

Juan P. Lewis

A SCRIBAL ERROR IN THE GNOMON: A PROPOSED CORRECTION TO BGU V 1210

LINES 241 AND 242 OF BGU V 1210 are dedicated to the capacities of slaves with *peculium*.¹ As most of column x of the papyrus, the text contains a lacuna in the middle part of the two sentences.² The missing words were reconstructed by Wilhelm Schubart in his 1919 edition of the papyrus:³

¹ Lines 155–157, 164–170, 172–173 also mention slaves, but as objects of transactions, confiscations, etc. Lines 241–242, instead, establish the legal limitations imposed on imperial slaves. Lines 38–43, 50–53, 59–65, 83–86, 133–135 are concerned with the rights and limitations of freedmen and freedwomen. Lines 66–69, 78 mention Junian Latins.

² Unlike column xi, column x is one of the most damaged of the papyrus, but it is still legible. The first six lines contain a lacuna at the beginning of the sentence, while lines 235–250 are lacunose in the middle.

³ W. SCHUBART, *Der Gnomon des Idios Logos. Erster Teil: Der Text*, Berlin 1919, p. 38. See also its accompanying volume, G. UXKULL-GYLLENBAND, *Der Gnomon des Idios Logos. Zweiter Teil: Der Kommentar*, Berlin 1934, p. 104. T. REINACH, ‘Un code fiscal de l’Égypte romaine: Le Gnomon de l’Idiologue’, *Revue historique de droit français et étranger* 43 (1919), p. 632 n. 242, suggested that the lacuna in line 242 could also be interpreted as *κατὰσθαί* [τι οὐδὲ ἐλ]ευθέρως, but freeborn women are never referred as such in the papyrus. In line 84, a freeborn Roman woman is referred to as *ἐγγενής*, the Greek for *ingenuae*. Otherwise, they are denoted simply as *γυναῖκες*, ‘women’ (ll. 29, 32, 76, 82, 148), or classified by the community they belong to: *ἀσταιί* (ll. 109, 125, 130), *Ῥωμαῖαι* (ll. 73, 87, 89, 93–95, 111, 138), *Αἰγύπτιαι* (ll. 123, 128, 132–133, 136–138, 141, 149), *Κρηναίαι* (ll. 44–45), or *Νησιώτιδαι* (l. 132). Conversely, freed slaves are always referred to as *ἀπελεύθεροι* or its derivatives: *ἀπελεύθερος* (ll. 38, 42, 49, 51, 59, 133), *ἀπελευθερούμενος* (l. 60), *ἀπελευθέρα* (ll. 50, 134), and *ἀπελευθερική* (ll. 83, 85). Junian Latin women are referred to at least once as *Λατεῖναι* (l. 78).

- 241 οὐκ ἐξὸν Καισαριανοῖς ἀγορ[άζειν τι ἐ]ξ ἀπαρτείας.
 242 [οὐ]κ ἐξὸν οὐκαρίοις κτᾶσθαί [οὐδὲ ἀπελ]εϋθέρας γαμε[ῖ]ν.

242. Schubart: οὐκαρίοις [οὐδὲ ἀπελ]εϋθέρας; Reinach: [τι οὐδὲ ἐλ]εϋθέρας

Unlike the eight previous columns of the *Gnomon*, provisions in columns ix and x are not numbered, but listed under π, that is the Greek for number 80, written at the top of column ix. Each provision, however, is written as a separate line, which has helped modern scholars to number them. *Prima facie*, these two separate lines should be read as two separate rules concerning two different types of slaves: no. 109 on the slaves of the imperial household (l. 241) and no. 110 on their underlings or *vicarii* (l. 242), and this is how they have usually been read.⁴ Here, however, I will suggest that the two lines are better read together as two separate segments of one general rule on the *Caesariani*, that is, the slaves of emperor.

