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THE EPHESIAN CUSTOMS LAW AND THE THIRD MITHRADATIC WAR

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## THE EPHESIAN CUSTOMS LAW AND THE THIRD MITHRADATIC WAR

It is hardly surprising that the remarkable Customs Law from Ephesos, published by Engelmann and Knibbe in 1989, has aroused so much interest.<sup>1</sup> Among the contributions on the topic is an attempt by Merkelbach to use the inscription to make two highly debateable chronological assertions. First, that the Third Mithradatic War started in 74 B.C., not 73. Second, that the royal Bithynian/Pontic era began in 298 B.C., not 297.<sup>2</sup> Since at least the second of these has already established a bridgehead in the scholarly record,<sup>3</sup> it seems desirable to challenge both notions as firmly as possible.<sup>4</sup>

The inscription is a copy of the customs regulations of the province of Asia, revised and published by the three *curatores publicorum vectigalium* nominated by Nero in A.D. 62 (Tac., Ann. 15,18,4). According to the editors, the first part (l. 7–84) quotes the Customs Law of the consuls of 75 B.C., L. Octavius and C. Aurelius Cotta, who reworked the existing legislation.<sup>5</sup> Merkelbach assumes that such a law could only have been passed after the death of Nicomedes IV of Bithynia, who must, therefore, be dead already in 75 B.C.: Eutropius' express statement (6,6) that Nicomedes died in the consulship of Lucullus and Cotta in 74 must be wrong. We are not told why this should be so, but presumably Merkelbach is thinking of the reference in the text to the activity of *publicani* in Bithynian territory (paragraphs 2, 4, 6, 9 especially): a law involving the acceptance of such activity could only have been made after the provincialisation of Bithynia, and hence, after the death of Nicomedes IV. With Nicomedes dead in 75, the war must have started in 74. There are assumptions here that are by no means necessary.

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<sup>1</sup> H. Engelmann, D. Knibbe, Das Zollgesetz der Provinz Asia. Eine neue Inschrift aus Ephesos, EA 14, 1989, 1–195 (preliminary report by the same authors, Das *Monumentum Ephesenum*: ein Vorbericht, EA 8, 1986, 19–32). See now SEG XXXIX, 1989, No. 1180; L'année épigraphique 1989 No. 681. Important discussions particularly in C. Nicolet, À propos du règlement douanier d'Asie: *demosionia* et les prétendus *quinque publica Asiae*, CRAI, 1990, 675–698; W. Eck, Cn. Calpurnius Piso, *cos. ord. 7 v. Chr.* und die *lex portorii provinciae Asiae*, EA 15, 1990, 139–145; C. Nicolet, Le *Monumentum Ephesenum* et les dîmes d'Asie, BCH 115, 1991, 465–480; M. Heil, Einige Bemerkungen zum Zollgesetz aus Ephesos, EA 17, 1991, 9–18. See also D. Knibbe, *Legum dicendarum in locandis vectigalibus omnis potestas*, ÖJh 58, 1988, 129–134; H. Wankel, Zum Zollgesetz der Provinz Asia § 1, ZPE 85, 1991, 40; H. Solin, Zum Zollgesetz der Provinz Asia, ZPE 86, 1991, 183; O. Salomies, Zu einigen Stellen im Zollgesetz der Provinz Asia, ZPE 86, 1991, 184–186; C. Schäfer, Zur *sphragis* von Sklaven in der *lex portorii provinciae Asiae*, ZPE 86, 1991, 193–198; Bulletin épigraphique 1991, No. 480.

<sup>2</sup> R. Merkelbach, Hat der Bithynische Erbfolgekrieg im Jahr 74 oder 73 begonnen?, ZPE 81, 1990, 97–100.

<sup>3</sup> See Th. Corsten, Die Inschriften von Prusa ad Olympon, Bonn 1991, 8, giving 298 as the start of the Bithynian era, and citing Merkelbach.

<sup>4</sup> As Heil, above n. 1, 9–11 and W. Leschorn, Antike Ären. Zeitrechnung, Politik und Geschichte im Schwarzmeerraum und in Kleinasien nördlich des Tauros, Stuttgart 1993, 179 ff. have already begun to do.

