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On legal proceedings under the idios logos : ?ατηγοροι and συ?οφανται

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ON LEGAL PROCEEDINGS UNDER THE IDIOS LOGOS: ΚΑΤΗΓΟΡΟΙ AND ΣΥΚΟΦΑΝΤΑΙ

The most recent generally available treatment of the Edict of Tiberius Julius Alexander is that of Wilhelm Schubart in *Archiv für Papyrusforschung* XIV (1941) 36—43. A Tübingen dissertation by L. Laepple, which Schubart there announced as forthcoming, is presumably a casualty of the war. The 1951 Leipzig dissertation (in typescript) of W. Müller, *Das Edikt des Tiberius Julius Alexander*, is known to me at this writing only from its listing in *L'année philologique* (1951) 348. For the scholarly world as a whole, certainly, Schubart's opening words are still true: „Diese Urkunde, eine der wichtigsten aus der römischen Zeit Ägyptens, ist zwar vielfach benutzt worden, hat aber als Ganzes noch nicht die Behandlung erfahren die sie verdient."

In his article Schubart proposed a number of emendations to the unsatisfactory text of OGIS 669 (= IGRR I, 1263), unaware that a definitive text of the inscription, based on long and careful on-the-spot inspection of the stone, had been published in America three years earlier[1]. The true text of the edict confirms some of Schubart's conjecture to a greater or lesser degree, but negates the rest by depriving it of its presumed epigraphical foundation.

The present article concerns lines 39—45 of the inscription, or § 9 in Dittenberger's division. The text reads (the restorations in line 44, reproduced here as proposed by Oliver, are not an issue in the present discussion):

38 τὸ δ'αὐτὸ καὶ περὶ τῶν ἐν ἰδίωι λό⟨γ⟩ωι πραγμάτων ἀγομένων
ἵστημι, ὥσ-
39 τε εἴ τι κριθὲν ἀπελύθηι ἢ{ι} ἀπολυθήσεται ὑπὸ τοῦ πρὸς τῶι ἰδίωι λόγωι
τεταγμένου, μηκέτι ἐξεῖναι τούτωι εἰσαγγέλλειν κατηγόρωι
μη⟨δ⟩ὲ εἰς κρίσιν ἄγεσθαι, ἢ{ι} ὁ τοῦτο ποιήσας ἀπαραιτή-

[1] H. G. Evelyn White and J. H. Oliver, *The Temple of Hibis in El Khārgeh Oasis*, Part II: *Greek Inscriptions* (New York, 1938) No. 4.

40 τως ζημιωθήσεται. οὐδὲν γὰρ ἔσται πέρας τῶν συκοφαντημάτων, ἐὰν τὰ ἀπολελυμένα ἄγηται ἕως τις αὐτὰ κατακρείνηι. ἤδη{ι} δὲ τῆς πόλεως σχεδὸν ἀοικήτου γενομένης διὰ τὸ
41 πλῆθος τῶν συκοφαντῶν καὶ πάσης οἰκίας συνταρασσομένης, ἀναγκαίως κελεύω, ἐὰν μέν τις τῶν ἐν ἰδίωι ⟨λ⟩όγωι κατηγόρων ὡς ἑτέρωι συνηγορῶν εἰσάγηι ὑπόθεσιν, παρίστασθαι ὑπ'
42 αὐτοῦ τὸν προσαγγεί⟨λ⟩αντα, ἵνα μηδὲ ἐκεῖνος ἀκίνδυνος ἦι· ἐὰν ⟨δ⟩ὲ ἰ⟨δ⟩ίωι ὀνόματι κατενεγκὼν τρεῖς ὑποθέσεις μὴ{ι} ἀποδείξηι, μηκέτι ἐξεῖναι αὐτῷ κατηγορεῖν, ἀλλὰ τὸ ἥμισυ αὐτοῦ
43 τῆς οὐσίας ἀναλαμβάνεσθαι. ἀδικώτατον [γά]ρ ἐστιν πολλοῖς ἐπάγοντα κινδύνους ὑπὲρ οὐσιῶν καὶ τῆς ἐπ[ι]τιμίας αὐτὸν διὰ παντὸς ἀνεύθυνον εἶναι. καὶ καθόλου δὲ
44 κ]ε̣λε̣ύσ̣ομαι τὸν γνώμονα τοῦ ἰ[δ]ίου λ̣ό̣γ̣ο̣υ̣ [κεῖσθ]αι, τὰ καινοποιηθέ̣ν̣τ̣α παρὰ τὰς τῶν Σεβαστῶν χάριτας ἐπ̣α̣νορθ̣ω̣σάμε̣ν̣ο̣ς̣. προγράψω[ι δὲ] φ[ανερῶς ὅπως τοὺς ἤδη{ι} ἐξ-
45 ελε⟨γ⟩χθέντας συκοφάντας ὡς ἔδει ἐτιμωρησάμην.

