Eos C 2013 / fasciculus extra ordinem editus electronicus
ISSN 0012-7825

THE TESTIMONY OF ASCONIUS CONCERNING THE LEGAL STATUS OF THE *COLLEGIA* DURING THE DECLINE OF THE ROMAN REPUBLIC*

By

JERZY LINDERSKI

In the life of the lower strata of Roman society, the *collegia* – various kinds of professional associations (of craftsmen and artists and, to a lesser extent, of merchants), also recreational and religious associations (mostly comprising the devotees of cults that had been recently introduced to Rome) – played a large but often unappreciated role. Any attempt to reconstruct the social history of the Republic must take this factor into serious consideration.

The significance of the *collegia* was fully appreciated by the master of modern historiography, Theodor Mommsen, who, in the early years of his career, chose this topic as the subject for his dissertation, *De collegiis et sodaliciis Romanorum* (Kiliae 1843). Also in this area he became a pioneer of a new direction in research: his postulate of the comprehensive exploitation of epigraphical sources established in the coming years the study of Roman associations on a firm foundation. Yet while inscriptions are the main source for the history of the associations under the Empire, very few are extant from the time of the Republic, and they can offer only an approximate idea of the importance the *collegia* had already attained at that period.

Telling information of the regard in which the associations were held and of their social function can be gleaned from the prescriptions contained in the *lex Acilia repetundarum*:

> Quei... [gener socer vitricus privignusve siet, queive eiei sobrinus siet pro]piusve eum ea cognatione attigat, queive eiei sodalis siet, queive in eodem conlegio siet... [neive eum qu]ei ex h. l. ioudex in eam rem erit, neive eum quei ex h. l. patronus datus erit[1].

---

* Originally published in Polish in "Eos" L 1959–1960, fasc. 2, pp. 133–141.

[1] *CIL* I 198, ll. 10 f.; C. Bruns, *Fontes iuris Romani antiqui*, Tubingae [7]1909, p. 60. Cf. F.M. de Robertis, *Il diritto associativo romano dai collegi della Repubblica alle corporazioni del Basso Impero*, Bari 1938, pp. 66 f.; idem, *Il fenomeno associativo nel mondo romano*, Napoli 1955, pp. 31 f.

The legislator thus equates the bonds that link the *sodales*, the members of the same association (cf. Gaius, *Dig.* XLVIII 22, 4: "sodales sunt, qui eiusdem collegii sunt"), with the bonds of blood. The enactment of this regulation testifies to a significant presence of associations already by the end of the 2nd century BC.

It seems certain now that throughout the Republic, down to its last century, no specific legislation was enacted regulating associations; they could arise of their own accord and without any official approval[2]. Proponents of the opposing view claim that associations were strictly controlled by the state and had to be formally authorized since the dawn of the Republic[3]. Yet the arguments they adduce are much less compelling than the arguments and evidence presented by the scholars who defend Mommsen's thesis of the freedom of associations. The state was interested in associations only in two dissimilar cases: if their activity became dangerous to the established order (as in the case of the Bacchic organizations) or when a need arose to establish an official association to take care of a public cult[4].

Significant changes to the situation sketched above came about only in the last hundred years of the Republic. The processes of change which affected the entire social system also had an impact on associations, drawing them into the whirl of political battles. While the *collegia* have perhaps never achieved the importance once enjoyed by the political clubs in Athens, the sources still paint a suggestive picture of their political activities in those turbulent times. Even though our evidence is scanty, *collegia* and various *sodalitates* must have served as political tools already in the time of Marius and Sulla. They were definitely a factor in the Catilinarian movement[5]. Political agitation reached its peak during the activities of Clodius and then after the death of Caesar. In those events, in addition to the religious fraternities, most susceptible to agitation (particularly the devotees of the Egyptian cults of Isis and Serapis[6]), prominently figured the numerous associations of craftsmen and labourers.

