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"Rechtsgeschichtliches zur Ackerverpachtung auf Tempelland nach demotischem Formular", Tycho Quirinus Mersich, Wien 2003 : [recenzja]

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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

Jahren als peinlich empfundene Lücke in der Forschung des ptolemäischen Ägypten und gibt neue Anregung und Material zur weiteren Forschung zu Zustrom und Anwesenheit der fremden Bevölkerung am Nil. Wir müssen uns aber dessen bewußt sein, daß nicht alle gesammelten Bezeichnungen sich wirklich auf die Fremden beziehen; in den Steuerurkunden geht es eher um den Rechtsstatus, im Fall von Soldaten haben wir öfters mit den Pseudoethnika zu tun, gelegentlich bezieht sich ein Ethnikon auch auf den Beruf. Diese sind aber als Sonderfragen zu untersuchen. Es ist noch hervorzuheben, daß eine beträchtliche Anzahl von Ausländern in Ägypten überhaupt kein Ethnikon aufweist, das ihre fremde Herkunft beurkundet. Manchmal können wir es nur aus den Personennamen erschließen, was besonders im Fall von Juden sichtbar ist (vgl. W. A. Tcherikover, A. Fuks, M. Stern, *Corpus Papyrorum Judaicarum*, Cambridge, Mass. 1957–1964; W. Horbury, D. Noy, *Jewish Inscriptions of Graeco-Roman Egypt*, Cambridge 1992), und dieselbe Erscheinung finden wir auch in anderen ethnischen Gruppen.

[Jan Krzysztof Winnicki]

Tycho Quirinus MRSICH, *Rechtsgeschichtliches zur Ackerverpachtung auf Tempelland nach demotischem Formular*, Wien 2003 (= *Österreichische Akademie der Wissenschaften, Veröffentlichungen der Kommission für Antike Rechtsgeschichte* 10), ISBN 3-7001-3154-2

The book by Tycho Mrsich is, as the author himself states in the preface, a result of a critical analysis of Heinz Felber's *Demotische Ackerpachtverträge der Ptolemäerzeit. Untersuchungen zu Aufbau, Entwicklung und inhaltlichen Aspekten einer Gruppe von demotischen Urkunden*, Wiesbaden 1997. It may perhaps be seen as redundant to write a review of a review, as M.'s publication has sometimes the appearance of a 150-pages-long, very polemical review of Felber's book which is referred to almost on every page and even a reader familiar with Felber's publication will find it necessary to consult it again and again. However, as M. is mainly concerned with the one aspect of demotic deeds of lease that Felber came short of analyzing, that is their legal implications, his book can be regarded as an important complement to Felber's work and definitely deserves attention.

In his work Felber gathered and studied a particular group of legal documents: demotic deeds of (land) lease from the Ptolemaic period. As the sample material failed to provide him with enough data for a thorough socio-economic study and he claimed incompetence with regard to legal history, he concentrated on the philological analysis of the texts and their clauses. However, he could not have avoided

dealing at least partially with the law of the documents in question, for that is inherent even in providing a mere translation of a legal text. The goal of M.'s work, as the author explains in his first chapter, is to analyze (and to improve) the way demotic legal documents are translated by philologists. His attempt was to present the legal-historian's point of view.

This is no place to present M.'s argument in detail, but let us discuss just several of his points.

M. argues – and does rightly so – that in providing a translation of a legal text the translator (especially one without the legal training) should abstain from employing legal or pseudo-legal terms in place of ancient Egyptian figurative expressions. Egyptologists are too often tempted to use expressions like “you possess” or “you have a claim” in translating clauses of Egyptian documents without even realizing the legal meaning or context of a “possession” or “claim”. Unfortunately Mrisch fails to produce any serious guidelines for such confused scholars, for I do not believe the suggestion to follow the terminology adopted by the *Lexikon der Ägyptologie* to be such a guideline. This somewhat dated *opus* never achieved any terminological (not to mention intellectual) unity with regard to Egyptian legal history. Instead, M. should have proposed a consistent nomenclature that would be understandable and appealing to both legal historians and Egyptologists alike.

To give but one example, throughout his book M. opposes the use of the German word “Vertrag” in respect to demotic documents, claiming that they lack the bilateral and consensual element implicit in the Roman (or modern) contract. In stead of “Pachtvertrag” we are advised to use a neutral “Pachtgeschäft”, but the author himself is not too consistent with his own suggestion and uses such an obscure term as “Gedinge” recurring in turn to the legal Germanic terminology which is as misleading (or even more) as the Roman (civil law) one. In doing so he might be committing the same sin which he accuses Felber of, since the legal terms from the pre-reception German legal language might be as improper to Egyptian law as is terminology taken from the Roman legal thought (with the very difference that “Vertrag” is understandable to almost all readers, “Gedinge”, however, to almost nobody). I doubt if the “Vertrag”-controversy can be settled according to M. and everybody will keep using the term in question, for to say “a demotic contract of sale” does not automatically imply that the transaction was a contract and a sale in the strict Roman sense.

It is also regrettable that in discussing legal terminology M. completely ignores languages other than German, as if scholars writing in, say, English or French were not facing the same problems. Discussions in terminology cannot be limited to one language and one legal order only, especially in a branch of science as small as the demotic studies. For instance, it is not quite clear to me if, according to M., the ban on “Vertrag” in respect of demotic documents (based on the word meaning in Roman and German law, pp. 78–81) automatically implies banishment of English “contract” or “agreement” as well.

