunt arrived in Athens is uncertain. After permitting the Voivode to read it, Hunt might have kept it himself, but Hunt never made such a claim and no researcher has ever found the document in Hunt's surviving papers. It is conceivable that Hunt gave the Ottoman document to Lusieri, but that seems improbable since Lusieri did not read Ottoman; the document would have been of little practical use to him. What is most likely is that the Voivode kept the document since it was addressed to him. After that, the document was probably lost or destroyed either before or during the Greek War of Independence in the 1820s.

Thus, only three things are certain. No one has ever found the original July 1801 Ottoman language document in any archive, including those in Greece or Turkey. No one has ever found a copy of this document. And quite surprisingly, no one has ever discovered an 1801 reference to it in the archives of the Ottoman Empire.

Of course, it may be that someone will discover a reference to this document dating from 1801, or that a copy of the Ottoman document will be discovered in the archives of the Ottoman Empire, or—and this seems the least likely—the original July 1801 Ottoman document will turn up somewhere. For the moment, however, the document and all references to it have vanished.

Nonetheless, it seems most likely that on July 8 Elgin obtained an Ottoman document, pertaining to the work of his artisans in Athens, from Ottoman officials in Constantinople and that Hunt took the document to Athens in the middle of July and gave it to the Voivode.

³³ See REPORT OF MARCH 16, 1816, *supra* note 17, at 18. (emphasis added).

³⁴ Hunt Letter, *supra* note 6, at 195.

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B. *Parliament's English Document*

There is no known historical reference to the July 1801 Ottoman document between the summer of 1801 and March 25, 1816. On that date, a Parliamentary Select Committee, convened to evaluate Elgin's request that the government purchase his antiquities collection, published a thirteen-page report plus "minutes of evidence" and appendices.³⁵ The record of the committee's report and the record of its proceedings contain information relevant to the broad question of whether the Ottoman government gave Elgin written permission to denude the Parthenon of its sculptures, and it reveals the Select Committee's failure to search out information that fully answered the broad question.

Elgin was the committee's first witness.³⁶ During his lengthy testimony, the committee repeatedly asked Elgin whether he had obtained written permission to remove the marbles and, if so, whether he had a copy of the document. As Elgin's testimony makes clear, he had no documentary evidence to offer the committee. Thus, after Elgin stated that he had obtained "a specific permission" to "draw, model, and remove," as well as permission to "excavate in a particular place," Elgin was asked: "Was the permission in writing?" Elgin answered: "It was . . . and I have retained none of them."³⁷ A few minutes later, Elgin was asked again: "[D]id your Lordship keep any copy of any of the written permissions that were given to your Lordship?" Elgin's response was unequivocal: "I kept no copies whatever."³⁸ And then immediately after Elgin completed his answer, Elgin was queried again: "In point of fact, your Lordship has not in England any copy of any of those written permissions?" "None," Elgin answered.³⁹ The committee then asked Elgin: "Did the Committee understand you to say, that it is possible Lusieri has such copies?" Elgin said: "Certainly; they will be at Athens, either in his possession or in the possession of the authorities there."⁴⁰ But the committee was evidently suspicious of whether Elgin personally knew that the document was in Athens or whether he was merely guessing. Thus, it asked Elgin whether he had "any distinct recollection of having had such copies of the authorities, and of having left them in Lusieri's possession?" Elgin retreated: "I

³⁵ See generally REPORT OF MARCH 25, 1816, *supra* note 17.

³⁶ Elgin testified on February 29, 1816. See *id.* at 17-23.

³⁷ *Id.* at 18.

³⁸ *Id.* at 19.

³⁹ *Id.*

⁴⁰ *Id.*

cannot speak to the fact so precisely as the Committee may wish.”⁴¹ And then to make sure that Elgin had no writing of any kind that would shed light on the contents of the 1801 document, the committee asked Elgin: “Did your Lordship, for your own satisfaction, keep any copy of the terms of those permissions?” Elgin again answered without qualification: “No, I never did.”⁴²

On the second day of hearings, William Hamilton testified. In response to a question as to whether he was “acquainted with much of the detail of the means” employed by Elgin to obtain “permission” to remove sculptures from the Parthenon walls, Hamilton stated, in a somewhat stilted manner, that “[his] employment” with Elgin “did not necessarily put [him] exactly in the way of being acquainted with his communications with the Turkish government.”⁴³ And then to assure itself that Hamilton knew nothing about the issue, the committee asked: “Have you any impression on your mind, as to the nature of the permission that was granted by the Turkish government?” Hamilton responded: “None of my own knowledge.”⁴⁴

Nearly two weeks after Elgin told the committee that he did not retain a copy of the Ottoman permission and Hamilton stated that he knew nothing about any permission Elgin may have obtained, the “Rev. Dr. *Philip Hunt*, L.L.D. [was] called in [by the committee], and Examined.”⁴⁵ The first question asked: “In what year were you at Constantinople, and in what character?” Hunt answered: “I went out with Lord Elgin, as his chaplain, and occasionally act[ed] as his secretary.”⁴⁶ The committee’s second question was: “Did you ever see any of the written permissions which were granted to [Elgin] for removing the Marbles from the Temple of Minerva?” Hunt answered:

Yes; I found on my first visit to Athens that the fermauns which had been granted to Lord Elgin’s artists were not sufficiently extensive to attain the objects they had in view, that their operations were frequently interrupted by the Disdar or military governor of the Citadel, and by the Janizaries, and other considerable obstacles thrown in their way, by sometimes refusing them admission and destroying their scaffolding; on my return therefore to Constantinople, in 1801, I advised Lord Elgin to apply to the Porte for a fermaun embracing the particular objects I pointed out to him; and as I had been before

⁴¹ *Id.*

⁴² *Id.* at 19.

⁴³ *Id.* at 25.

⁴⁴ *Id.* at 26.

⁴⁵ *Id.* at 55.

⁴⁶ *Id.*

deceived with respect to the pretended contents of a fermaun, I begged that this might be accompanied by a literal translation; the fermaun 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.⁴⁷

Hunt's recorded statement that he had a translation of the 1801 Ottoman document is the earliest record indicating that he—or for that matter, anyone else—had such a document. Although Hunt's statement to the committee that he "begged" for a "literal translation" and that he then possessed merely "a translation," gave rise to many questions, the committee pursued none of them. Rather, once Hunt finished his answer, the committee shifted its focus to the substance of the firman. After another fifteen or twenty minutes of questioning, the committee excused Hunt as a witness and did not take the testimony of any additional witnesses.⁴⁸

As Hunt's statement indicated, he did not identify the language of his translation. But other evidence establishes that it was in Italian and that the Select Committee knew that it was.⁴⁹ Thus, the question raised is whether the committee ever examined the Italian document Hunt said he had in Bedford, or whether Hunt simply gave the committee an English translation of the Italian document, which the committee included in its published report.

