

## THE DATE OF THE PERGAMENE ASTYNOMIC LAW

THE long Pergamene inscription first published by W. Kolbe, *Ath. Mitt.*, XXVII, 1902, pp. 47-77 and best known from the edition of W. Dittenberger, *O.G.I.*, 483, has just been magisterially reedited with full bibliography by one of the masters of Greek Epigraphy, Günther Klaffenbach, *Abh. Ak. Wiss. Berlin*, Kl. für Sprachen, Literatur und Kunst, Jahrgang 1953 (published in 1954), Nr. 6. The inscription still presents a fundamental problem which is this: Why did someone in the Hadrianic Period<sup>1</sup> erect at his own personal expense a Hellenistic<sup>2</sup> law concerning the maintenance of Pergamene buildings, streets and installations? The law bears the heading --]ς ἀστυνομῶν τὸν βασιλικὸν νόμον ἐκ τῶν ἰδίων ἀνέθηκεν, so that the identity, or even classification, of the *basileus*, its nominal author, constitutes part of the same question.

Is the law called a *basilikos nomos* because it emanated from a Hellenistic king like Eumenes II, who had died two and a half centuries earlier, or from the reigning Roman emperor Hadrian, who at Athenian request reedited and froze the laws of Draco and Solon?<sup>3</sup> Against the assignment to the reigning emperor, which at one time, because of the absence of further identification, seemed inevitable to me, is the fact that the phrase *basilikos nomos* applied rarely to imperial legislation but commonly to royal legislation. Accordingly, it is better to agree with Klaffenbach and the *communis opinio* of modern scholars that the law is described as the *basilikos nomos* because it emanated from some long dead Hellenistic king, probably Eumenes II.

Why, then, did someone in the time of Hadrian set up a copy of this lengthy royal law? Legras and Cardinali assumed that the law had remained in effect ever since the Hellenistic Period when it was first promulgated. According to their answer (though, as Klaffenbach, p. 24 comments, they did not quite think it through), the law which obtained in the time of Hadrian was engraved as a public convenience. Kolbe and Prott did not face the problem at all. Klaffenbach attributes the inscription

<sup>1</sup> Klaffenbach has checked the opinion of earlier epigraphists who assigned the lettering to the Trajanic-Hadrianic Period. He too, like Prott and Dittenberger, concludes that the lettering has the greatest similarity with that of *O.G.I.*, 484, a dated Pergamene inscription of the Hadrianic Period. Two slight changes in the text, at points where Klaffenbach was the first to recognize problems, seem to me desirable. In line 17 read τὸ δ' ἐλ<λ>οιπον διάφορον instead of τὸ δὲ {λοιπὸν} διάφορον. In line 60 insert the word αἰ into the restoration (which is too short) so that it reads τὰ [δὲ αἰ γεινόμενα δ]ιάφορα and compare *S.I.G.*<sup>3</sup>, 589, τὸν αἰ γινόμενον.

<sup>2</sup> The language of the law strikes everyone, including such connoisseurs as Bengtson, Klaffenbach, and J. and L. Robert, as Hellenistic.

<sup>3</sup> Not only the laws of Athens, but also the laws of Megara. See J. H. Oliver, *The Ruling Power: A Study of the Roman Empire in the Second Century after Christ through the Roman Oration of Aelius Aristides*, (Trans. Amer. Philosoph. Soc., 43, 1953), particularly Ch. VI.

merely to the antiquarian interests of the time and suggests that the *astynomos*, who may well have erected the monument, did so as a *summa honoraria*. For Klaffenbach the law had long ceased to be valid, and so its inscription really served no useful purpose at all. However, Klaffenbach admits that it would have been simpler to assume that the law was valid, when engraved, but he considers that this possibility is quite excluded, because (1) the money penalties of the time of Eumenes II would certainly not be those of the Hadrianic Period, and (2) the officials mentioned in the law are officials of the Hellenistic Period, while some of them are not attested for the Roman Period and one, *ὁ ἐπὶ τῆς πόλεως*, even cannot belong to the Roman Period (in his opinion).

