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# ARCHIV FÜR PAPYRUS- FORSCHUNG UND VERWANDTE GEBIETE

**BEGRÜNDET VON**

*Ulrich Wilcken*

**HERAUSGEGEBEN VON**

*Jean-Luc Fournet, Paris*

*Bärbel Kramer, Trier*

*Wolfgang Luppe, Halle*

*Herwig Maehler, Wien*

*Brian McGing, Dublin*

*Günter Poethke, Berlin*

*Fabian Reiter, Berlin*

*Sebastian Richter, Leipzig*

**DE GRUYTER**

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### **‘When the culprits come to light ...’:**

**P.IFAO I 26, BGU III 731.ii, and P.Fay. 108\***

Benjamin Kelly (Toronto)

**Abstract:** This paper suggests improved reconstructions for damaged passages in the request sections of three petitions: P. IFAO I 26; BGU III 731.ii; and P. Fay. 108. All three are best interpreted as relating to cases in which the petitioners did not know the identities or whereabouts of the wrongdoers, and therefore requested the registration of petitions so that their claims would be protected when the culprits came to light.

P.IFAO inv. 191, published as P.IFAO I 26, is a 5.5 cm x 6 cm papyrus fragment, the recto of which contains the conclusion of a petition; the verso is blank. The editor dated the document to the second century AD, and transcribed the text as follows:

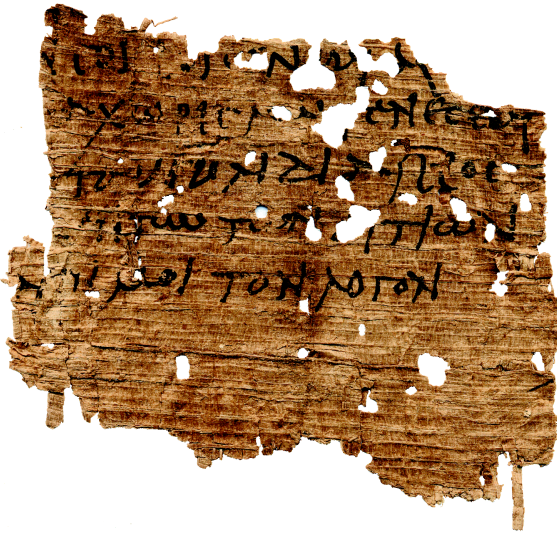
φανερó]ν σοι ποιω̑ν καὶ ἄξ[ιω̑  
ἐν κατ]αχωρίςμῳ γενέσθαι  
τάδε] τὰ βιβλίδια πρὸς  
τὸ ἀπ]άντων τῶν αἰτιῶν  
μέ]νιν μοι τὸν λόγον

The text is the base of a petition with a well recognized type of request: that the petition be registered by the recipient (usually the *στρατηγός*).<sup>1</sup> Most of the language in P.IFAO I 26 is precisely what we would expect in a request of this kind; the formulation *πρὸς* (or sometimes *εἰς*) τὸ μένειν μοι (or ἡμῖν) τὸν λόγον is

\* I thank Robert Tordoff and Angela Hug for their comments on this article. I am to blame for any remaining imperfections. The image of P.IFAO inv. 191 appears courtesy of Institut Français d'Archéologie Orientale in Cairo, which holds the copyright.

<sup>1</sup> The main published discussions are: L. Mitteis, *Zur Lehre von den Libellen und der Prozeß-einleitung nach den Papyri der früheren Kaiserzeit*, *Berichte über die Verhandlungen der Königlich Sächsischen Gesellschaft der Wissenschaften zu Leipzig: Philologisch-historische Klasse* 62, 1910, 61–126, at 69–76; id., *Grundz. Mitt.*, pp. 33–34; F. Zucker, *Witten*, *Die Klagschriften mit Schlussbitte um Registrierung*, *Philologus* 69, 1910, 449–465; P. D. M. Witt, *The Judicial Function of the Strategos in the Roman Period*, *Diss. Duke University* 1977, 49–57.

especially common in registration petitions from the second half of the second century as well as the third century AD.<sup>2</sup> In his fundamental discussion of this type of petition, Mitteis drew attention to the fact that registration requests were often made when the identities or whereabouts of culprits who had committed



