

THE THEODOSIAN CODE AND EPIGRAPHIC EVIDENCE

I. THE LAW ON ACCUSATIONS ATTRIBUTED TO CONSTANTINE: EPISTULA AND EDICTUM

CTh IX, 5, 1

Imp. Constantinus A. ad Maximum p(raefectum) u(rbi).

Si quis alicui maiestatis crimen intenderit, cum in huiusmodi re convictus minime quisquam privilegio dignitatis alicuius a strictiore inquisitione defendatur, sciat se quoque tormentis esse subdendum, si aliis manifestis indiciis accusationem suam non potuerit conprobare. Cum eo, qui huius esse temeritatis deprehenditur, illum quoque tormentis subdi oportet, cuius consilio atque instinctu ad accusationem accessisse videbitur (videbatur CJ), ut ab omnibus commissi consocii statuta vindicta possit reportari.

In servis quoque vel libertis, qui dominos aut patronos accusare aut deferre temptaverint, professio tam atrocis audaciae statim in admissi ipsius exordio per sententiam iudicis conprimatur ac denegata audientia patibulo adfigatur.

P(ro)p(osita) kal. Ianuar. Volusiano et Anniano cons.

Translation: C. Pharr, *The Theodosian Code* (1952) 230.

Emperor Constantine Augustus to Maximus, Prefect of the City.

If any person should bring the charge of high treason against another, since a person convicted in a case of this kind is not protected by the privilege of any high rank from a very severe inquisition, the accuser shall know that he also must be subjected to torture if he should not be able to prove his accusation by other clear evidence. Along with the person who is discovered to be guilty of such rash criminality, that person also must be subjected to torture by whose advice and instigation he appears to have undertaken the accusation, in order that the established penalty may be exacted of all persons who are accomplices of the deed.

In the case of slaves also, or of freedmen who attempt to accuse their masters or patrons, respectively, or to report them to the authorities, the assertion of such atrocious audacity shall be repressed immediately at the inception of the guilty act itself, through the sentence of the judge, a hearing shall be denied such slave or freedman, and he shall be affixed to the cross. (January 1, 314)

Edictum de accusationibus

Three main copies: *CIL* V, 2781 ("Padua"). *I. Creticae* I, XVIII, 188 (Lyttos). *CIL* III, 12133 (Tlos). Four minor copies: *I. Sinope* 95-96 (Sinope). *Museum Helveticum* 43 (1986) 136 (Pergamum). *Année épigr.* 1996, 1469 (Ephesus). *Année épigr.* 2002, 1302 (Corcyra).

Select bibliography: D. Feissel, *Antiquité tardive* 3 (1995) 49-51. J. F. Matthews, *Laying down the Law* (New Haven, 2000) 254-270 (with English translation). S. Corcoran, *Antiquité tardive* 15 (2007) 221-250.

Exemplum sacri edicti.

[Pr.] [Reb]us ipsis a[ct]is probatum est plurimos non contentos fortunis suis [...] *ET IDE* [...] ad accusationem innocentium [procedere a]dque ex eiusmodi causis tam eorum qui accus[an]tur quam qui [ad tes]timonium voc[an]tur gravissimis vexationibus adfici.

[1] Unde consulentes securitati provincialium nostrorum eiusmodi remedi(a) prospeximus ut accusator non omnimodo de iudicio repellatur, verum quicumque intentionibus suis probationes ad[der]e confidit, habeat adeundi iudicis liberam potestatem ac manifestis indiciis commissi reum detegat, ut pro qualitate factorum competenter in eum qui convictus fuerit vindicetur. Quod si minime potuerit ea quae intentaverit conprobare, scire debet severiori s[er]v[ati]o sententiae subiugandum.

