

SOME REMARKS ON THE (NON-)APPEARANCE OF HETAIREIA IN BYZANTINE LAW

1. Introduction

In his work *Antike Kapitalvereinigungen. Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft*, Andreas M. Fleckner makes the following remark: ‘Die Basiliken verwenden ἑταιρεία für *societas*. Das ist bemerkenswert, denn für eine wortgetreue Übersetzung wäre κοινονία zu erwarten, der griechische Begriff für eine gemeinsame wirtschaftliche Unternehmung wie die gewinnorientierte *societas*’.¹ The fragment from the Basilica which prompted Fleckner to make his observation was BT 433/20-21, which corresponds with D. 3,4,1pr.:

D. 3,4,1pr.: Not everybody is allowed to form a partnership (*societas*), association or similar corporate body, for this possibility is restrained by statutes, *senatus consulta*, and imperial constitutions (...).²

B. 8,2,101 = D. 3,4,1 (BT 433/20-21): Γαίυ. Οὐ πάσιν ἐφεῖται ποιεῖν ἑταιρείας ἢ συστήματα ἢ σωματεῖα, (...).

From Gaius. Not everybody is allowed to form ‘partnerships’ (ἑταιρείαι), or associations (συστήματα) or corporate bodies (σωματεῖα), (...).

Fleckner states that the Greek translation ἑταιρεία for the Latin *societas* is hard to reconcile with the tendency, traced in other fragments of the Basilica and in literary sources, to translate *societas* with the notion κοινονία.³ Moreover, Fleckner emphasizes

1 A.M. Fleckner, *Antike Kapitalvereinigungen. Ein Beitrag zu den konzeptionellen und historischen Grundlagen der Aktiengesellschaft*, Köln/Weimar/Wien 2010, 401.

2 D. 3,4,1pr.: *Gaius libro tertio ad edictum provinciale: Neque societas neque collegium neque huiusmodi corpus passim omnibus habere conceditur: nam et legibus et senatus consultis et principalibus constitutionibus ea res coercetur (...)*.

3 Also an *old* scholion pertaining to D. 3,4,1pr. (BS 166/17-167/19 [anonymous]) uses the notion ἑταιρεία. See § 2.1 below. For the *old* and the *new* scholia, see H. de Jong, ‘Stephanus on the *condictio de bene depensis* (ὁ ἀπὸ καλοῦ δαπανήματος κονδικτικός)’, *TRG* 78 (2010), 15-35 (16).

that according to a fragment of Gaius in the Digest (D. 47,22,4)⁴ the term *ἐταιρεία* was used to refer to a specific form of partnership, not partnership in general: ‘eine genossenschaftliche Vereinigung ohne eigenen Erwerbszweck, häufig für die Verfolgung politischer Ziele’.⁵

Apart from the fragment just mentioned (BT 433/20-21), there are four texts in the Basilica where the use of the notions *ἐταιρεία* and *κοινωνία* raises some doubts.⁶ In one, just as in the fragment above, the notion *ἐταιρεία* is used, where one would expect the more general notion *κοινωνία*.⁷ In other texts, where the partnership under discussion is not a profit seeking one, and one would thus expect the notion *ἐταιρεία*, the word *κοινωνία* is used.⁸ Fleckner comes up with two possible explanations. In handing down the texts through the centuries, from Gaius to the Basilica, some flaws managed to creep in. However, it is also possible that the compilers of the Basilica had better pre-Justinianic materials at their disposal than those of the Digest had.⁹

In secondary literature, much attention has been paid to the interpretation of the word *societas* in the fragment of Gaius mentioned above (D. 3,4,1pr.).¹⁰ Also the corresponding text in the Basilica (BT 433/20-21) was dealt with, but the exact meaning of *ἐταιρεία* was rarely discussed. For want of a better solution, Fleckner abides by the traditional opinion that *ἐταιρεία* refers to a partnership in the narrow sense of the word, i.e. a professional organisation of *publicani* and not to a profit seeking partnership of *publicani*.¹¹

Fleckner’s investigations, however, did not comprise all relevant fragments in the sources, while those he discussed were not always profoundly analysed. Moreover, in dealing with the (non-)appearance of *ἐταιρεία* in the Basilica, Fleckner did not pay attention to the meaning of this term in its original historical context (D. 47,22,4). Furthermore, when interpreting legal notions in the Basilica, one should also take into account sixth century teaching of Byzantine law, since the compilers of the Basilica to a

4 D. 47,22,4: *Gaius libro quarto ad legem duodecim tabularum: Sodales sunt, qui eiusdem collegii sunt: quam Graeci ἐταιρείαν vocant. his autem potestatem facit lex pactionem quam velint sibi ferre, dum ne quid ex publica lege corrumpant. sed haec lex videtur ex lege Solonis tralata esse. (...)*. See § 2.3 below.

