

Taubenschlag, Rafał

Nόμος in the papyri

The Journal of Juristic Papyrology 2, 67-73

1948

Artykuł został zdigitalizowany i opracowany do udostępnienia w internecie przez **Muzeum Historii Polski** w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

NOMOS IN THE POPYRI

I

The term νόμος designates first at all a royal decree issued by the king in contrast with royal διαγράμματα and προστάγματα.¹ Such decrees are for instance the νόμος τελωνικός, the νόμος βεβαιώσεως or the νόμος κατὰ τοὺς ἐμβρατεύοντας.²

The term νόμος designates further the autonomous statutes (πολιτικός νόμος), applying to citizens of autonomous cities, such as Alexandria or to members of ethnical or pseudoethnical unions³. The specific enactments on ἀποκληροῦσθαι κριτὰς in P. Hal. 121-122 may be also a part of a πολιτικός νόμος.

Finally we find in the Ptolemaic period the expression ὁ τῆς γῶρας νόμος for the law of the Egyptian people.^{3a}

II

In the Roman period the term νόμος in plur. is used in the sense of the *lex duodecim tabularum* or the old customary law. Thus in Lond. II No. 354 (p. 164) (10 B.C.) (v. 17): τῶν νόμων κωλύοντων δις περὶ αὐτοῦ κρίνεσθαι.⁴ In BGU 1578₉ (II/III cent. A.D.) the passage: ταύτης γὰρ ὑποχειρίας μοι οὔσης κατὰ τὸν νόμον can also allude to a provision of the XII tables or to the old customary law.⁵ In Lond. II 470 p. 212 = M. Chr. 328 (168 A.D.) (v. 6) the passage on *acceptilatio*: περιλουούσης δάνιον μητρικὸν αὐτῆς κατὰ τὸν νόμον τῶν Ῥωμαίων refers to the law based on jurisprudence.⁶

¹ Cf. my *Law in Greco-Roman Egypt* p. 6 note 26.

² See my *Law l. c.*, it may be added: the νόμος on ἐκφύριον ἐν δεκαρτάβου in BGU 1581 or on ἀγνεία see Otto Priester und Tempel II 31 ff; Wilcken *Arch. f. Pap.* IX 77 ff.

³ Cf. my *Law* p. 7.

^{3a} Cf. my *Law* p. 2/3.

⁴ Cf. Wenger *Institutes* p. 176.

⁵ Cf. my *Law* p. 98 n.

⁶ Cf. Sohm *Institutes* (engl. transl.) 451.

Νόμος designates further in this period an imperial constitution such as Hadrian's constitution granting to Antinoites ἐπιγαμία πρὸς Αἰγυπτίους.⁷ May be that the specific νόμοι, παραθηγῶν⁸, ὑποθηγῶν⁹ and ἀρράβωνων¹⁰ which appear for the first time in the Roman period are also imperial constitutions.

The term πολιτικοὶ νόμοι disappears in the Roman period and is replaced by ἀστικοὶ νόμοι¹¹ which means specifically the law of the autonomous city of Alexandria. We also find the νόμοι τῶν Ναυκρατιτῶν granted to Antinoites.¹² There is no trace of πολιτικοὶ νόμοι of ethnical or pseudo-ethnical organizations.

The ὁ τῆς χώρας νόμος persists until early in the second century.¹³ Then it gives way to the ὁ τῶν Αἰγυπτίων νόμος. The latter seems to have had more farreaching application than I had previously recognized.¹⁴ Among the provisions of the ὁ τῶν Αἰγυπτίων νόμος I would now include the provision of διμοιρία of the older son,¹⁵ the regulations of *aetas legitima*,¹⁶ the ruling that inheritance κατ' οἶκον be divided according to household¹⁷ and not according to individuals, and a series of other rulings of inheritance.¹⁸

Finally it should be noted that νόμος could also mean ordinances of associations such as those of the salt merchants, the weavers and so on.¹⁹

⁷ Cf. W. Chr. 27 (II cent. A.D.) verso 3: ὁπεναντίον τί ἐστὶν κατὰ νόμον ἢ κατὰ διάταξιν; see also P. Jand. 140 p. 101.

⁸ See my *Law* p. 266.

⁹ See M. Chr. 249.

¹⁰ See my *Law* p. 510.

¹¹ Cf. Oxy. 706 = M. Chr. 81 (115 A.D.); on Oxy. 2177₁₂ (III cent. A.D.) see my *Law* p. 350 note.

¹² Cf. note 7.

¹³ Cf. my *Law* p. 2/3.