[2] Sane si quis alicui maiestatis crimen intenderit, cum eiusmodi obiectus minime quemquam privilegio dignitatis alicuius a strictiori inquisitione tueatur, sciat se quoque tormentis esse subdendum, si aliis manifestis indiciis atque argumentis accusationem suam non potuerit conprobare, cum in eo qui huius esse temeritatis deprehenditur illud quoque tormentis erui oporteat cuius consilio atque instinctu ad accusationem accessisse videatur, ut ab omnibus tanti commissi consociis vindicta possit reportari.

[3] Delatoribus autem quod adeundi quoque iudicis tam statutis parentum nostrorum quam etiam nostris sanctionibus interclusa sit facultas, omnibus cognitum est, cum eiusmodi hominibus audientia non debeat commodari, quandoquidem eos pro tanti sceleris audacia poenae conveniat subiugari.

[4] In servis quoque sive libertis qui dominos vel patronos accusare aut deferre temptant, eiusmodi legem iuxta antiqui quoque iuris statutum observandam esse censuimus, ut scilicet professio tam atrocis audaciae statim in admissi ipsius exordio per sententiam iudicis comprimatur ad denegata audientia patibulo adfixus qui ad eiusmodi desperationem processerit exemplum ceteris praestet, ne quis in posterum audaciae similis existat.

[5] Sane ut undique versum securitati innocentium consulatur, placet etiam famosos libellos non admitti. Quos sine nomine propositos si qui invenerit, statim detrahare atque scindere vel igni debeat exurere. In quibus etiam iudicum eiusmodi observantiam esse oportebit, ut, si forte ad se talis libellus perlatus fuerit, igni eum praecipiat concremar[i], cum eiusmodi scripturam ab audientia iudicis penitus oporteat submoveri, mane(n)te contra eos inquisitione qui libellos eiusmodi proponere ausi fuerint, ut reperti debitis t[em]eritatis suae poenis subiciantur.

[Ep.] Super his itaque omnibus tam ad praefectos nostros quam etiam ad praesides et rationalem et magistrum privatae scripta direximus, quorum exempla alio edicto nostro subdita cuiusmodi legem statutumque contineant plenissime declaratur.

II. JULIAN'S CONSTITUTION *DE PEDANEIS IUDICIBUS*

CTh I, 16, 8 (CJ III, 3, 5)

Imp. Iulianus A. Secundo ppo. Quaedam sunt negotia in quibus superfluum est moderatorem exspectari (expectare CJ) provinciae. Ideoque pedaneos iudices, hoc est qui negotia humilia disceptent, constituendi damus praesidibus potestatem.

Dat. V kal. Aug. Antiochiae Mamertino et Nevitta cons.

Translation: C. Pharr, *The Theodosian Code* (1952) 29.

The same Augustus to Secundus, Praetorian Prefect. There are certain cases in which it is unnecessary to await the governor of the province, and therefore We grant to the governors the power to appoint petty judges, that is, judges who shall decide the less important cases. (July 28, 362)

Inscription of Amorgos, main editions: Th. Mommsen, *CIL* III 2, 459 (p. 86-87, 982). M. Michaux, *RIDA* ser. 3, 2 (1955) 303-310. D. Feissel, in: *La codification des lois dans l'Antiquité. Actes du colloque de Strasbourg, 27-29 nov. 1997* (Paris, 2000), 315-337.

Inscription of Amorgos

E(xemplum) s(acrarum) l(itterarum).

Oboriri solent nonnul[lae] controuersiae quae not(ionem) requirant et examen iudicis celsioris, tum autem quaedam negotia sunt in quibus superfluum sit moderatorem exspectare provinciae.

Quod nobis utrumque pendentibus rectum admodum visum est ut pedaneos iudices, hoc est eos qui negotia humilia disceptent, constituendi daremus praesidibus potestatem.

Ita enim et sibi partem curarum ipsi dēpserint et tamen nihilominus quasi ipsi hoc munus administrabunt cum illi quos legere administren[t]. Cuius rei conscii ani[...] atque eminente[m ex]cellentiam tuam [san]cimus, Secunde paren[s cari]ss[ime at]qu[e] ama[n]tissime,

-----]icum

e[...].ici[...].i[- -g]ratissimum conc[- -]tare in quo publ[ico commo] consulatur.