5 Fleckner, *Antike Kapitalvereinigungen* (note 1 above), 401-402.

6 B. 11,1,14 = D. 2,14,14; B. 40,1,3,4 = D. 37,1,3,4; B. 26,1,22 = D. 46,1,22 and B. 60,12,31,1 = D. 47,2,31,1 (see Fleckner, *Antike Kapitalvereinigungen* (note 1 above), 404). See § 3 below.

7 B. 11,1,14 = D. 2,14,14 (BT 629/12-13).

8 B. 40,1,3,4 = D. 37,1,3,4; B. 26,1,22 = D. 46,1,22 and B. 60,12,31,1 = D. 47,2,31,1.

9 Fleckner, *Antike Kapitalvereinigungen* (note 1 above), 405.

10 Fleckner, *Antike Kapitalvereinigungen* (note 1 above), 405 (nt. 307); *contra*, nt. 308 (see some of these opinions note 22 below).

11 Fleckner, *Antike Kapitalvereinigungen* (note 1 above), 405-406.

considerable extent were relying on the work of the antecessors. These shortcomings justify to investigate once again the (non-)appearance of the term *ἑταιρεία* in Byzantine law, which will enable us, it is hoped, to adopt a better considered viewpoint than previously defended in secondary literature.

2. The term *ἑταιρεία* in the Basilica

The term *ἑταιρεία* occurs in three Basilica books, i.e. in the text as well as in the scholia.¹² These fragments can be found in the titles 8,2 (= D. 3,4), 11,1 (= D. 2,14) and 60,32 (= D. 47,22). None of these has the contract of partnership as its subject. It is, by contrast, Basilica title 12,1 (*Περὶ κοινωνίας καὶ λύσεως αὐτῆς*) which deals with this contract. In all fragments dealing with *ἑταιρεία*, this notion appears to refer to a kind of *societas*, which one sooner would expect to be termed as *κοινωνία*.¹³ According the *Thesaurus Linguae Graecae*, the term *ἑταιρεία* only occurs 16 times in the Basilica, the term *κοινωνία* 870 times. We will now discuss the fragments in the Basilica.

2.1. B. 8,2,101pr. (= D. 3,4,1pr.)¹⁴

The first fragment is B. 8,2,101pr. (BT 433/20-21), which was mentioned above. In this text *ἑταιρεία* is bracketed together with the terms *σύστημα*¹⁵ and *σωματεῖον*.¹⁶ The

12 In the Novels the word *ἑταιρεία* does not occur, *κοινωνία* on the other hand does, viz. in the meaning of *communio*: Novv. 6,1; 7,11; 42,3,1; 89,15pr.; 96pr.; 109 (*passim*); 115 (*passim*); 123 (*passim*); 131,14,1; 137,2; 133,5pr.

13 Fleckner also refers to the use of *κοινωνία* by classical authors, such as Plutarch. In Plu. *Cat. Ma.* 21,6 for example it is stated that Cato required his borrowers to establish a *κοινωνία* or partnership (*ἐκέλευε τοὺς δανειζομένους ἐπὶ κοινωνία πολλοὺς παρακαλεῖν*) (see Fleckner, *Antike Kapitalvereinigungen* (note 1 above), 401 (nt. 283)). Unfortunately, Fleckner refrained from searching for literary sources dealing with the notion *ἑταιρεία* (preferably combined with *κοινωνία*). See for example Plu. *Moralia* 787 E: *τὰς κοινωνίας καὶ τὰς ἑταιρείας*. In his commentary on Plutarch, Cuvigny states the following about *ἑταιρεία*: 'il est impossible qu' *ἑταιρεία* désigne ici des sociétés secrètes du type de celles qui existaient à Athènes au v^e siècle. La loi romaine interdisait de telles associations (voir *Corr. de Pline et de Trajan*, 34 et 96,7 [Plin. *Ep. Tra.* 10; see note 62 below *HdJ*]). Il existe sous l'empire des *hetairies* parfaitement légales qui sont des associations à caractère religieux formées pour honorer un défunt (voir *RE*, 'ἑταιρεία col. 1373-1374), mais dans notre texte le terme désigne de simples groupes d'amis et de partisans: cf. *Praecepta ger. reip.*, 813 A, *τοῦτο διαβάλλει μάλιστα τὰς ἑταιρείας καὶ φιλίας (...)*'; see M. Cuvigny, *Plutarque. Oeuvre Morales* Tome XI, Première partie, Paris 1984, 142.