---

[2] The leading proponent of this view is Th. Mommsen, *op. cit.*, pp. 34 ff. This idea was taken up and developed by W. Liebenam (*Zur Geschichte und Organisation des römischen Vereinswesens*, Leipzig 1890, pp. 16 ff.), J.P. Waltzing (*Étude historique sur les corporations professionnelles chez les Romains*, vol. I, Louvain 1895, pp. 78 ff.), L. Schnorr v. Carolsfeld (*Geschichte der juristischen Person*, München 1933, p. 402), M.G. Monti (*Le corporazioni nell'evo antico e nell'alto medio evo*, Bari 1934, pp. 22 f.), de Robertis (*Diritto associativo...* [n. 1], pp. 35 ff.).

[3] M. Cohn, *Zum römischen Vereinsrecht*, Berlin 1873, pp. 27–35; U. Coli, *Collegia e sodalitates*, Bologna 1913, pp. 37 ff.; V. Bandini, *Appunti sulle corporazioni romane*, Milano 1937, pp. 42 ff.

[4] See Waltzing, *op. cit.* (n. 2), p. 74.

[5] L. Ross Taylor, *Party Politics in the Age of Caesar*, Berkeley–Los Angeles 1949, p. 44.

[6] See L. Ross Taylor, *Foreign Groups in Roman Politics of the Late Republic*, in: *Hommages à J. Bidez et à F. Cumont*, Bruxelles 1948 (Collection Latomus 2), pp. 327 ff.

In view of this turmoil, the attitude of the government towards associations was bound to change. A long series of legal measures ensued, marking the intrusion of the state into the affairs of the *collegia*, substantially limiting their freedom of organization. As in other aspects of the society, also in the field of associations, the end result of this process was the creation of a new state of affairs during the time of Caesar and Augustus.

The testimony of Asconius is crucial to any attempt aiming to reconstruct the evolution of the legal situation of associations toward the end of the Republic. Other scattered information, gleaned from Cicero himself and from Cassius Dio, can serve only to complement the evidence presented by Asconius. His testimony has been the subject of several investigations; however, no consensus has been reached, and no convincing interpretation emerged. This is largely due to the fact that scholars have mostly debated the legal content of Asconius' text, neglecting its historical and philological analysis. Unexploited opportunities exist for a more comprehensive interpretation; if we attain a more exact picture of the juridical status of the *collegia*, we shall also enlarge our knowledge of the social history of the late Republic.

Let us turn to the sources. Asconius refers to the legislation concerning associations twice: in his commentary to Cicero's lost speech *Pro Cornelio,* and in his commentary on the speech against Piso. For a better visualization, these two passages[7] are adduced below side by side:

In Pis., p. 6:	*In Corn.*, p. 75:
L. Iulio C. Marcio[8] consulibus [...] senatus consulto collegia sublata sunt, quae adversus rem publicam videbantur esse constituta.	Frequenter tum etiam coetus factiosorum hominum sine publica auctoritate malo publico fiebant: propter quod postea collegia et SC et pluribus legibus sunt sublata praeter pauca atque certa, quae utilitas civitatis desiderasset, sicut fabrorum lictorumque[9].

The *senatus consultum* mentioned by Asconius in the *In Pisonianam* dates from 64 BC[10]. The question arises whether Asconius is referring to the same decree also in his commentary to the *Pro Cornelio*. Opinions on this subject

---

[7] Quotations from the text of Asconius are given according to the edition of A.C. Clark (Q. Asconii Pediani *Orationum Ciceronis quinque enarratio*, Oxonii 1907); consulted was also the edition of T. Stangl (*Ciceronis Orationum Scholiastae*, vol. II, Vindobonae–Lipsiae 1912).

[8] The manuscripts of Asconius have *L. Iulio C. Mario*. This, however, is an obvious scribal error as this pair of consuls did not exist.

[9] The reading *lictorumque*, accepted by Stangl (p. 59), is found in all manuscripts. Clark, following Manutius, introduced the emendation *fictorumque.* As will be seen, the manuscript reading is on the factual grounds much more appropriate, and thus there is no need for a conjecture.

