

## WAS THE REMOVAL OF THE MARBLES ILLEGAL?

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One of the most debated issues regarding the removal of the Acropolis sculptures by Lord Elgin and their transfer to England in 1800-01 is the legality of that act. In the present essay we will confine ourselves to the written evidence invoked to support the legality of the marbles' removal. This evidence is an English translation of an Italian translation of a Turkish document. It was presented by Dr Hunt, chaplain to Elgin, to the British Parliamentary Committee formed in 1816 to examine the issue of the marbles' acquisition by Elgin. The Turkish document itself, together with any other written testimony which could confirm that Elgin acted on the legitimate approval of the Ottoman authorities, has been lost.

According to Dr Greenfield, who has recently dealt with the issue of the restitution of objects of cultural significance to their countries of origin, 'it is often presupposed that the legal position regarding the marbles is beyond serious dispute. This point of view has never been closely examined and demands serious scrutiny. . . The view of the British Government has also always been expressed in terms of the legality of the acquisition of the marbles. The Trustees and officials of the British Museum have often gone on record as saying that the marbles were legally purchased... In the House of Lords debate of the proposed amendment in 1983 to the British Museum Act, Lord Nugent declared that the 'question of legal ownership is beyond all doubt'. (1) The legality of this act, therefore, is taken for granted by the British Government and the Trustees of British Museum and is not debated.

Professor Merryman of Stanford University is of the same opinion, which he supports, relying 'upon the subsequent acts of ratification by the Turkish authorities to overcome any arguments about those actions taken in excess of the original terms of the firman. In particular there were said to be two such instances of acquiescence, namely the issue by the sultan of additional firmans addressed to the voivode and disdar of Athens, in which he generally sanctioned what those local officials had done for Elgin and his party, and written orders by the Ottoman government to the Athenian government releasing a shipment of marbles to England when they were held up in Piraeus, the port of Athens. Again, whilst these events are referred to in correspondence, there are no authentic original documents in existence'. (2)

It is expedient, first of all, to go through the events that led to the issue of this single document. Lord Elgin was appointed ambassador of Great Britain to Constantinople in 1799. Even before setting out for his new post, he had planned to employ painters and designers to make replicas of Greek antiquities, following the cultural trends of his time (3). Passing through Sicily, he met painter and designer, Giovanni Batista Lusieri, who convinced Elgin to turn his interest to Athens (4). While in Italy, Elgin and his personal

secretary, W. R. Hamilton, hired some painters and architects who, after going to Constantinople, arrived in Athens at the end of July 1800 (5). There they met Spiridon Logothetis, the British Consul, who helped them to settle and start their work (6).

Elgin's men had from the beginning difficulties in getting access to the Acropolis to draw sketches and pictures of the monuments. They, like other travellers before them, had to bribe the Turkish dizdar into allowing them entry. It was later stated that the amount of money they gave to the dizdar was 5 guineas a day (7). If that was true, the total amount would have been incredibly high, especially since Lusieri's salary was 200 English pounds a year.

The sum of 5 guineas a day was even characterized as 'monstrous' by Smith. Many years later in Egypt an English pound was equivalent to 72 piastres (gurus) (8). A payment of 5 guineas would suggest that they were paying at least 400 piastres a day to enter the Acropolis when Logothetis wrote to Elgin during the same period (September 1800) that 100 piastres was enough for the dizdar and another 100 for the Turks living around the Parthenon, a mosque at the time. Logothetis also asked for a letter recommending the artists and himself to the voivode,(9) the representative of Kizlar Agasi, the Archieunuch of the Sultan's Harem, under whose authority Athens was a 'vakouf' of the Sultan's mother (Valide Sultan). According to Elgin's statement to the Parliamentary Committee which examined the marbles' acquisition, payment of the 5 guineas a day went on from August 1800 to April 1801 (10).



In February 1801 Logothetis asked in another letter for a firman that would allow Elgin's artists free access to the Acropolis. In March, the document they were expecting did not arrive.