I

The crucial problem for the understanding of this passage is the meaning of the terms κατήγοροι and συκοφάνται. Rudorff in 1828 interpreted these two terms as alternative designations for informers[2], and this view has held the field ever since. Rudorff's equation of the two terms was adopted and expanded by P. M. Meyer[3], who saw the κατήγοροι of the edict as a class of professional informers, and cited as additional support the expression συκοφαντώδου κα[τηγορί]ας in M. Chr. 68, 19—20 (A. D. 14) and the κατηγορούντων of M. Chr. 372 VI, 3 (early second century). Meyer's analysis was accepted by Hirschfeld[4], Plaumann[5], and Taubenschlag[6].

[2] *Rheinisches Museum* 2 (1828) 183—5. "κατήγορος und συκοφάντης bedeuten hier jeden, der dem Fiskus anzeigt.... κατηγορεῖν und εἰσαγγέλλειν dagegen unterscheidet sich wie *genus* and *species*" (183 note 3).

[3] *Festschrift zu Otto Hirschfelds sechzigstem Geburtstage* (Berlin, 1903) 149—152 and *Archiv für Papyrusforschung* 3 (1903), 87. Meyer went beyond Rudorff also in completely equating κατηγορεῖν and εἰσαγγέλλειν.

[4] *Die kaiserlichen Verwaltungsbeamten bis auf Diocletian* 2 (Berlin, 1905) 353 note 4.

[5] Pauly-Wissowa, *RE* IX (1916) 898 and *Abhandl. Preuss. Akad. Wiss., Phil.-Hist. Klasse* (1918) Nr. 17, p. 56.

[6] *Das Strafrecht im Rechte der Papyri* (Leipzig—Berlin, 1916) 102—3. Taubenschlag was the first to suggest, however, that a δημόσιος κατήγορος (P. Flor. 6)

The two terms were thereafter differentiated by Preisigke[7], but this distinction is obviously not yet generally accepted, since the most recent treatments of this text continue to adhere to Meyer's interpretation[8].

While it is true (as Rudorff pointed out) that Dio Cassius uses both κατηγορεῖν and συκοφαντεῖν in speaking of the delations at Rome under Tiberius (Dio also uses μηνύειν), I submit that such looseness of terminology is inherently improbable in the technical legal language of a prefectural edict; and I propose to show that the edict does in fact, by careful use of precise language appropriate to each, distinguish the two terms along the lines indicated by Preisigke, viz.:

συκοφάντης is, of course, the invidious designation of the delator, or common informer, who practices malicious or vexatious denunciation (συκοφαντημάτων, line 40) for personal profit[9].

κατήγορος, on the other hand, here denotes a functionary, namely a public prosecutor, serving in the Department of the Idios Logos (τῶν ἐν ἰδίωι λόγωι κατηγόρων, line 41).

It is apparent at a glance that the Prefect in lines 41—42 treats in succession two discrete situations: in the first (ἐὰν μὲν...) the κατήγορος in the Idios Logos Department brings a suit as advocate for another (ἑτέρωι συνηγορῶν εἰσάγηι ὑπόθεσιν), in the second (ἐὰν δὲ...) the κατήγορος prosecutes on his own responsibility (ἰδίωι ὀνόματι). What has hitherto not been clearly discerned is the relationship of this distinction to the text of the preceding sentences.

A key to the solution is provided, curiously enough, by a seemingly unimportant word: τούτωι in line 39. Some scholars have regarded this word as the modifier of κατηγόρωι, while others, di-

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might be an official. For an example he pointed to the ἐκλογιστής in § 8 of the edict of Tiberius Julius Alexander, but not, oddly enough, to the κατήγορος of § 9, where he followed the traditional interpretation; cf. also note 8 below.

[7] *Wörterbuch*, *s.vv.*: κατήγοροι — „die Anwälte für das Ressort des Idiologos." συκοφάντης — „Angeber, falscher Ankläger".