14 See also SBM Σ,12,1.

15 At the word *συστήματα* in the Basilica text there is the following new scholion, which refers to title D. 47,22: sch. 2 ad B. 8,2,101 (BS 166/16; anonymous): 'Ἡ συστήματα – ἀνάγνωθι τὸν κβ' τιτ. τοῦ μζ' βιβ. 'Or associations – read title 22 of book 47'.

corresponding Digest text, D. 3,4,1pr., also mentions three different notions, viz. *societas*, *collegium* and *corpus*. Since σύστημα and σωματεῖον are apparently translations of *collegium* and *corpus*, we may presume that ἔταιρεία is a translation of *societas*.¹⁷ In the manuscript codex Leidensis Vossianus graecus Fol. 19 a remark on this fragment is handed down.¹⁸ This is probably an old scholion at D. 3,4,1pr., dating from the sixth century AD, which was later integrated in the Basilica text.¹⁹ It cannot be ruled out that the compilers of the Basilica text were guided by this scholion when formulating the Greek equivalent of D. 3,4,1pr. The scholion uses the word ἔταιρεία:

sch. V 3 ad B. 8,2,101 = D. 3,4,1 (BS 166/19-22; anonymous): (...) ὁ Γάϊος διδάσκει, τίσιν ἐπιτέτραπται ἔταιρείαν ἢ κολέγιον²⁰ ἢ σωματεῖον συστήσασθαι. Λέγει γάρ, ὅτι οὔτε ἔταιρείαν, οὔτε κολέγιον, οὔτε σύστημα, οὔτε σωματεῖον ἐφέπειται τοῖς τυχοῦσι χύδην ἢ ὡς ἔτυχε ἔχειν. (...).

(...) Gaius teaches who it is allowed to form a ‘partnership’ (ἔταιρεία), an association (κολέγιον) or a corporate body (σωματεῖον). For he says that these persons are not allowed to form as it happens any ‘partnership’ (ἔταιρεία), association (κολέγιον and σύστημα) or corporate body (σωματεῖον). (...).

In this scholion, which is actually a Greek translation (*index*) of the Digest text, its anonymous author deliberately chooses to use the notion of ἔταιρεία,²¹ and not the term κοινωνία. The reason for doing so is, as will appear below, that ἔταιρεία and κοινωνία are,

16 See for the various kinds of organizational forms in Byzantine economy G.C. Maniatis, ‘The Domain of Private Guilds in the Byzantine Economy, Tenth to Fifteenth Centuries’, *DOP* 55 (2001), 339-369. According to Maniatis the occurrence of various organizational forms (ἔταιρεία, σύστημα and σωματεῖον) in this Digest fragment (D. 3,4,1pr.) does not imply that they are legally and functionally identical (p. 347). Fleckner rejects this view, see note 11.

17 By the way, in western legal scholarship the partnership of D. 3,4,1pr. is termed *societas*. Cf. Gl. *neque societatem* ad D. 3,4,1pr.: *puta negotiatorum vel professorum, qui non simul cohabitant: ut C. iurisd. om. iud. l. fi.* (C. 3,13,7) & *hoc etiam patet ex definitione societatis: quam dic, ut insti. de. socie. in prin.* (Inst. 3,25pr.).

18 See RHBR, I, No. 96. The remark can be found at fol. 287 of the manuscript.

19 See note 3 above.

20 The Greek translation of *collegium* is σύστημα, see further down in the same scholion (BS 167/6): (...) τοῦ κολεγίου ἢ τοῦ συστήματος (...). See also L. Burgmann, ‘Das Lexikon ἀσθηθ’, *FM* VIII (1990), 249-337 (274) (collegion, K 41).

21 In my discussion of ἔταιρεία I will only deal with the literature on the Byzantine sources. The interpretation of the corresponding Latin notion in classical and Justinianic Roman law is left out. This implies that I do not go into major parts of the literature mentioned by Fleckner (note 11 above).

at least in the view of the anonymous author, by no means synonyms.²² It is probable that κοινονία is the more general term indicating any kind of partnership, whereas ἑταιρεία indicates a more specific form. Since the author of the scholion was aware of the fact that D. 3,4,1pr. dealt with a specific form of partnership – which form will be discussed below – he decided not to use the general term. A clear indication that in classical law the notion *societas* must have had a more general purport can be found in the Institutes of Gaius, which speak of *aliud genus societatis*.²³ This, however, does not mean that the partners in a specific contract of partnership, such as ἑταιρεία, cannot be denoted by the more general term κοινοί, corresponding with the Latin *socii*.²⁴ The anonymous author of the scholion just mentioned had probably noticed that D. 47,22,4 refers to the Greek notion ἑταιρεία, when dealing with a specific kind of partnership. A coherence between the linguistic usage in D. 3,4,1pr. and D. 47,22,4 is not unlikely since both texts originated with Gaius.

2.2. B. 11,1,14 (= D. 2,14,14)

The second fragment is B. 11,1,14 (= D. 2,14,14), which is handed down in only a few manuscripts. Only two give the full text of B. 11,1,14. The oldest manuscript, codex Coislinianus graecus 152 (Ca), dating from the second half of the twelfth century, displays the text of B. 11,1,14 without using the word ἑταιρεία. In the later one, codex Parisinus

