

Taubenschlag, Rafał

"A propos des Associations dans l'Egypte gréco-romaine", Claire Préaux, "Revue internationale des droits de l'Antiquité", I, 1948 : [recenzja]

The Journal of Juristic Papyrology 3, 199-203

1949

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.

R E V I E W O F A R T I C L E S

CLAIRE PRÉAUX, *A propos des Associations dans l'Égypte gréco-romaine* (*Revue internationale des droits de l'Antiquité* I (1948) 189—198).

As the starting point for her dissertation the author takes the Pap. Mich. 243—245. They concern ordinances of associations in Greco-Roman Egypt. The author submits the provisions of these ordinances to analysis. She concludes that these ordinances like those already known contained in Lond. 2710 = SB 7835 and PSI 1265 had to be renewed every year on the occasion of the election of the president of the association. They contain provisions concerning the jurisdiction of the general Assembly of the association and the duties of the members and the president. The author states that similar provisions were to be found in the ordinances of Greek associations outside of Egypt, just as well as in the ordinances of the associations of Egyptian natives. After an analysis of the mutual relation between these ordinances proving from three different provinces of Law, the author comes to the conclusion that the Greek ordinances outside of Egypt have to a certain extent exercised an influence on the Greek ordinances in Egypt. The author asserts further that the ordinances in question contain provisions concerning „mutual assistance” of the members. Finally these associations can be considered as a form of the survival „of democratic habits” in the Hellenistic monarchies and in the Roman Empire. It is also possible that they were precursors of the organisation of the primitive Church and of the medieval communities.

As this summary shows the authors study failed to produce any new results. At the same time, however, the study is open to many objections. We will list some of them.

Miss Préaux is not acquainted with the literature of the subject. Her article is based only on Boak's commentary to Mich. V N° 243—245 and his article in P.A.P.A. LXVIII (1937), 212—220;

the works by San-Nicolò, *Ägyptisches Vereinswesen zur Zeit der Ptolemäer und Römer* I (1913); II (1915); Viereck, *Aktenstücke zum griechisch-römischen Vereinswesen* (*Klio* VIII [1908], 413 ff); P. Meyer, *Aus der Geschichte eines Kultvereins des Apollon im griechisch-römischen Ägypten* (ibidem 427); Poland, *Geschichte des griechischen Vereinswesens* (1909), 522 ff; Reil, *Beiträge zur Kenntnis des Gewerbes im hellenistischen Ägypten* (1913), 176 ff; Guéraud, *Décret d'une association en l'honneur de son président* (*Bull. Soc. Arch. Alex.* N° 32—33 [1938—1939], 21 ff); Rostovtzeff, *The Social and Economic History of the Hellenistic World* (1941), 732, 733, 1061/2; 1063/4; 1388¹⁰⁵; 1590; Taubenschlag, *The Law of Greco-Roman Egypt II* 65/6 were not consulted by her.

On p. 192 Miss Préaux asserts that the *νόμοι* sont des conventions ou se trouvent définies les obligations et les droits de deux parties à savoir le président et les membres(!). It is the same as if somebody would say that a marriage is a contract between the couple and the registrar. On p. 193 the number of the parties increases considerably as Miss Préaux states changing her mind *ces statuts sont cependant contrats par l'échange d'obligation qu'ils instituent entre les membres et entre ceux-ci et le président* as if the president were not a member of the association. I may refer therefore to my *Law II* 64/5 which will inform her that the association ordinances are contracts voluntarily entered by their members, binding upon them by virtue of their own consent.

From the above mentioned fatal error follows her further statement p. 192 about the obligations of the two parties deriving from the contract especially *les obligations du président* and *la sanction des obligations du président*. Miss Préaux is not aware that the supposed „obligations” contain rights and duties and don't derive from the contract between him and the association but from the binding vote of the majority of the membres, conferring rights to him and imposing duties upon him.