[8] Schubart, *loc. cit.*, 39—40; Taubenschlag, *The Law of Greco-Roman Egypt*[2] (Warsaw 1955), 548 and *Studi in onore di V. Arangio-Ruiz* (Naples [1953]), Editor: This is the closing of the parenthesis begun on the preceding line, before Naples—thus: (Naples, [1953]) I, 501—7, (repeating in summary form the fuller presentation given in his *Strafrecht* 103).

[9] The material motive might be to obtain the informer's share from the victim's loss, or — as in M. Chr. 68 — to purchase the property from the state after it was confiscated by the Idios Logos.

sturbed by its apparent lack of antecedent, have resorted to emendation, Rudorff (followed by Plaumann) reading τοῦτο, Schubart more recently proposing ταὐτό[10]. To construe τούτωι with κατηγόρωι offends, as Schubart has remarked, against sense as well as syntax. But the proferred emendations are actually no improvement on either score, for the reason that they are based on the same fundamental misconception of κατηγόρωι as the performer of εἰσαγγέλλειν, and this error in turn stems from the mistaken notion that κατήγορος in this context is synonymous with συκοφάντης. Once this false preconception is discarded, τούτωι becomes quite unobjectionable, and all that is required is a straightforward reading of the text as it stands on the stone[11]. First, as to syntax, μηκέτι ἐξεῖναι τούτωι is normal, idiomatic construction, and it is moreover paralleled exactly by μηκέτι ἐξεῖναι αὐτῷ in line 42. To change τούτωι to an accusative (object of εἰσαγγέλλειν) and substitute κατηγόρωι for τούτωι as the dative governed by ἐξεῖναι, is to reject both idiom and parallelism in favor of grotesque abnormality. Conceivably, we might have to accept even such unnaturalness if the sense compelled us to do so. But sense too is violated by this alteration. For the function of the κατήγορος is not to lay information (εἰσαγγέλλειν), but, as we see in lines 41—42, to institute suits and prosecute (εἰσάγηι, κατηγορεῖν). Nothing could be more explicit than the differentiation in lines 41—42 between prosecutor (τις...κατηγόρων) and informer (τὸν προσαγγείλαντα). The same distinction is made in practically identical terms in line 39, where εἰσαγγέλλειν is the function of the informer, here designated by τούτωι[12], while κατηγόρωι, as the word order also indicates, is the

[10] Rudorff, *loc. cit.*, 150; Plaumann, *RE* IX, 898; Schubart, *loc. cit.*; Dittenberger, OGIS II, p. 401 note 76, left open the question of whether τούτωι, which he printed, should be taken as masculine with κατηγόρωι or as neuter with τι. Those who accepted τούτωι without comment apparently took it to modify κατηγόρωι. In Schubart's view, his emendation restores the „vollen Sinn" of the parallelism between §§ 8 and 9 of the edict; actually, however, the parallelism of these two sections is quite explicit as the text stands: see the discussion of this point in the next paragraph.

[11] Future studies of the document would do well to start with the recognition that the edict is, from beginning to end, a fundamentally sound example of idiomatic chancery Greek.

[12] Cf. Evelyn White, *op. cit.*, 33: "τούτωι indicates the accuser implied in εἴ τι κριθὲν κτλ." Schubart's objection (*loc. cit.*) to τούτωι — that „von 'diesem Ankläger' noch gar nicht die Rede war" — misses the point. Two things are pro-

indirect object of εἰσαγγέλλειν, i.e. the prosecuting officer to whom the intormer brings his denunciation and by whom legal proceedings are instituted (ἄγεσθαι). Thus μηκέτι ἐξεῖναι τούτωι εἰσαγγέλλειν κατηγόρωι means, quite simply, just what it says: „this (informer) shall not again be permitted to submit (the same) denunciation to a prosecutor."

An additional measure of support for this interpretation of κατήγορος may be found in the parallelism of §§ 9 and 8 (lines 35—38) of the edict.[13] This parallelism is announced by the Prefect in the opening words of § 9: τὸ δ'αὐτὸ ἵστημι περὶ.... With the interpretation of κατήγορος offered above, the parallelism of the two sections extends beyond a mere reiteration of the principle of *res adjudicata* to the procedural particulars of the two situations. In both sections prosecuting officers are forbidden to reintroduce cases previously dismissed. In both sections their action in presenting cases for judicial consideration is expressed by the verb (εἰσ)άγειν. In § 8 this function is performed by an ἐκλογιστής, in § 9 by a κατήγορος.

