Rafał Taubenschlag

"Zur Frage der Publikation im römischen Recht mit Ausblicken in das alt griechische und ptolemäische Rechtsgebiet", Fr. von Schwind, München 1940 : [recenzja]

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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.
SURVEY OF THE LITERATURE
FROM 1939 UNTIL 1945

SOURCES


This work is divided into three parts. The first part deals with the publication of the Roman sources of the law, the XII Tables and other legis, the plebiscita, public treaties, edicts and senatusconsulta. The author’s thesis is that the publication of the law presupposed its validity and this idea was adopted by the Romans for the above mentioned sources of the law. In the second part the author discusses the publication of the Roman law in the provinces, particularly in Egypt. Here the author discusses the way in which the edict had to pass from the governor to the place of its placard, the placard itself, the officials charged with the latter, the place of its hanging out, the manner in which the hanging out took place, the material and the language of the placard, the duration of the placard, as well as the constitutive efficacy of the publication. An appendix treats of the same problems in the Ptolemaic law and its relation to the Roman law. The third part is devoted to the imperial constitutions. In this part, the author points out that the Codex Theodosianus adopted for the imperial constitutions the Greek idea on the constitutive efficacy of the publication.

E. VOLterra, L'efficientia delle costituzioni imperiali romani per le province e l'istituto dell'exposito. Studi di stor. e dir. in onore di E. Besta I (1939), p. 117ff.

The Egyptian papyri of the Roman period show that there was no legislative unity in the Roman provinces before Theodosius and Justinian in the field of private law. Thus, for instance, the imperial legislation (Gnom. § 4.38.107) introduced provisions for exposed children in Egypt, quite different from those in Italy. Consequently, if we find in a constitution issued before Theodosius, provisions different from those enforced in that time in Italy, we can assert that this constitution was applied only in a particular Roman province such as Egypt, Syria and so on.


The author deals with three problems: whether Caracalla granted citizenship to all citizens of the Empire (who were not citizens) or whether he excepted some groups from this grant; secondly, whether the C.A. was considered by the Greeks a brutal measure to a raising in rank; thirdly, whether the large numbers of citizens who were now called Romans, had to live exclusively according to the Roman law or not. His answers are: (a) Caracalla granted citizenship to peregrini belonging to the Empire, (b) The grant was considered a distinction, (c) The residents of the city-communities, even as Romans, enjoyed the right of applying their local law before the native authorities, but also the right of applying the Roman law before the Roman authorities. The author finds an analogy for the last idea in the inscription of Rhosos, in which Marcus Antonius and Octavian, granting citizenship and exemption from taxes to the head of the Navy, Seleucus from Rhosos, entitled him to choose between the Roman and the Greek systems of law.


The C.A. granted citizenship to all inhabitants of the Empire but left unaffected the status civilis (1) of the various classes of the population, so that the rural Egyptians continued to be hominespopulares and inferior to the metropolites, who were not considered deditici before the C.A. The new citizens under the C.A. were Romans sui generis. They retained their status civilis (1), and unlike the older Romans they had no tribus.


This is a criticism of Segre's article. There is a good deal to be said against Segre's view that the C.A. granted citizenship to all the inhabitants of the Empire, although no restoration of the clause following the grant can as yet be regarded as established. There is no evidence that metropolites, who were citizens sui generis, retained their status, and not alike Egyptians. Segre's view that the Aurelii were citizens sui generis does not clear up as yet unsolved problems of poll-tax in the third cent. A.D.

1 The latest edition of that famous inscription is given in S. Riccobono's Fontes Juris Antaeustiniani. Pars I Leges (second edition, Florence 1941) No. 55, p. 308-315, with a Latin translation by N. Festa. This new edition of Fontes has been enriched by some papyri, as SB. III 6944; Odlo III 73; Giss. I 40 col. 1; Oxy. XII XIV 1406; Columbia Inv. 181 182 and the most important provisions of the Gnomon Idiologoi. As we learn from Riccobono's Preface, in preparing the new edition intensively collaborated A. Berger, who is responsible for the adaptation of all documents inserted for the first time into this collection.