In the spring of 1801 Lusieri went to Constantinople, obviously to brief Elgin on the progress of their work. At the beginning of March, Lusieri left for Athens where he arrived on 15 April. According to Smith, 'a firman of some sort seems to have been obtained and forwarded to Logotheti, but it failed to reach him for a long time, and turned out to be an illusory document' (11). In other words, it has never existed.

Lusieri wrote to Elgin that his men were facing difficulties in carrying out their duties because they did not have the necessary firman, supposedly sent by Elgin to Logothetis before his departure from Constantinople; it follows, that he did not have any document on his arrival in Athens. According to Lusieri,(12) Logothetis had never received the document. The dizdar declared that he could no longer allow Elgin's men to enter the Acropolis without a firman, because the kadas and the voivode threatened him, and so Lusieri begged Elgin to have one sent as soon as possible, with a content that would prevent the occurrence of new obstacles (13). By the time Hunt arrived in Athens on 16 May, no document had been received. He himself then wrote to Elgin asking for the firman, otherwise it would be impossible to carry out any work of copying and drawing of the monuments (14).

The document, so much desired by Elgin and his men, and used to justify the removal of the Parthenon metopes, the Caryatid, and other antiquities from the Acropolis, was at last issued on 1 July 1801. A few days earlier, the French army in Egypt surrendered to the British army. It seems that Elgin took advantage of the situation and was granted by

the Turks, as a gesture of gratitude, what he had been requesting, to no avail, for a long time. Elgin received it on 6 July and, two days later, Hunt, who was in Constantinople again, left for Athens, arriving on the twenty-second of the same month. He presented it to the Turkish authorities the next day; Elgin's workmen were now free to begin their task (15).

The English translation of this document, the only one to survive, is as follows:

'Translation from the Italian of a Fermaun, or Official Letter from the Caimakan Pasha, (who filled the office of Grand Vizier at the Porte, during that minister's absence in Egypt) addressed to the Cadi or Chief Judge, and to the Faivode or Governor of Athens, in 1801.'



After the usual introductory compliments, and the salutation of Peace, it is hereby signified to you, that our sincere Friend his Excellency Lord Elgin, Ambassador Extraordinary from the Court of England to the Porte of Happiness, hath represented to us, that it is well known that the greater part of the Frank (i.e. Christian) Courts are anxious to read and investigate the books, pictures or figures, and other works of science of the ancient Greek philosophers: and that in particular, the ministers or officers of state, philosophers, primates and other individuals of England, have a remarkable taste for the drawings, or figures or sculptures, remaining ever since the time of the said Greeks, and which are to be seen on the shores of the Archipelago and other parts; and have in consequence from time to time sent men to explore and examine the ancient edifices, and drawings or figures. And that some accomplished, *Dilletanti*, of the Court of England, being desirous to see the ancient

buildings and the curious figures in the City of Athens, and the old walls remaining since the time of the Grecians, which now subsist in the interior part of the said place; his Excellency the said Ambassador hath therefore engaged five English painters, now dwelling at Athens, to examine and view, and also to copy the figures remaining there, *ab antiquo*: And he hath also at this time expressly besought us that an Official Letter may be written from hence, ordering that as long as the said painters shall be employed in going in and out of the said citadel of Athens, which is the place of their occupations; and in fixing scaffolding round the ancient Temple of the Idols there; and moulding the ornamental sculpture and visible figures thereon, in plaster or gypsum; and in measuring the remains of other old ruined buildings there; and in excavating when they find it necessary the foundations, in order to discover inscriptions which may have been covered in the rubbish; that no interruption may be given them, nor any obstacle thrown in their way by the Disdar (or commandant of the citadel) or any other person; that no one may meddle with the scaffolding or implements they may require in their works; and that when they wish to take away any pieces of stone with old inscriptions or figures thereon, that no opposition be made thereto.