In the traditional reading of the *Gnomon*, provision no. 109 forbade the so-called *Καισαριανοῖ* to buy anything in the public auctions (ἐξ ἀπαρτείας) of the *bona damnatorum*.⁵ Provision no. 110 was more stringent and specifically barred *vicarii* from entering commercial transactions altogether and marrying freedwomen. The early editors of the papyrus agreed that the *Καισαριανοῖ* can be identified with the *familia* of the emperor,

⁴ P. M. MEYER in *Jur. Pap.*, p. 344; O. LENEL & J. PARTSCH, *Zum sog. Gnomon des Idios Logos* [= *Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Philosophisch-historische Klasse* 1920, 1 Abh.], Heidelberg 1920, p. 31; T. REINACH, 'Un code fiscal de l'Égypte Romaine: Le Gnomon de l'Idiologue. Commentaire', *Revue historique de droit français et étranger* 44 (1920), pp. 104–107; S. RICCOBONO, 'Forma Idiologi', [in:] *FIRA I*, p. 478; IDEM, *Il Gnomon dell' Idios Logos*, Palermo 1950, p. 70. On *vicarii*, see F. REDUZZI MEROLA, 'Servo parere'. *Studi sulla condizione giuridica degli schiavi vicari e dei sottoposti a schiavi nelle esperienze greca e romana*, Naples 1990, and J. P. LEWIS, *What's a vicarius? Or How True Meaning Can Mislead You*, PhD thesis, Edinburgh 2013.

⁵ On public auctions, see M. GARCÍA MORCILLO, 'Staging power and authority at Roman auctions', *Ancient Society* 38 (2008), pp. 153–181. On *bona damnatorum*, see W. WALDSTEIN, 'Bona damnatorum', [in:] *RE (Suppl.) X* (1965), pp. 96–119; B. LEVICK, 'Caesar omnia habet: Property and politics under the principate', *Entretiens sur l'Antiquité classique* 33 (1987), pp. 187–218, F. MILLAR, *The Emperor in the Roman World: (31 BC – AD 337)*, London 1992, pp. 163–174.

that is his slaves and freedmen, even if some associated them more narrowly with slaves and freedmen dedicated to financial and administrative tasks.⁶

Provision no. 109 makes sense. The *Gnomon* is concerned mostly with situations in which the imperial *fiscus* could accrue its wealth through confiscation, that is, through the appropriation of the *bona damnatorum*, which were confiscated only in part, while the remnants were auctioned off. Imperial slaves and freedmen involved in the administration of Egypt would have had privileged knowledge about those confiscations and may have used that information to dominate the auctions of the goods which were not seized directly by Caesar. This would have generated resentment in the province. As there were so many causes of confiscation, imperial slaves would have had enormous opportunities to become rich. Hence, the limitation of their capacity to take part in public auctions.

Provision no. 110 is more difficult to understand. First, whilst it is often assumed that the οὐκάρριοι of line 242 belonged to the *peculium* of

⁶ SCHUBART, *Der Gnomon* (cit. n. 3), p. 38, translated Καίσαριανοὶ as ‘Hausgesinde’ (the menial staff or the domestic servants of the emperor), a view shared by REINACH, ‘Un code fiscal’ (cit. n. 4), p. 104, who explicitly included in the category not just the domestic slaves of the emperor, but ‘notably’ his freedmen, who were ‘employed in all sorts of tasks’ (‘affectés, on le sait, à toutes sortes de besognes’). See also LENEL & PARTSCH, *Zum sog. Gnomon* (cit. n. 4), p. 31, and RICCOBONO, *Il Gnomon* (cit. n. 4), p. 249, for a similar view. MEYER in *Jur. Pap.*, pp. 343–344, understood the word in a more restricted way, not as all the slaves and freedmen of the emperor, but as the subaltern servants and officials of the imperial financial administration (‘Subalternbeamten der kaiserlichen Finanzverwaltung’), who were in charge of the confiscation of goods which accrued to the *fiscus*. It is unclear whether he thought that this was how the concept was always applied or if he was commenting on how it was used in this document in particular. Originally, both Καίσαριανοὶ and Καίσαραιοι were used mostly for the partisans of Caesar, but it was later extended to his slaves and freedmen, P. WEAVER, ‘Phaon, freedman of Nero’, *Zeitschrift für Papyrologie und Epigraphik* 151 (2005), p. 251. In late antiquity, the term ceased to denote slaves and freedmen and was applied to the low-status freeborn members of the imperial administration, see R. HAENSCH, ‘Von den *Augusti liberti* zu den *Caesariani*’, [in:] A. KOLB (ed.) *Herrschaftsstrukturen und Herrschaftspraxis im Imperium Romanum*, Berlin 2006, esp. pp. 162–163, and S. CORCORAN, ‘Emperors and Caesariani inside and outside the Code’, [in:] S. CROGIEZ-PÉTREQUIN & P. JAILLETTE, (eds.) *Société, économie, administration dans le Code Théodosien*, Villeneuve d’Ascq 2012, pp. 267–268.

