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PROCURATORIAL JURISDICTION IN THE *LEX PORTORII ASIAE*

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One of the most intractable *cruces* of the *lex portorii prouvinciae Asiae* comes at the very end of the surviving text and has not yet been fully resolved either by H. Engelmann and D. Knibbe in the *editio princeps*¹ or by the Oxford team of editors, who have recently revisited the text.² Beginning with line 147, several very fragmentary lines give provisions for resolution of disputes arising from the regulations of the *lex portorii*. The understanding of these provisions is highly significant for our knowledge of the development of procuratorial jurisdiction, for the scope of which it is the earliest piece of documentary evidence, separated as it is only by nine years from its establishment by Claudius in AD 53 (Tac., *Ann.* 12.60).³ It will be the purpose of the present note to offer a new reading at the end of the line 148 of the document and to discuss briefly its further significance.

The crucial passage (§ 63 by the editors' numbering), from the middle of l. 147, stands in the Oxford edition of the *lex portorii* thus: ἐάν τις ἀμφισβήτησις γένηται μεταξὺ τοῦ ΤΑΥ[- - - | - - - ± 42 - - -] ἐπιτρόπῳ Νέρωνος Σεβαστοῦ τῷ τῆς ἐπαρχείας ἀφηγουμένῳ ΠΙΡΟΣΙΝΑΙΩ[- - -] ('If any dispute arises between the person [- - -, before the] procurator of Nero Augustus who is in charge of the province, to which (?)', tr. B. M. Levick). The last word in line 148 has been read as προσήναο or πρὸς ἦν ἄν by the *edd.pr.*, but the results of the re-examination of the stone by the Oxford editors are beyond reasonable doubt confirmed by a high-resolution photograph of the lower right part of the inscription on the website of the Oxford Centre for the Study of Ancient Documents.⁴

The letters ΠΙΡΟΣΙΝΑΙΩ obviously do not form part of any recognizable Greek word in our standard orthography, and since no sense can be made out of them otherwise we shall be justified in looking for a lapicide's error or a variant spelling here. A parallel is provided by a line from a verse sacred law of a Dionysiac cult from Smyrna of the second (or perhaps third) century AD: προσίναι βωμοῖσι ἄνακτ[ος], 'approach the altars of the Lord', where προσίναι is a variant spelling for προσιέναι, criticised among a number of similar spellings by Phrynichus (*Ecl.* 7).⁵ I propose, therefore, to assume that we meet with a similar spelling here and to read in line 148 ἐπιτρόπῳ Νέρωνος Σεβαστοῦ τῷ τῆς ἐπαρχείας ἀφηγουμένῳ προσίναι, 'approach the procurator of Nero Augustus who is in charge of the province' (perhaps προσίναι ὀφειλόντων, 'they should be obliged to approach').

The reference would then be to the Latin formula, a version of which appears in what was, according to the Antonine and Severan jurists, a common answer to petitions from provinces when they were heard by the emperor's *consilium*: *eum qui prouvinciae praeest adire potes* (Dig. 1.18.8 = Lenel, *Palingenesia*, Iulian. 5; Dig. 1.18.9 = Lenel, *Palingenesia*, Callistr. 1).⁶ A parallel for translating *adire* as προσιέναι in a

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¹ H. Engelmann and D. Knibbe, *Das Zollgesetz der Provinz Asia: Eine neue Inschrift von Ephesos* (Bonn 1989), *Epigraphica Anatolica* 14, 134, for their text and commentary (whence *AE* 1989, no. 681; 1991, no. 1501; *SEG* XXXIX 1180).

² M. Cottier *et al.* (eds.), *The Customs Law of Asia* (Oxford 2008), 82–5 for the text with *apparatus criticus* and English and Latin translations, and 161–4 for the commentary (by B. M. Levick).

³ The literature is immense; the discussion between F. G. B. Millar, Some Evidence on the Meaning of Tacitus, *Annals* XII.60, *Historia* 13 (1964), 180–87; The Development of Jurisdiction of Imperial Procurators: Further Evidence, *Historia* 14 (1965), 362–7, and P. A. Brunt, *Roman Imperial Themes* (Oxford 1990), 163–87 (a revised version of his 1966 article on the subject), remains fundamental.