P.IFAO inv. 191 (= P.IFAO I 26): Petition

<sup>2</sup> For clear parallels, see: BGU I 2.17 = Chrest. Mitt. 113 (AD 209); BGU I 45.17–18 (AD 203); BGU I 321.23 = Chrest. Mitt. 114 (duplicate = P.Berol. inv. 7081, recto, 22–23) (AD 216); BGU II 651.8–9 = Chrest. Mitt. 111 (AD 192); BGU VII 1577.5–6 (AD 199–209); P.Bodl. I 40.7–8 (AD 222–235); P.Fouad 29.14 (AD 224); P.Grenf. II 61.19–21 (AD 195 or 197–198 [see J.E.G. Whitehorne, *Strategi and Royal Scribes of Roman Egypt (Str.R.Scr.<sup>2</sup>)*, 2006, 26]); P.Harr. II 200.14 (AD 236); P.Lond. II 363.8 = A. Martin, ‘Women, camels, donkeys, or other animals’: Réédition de P.Lond. II 363 (p. 170), in: B. Palme (ed.) *Akten des 23. Internationalen Papyrologenkongresses*, 2007, 435–438, at 437 (c.AD 175); P.Mich. VI 423.24–25 (duplicate = VI 424) (AD 196–197); P.Mich. IX 527.19–22 (AD 187–188 [see Whitehorne, *Strategi*, 25]); P.Tebt. II 330.10–11 = Chrest. Mitt. 110 (c.AD 196–198 [see Whitehorne, *Strategi*, 46]). Aside from these texts, some badly damaged petitions have also been reconstructed to have this formula: BGU III 731.ii.14–15 (AD 180); P.Fay. 108.26–27 (c.AD 170 [see Whitehorne, *Strategi*, 44]); PSI III 249.20 (AD 218). Some registration petitions also offer a variation on the formula *πρὸς πρὸς* (or *εἰς*) *τὸ μένειν μοι* (or *ἡμῖν*) *τὸν λόγον*: P.Gen. II 107.13 (AD 164 [see BL VIII 164]); P.Oxy. XLVI 3289.17–18 (AD 258/259); P.Oxy. LXI 4122.17–18 (AD 305). The formula also occurs in petitions that do not explicitly request registration: P.Flor. I 9.15–16 (AD 255); P.Oslo II 23.13–14 = Pap. Choix 19 (AD 212 [see BL VIII 228]); P.Tebt. II 333.13–14 = Chrest. Mitt. 115 = Sel. Pap. II 336 (AD 216); SB VI 9203.16–17 (AD 222–235). Such petitions without explicit registration requests cannot be confidently classed as registration petitions; in what follows they are noted but do not form part of the main argument.

wrongs were unknown.<sup>3</sup> He suggested tentatively that the purpose of this procedure could have been to trigger an official investigation of the wrong, or to ensure that the claim did not become barred by the expiration of a limitation period if it took some time to find the culprit(s).<sup>4</sup> This latter suggestion has led most editors to translate the word λόγος in such contexts as 'right' or 'claim', or, in French editions, 'droit'.<sup>5</sup> The phrase πρὸς (or εἰς) τὸ μένειν μοι (or ἡμῖν) τὸν λόγον is thus generally understood to mean 'so that my (or our) right may remain'.

P.IFAO I 26, as reconstructed by its editor, provokes unease. It contains much of the language typical of registration petitions of the second and third centuries, but there is no satisfactory parallel for ἀπάντων τῶν αἰτιῶν in the request section of a published registration petition. Furthermore, if the author of the petition really did write this, it would force a reevaluation of the meaning of λόγος in these contexts. The editor's accentuation of αἰτιῶν assumes that we are dealing with the genitive plural of ἡ αἰτία rather than ὁ αἵτιος. This would, indeed, appear to be the only way in which lines 4–6 as printed can make sense:<sup>6</sup> ἀπάντων τῶν αἰτιῶν is an attributive genitive which limits τὸν λόγον; for the sake of emphasis it appears before the article of the substantive that it limits.<sup>7</sup> One would still have to assume an error of gender, ἀπάντων for ἀπακῶν, but this is not unthinkable. Lines 4–6 would therefore mean: 'so that my statement of absolutely all the accusations may remain for me'. If this is correct, λόγος would refer not to the abstract right to commence proceedings before a court or obtain a remedy from it, but to the rather