[10] For the dating of the *SC*, cf. Waltzing, *op. cit.* (n. 2), pp. 92 ff; E. Kornemann, *Collegium*, *RE* IV 1 (1901), col. 406; de Robertis, *Diritto associativo...* (n. 1), pp. 77–79.

are, as usual, divided[11]. It seems, however, that the dispute how to interpret the abbreviation *SC*, as *senatus consulto* (favoured by Mommsen and his successors) or as *senatus consultis* (as proposed by Cohn and Kayser[12]) obscured another and incomparably more important problem. This problem consists in determining the mutual relationship between Asconius' two texts. This is crucial not only for an evaluation of the decree of the Senate of 64 BC but in general for a correct appraisal of the subsequent official measures pertaining to associations.

First and foremost, it should be noted that whether we believe these texts to refer to the same *senatus consultum* or to two different decrees, we are not entitled to apply the whole content of *In Corn.* p. 75 to the *SC* from 64 BC. For certainly we cannot credibly maintain that all subsequent *leges* and *senatus consulta* solely repeated the regulations that had already been enacted in 64 BC. Yet this is the view which modern scholarship embraced. Its most prominent representatives stated their position very clearly:

> Ne tamen hoc SCto (*scil.* from 64 BC) omnia collegia peraeque dissoluta putes, excepta sunt certa quaedam quae publicam utilitatem haberent (Mommsen, *op. cit.*, p. 74).
>
> C'était (*scil.* the *SC* from 64 BC) une mesure générale: les collèges épargnés formaient une si minime exception que le Sénat les désigna nominativement (Waltzing, *op. cit.* [n. 2], p. 106).
>
> (The *SC* from 64 BC was) un provvedimento generale [...] che soppresse tutte le associazioni, eccetto alcune poche specificamente indicate (de Robertis, *Diritto associativo*... [n. 1], p. 93).

These scholars, it would appear, did not fully realise the implications inherent in their formulations. As a result, their presentation of the development of the legal status of associations at the end of the Republic is hardly clear or transparent.

My position differs significantly from the currently dominant doctrine. It can be formulated as follows: (1) the words of Asconius in his commentary to the speech *In Pisonem* refer directly only to the *senatus consultum de collegiis* of 64 BC; (2) in the commentary to the speech *Pro Cornelio*, Asconius has encapsulated an abbreviated overview of the development of the legal status of associations in the period from 64 BC to the legislation of Augustus.

Let us now proceed to document this thesis in more detail.

---

[11] Mommsen (*op. cit.*, p. 73) argued that in both passages Asconius refers to the same decree; and after him, Liebenam, *op. cit.* (n. 2), p. 23, Waltzing, *op. cit.* (n. 2), p. 91, Monti, *op. cit.* (n. 2), pp. 23 f. et al. Cohn (*op. cit.* [n. 3], pp. 53 f.) and P. Kayser (*Abhandlungen aus dem Process- und Strafrecht*, vol. II, Berlin 1873, p. 159) assumed two different decrees, but did not present sufficient evidence for their thesis. de Robertis (*Diritto associativo*... [n. 1], pp. 76 f.) does not take a clear position on this issue.

[12] From a palaeographical standpoint, the plural ought to be marked by the doubling of the final letter. The manuscripts are, however, often erratic, and thus this argument is not decisive.

Even at first glance, the difference in style, in emphasis and, most importantly, in the terminology between the two passages of Asconius is striking.

I. In the first case only those associations which posed a danger to the Republic and whose activities contravened the existing laws were abolished ("quae adversus rem publicam videbantur esse constituta"). If we keep in mind the disposition in the *Laws of the Twelve Tables* preserved by Gaius: "his (*scil.* sodalibus) potestatem facit lex (*scil.* XII tab.) pactionem quam velint sibi ferre, dum ne quid ex publica lege corrumpant"[13], we shall immediately realise that in 64 BC the Senate exploited the same legal options as previously in 186 BC in the notorious affair of the Bacchanalia. The *SC* did not alter the existing legislation and did not establish new norms of conduct with respect to associations. The Senate acted as the governing body called to watch over the safety of the Republic and in its decree determined that a certain group of associations had been formed *adversus rem publicam*, and thus with a purpose that violated existing laws. For this reason, the *SC* directed the magistrates to abolish this type of associations.