⁴ <http://www.csad.ox.ac.uk/lex-portorii/hr/fig-14.jpg> (accessed on 20.05.2011).

⁵ *ISmyrna* II.1 728, l. 10, with Petzl's note *ad loc.* for parallels and further references, of which the observations of L. Robert, *Sur les inscriptions de Theangela*, *AC* 4 (1935), 158–9 n. 2 [= *id.*, *Coll. Froehner*, p. 70], remain the most important.

⁶ Cf. also Dig. 4.4.20 pr. (= Lenel, *Palingenesia*, Ulp. 409): *potuerit adire praetorem per procuratorem*; Dig. 11.4.3 (= Lenel, *Palingenesia*, Ulp. 2182): *adire praesidem*; Dig. 16.3.5.2 (= Lenel, *Palingenesia*, Ulp. 898): *adire eum praetorem oportere*; Dig. 24.3.22.8 (= Lenel, *Palingenesia*, Ulp. 954): *adire iudicem competentem*; Dig. 28.7.8.8 (= Lenel, *Palingenesia*,

similar context is provided by a rescript of Marcus Aurelius and Lucius Verus to Ulpius Eurycles, λογιστής of Ephesian γερουσία (AD 163/4): [προ]σ[ι]θέναι τῷ κρατίστῳ ἀνθυπ[ά]τῳ, and closely similar wording appears in two third-century documents, a letter of Gordian III to Epaphras from Aphrodisias, and a rescript of Valerian and Gallienus to the winners of sacred games at Antinoopolis.⁷ It is also the translation given in the late antique treatise *de idiomatibus casuum*, ascribed to Servius (or Sergius).⁸ The equivalence is worth noticing in the future *Greek Lexicon of Roman Law*.⁹

If my hypothesis is correct, it would confirm that we are, indeed, dealing in these lines with the establishment or enhancement of some form of independent procuratorial jurisdiction both in a public province and outside imperial domains, thus supporting the view that the grant of jurisdiction in AD 53 was not so restricted and could extend to disputes arising out of tax collection.¹⁰ It would also show that the Claudian system has not been abandoned by Nero as sometimes supposed on the basis of Suetonius (*Nero* 17) and Tacitus (*Ann.* 13.51).¹¹

Moreover, this early appearance of standard legal terminology (illustrated also by the mention of τῷ τῆς ἐπαρχείας ἀφηγουμένῳ, *qui ei prouinciae praeerit*, in the same line) in describing procurator's judicial responsibilities serves to emphasize the seminal role of the Claudian reform of AD 53 and of the work of Neronian commissioners after AD 58. It is not inconceivable that the standard formula of later imperial replies made its first appearance precisely in that period.¹² It may be of further importance that the terminology of this paragraph is non-specific to Asia. While τῆς ἐπαρχείας surely has the sense of 'the province' rather than 'a province' here, if the phrase is to be understood in the way argued for above, it is a distinct possibility that we have here a standard clause, not tailored to local specifics and meant for insertion in customs regulations of a number of provinces.¹³

Caution is, of course, needed. Any restoration of the long lacuna at the end of line 147 and the beginning of line 148 will, at least until the full publication of the tax law from Andriake or appearance of another parallel document, of necessity remain entirely conjectural, and therefore it is impossible to establish the scope and limits of procuratorial jurisdiction with any certainty on the basis of these lines. While the proposal of the *edd.pr.*, τὰς τῆν τῆν τελωνίαν μισθωσαμένου καὶ τινος τῆν ἐπαρχείαν ἐνοικοῦντος], remains attractive, as does Levick's suggestion that the text deals with disputes between *publicani* and travellers, it is not difficult to conceive of a version much more narrow in scope, referring to litigation between *publicani* and those who had commercial transactions with the *res familiaris*.¹⁴ Disputes of that kind could

Ulp. 1218): *non est necesse adire praetorem*; Dig. 29.2.12 (= Lenel, *Palingenesia*, Ulp. 399): *non est necesse praetorem adire*; CIL V 2781, l. 2 (rescript of Constantine, AD 314): *habeant adeundi iudicis liberam potestatem*. In Latin this technical sense goes as far back as the *SC de Bacchanalibus* (CIL I² 581, l. 8: *nisei pr. urbanum adiesent*), though in the Republican period more commonly governing a prepositional phrase, cf. *TLL* s.v.