On p. 193 Miss Préaux compares the Greek *νόμοι* in Egypt with those outside Egypt and the Demotic ones. This was long ago done, with more precision, precaution and accuracy by more competent scholars as San-Nicolò, *Vereinsgerichtsbarkeit* (*Gedenkschrift Swoboda*) p. 257 and passim, Roberts-Skeat-Nock, *The Gild of Zeus Hypsistos*, *Harv. Theol. Rev.* vol. XXIX, N° 1 (1936) p. 72 and Boak, *P.A.P.A.* LXVII, 220 ff. Miss Préaux finds out p. 194 *que les pouvoirs de juridiction arbitrale de l'assemblée, les obli-*

gations même des membres... enfin les règles de bonne conduite... se retrouvent également dans tous les statuts de tous trois domaines. One would expect the conclusion that either the three kinds of νόμοι developed independently from one another or — as the influence of the Egyptian νόμοι on the Greek ones outside Egypt does not come into consideration — the Greek νόμοι in Egypt were adopted from the Greek ones outside Egypt (Boak) or from the Demotic ones (Roberts-Skeat-Nock). Instead of such a conclusion we read with Miss Préaux p. 196 *mais des formules, des mots, des solutions de détails ont pu, sur le sol d’Egypte être importé du domaine grec tandis que les moeurs, que ces statuts reflètent... font songer... à la vie des confrères égyptiens* although *ces moeurs* are according to Miss Préaux (p. 194 v. 4 from the bottom) identical with those which reflect the Greek νόμοι outside Egypt and it would be more consistent to assume that they reflect the life of the same Greek circle from which all other things were taken. I would point out that Boak finds l. c. 220 *the Greek element in the νόμοι from Michigan in the form of the νόμοι themselves* whilst Skeat, Roberts, Nock stressed the Egyptian element in Lond. 2710 *in the organisation of the gild* (l. c. 74, 85, 87). If Miss Préaux writes p. 195 *ce sont surtout ces règles à observer dans la vie commune qui avaient paru à Mrs Skeat, Roberts et Nock constituer dans les statuts de la confrérie de Zeus Hypsistos, P. Lond. 2710, la preuve d’une forte influence indigène sur les statuts des associations d’Egypte dont les membres s’exprimaient en grec, voyez particulièrement The Gild of Zeus Hypsistos p. 87, she imputes to the editors of P. Lond. 2710 something what they never wrote.*¹ Summing up p. 87 their analysis they say *this document is of particular significance*

¹ Similarly Mrs. Préaux, *Chronique d’Egypte* 48, 366 imputes me that I *range aux associations les temples*. I must protest against such an imputation or to use Mrs. Préaux own words p. 368 *against une affirmation qui paraît un peu simplifier les choses*. This nonsense must go to the account of Mrs. Préaux. I wrote *Law II 65: Control of corporate bodies. I. The law of associations II. Regulations concerning temples*. Mrs. Préaux does not know that corporate bodies comprise associations and foundations (cf. my *Law I 48*) and that temples belong to the latter category. It may be mentioned that Mrs. Préaux confuse remarks on p. 367 show that she has no idea about notion of the *right of religion* as she had no idea about notion of *corporate bodies*. It is not here the place to explain the motives which induced Mrs. Préaux to pass from the highest praise of my work in *Chronique d’Egypte* Nr 45/46, p. 215 ff to the vulgar libel in *Chronique d’Egypte* Nr 48 p. 366 ff.

as showing how an Egyptian mode of corporate life passed from the native speaking to the Greek speaking and mode means form and the form of corporate life is the form of organisation (cf. p. 85 So we have in our papyrus an Egyptian form of organisation) as the authors pointed out on p. 74, 85.