II. In the second passage, Asconius does not focus on associations which had been suppressed, but rather on those which had survived. In the previous case all associations that did not act *adversus rem publicam* were left untouched; now, however, it has also become necessary that an association prove its social usefulness (*utilitas civitatis*). Thus we can well understand that Asconius felt compelled to adduce examples of such associations, and that they were both few and strictly defined (*pauca atque certa*). It is important to stress that in the sense of a legal requirement the term *utilitas civitatis* was a concept alien to the political discourse of the Republic. It has been well observed that the political language of the Principate has its roots in the declining years of the Republic[14]; nevertheless, it is equally obvious that, in this novel context, the old terms also acquired a novel content. Official documents from the end of the Republic and the beginning of the Empire frequently state that they are inspired by *utilitas publica*[15], but the comprehensive system in which this concept came into legal prominence was not a creation of the Republic but of the Empire. The stress on the *utilitas publica* (peculiarly understood as the *utilitas* for the state and not for the society) would grow by degrees and would reach its peak only during the later statist Empire. It should by now be clear that the decree of the Senate from 64 BC did not redefine the right of association according to the principle of perceived usefulness of any

---

[13] *Dig.* XLVII 22, 4.

[14] See J. Beranger, *Remarques sur la langue politique du Principat*, REL XXX 1952, p. 42.

[15] J. Gaudemet, *Utilitas publica*, RD XXIX 1951, pp. 467 ff. However, *utilitas* is always employed as a general concept rather than a precise legal norm. See e.g. already in the 2nd century *SC de Tiburtibus* (S. Riccobono, *Fontes iuris Romani anteiustiniani*, vol. I, Florence 1940, p. 323), and the numerous enunciations of Cicero. The exact term *utilitas civitatis* appears in Cicero only once, in a distinctly rhetorical passage (*Flac.* 98): "...quid utilitas civitatis, quid communis salus, quid rei publicae tempora poscerent".

particular group for the state. If this were true, we would be compelled to conclude that the real creator of the legal system governing the status of associations as it was in force at the time of the Empire was neither Caesar nor Augustus but Q. Caecilius Metellus, a prominent representative of the conservative senatorial aristocracy and, according to Cicero (*In Pis*. 8), the most resolute defender of the decree of the Senate.

It is often maintained that in the text here discussed Asconius may have been guilty of an anachronism, that he has transferred the attitudes of his own times into the already distant years of the Republic[16]. This view, however, cannot withstand criticism[17]. We know how conscientious and astute Asconius was in his investigations. He has rightly been called a precursor of modern philologists and historians. He not only read and excerpted the works of historians and orators, but also conducted a thorough archival research, investigated the texts of official documents, decrees of the Senate and laws[18].

Thus the answer to these various doubts and cavils can only be this: the mention of *utilitas civitatis* did not figure at all in the text of the decree of the Senate of 64 BC, but was taken by Asconius from one of the later *leges*. He describes precisely the starting and ending point of this long legislative process: the spread of the *coetus factiosorum hominum*, followed by a series of decrees of the Senate and of the laws directed against those groups. These measures limited more and more the freedom of associations until finally only those *collegia* were left "quae utilitas civitatis desiderasset".

How then should we expand the abbreviation *SC*? The arguments presented above provide a clear answer: both on historical and juridical grounds the only permissible solution is *senatus consultis* (and not *senatus consulto*).

Which *senatus consulta* and *leges* did Asconius have in mind? In a chronological order, we may think of the following acts: (1) the *SC de collegiis* from 64 BC, (2) the *SC* from 56 BC *ut sodalitates decuriatique discederent*, (3) the

---

[16] Cf. de Robertis, *Diritto associativo*... (n. 1), p. 87.