At times M.'s polemical temperament seems to be ill targeted, for he chastises Felber for errors the latter did not make. For instance, Felber is several times (e.g. pp. 60–61) attacked for his “theory” that the written deed is just a recorded version of an essentially oral agreement. But if we take a closer look at the relevant passage in Felber’s book (n. 123 on p. 116), we notice that he never proposed a theory of his own, but merely quoted a view of Sethe. And rightly so: it does not require an elaborate juridical analysis to say that in a basically illiterate society as the ancient Egyptian one was, a great majority of transactions must have been conducted by means of oral agreements that were never recorded. Only the few privileged had access to notaries/scribes and resorted to their services simply because a written document was a better proof in case of a dispute and was easier to produce than 12 witnesses. Therefore I cannot agree with M. that oral agreements were not legally binding (§10, pp. 80–86): they were only more difficult to prove, hence the requirement of swearing oaths. This is confirmed by the wording of the papyri themselves: the declaring party is invariably introduced the *sdm=f* form (i.e. having a past meaning) of the verb *dd* – “to say”: “A said to B”. This piece of evidence clearly indicates the importance of the oral declaration and its having taken place prior to the procurement of the document itself. I do not see why this should be ignored.

Another bone of contention is the use and meaning of the so called “independent conjunctive” in demotic legal texts. Felber stresses the injunctive meaning of the “independent conjunctive” i.e. one implying obligation and he proposes to translate such conjunctive with descriptive imperative into German: “und somit habe ich etwas zu tun” (in English best translated with “shall”, containing both the future tense and the aspect of duty/obligation)

Felber’s views are strongly criticized by M. (§11, pp. 87–107), who refutes both “independency” of the conjunctive and its ability to express the aspect of obligation. He claims that the idea of obligation was alien to the Egyptian law and sees in demotic leases not bilateral agreements concluded between equals, but rather unilateral “privileges” conferred upon the “receiving” party (the tenant). If I understand correctly, M. suggests we comprehend the principal clause of demotic leases as expressing an arbitrary “order” of the lessor and the following conjunctive clauses as accompanying conditions.¹ The declaration of the tenant would thus not be an “active” act of commitment creating an obligation but a “passive” acceptance of the lessor’s conditions.

This is an interesting theory, but I remain unconvinced. It seems to be more imagined than based on solid evidence and complicating things rather than explaining them. The main question is, if the transaction was in fact a unilateral “or-

¹ Pp. 106–107: “Einfacher aber versteht man es in der Grundfunktion als konjunktivische Verkettung zweier zusammengehöriger Zeitstadien, der Verbindung zwischen dem positiv ergangenen Befehl und seinen nun explizierten – und fortwirkend gedachten – Bedingungen”.

der" of the lessor, why was it styled in the document as a declaration of the lessee? In view of M.'s theory, a declaration of the lessor would have been more natural and logical. Moreover, M. fails to explain the presence of "independent conjunctive" in other types of demotic deeds, e.g. in loans, in which it appears exactly in the same function but where the concept of the transaction as an "order" has definitely no appliance. Felber's interpretation is definitely simpler and more convincing.

Demoticists indeed deserve to be chastised for indifference to legal matters, for they more often put themselves to the study of legal documents without even some basic training or a certain degree of "legal sensibility".² An edition of legal documents with good legal commentary is still a rarity within the field of demotic studies,³ the usual evasion being the one made by Felber: their work is that of a philologist putting together legal text and thus facilitating a task of a legal historian, who should start his work at the point where they stopped. But such evasion is not possible: a mere translation is already an interpretation. Moreover, for some reason or another there does not seem to be anyone wishing to take on the arduous task of studying the law of demotic texts outside the field of demotic studies. It is perhaps too much to ask that every single publication of a new text be accompanied by a detailed legal discussion (especially if the text itself belongs into a well-known category), but it is certainly a must for the type of a study that Heinz Felber undertook: there is no reason why a study of a particular group of legal texts should lack a detailed legal commentary. In this respect Mrisch's book is an important contribution, even if not totally convincing.

I would like to add another comment, from a non-German reader's point of view. The book is written in a rather complex high style that combined with the complicated legal jargon and the complexity of matters discussed by the author account for a rather limited readability. The practice of referring to individual papyri by numbers does not make things easier: every time one has to look up the papyrus *siglum* in the concordance table on pp. 22–23, consult the book of Felber and sometimes even a third publication (as with the much discussed P. BM 10560 = Doc. no 23, that has not been transcribed/translated by Felber).

[Tomasz Markiewicz]

² An example of such indifference is the absence of a section devoted to the survey of demotic law (which is not the same as the survey of demotic legal documents) in the reference book of M. DEPAUW, *A Companion to Demotic Studies*, Bruxelles 1997.

³ The cooperation of the philologist K. SETHE with the legal historian J. PARTSCH that produced the magisterial study *Demotische Urkunden zum ägyptischen Bürgerschaftsrechte*, Leipzig 1920 remains unsurpassed to this very day, despite the 83 years that have elapsed since its publication.