the *Caesariani* of the previous line, this is not specified.⁷ The word could well be interpreted more generically to refer to all slave *vicarii* who belonged to other slaves, imperial or not, as part of their *peculium*. Unlikely as this might be, as the possessive pronoun *αὐτῶν* is missing, this possibility cannot be entirely ruled out. Second, while provision no. 109 restricts the capacities of imperial slaves (and possibly freedmen) to acquire property in the specific context of auctions, according to the traditional reading of the *Gnomon*, provision no. 110 bars slave *vicarii* from purchasing anything altogether. This is strange. Although they were slaves, *vicarii* could take part in all kinds of commercial transactions. They could contract debts, hire their services, take part in commercial ventures, or be appointed to run commercial establishments.⁸ Despite being slaves, nothing prevented them from buying and selling goods, even if the legal procedure through which slaves took part in sales and purchases has been subject to debate.⁹ We know of *vicarii* of imperial slaves who purchased other slaves, bought commodities, or took credit for substantial amounts of money from *feneratores*.¹⁰ Moreover, a few papyri have been found which document *vicarii* of Egyptian imperial slaves buying and selling things, something which theoretically provision no. 110 would have forbidden.¹¹ Two of those papyri, namely BGU I 102 and P. Oxy. IV 735, were produced after the *Gnomon* was compiled and circulated.¹² If the prohibition to buy

⁷ This is to be expected to some extent. Ambiguity and lack of specification is common in legal documents, despite the best efforts of law and decree drafters.

⁸ E.g. Dig. 9.4.19.2 (Paulus); 14.1.1.22 (Ulpian), 14.3.11.8 (Ulpian), 15.1.7.4 (Ulpian).

⁹ H. ANKUM, 'Mancipatio by slaves in classical Roman law?', *Acta Juridica* 1 (1976), pp. 1–18. Drawing upon transactions recorded in papyri, R. TAUBENSCHLAG, *The Law of Greco-Roman Egypt in the Light of the Papyri, 332 BC – 640 AD*, Warsaw 1944, argued that imperial slaves did business with other Romans and *peregrini* 'according to the rule of *ius gentium*' (p. 67).

¹⁰ AE 2003, 1016 = AE 2005, 893; ChLA XXV 789 = PSI XIV 1448; T. Sulpicii 49, 94 (= AE 1982, 199), 95 (= AE 1982, 187).

¹¹ BGU I 102; P. Oxy. IV 735 = ChLA IV 275 = *Rom. Mil. Rec.* 1, 81; SB XIV 12169.

¹² It can always be argued that the provisions of the *Gnomon* were not always enforceable, or even not legally binding, and that *vicarii* would have bought and sold goods irrespective of what the law said. After all, prohibitions to buy and sell things are often got round through operating underground in the informal economy. But if those *vicarii* were operating

was restricted to public auctions of confiscated goods, therefore, it would have made more sense to name *vicarii* in the previous sentence: οὐκ ἐξὸν Καισαριανοῖς τε καὶ οὐκαρίοις αὐτῶν ἀγοράζειν τι ἐξ ἀπαρτείας.