CTh I, 16, 8 (CJ III, 3, 5)

Imp. Iulianus A. Secundo ppo.

Quaedam sunt negotia in quibus superfluum est moderatorem exspectari provinciae.

Ideoque pedaneos iudices, hoc est qui negotia humilia disceptent, constituendi damus praesidibus potestatem.

Dat. V kal. Aug. Antiochiae Mamertino et Nevitta cons.

III. A CONSTITUTION OF VALENS ON THE ASSESSMENT OF TAXES AND A GREEK EDICT IN THE PROVINCE OF ISLANDS

CTh XIII, 10, 7

Idem AAA. ad Modestum p(raefectum) p(raetori)o.

Sicubi subscriptorum modo¹ sorte fatali morientibus de scribto aliquid fuerit inminutum contraque in vicina vel contermina eius vel in eodem² vel ubilibet simili substantia ratione nascendi ultra conscribtorum numeris³ adcreverit, modus censuum intraque⁴ servetur, ut ex eo qui superest ille qui defuerit suppleatur.

Hoc autem ut rite celebretur, auctoritas tua iudicibus tantum, id est rectoribus provinciarum, permittat potestatem, ita ut iidem, cum querimonia defensorum vel plebeiorum ad eos fuerit nuntiata, exhibitis partibus secundum fidem rerum coram cognoscant ac stabilitatem census finita altercatione componant, eos tantum qui mortui videbuntur ex ad crescentibus repleturi. Ceterum illos qui relictis censibus aufugerunt ad excusationem pertinere non est aequum, quando quidem eum qui videbitur aufugisse constat esse revocandum.

Dat. XVII kal. Feb. Constantinopoli Gratiano A. II et Probo cons.

Translation: C. Pharr, *The Theodosian Code* (1952) 401.

The same Augustuses to Modestus, Praetorian Prefect. Whenever the due measure of assessed persons is diminished because of the death, by the lot of fate, of persons who have been assessed, and on the other hand, if there should be an increase, by reason of births, in the number of those persons assessed for taxes in neighboring or adjoining districts, or in the same district, or anywhere at all, of a similar class of taxpayers, the measure of the tax assessment in both places shall be preserved, so that the place of the person who is lacking shall be supplied by such supernumerary. Moreover, that this regulation may be duly enforced, Your Authority shall grant full power to judges only, that is, to governors of the provinces, so that when the complaint of the defenders or of the plebeians has been lodged with them, the parties shall be produced in court, and the aforesaid governors shall try the case in the presence of all parties, according to the trustworthiness of the situation. Thus they shall compose the stability of the tax assessment and shall fill from the number of supernumeraries the places only of those persons who are proved to be dead. But it is not just that such exemptions shall apply to those persons who desert their tax assessments and flee, since, indeed, it is established by law that a man who appears to have fled must be recalled. (January 16, 371)

¹ *Sicubi [censuali in possessione cuiusdam hominibus quibusdam de] subscriptorum modo* Mommsen; *Sicubi [in aliqua metrocomia de] subscriptorum modo* Jones; *modo ... describto* Pharr.

² *in eodem [territorio]* Seeck.

