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In memoriam Raphael Taubenschlag (1881-1958)

The Journal of Juristic Papyrology 13, 7-15

1961

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IN MEMORIAM RAPHAEL TAUBENSCHLAG
(1881 — 1958)

On June 25, 1958 Polish scholarship suffered an irreparable loss. On that day died Professor Raphael Taubenschlag, one of the most prominent historians of law, an internationally recognized scholar, whose research covered various and very large domains of legal studies. More than 200 items of his writings, the fruit of many years' work, is an imposing achievement of this eminent papyrologist and Romanist, who had devoted more than fifty years of his life to the pursuit of legal science.

Raphael Taubenschlag was born on May 6, 1881 at Przemyśl. He graduated from a secondary school in 1899, studied law first at the Law Faculty of the Jagiellonian University in Cracow and then in Leipzig, under the guidance of the famous papyrologist and historian of law, Ludwig Mitteis. He continued his studies, resolving to dedicate himself exclusively to scientific research. After his return to his country Taubenschlag published in the years 1907—1910 his first works which secured for him a "habilitation" as a position of "private docent" of Roman law at the Law Faculty of the Jagiellonian University.

The researches of Taubenschlag during the highly productive period of thirty years till the outbreak of World War II is represented by his numerous dissertations belonging to the domain of Greek, Hellenistic and Roman laws as well as a translation of the manual of Roman legal institutions by Sohm and an independent outline of this subject for teaching purposes, later reedited several times. About that period a special object of Taubenschlag's scientific interests was also Polish medieval law. On this subject he published a number of studies that all are outstanding contributions to our knowledge of private law. He also wrote numerous reviews.

At the outbreak of World War II Taubenschlag went abroad and stayed in France and in the U.S.A. He held professorship successively: in 1939/40 — professor of Roman law in Aix-en-Provence,

in 1941/42 — professor in the New School for Social Research in New York and in the years 1942—1947 — research professor in ancient civilization at the Columbia University. During the exile period he had prepared a vast synthesis of the Greco-Roman law in Egypt in the light of the papyrological sources. The first volume deals with the problems of private law, and was published in New York in 1944, the second volume which presents political and administrative law was published in 1948, after Taubenschlag's return to Poland. A new edition of this work appeared in Warsaw in 1955. After his return to his native country in 1947, Taubenschlag was appointed to the chair of Roman and ancient laws in the University of Warsaw directing its activities to the very end of his life.

When still in exile Taubenschlag founded *The Journal of Juristic Papyrology* which, after his return to Poland, he continued to publish, for some time in collaboration with Professor George Manteuffel. As the Director of the Institute of Papyrology of Warsaw University he published in the Journal the results of his research in the domain of ancient law.

The scientific activity of Taubenschlag can be divided into three periods. In the first period, from 1906 till 1939, the range of his varied scientific interests embraced, as we have mentioned, the Roman law as well as Hellenistic and Polish medieval laws. Among the works on Roman law, beside an historical study on earnestmoney, the two monographs on guardianship and on the private law at the time of Diocletian deserve attention. The first monograph entitled: *Vormundschaftsrechtliche Studien. Beiträge zur Geschichte des römischen und griechischen Vormundschaftsrechtes* (1913) actually consists of four distinct dissertations. In the first three concerning the edict *de administratione tutorum, crimen suspecti* and guardianship over persons below the age of puberty Taubenschlag discusses the problems of the history of Roman *tutela impuberum*. The fourth dissertation is devoted to the problem of guardianship over women. In his presentation of the evolution of *tutela impuberum* many relative problems are discussed as well. In numerous instances he justly separates the Justinian additions and alterations from the classical institutions thus contributing considerably to the lucid and conclusive examination of the history of the Roman *tutela impuberum*. In his dissertation on *crimen suspecti* the author for the first time fixes the precise boundaries be-

tween the *accusatio* and the *remotio* and in the dissertation on the edict *de administratione tutorum* he illustrates how the obligation of a guardian to give a security arose and accepts its republican origin. In the essay on guardianship over women the greatest value resides in the part in which the author endeavours to prove upon the evidence of the sources the resistance of the local law to the impact of the imperial law. The dissertation on *tutela impuberum* is a novel contribution to the criticism of Justinian texts.