The first of Klaffenbach's objections is in our opinion surprisingly feeble. We may cite the example of the ancient Roman laws which remained valid for generations and centuries. As Rome moved out of the stage of barter into a money economy, the fines were converted from sheep and cattle, first into bronze, finally into denarii, but the laws were still called those of the Twelve Tables.<sup>4</sup> Under the Principate an imperial constitution was often shortened, expanded or altered by some succeeding emperor but continued to be known by the name of the emperor who promulgated the original version.<sup>5</sup> Both Roman and municipal laws underwent slight changes of modernization from time to time without losing the old names. The code may have a new designation but individual laws within the code retain their traditional names.

Klaffenbach's second argument, based on the officials who appear in the law, is much stronger. He is very dubious about the chances that *ὁ ἐπὶ τῶν ἱερῶν προσόδων* continued into the Roman Period. But in Roman Athens there was an official called the Treasurer of the Sacred Diataxis who seems in the third century to have been replaced by the plural board *οἱ ἐπὶ τῆς ἱερᾶς διατάξεως*.<sup>6</sup> We are entitled to ask who at Pergamum corresponded to the Treasurer of the Sacred Diataxis at Athens, if not *ὁ ἐπὶ τῶν ἱερῶν προσόδων*. Until he produces another official in the latter's place, it is better to assume the presence of that official. Klaffenbach is even more dubious about the *nomophylakes*, who are attested for Hellenistic Pergamum, but not for Roman Pergamum.<sup>7</sup> I think that their absence in our inscriptions is as accidental as the absence of reference to *astynomoi* and other officials whose presence Klaffenbach cannot attest but cheerfully assumes. These questions, however, are not too important for Klaffenbach, who on p. 24 continues as follows with the heavy ammunition:

<sup>4</sup> H. Mattingly, "Aes and Pecunia," *Numismatic Chronicle*, Sixth Series, III, 1943, pp. 21-39.

<sup>5</sup> See, for example, F. Schulz, *History of Roman Legal Science*, Oxford, 1946, pp. 315 f.

<sup>6</sup> *Hesperia*, Suppl. VI, 1941, pp. 133-4.

<sup>7</sup> Fritz Freiherr von Schwind, *Zur Frage der Publikation im römischen Recht mit Ausblicken in das altgriechische und ptolemäische Rechtsgebiet* (Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte XXI, 1940), especially pp. 67 and 180, thinks that the activity of *nomophylakes* continued into the Roman Period and affected Roman practice.

Denn den Ausschlag gibt ὁ ἐπὶ τῆς πόλεως. Nicht als ob es diese Einrichtung nicht auch in der römischen Kaiserzeit gegeben hätte, kaiserliche Kommissare sind oft genug in den Städten eingesetzt worden, aber die hiessen διορθωταί, ἐπανορθωταί oder λογισταί, niemals ἐπὶ τῆς πόλεως. Das ist vielmehr eine der typisch hellenistischen Bezeichnungen für den vom König eingesetzten Stadtgouverneur, vgl. darüber H. Bengtson, *Strategie* II 240 ff. Damit ist es erwiesen, dass das vorliegende Gesetz in der Tat der pergamenischen Königszeit zuzuweisen ist.

To begin with, I can see no similarity between irregular "trouble-shooters" or emergency agents, such as διορθωταί, ἐπανορθωταί and λογισταί were, and the regular official ὁ ἐπὶ τῆς πόλεως. Surely the ἐπὶ τῆς πόλεως was a citizen of Pergamum, not an outsider like a *logistês*. The two types differ not only in that one occupies a permanent office, the other a temporary emergency office, but because one is a foreigner, while the other is a local citizen.

Secondly, the fact that the title ὁ ἐπὶ τῆς πόλεως is a title of a city governor appointed by the Hellenistic king in no way proves that the institution of the city governor was merely dropped at Pergamum and that his full-time duties were re-assigned to others in a revolutionary reorganization. Since at Pergamum the glorious period was not the pre-Hellenistic Period, the ancestral constitution, upon which Pergamenes continued like everyone else to look back with appreciation, was here the royal constitution. Why could not an ἐπὶ τῆς πόλεως continue to be appointed, if not by the Roman governor, then by the city itself? Furthermore, we are under no obligation to visualize the duties of the office as precisely the same. On the contrary, the absence of change in any office would seem incredible. But if Rome really imposed serious changes as I do not believe, she could have worked through old institutions to do so.