The committee's report fails to resolve the ambiguity. At one point, the report states: "A translation of the fermaun itself has since been forwarded by Dr. *Hunt*, which is printed in the Appendix."⁵⁰ That sentence could mean that Hunt forwarded an English document to the committee, which the committee then printed as a firman in the appendix. Such a construction requires that the committee's phrase, "[a] translation of the fermaun itself has since been forwarded," to be interpreted to mean—and this is the interpretation adopted by William St. Clair, Elgin's biographer—that Hunt forwarded an English translation of his purported Italian translation of the original Ottoman document.⁵¹ While that assumption may be correct, it is equally plausible that

⁴⁷ *Id.* at 55-56.

⁴⁸ *See id.* at 56.

⁴⁹ *See id.* at 69.

⁵⁰ *Id.* at 5.

⁵¹ *See* WILLIAM ST. CLAIR, LORD ELGIN AND THE MARBLES 90 n.* (1967) [hereinafter ST. CLAIR, LORD ELGIN] ("In a translation given by Hunt to the Select Committee in 1816, Hunt rendered this 'by Mr. Philip Hunt, an English Gentleman, Secretary of the Aforesaid Ambassador.' I suppose this is right but I do not know what N.N. can stand for.").

the committee's phrase—"[a] translation of the *fermaun* itself has since been forwarded"—means that the "translation" the committee received from Hunt was the Italian document Hunt claimed was a translation of the original Ottoman document, thus leaving it to the committee to translate the Italian document into English.

The committee's report contains another clue relevant to whether it examined the Italian document. At the bottom of the English document, there is a sentence that provides: "The words in Italian rendered in two places 'any pieces of stone,' are 'qualche pezzi de pietra.'"⁵² This sentence—which permits the reader to assess the correctness of the English translation of a phrase by providing the phrase in Italian—leaves it unclear whether Hunt forwarded to the committee at least this one Italian phrase because he thought it of special importance, or, and this seems more probable, whether the committee examined the entire Italian document.

Librarians for Parliament have informed me that the original record of the committee's deliberations—the transcript, committee notes, and draft report, which might have contained evidence capable of resolving this ambiguity—was destroyed in a fire.⁵³ Thus, it is not possible to determine conclusively whether the committee received an English translation of Hunt's Italian document, or, examined the Italian document and had it translated into English, or compared it to an English translation Hunt provided. Nonetheless, unless we are prepared to believe that the Select Committee trusted Hunt to provide it with an accurate translation—and if it did, the Select Committee would seem to have entrusted Hunt with a responsibility it could reasonably be expected to discharge itself—it is likely that the committee examined the Italian document and either had the document translated into English or verified the accuracy of an English translation provided by Hunt.

Twelve days after Hunt testified, the committee's report was printed. The report's appendix contained not only the transcription of the witnesses' testimony, but also an English document that was printed entirely on one page. Three-and-one-half lines precede the document and state: "TRANSLATION from the Italian of a *Fermain*, or Official Letter from the Caimacan Pasha, (who filled the office of Grand Vizier at the Porte, during that Minister's absence in Egypt) addressed to The *Cadi*, or Chief

⁵² REPORT OF MARCH 25, 1816, *supra* note 17, at 69.

⁵³ Telephone Interview with Simon Gough, Records Office, Houses of Parliament (Aug. 14, 1998).

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Judge, and to The *Vaivode* or Governor of Athens, in 1801.”⁵⁴ The document, which is divided into two paragraphs, is immediately preceded by a statement that indicates that the “usual introductory compliments, and the salutation of Peace”⁵⁵ were to be inserted and to come first. Immediately underneath the second paragraph, the following words appear: “(Signed with a signet.) SEGED ABDULLAH KAIMACAN.”⁵⁶ Thus, the committee’s presentation of the English document gave several distinct impressions: the committee had examined a document that was signed by Seged Abdullah Kaimacan, the document examined had a signet affixed, and the English document published in the appendix was an accurate translation of the July 1801 Ottoman document Elgin obtained from the Porte in Constantinople.

Although the committee’s report gave the impression that the authenticity and reliability of the English document in the appendix were beyond question, the committee had reason—ample reason—to be suspicious that Hunt’s Italian document might be a fraud.⁵⁷ The committee was aware that Elgin desperately needed to sell his collection of antiquities to raise funds in order to reduce his substantial indebtedness.⁵⁸ In fact, it would not be an exaggeration to characterize Elgin’s financial condition as dire. Furthermore, the committee most likely concluded, after listening to Elgin testify—especially after he incredulously insisted that any private person could have received the same permission as he did to remove the sculptures—that Elgin was prepared to bend, distort, and ignore the truth to strengthen his position before the committee.⁵⁹ The committee also must have realized that Elgin knew, given the committee’s close questioning of him, that the committee was eager to see a written permission. Lastly, by the time Hunt testified, the committee knew, from Elgin’s testimony, that Elgin knew nothing about Hunt having a copy of the 1801 document.⁶⁰ To have Hunt

⁵⁴ REPORT OF MARCH 25, 1816, *supra* note 17, at 69. The term “Voivode” is also spelled “Vaivode.”

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See *infra* notes 58-60 and accompanying text.

⁵⁸ Lord Elgin’s indebtedness had prompted him to try to sell his collection of antiquities as early as 1811 to the British Government. See ST. CLAIR, *CONTROVERSIAL HISTORY*, *supra* note 3, at 177-79.

⁵⁹ See REPORT OF MARCH 25, 1816, *supra* note 17, at 17-23. For example, Elgin stated at one point during his testimony: “I did not receive more as ambassador than they received as travellers.” *Id.* at 19. The Earl of Alberdeen made it clear that “a private individual could have accomplished the removal of the remains which Lord Elgin obtained.” *Id.* at 49.

⁶⁰ See *id.* at 19.

then appear out of the blue, claiming to have in his possession a copy of the written permission, had to make even a trusting soul suspicious that Hunt's Italian document was fraudulent.

The committee did nothing to reduce the risk of fraud even though it had two options. First, the committee could have asked Hunt questions about the Italian document—questions such as: since neither Hunt nor Elgin was fluent in Italian, why was Hunt's translation in Italian? If Hunt did not make the translation, who did? In whose handwriting was the document? When and where was the translation done? How could Hunt be certain that his translation accurately reflected the substance of the Ottoman document? If the purpose of the translation was to assure that local Ottoman officials honored the terms of the Ottoman document, why did Hunt, and not Lusieri, who was in Athens overseeing the work, have the document? How is it that Elgin did not know that Hunt had the translation? Lastly, how did Hunt come to be a witness two weeks after Elgin was repeatedly asked for a written permission he did not have? The committee's failure to ask Hunt these and related questions puts the committee's examination of Hunt in sharp contrast to the far more searching examination the committee conducted of Elgin.⁶¹ More importantly, the committee's failure to ask Hunt such questions meant that the members of Parliament—for whose benefit the Select Committee prepared its report—received a deficient report that failed to address important questions.