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- 22 M. Cohn, *Zum römischen Vereinsrecht. Abhandlungen aus der Rechtsgeschichte*, Berlin 1873, 176: 'Ich entnehme aus dieser Wiedergabe, dass ihnen das Wort *societas* im Gajanischen Fragment eine völlig andere Bedeutung zu haben schien, als die einer Erwerbsgesellschaft, der griechischen κοινονία; denn die ἑταιρεία bezeichnet eine Vereinigung von Genossen zu geselligen Zwecken und als criminalistischer Begriff zu factiösen Zwecken'. Cohn also refers to the existence of an inscription which displays a *collegium salinariorum* and a *collegium aurariarium*. According to Cohn we can thus also use the term *collegia publicanorum* (see idem, 182ff.). A *collegium publicanorum* can also be profit seeking (D. 47,22,4) (see idem, 176 nt. 67). It is striking, however, that Cohn within the context of the various terms used for partnerships in D. 3,4,1pr. (= B. 8,2,101) does not deal with other Basilica fragments which mention ἑταιρεία. Cf. also O. von Gierke, *Das deutsche Genossenschaftsrecht*, III, Graz 1954, 42-43 nt. 22. *Contra* E. del Chiaro, *Le contrat de société en droit privé sous la République et au temps des jurisconsultes classiques*, Paris 1928, 222/223 nt. 1: Del Chiaro rejects the idea that the term *collegium* can be used for certain contracts of partnership or that the texts of Gaius refer to *collegia*: 'Le texte de Gaius vise donc le cas de sociétés et non de *collegia*. Les *societas publicanorum* peuvent avoir sous les conditions posées par la loi un *corpus*, ce qui se comprend étant donné le fait qu'elles intéressaient l'ordre public'. Cf. also M.R. Cimma, *Ricerche sulle società di publicani*, Milano 1981, 186-190.
- 23 Gaius 3,154 a-b: *Est autem aliud genus societatis proprium ciuium Romanorum.* (...). Cf. also D. 17,2,5pr.
- 24 Cf. Fleckner, *Antike Kapitalvereinigungen* (note 1 above), 402. See also Cohn, *Zum römischen Vereinsrecht* (note 22 above), 177 nt. 68. Cf. also M. Kaser, *Das römische Privatrecht*, II, München 1975², 409.

graeus 1352 (P), dating from the beginning of the thirteenth century, however, we do find the word *ἐταιρεία*:²⁵

D. 2,14,14: Likewise, a pact can surely benefit and prejudice the manager of partnerships.²⁶

B. 11,1,14 = D. 2,14,14 (BT 629/12-13): Ὀπί. Τὸ σύμφωνον τῶν μαγίστρων [τῶν ἐταιρειῶν (P)] καὶ ὠφελεῖ καὶ βλάπτει,

From Ulpianus. The pact benefits and prejudices the managers [of partnerships (P)].

It has to be noticed that the corresponding Digest fragment uses the word *societas* and not terms like *collegium* or *corpus*. By contrast, these terms do appear in the Digest fragment we discussed above (D. 3,4,1pr.) and the one we will discuss below (D. 47,22,4).²⁷ From an anonymous remark at D. 2,14,14, one receives the impression that the author considers *societas* and *ἐταιρεία* as synonyms.²⁸ The term *κοινωνία* is specifically equated with *ἐταιρεία* by ἦτοι. Below I will discuss the choice for *ἐταιρεία*.

Sch. Ca 1 ad B. 11,1,14 = D. 2,14,14 (BS 226/9-21 (*passim*); anonymous): Ὡσπερ ὁ γενικὸς προκουράτωρ πακτεύων καὶ ὠφελεῖ καὶ βλάπτει τὸν πρωτότυπον, οὕτω καὶ ὁ μάγιστρος ἦτοι ὁ σύνδικος τῶν κοινωνιῶν ἦτοι ἐταιρειῶν. (...). Μὴ νόμιζε δέ, ὅτι πᾶσιν ἐφεῖται, σύστημα ἢ ἐταιρείαν ἢ κολλέγιον ἔχειν. Τὰ γὰρ περὶ τούτων μαθητῆς ἐν τῷ ἐξῆς βιβ. ἐν τοῖς ὑποκειμένοις ἐν τῷ τίτ. —, διγ. —.

Just as the general *procurator* through his agreement both benefits and prejudices the principal, so does the *magister*, i.e. ὁ σύνδικος, of the *societates*, i.e. ἐταιρειῶν. (...) You should not think that it is allowed for all people to form an association (σύστημα) or a

25 The critical apparatus ad BT 629/12 says: ‘τῶν ἐταιρειῶν: Vb P, om. Ca’. The exact location of B. 11,1,14 in the manuscripts is: cod. Coisl. gr. 152 (Ca) fol. 13v and cod. Paris. gr. 1352 (P) fol. 127r (for the manuscripts, see RHBR, I, No. 203 and No. 166). In this article, I only discuss Ca and P. For the fragmentary Vb, cf. H.J. Scheltema/N. van der Wal, [edd.], *Basilicorum Libri LX*, Series A Volumen II: Textus librorum IX – XVI, Groningen/Djakarta/s-Gravenhage 1956, v.