<sup>3</sup> Mitteis, *Zur Lehre von den Libellen* (n. 1), 74–76; cf. id. *Grundz. Mitt.*, pp. 33–34. This observation has been echoed by several editors: Martin, 'Women, camels ...' (n. 2), 438; P.Gen. I<sup>2</sup>, p. 118; P.Oxy. LVIII, p. 4; LXI, p. 111 and 4122.16 n. It is possible to imagine that, in some cases, there were other reasons, aside from the unavailability of the defendant, that made the petitioner unable or unwilling to begin court proceedings immediately; cf. Witt, *Judicial Function* (n. 1), 49–50.

<sup>4</sup> Mitteis, *Zur Lehre von den Libellen* (n. 1), 72–73; cf. id., *Grundz. Mitt.*, p. 34.

<sup>5</sup> BGU I 321.23 ('my rights', trans. J. Whitehorne, *Strategus, Centurion, or Neither: BGU I 321 and 322 (= M.Chrest. 114 and 124) and Their Duplicates*, BASP 40, 2003, 201–211, at 204); P.Bodl. I 40.8 ('my claim'); P.Fouad 29.14 ('mon droit'); P.Gen. II 107.13 ('le droit'); P.Lond. II 363.8 (p. 170) ('nos droits', trans. Martin, "Women, camels..." [n. 2], 437); P.Mich. VI 423.25 ('the right to plead'); P.Mich. IX 527.22 ('the right to plead'); cf. P.Oxy. XLVI 3289.18 ('our case'); P.Oxy. LXI 4122.18 ('right of action'). See too Preisigke, WB, sv. λόγος (10) 'Rechtsgrund, Rechtsanspruch'. Note that several editions published before Mitteis' analysis of these petitions translated the word differently: P.Fay. 108.26–27; P.Tebt. II 330.10–11; 333.13–14; the editor of P.Harr. II 200 (published in 1985) also understands the phrase in essentially the same way as the editors of P.Tebt. II: 'so that I may be able to call to account those who turn out to be the guilty parties'.

<sup>6</sup> Assuming that we are dealing with the genitive plural of ὁ αἵτιος could yield a grammatically coherent phrase which translates as 'so that the right of absolutely all the offenders may remain for me', but this is conceptually incoherent. Nor can it be a question of preserving the petitioner's rights *against* the offenders: one would need something like καθ' ἀπάντων τῶν αἰτιῶν to produce such a sense.

<sup>7</sup> For such a positioning of the attributive genitive, see Mayser, *Gram. II.2*, p. 145, and parallels cited there.

more concrete statement of the misdeeds committed by the culprits that is embodied in the text of the petition itself. This would suggest that the word has been repeatedly mistranslated by editors of other petitions containing the phrase *πρὸς* (or *εἰς*) *τὸ μένειν μοι* (or *ἡμῖν*) *τὸν λόγον*.

A photo of the document, helpfully supplied by the Institut Français d'Archéologie Orientale in Cairo, suggests a more plausible understanding of the text. The editor read an alpha as the first surviving letter in line 5, leading him to reconstruct ἀπ[ά]ντων. The letter in question is faint and incomplete, so at the very least should have been dotted. One can perhaps see why the editor read an alpha, especially in the light of the first alpha in line 4, with its nearly horizontal right-hand stroke. But there is the problem that the first letter in line 5 has what appears to be a stroke looping to the right above what should be the apex of the alpha. A comparison with the forms of the letters *εν* in *γενέσθαι* in line 3 suggests a much more likely reading for the first letter in line 5: that what the editor read as an alpha is actually an epsilon. The first epsilon in *γενέσθαι* has a crossbar drawn quite high up the letter, with the crossbar then connecting to the nu. Its top curve is rather abbreviated. The remains in line 5 are consistent with exactly the same epsilon-nu combination. It therefore is much more likely that the scribe wrote *εντων* rather than *αντων*.