<sup>5</sup> Engelmann and Knibbe, EA 14, 1989, 96 and 160.

First, must Nicomedes be dead by the time of the law, and is this necessarily 75 B.C.? The editors of the inscription had no difficulty seeing him alive (p. 161): they cite the activities of the *publicani* in Bithynia during the reign of Nicomedes III, about which he complained in 104 when asked by Marius to contribute forces for the war against the Germans (Diod., 36,3,1). And just before the First Mithradatic War, Nicomedes IV was notoriously in debt to the Roman ambassadors (as payment for his restoration to the throne), and to their followers (*publicani*?) from whom he had borrowed large sums of money on interest (App., Mith. 11). *Publicani* could evidently operate outside the physical territory of the Roman empire.<sup>6</sup> In addition, paragraph 9 of the text provides an interesting list of harbours subject to the *portorium Asiae*, including the Black Sea approaches. Conspicuously absent, however, are the harbours of the kingdom of Bithynia: it would certainly be possible, although not necessary, to take this as evidence that Nicomedes was still alive. But even if it is felt that the new Customs Law of Asia must have been occasioned by the Senate's acceptance of the Bithynian bequest and the incorporation of Bithynia into the Roman tax system, we are not necessarily in 75. As Heil has shown, the Customs Law makes reference to the lease of the Asian taxes by the consuls of 75, but does not state or necessarily imply that they are the authors of the law itself.<sup>7</sup> The year 75 provides only a *terminus post quem*: the law could date from some time in 75 after the lease of the Asian taxes, but equally well it could have been introduced in 74 or 73 (the *terminus ante quem* is 72: the consuls of that year add the first supplement – see l. 84–87).

Even if the death of Nicomedes could be pinned to 75, does this make war in 74 inevitable? The answer is most certainly not. Merkelbach rightly maintains that, on the whole, scholars have divided into two groups on this matter, supporting one or other of only two possible schemes: the death of Nicomedes in 75 and outbreak of war in 74 (the Mommsen group); or everything exactly one year later (the Magie group).<sup>8</sup> Such an immediate connection, however, between the king's death and the outbreak of the war is not at all necessary.<sup>9</sup> François de Callataÿ, for instance, suggests on carefully presented

<sup>6</sup> See E. Badian, *Publicans and Sinners. Private Enterprise in the Service of the Roman Republic*, Oxford 1972, 87–89.

<sup>7</sup> Heil, above n. 1, 9–10.

<sup>8</sup> In fact there is another group who believe that Nicomedes died in 74 and that the war started in 74. See, for instance, T. R. S. Broughton, *The Magistrates of the Roman Republic*, New York 1952, II 106–108. It is interesting to note Broughton's (and indeed Merkelbach's – see below) unease with accepting Eutropius literally: Nicomedes' death, he writes, "may have been very early in 74 or even, given some slight inexactitude on the part of Eutropius, have occurred at the end of 75". He seems aware that there is too much to squash in between the beginning of 74 and an outbreak of war in the spring, and has Lucullus arriving in Phrygia in the autumn; but this goes against Appian (Mith. 69–71) who says that the war started in the spring, and against Plutarch (Luc. 7–8) and Memnon (27) who say that Lucullus and Cotta were both in Asia when Mithradates invaded. A recent addition to this group is P. McGushin (ed.), *Sallust. The Histories*, Oxford 1992, II 247–250, discussing particularly the placement of Sallust's statement concerning certain Bithynians who hurried to Rome to refute the claim to the throne of an alleged son of Nicomedes (Sall., H. 2.71 Maur. = 2.83 McGushin).