26 D. 2,14,14: *Ulpianus libro quarto ad edictum: Item magistri societatum pactum et prodesse et obesse constat.*

27 See also the Digest fragments without the expected *ἐταιρεία* in § 3 (with the notes 52-54) below.

28 Cyrillus uses the same words, viz. ὁ σύνδικος τῶν κοινωνιῶν (sch. Ca 2 ad B. 11,1,14 = D. 2,14,14 (BS 226/22-23; Cyrillus)). It is striking that Cyrillus uses the words τῶν κοινωνιῶν (*sociorum*) in stead of τῶν κοινωνιῶν (*societatum*). Probably, this has to do with the wrong genitive *societatum* (in stead of *societatum*) in the Digest text.

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‘partnership’ (ἑταιρεία) or an association (κολλέγιον). For about these things, you learn in the next book in the texts in the title –, fragment –.

This remark refers to a fragment in the next Digest book, which we already discussed above (D. 3,4,1pr.). Because of this specific reference to the Digest, this scholion has to be an *old* scholion.²⁹

The next remark at the same D. 2,14,14 is remarkable in the sense that it connects all the fragments mentioned in this paragraph (§ 2.1-2.3). Moreover, it discusses the words τῶν ἑταιρειῶν, which are missing in the Basilica text in manuscript Ca. This remark has been located as the third scholion at the word μαγίστρων from de Basilica text in Ca.³⁰

sch. Ca 4 ad B. 11,1,14 = D. 2,14,14 (BS 226/28-30; anonymous): Πρόσκειται εἰς τὸν Ἄνωνυμον τῶν ἑταιρειῶν· πρὸς δὲ παραγραφόμενός φησιν· τίνες δύνανται ποιεῖν ἑταιρείας, ἔχεις βιβ. γ’ τιτ. δ’ καὶ βιβ. μζ’ τιτ. κβ’ (sc. Dig.). (...).

It is placed in Anonymus: τῶν ἑταιρειῶν; at which he says in a remark: you can find who can form ἑταιρεία in book 3, title 4 and book 47, title 22. (...).

Two questions arise. The first question is what this remark relates to. Does this remark refer to the words τῶν ἑταιρειῶν in the above mentioned anonymous scholion BS 226/9-21? Or does the author of BS 226/28-30 refer to another manuscript with a work composed by Anonymous? By studying all scholia which begin with the words πρόσκειται εἰς,³¹ we can conclude the latter option has to be the case.³² The anonymous author of BS 226/28-30 seems to compare the Basilica text and a text by Anonymus. In the Anonymus text, the author apparently finds the words τῶν μαγίστρων with τῶν ἑταιρειῶν in stead of τῶν μαγίστρων (without τῶν ἑταιρειῶν) in the Basilica text. In this comparison, the words τῶν ἑταιρειῶν are an ‘addition’ (πρόσ’κειται). In fact, these words are lacking in the Basilica text.

29 See note 3 above.

30 See cod. Coisl. gr. 152 fol. 13v (see note 25 above).

31 In the Basilica the combination πρόσκειται εἰς occurs 90 times: Πρόσκειται εἰς τὸ κατὰ πόδας (63), πρόσκειται εἰς τὸ Πλάτος (16), πρόσκειται εἰς τὸν Κύριλλον (5), πρόσκειται εἰς τὸν Ἄνωνυμον (3), πρόσκειται εἰς τὸν Ἰνδικα (3).

32 See for other examples sch. 2 ad B. 38,3,32 = C. 5,51,7 (BS 2217/18; Thalelaeus) and sch. 2 ad B. 41,1,96 = C. 6,50,2 (BS 2443/20; Thalelaeus). In a few cases the words occur not only in the mentioned text, but also in the Basilica text; cf. e.g. sch. 5 ad B. 60,51,8 = D. 48,19,8 (BS 3881/11-12).

The second question is why the word *ἐταιρεία* is used, and not *κοινωνία*. The solution has to be found in the *magister*.³³ This *magister* only occurs in a not profit seeking partnership, as in D. 3,4,1,1³⁴ and D. 37,1,3,4,³⁵ but not in D. 17,2 (*pro socio*).

Striking is also the interlinear (*new*) scholion (from Ca), which is placed in the Scheltema edition at fragment 15,³⁶ but in fact belongs to fragment 14. This scholion is actually situated between the fragments 14 and 15:³⁷

sch. Ca 1 § ad B. 11,1,15 = D. 2,14,15 (BS 227/2; anonymous): Ζήτει βιβ. ζ' ττ. β' περὶ τῶν ἐταιρειῶν. (...).

Seek book 7, title 2 about the *ἐταιρεία*. (...)

In the manuscript itself, one can – with difficulty – also read ζ' instead of ζ'.³⁸ This would mean that the former reference could correspond with Digest title 47,22 which reads *de collegiis et corporibus*. In this case, title β' has to be read as λβ'.