We therefore have written this Letter to you, and expedited it by Mr. Philip Hunt, an English gentleman, Secretary of the aforesaid Ambassador, in order that as soon as you shall have understood its meaning, namely, that it is the explicit desire and engagement of this Sublime Court endowed with all eminent qualities, to favour such requests as the above-mentioned, in conformity with what is due to the friendship, sincerity, alliance and good will subsisting *ab antiquo* between the Sublime and ever durable Ottoman Court and that of England, and which is on the side of both those Courts manifestly increasing;

particularly as there is no harm in the said figures and edifices being thus viewed, contemplated and designed. Therefore, after having fulfilled the duties of hospitality, and given a proper reception to the aforesaid Artists, in compliance with the urgent request of the said ambassador to that effect, and because it is incumbent on us to provide that they meet no opposition in walking, viewing, or contemplating the figures and edifices they may wish to design or copy; or in any of their works of fixing scaffolding, or using their various implements; it is our desire that on the arrival of this Letter you use your diligence to act conformably to the instances of the said Ambassador, as long as the said five Artists dwelling at Athens shall be employed in going in and out of the said citadel of Athens, which is the place of their occupations; or in fixing scaffolding around the ancient Temple of the Idols, or in modeling with chalk or gypsum the said ornaments and visible figures thereon; or in measuring the fragments and vestiges of other ruined edifices; or in excavating, when they find it necessary, the foundations, in search of inscriptions among the rubbish; that they be not molested by the said Disdar (or commandant of the citadel) not by any other persons, not even by you (to whom this letter is addressed); and that no one meddle with their scaffolding or implements, nor hinder them from taking away any pieces of stone with inscriptions or figures. In the above-mentioned manner, see that ye demean and compound yourselves.

(signed with a signet) SEGED ABDULLAH KAIMACAN.

N.B. The words in Italian rendered in two places 'any pieces of stone', are 'qualche pezzi di pietra' (16).

We are not going to examine whether this document gave permission to Elgin to remove the sculptures from the Acropolis and transfer them to England. It is obvious that there is no such allusion in its content. Besides, it was only during the course of the works that Hunt asked and, after some hesitation, received authorization to remove one metope from the Parthenon. From then on, the removal of more was easy. Hunt himself admitted in 1816 to the House of Commons Committee constituted to consider the purchase of the monuments, that 'the voivode had been induced "to extend rather than contract the precise permission of the firman" ' (17). It seems that the voivode was in some way persuaded to allow much more than was stated in the document.

It becomes evident from the above that the legality of the marbles' removal, even taking into account the extension of the initial order, is based upon this single document, everywhere referred to as a 'firman'.

To understand the legal importance of this unique document upon which the legality of Elgin's enterprise is based, one has to consider the diplomatic language of the Ottoman documents, as well as the whole organization and operation of the Ottoman administration during the beginning of the nineteenth century. In the Ottoman empire during that period, there was no legislative body to debate and enact the state's legislation. Being a theocratic and authoritarian state, what was only acceptable was the 'holy law of Islam' (shari'a) as the basis of the state and the sultan's right to amend the provisions of the holy law, where that was inadequate, with decrees not contradictory to it (orf). This right was expressed in firmans. Any act, therefore, that followed the issue of a relevant firman was legal, as it had the approval of the legislator, the sultan. In this case, we could accept that Elgin acted on



the lawful permission of the Ottoman authorities, despite extending his right to copy the antiquities to the point of removing them. Is the document presented as such a firman, however?

Any expert in Ottoman diplomatic language can easily ascertain that the original of the document which has survived was not a firman. 'Ferman, in Turkish, denotes any order or edict of the Ottoman sultan. In a more limited sense it means a decree of the sultan headed by his cypher (tughra) and composed in a certain form' (18).