In the second monograph, entitled: *Das römische Privatrecht zur Zeit Diokletians* (1923), the author presents the Roman law, the national law and Diocletian's innovations. He discusses successively the law of persons, law of property, law of obligations and law of succession upon death in the Roman as well as in the national law, and finds hitherto unknown proofs of the vitality of the national law in the epoch of Diocletian. To them, for instance, belong the existence of domestic community, the popular *patria potestas*, the *ius poenitendi* etc. The author's opinion is that the fundamental changes can be found only in the law of persons with reference to adoption and guardianship and that these modifications have taken place under the influence of Greek law. Likewise this influence appears in the reception of some institutions of the law of pledge. In the law of obligations the innovations of Diocletian consist in the development of the existing principles of Roman law. The fact that Diocletian in spite of his conservatism [had a keen comprehension of the world in which Rome was to fulfill her historical mission, led the author to assert that this attitude of the emperor could only signify the end of the old epoch and the beginning of a new one in the history of legal relations.

Already in these first dissertations, which with regard to method are on a par with the most modern research in the field of Roman studies, by a very cautious examination of the texts of Justinian law, Taubenschlag gave the proof of his skillful use of the sources. A number of entries in the *Pauly-Wissowa Realencyklopädie* and a textbook of Roman law close this period of Taubenschlag's research work in the domain of Roman law.

Equally imposing were in this period the achievements of Taubenschlag in the domain of Hellenistic law. The Greek law in Egypt as well as the Roman provincial law, reflected in the papyri, are

the subject of research of the young scholar, educated under the guidance of eminent German legal historians and papyrologists. The essay on courts of *laokritai*, on judiciary organization of Egypt in the Roman and Byzantine epochs, also numerous contributions published in such periodicals as: *Zeitschrift d. Savigny-Stiftung*, *Archiv f. Papyrusforschung*, *Aegyptus*, *Archives d'Histoire du Droit Oriental*, *Przegląd Prawa i Administracji*, *Czasopismo Prawnicze i Ekonomiczne* as well as in numerous volumes of collected studies dedicated to his friends and colleagues broadly outline Taubenschlag's research work.

However, the works which have the most fundamental importance for the researches in this domain, are two large studies on penal law in the law of the papyri and on the history of the reception of Roman law in Egypt. The first work, published in 1916, is entitled: *Das Strafrecht im Rechte der Papyri*. In this dissertation the author presents in the light of the sources the penal law of the Ptolemaic, Roman and Byzantine epochs. He discerns four kinds of offences: private delicts, fiscal delicts, crimes against the king and sacral delicts. The author asserts that the criminal jurisdiction belonged to the king though it was exercised by the *laokritai* and *chrematistai*, courts of ten men as well as by certain number of single judges. In this study he emphasizes that for a lawsuit it was necessary to discern the police- and the court- procedure. The latter one had many loose elements in it. The case was often dropped in consequence of the withdrawal of a private plaintiff, amnesty, appeal or revocation of the right of asylum in temples (a privilege to which especially the priests were entitled). Taubenschlag's work based on the rich material of the sources illustrated the Roman and foreign influences in the provincial law and was an important contribution to the knowledge of the penal law in the Eastern provinces of the Roman Empire.

To the history of the law in Egypt, one of the most important provinces of the Roman Empire, devoted Taubenschlag his second essay: *Die Geschichte der Rezeption des römischen Rechtes in Aegypten* published in the collection of essays in honour of one of the most eminent Romanists of the XX-th century, Pietro Bonfante. In this dissertation Taubenschlag describes the legal life of Roman citizens in Egypt before the *Constitutio Antoniniana*. Their legal life was based on the fundamental constitution of Augustus suppl-

mented later by other imperial constitutions, senatusconsults, general provincial edict and special edicts of provincial governors. The private law by which were governed these *cives Romani* was imbued with the local influences. At the same time when the Roman law reached its climax in Rome, there began in Egypt a marked decline of this law, then its gradual Hellenization and transformation into vulgar law. This process coincides with the Romanization of local law by way of imperial legislation and judicial practice. Then the law by which were governed the *peregrini* before the *Constitutio Antoniniana* was imbued with the principles and institutions of imperial law just as the imperial law was imbued with the elements of local law. The imperial law imposed on the peregrines by the *Constitutio Antoniniana* was not the classical but the degenerated, vulgar law which developed by way of imperial constitutions, edicts of provincial governors and juristic literature. This legal dualism led naturally to an attempt at creating a uniform law in the shape in which it now appears in the Justinian legislation. Nevertheless this legislation could not remove the existing legal dualism. In all domains of Justinian legislation side by side with the institutions of Roman law there developed institutions of national law. Then an attempt at their unification failed. Taubenschlag's presentation of the subject is so precise, and the sources, as well as the scientific literature of which he makes use, so rich, that his work is an inexhaustible survey of the sources and a very desirable synthesis for the legal historians. Contemporary reviewers justly emphasized that through its originality and completeness Taubenschlag's study was a novel presentation of the history of Roman law in the imperial provinces. We may see that the scholars' interest in the new and heretofore unused sources was dominant at that period and that in future it would determine the character and scope of his research work.