Again let us look at the situation in other free cities, such as Athens and Sparta. Both of the latter employed an administrative institution with a perennial officer who was a local citizen and whose title was ἐπιμελητῆς τῆς πόλεως.<sup>8</sup> We have the right to ask who at Roman Pergamum corresponded to the ἐπιμελητῆς τῆς πόλεως of Roman Athens and of Roman Sparta, if not the ἐπὶ τῆς πόλεως.

Why are ancient texts engraved or re-engraved long afterwards at much expense on bronze and marble? Sometimes they are old legal documents justifying some action or situation in the present, for example a first grant of powers, or a kind of charter, or an earlier decision. Sometimes they are honors, of which the record has disappeared

<sup>8</sup> At Athens: *I.G.*, II<sup>2</sup>, 1103, 1990, 3185, 3449, 3546, 3580, 3548 + 4342; *Hesperia*, XI, 1942, p. 39 and XII, 1943, p. 68; also on the front of the Sarapion Monument (for which see the new date in *Hesperia*, Suppl. VIII, 1949, pp. 243-5). At Sparta: *I.G.*, V(1), 32 A and *B.S.A.*, XXVI, 1923-5, p. 200 (with A. M. Woodward's note on p. 203).

through a fire or through weathering; the authorities in such cases may feel that the honors of benefactors cannot be allowed to disappear whether or not relatives survive. Sometimes they are late expressions of family or civic pride in the literary performance of an ancestor. Sometimes a chronology in the form of a list of eponymous officials or in that of a chronicle may be engraved or re-engraved long afterwards because it is a useful work of reference. At Athens around A.D. 220 a board connected with the Asclepieum engraved a list of paeonistae and a copy of the Paeon of Sophocles.<sup>9</sup> Was it for purely antiquarian reasons that they engraved the ancient paeon? It is unrecorded but probable that the paeon was still in use. Finally there is the case of the Laws of Draco and Solon which were published at Athens on marble around 400 B.C.<sup>10</sup> In this case we actually have the evidence and can say that though the Laws of Draco and Solon were in some cases retouched or modernized to eliminate contradictions and obscurities, and to include new rules, they were published on stone primarily to make them easier to consult. The engraving served a useful purpose. In my opinion the engraving of a law of an Attalid king in the time of Hadrian would be analogous to the engraving of laws of Draco and Solon in 400 B.C., and should be that of a law which Pergamenes needed to consult in the Hadrianic Period, because it was still valid, though with some modernization. In Hadrianic Egypt laws of the Ptolemies were cited as “royal *prostagmata*”<sup>11</sup> which were still valid,—perfect parallels for the *basilikos nomos*.

While an aesthetic-antiquarian interest might conceivably be strong enough to effect the late publication on marble of a comparatively short work of great literary value like the Paeon of Sophocles, I cannot believe that a purely antiquarian interest in the way a proper maintenance of cisterns was enforced back in the days of Eumenes II, in the way rubbish and offal were kept off the streets, and such matters, would have induced anyone to expend his money on an inscription of considerably more than 237 lines. That is my main difficulty in following Klaffenbach. Furthermore, I doubt that the ways of enforcing proper maintenance of cisterns, cleanliness, security, etc. were even very different, and I feel that failure to identify the king is easy if the law had always been in use from the beginning, but is hard to swallow in the case of a late engraving of an obsolete law for purely antiquarian reasons. I fail to see the parallel between the useful publication of such interesting and helpful material as a chronicle and the utterly useless publication (useless for the common man, however useful to a few scholars) of an obsolete code for a police and street cleaning department.

Klaffenbach, who is too cautious a scholar to yield to temptation and to insert his conjectural restorations into the text, thinks of the expenditure as a *summa*

<sup>9</sup> For the inscription see *T.A.P.A.*, LXXI, 1940, pp. 308 f. (cf. *Hesperia*, V, 1936, pp. 109-13).

<sup>10</sup> *Hesperia*, IV, 1935, pp. 1 ff.

<sup>11</sup> M.-Th. Lenger, “Les vestiges de la législation des Ptolémées,” *Mélanges Fernand de Vischer*, II (*R.I.D.A.*, III, 1949), pp. 69-81.

*honoraria*, and this is an excellent idea if the publication was that of a law by which men lived at Pergamum in the Hadrianic Period. But otherwise the donor would have disappointed the public which expected him to make urgent repairs or to make a distribution of grain or whatever was customary when repairs were unnecessary. Promising them in assembly an obsolete code of this character, he would not have cut a really good figure, which, after all, was the purpose.

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