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Patronum cooptare, patrociniū deferre: Lex Malacitana c. 61*

The vocabulary of patronage, like the institution itself, is not easily grasped, in part because the Romans used a variety of words to describe the same institution. Hence, *fides*, *clientela*, *patronatus* and *patrociniū* were employed to characterize different perspectives and various aspects of the same relationship.

This problem is particularly acute when one considers chapter 61 of the *lex Malacitana*. The chapter in questions reads:

ne quis patronum publice municipibus municipii Flavi Malacitani cooptato patrociniūve cui deferto, nisi ex maioris partis decurionum decreto ... (ILS 6089 = FIRA² Nr. 24).

The question to be discussed here is whether the formulae *patronum cooptare* and *patrociniū deferre* refer to one or more specific kinds of patronage. Might one be considered retrospective and the other prospective in terms of the patronal services? Or, does *patronum cooptare* imply the grant of general responsibilities while *patrociniū deferre* specific ones? Or, alternatively, are these expressions simply redundant? These questions are important, for communities employed the patronal relationship for various purposes and may have devised distinct formulae to define particular functions¹).

The first problem to be considered is whether Roman lawgivers did employ apparently repetitious combinations of formulae in order, for example, to prevent the circumvention of the regulation or to ensure its enforcement. That they did so may be observed in another municipal charter, the *lex Ursonensis*, two passages of which are relevant for this discussion. In chapter 97, the text reads:

ne quis Ilvir neq quis pro potestate in ea colonia facito neve ad decuriones referto neve decurionum decretum facito fiat, quo quis colonis coloniae patronus sit adoptetur praeter eum ... (ILS 6087).

Though there is no reference to a distinction between *patronum cooptare* and *patrociniū deferre*, this chapter does regulate two distinct formulae (*patronus esse* and *patronus adoptari*) which were apparently being used to designate patrons in contemporary decreta. It is however highly unlikely that the two expressions used here were meant to produce different kinds of patrons or patrons with different functions.

In chapter 130 of the same charter the language is more fulsome:

ne quis Ilvir aedilis praefectus coloniae Genetivae Iuliae quicunque erit ad decuriones coloniae Genetivae referto neve decuriones consulto neve decretum

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¹) The *leges Ursonensis* and *Malacitana* mention a variety of patronal relationships. The title was given to individuals (and their descendants) who founded the colony, who distributed land among the citizens (ILS 6087, c. 97), and to those who acted as *patroni causae* in internal affairs (ILS 6089, c. 67). Moreover, special regulations affected the designation of *patroni* of senatorial status (ILS 6087, c. 130).

decurionum facito neve de ea re in tabulas publicas referto neve referri iubeto neve quis decurio de ea re, qua de ea re agetur, in decurionibus sententiam dicito neve decretum decurionum scribito, neve in tabulas publicas referto, neve referundum curato, quo quis senator senatorisque filius populi Romani coloniae Genetivae patronus atoptetur sumatur fiat nisi ...

Here again there is no reference to *patrocinium*, but three formulae are mentioned by which a patron might be designated: *patronus atoptetur*, *patronus sumatur* and *patronus fiat*. Nevertheless, the general context of this chapter indicates that the intention of this provision (and that of c. 97) is not to distinguish between different kinds of patrons, but to regulate the various means and procedures by which the patron of a community might be designated.

To ensure the efficacy of a regulation, the lawgivers specifically mentioned the various formulae which were currently being employed in reference to a particular institution. Nor was this tendency unusual at other points in these charters. A common conclusion to the various regulations is: *cui volet cuique per hanc legem licebat actio petitio persecutio esto*²). These three words (*actio*, *petitio*, *persecutio*) though of different origins are variously considered as "... eine sinnlose Häufung synonymer Begriffe" or as formal regulations "... (die) jede Lücke zu schließen und jeden Umgehungsversuch zu verhindern suchten"³). Now that the principle has been established that the lawgivers employed various formulae in the charters in order to achieve one result, we may consider whether the two expressions used in the *lex Malacitana*, c. 61, refer to the same institution.

The Oxford Latin Dictionary makes the following distinctions between the words *patronus*, *patronatus* and *patrocinium*. The first is the person who has undertaken the protection of another, the second is defined as the status or position of a patron and the third as the exercise of the functions of a patron. It is the last of these three which comes closest to the English word "patronage". By these definitions, the formula *patronum cooptare* found in this law and on bronze *tabulae patronatus* would be equivalent to the official bestowal of *patronatus*⁴), i.e., to the bestowal of the status or dignity of patron on an individual. The exercise of the function implied by the dignity would be considered *patrocinium*. Theoretically, then, there seems to be a distinction between these words.

This conclusion would appear to be supported by the fact that *patrocinium* usually refers to the activities of an advocate or, in particular, to his plea.⁵) Hence, *patrocinium deferre* in this formula might be interpreted to mean specifically the appointment of an advocate by a community and not to the bestowal of a general patronage of the community. In this interpretation, the formula *patrocinium deferre* would appear to create a *patronus causae municipii Malacitani* and not a *patronus municipii*⁶).

²) Cf. *lex Ursonensis* cc. 125–126, 128–132; the *lex Salpensana* (ILS 6088) c. 26 and the *lex Malacitana*, cc. 62, 67.