The question remains whether in Ca the word *ἐταιρεία* is left out, or whether this word simply does not appear in the Basilica text. This latter option seems to be the case. As a result of the above remarks concerning BS 226/9-21 and BS 226/28-30 in (the older manuscript) Ca, it is by all means possible that the word *ἐταιρεία* was inserted in the Basilica text of P.³⁹ The addition, which is brought up in Ca, can actually be found twice in P. The first time, *ἐταιρεία* occurs in the Basilica text we discussed above, viz. B. 11,1,14 = D. 2,14,14 (BT 629/12-13). The second time, we find *ἐταιρεία* in the scholion at B. 11,1,14.⁴⁰ The latter scholion is almost identical to a scholion in Ca, viz. sch. Ca 3 (BS 226/24-27). However, in P the word *ἐταιρειῶν*, lacking in Ca, is added to the word *μάγιστροι*. Thus, unlike the other Basilica fragments with *ἐταιρεία*, B. 11,1,14 (= D.

33 Cf. U. Malmendier, *Societas publicanorum. Staatliche Wirtschaftsaktivitäten in den Händen privater Unternehmer*, Köln 2002, 261-265.

34 See § 2.1 above.

35 See § 3 below.

36 See RHBR, I, No. 203, (p. 230): 'Hand a (12. Jhdt., Ende – 13. Jhdt., Anfang): zahlreiche Sekundärscholien (passim)'.

37 Cod. Coisl. gr. 152 fol. 13v (see note 25 above).

38 Probably, one can also think of the Digest reference βιβ. ιζ' ττ. β'. This reference corresponds with D. 17,2 (*pro socio*). If this is correct, it is striking the author of the *new* scholion refers to a Digest fragment, and not to a Basilica fragment, as he does at the end with κεφ. and θεμ.

39 See for the similarities between Ca and P for example also H. de Jong, 'The *actio utilis institoria* and its variants in Byzantine law', *FM XII*, § 3.3 (forthcoming).

40 Sch. P 1 ad B. 11,1,14 = D. 2,14,14 (BS 344/24-27; anonymous).

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2,14,14) causes obscurity as regards the question whether the word ἑταιρεία was originally used in the Basilica.

2.3. B. 60,32,4 (= D. 47,22,4)

The third fragment is B. 60,32,4, which concerns a discussion about the Law of the Twelve Tables (8,27) by Gaius.⁴¹ This fragment occurs in the codex Parisinus graecus 1350 (Pe) which dates from the twelfth century.⁴²

D. 47,22,4: Comrades are those who belong to the same association, what the Greeks call an ἑταιρεία. (...).⁴³

B. 60,32,4 = D. 47,22,4 (BT 2938/3-4): Γαίω. Ταῖς θεμιταῖς ἑταιρείαις θεμιτὰ συμφωνεῖν ἔξεστιν.

By Gaius. With permitted ἑταιρείαι it is allowed to make permitted agreements.

The proper translation of ἑταιρεία occurs as a remark at B. 60,32,3,⁴⁴ which scholion Fleckner did not notice:

sch. Pe 1 ad B. 60,32,3 = D. 47,22,3 (BS 3620/12; anonymous): (...). Ταῦτα δὲ τὰ συνέδρια καλοῦσιν Ἕλληνες ἑταιρείας. (...).

(...). These councils, the Greeks call ἑταιρείαι. (...).

In this scholion, ἑταιρεία is characterized as συνέδρια,⁴⁵ and not described in such terms as κοινονία (or σύστημα), which one might have expected.⁴⁶

41 Brunt is of the opinion that the reason for the appearance of ἑταιρεία in this fragment is the ignorance of the law to which Gaius refers; cf. P.A. Brunt, 'Publicans in the Principate', in: Id., *Roman imperial Themes*, Oxford 1990, 354-432 (368 nt. 53). This assumption is enfeebled in § 4 below.

42 See RHBR, I, No. 163, fol. 154r.

43 D. 47,22,4: *Gaius libro quarto ad legem duodecim tabularum: Sodales sunt, qui eiusdem collegii sunt: quam Graeci ἑταιρείαν vocant.* (...) It is remarkable that Accursius explicitly equates this fragment with *societas*: Gl. *sodales vocant* ad D. 47,22,4: *id est, societatem.*

44 A remark at B. 60,32,4, viz. sch. 1 (BS 3620/27-3621/4) uses the same word ἑταιρεία, but this remark probably refers to one of the previous fragments.

45 The word συνέδρια also occurs in the meaning of 'assembly' (*coetus, conventus*); see the remarks at D. 48,4,1,1: *συνεδρία* equated with *συναγωγή* (sch. 6 ad B. 60,36,1 = D. 48,4,1 (BS 3670/25-26; anonymous) and sch. 10* ad B. 60,36,1 = D. 48,4,1 (BS 3671/3-21; anonymous)). It also (rather)

It is striking that our third fragment (B. 60,32,4) is adopted in a *new* scholion at B. 12,1,55 (= D. 17,2,57),⁴⁷ albeit that the word *ἐταιρείας* is replaced by the term *συμφωνίας*.⁴⁸ At the beginning of this new scholion, the word *ἐταιρεία* is nevertheless used but, referring to B. 60,32,3, it has a similar meaning to *σύστημα*.⁴⁹