Second, the committee could have sought verification of the Italian document in Constantinople. Since Hunt claimed that the Italian translation was prepared in Constantinople at his request, he most likely could have identified who had translated it and who wrote it. If Hunt had been asked those questions, he almost certainly would have identified that person as Pisani.⁶² With that information in hand, the committee could have verified Hunt's claim through the British ambassador in Constantinople, who might have secured a statement from the translator, as well as confirmation that the handwriting of other documents prepared by Pisani was sufficiently similar to establish the veracity of Hunt's testimony.

But the committee pursued neither option to reduce the risk of fraud. It failed to ask Hunt questions about the document, and it failed to secure any verification from Constantinople. As a result, the committee was unable to reassure itself or, more

⁶¹ It may be that the committee asked Hunt these questions in private, but there is no evidence that supports such speculation.

⁶² See NISBET LETTERS, *supra* note 18, at 97-98.

importantly, Parliament that Hunt's Italian translation was not a fraud. The committee's failure to take prompt and reasonable steps to protect itself and Parliament from a fraudulent deception does not mean that Hunt's Italian document was a fraud, and, as will be shortly reviewed, there is evidence that Hunt's Italian document originated in Constantinople in 1801.

In addition to its failure to take reasonable steps to reduce the risk of fraud, the committee failed to take any action to establish that either the English or Italian document—assuming there was no fraud—was an accurate translation of the original, July 1801, Ottoman document. The committee did not follow up the statements of Elgin and Hunt—that the original Ottoman document was in Athens—by sending an envoy from London or from its embassy in Constantinople to Athens to secure information about the 1801 Ottoman document. If the document had survived, the committee could have had a copy made and translated so that it could be confident that Hunt's Italian document was an accurate translation. Or, the committee could have inquired through an envoy or ambassador as to whether the Sultan had given Elgin permission to remove the sculptures from the temple's walls. But the committee took none of these initiatives, or any other, which might have clarified the doubts surrounding the authenticity and reliability of Hunt's Italian document.

The committee's failure to exercise due diligence did not keep it from presenting in the appendix to its report the English translation of Hunt's Italian document as an accurate, authenticated translation of the July 1801 Ottoman document. Because the Italian document disappeared almost immediately from the public record, and because the Parliament fire destroyed the original committee's record of its proceedings, there was no documentary evidence to prompt a reassessment of the English language document's authenticity. As a result, the Select Committee's 1816 English document was not only accepted by the Parliament as an accurate translation of the July 1801 Ottoman document, but has been accepted as such ever since.⁶³

C. *Hunt's Italian Document*

After the Select Committee completed its proceedings, Hunt's Italian document became mixed up with his personal papers and was overlooked by his heirs as a document of potential historical

⁶³ See COOK, *supra* note 7, at 71-73; ST. CLAIR, *CONTROVERSIAL HISTORY*, *supra* note 3, at vi, 88; Merryman, *supra* note 14, at 1898.

significance. In 1967 that changed when William St. Clair's biography of Elgin was first published, and although St. Clair did not explicitly state that he had located Hunt's Italian language document, he had.⁶⁴ In the preface to his biography, St. Clair writes: "BY FAR my greatest debt of gratitude is to Mrs. A.C. Longland of Abingdon who unreservedly made me a present of a collection of papers which belonged to her great-grand-uncle, Dr. Philip Hunt."⁶⁵ If this acknowledgment is then combined with the endnote in which St. Clair asserts that Hunt's 1816 Italian document "is among the Hunt Papers," it would seem that St. Clair, as of 1967, was in possession of Hunt's Italian document.⁶⁶ Nonetheless, it was not until the publication of the third edition of his Elgin biography, that St. Clair explicitly states that he has Hunt's 1816 Italian document, and makes the Italian text public for the first time:

All subsequent accounts of Lord Elgin's activities before the publication of the first edition of the present book were dependent on this derived English version. The actual document remained in the family among the Hunt papers where I discovered it, and it is now in my possession. The official Italian version is published in full for the first time, 1998, in Appendix I.⁶⁷

⁶⁴ See ST. CLAIR, LORD ELGIN, *supra* note 51. In a chapter entitled "The Firman," St. Clair provides an English version of Hunt's document that differs from the Select Committee's English version. For example, St. Clair's English version states: "We therefore have written this letter to you and expedited it by N.N." *Id.* at 90. After the letters "N.N.," St. Clair places a footnote that states in full: "In the translation given by Hunt to the Select Committee in 1816, Hunt rendered this 'by Mr. Philip Hunt, an English gentleman, Secretary of the Aforesaid Ambassador.' I suppose this is right but I do not know what N.N. can stand for." *Id.* at 90 n.*. Since the Select Committee's report gave no indication that Hunt's Italian document did not identify Hunt as the courier, the only way that St. Clair could have known that the Italian document used the letters "N.N.," as opposed to identifying Hunt as the courier, is if he had examined the Italian document. Furthermore, on the same page of his text, St. Clair adds a footnote that begins with the words "This part reads," and is then followed by sixteen words in Italian. *Id.* at 90 n.†. Since the Select Committee had provided only four of these sixteen Italian words, St. Clair could have added the additional twelve Italian words only if he had had access to the Italian document. Compare REPORT OF MARCH 25, 1816, *supra* note 17, at 69. Lastly, at the end of his English version of the Ottoman document, St. Clair makes reference to endnote four, which provides in relevant part: "An Italian version of the firman, in the handwriting of Pisani the British interpreter at Constantinople, is among the Hunt Papers. Clearly this is the document from which Hunt provided the translation for the Select Committee." ST. CLAIR, LORD ELGIN, *supra* note 51, at 287-88 n.4. The Select Committee's report made no reference to the handwriting of Hunt's Italian document. The only basis St. Clair would have had for asserting that the Italian document was in Pisani's handwriting was if he had examined it.

⁶⁵ ST. CLAIR, LORD ELGIN, *supra* note 51, at v.

⁶⁶ *Id.* at 287 n.4.

⁶⁷ ST. CLAIR, CONTROVERSIAL HISTORY, *supra* note 3, at 88. In an endnote after the word "possession," St. Clair also claims that the "Hunt papers had been examined by

The similarity between the texts of the two documents establishes that the Select Committee's English document was a translation of Hunt's Italian document. But that relationship between the documents does not eliminate the possibility, as discussed above, that the Italian document was fraudulently created in England in 1816. Although that possibility seems remote, the reasons why it seems remote are relevant to reassessing the character and authenticity of Hunt's Italian document, and therefore must be briefly reviewed.