¹⁴ Cf. my *Law* p. 2.

¹⁵ Cf. my *Law* p. 159.

¹⁶ Cf. my *Law* p. 125 note 51.

¹⁷ Ryl. 76₈ (late II cent.) cf. Kreller *Erbrechtl. Unters.* 412.

¹⁸ On Wess. Stud. XX No 9 (158—161 A.D.) see my *Law* p. 141₁₈; see also Mey. 8₁₅ (151 A.D.) and my *Law* p. 188₃; and Oxy. 1102₁₂ (146 A.D.) (Report of legal proceedings): νὸν ἄρουραι κατὰ τοῦς νόμους καὶ τὰς ἀναγνωσθείας μοι κρίσεις δοκοῦσιν τῇ συγγραφοδιαθήκῃ μὴ ὑποστέλλειν.

¹⁹ Cf. Mich. 245₁₂ (reign of Tiberius): κορία <ἐ>στὼι ἢ νόμος; see also PSI 902 (I cent. A.D.); Mich. 355₁₁; Osl. 141 which refers probably to an ordinance of weavers.

III

In the period between the *Constitutio Antoniniana* and Justinian's codification we continue to find νόμος referring either to the XII tables or the old customary law. Thus in Lips. 34₉ (395 A.D.) where like Lond. II 354 the principle *bis de eadem re ne sit actio* is mentioned.²⁰ The same holds for Oxy. 1208₆ (291 A.D.) and Oxy. 1268 (III cent. A.D.) where we read ἔχοντος αὐτήν ὑπὸ τῆ χειρὶ κατὰ τοὺς Ῥωμαίων νόμους.²¹ The *lex Iulia et Titia* is called νόμος Ἰούλιος καὶ Τίτιος,²² the *lex Plaetoria* Λαιτώριος νόμος²³ and the *lex Pappia Poppaea* νόμος Πάππιος Παππαιοῦ.²⁴ The νόμος in CPR 20, 18 = W. Chr. 462 (250 A. D.) and M. Chr. 71 (462 A. D.) is the *lex Iulia de cessione bonorum*²⁵ and the νόμος in Strassb. 29 (289 A.D.) is the *lex Iulia et Pappia Poppaea on ius liberorum*.²⁶

The term νόμος also continues to be used for the law based on jurisprudence. Thus Flor. 36 = M. Chr. 64 (312 A.D.) in which the prefect orders an investigation to find out whether or not the wife gave her consent to the marriage, reads: Εἰ [ἤρέσκετο] τῆ πρὸς τὸν ἄνδρα συμβιώσει ἢ παῖς, αὐτὸ τοῦτο φανερόν γενέσθω παρὰ τῷ λο[γιστῆ] ἀκολούθως τοῖς νόμοις.²⁷ Other examples are Flor. III 309₆ (IV cent. A.D.) referring to the νόμος on ὕβρις²⁸; Thead. 24₉ (354 A.D.) referring to the νόμος on dikes;²⁹ and Cair. Masp. 67295₃ (II_{8.9.23}; III₂₇) (ca 491/5 A.D.) mentions the νόμοι ῥεπεντίωνος with respect to the *actio rei uxoriae*.³⁰ It should also be noted that the term *heres legitimus*, a pure creation of the jurists,³¹ is translated κληρονόμος κατὰ τοὺς νόμους.³² The imperial constitutions in this

²⁰ Cf. note 4.

²¹ Cf. note 5.

²² Cf. my *Law* p. 25, 151₂₁.

²³ Cf. my *Law* 155₁₇.

²⁴ Lugd. Bat. II 5₁₂ (505 A.D.).

²⁵ Cf. my *Law* p. 20₉₂.

²⁶ Cf. my *Law* p. 24 note.

²⁷ Cf. Lugd. Bat. II p. 21/2; see No 5 (505 A.D.) (v. 11) παροῦσαν καὶ ἐβ-δοκοῦσαν πρὸς γάμου [κοινωνίαν] κτλ. and the literature p. 21 note 11.

²⁸ Cf. D 47, 10, 1, § 1; I 4, 4; C 9, 35.

²⁹ Cf. D 47, 2, 10.

³⁰ Cf. Steinwenter *Arch. f. Pap.* VII 54 ff.

³¹ Cf. D 5, 5, 27; 5, 2, 6, pr; see Biondi, *Succ. test.* 627.