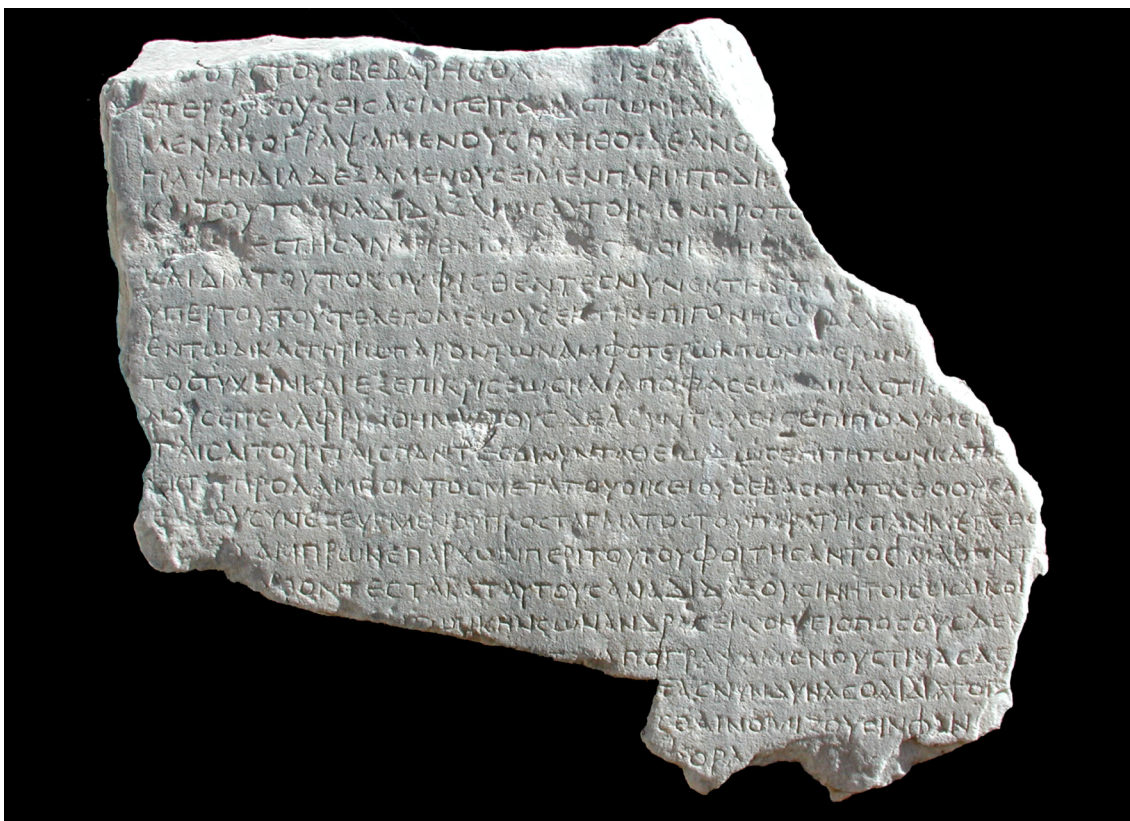
³ *ultra conscriptum numerus* Mommsen.

⁴ *in utraque* Mommsen; *inter utramque* Jones.

A governor's edict found in Kos

Main editions: *IG XII 4*, 273. D. Feissel, *Chiron* 39 (2009) 297-322.