Not surprisingly, St. Clair approaches the question of whether Hunt's Italian document was fraudulent in a way that is consistent with his fundamental claim that Hunt's Italian document is an authenticated, accurate translation of the July 1801 Ottoman document. Thus, St. Clair initially responds to the possibility of fraud by ignoring it and making unsupported assertions about the character of the Italian document. Three examples illustrate the point. First, in the preface to the third edition of the biography that contains the text of the Italian document, St. Clair states: "The official translation into Italian which was provided, at Elgin's request, for the British Embassy in Constantinople and which was used to persuade the authorities on the spot in Athens, is now in my possession."⁶⁸ Second, in the chapter entitled, "The Firman," St. Clair writes: "As was the case with many official Ottoman documents of the time, the official translation was given in Italian, at the time the lingua franca of the eastern Mediterranean. A copy was supplied to the Embassy soon afterwards."⁶⁹ Third, prior to publishing the text of the Italian document, St. Clair states: "All accounts of this firman derive from a document containing an official Ottoman translation into Italian which was given to a representative of Lord Elgin in Constantinople at the time when the permissions were granted."⁷⁰

St. Clair weaves several assertions together—Elgin requested the translation; the translation was "official"; and a copy "was supplied to the Embassy soon afterwards"—which, if substantiated, would put the authenticity of the document beyond challenge. But St. Clair offers no support for these claims, and none seem to exist. St. Clair's assertion that Elgin requested the Italian translation, when Elgin professed no knowledge of a translation, distorts what is known, and, at minimum, requires an

various scholars and publishers but none had identified the document in Italian as the firman." *Id.* at 357 n.10.

⁶⁸ *Id.* at vi.

⁶⁹ *Id.* at 88.

⁷⁰ *Id.* at 337.

explanation that St. Clair does not provide. The meaning of St. Clair's assertion that the Italian translation was "official" is uncertain. Although St. Clair claims that the Italian document is in Pisani's handwriting, he does not claim that Pisani translated it nor does he claim that he knows who translated the Ottoman document into Italian. Since there are no references to an Italian translation in the Ottoman and British archives, St. Clair's claim that the Italian translation is "official" is vague, if not meaningless. The meaning of St. Clair's assertion that a "copy was supplied to the Embassy" is also uncertain.⁷¹ There are no records dating from 1801 verifying the existence of the Italian document, let alone the idea that it was part of a British Embassy file. St. Clair's statement that the Italian language document "was supplied to the Embassy" begs for clarification and substantiation.⁷²

St. Clair's second approach to the issue of fraud is to offer evidence that the Italian document was created in Constantinople in 1801. His claim that the Italian document he possesses is on paper that was available in Constantinople in 1801 is likely true, but that fact would not prevent the same paper from being later available in London.⁷³ St. Clair states that a notation—St. Clair

⁷¹ *Id.* at 88.

⁷² *Id.*

⁷³ See *id.* at 337. St. Clair's evidence for this assertion is a watermark on the paper that he describes as "three hats, with an unidentified symbol between them, and a V G countermark." *Id.* St. Clair identifies the watermark as belonging to the papermaker Valentino Galvani. In the very same paragraph, he writes that Galvani "is known to have possessed paper mills in the Veneto and in northern Italy in the 1790s and to have exported to the Levant." *Id.* St. Clair supports his assertion with a reference to a book by Georg Einder. See GEORG EINDER, *THE ANCIENT PAPER-MILLS OF THE FORMER AUSTRO-HUNGARIAN EMPIRE AND THEIR WATERMARKS* (1960). Einder identifies a watermark that has a symbol that might be considered a "hat," as St. Clair does, and the letters "V G" as Valentino Galvani's watermark. Einder also supports the claim that Galvani had paper mills in northern Italy in the late eighteenth century and early nineteenth century. But whether Galvani exported paper to the Levant is another matter. Peculiarly, St. Clair does not actually state that Galvani exported paper to the Levant. Rather, he writes that Galvani is "known . . . to have exported to the Levant," suggesting that he, St. Clair, had evidence that Galvani had a reputation for exporting paper to the Levant, but that he, St. Clair, was not denying or verifying the reliability of Galvani's reputation. ST. CLAIR, *CONTROVERSIAL HISTORY*, *supra* note 3, at 337. Here, again, St. Clair cites Einder as his source. Einder, however, writes that although Galvani's "natural market was Venice, the sale of his paper to Trieste and to the north was also possible. Venice sold entire cargoes of paper to the Levant and other markets overseas." EINDER, *supra*, at 168. Einder makes no claim about Galvani's reputation, and he does not state that Galvani exported paper to the Levant. What he asserts is that Galvani sold paper to markets in Venice, which in turn shipped paper to various markets including those in the Levant. Thus, if one connects Einder's two quite separate and independent factual assertions—Galvani shipped paper to Venice and Venice shipped paper to the Levant—there is evidence to support the possibility that Galvani's paper might possibly have been exported to Constantinople in 1801. But Einder does not actually connect the assertions, presumably because he lacked the evidence to do so.

terms it a “file note”⁷⁷⁴—on the outside of the document is “in the hand of Philip Hunt.”⁷⁷⁵ Whether Hunt wrote the file note does not prove that the document was created in Constantinople in 1801. Hunt could have written the file note at any time in any place.

St. Clair also contends that the handwriting of the document “appears to be that of Pisani.”⁷⁷⁶ If the document is in his handwriting, that would establish at minimum that it was prepared in Constantinople since that is where Pisani worked. But St. Clair’s support for this claim is weak. Instead of having handwriting experts compare the Italian document he possesses with the documents written by Pisani, St. Clair seems to have made the critical judgments by himself.⁷⁷⁷ Perhaps St. Clair has had sufficient experience in comparing handwriting to forego the assistance of acknowledged authorities, but he makes no such representation. Moreover, although it is possible that St. Clair had access to many documents, he knew were in Pisani’s handwriting and which he used as a basis of comparison, St. Clair does not state that he did, and it is not self-evident.⁷⁷⁸

The issue of whether the Italian document in St. Clair’s possession was fraudulently created by Hunt in England in 1816 cannot be resolved without a more thorough evaluation by recognized authorities. But two factors not discussed by St. Clair make it unlikely that the Italian document was a fraud. If the document was created in England to reassure the Select Committee that Elgin did have some kind of written permission,

⁷⁴ ST. CLAIR, *CONTRVERSIAL HISTORY*, *supra* note 3, at 337.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See ST. CLAIR, *LORD ELGIN*, *supra* note 51, at 287 n.4.

⁷⁸ In addition, St. Clair expresses his point that the document is in Pisani’s handwriting in a highly qualified way. What he states is that the “handwriting *appears* to be that of Pisani.” *Id.* at 337 (emphasis added). The word “appears” is usually used when a person making a claim believes that an assertion is more likely true than not, while conceding that there is reasonable probability that the claim is untrue. Although the use of the word “appears” might have been unintentional on St. Clair’s part, that seems unlikely given that St. Clair’s understanding of the important difference between a qualified and an unqualified assertion is evidenced in the very same sentence when he asserts without reservation: “A file note on the outside of the document in the hand of Philip Hunt notes ‘Kaimacan Letter No.2. To the Governor of Athens.’” *Id.* Presumably, St. Clair, who possesses a body of documents in Hunt’s handwriting against which he could compare the handwriting of the file note, had far more confidence that the file note was written by Hunt than he did that the Italian document was written by Pisani. See *id.*

In addition to these shortcomings, there are gaps in St. Clair’s evidence. St. Clair presents no evidence as to whether the ink used to prepare the document was ink found in Constantinople. St. Clair fails to determine whether other documents prepared by Pisani on or about July 8, 1801, the date St. Clair claims the document was prepared, used paper with the same watermark and ink of the same chemical composition. If such evidence could be established, that would constitute more than convincing evidence in support of the claim that the Italian document was prepared by Pisani in Constantinople in July 1801.

there is no reason it would have been written in Italian. An English document would have been perfectly acceptable and unquestioned since it presumably was prepared for Elgin and Hunt. Thus, the mere fact that the document is in Italian undercuts the possibility that it was fraudulent.