⁷ Marcus Aurelius and Lucius Verus: *I.Eph.* Ia 25 = Oliver, *Greek Constitutions*, no. 170, ll. 49–50; Gordian III: προσιῶν | τῷ φίλῳ μου καὶ ἐπάρχῳ τῆς πατρίδος τῆς | ἐμῆς Φλαβίῳ Λατρωνιανῶ (IAph2007, no. 8.100, ll. 9–11); Valerian and Gallienus: πρόστιτε τῷ φίλῳ ἡμῶν | καὶ ἐπάρχῳ τῆς Αἰγύπτου Μαγνίῳ Φήλικι (*P.Oxy.* LI 3611, ll. 14–15). Cf. V. I. Anastasiadis and G. A. Souris, *An Index to Roman Imperial Constitutions from Greek Inscriptions and Papyri, 27 B.C. to 284 A.D.* (Berlin 2000), 155 s.v. πρόσσειμι (εἶμι).

⁸ GL IV.568.7–8: *adeo consularem πρόσσειμι τῷ ὑπατικῷ*.

⁹ For the preliminary announcement of this project by A. Raggi and C. Slavich (Pisa), see http://ciegl.classics.ox.ac.uk/html/webposters/75_SlavichRaggi.pdf.

¹⁰ Cf. n. 3 above for literature.

¹¹ Cf. Brunt, *op.cit.* (n. 3 above), 177–9, for a consideration of this possibility.

¹² Compare the first appearance of the title *procurator ducenarius* under Claudius: Suet., *Claud.* 24.1, with D. W. Hurley, *Suetonius: Divus Claudius* (Cambridge 2001), 164–5 *ad loc.*

¹³ Compare S. Mitchell, The Treaty between Rome and Lycia of 46 BC (MS 2070), in R. Pintaudi (ed.), *Papyri Graecae Schøyen* (*P.Schøyen* I) (Firenze 2005), 196, for a persuasive argument that the failure to mention any officials specific to the Lycian League in the clauses of that treaty concerned with division of jurisdiction between Rome and Lycia shows that this is 'a generic reference to the highest local official, copied across from other similar treaties'.

¹⁴ The Latin text could then run somewhat as follows (to adapt M. H. Crawford's Latin version of these lines): *si quae con-trouersia erit inter eum qui socius aut adfinis eius conductionis erit et eum qui cum fisco contraxerit, procuratorem Neronis Augusti qui ei prouinciae praeerit adire oportebunt*.

surely present a major problem, for instance in the Hellespontine district, in the neighbourhood of imperial estates in the Thracian Chersonesus.¹⁵ This could also be more in line with the original sense of *causa fiscalis*, particularly in a public province like Asia, where quaestorian jurisdiction still played a role more than a century later, and the tax in question was presumably still paid into the *aerarium populi Romani* rather than *fiscus*.¹⁶ We should note that the commissioners retained in parallel to this clause the decision of the consuls L. Valerius Messalla Volesus and Cn. Cornelius Cinna Magnus (AD 5), giving the right of appointing judges in some disputes arising out of the Customs Law, presumably between the publicans and the treasury, to the *praetor peregrinus* (l. 117).

Nor do these lines provide any strong clue as to whether procurator's jurisdiction in fiscal matters was in the province of Asia in any real sense subordinate to the proconsular in that period, a natural inference at least from what Tacitus says of Neronian measures in AD 58 (*Ann.* 13.51), and if so, in what form, or was established in parallel to that of the proconsul.¹⁷ As stressed by Barbara Levick, line 150 of the Customs Law may be restored in the sense that proconsuls exercised some form of control, and the advice of Ulpian to the proconsul to abstain from intervening in *causae fiscales* came as late as the reign of Caracalla.¹⁸ For the second century this, as I hope to argue elsewhere, would also better agree with other epigraphic evidence from Asia Minor, which interestingly only shows procurators acting as governors' advisers or delegates in fiscal matters, rather than exercising independent jurisdiction, well into the Antonine period.¹⁹ However, Nerva's strengthening of praetor's jurisdiction in fiscal cases (Dig. 1.1.2.32; Plin., *Paneg.* 36.3–5) is no evidence for the situation between Claudius and Nerva (or, strictly speaking, outside Italy), beyond suggesting a bleak picture under Domitian, and what survives of these and the following lines of the *lex portorii* does not help to clarify the issue. A rule that for certain types of disputes the litigants ought to approach the procurator need not mean that there was no appeal from the procurator to the proconsul or that when a plaintiff had a grievance with the procurator himself the jurisdiction did not belong to the proconsul, the quaestor or the *praetor peregrinus*.²⁰