3. The unexpected *κοινωμία*

In his article, after discussing the Basilica fragment 8,2,101 with the corresponding remark, Fleckner refers to the ambiguous Basilica fragments already mentioned in the introduction.⁵⁰ In fragments where, according to Fleckner, one would expect *ἐταιρεία*,

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- occurs with the meaning of ‘council’ (*consilium*): see for example sch. 7 ad B. 8,1,26 = C. 2,7,11pr. (BS 78/1-3; anonymous). See also Burgmann, ‘Das Lexikon ἀσηθ’ (note 20 above), 311 (K 16): *consilium κοινώλιον· βούλευμα, συνέδριον*, and L. Burgmann, ‘Das Lexikon ἄδεται – ein Theophilosglossar’, *FM VI* (1984), 19-61 (47) (K 7): *consilium κοινώλιον· βουλή και συνέδριον ἐκ φανερώων ἀνδρώων*. Cf. *ἐταιρικά συστήματα* (B. 60,32rubr. and 60,32,1; BT 2937/3 and 6) for *collegia sodalicia* (D. 47,22,1pr.) and *συνέδρια ἐταιρείας* in the remark at this (sch. 1 ad B. 60,32,1 = D. 47,22,1; BS 3619/5). Cf. PWRE, s.v. *σύστημα* col. 1834.
- 46 The word *συνεδρία* is used, though rarely, as a translation for *collegium*, viz. in a remark at D. 27,1,17,3: sch. 2 ad B. 38,1,17 = D. 27,1,17 (BS 2172/23-28; anonymous). D. 27,1,17,3: *Callistratus libro quarto de cognitionibus: Non omnia tamen corpora vel collegia vacationem tutelarum habent, quamvis muneribus municipalibus obstricta non sint, nisi nominatim id privilegium eis indultum sit*. Cf. the corresponding Basilica text: B. 38,1,17 = D. 27,1,17 (BT 1688/2-5). See also *συνέδριον* in sch. 2 ad B. 60,32,3 = D. 47,22,3 (BS 3620/18-22; anonymous).
- 47 Sch. Ca 1 ad B. 12,1,55 = D. 17,2,57 (BS 493/13-17; anonymous).
- 48 See M.Th. Fögen, ‘Das Lexikon zur Hexabiblos aucta’, *FM VIII* (1990), 153-214 (193) (K 39): *Κομβέντιον ἦγον σύμφωνον*, and Burgmann, ‘Das Lexikon ἀσηθ’ (note 20 above), 273 (K 23); 313 (K 92). Cf. *συνεδρία for conventus*.
- 49 Sch. Ca 1 ad B. 12,1,55 = D. 17,2,57 (BS 493/14-17; anonymous): (...) ἀλλ’ οὐδὲ ἐταιρία ἦγον σύστημα παράνομον συνίσταται, ὡς κεφ. γ’ τοῦ λβ’ τίτ. τοῦ ζ’ βιβλ.: ἀλλὰ καὶ ταῖς θεμιταῖς συμφωνίας θεμιτὰ συμφωνεῖν ἔξεστιν, ὡς κεφ. δ’ τοῦ αὐτοῦ βιβλ. καὶ τίτ. See also BT 2938 app. crit. ad l. 3 *ἐταιρείας*: ‘Pe, dubium ΠΣ, συμφωνίας BS’. For the fragmentary ΠΣ, cf. H.J. Scheltema/D. Holwerda/N. van der Wal, [edd.], *Basilicorum Libri LX*, Series A Volumen VIII: Textus libri LX, Groningen 1988, vi-xv. Cf. *σύστημα* and other organizational forms in Maniatis, ‘The Domain of Private Guilds’ (note 16 above), *passim*. See also *σύστημα* and *ἐταιρεία* in another (negative) meaning *Ecl.B.* 9,1,16 (= D. 49,1,16) in § 4 below.
- 50 See also Von Gierke, *Das deutsche Genossenschaftsrecht* (note 22 above), 43 nt. 22: ‘Wie dem aber auch sein mag: im Corpus juris civilis werden unzweideutig gewisse als ‘*corpora*’ anerkannte Vereinigungen mit dem Namen ‘*societas*’ belegt (l. 1 pr. D. 3,4, l. 3 § 4 D. 37,1, l. 22 D. 46,1, l. 31 § 1 D. 47,2) (...)’ and Cimma, *Ricerche sulle società di publiccani* (note 22 above), 190ff. *Del Chiaro, Le contrat de société* (note 22 above), 222-223 nt. 1: ‘D’ailleurs la preuve tirée des Basiliques n’a par elle-même aucune valeur, il faudrait admettre la substitution dans plusieurs textes: D. 37,1,3,4; 46,1,22; 47,2,31,1’.