In addition, and perhaps more importantly, if Hunt had conspired with Elgin to create a fraudulent document, they would have most likely created one that unequivocally authorized Elgin to do what he did—that is, to remove sculptures from the Parthenon walls. After all, Elgin claimed that he had permission to do this, and the Select Committee made it crystal clear to Elgin that it wished to see a writing that permitted this activity. If Elgin and Hunt were going to commit fraud, it would seem that they would have created a document that gave the committee what Elgin knew it wanted—a document that granted Elgin permission to denude the Parthenon. But the Italian document not only failed to authorize the removal of sculptures from the Parthenon walls, it stated that the work done by Elgin's artisans would not harm the sculptures.⁷⁹ Thus, it seems inconceivable that Elgin and Hunt would engage in fraudulent conduct that failed so dramatically to achieve the very purpose of the fraud. As a result, it is extremely likely that Hunt's Italian document was created in Constantinople in 1801.

But the reasons that support the conclusion that Hunt's Italian language document was created in Constantinople stop short of establishing any particular relationship between Hunt's Italian document and the missing July 1801 Ottoman document. We will eventually turn to that question—what was the relationship between the Ottoman and the Italian documents?—but only after other preliminary issues are canvassed.

II. TWO DISCREPANCIES BETWEEN HUNT'S ITALIAN DOCUMENT AND PARLIAMENT'S ENGLISH DOCUMENT

Hunt's Italian document is the critical link in the chronological, documentary chain giving legitimacy and authenticity to the Select Committee's English document. In 1998, when St. Clair made public that he had Hunt's missing Italian document and then included its text in his revised biography of Elgin, he became the leading contemporary champion of this orthodoxy. But the very resurfacing of the Italian document provides powerful evidence that unravels this orthodoxy and

⁷⁹ See REPORT OF MARCH 25, 1816, *supra* note 17, at 69 (“[P]articularly as there is no harm in the said figures and edifices being thus viewed, contemplated, and designed.”).

paints a vivid portrait of misrepresentation and deceit by the Select Committee, Elgin, and Hunt.

It is now apparent that there are two important discrepancies between Hunt's 1816 Italian language document and the Select Committee's 1816 English language document. The first sentence of the second paragraph of the text of the Select Committee's English language document begins with the following words: "We therefore have written this Letter to you, and expedited it by Mr. Philip Hunt, an English Gentleman, Secretary of the aforesaid Ambassador."⁸⁰ But, as St. Clair's biography of Elgin makes evident, Hunt's Italian language document states: "We therefore have written this letter to you and expedited it by N.N."⁸¹

St. Clair made this discrepancy public in the 1967 edition of his Elgin biography, although he stated at the time: "I do not know what N.N. can stand for."⁸² By the time St. Clair revised the biography in 1998, however, he believed he had solved the "N.N." riddle. He stated that "N.N." was a "conventional way of showing that the name of an individual is to be inserted later."⁸³ My own investigation led to a similar conclusion.⁸⁴

There was nothing accidental about this discrepancy. No one would mistakenly substitute "Mr. Philip Hunt, an English gentleman, Secretary of the aforesaid Ambassador," for the letters "N.N." By identifying Hunt as the courier, Parliament's English document offered an explanation in the text as to how Hunt came to possess a translation of the critical Ottoman document fifteen years after he surrendered it to officials in Athens. It also put Hunt in a position to vouch for the authenticity and the accuracy of the Italian translation, which, in turn, strengthened the legitimacy and the authenticity of the Select Committee's English document.

The second discrepancy is more startling. The Select Committee printed the English language document as if it were signed and had a signet attached. At the bottom of the document were the following words: "(Signed with a signet.) SEGED

⁸⁰ *Id.*

⁸¹ ST. CLAIR, LORD ELGIN, *supra* note 51, at 90. Also, in December 2000, St. Clair forwarded to me a photocopy of the Italian document, and it does use the abbreviation "N.N." and not Hunt's name.

⁸² *Id.* at 90 n.*.

⁸³ ST. CLAIR, CONTROVERSIAL HISTORY, *supra* note 3, at 340.

⁸⁴ The letters "N.N." are likely an abbreviation for the Latin *non nullus*, loosely translated to mean "someone." It was a conventional way of indicating in a draft document that the name of a specific person would be inserted at a later time when a final version of the document was rendered. E-mail from Len Newman (June 2, 2000, 14:13 EST) (on file with author).

ABDULLAH KAIMACAN.”⁸⁵ The suggestion is clear: The committee examined a document that had a signet and was signed by the Acting Grand Vizier. When St. Clair included the text of the Italian document in his 1998 biography, he placed the words “/Sotto¹¹⁰/Sejid Abdullah Kaimmecam” at the end of the text.⁸⁶ This also gave the impression that the Italian document was signed by Sejid Abdullah Kaimmecam.⁸⁷ Immediately following the Italian language text, St. Clair included an English language translation of the Italian document that ends with the following statement: “Signed [*in the translation given in the Select Committee’s report the phrase used is ‘signed with a signet’*] Seged Abdullah Kaymacam.”⁸⁸

As surprising as it may be—and some may even find it shocking—St. Clair’s Italian language document is not signed by Seged Abdullah Kaymacam, and it has no signet. The fact that the document is not signed and that it lacks a signet is certain. I first learned that the Italian document lacked a signature and a signet when St. Clair answered a direct question I asked him during a telephone conversation in the fall of 1997, about six months before the publication of the 1998 revised edition of his biography. St. Clair affirmed the fact that the Italian document lacked Seged Abdullah Kaymacam’s signature and a signet during a second telephone conversation in the spring of 1998. St. Clair was present at a conference in Athens in May 2000 when I stated that the Italian document was not signed by Seged Abdullah Kaymacam and lacked a signet, and although he commented on other points I made in my lecture, he did not contradict or contest my statement that the Italian language document was unsigned and lacked a signet. Finally, in December 2000, St. Clair forwarded me a photocopy of the Italian document. The photocopy affirms the facts that Seged Abdullah Kaymacam did not sign the Italian document and that the Italian document lacks a signet.⁸⁹ The presentation of the Italian document as if it were signed by the acting Grand Vizier, Seged Abdullah Kaymacam, and had a signet, insulated it from questions regarding its authenticity. But if the Italian language document is not signed, as it is not, and if it lacks a signet, as it does, then its relationship to the Ottoman language document is open to question and reconsideration.