The prohibition to marry freedwomen seems to be related to the *Senatus Consultum Claudianum* (SCC) of AD 52. According to this senatorial decree, the children born of a union between a slave and a free(d) woman consented by the slave's master would be slaves, even though their mother preserved her freedom.¹³ On the basis of the master's agreement (*pactio*) to the union, this *contubernium* would acquire all the trappings of a lasting marital union and thus the children would have their paternal filiation recognised and as a result inherit their father's servile status, contravening the law of nations.¹⁴ According to Gaius, Hadrian, moved by the unfairness and inelegance of such prescription, restored the law of nations, which meant that as the mother remained free, her children were free as well.¹⁵ It seems as if the officials of the *Idios Logos* were trying to

in the shadows and contravening the law, it is unlikely that they would have registered those operations in written documents. On the shadow economy in the modern world, see F. SCHNEIDER & D. H. ENSTE, *The Shadow Economy. An International Survey*, Cambridge 2013.

¹³ Gaius 1.84. If the master's consent was lacking, the woman would suffer *capitis diminutio* and become a slave, as would the offspring of that non-consented union, who would belong to the slave's master (Gaius 1.91, 160, PS 2.21a, and Tacitus, *Ann.* 12.53.1). The master had to give formal notification (*denuntiatio*) of his unwillingness to allow the union three times: *CTh* 4.12.2 (interp.), *CTh* 4.12.4, 5, and 7. See also *CTh* 10.20.10.pr. and *Dig.* 16.3.27 (Paulus). When he discusses the SCC, Gaius mentions female Roman citizens only (*civis Romana*), probably implying freeborn women, even though formally manumitted slaves became citizens too. The imperial constitutions mentioned in footnote 15 sometimes imply that the SCC applied to *ingenuae* only, but often they do not make distinctions between the free women who were affected by it and denote them simply as *mulieres* or as *liberae*, who could be either free-born or freed; see J. A. CROOK, 'Gaius, *Institutes*, i.84–86', *The Classical Review* 17/1 (1967), pp. 7–8.

¹⁴ A. KACPRZAK, 'Pactio ex senatus consulto Claudiano', *Index* 47 (2019), p. 59. By *ius gentium*, children born out of wedlock or from unions of partners who lacked *conubium* (slaves and peregrines) inherited the status of their mothers. S. TREGGIARI, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian*, Oxford 1991, esp. pp. 43–49 and 52–54.

¹⁵ Gaius 1.84. The SCC remained valid until the early sixth century, as several imperial constitutions show: Constantine in AD 314 (*CTh* 4.12.1), Julian in AD 362 (*CTh* 4.12.5), Valentinian, Valensm, and Gratian in AD 366 (*CTh* 4.12.6), Honorius and Arcadius in AD 398 (*CTh* 4.12.7),

avoid the haemorrhage of children born to manumitted women who had *contubernia* with imperial slaves.¹⁶ Introducing an explicit prohibition to marry freedwomen (or free women tout court, if one follows Reinach's reconstruction of line 242) would have resulted in the automatic suspension of the master's (in this case the emperor's) consent to a type of unions which Hadrian had recently made more attractive. Such prohibition would have led to the loss of status of any freedwoman who formed a now by default unconsented union with an imperial slave, while her children would have become *vernae Caesaris*. It should be borne in mind that the SCC applied to all the enslaved members of the imperial *familia*, not just to the *vicarii* of the slaves of the emperor. Moreover, the relationship between the emperor and *Caesariani*, as any other master-slave relationship, was direct, whereas the relationship between the Emperor and the *vicarii* of his slaves was mediated by the simple fact that *vicarii* were *peculium* assets.¹⁷ It seems odd that an explicit limitation to consent slaves to marry up would be restricted to *vicarii* rather than extended to all *Caesariani* as a whole.