³² Cf. Oxy. 1121₁₃; see Kreller *l. c.* 57₂.

period are sometimes called θεῖοι νόμοι. In Ryl. 117₄ (269 A.D.) we read: σαφῶς τοῖς θείοις νόμοις διώρισταί that those who have inherited nothing from deceased persons cannot be held responsible for the debts of the latter or for claims made against them. This statement is not quite correct,³³ for in Roman law one could acquire an inheritance consisting of nothing but debts. It may be, however, that there was a special constitution for Egypt introducing the principle mentioned in the Ryl. text.

In PSI 965 (IV cent. A.D.), however, we find the term Καίσαρος ἱερὸς νόμος and in Cair. Masp. 295₈ the phrase [οἱ νόμοι τῶν θειοτάτων] ἡμῶν βασιλέων.

Νόμοι very frequently mean, in this later period, constitutions valid throughout the Empire. Thus, Oxy. 1414₂₄ (270/5 A.D.) refers to the constitution of Septimius Severus on βουλαί, with the previously unknown provision that the *prytanis* should be nominated six months before assuming office (II 24-27) [ὁ νόμος κ[ε]λεύει πρὸ ἐξαμήνου τὸν μελλοπρότανιν ὀνομάζεσθαι. Oxy 1204₉ (299 A.D.) mentions constitutions that establish the provision that senatorial rank brings release from *munera*.³⁴ P. Boak No. 21 (296 A.D.)³⁵ quotes a νόμος ruling that dowries recorded in written agreements must be evaluated by a goldsmith and a tailor before they can become valid. PSI 807 (280 A.D.) mentions νόμοι which order μηδὲνα κατέγεσθαι ὑπὲρ ἄλλων in words strongly reminiscent of the pertinent constitutions of Diocletian.³⁶ In Rend. Harr. 68₄ (225 A.D.) the applicant requests the *iuridicus* to appoint him guardian of two of his sister's three children: τοῖς νόμοις ἀκολούθως that is to say, according to the *constitutio divi Marci*.³⁷

The νόμος on ἀτέλεια in BGU 1073₄ trace back to the emperor Claudius and his successors.³⁸ The νόμοι in Oxy. 67₁₀ (538 A.D.) are the rulings of Constantin on *litis denuntiatio*;³⁹

³³ Cf. Kreller *l. c.* 412.

³⁴ Cf. DI 2, 2-5.

³⁵ Cf. my *Law* 95₉₅.

³⁶ Cf. my *Law* p. 34.

³⁷ Cf. D. 1, 20, 2 *Iuridico qui Alexandriae agit datio tutoris constitutione divi Marci concessa est*.

³⁸ Cf. Oertel *Liturgie* 591₆.

³⁹ Cf. Wenger *Institutes* 272.

those in Lips. 41₃ (IV cent. A.D.) the provisions by post-Julian emperors on *repudium*;⁴⁰ and the νόμος in Oxy. 1101 (367/70 A.D.) refers to the provision on military jurisdiction.⁴¹ The nature of the ταμείων νόμοι in Lond. II 213 verso p. 160/1 = W. Chr. 267 (late III cent. A.D.) cannot be determined.

In some papyri we find νόμος used to mean rescript. This is the case in M. Chr. 199 referring to Diocletian's rescript on *alienatio in fraudem creditorum*.⁴² In Flor. 57 (222/3 A.D.) the νόμος must be understood to mean the rescripts providing that those who are over 70 years of age shall not be compelled to perform liturgies.⁴³

In other texts νόμος means *decretum*. The term νόμος in SB 7696 means the ordinance of the emperor Severus exempting the *coloni* from the municipal liturgies.⁴⁴ The νόμοι in Oxford 6 (330 A.D.)⁴⁵ and Wess. Stud. XX 88 (337 A.D.)⁴⁶ are the *decretum divi Marci*.⁴⁷ Finally we have the constitutions applying only to Egypt: Oxy. 1642₂₆ (289 A.D.) providing that the property of children under *patria potestas* shall not escape the liabilities of their father;⁴⁸ the constitution on ἔδνα in Cair. Preis. 2₃ (362 A.D.)⁴⁹ and the constitution on παραμυθία in BGU 1024 (IV cent. A.D.).⁵⁰

The ὁ Αἰγυπτίων νόμος continues in this period. I would include in this category the provisions on *aetas legitima* in Lips. 29₅ (295 A.D.)⁵¹ and on *patria potestas* in BGU 667 (221/2 A.D.) and 907 (Imp. Commodus era).⁵²

⁴⁰ Cf. Mitteis *Leipz. Pap.* 140.

⁴¹ Cf. C. Th. XII, 1, 128 (392 A.D.); C. I. 1, 46, 2.

⁴² See my *Law* 21, 29.