⁸⁵ REPORT OF MARCH 25, 1816, *supra* note 17, at 69.

⁸⁶ ST. CLAIR, *CONTROVERSIAL HISTORY*, *supra* note 3, at 339.

⁸⁷ *See id.*

⁸⁸ *Id.* at 341.

⁸⁹ Although St. Clair has known for years that the Italian document (which has been in his possession since the 1960s) was unsigned and lacked a signet, he did not correct this misrepresentation in the third edition of his *Elgin* biography. *See generally id.*

III. THE SELECT COMMITTEE'S MISREPRESENTATIONS AND DECEIT

At the time of the Select Committee proceedings, who knew of the two discrepancies between the Italian and the English documents? How and why did it happen that the English document identified Hunt as the courier and was printed as if it were signed with a signet? The sparse surviving documents do not conclusively answer these questions, but a review of what is known strongly points toward several conclusions.

First, let us consider Hunt. Did Hunt knowingly participate in a process that resulted in the discrepancies between his Italian language document and the Select Committee's English language document? There was only one way that Hunt might have been uninformed of the discrepancies prior to the publication of the Select Committee's report. If Hunt had submitted the Italian translation to the committee, and if the committee did not discuss with Hunt the alterations prior to publication, then Hunt would not have known of the alterations in advance. But was that likely? Was that even conceivable? It is implausible that the committee would have replaced "N.N." with Hunt's name unless Hunt had provided the committee with that information. Given that the committee obtained the Italian document from Hunt, it likely asked Hunt whose name to put at the bottom of the document. Thus, it seems almost a certainty that Hunt was not only the source of the information that led to the alterations, but also knew of the alterations prior to publication.⁹⁰

⁹⁰ But if Hunt knowingly participated in the process that resulted in the discrepancies between the Italian and the English documents, does that mean that Hunt lied to the committee about the nature and the content of the Italian document? Surprisingly, this problem vanishes by carefully examining Hunt's words. Hunt testified:

[O]n my return therefore to Constantinople, in 1801, I advised Lord Elgin to apply to the Porte for a fermaun embracing the particular objects I pointed out to him; and as I had been before deceived with respect to the pretended contents of a fermaun, I begged that this might be accompanied by a literal translation; the fermaun 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 the Committee before I left Bedford.

REPORT OF MARCH 25, 1816, *supra* note 17, at 56. Although Hunt's syntax was sufficiently ambiguous to permit the unsuspecting to conclude that he had in fact secured a "literal translation," that is not what Hunt said he received. Hunt said he "begged" for a "literal translation." He did not say he received one. What he secured, he said, was "a translation." Hunt knew he did not possess a "literal translation" because his document was unsigned, undated, and contained the abbreviation "N.N." Moreover, Hunt said nothing that would put his testimony in conflict with the publication of an English document that substituted his name for the abbreviation "N.N." and imposed a signature and a signet where there was none.

Hunt's willingness to increase the chances that the Parliament would agree to purchase Elgin's collection so that the antiquities would remain in England was entirely in keeping with his brash and aggressive conduct in obtaining the marbles in 1801. Remember, it was Hunt who took the Ottoman document to Athens in 1801, and it was Hunt who, by all accounts, bullied, threatened, and bribed Ottoman officials in Athens to permit the removal of sculptures from the walls.⁹¹ It was Hunt who wrote Elgin at that time beseeching Elgin to send a "Man of War" to Athens so that the entire Erechtheum—which Hunt described in a letter to Elgin as "that beautiful little model of ancient art"—"might be transported wholly to England."⁹² Against this background, it is not difficult to accept that Hunt was willing, perhaps eager, to lend a hand in creating a misconception, if the misconception might strengthen Elgin's overall position and increase the chances that Parliament would purchase Elgin's collection and deposit it in the British Museum.

Second, was Elgin aware of the deception? Although there is no direct evidence that Elgin knew the committee's English document was not faithful to the Italian document, the circumstantial evidence suggests he did. Hunt was the committee's last witness, and as he explained to the committee, his appearance before the committee was a surprise to him: "[The Italian translation] 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."⁹³ So how did Hunt become a witness? Elgin must have facilitated it. Elgin was the party in interest. He knew that the committee was eager to examine a written permission, and the failure to produce such writing might undermine his efforts to sell his collection. Although no records exist that recount how Elgin knew Hunt was in London, and although no documents indicate how Elgin got Hunt before the committee, it is implausible to think that Elgin did not play a central role in bringing Hunt to the witness table. And if Elgin was critical to bringing Hunt before the committee, he must have known what Hunt would say. Otherwise, why would he extend himself to facilitate Hunt's testimony if there was a possibility that Hunt might make statements that were

⁹¹ Even St. Clair, who is sympathetic to Elgin and his enterprise, has written: "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." ST. CLAIR, *CONTROVERSIAL HISTORY*, *supra* note 3, at 337.

⁹² Hunt Letter, *supra* note 6, at 196.

⁹³ REPORT OF MARCH 25, 1816, *supra* note 17, at 56.

contrary to his interests? Thus, although no evidence directly establishes what Elgin knew about Hunt's document, it seems utterly naive not to assume that he was familiar with every significant detail of Hunt's testimony.

Third, was the Select Committee aware of the discrepancies? Or, put slightly differently, was the Select Committee an innocent victim of Elgin's and Hunt's deceit? The Select Committee would have been unaware of the discrepancies between the English document it published and the Italian document only if Hunt had submitted the altered English document to the committee, had not informed the committee of the alteration, and the committee did not insist on examining the Italian document. Then and only then would the committee not have known of the discrepancy. Although the possibility of these circumstances existing must be conceded, it seems highly implausible that they did. As already noted, it is conceivable that the committee accepted an English translation from Hunt without examining the Italian document. But even so, it is difficult to believe that Hunt would have failed to disclose the discrepancies, when he knew that his deception could have been uncovered if the committee insisted on examining the Italian document.

Furthermore, a review of the committee's examination of Hunt provides additional support for the claim that the Select Committee was aware when it questioned Hunt that the English document might differ from the Italian. The committee asked Hunt no questions about his "translation." This failure to seek any information about the Italian document appears irresponsible or incompetent, and neither characterization seems appropriate given the committee's overall proceedings. However, if one accepts that the committee deliberately refrained from asking Hunt questions about the Italian document—so that his ambiguous and incomplete statements would cover up the discrepancies between the Italian and the English documents—the otherwise seemingly incomprehensible incompetence of the committee becomes a shrewd stratagem to buttress Elgin's claim that he had obtained a written permission. It seems almost certain that the Select Committee knew at the time it prepared its report that the insertion of Hunt's name in the English document and the representation that the English document was signed with a signet created serious discrepancies between Hunt's Italian document and the English document.