Gratian, Valentinian, and Theodosius I in AD 379 or 380 (*CTh* 10.20.10.pr), Honorius and Theodosius II in AD 415 (*CTh* 12.1.179). In an address to the people issued at Serdica (modern Sophia) in AD 326, the emperor Constantine stated that freeborn women who cohabited with slaves of the imperial household would not have their status impaired, but their children would be born Junian Latins (*CTh* 4.12.3), which meant that the emperor preserved some patronage rights over them. Whether this is what meant by Hadrian's restoration of *ius gentium*, or an innovation by Constantine is difficult to say. Following old precedents, Constantine maintained that if the consent of the master was lacking, women who cohabited with slaves would lose their freedom, and as a consequence their children would be slaves (*CTh* 4.12.4, AD 331). Justinian abolished the SCC sometime between AD 531 and 534 (*CJ* 7.24.1).

¹⁶ A. J. B. SIRKS, 'Der Zweck der Senatus Consultum Claudianum von 52 n. Chr.', *Zeitschrift für Rechtsgeschichte* 122 (2005), p. 145, doubts that without the restrictions of the SCC the numbers of *vernae* would have decreased, as the senate resolution applied to male slaves who married up, but not to female slaves who could still be sexually exploited and compelled to produce offspring for their masters. But the possibility of having free children, even if *spurii*, clearly played as an incentive for male slaves to look for free partners outside their households, reducing the mating opportunities of the female slaves of the household and the number of slave families – and consequently of *vernae* – under the control of the master.

¹⁷ 'Direct' not in the sense that the emperor had close personal contact with his slaves, but in the sense that they were owned directly by the emperor, their *dominus*, whilst *vicarii* were counted as assets of a separate account: *Dig.* 15.1.5.4 (Ulpian), 15.1.7.4 (Ulpian).

A way of getting round these problems is to see lines 241 and 242 not as two separate provisions but as two closely related segments of one general rule limiting the legal capacities of the *Caesariani*. The main problem with this interpretation, however, is that at first sight both clauses seem to contain a dative of reference complementing the impersonal verb phrase οὐκ ἔξον. In the first clause at least, it is indisputable that the noun which denotes imperial slaves is in the dative plural, *Καισαριανοῖς*, making them the main party to which one or both prohibitions apply. One would expect to find a parallel structure in the second clause as well, that is οὐκ ἔξον + dative + infinitive, especially if we consider that this clause structure is found in several other lines of the document – the *Gnomon* is a list of legal provisions and prohibitions after all – even if the order of the two first elements is often reversed.¹⁸ In that case, the prohibition of line 241 (no. 109) would apply to the *Caesariani* only and the prohibition of line 242 (no. 110), to their *vicarii*; unless the third element of line 242 is not declined in the dative case.

The last *iota* of οὐκαρίοις has partly faded away and it can be read differently. It does not seem to have a terminal or spur as many of the other *iotas* of the papyrus do, among them the last *iota* of *Καισαριανοῖς*. What remains of the stem of the *iota* is not too different from the stem of an *upsilon*, whose two arms have been erased by time. If the last but one letter of οὐκαρίοις was indeed an *upsilon*, then it would mean that the third element of line 242 is not a dative, but the accusative plural οὐκαρίους. This accusative would be the object of the verb *κτᾶσθαι* as [ἀπελ]ευθέρας is the object of γαμε[ι]ν on the same line. The two infinitives would function as infinitive complements of οὐκ ἔξον, and the whole phrase would refer anaphorically to *Καισαριανοῖς* of the previous line. The absence of a dative of reference in the second clause is unproblematic. A similar construction is found elsewhere in the *Gnomon* at least once.¹⁹ This new reading would then be:

¹⁸ οὐκ ἔξον + dative + infinitive: ll. 49, 50, 70, 200; dative + (οὐκ) ἔξον + infinitive: ll. 29, 89, 137, 174, 181, 194, 195, 200, 210, 213.