An examination of petitions with a similar formula suggests an appealing reconstruction for the start of line 5. In P.Tebt. II 330.10–11, the registration of the petition is requested *πρὸς τὸ φανέντος τινὸς αἰτ[ί]ον μέν<ε>ιν μοι τὸν λόγ[ο]ν*. Similarly, in P.Grenf. II 61.19–21 we find *πρὸς τὸ φανέντος τοῦ Cτοτοήτεως μένειν μοι[ι] τὸν λόγον*.<sup>8</sup> A related formula also uses a participial form of φαίνω (this time a future rather than an aorist passive participle) after the preposition *πρὸς*: e.g. BGU I 35.13–15: *πρὸς τὸ μέν<ε>ιν μοι τὸν λόγον πρὸς τ[ο]ν φανησκόμην αἰτίου*.<sup>9</sup> I would, therefore, suggest that in P.IFAO I 26 the scribe wrote *φανέντων* in line 5. Now, it is clear from the photograph that there is a dot of ink to the left of the epsilon; this is consistent with the bottom of the right-hand upright of a nu. Moreover, the photograph also shows traces of the right-hand extremities of the tau in *καταχωρίσμω* and of the epsilon in *τάδε*. Lines 3–6 should therefore be transcribed as follows:

    ἐν κα]ταχωρίσμω γενέσθαι  
    τάδ]ε τὰ βιβλίδια πρὸς  
5 τὸ φα]νέντων τῶν αἰτίων  
    μέ]ν<ε>ιν μοι τὸν λόγον

<sup>8</sup> See too P.Fay. 108.26–27 (quoted below). Also relevant is P.Mich. IX 527.19–22, a petition about a mare who has disappeared (presumably under suspicious circumstances): *εἰς τὸ εὐρεθῆναι αὐτῆς μεῖναι μοι τὸν λόγον*.

<sup>9</sup> See too BGU II 651.8–10; P.Fouad 29.14–15; P.Harr. II 200.14–16; cf. BGU I 72.15–16; P.Oxy. XLVI 3289.17–19. Several petitions without an explicit request for registration have the same feature: P.Flor. I 9.15–17; P.Oslo II 23.13–15; P.Tebt. II 333.13–15; SB VI 9203.16–18.

As with P.Tebt. II 330 and P.Grenf. II 61, the phrase φα[νέντων τῶν αἰτίων is best understood as a genitive absolute expressing time.<sup>10</sup> If we accept the conventional understanding of λόγος as 'right' in such contexts, the phrase can be translated 'so that my right may remain when the culprits come to light'. Thus, standing behind this petition is the scenario that Mitteis saw in several other registration petitions: a wrong had been committed by culprits who were unknown or who had vanished; the petitioner wanted to register the petition in case the culprits were later found.

Reflection on P.IFAO I 26 and its parallels also suggests improvements to the texts of two other petitions with registration requests, both of which also would seem to arise from situations in which the culprits' identities were unknown. First, there is BGU III 731.ii, a document dated to AD 180. The editor reconstructed the request section in lines 12–15 in the following way: ὅθεν ἐπιδίδωμι καὶ [ἀξιῶ] ἐν | καταχωρισμῷ [γενέσθαι τάδε τὰ] | βιβλίδια εἰς τὸ φ[ανέντος τοῦ . . . . .] | μένειν μοι τὸ[ν λόγον]. Marius Gerhardt of the Ägyptisches Museum und Papyrussammlung in Berlin has kindly checked the papyrus on my behalf, and confirms the editor's reading of phi at the end of line 14. Moreover, he reports the remains of what seems to be the upper left part of an alpha after the phi. The fully extant lines of the document (lines 4–10) contain 25 to 31 letters each, with the letters being of quite variable size; the nus and omegas in particular are quite broad. Since there are 16 extant letters in line 14 if we include the alpha, there could have been something in the order of 15 or 16 letters lost at the end of the line, but fewer are also possible. It is also relevant that Mr Gerhardt reports that the phi in line 14 stands in almost the middle of the line, to judge from the fully extant lines in the earlier part of the document.