<sup>9</sup> Certainly not on the basis of Appian's statement (Mith. 71) that Nicomedes IV had died 'recently' (ἄρτι) when the war started: Appian uses the adverb ἔναγχος in a very loose manner to cover a period of many years (see B. C. McGing, GRBS 21, 1980, 36–37) and there is no reason to think that he was any more precise with

numismatic grounds that Nicomedes died in the winter of 76/75, but he still dates the beginning of the war to 73.<sup>10</sup> Indeed making too close a connection between Nicomedes' death and the beginning of the war – which Appian (Mith. 69–71), who provides our only substantial and coherent narrative, places in the springtime – renders it quite impossible to fit in all the events that have to take place in that period. Merkelbach, and others, would have Nicomedes die right at the end of 75, in order to excuse Eutropius' inaccuracy as far as possible. In the short period after Nicomedes' death and before Mithradates' invasion in the spring of 74, the following events must have occurred:<sup>11</sup> news of Nicomedes' death has to make its way to Rome; certain Bithynians also have to get there, to refute the claim of Nicomedes' alleged son to the Bithynian throne (Sall., H. 2.71 Maur.); the Senate has to accept Nicomedes' bequest and prepare and pass the long, complicated and comprehensive new Customs law for Asia (indeed, so far, this all has to happen between Nicomedes' death and the end of the year 75); M. Iunius Iuncus, governor of Asia, has to receive orders from the Senate extending his command to include the new province of Bithynia, the initial administration of which he had enough time to organise before Cotta took over command;<sup>12</sup> Lucius Octavius has to go to Cilicia (after leaving Rome probably at the beginning of 74), die there, and report of this come back to Rome before Lucullus can be appointed governor (Plut., Luc. 6); Lucullus has to recruit a legion and transport it to Asia (Plut., Luc. 7); and Cotta has to get his consular province changed, and also make his way to Asia (Plut., Luc. 6). It is inconceivable that this could all take place between October/November/December of 75 and the spring of 74 (March/April?), when both Lucullus and Cotta are supposed by Plutarch and Memnon to be ready with their forces to confront Mithradates.<sup>13</sup>

It would be superfluous to rehearse here all the arguments concerning the date of the outbreak of the Third Mithradatic War, but perhaps two points might be emphasized. First, the sort of highly selective choice of evidence that Merkelbach has made cannot solve the problem. He has concentrated solely on Eutropius (6,6) and the Epitome of Livy (93). They undoubtedly provide the only unequivocal evidence that Lucullus and Cotta were actually fighting Mithradates in the year of their consulship. But what then do we make of the conflicting, or potentially conflicting, evidence provided by the chronological compression I have just outlined, or by Appian, Plutarch, Phlegon, Memnon, Velleius and above all by Cicero?<sup>14</sup> In the Pro Cluentio (90, 108, 136–137) Cicero makes it quite clear he thought that Lucullus was in Rome at a time when there were already *consules designati* for 73, that is, after July/August 74.<sup>15</sup> This can scarcely be regarded as absolutely decisive, since Cicero

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ἄρτι – it is really only the vaguest of chronological indicators. On Appian's lack of interest in precise chronology, see B. C. McGing, ANRW II 34.1, Berlin/New York 1993, 516–517.

<sup>10</sup> F. de Callataÿ, Les derniers rois de Bithynie: problèmes de chronologie, RBN 132, 1986, 5–30.

<sup>11</sup> For details, and analysis of the slow speed of communications between Asia and Rome, see B. C. McGing, Phoenix 38, 1984, 15–16.

<sup>12</sup> For the sources see Broughton, above n. 8, 98.

<sup>13</sup> See above n. 8.

<sup>14</sup> See McGing, above n. 11, 13–17.

<sup>15</sup> Actually his presence can be further pinpointed to November/December 74: see A. N. Sherwin-White, Roman Foreign Policy in the East 168 B.C. to A.D. 1, London 1984, 165 n. 25. Sherwin-White rightly refers to

could have got it wrong;<sup>16</sup> but he is a very convincing witness here, and if he did somehow make a mistake, we need an explanation.<sup>17</sup>