¹⁹ In lines 29–32, two separate verb phrases headed by οὐκ ἔξον have the same dative of reference, namely *Ἀλεξανδρεῖ*, to whom the two rules apply. It is true, however, that the connection between the two phrases is made explicit by *πλείονος*, which here functions like a conjunctive adverb. Nothing of the sort is found in line 242, but asyndetic coordination is a common phenomenon.

- 241 οὐκ ἐξὸν Καισαριανοῖς ἀγορ[άξειν τι ἐ]ξ ἀπαρτείας.
 242 [οὐ]κ ἐξὸν οὐικαρίους κτᾶσθαί [οὐδὲ ἀπελ]εϋθέρας γαμε[ῖ]ν.

Caesariani cannot buy anything in auctions. They cannot acquire vicarii nor marry freedwomen.

This interpretation of the syntax of line 242 could also work even if the original word of the papyrus is indeed the dative οὐικαρίοις. As the dative of reference in line 241 came after the verb phrase οὐκ ἐξόν, the scribe could have made a mistake and by analogy changed a dative for the accusative object of the infinitive κτᾶσθαί.²⁰ Grammatical mistakes and incorrect use of cases are not uncommon in papyri and the *Gnomon* is not free of them.²¹ There would not be anything particularly odd if the scribe who copied the *Gnomon* had declined yet another noun incorrectly.

That line 242 contains an accusative plural instead of a dative or that the scribe of the *Gnomon* made a mistake and substituted a dative for an accusative may seem too forced interpretations. Nonetheless, neither should be entirely ruled out, and I would like to entertain the possibility of such readings, especially as they make much more sense from a legal point of view at least.²² What this new reading would imply is that both provisions, no. 109 and no. 110, concern the slaves of the imperial household, denoted here by the dative Καισαριανοῖς in line 241. Rather than a restriction of the purchasing powers of the *vicarii* of imperial slaves, provision no. 110 (line 242) would have *vicarii* as the objects of purchases. In

²⁰ κτᾶομαι is a transitive verb, but it is found used intransitively as a nominalised infinitive, as in Clem. *Strom.* 1.26: κτᾶσθαί τε γὰρ καὶ χρῆσθαι ταύτης ἰδion βασιλικωτάτης οὔσης, or Athan. *Vit. Ant.* 17: Διὰ τοῦτο μηδὲ τοῦ κτᾶσθαί τις ἡμῶν ἐπιθυμίαν λαμβανέτω.

²¹ As way of example: in line 24, the accusative plural κληρονόμους is used after another accusative plural even though the noun should be a nominative singular. In line 51, the scribe initially wrote the accusative plural Ῥωμαίους and afterwards corrected it when he realised a genitive plural was required. A dative plural, instead of a nominative singular, occupies the place of the subject in line 79.

²² We do not have other papyri for *comparanda*, but I am aware that my argument is not entirely alien to the *lectio difficilior potior* principle. When we pay attention to the syntax and the style of the *Gnomon*, however, it would be unsurprising if the scribe, who was probably not a Greek native speaker altered the original text for and opted for a 'simpler' form.

other words, these provisions would have barred the slaves of the emperors in Egypt from buying anything at auctions and from buying *vicarii* either at the auction of confiscated goods, or even by means of purchase altogether. If the latter was the case, they would have had to content themselves with the *vicarii* supplied to them when they had their *peculium* granted by the emperor or the prefect of Egypt. If the measure was restricted to public auctions, these two lines could be interpreted as a preventive measure aimed at limiting the opportunities imperial slaves had to take too much advantage from the confiscatory actions of the imperial *fiscus*.

Juan P. Lewis

The Open University
Faculty of Arts and Social Sciences
School of Arts and Humanities
Edinburgh
UNITED KINGDOM
e-mail: *juan.lewis@open.ac.uk*