Perhaps the possibility of making use of yet untapped sources directed Taubenschlag to continue his studies in Polish medieval law which became at that time another field of his scientific research. He astonished with his extraordinary perseverance and the keenness of an experienced scholar. Then he published a series of studies on the history of Polish law, especially on the most ancient Polish judicial procedure up to the times of Casimir the Great, on the formularies of private legal acts in Poland in the XII-th and XIII-th centuries and on the origin of the written summonses in Polish medieval lawsuit. The essay on J. Przyłuski and a detailed

study of Polish penal law in the Middle Ages are also distinguished achievements.

In his pioneer work on J. Przyłuski, a Polish Romanist of the XVI-th century, Taubenschlag analysed Przyłuski's statutory project entitled: *Leges seu Statuta et Privilegia Regni Poloniae*. This project is based not only on the Polish and canonical laws but also on the Roman law. In Taubenschlag's opinion the work of a Württembergian, Conrad Logus, entitled: *Iuris Civilis methodus*, must have been the prototype of Przyłuski's project because a comparison of both shows their conformity. Moreover Taubenschlag's essay has its useful value for the knowledge of medieval popular literature in Poland.

The work on Polish penal law in the Middle Ages, published in the Balzer Studies, is the first history of the Polish penal law based upon original sources. Taubenschlag discusses in it the general problems as well as the concepts of the offence, participation in offence, attempt, judicial and collective responsibility and in a separate chapter he deals with individual offences. Upon an analysis of the sources the author shows the predominant influence of German law on the development of the institutions of Polish law. Taubenschlag's undeniable merit was the use of the comparative method. By applying it he could prove how strong was the influence of the foreign law on the institutions of the Polish judicial procedure. As we may see, these thirty years of Taubenschlag's research work were abundant in achievements in various domains of the history of the law.

The next period of his scientific work covers the years of the World War II. At this time, far from the tumult of the battles, Taubenschlag is hospitably received by Columbia University, where making use of the rich library of his colleague, Professor Westermann, an eminent historian, he works on a synthesis of the law of Greco-Roman Egypt in the light of the papyri. Then he continues and supplements his former studies and gives a vast scientific synthesis founded on almost complete and minute utilization of the discovered papyrological sources as well as the rich literature on this subject. The work of Taubenschlag bears the title of *The Law of Greco-Roman Egypt in the Light of the Papyri*. In the learned world no other scholar was better qualified than Taubenschlag to perform that task. Having published more than thirty essays grounded on papyrological sources, he had the

best understanding of the structure of legal institutions in the Greco-Roman Egypt. They all reflected the contest of the native and Greek legal ideas with the Roman ones in Egypt and their mutual influence. Nearly half a century before, Mitteis, an eminent legal historian and teacher of the young Taubenschlag, was the first to give a co-ordinated study of then known sources. In an excellent outline he had presented legal principles and cases contained in the newly discovered papyri and together with Wilcken founded a new branch of science, namely papyrology. But even Mitteis himself had never attempted to give a co-ordinated picture of the whole law that had been in force in one of the most important provinces of the Roman Empire, because such a picture, if based on the papyrological sources known then to him, could not be complete and perfect. Taubenschlag had much better luck, who almost half a century later had at his disposal a very rich mine of the newly discovered sources. The exuberant bloom of papyrology in the XX-th century had given to this indefatigable research worker the possibility to elaborate a synthesis, which for every Romanist or student of classical philology and above all for the papyrologist is an invaluable treasury of sources for further scientific investigation. The work begins with a lengthy introduction in which the author presents the historical evolution of Egyptian, Greek and Roman legal institutions and their influence on the development of legal life in Egypt. Then the individual parts of private law are discussed in accordance with the system adopted in the manuals of Roman law. Each of these parts is properly illustrated with the papyri. Next there follows the presentation of the law of persons (corporate bodies, natural individuals, slavery), family law (marriage, patria potestas, guardianship), law of succession upon death, law of property, servitudes and the law of obligations, in their various constructions and aspects. The following part contains the penal law, a domain elaborated by Taubenschlag in 1916. The new presentation of this law is an excerpt from the older work, enriched with many details drawn from the new sources. Then follow the chapters devoted to the judicial organization and civil and penal procedure. The last two chapters, which treat of the political and administrative law, give in a concise outline a presentation of the authority of a Ptolemaic monarch and of a Roman emperor, the principles of territorial self-government, the rights and duties of citizens and non-citizens, the control of individuals and corporate bodies and the control of