And just how reliable are Eutropius and what Brunt calls “the wretched Periochae of Livy”?<sup>18</sup> Merkelbach believes that at the beginning of Chapter 6,6 Eutropius’ main purpose is to tell us that there was war in Bithynia in the year 74; a necessary precondition was the death of Nicomedes, but this is a subsidiary, less important, piece of information that Eutropius slightly carelessly attaches to the consulship of Lucullus and Cotta, when it really belongs right at the end of 75. It seems to me that the reverse is the case: what Eutropius really knows about the year 74 is what he states in his first sentence, that “in the consulship of L. Licinius Lucullus and M. Aurelius Cotta, Nicomedes King of Bithynia died, and in his will made the Roman people his heir”. He also knows that war resulted from this situation, but in my opinion, his carelessness lies not in postdating the death of Nicomedes, but in predating the start of hostilities. The consuls were both ordered against Mithradates and may even have left Rome while still in their consulship: it would be easy to understand how Eutropius failed to register their metamorphosis into proconsuls by the time that they actually joined battle with Mithradates. What we have is a conflict in our assessment of the nature of Eutropius’ reliability. Do we reject one area of proven reliability – his consular datings<sup>19</sup> – and accept the notoriously unreliable application of the word *consul*, which as Magie points out (recalling Mommsen’s observation), was frequently used in the sources where *proconsul* was meant, and is anyway purely descriptive rather than intended as a precise chronological indicator?<sup>20</sup>

The same easy misuse of *consul* would not be at all unexpected in the notoriously difficult Epitomes of Livy (93–94). Merkelbach does bring out the relationship in Epit. 93 between events in Asia and those in Spain, but it is by no means clear that hostilities in Asia have to begin in the same year as the siege of Calagurris in Spain (74). After mentioning the activities of P. Servilius in Cilicia (75 or 74), the Epitomator states that Nicomedes, king of Bithynia, made the Roman people his heir, and his kingdom was reduced to the form of a province (74). Mithradates made a treaty with Sertorius (74), and (in due course) waged war

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the Pro Cluentio as “a neglected scrap of evidence”, but it is not as neglected as he makes out: it is over thirty five years ago that J. Van Ooteghem, *Lucius Licinius Lucullus*, Namur 1959, 60–61 first drew attention to the significance of this evidence. I am not altogether sure why Sherwin-White thinks Cicero implies that both consuls were still in Rome at the end of 74: it seems to me that Cicero refers only to Lucullus.

<sup>16</sup> Sherwin-White, above n. 15, 165 believes that in the face of this evidence “the whole tedious controversy can be set aside”.

<sup>17</sup> The Pro Murena (33) offers only a superficial inconsistency: *ad quod bellum* (the Mithradatic War) *duobus consulibus ita missis ut alter Mithridatem persequeretur, alter Bithyniam tueretur* . . . All this says is that Lucullus and Cotta were ordered by the Senate to conduct the war against Mithradates while they were still consuls; it is not a necessary implication that they were fighting while consuls, or even that they had left Rome while still consuls.

<sup>18</sup> P. A. Brunt, CQ 30, 1980, 488.

<sup>19</sup> See G. Perl, *Zur Chronologie der Königreiche Bithynia, Pontos und Bosporos*, Studien zur Geschichte und Philosophie des Altertums, Amsterdam 1968, 308–309.

<sup>20</sup> D. Magie, *Roman Rule in Asia Minor*, Princeton 1950, II 1205 n. 5.

on the Roman people.<sup>21</sup> The king's forces are numbered, and we are taken into 73 and the defeat of Cotta at Chalcedon. Having dealt with Mithradatic affairs from 74 into early 73, the Epitomator (accurately reflecting Livy, one hopes) then does the same for Spain: he backtracks to the campaigns of Pompeius and Metellus in 74, their reverse at Calagurris and dispersal to Hispania Ulterior and Gaul for the winter of 74–73. I know this can be read differently, but there is nothing inherently implausible in such an interpretation. There is no question that as they stand, the Livian Epitomes point to 74 as the beginning of the war, but when weighed against impressive conflicting evidence, their specific reliability, revolving, as it does, simply around the use of the word *consul*, does not inspire confidence.