³) On this problem, see F. Sturm, *Stipulatio Aquiliana*, München 1972, 147–149, 157ff. and 163.

⁴) On the *tabulae*, cf. ILS 6094ff. and below.

⁵) Cf. Plin. epp. VI, 21. 1, IX, 7. 1 and Cod. II, 7. 9 and the references given in the Oxford Latin Dictionary.

⁶) Such a *patronus causae* would represent the community in external relations; the appointment of a *patronus causae* for internal affairs is regulated in c. 67.

In practice, however, the theoretical distinction between *patronum cooptare* (as a general patronage) and *patrocinium deferre* (as a specific legal service of an advocate) does not appear to have been observed in the patronage of communities. Three examples illustrate this problem.

The *lex Malacitana* specifies that the designation of a patron of the community be confirmed by a *decretum decurionum*. A number of these honorary decrees, known as *tabulae patronatus*, have survived⁷). Although the texts of the individual *tabulae* vary considerably, they generally record that the community coopted someone as its patron and that he has received the community in *fidem clientelamque suam*. A *tabula* from Mauretania dating to the reign of Nero reads:

Q. Julius Q. f. Qui Secundus legatus pro/praetore hospitium fecit cum/decurionibus et colonis colonia/Julia Augusta Legionis VII Tupusuctu sibi/liberis posterisque suis eosque pa/trocinio suo tuendos recepit ... (CIL VIII 8837)⁸)

What is interesting here is that *patrocinium* is employed where *fides clientelaque*, normally appears and that it is considered the complement of *hospitium*. Hence, it is very likely that *patrocinium* here refers to a general, rather than to a specific, patronage.

In an inscription from Peltuinum in Italy, a *decretum decurionum* for Nummia Varia is recorded in which the following formulae appear together:

... ut merito debeat ex consensu universorum patrona praefecturae nostrae fieri ... placere universis conscriptis Nummiae Variae ... pro splendore dignitatis suae patrocinium praefecturae nostrae deferri ... et singulas universosque nos remque publicam nostram in clientelam domus suae recipere dignetur ... (CIL X 3429)

Here too it is probable that the authors of the *decretum* considered *patrona fieri*, *patrocinium deferri* and *in clientelam recipere* to describe the same relationship.

A third example is an inscription from Banasa in Mauretania which dates to A.D. 162. It reads:

Aurelii Banasitani ex decreto splendidissimi ordinis Q. Claudium Feroem/Q. Filium Aeronium Montanum patronum/sibi liberisque ac posteris suis cooptaverunt/Q. Claudius Ferox Q. fil. Aeronius Montanus item/patrocinium in se recepit ... (AE 1948), 115)

This inscription is particularly important because it specifies, as required by the *lex Malacitana*, that the cooptation of the patron result from a *decretum decurionum*. Most significant for this discussion is, however, the emphasis given by the expression *it(em) patrocinium in se recipit* as an exact complement of *patronum cooptare*. These three examples show conclusively that, in regards to the patronage of communities, the Romans did not in practice make a clear distinction between the status of the patron and the exercise of the duties implied by the assumption of the status. In this context, both formulae refer to the bestowal of a general patronage.

⁷) On this form, R. Cagnat, *Cours d'Epigraphie latine*⁴, Paris 1914, 330 and L. Harmand, *Le Patronat sur les Collectivités publiques*, Paris 1957, 332ff.

⁸) The date of this and the two following documents is assured by the mention of the relevant consuls at the beginning of the inscription. They and the names of the *legati* who were appointed to carry out the decree have been omitted here.

Even if one accepts that the two formulae are linguistic variations which describe one phenomenon, it is possible that *patronum cooptare* and *patrocinium deferre* might refer to different aspects of a general patronage. In this case, the former might be viewed as retrospective, "for services rendered", and the latter prospective, that is, for services "to be rendered". There is however no evidence for such a meaning in the context of the patronage of communities.

Among the *tabulae patronatus*, there is no indication that *patrocinium* has this prospective meaning. Rather, it appears to be the case that *patronum cooptare* alone included both the prospective and retrospective services. For, in the one case in which such a distinction is made (... *ut omnis aetas curae eius merito gratias agere debeat, futurumque ut tantae virtutis vir auxilio sit futurus municipio nostro*), namely in the decree coopting Pomponius Bassus as patron of Ferentinum (ILS 6106), the community requests Bassus to accept it (i.e., the community) in his *clientela* and allow himself to be coopted patron. Moreover, Pliny the Younger, in referring to his cooptation as patron of Tifernum (*me patronum cooptavit*) states that he was *paene adhuc puerum* at the time (IV, 1.4) indicating that the community was anticipating services in the future, rather than rewarding those of the past⁹).

In summary, there is, first, no reason to think that, of the two formulae discussed here, one has a general meaning and the other a specific or that one is retrospective and other prospective. In the context of the patronage of communities, the two are synonymous. Secondly, it is manifest that the vocabulary of patronage must be treated with considerable caution. In the context discussed here, the two formulae refer to the same institution, but, in other situations, they clearly do not.

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⁹) On this letter, see J. Nicols, Pliny and the Patronage of Communities, *Hermes* (forthcoming).