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Before proceeding from this conclusion to an analysis of the portion of the edict under discussion, it will be well to dispose of the other texts cited by Meyer in support of his interpretation of κατήγορος.

I turn first to συκοφαντώδου κα[τηγορί]ας in M. Chr. 68. Assuming that the restoration is correct (as it may well be, though other possibilities exist — e.g., κακουργίας), to interpret this phrase to mean that συκοφάντης and κατήγορος are equivalents is like concluding from an expression such as „slavish imitation" that „slave" is a synonym of „imitator". A reading of the whole papyrus shows that the adjective συκοφαντώδης is simply a pejorative descriptive

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hibited in this clause of the edict: 1. The same charge may not be introduced again. This is provided by εἰς κρίσιν ἄγεσθαι (the infinitive is passive, not middle; cf. note 13). 2. The same informer may not repeat a denunciation. This is specified by τούτωι. The identity of the informer is established by the necessity of his appearance in court (lines 41—42).

[13] The pertinent portions of § 8 read: καθόλου ⟨δ⟩ὲ κελεύω{ι}, ὁσάκις ἔπαρχος ἐπ' αὐτὸν ἀχθέντα ἔφθασεν κρείνας ἀπολῦσαι, μηκέτι εἰς διαλογισμὸν ἄγεσθαι. ἐὰν δὲ καὶ δύο ἔπαρχοι τὸ αὐτὸ πεφρονηκότες ὦσι, καὶ κολαστέος ἐστὶν ὁ ἐγλογιστὴς ὁ τὰ αὐτὰ εἰς διαλογισμὸν ἄγων. ...διὰ τὸ καθ' ἕκαστον διαλογισμὸν τὰ αὐτὰ πράγματα εἰς κρίσιν ἄγεσθαι.

with which a petitioner, in asking that a charge against him be dismissed, deprecates the accusation by characterizing it as the kind of vexatious villainy that informers practice[14].

M. Chr. 372 can be passed over, since κατηγορούντων, standing there by itself, is quite inconclusive. Instead I may signalize P. Flor. 6 (A. D. 210), which distinguishes explicitly between proceedings initiated by private persons, who must post security against perpetrating συκοφαντία, and those brought by δημόσιοι κατήγοροι, public prosecutors[15].

II

If we turn now and re-read the whole section of the edict on Idios Logos matters in the light of the foregoing analysis, the following sequence of ideas emerges:

1. The first sentence (lines 38—40) is general in scope. Once the *Idiologus* has dismissed a case it is not to be revived; an informer may not again bring a denunciation in the same matter to a prosecutor (εἰσαγγέλλειν κατηγόρωι), and a prosecutor may not again bring up the matter for judicial consideration (εἰς κρίσιν ἄγεσθαι). This is, of course, an assertion of the familiar legal principle of *res adjudicata*[16].

2. The following sentences, as far as ἀκίνδυνος ἦι in line 42, concern denunciations brought by private informers (συκοφάνται) to the prosecutors (κατήγοροι). The Prefect wants to put an end to the vexatious denunciations with which „a host of informers" is keeping Alexandria in a turmoil (lines 40—41). In addition, therefore, to prohibiting the reintroduction of matters once dismissed (line 39), the Prefect also orders (lines 41—42) that when a κατήγορος brings an action on the basis of information supplied by a private individual, he must produce in court the person who submitted the denunciation to him (παρίστασθαι ... προσαγγείλαντα). The Prefect thus strikes a well-aimed blow at the professional informers by

[14] Similarly in P. Oslo 17 (report of a hearing before a strategus in A. D. 136), the accused say of a witness who has testified against them that they συκοφαντεῖσθαι ὑπ' αὐτοῦ (line 8).

[15] Lines 5—7: τοῦ δεῖνα βουλομένου μου κατηγορεῖν οὔτε ὄντοςδη μοσίου κατηγόρου ἀλλ'οὐδὲ ἀσφαλισαμένου τὸ ταμεῖον εἰς τὸ πρόστειμον τῆς συκοφαντίας.