[17] The equally unjustified accusation of anachronism has been levelled against Asconius with respect to his statement: "frequenter tum etiam coetus factiosorum hominum sine publica auctoritate malo publico fiebant". The term *auctoritas publica* appears frequently in the sources from the late Republic, but without any precise legal connotation (see *ThLL* s.v.). Furthermore, Asconius does not apply either this term or indeed the entire sentence to any particular law or *senatus consultum.*

[18] For a discussion of the research methods of Asconius, see C. Lichtenfeldt, *De Q. Asconii Pediani fontibus ac fide*, Vratislaviae 1888 (= Breslauer Philologische Abhandlungen, Bd. II, Heft 4), pp. 1 ff., especially 57–71. The testimony of Asconius himself is interesting: "sed ego, ut curiosius aetati vestrae satisfaciam, Acta etiam totius illius temporis persecutus sum; in quibus cognovi pridie Kal. Mart. SC esse factum, P. Clodi caedem et incendium curiae et oppugnationem aedium M. Lepidi contra rem p. factam; ultra relatum in Actis illo die nihil" (*In Milon.*, p. 44, Clark). The *Acta* to which Asconius is referring were most probably the *acta diurna* (*urbis*) published since 58 BC, but we cannot exclude the possiblity that Asconius had access to the actual *acta senatus.* However, cf. J.W. Kubitschek, *Acta*, *RE* I 1 (1894), coll. 287 ff.

lex Licinia de sodaliciis from 56 BC[19], (4) the *lex Iulia* (of Caesar or Augustus) *de collegiis*[20]. The *SC* from 64 BC was aimed solely against associations "quae adversus rem publicam videbantur esse constituta", i.e. against the "coetus factiosorum hominum (qui) malo publico fiebant". For Asconius, this is the starting point. The next two measures were directed against the gangs of Clodius (the *SC* from 56 BC) and against associations that were responsible for organising electoral bribery (*lex Licinia*). In none of these enactments can we detect a mention of *utilitas civitatis* in the sense of *utilitas publica*. Thus it was the *lex Iulia* that first introduced this concept as the basis for the legislation in the matters of *collegia*.

In the well known inscription *collegium symphoniacorum* (*CIL* VI 4416) we read: "Dis Manibus collegio symphoniacorum. Qui sacris publicis praestu sunt, quibus senatus c(oire) c(onvocari) c(ogi)[21] permisit e lege Iulia ex auctoritate Aug(usti) ludorum causa". The *collegium symphoniacorum* was authorised *ludorum causa*. Its usefulness depended upon the role the *symphoniaci* played during the games. The situation of the *lictores* and *fabri* mentioned by Asconius was not dissimilar. In the case of the *lictores*, their usefulness to the state is obvious[22]. And the *fabri* were granted the authorization and all attendant legal privileges not just as carpenters, but because their *collegia* performed an important public service as firefighters. Although the employment of the *collegia fabrum* in that capacity probably goes back to the republican times, these associations received the official seal of approval on the basis of their *utilitas publica* only under the legal regime of the *lex Iulia*[23].

Several passages of later jurists show a striking stylistic correspondence with the wording of Asconius. Gaius (*Dig*. III 4, 1): "Paucis [...] in causis concessa sunt huiusmodi corpora", and further in the text: "Item Romae collegia certa sunt, quorum corpus senatus consultis atque constitutionibus principalibus confirmatum est, veluti pistorum et quorundam aliorum, et naviculariorum, qui et in

---

[19] For the *SC* from 56 BC and the *lex Licinia* see de Robertis, *Diritto associativo...* (n. 1), pp. 100 ff.

[20] We cannot delve here into the disputed and thorny question of the paternity of the *lex Iulia*: should we ascribe it to Caesar or to Augustus? In any case, it appears it was Augustus who issued final regulations pertaining to the *collegia*, perhaps on the basis of Caesar's law.

[21] The expansion given in the text is due to Mommsen. Recently, other solutions have been proposed. See A. Berger (ZRG LXI 1951, pp. 486–490; and earlier Epigraphica IX 1947 [1949], pp. 44 f.), and Ch. Saumagne (RD XXXII 1954, pp. 129–131). Cf. P.W. Duff, RIDA VI 1951, p. 19.