Similar inaccuracy is to be found on p. 196. Here Miss Préaux discusses the provisions in Mich 244⁶⁻⁷ (43 A.D.), 245 (47 A.D.) and PSI 1265 (426 or 441 A.D.) concerning the collection of the taxes by the president of the association resp. by a special supervisor elected among the members. Miss Préaux refers these passages to a *mutuelle fiscale* or p. 197 to *l'assurance fiscale qui se conçoit aisément comme une variété de l'assurance contre les poursuites pour dette que constitue l'ἔρανος ou qu'instituaient entre leurs membres les confréries de culte indigènes*. This assertion is unfounded. Mich 244 provides: if a member fails to pay the dues of the *laographia*, the president is authorized to take necessary steps against him in order to enforce payment; should the other members be obliged to *mutual assistance*, they ought in such a case be also compelled to pay; as a respective provision is missing, it indicates that an obligation to *mutual assistance* was not established. In Mich. 245 we read also that if anyone fails to satisfy any of the public obligations, it shall be permissible for the collector to arrest him and only him. In PSI 1261 there is — it is true — a provision on reciprocal assistance but this provision refers according to the editor, to (p. 94 note ad 10) rather *fiscal irregularities and similar deficiencies* than to the payment of taxes and may be the result of collective responsibility applied to all professional corporations by the late imperial legislation (cf. my *Law II* 68). Students of law will be perplexed reading how Miss Lenger, *Chronique d'Égypte* N° 47 (1949) p. 168 understood the mutual assistance: *les cotisations versées par les membres sont volontairement destinées par eux à garantir le paiement collectif de différentes taxes qu'ils doivent au fisc*. The function of the *mutuelle fiscale* does not consist in the distribution of the taxes among the members and in the collection of the shares due by them but in the mutual financial assistance in the payment of these shares.

On p. 192 Miss Préaux asserts *que la forme contractuelle plus marquée des statuts grecs d'Égypte relevât d'une influence égyptienne, puisqu'on retrouve cette forme dans les textes démotiques, dès l'époque lagide et beaucoup moins dans les statuts provenant des autres*

parties du monde grec and adds p. 193 note 1 *Nous voudrions noter que les statuts grecs des associations de famille chargées de perpétuer un culte funéraire tiennent de leur origine testamentaire un caractère législatif plus accentué que leur caractère contractuel*. This means that Miss Préaux did not consult: Ziebarth, *Das griechische Vereinswesen* 167; San Nicolò, *Vereinswesen* II 21 ff; 101 ff; *Vereinsgerichtsbarkeit* 296; Vinogradoff, *Historical Jurisprudence* II 119—127; Boak, l. c. 220.

I shall finish my remarks by quoting Miss Préaux own words with some modifications (cf. *Chronique d'Égypte* 49 (1949) p. 368) *il y aurait ainsi sans doute maintes notions qu'on voudrait contester ...et... il est fatal de rencontrer tant d'erreurs matérielles, logiques et bibliographiques dans un si petit article...*

I have submitted this relatively tiny dissertation to a detailed analysis because I wanted to demonstrate on its behalf how great mistakes can be committed by a historian, if he undertakes to deal with a subject which demands imperatively for juridical knowledge. In doing so I was led by no other motives than those dictated by my scientific conscience. *Quia audivimus... quosdam imperitos homines devagare et doctrinam discipulis adulterinam tradere* (Iust. C. *Omnem* § 7). We have to do with the same danger which has been indicated by Mitteis (*Sav. Z.* 34, 459) in his criticism of the misconceptions of the anonymous philological editors of the *Dikaiomata*, namely that philologists and historians will relying upon their authority repeat them in good faith. My purpose is to prevent philologists and historians from copying *bona fide* the mistakes of Miss Préaux and from asserting for instance that the νόμος is *une convention ou se trouvent définies les obligations et les droits de deux parties, à savoir le président et les membres*. It was especially necessary to criticise Miss Préaux work because the example given by her, has unfortunately found an imitator in the person of her disciple Miss Lenger, who without any juristic preparation is going to prepare a commentary to a *Corpus juris ptolemaici* in which we shall find such statement as that the decision written on the margin of a petition presented to the king (Tebt. 43) is to be considered as *une sentence sans appel que les souverains prononcent en leur qualité de juges suprêmes* (cf. *Rev. int. d. droits de l'antiq.* I 127 and above p. 149 note).