[16] On the appearance of this principle in the papyri see Taubenschlag, *The Law of Greco-Roman Egypt*[2] 522 ff.

stripping them of the anonymity and secrecy in which delation flourishes. Furthermore, by the early third century at least, a private individual lodging information against another „was obliged to give security for the fine to which he was subject should his information prove to be false;"[17] whether this penalty was already in effect in A. D. 68, when Tiberius Julius Alexander issued his edict, is an open question[18].

3. The next sentence, beginning with ἐὰν δέ in line 42, turns to prosecutions originating with the κατήγοροι themselves, and provides penalties to deter them from launching prosecutions irresponsibly.

4. The portion of the edict aimed at discouraging vexatious accusations and prosecutions concludes, in the sentence beginning ἀδικώτατον γάρ (line 43), with an homiletic dictum, almost platitudinous in its sententiousness, on the justice of punishing persons who make a practice of persecuting others. This concluding statement provides the moral justification for the penalties decreed in the preceding sentences, and, though it follows directly upon the sanctions decreed against malicious κατήγοροι, it is a generalization, and as such is equally applicable to συκοφάνται.

5. In the next sentence, beginning καὶ καθόλου (line 43), the Prefect, in a statement of general policy, declares his intention of enforcing the Gnomon of the Idios Logos in keeping with the declared wishes of the Emperors. This apparent digression from the specific subject of unwarranted prosecutions to which this section of the edict is otherwise devoted, is perhaps explained by the preceding mention of confiscation (ἀναλαμβάνεσθαι), with which so many provisions of the Gnomon are concerned. In that case the Prefect's train of thought would be: (a) a κατήγορος who is responsible for three unjustified prosecutions shall have half his property confiscated; (b) speaking of such matters, I want it known that all valid provisions of the Gnomon will be enforced. If this is in fact the sequence of ideas, it carries the important implication that we

[17] Taubenschlag, *op. cit.*, 548. The source is P. Flor. 6, 5—7, quoted in note 15, above.

[18] Another subject of speculation is whether, as Rudorff suggested (*loc. cit.*), there is any connection between these measures against informers promulgated by the Prefect of Egypt in the first month of Galba's reign and the action taken by the senate at Rome *recens Galbae principatu* (Tacitus, *Hist.* 2.10; cf. 4.42, *occiso Nerone*) to punish *delatores*.

have in (a) a hitherto unknown provision of the Gnomon. This is at present, however, no more than a possibility. As to the text of this sentence (and the next), it is worth repeating Evelyn White's admonition[19] that all previously proposed restorations, „except that of Franz [in CIG], are vitiated by the supposed infinitive ἐπανορθῶσαι (a misreading).... ἐπανορθωσάμενος ... is certain, and is clear ... in the original."

6. In the last sentence, προγράψω ... ἐτιμωρησάμην, the Prefect reverts briefly to the previous subject with a promise to make public his actions in meting out condign punishment to „convicted informers". Textually noteworthy is the thoroughly satisfactory ἐξ]ελε⟨γ⟩χθέντας, which replaces the previously misread ἐν]δειχθέντας.

III

In the light of the foregoing analysis I translate the section of the edict here under discussion as follows[20]:

„I also establish the same rule for matters brought up under the 'Special Account', so that if any matter has been judged and dismissed, or shall be dismissed, by the [procurator] appointed in charge of the 'Special Account', the [accuser] shall not again be permitted to submit it to a prosecutor nor shall it be brought to judgment, or the person so doing will be punished mercilessly. For there will be no end to vexatious denunciations if dismissed matters are brought up till someone decides to condemn. Since already the city has become practically uninhabitable because of the multitude of informers and every household is thrown into confusion, I perforce order that if any of the prosecutors attached to the 'Special Account' introduces a suit as spokesman for another, he shall produce the real accuser in court, so that the latter too may not be free from risk; and if he brings three suits on his own responsibility and does not prove them, he shall not again be permitted to prosecute, but half his estate shall be confiscated. For it is most unjust that a person who brings upon many the dangers of [loss of]

[19] *Op. cit.*, 33—34. This applies also to the subsequent proposal of Schubart, *loc. cit.*

[20] An English translation of most of the edict will be found in N. Lewis and M. Reinhold, *Roman Civilization*, Volume II: *The Empire* (New York, 1955).

property and penalty should himself be completely free from liability. And in general I shall order that the code of regulations of the 'Special Account' remain in force, now that I have rectified the innovations practiced contrary to the grants of the Emporors. And I shall openly publicize how I have meted out condign punishment to already convicted informers."

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