[22] It is difficult to imagine what usefulness the state could see in the corporations of potters and dyers. For that reason the suggested readings *fictorumque* and *tinctorumque* cannot be upheld. Cf. de Robertis, *Diritto associativo...* (n. 1), p. 75.

[23] Cf. J. Linderski, *Wytwórczość włókiennicza w Rzymie i jej organizacja* (*I–III w. n.e.*), cz. II: *Collegia Centonariorum* [*The Textile Industry in Rome and its Organization (I–III c.)*, Part II], Przegląd Historyczny XLVIII 1957, pp. 28 ff.

provinciis sunt". (Asc: "pauca atque certa"). Callistratus (*Dig*. XXVII 1, 17, 2): "Eos, qui in corporibus sunt, veluti fabrorum, immunitatem habere dicimus..." *(*Asc.: "sicut fabrorum lictorumque"). Callistratus (*Dig.* L 6, 6, 12): "Quibusdam collegiis vel corporibus, quibus ius coeundi lege permissum est, immunitas tribuitur: scilicet eis collegiis vel corporibus, in quibus artificii sui causa unusquisque adsumitur, ut fabrorum corpus est et si qua eandem rationem originis habent, id est idcirco instituta sunt, ut necessariam operam publicis utilitatibus exhiberent"[24]. (Asc.: "...quae utilitas civitatis desiderasset").

All these enunciations can be traced to a common source, and this source can only be the *lex Iulia*. The law most likely did not contain a register of authorized associations, but rather an enumeration of the grounds on which the authorization could be granted, with a few representative associations adduced *exempli gratia*. This assumption best explains the fact that the *fabri* appear in a similar context in Asconius and in two separate passages of Callistratus. Gaius first emphasizes the grounds on which the authorization was granted[25], and also gives examples of authorized associations. Asconius, on the other hand, limits himself only to adducing examples. For both writers, the term *certa* denotes those associations which met all the requirements necessary for obtaining authorization. It is not difficult to see that Gaius reflects a later phase in the application of the *lex Iulia,* while Asconius limits himself to delineating its central tenet: the consideration of the *utilitas civitatis*.

This concludes our argument. We hope our main thesis has been confirmed, namely: (1) that the *SC* from 64 BC did not introduce the concept *utilitas civitatis* into the legislation pertaining to associations, (2) that Asconius derived this concept from the *lex Iulia de collegiis*.

The *lex Iulia* constituted the crowning point of the regulations initiated by the republican Senate, but it was not a simple continuation. The decrees of the Senate were exclusively repressive; they were directed against groups engaged in political battles, and only those that stood on the opposite side of the barricades. It is not by chance that the *senatus consultum de collegiis* was issued in 64 BC when the Republic was threatened by Catiline's conspiracy. In the circumstances that arose in the last decades of the Republic, this defensive tactic was doomed to failure, but the Senate proved unable to bring about a comprehensive reform of the legal status of the *collegia*. On the other hand, such a reform resulted naturally first from Caesar's and then from Augustus' programme of restructuring the *res publica*. In the new system, each class and group was given a new task. It will not be an exaggeration to say that Augustus' final implementation of the new

---

[24] Gaudemet (*op. cit.* [n. 15], p. 476) suspects that the crucial sentence beginning with *id est...* is an interpolation. In the light of our argument this suspicion should be rejected.

[25] The grounds for authorization were limited, but the number of authorized associations kept increasing over time. Cf. de Robertis, *Diritto associativo...* (n. 1), pp. 239 f.

legal framework pertaining to associations produced social effects as far reaching as the concurrent reorganization of the equestrian class, while affecting an incomparably greater part of the population. The *lex Iulia de collegiis* submitted the associations of artisans to the supervision of the state and made them public organizations. Not all the consequences of the motto of 'usefulness for the state' (*utilitas civitatis*) were immediately observed and realized: obligatory associations of artisans were introduced only during the Late Empire.