economics (industry, trade, banking and communication). It would be superfluous to add that the overwhelming part of the individual elaborations brings new information. As one of the reviewers, justly remarks even when Taubenschlag follows a beaten track (frequently it is the track beaten by himself) he has always something new to say and to add. This work of Taubenschlag, the achievement of many years of his study of Roman provincial law, won for him due consideration in the learned world.

The third period of Taubenschlag's professional activity consisted of the postwar years of work in Warsaw University. As the founder and editor-in-chief of *The Journal of Juristic Papyrology* he continued the study of Roman provincial law and published in the Journal the results of his researches, as well as the bibliographical survey of the papyrological sources and literature. The high scholarly standard secured for the Journal the collaboration of eminent foreign papyrologists and legal historians.

Taubenschlag's interests embraced at that time, beside the Hellenistic law, also other ancient laws, especially the Babylonian and Syrian laws. In those domains too this eminent scholar gave a co-ordinated picture of the evolution of ancient laws. In 1952 he published an *Introduction to the Law of the Papyri* and in 1955 — *The Roman Private Law in the Light of Ancient Laws* (polish), a work based on his former manual of Roman private law. In this way he acquainted the Polish reader with the legal regulations which were in force in remote antiquity.

From his works, published mostly in foreign languages, Taubenschlag won universal esteem in the learned world as a distinguished Romanist, eminent papyrologist and world famous legal historian. For this reason he frequently received various high honorific distinctions. It will be sufficient to mention that in 1933 in Rome he was elected chairman of the Congress organized in honour of the 1400th anniversary of the publication of the *Corpus Iuris Civilis*. In 1934 he was one of the six chairmen of the pontifical Congress in Rome organized on the same occasion. In 1955 Taubenschlag was elected honorary chairman of the International Papyrological Congress in Vienna. The Academies of Bologna, and Berlin Marc Twain Society reckoned him among their members. In Poland Taubenschlag was elected member of the Polish Academy of Sciences in Cracow in 1925. In 1951 he was a titular, and subsequently an ordinary member of the Polish Academy of Sciences in Warsaw.

For distinguished services in the field of scholarship Taubenschlag received the Barczewski Prize in 1948 and the highest State Prize in 1952. Also he was a holder of numerous State distinctions, such as the Commander's Cross of the Order of Polonia Restituta (1937), the Gold Cross of Merit (1951), the Commander's Cross with a Star of the Order of Polonia Restituta (1935), the Tenth Anniversary's Medal (1955) and the first class Order of the Ensign of Labour (1956). Warsaw University bestowed on him in 1950 the degree of *doctor honoris causa*.

Not lesser were the services rendered by Taubenschlag as a teacher and director of the Institute of Papyrology of the Warsaw University. Under his careful and expert guidance the young students now became experienced and gifted research workers. To this not numerous but how talented team of young scholars is owed the edition of the *Symbolae Raphaeli Taubenschlag dedicatae*, on the occasion of his 75th birthday and the 50th anniversary of his professional activity. With these three volumes the scholarly world honoured the services rendered by Taubenschlag who had worked all his life for the sake of learning. Numerous monographs and dissertations by eminent and well-known foreign and Polish legal historians, contained in the *Symbolae*, are an expression of their homage to this eminent scholar for his indefatigable work.

Particularly strong ties linked Taubenschlag with the Law Faculty of the Jagiellonian University in Cracow. From this Faculty he had graduated and obtained the degree of *Doctor Utriusque Iuris* in 1904. Here in 1913 he was appointed "private docent" of Roman law, became extraordinary (associate) professor in 1919 and later (in 1921) ordinary (full) professor of Roman law. He was twice elected dean of the Law Faculty of the Jagiellonian University and held this office during the academic years 1929/30 and 1935/36. Therefore he had always shown warm attachment to Cracow. According to his wish expressed before his death, his mortal remains were buried in the same cemetery where the great Polish Romanist Stanisław Wróblewski, (who was Taubenschlag's teacher, protector and best friend), had been buried.

[Cracow]

Wacław Osuchowski