To commit such deceit the Select Committee had to be highly motivated. And it was. Elgin's collection was incomparable.⁹⁴ If Parliament did not buy it, it was destined for the continent.⁹⁵ Many in England who prized the collection wanted it to remain in London, believing that it would immediately strengthen the British Museum as a center of international culture.⁹⁶ Furthermore, the committee knew that opposition to the purchase existed in the Parliament.⁹⁷ Thus, it is hardly far-fetched to imagine that the committee gauged that shoring up the legality of Elgin's claim would enhance the chances that Parliament would approve the purchase.

The immediate consequence of the Select Committee's hiding of facts that could be used to challenge the purchase was to mislead the Parliament to which it reported and to increase the likelihood that Elgin's collection would remain in England. The long-term consequence was the fabrication of a claim of legitimacy that powerfully affects contemporary events.

IV. A LETTER, NOT A FIRMAN

The Select Committee's report referred to the English document published in the appendix as a firman. The committee wrote: "Dr. Hunt, who accompanied Lord *Elgin* as chaplain to the embassy, has preserved, and has now in his possession, a translation of the second fermaun."⁹⁸ The opening words of the introduction the committee placed before presenting the text of its English document were: "Translation from the Italian of a *Fermaun*, or Official Letter from The Caimacan Pasha."⁹⁹ In this century, commentators of differing views have also referred to the Select Committee's English document as a firman. Thus, a century after the Select Committee's proceedings, A.H. Smith, a former Keeper of Greek and Roman Antiquities at the British Museum, wrote in his centennial article: "The terms of the new firman are published in the report of the Select Committee and elsewhere."¹⁰⁰ B.F. Cook, a former Keeper at the British Museum, referred to the 1801 document as a firman in his 1984 guide to Elgin's collection: "On 6 July Elgin received the desired firman."¹⁰¹ Christopher

⁹⁴ See *id.* at 6-7.

⁹⁵ See *id.* at 49.

⁹⁶ See *id.* at 15; 31 PARL. DEB., H.C. (1st Ser.) (1815) 828-30.

⁹⁷ See 31 PARL. DEB., H.C. (1st Ser.) (1815) 829-30; 32 PARL. DEB., H.C. (1st Ser.) (1815) 824-28.

⁹⁸ REPORT OF MARCH 25, 1816, *supra* note 17, at 4.

⁹⁹ *Id.* at 69.

¹⁰⁰ Hunt Letter, *supra* note 6, at 190.

¹⁰¹ COOK, *supra* note 7, at 71.

Hitchens, who favors the restitution of the collection to Greece, has written: "Elgin was able to obtain a *firman* from the Sultan's ministers."¹⁰² William St. Clair, repeatedly refers to the Select Committee's English document and the Italian document he possesses as a firman. In an identical vein, the American legal scholar, John Henry Merryman has written: "Elgin obtained from the Ottomans in Constantinople, where he was the British ambassador, a formal written instrument called a firman, addressed to the local authorities in Athens."¹⁰³

Although a chorus chants "firman," the Select Committee's English document is not a firman. The quintessential requirement of a firman was that the Sultan issued it personally. An authority as familiar and as accessible as the Oxford English Dictionary offers a concise definition: a firman was "[a]n edict or order issued by an Oriental sovereign, *esp.* the Sultan of Turkey; a grant, license, passport, permit."¹⁰⁴ The Sultan did not issue the English document published in the Select Committee's report. Instead, it was signed by Seged Abdulah Caimacan, who filled the office of the Grand Vizier while the Grand Vizier was in Egypt trying to reestablish Ottoman control. As powerful a figure as the Grand Vizier was in the Ottoman government, an unbridgeable gulf separated the Grand Vizier, an appointed official, and the Sultan, the sovereign.¹⁰⁵

¹⁰² Robert Browning, *The Parthenon History*, in CHRISTOPHER HITCHENS, *THE ELGIN MARBLES: SHOULD THEY BE RETURNED TO GREECE?* 10 (1998).

¹⁰³ Merryman, *supra* note 14, at 1897-98.

¹⁰⁴ 4 THE OXFORD ENGLISH DICTIONARY 249 (1978).

¹⁰⁵ The question of whether the 1801 document was a firman has not been considered carefully by those who sympathize with Elgin's initial taking or the retention by the British Museum. Consider two examples. St. Clair, Elgin's biographer, who went to some lengths to offer support for his claim that the Italian document he possesses was created in Constantinople in 1801, uses the word "firman" without explanation. In contrast, John Henry Merryman at least raises the question of what a "firman" is in an explanatory footnote. Merryman writes: "A firman (firmaun, fermaun) was an edict/order/decree/permit/letter from the Ottoman Government addressed to one of its officials ordering/suggesting/requesting that a favor be conferred on a person. See 4 Oxford English Dictionary 249 (1961)." Merryman, *supra* note 14, at 1898. What is surprising about Merryman's reference is that his definition of a firman is at odds with the definition contained in his reference, the edition of the OED quoted above. As noted, the OED defines the word "firman" to be an edict or order issued by the Sultan. In contrast, Merryman states that a firman was issued by "the Ottoman government," a phrase broad enough to include the Grand Vizier or his designate. There is no apparent reason—and Merryman offers none—for Merryman to assume that the OED's statement that firmans were issued by the Sultan was intended to include the Grand Vizier. Moreover, whereas the OED limits a firman to an "edict or order," Merryman expands the definition to include a "decree/permit/letter." Although one might well think there was little difference between an "edict or order," on the one hand, and a decree or permit, on the other—they all seem like formal, legal documents—that is not true for a "letter," which can include a communication that is much less formal, and certainly less legal, in character.

The fact that the document sent to the Ottoman officials in Athens was a letter signed by the acting Grand Vizier as opposed to a firman may well be of great significance. There is evidence that the Grand Vizier—or acting Grand Vizier—lacked the authority to permit the dismantling of the Parthenon. Rather, it seems that control over classical antiquities rested with the Sultan.¹⁰⁶ Accordingly, the fact that the acting Grand Vizier sent a letter to the Ottoman officials in Athens, as opposed to the Sultan sending a firman, was a potentially significant matter affecting the ultimate relevance of the 1801 letter to the question of whether the Ottomans gave Elgin prior permission to remove sculptures from the Parthenon's edifice. If the Sultan controlled classical antiquities, the acting Grand Vizier would not have intended his letter to authorize the removal of the Parthenon sculptures, which only the Sultan controlled.

V. HUNT'S ITALIAN LANGUAGE DOCUMENT RECONSIDERED

The Select Committee's English document is definitely a translation of Hunt's Italian document. But is the uniformly accepted assumption that the Italian document is a translation of the original Ottoman document correct? Until now, that question seemed off limits. The representation that the Italian document was signed by Seged Abdullah Kaimacan and had a signet appeared to be irrefutable evidence establishing the document's authenticity and reliability. Regardless of how many other questions one might have challenging the Italian document, the very idea that the Italian document was signed with a signet insulated the document's authenticity from challenge. Now that it is absolutely certain, however, that the Italian document is not signed and that it lacks a signet, we are in a position for the first time to reconsider, in light of all the available evidence, the bedrock assumption that the English document published in the Select Committee's report is, by its assumed linkage to the Ottoman document through the Italian document, a trustworthy and accurate translation of the July 1801 Ottoman document.