αὐτοὺς τοὺς βεβαρῆσθαι [νο]μίζοντας τῷ [..... ἀπο]γραψαμένους παρα[- - ca 12-14 - -]
 ἑτέροισι οὐδ' εἴσασιν γείτονας τῶν καὶ αὐτῶν [.....] νομοῖς ἐπὶ μειωτῷ [κῆνσφ ὀλίγου]ς
 μὲν ἀπογραψαμένους, πλῆθος δὲ ἀνθρώπων ἔτι ἀσ[υ]ν[τελῶν ἔχοντας δὴ καὶ κ[ουφὴν] ἀπο-
 5 γραφὴν διαδεξαμένους, εἰ μὲν παρὶ τὸ δικαστ[ήριον, ὑπὲρ] ἑαυτῶν προσελθεῖν καὶ ὑποβαλεῖν
 καὶ τοῦτο ἀναδιδάξαι ὡς αὐτοὶ μὲν πρὸ τούτου οἱ πλείονας ἀπογραψάμενοι εἰς ἐλάττον-
 αὐ μὲν ἔστησαν ἀριθμόν, οἱ δὲ σύνοικ[οι] ἢ οἱ γείτο[νες οἱ ὀλίγοι τὸ] τῆνικαὶ τυγχάνοντες :
 καὶ διὰ τοῦτο κουφισθέντες νῦν ἐκ τῆς τ[ῶ]ν [ἐπιγεννη]θέντων προσθήκης πληθύνουσιν,
 ὑπὲρ τοῦ τούτοις λεγομένου ἐκ τῆς ἐπιγονῆς θαλλεῖν καὶ τ[οὺς] βεβαρῆσθαι αἰ[τι]ωμένους,
 10 ἐν τῷ δικαστηρίῳ παρόντων ἀμφοτέρων τῶν μερῶν κ[αὶ τῆς] ἀληθείας ἐξετασθείσης, ἰσότη-
 τος τυχεῖν καὶ ἐξ ἐπικρίσεως καὶ ἀποφάσεω[ς] δικαστικῆς τοῖς μὲν ταῖς ἀληθείαις βεβαρημέ-
 νους ἐπελαφρυνθῆναι, τοὺς δὲ ἀσυντελεῖς ἐπὶ πολὺ μείν[α]ντας κατὰ τὸ δίκαιον ὑπαχ[θ]ῆναι
 ταῖς λιτουργίαις. Πάντες <τ>οῖνον τὰ θειωδῶς ἐπὶ τῇ τῶν κατὰ λ[ό]γον λυσιτε<λ>εῖα θεσπεισθέντα
 ἐκ τοῦ προλάμποντος μετὰ τοῦ οἰκείου σεβάσματος θεοῦ καὶ π[ρ]οσκυνουμένου γράμματος καὶ
 15 ἐκ τοῦ συνευγμένου προστάγματος τοῦ παρὰ τῆς πανμεγέθους ἐξουσίας τῶν κυρίων μου τῶν
 ὑπερλάμπρων ἐπάρχων περὶ τούτου φοιτήσαντος μαθόν[τες, ἢ ἐ]νδημοῦντι τῷ δικαστηρίῳ
 [προσε]<λ>θόντες τὰ κατ' αὐτοὺς ἀναδιδάξουσιν ἢ τοῖς ἐκδίκοις ἐκ βι[βλίων] δόσεως πόσους μ[ὲν]
 [- - ca 12 - -] τῶν κήνσων ἄνδρας εἶχον, εἰ" πόσους δὲ ν[ῦν] ἄνδρας ἔστησαν θανατ[- - ca 8 - -]
 [- - - - - ca 18 - - - - -] του ἀπογραψαμένους, τίνας δὲ [- - ca 8 - -] ἤσοντα[- - ca 12 - -]



IV. A CONSTITUTION OF VALENS ON CURIAL DUTIES AND A LATIN INSCRIPTION OF KOS

CTh XII, 1, 76 (CJ X, 32, 31)

Idem AAA. ad Modestum p(raefectum) p(raetori)o. Ex omnibus domibus producti qui origine sunt curiali, ad subeundam publicorum munerum functionem protrahantur, quippe cum occultatoribus talium praeter iacturam existimationis etiam rerum discrimen incumbat, si ulterius progressi utilitatem publicam privatis studiis (custodiis CJ) et patrociniis postponant.

Dat. III id. Iul. Ancyrae Gr(at)iano A. II et Probo cons.

Translation: C. Pharr, *The Theodosian Code* (1952) 353.

The same Augustuses to Modestus, Praetorian Prefect. Persons who are of the birth status of decurions shall be led forth from all homes and shall be dragged forth to undergo the performance of their compulsory public services. Of course, the harborers of such persons shall be threatened with loss of their property as well as loss of status, if they should proceed farther and should esteem the public welfare less than their personal desires and their protection.

(July 13, 371)

Latin inscription of Kos

Main editions : *IG XII 4*, 272. D. Feissel, *Chiron* 39 (2009) 314-317.

tendunt ut in domibus [
municipibus mereant civi[
stricta taenacis observan[tiae
origene curiales rimanci[pentur
5 functionum publicaru[m
[.]sum uigorem salutaris [
[...].t.ribus praeteri[
[.....]p[.]t[.]edic[