The second point to be made concerns the three known examples of royal Bithynian coins with the era year 224. It is high time these were recognised for the red herring they are. If the Bithynian era began in October 297, so the argument runs, the coins date to after October 74; Nicomedes must still be alive in the autumn of 74, and therefore the war cannot have started until 73. But as discussed elsewhere, the coins are entirely indecisive.<sup>22</sup> They *could* have been issued by Nicomedes IV, and thus have the required vital significance for our chronological problem;<sup>23</sup> this certainly helps my case, but unfortunately other possibilities are just as, if not more, convincing. After an unprecedented break in the royal Bithynian coinage between the era years 216 and 222 (82/1–76/5), the final two issues of 223 (75/4) and 224 (74/3) are stylistically and monogramatically most unusual: de Callataÿ argues that they are both posthumous issues of Nicomedes IV, who was already dead by October 75.<sup>24</sup> This is far from being a necessary conclusion, but it is a serious numismatic argument and highlights how insecure the assumption is that the coins of 224 must have been issued by Nicomedes IV. They could have been issued by Nicomedes' son making a bid for the throne, as Maurenbrecher long ago suggested<sup>25</sup>. They could have been issued by a Bithynian city, as must have been the case during the First Mithradatic War, when there was no interruption in the royal Bithynian coinage even though the kingdom was occupied by Pontic forces.<sup>26</sup> One way or another they cannot be presented as definitive proof that Nicomedes was still alive at the time of their issue, although that remains perfectly possible. I assume that it is this conviction which led Merkelbach to his conclusion that the beginning of the Bithynian era must be set back to October 298: having established, as he sees it, the beginning of the Third Mithradatic War in the spring of 74, he cannot have Nicomedes still alive in the autumn of that year, and therefore adjusts the Bithynian era. This seems to me a desperate remedy. The evidence for the beginning of the Bithynian/ Pontic royal era is

<sup>21</sup> According to Appian (Mith. 68–70), Mithradates made the treaty with Sertorius in summer, and then spent “the rest of the summer and the whole winter” preparing for war, before invading in the spring.

<sup>22</sup> See P. Pollak, ANSMusN 16, 1970, 52; McGing, above n. 11, 14–15; B. C. McGing, *The Foreign Policy of Mithridates VI Eupator King of Pontus*, Leiden 1986, 173–175.

<sup>23</sup> As argued most influentially by W. H. Bennett, *Historia* 10, 1961, 460.

<sup>24</sup> De Callataÿ, above n. 10, 24–30. He does, however, see considerable differences between the 223 and the 224 issues, and if either of them is a posthumous issue, 224 with its reduced weight and poor quality, would seem to be the better candidate.

<sup>25</sup> C. Sallusti Crispi *Historiarum Reliquiae* Fasc. 2, Stuttgart 1898, 228.

<sup>26</sup> Pollak, above n. 22, 52.

scattered, extensive and difficult. By far the most exhaustive analysis has been made by Perl,<sup>27</sup> and his conclusion that the era started in October 297 has, as far as I know, met with universal agreement. This does not necessarily mean it is right, but any rejection of it would need a refutation of the same sort of massive detail with which Perl made his case in the first place, and would need careful consideration of the many ramifications such a redating would have for the course of Bithynian and Pontic history. As far as our evidence goes at the moment, the overwhelming weight of analysis supports October 297 as the beginning of the Bithynian/Pontic royal era: whether the Third Mithradatic War started in 75 or 74 has no necessary bearing on this date.

Merkelbach suggested that Magie and the other scholars who supported 73 as the beginning of the Third Mithradatic War had immersed themselves so deeply in Asiatic affairs that, unlike the Mommsen group, they could not see the larger Mediterranean picture which necessitates the year 74. This, I think, is probably unfair to both groups, who were, and are, well aware of the difficulty of the problem and the contradictory nature of the evidence. The larger Mediterranean picture to which Merkelbach refers, concerns a single statement in Epitome 93 of Livy connecting affairs in Asia with those in Spain. It constitutes one of the many pieces of evidence that have to be taken into account, but I have tried to argue that a reliance on the Livian Epitomator and Eutropius is fraught with difficulty, and their testimony cannot be considered decisive without careful consideration of what is in my opinion stronger counter-testimony from other sources. Unfortunately the Customs Law from Ephesos, while a spectacular addition to the corpus of epigraphical material from Asia Minor, offers no help: it cannot be used by defenders of the year 74 as ammunition to fire at those supporting the year 73; nor does it have any bearing on the date when the royal Bithynian/Pontic era began, almost certainly in October 297.

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<sup>27</sup> In his article cited above n. 19.