Three factors must be assessed. First, there is the use of the "N.N." in the text of the Italian document. As already noted, "N.N." was used in draft documents to indicate that the name of an individual was to be inserted in a final version of the document. The abbreviation "N.N." would not have been used in the final version of a document; rather, it would have contained the name

¹⁰⁶ See MOLLY MCKENZIE, *TURKISH ATHENS: THE FORGOTTEN CENTURIES 1456-1832*, at 28 (1992).

of the courier. If the Italian document was meant to be a literal translation of the Ottoman document, and if the Ottoman document had Hunt's name in it, as Hunt claimed it did, there would be no reason whatsoever for Pisani—presumably the translator—to substitute “N.N.” for Hunt's name.¹⁰⁷

Second, if the Italian document was a translation of the Ottoman document intended to insure that Ottoman officials in Athens honored the terms of the Ottoman document, why was it in Italian? Neither Elgin nor Hunt read Italian. Even assuming Pisani was far more comfortable translating Ottoman into Italian than into English, nothing prevented Hunt or others from sitting down with Pisani in Constantinople and translating the Italian document into English before Hunt departed for Athens. That would have made the translation Hunt took useful. By contrast, leaving the Italian document untranslated failed to fulfill the very purpose Hunt later claimed prompted him to have a translation done in the first place. Of course, an Italian document might have helped Lusieri, Elgin's overseer in Athens, but Hunt kept the Italian document.¹⁰⁸

Third, the Italian document lacked a date. It is inconceivable that the original Ottoman document lacked a date. Orders from the Porte were dated. Thus, if the Ottoman document was dated when Pisani supposedly translated it into Italian, it is likely that he would have noted the date on the Italian translation.

These three considerations—the use of “N.N.,” the translation done in Italian, and the document being undated—upend the claim that the Italian document was a literal translation of the Ottoman. But if the Italian document is not a literal translation of the Ottoman document, what is it? To solve the puzzle presented, we must be willing to unleash ourselves from the orthodoxy of the past and consider two alternatives.

¹⁰⁷ Even if Pisani was intent on translating only the critical aspects of the Ottoman document, only the terms of the order that defined the activities that Elgin's artisans could conduct, that approach cannot explain the use of “N.N.” given the entire first paragraph of the English document, which describes the activities Elgin wished his artisans to be able to conduct, not the activities for which permission was granted. Those activities are defined in the second paragraph of the document. Thus, if Pisani's approach was to translate only the critical terms of the document that defined the permitted activities, he would not have translated the entire first paragraph, which constituted about one half of the entire document.

¹⁰⁸ St. Clair seeks to explain the use of Italian on the ground that it was the “lingua franca of the eastern Mediterranean” at the time. ST. CLAIR, *CONTROVERSIAL HISTORY*, *supra* note 3, at 88. Assuming that Italian was the lingua franca of the eastern Mediterranean, that fact fails to explain why this document was in Italian. How could a document in Italian help Hunt determine whether Ottoman officials in Athens complied with its terms if he did not read Italian? St. Clair's explanation is unpersuasive when weighed against the avowed purpose of the translation.

First, there is the possibility that the Italian document is a translation of a draft Ottoman document the Porte made available to Elgin to insure that the activities the Porte was prepared to permit were acceptable to the British ambassador. If this were the case, it would explain why the Italian document used the letters "N.N.," and why it lacked a date. But it leaves unexplained why the document was in Italian. Although Pisani most likely would have translated the Ottoman document initially into Italian, it is doubtful that matters would have been left in that state since Pisani would likely have gone over the document with Hunt, if not Elgin. It would seem likely that Pisani would have worked with a member of Elgin's embassy staff to prepare an English translation so that Elgin could read it at his convenience. The possibility that the Italian document is a translation of a draft Ottoman document cannot be ruled out, but that explanation leaves unanswered why Hunt had an Italian rather than an English translation.

There is a second explanation. If the Italian document is considered a document prepared by Pisani, embodying Elgin's wishes and presented to the Porte for consideration, the puzzle created by the use of "N.N.," the absence of a date on the document, and the fact that the document is in Italian vanishes. The use of the Latin abbreviation "N.N." makes sense since Pisani would not presume to know whom the Porte would select as a courier. The lack of a date makes sense if the document was a draft submitted to the Porte for consideration. The fact that the document is in Italian is also explained if Pisani prepared the document to present to the Ottomans. As a dragoman, Pisani was routinely a negotiator with the Porte. In this capacity he must have been fully informed by Hunt, who had just arrived from Athens, and possibly Elgin, as to the problems the artisans were encountering on the Acropolis and what Elgin hoped to accomplish. It is quite plausible that the Porte, wanting to please Elgin in the hope of regaining control over Egypt in the wake of the British defeat of Napoleon's forces in Egypt, asked Pisani to draft a document that defined the conduct Elgin wanted his artisans to conduct. If Pisani had been so asked, he would likely have prepared the requested document in Italian, his native language.

In sum, Hunt's Italian document was likely prepared in Constantinople in 1801. But it was not a literal translation of the Ottoman document. Rather, it was a document, probably prepared by Pisani, that defined the activities Elgin wanted his workers on the Acropolis to conduct and that Pisani presented to the Porte for consideration. It is improbable that evidence will

ever come to light that will allow us to know for certain exactly what Hunt's Italian document is, and, in the absence of such conclusive evidence, this conclusion is the one best supported by the evidence now available.

CONCLUSION

Accepting, as we must, that the Italian document is not a translation of the 1801 Ottoman document breaks the documentary chain the Select Committee knowingly misrepresented when it presented its English document as a legitimate and accurate translation of the 1801 Ottoman document. This means that although the English document is an accurate translation of the Italian document, we do not know how the substance of either document compared to the substance of the Ottoman document Elgin obtained in 1801. Such a realization destroys the settled view that the Select Committee's English document reliably and accurately defined the activities that Elgin's artisans were permitted to conduct.

Nonetheless, two points can be made with some confidence about the scope of activities permitted by the 1801 Ottoman document. First, as Elgin wrote to Lusieri in July 1801, the Ottoman document permitted Lusieri to "dig."¹⁰⁹ Digging had not previously been permitted, and Elgin emphasized this new dimension to Lusieri. Second, whatever the scope of activities permitted by the 1801 Ottoman document, there is no reason to assume that they were more extensive than those Elgin requested and that are defined in Hunt's Italian document. Thus, while the Ottoman document might have imposed more severe limitations on Elgin's artisans than those defined in the Italian document, there is no reason to believe that it granted greater powers.

¹⁰⁹ Hunt Letter, *supra* note 6, at 192.