A firman has some common features that distinguish it from documents of other types. First, the tougras, the emblem of the sultan. A firman's compilation is always the same. The document begins with the 'invocatio', invocation to God (da' vet tahmid). After a long gap, a sign of respect to God, there follows the sultan's 'monogram' with his name, his father's name and the wish 'for ever victorious' in Arabic. The text begins by mentioning the official or officials to whom it is addressed ('inscriptio'). Before each name, a series of complementing phrases is written in Arabic, pertinent to the position and rank of the person (elkab), followed by a wish, in Arabic as well (du'a). The text includes characteristic phrases typical only to a firman. The presentation of the case ('narratio') always begins with the clause 'Upon arrival of the great imperial document, let it be known that:' (Tevki-i ref' i-i humayun vasil olicak ma'lum ola ki). The order ('dispositio') begins with phrases such as 'if it is thus' 'now (it is necessary)', 'upon the arrival of my high command', etc. (oyle olsa, imdi gerekdir ki, hukm-i sherifim vusul buldukta) or in other instances with the words 'I have ordered so that' (buyurdum ki). The ratification of the command ('corroboratio') is expressed with the words: 'So you should know and obey to my great emblem (the tougra)'. (Soyle bilersiz; alamet-i sherifim itimad kilasiz). All these features are absent from the text of the document referred to as a firman.

Furthermore, a firman always ends with the date of issue in Arabic and in full, followed by the place of issue written separately on the left corner. These features are also absent from the document. Finally, a firman never mentions the name of the editor, for it is issued in the name of the sultan, and it certainly does not bear his seal. These are features of a common letter or document of the official issuing it. Consequently, the document whose translation we have is not a firman.

The document is not even a 'buyuruldu', (19) a formal order of a vezir, a rank held by the 'kaimakamis', and he could issue it. A document of this kind bears on the top right end the emblem (pence) with the name of the editor. During the time of issue of the document we examine here, it also bears his seal and always ends with the word buyuruldu (it has been ordered), hence its name, written in the form of a discontinuous line. It is nearly always dated.

Such an order, though, would bring the kaimakami into disrepute, since it would not be based on a sultan's command as it should. This document is nothing more than a 'letter' (mektub), as named in its text. In this type of document, the name of the sender is indicated at the end of the text, in the left corner, where is also fixed the personal seal on the ring of the editor, different from the big seal used in a buyurdi. These letters are not dated in most cases. The document is an Official Letter, as referred to in its text, and not an order. It starts by mentioning the officials of the Ottoman administration to whom it is addressed, with the usual compliments that accompany an address in similar documents and the 'salutation of peace', a wish for the addressee. The document was sent to the Cadi, or Chief Judge of the city who had the duty of entering the text of the document in the register of the court (sicil) and of overseeing its application, and to the voivode of the city, the highest-ranking administrative and judicial representatives of the state.

The document consists of two parts. The first defines the reasons for which it was issued. It is clear that it repeats, as was customary, almost word for word the content of Elgin's document with which he asked for a firman, but received this 'official letter' instead. The reference to the 'Dilletanti', the number of the five 'English painters' working in Athens, and the detailed description of their work there, must derive from Elgin's document.

The second part of the document, which reiterates the first in many points, states what the recipients should do. Nowhere, however, does it have the meaning of an order. The expressions used are typical: 'it is the explicit desire and engagement of this Sublime Court', i.e. the official sending the document; 'It is our desire that..'. Therefore, it is a wish and not an order or enforcement of a law or a sultan's command.

The editor of the document was Kaimmakam Seyid (descendant of Prophet Mohammed), Abdullah Pasha. He was born in 1762-63. His father, Antali Omer Pasha, went to Constantinople where he became a civil servant. He had had several posts before becoming cavush-bashi (in command of the body of the Cavushes) (20) from 1794 to 1796.

On 1 December 1799, having the rank of vezir and the title of Vali of Anadolu, he was appointed Kaimmakam (deputy) of the Grand Vezir Kor Yusuf Ziyaaddin Pasha (21) who was in Egypt in charge of the war against the French army. According to Sureyya, biographer of personalities from the Ottoman state, Abdullah Pasha died on 10 February 1801 (2 Seval 1215) (22). This date cannot be correct, because it would exclude him from issuing the document of 1 July 1801. According to the historian of the Ottoman Empire, Cevded, Abdullah Pasha died from cardiac arrest on 5 February 1802 (2 Seval 1216) (23). He was replaced by cavus-bashi Mustafa Bey who was promoted to the rank of vezir (24).