But even with these important caveats, the new reading proposed here is of importance. If my suggestion is correct, this would be the first piece of documentary evidence to show that jurisdiction granted by

¹⁵ For Attalid lands in the Chersonesus eventually passing into Augustus' hands, Cassius Dio 54.29.5; customs stations of the Hellespontine district were listed in ll. 23–24 of the *lex portorii*.

¹⁶ Quaestorian jurisdiction in public provinces: Gaius, *Inst.* 1.6; quaestors exercising jurisdiction in the province of Asia: *I Aph 2007*, no. 12.25 (reign of Trajan); *I Aph 2007*, no. 8.86 (reign of Marcus Aurelius); *AE 1997*, no. 1448 (joint reign of Severus, Caracalla and Geta); provincial *fiscus* of Asia (not identical with the imperial): P. Herrmann and K. Z. Polatkan, *Das Testament des Epikrates und andere neue Inschriften aus dem Museum von Manisa*, *SB Wien Phil.-hist. Klasse* 265.1 (1969), 27–8; current records of the *quaestor aerarii* T. Domitius Decidianus are referred to at the beginning of the *lex portorii* (ll. 6–7). For the role of procurators in collecting taxes in the province of Asia in the second century AD, cf. G. P. Burton, *Provincial Procurators and the Public Provinces*, *Chiron* 23 (1993), 16–20.

¹⁷ Raised as a possibility in *SEG XXXIX 1180 ad loc.*

¹⁸ Cottier *et al.* (eds.), *op. cit.* (n. 2 above), 163 *ad l.* 150. For the view that situation under Caracalla may have been out of line even for the early third century, cf. Brunt, *op. cit.* (n. 3 above), 187.

¹⁹ The earliest piece of evidence after the Customs Law itself unambiguously describing procurators as an independent source of judicial decisions in the province of Asia is a recently published petition to the proconsul Arrius Antoninus (AD 188/189) from Sardis (*AE 1999*, no. 1534 = *SEG XLIX 1676*). Inscription in honour of a certain P. Aelius Zeuxidamus Aristus Zeno, who was an *aduocatus fisci* in Asia and Phrygia (*IGRR IV 819*, Hierapolis), may indicate that the honorand practised in the court of the *procurator Phrygiae*, whose residence since the reign of Marcus Aurelius was at Hierapolis, cf. G. W. Bowersock, *Martyrdom and Rome* (Cambridge 1995), 94–5. I hope to discuss procuratorial jurisdiction in Asia Minor more widely in my monograph *Law in Roman Asia Minor*, which I am preparing for publication in the Oxford Classical Monographs series.

²⁰ Cf. M. Heil, *Einige Bemerkungen zum Zollgesetz aus Ephesos*, *EA 17* (1991), 17–18, who rightly emphasizes the difference between procuratorial jurisdiction in private law cases (in his view referred to here) and the governor's *cognitio*; on different types of tax disputes, G. Klingenberg, *Die abgabenrechtliche Reform des Jahres 58 n.Chr.*, in R. Novak *et al.* (eds.), *Reformen des Rechts: Festschrift zur 200-Jahr-Feier der rechtswissenschaftlichen Fakultät der Universität Graz* (Graz 1979), 66–70, is still useful. It is notable that, as attested by Ulpian (Dig. 39.4.1 pr. = Lenel, *Palingenesia*, Ulp. 1304), praetor's jurisdiction over *publicani* survived under Caracalla, when the same Ulpian advised governors to abstain from hearing fiscal cases.

Claudius to his non-praesidial procurators was not limited to imperial domains, that the arrangements put in place in AD 53 stayed in force after Claudius' death, and that the application of standard terminology for jurisdiction to procurators (and possibly the use of the later common formula *eum qui prouinciae praeest adire*) goes back at least to Neronian tax and customs regulations.

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