On analogy with P.Grenf. II 61.19–21 (quoted above), one could suggest that the name of the alleged culprit stood in the lacuna at the end of line 14. But there is no sign in the narrative of the petition that the petitioner knew who committed the theft, and certainly no suspect is named. In this context, it would be odd for a named individual to appear in the request section without prior introduction. For much the same reason, φα[νέντος αὐτοῦ] and φα[νέντων αὐτῶν] are also to be rejected. In the light of P.Tebt. II 330 and – I would suggest – P.IFAO I 26, it is more plausible to suggest that the gap at the end of BGU III 731.ii.14 can be reconstructed φα[νέντος τοῦ αἰτίου] or φα[νέντων τῶν αἰτίων]. There is no strong criterion that allows us to choose between these alternatives, since, in cases of unwitnessed thefts and acts of property damage, the authors of registration petitions sometimes assume a single culprit, and sometimes multiple perpetrators.<sup>11</sup> But it is perhaps reasonable to express a moderate preference for φα[νέντων τῶν

<sup>10</sup> Of course, it is not impossible that a conditional sense was intended by the author instead of (or as well as) a temporal one; note the editors' translation of P.Tebt. II 330.10–11: 'if any one is proved to be the culprit'.

<sup>11</sup> Individual culprit: P.Tebt. II 330. Groups: BGU II 651; P.Harr. II 200; P.Oxy. XLVI 3289; cf. P.Oslo II 23, BL II.2 91; P.Tebt. II 333. In some petitions concerning unknown culprits, the authors hedge their bets by referring to multiple perpetrators at one point of the document and single perpetrators at another: BGU I 35; 72; cf. SB VI 9203.

αἰτίων], since the petition concerns the theft of a large quantity of wood (supposedly worth 3000 dr.),<sup>12</sup> 20 artabas of salt, and a door. Although multiple trips by a single thief would not be unthinkable, it would be natural for the author of the petition to assume that several people colluded to carry away such a quantity of material.

Secondly, an improvement can be suggested for P.Fay. 108, a petition from around AD 170 complaining of what was apparently a bandit attack on two pig merchants by individuals whose identities seem to have been unknown (their names are certainly not mentioned).<sup>13</sup> At lines 26–27, the editors reconstructed *πρὸς τὸ φανέ[ντων τῶν ἐπαιτίων μένειν] | ἡμεῖν τὸν λόγ[ον]*. The reconstruction of *ἐπαιτίων* rather than *αἰτίων* is hard to defend, since one always finds *αἴτιος* rather than *ἐπαίτιος* in such contexts.<sup>14</sup> Furthermore, whilst *ἐπαίτιος* is attested in Greek literary texts, searches of the DDBDP and the WörterListen show that it is, as yet, unattested in documentary papyri. Reconstructing *αἰτίων* rather than *ἐπαιτίων* would have made for a line of 29 letters rather than 31, which is plausible. Lines 4 to 16 of the document are more or less fully preserved, and contain 24 to 31 letters.<sup>15</sup> In line 26, there are ten extant letters, so it is therefore entirely conceivable that 19 have been lost at the end of the line, rather than the 21 that the editors assumed. Of course, it is not physically impossible that the line read *πρὸς τὸ φανέντων αὐτῶν μένειν*, but the absence of precise parallels for *αὐτῶν* in such a context makes this less likely. The word *αὐτῶν* would also be ambiguous, since the preceding narrative refers not just to the petitioners and the *κακοῦργοι* who attacked and robbed them, but also both to a watchtower guard who was another victim in the incident, and to a stolen pig. The words *τῶν αἰτίων* are therefore to be preferred.

<sup>12</sup> For this valuation, and the price of wood generally, see H.-J. Drexhage, *Eigentumsdelikte im römischen Ägypten* (1.–3. Jh. n.Chr.): Ein Beitrag zur Wirtschaftsgeschichte, ANRW II.10.1, 1988, 952–1004, at 994–997; id., *Preise, Mieten/Pachten, Kosten und Löhne im römischen Ägypten bis zum Regierungsantritt Diokletians*, 1991, 112–118.

<sup>13</sup> For this incident, see B.C. McGing, *Bandits, Real and Imagined*, in *Greco-Roman Egypt*, BASP 35, 1998, 159–183, at 167.

<sup>14</sup> For references, see above, 372, with nn. 8–9.

<sup>15</sup> Lines 1–3 are not useful in establishing the likely number of letters in line 26, since they are either of irregular length or contain text of irregular size. See the photo at <http://ipap.csad.ox.ac.uk/Fayum-colour/300dpi/P.Fay.108.jpg> (accessed 19 November 2013).