Cevded gives a fairly detailed account of Abdullah Pasha's death, making him a more informed and credible source than Sureyya. The latter mentions only the date of Abdullah Pasha's death, probably based on Cevded but copying erroneously the year of his death.

Abdullah Pasha issued the letter that survived in translation, as a gesture of gratitude to the British ambassador who was at that time at the peak of his influence at the Porte because of the successful outcome of the war in Egypt. But Abdullah Pasha would not dare to issue a firman to the same effect because he would need the approval of the sultan himself, who would probably reject Elgin's request. Consequently, the document upon which the 'legality' of the removal of the Acropolis monuments is based had neither the strength of a law nor even that of a legal order of the sultan's government, as it would have if it was a firman, but it is simply a 'reference letter' supplied to the British ambassador by the deputy of the Grand Vezir, succumbing to his persistent demands and his powerful influence at the time. The fact that such a document of inferior authority was enough for the authorities in Athens to allow the ravage of the Acropolis should not surprise us. Elgin himself later said that: 'in point of fact, all permissions issuing from the Porte to any distant provinces, are little better than authorities to make the best bargain that can be made with the local magistracies' (25).

The alleged existence of another earlier 'firman', the one which was lost in a mysterious way and never reached Athens, is contradicted by the surviving document. An earlier order, especially one by the sultan, should have been referred to in the document we have. This is the bureaucratic Ottoman custom evident in countless Ottoman documents. If there was such a firman, the editor of the document concerned would be quick to mention it in order to validate his own order. But there is no reference to any earlier document, for the simple reason that there was not one.

Also doubtful is the existence of the documents which, according to Cook, Elgin acquired from the Turkish government when he returned from his visit to Greece in the Summer of 1802, and which approved of all that the voivode and the dizdar did in Athens to help Lusieri, working on behalf of Elgin. It is very strange and unusual for the 'Turkish government' (there was not a government in the modern sense of the word, i.e. with a prime minister and ministers with responsibilities, at the time of the Ottoman Empire) to ratify years later acts of previous officials -- Seyid Abdullah Pasha had already died -- that were not legally sanctioned and their legality outside the Ottoman Empire could in future be disputed.

Cook adds that these documents were handed to these two officers by Lusieri and even copies of them did not survive. The truth is that documents issued by any Turkish authority were always held by the persons concerned and not by the authorities addressed to and only one copy of them was recorded in the register of every kadas. It is thus curious, to say the least, that none of the Turkish documents alleged to have been issued for the removal of the Acropolis marbles has survived.