⁴³ Cf. Oertel *Liturgie* 374.

⁴⁴ Cf. Wenger *Actes Oxford* 537 ff; 539 ff.

⁴⁵ (v. 11) [τῶν νόμων οὐ συγχ]ωροῦντων ἀποκινηθῆναι τινα [τῆς γῆς] ἄνευ δικαστικοῦ προστάγματος.

⁴⁶ (v. 18) οὐδὲ γὰρ [τῆς] [ἐξ]ουσίας ἔστιν τῷ βουλομένῳ ἄλλω[τρίων] ἀντιποιεῖσθαι ἄνευ δικαστικοῦ δικαίου.

⁴⁷ Cf. D 4, 2, 13; 48, 7, 7, see Wenger *Institutes* 10/11.

⁴⁸ Cf. on the whole problem Mitteis CPR p. 105.

⁴⁹ Cf. my *Law* 96 ff.

⁵⁰ Cf. my *Law* 329 ff.

⁵¹ Cf. my art. *Aegyptus* XII 144 ff.

⁵² Cf. my *Law* 99.

Finally νόμος in the sense of the ordinance of an organization appears in Wess. XX 69.⁵³

IV

In the time of Justinian the meaning of νόμος undergoes several changes. First at all, it comes to mean Justinian's codification as a whole as in Cair. Masp. 67312_{22.29} (507 A.D.) and 67151₅₁₋₆₂ (570 A.D.) referring to the *clausula codicillaris* and the *codicilli testamento confirmati*,⁵⁴ and in Cair. Masp. 67151₂₃₄ with reference to the γενικός κουράτωρ and κατὰ νόμους κηδεμών.⁵⁵ In CPR 30 II 13, 25 (VI cent. A.D.) and Cair. Masp. 67006 verso l. 112 (VI cent. A.D.)⁵⁶ the νόμος means the *Codex* and specifically the provisions on μνηστεία and dowry.

In the previous period the imperial constitutions in the *Codex* are called νόμοι. In Cair. Masp. 67057 I 1, however, the reference is probably to the edict XIII of Justinian (554 A.D.)⁵⁷ and in Cair. Masp. 67097 verso 32-33 (569 A.D.) to the decalogue.⁵⁸

Individual constitutions are also cited. In Lond. II 484_{15 16} p. 323 (616 A.D.) we read of a νόμος ἐμφυτεύσεως,⁵⁹ in Cair. Masp. 67032=Meyer *Jur. Pap.* 52 (551 A.D.) of the constitution on ἐγβεβαστήης and in Mon. 6 (565 A.D.)⁶⁰ of an otherwise unknown constitution on the testimony of one witness.

In one case νόμος⁶¹ refers to a Novel of Justinian, Nov. 87 according to which a renunciation implying the revocation of the gift is admissible, and the *donatio mortis causa* becomes in consequence of this clause by no means a *donatio inter vivos*.

⁵³ (v. 11—12) διαρρέσας [εἰς πάντα τὰ] [κατὰ τὸν νόμον.

⁵⁴ Cf. my *Law* 149₃₅.

⁵⁵ Cf. my *Law* 58; 156₂₁.

⁵⁶ Cf. my *Law* 96₉₇.

⁵⁷ πρὸς τὸν θεῖον νόμον; and the note of the ed.

⁵⁸ Cf. my *Law* 105 and my *Gesch. d. Rezeption d. röm. Rechts in Ägypten* in *Studi Bonfante* I 436.

⁵⁹ Cf. my *Rezeption d. r. R.* 427₄₅₀.

⁶⁰ Cf. my *Law* 594.

⁶¹ Cf. Cair. Masp. 67151₃₀ *inter vivos κατὰ νόμον* see my *Law* p. 155₈.

It is noteworthy that νόμος̄ refers to the Republican *lex Falcidia*. The testament and the will of the bishop of Hermonthis mentions an ἐπιχώριος νόμος that means a local law.⁶³ Also of local origin is the νόμος πράξεως καὶ βεβαιώσεως⁶⁴ and the νόμος on *hypotheca omnium bonorum*.⁶⁵

Raphael Taubenschlag

[Warsaw University]

⁶² Cair. Masp. 67512₉₃ see my *Law* p. 148₃₁.

⁶³ Cf. Lond. I No 77 p. 251 = M. Chr. 519 (VI cent. A.D.) see my *Law* p. 5 note 25.

⁶⁴ See my *Law* 247 cf. Wenger *Mon. Pap.* p. 56.

⁶⁵ Cf. Lond. 1756 see my *Law* 212.