## NOTES

1. JEANETTE GREENFIELD, *The Return of Cultural Treasures*, 2nd ed., Cambridge University Press, 1996, pp. 76-7.
2. JOHN MERRYMAN, 'Thinking about the Elgin Marbles', *Michigan Law Review*, vol. 83, no. 8, August 1985, p.1899, 1985. GREENFIELD, *op. cit.*, p. 80.
3. A. H. SMITH, 'Lord Elgin and his Collection', *Journal of Hellenic Studies*, 1916, pp. 165-66.
4. SMITH, *op. cit.*, p. 169
5. SMITH, *op. cit.*, pp. 172--73.
6. SMITH, *op. cit.*, p.179.
7. SMITH, *op. cit. i.*, p.180.
8. EDUARDS LANE, *The Manners and Customs of the Modern Egyptians*, Everyman's Library (1st ed. 1860). London 1963, p. 579.
9. 'It became common for pashas to appoint agents for the administration of. . . districts, under the name *mutesellim* for *sancaks* and *voyvoda* for *kadas*, and to share with them the revenues derivable from the tax-farms which the pashas now frequently held themselves, on a life tenure. The sole interest of these agents was to make as much money as they could while the opportunity was still theirs.' (H. A. R. GIBB-HAROLD BOWEN, *Islamic Society and the West*, vol. 1, *Islamic Society in the Eighteenth Century*. Part 1, Oxford University Press, London, New York, Toronto 1963, p. 198.
10. SMITH, *op. cit.*, p. 181.
11. 'A firman of some sort seems to have been obtained and forwarded to Logotheti, but it failed to reach him for a long time, and turned out to be an illusory document.' SMITH, *op. cit.*, p. 183.
12. SMITH *op. cit.*, p. 185.
13. 'I therefore beg your Excellency to have one sent to us as soon as possible, drawn up in such terms as to prevent us meeting with new difficulties in resuming and peaceably continuing our work.', SMITH, *op. cit.*, p. 186.
14. 'Positive Firmans must, however, be obtained from the Porte, to enable the Architects and Modelers to proceed in their most interesting labours. . . . Till those firmans are obtained, the bas-reliefs on the frieze, and the Groupes on the Metopes can neither be modeled nor drawn.' (SMITH, *op. cit.*, p. 88).
15. For these dates see B. F. COOK, *The Elgin Marbles*, British Museum Publications, p. 55
16. SMITH, *op. cit.*, p. 69.
17. 'The Voivode had been induced "to extend rather than contract the precise permission of the firman" (COOK, *op. cit.* p. 58).
18. U. HEYD, *Ferman*, *Encyclopedia of Islam*.

19. Buyuruldu: order of an Ottoman grand vizier, vizier, beglerbegi, defterdar, or other high official to a subordinate (U. HEYD, Buyuruldu, Encyclopedia of Islam).
20. The position of cavush-bashi was very important in the central administration during the eighteenth and beginning of the nineteenth centuries. His duties were numerous and varied. 'Owing to the assumption of the Sultan's judicial functions by the Grand Vezir, the Cavush-Bashi, whose primary duty it was to conduct proceedings at the sitting of the court in which these functions were performed, came to attend more generally on the minister rather than on the monarch and so to be regarded as yet another of his lieutenants: it is for this reason that the Cavush-Bashi appears not only as an officer of the Household but as a functionary of the administration . . . In later times the Cavush-Bashi performed a variety of duties. They all had their origin, however, in his command of the Cavushes.. . The Cavush-Bashi, gave them the necessary orders and also played an important part in the proceedings of the court. By the eighteenth century he had come indeed to be regarded as its vice-president.. . It was the duty of the Cavushes under him to marshal petitioners, litigants, and accused persons in the Grand Vezir's court, to carry messages and to execute certain sentences. (GIBB-BOWEN, op. cit., pp. 117-19).
21. 'Vezirs appointed to replace the Grand Vezir when he was commanding in the field were called Ka'im-makam, It was generally the Second Vezir that was given this duty. He enjoyed for the time being almost all the authority of a Grand Vezir except in the area where the army was operating, though less than his pomp. For since most of the principal officers and officials of the administration would accompany the Grand Vezir on campaign, the Ka'im-makam had, to support him at home, only the officers and officials that were appointed to replace them. This curious system dated from the days when the Sultans led their armies to war in person. Their chief ministers followed them, leaving substitutes at the capital. And in later times it was continued even when the sultans remained at home and the Grand Vezirs commanded.' (GIBB-BOWEN, op. cit., p. 114).
22. MEHMED SUREYYA, Sicil-i Osmani veyahud Tezkere-i Meshahir-i Osmaniyye (Ottoman Code or Biographies of Renowned Ottomans), Istanbul 1311, (1895), vol. 3, p. 391.
23. AHMED CEVDED, Tarih (History), Istanbul 1301-07 (1885-91), vol. 7, pp. 143-44.
24. CEVDED, op. cit., p. 145.
25. GREENFIELD op. cit., p. 78.
26. COOK, op. cit., p. 59.