κοινωνία appears instead.⁵¹ It concerns the fragments B. 40,1,3,4 (= D. 37,1,3,4),⁵² B. 26,1,22 (= D. 46,1,22)⁵³ and B. 60,12,31,1 (= D. 47,2,31,1).⁵⁴ Based on the following argument, this expectation of Fleckner – ἑταιρεία instead of κοινωνία – is not plausible. The rare use of the term ἑταιρεία should be originally sought in the teachings of a sixth century *antecessor*. This hypothesis can explain the non-appearance of ἑταιρεία. If the origin of the Digest fragments (D. 37,1,3,4; D. 46,1,22 and D. 47,2,31,1) corresponding with the Basilica fragments above-mentioned (without ἑταιρεία) is studied, it has to be concluded that all these books belong to the private study of a sixth century law student. These books are the so-called τὰ ἐξτραρόδινα βιβλία.⁵⁵ In their teachings, the *antecessores* did not deal with these books. The quite literal Greek translation by Dorotheus was probably used for studying these books.⁵⁶ Apparently, Dorotheus translated the term *societas* into κοινωνία, and not into ἑταιρεία.⁵⁷ In the lexicons, *societas* – though not as a lemma – only occurs as κοινωνία.⁵⁸ In the next paragraph, it will be clearly expounded that the translation of *societas* into κοινωνία in Byzantine law is the only correct one.⁵⁹

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- 51 Fleckner also mentions D. 2,14,14 as obscure fragment (Fleckner, *Antike Kapitalvereinigungen* (note 1 above), 404). In this fragment ἑταιρεία appears instead of κοινωνία (see § 2.2 above). Except Brunt (Brunt, 'Publicans in the Principate' (note 41 above), 368 nt. 53), none of the other authors (see note 550 above) mentions this fragment in the enumeration as parallel to D. 3,4,1pr. and D. 47,22,4. This is not surprising, because a statement of *corpus* or *collegium* is lacking. See also Malmendier, *Societas publicanorum* (note 33 above), 252-253.
- 52 BT 1784/17-18; sch. 5 and 6 ad B. 40,1,3 = D. 37,1,3 (BS 2355/6-10, anonymous; BS 2355/11-13, anonymous). D. 37,1,3,4: *Ulpianus libro trigesimo nono ad edictum: A municipibus et societatibus et decuriis et corporibus bonorum possessio adgnosci potest. (...)*. Cf. Gl. *municipibus* ad D. 37,1,3,4: & *corporibus et decuriorum. Et est differentia: quia societas est, quando non simul cohabitant: Collegium, quando sit: Corpus est genus*.
- 53 BT 1245/24 (the scholia at this fragment fail). D. 46,1,22: *Florentinus libro octavo institutionum: Mortuo reo promittendi et ante aditam hereditatem fideiussor accipi potest, quia hereditas personae vice fungitur, sicuti municipium et decuria et societas*.
- 54 BT 2828/12 (τινος συστήματος); sch. 1 ad B. 60,12,31 = D. 47,2,31 (BS 3371/15; anonymous). D. 47,2,31,1: *Ulpianus libro quadragesimo primo ad Sabinum: Si quis tabulas instrumentorum rei publicae municipii alicuius aut subriperit aut interleverit, Labeo ait furti eum teneri: idemque scribit et de ceteris rebus publicis deque societatibus*.
- 55 Van der Wal/Lokin, *Delineatio*, 38ff.
- 56 See for general characteristics F. Brandsma, *Dorotheus and his Digest Translation*, Groningen 1996, 278-293.
- 57 See for example sch. 1 ad B. 60,12,31 = D. 47,2,31 (BS 3371/15; anonymous).
- 58 See for κοινωνία Fögen, 'Das Lexikon zur Hexabiblos aucta' (note 48 above), 210 (T 25) and Burgmann, 'Das Lexikon αὐσηθ' (note 20 above), 326 (T 21). See for (*socius*) κοινωνός B.H. Stolte, 'The Lexicon Μαρτίσιου', *FM* VIII (1990), 339-380 (372) (Σ 18).
- 59 That sixth century remarks may have ended up in the Basilica text is not a new thought. Cf. for example J.L. Barton, 'The *lex Aquilia* and decretal actions', in: A. Watson, (ed.), *Daube noster. Essays in legal history for David Daube*, Edinburgh 1974, 15-25 (22ff.). In this article, a remark by

4. Meaning of the term *ἐταιρεία* in D. 47,22,4

To understand why the term *ἐταιρεία* for *societas* as a juridical term rarely occurs – and is even incorrect – it is necessary to investigate the use and the meaning of the term *ἐταιρεία* in D. 47,22,4.⁶⁰ In D. 47,22,4, the term *ἐταιρεία*, by analogy with *sodalis*, has to be equated with *sodalitas*,⁶¹ a term which, for that matter, is never used in the Digest.⁶² In view of the context of the text (the Law of the Twelve Tables (451 BC)), this is not striking. It seems to be an old (archaic) term, not used anymore in Justinianic law. *Sodalitas* is, as it turns out at the end of the fragment, a legitimate club, usually social and religious.⁶³

Concerning the context, the – old – term *ἐταιρεία* was a social, religious or political community *before* Justinianic law. The term has nothing to do with the legal concept of *societas* (κοινωνία) in Justinianic law. Since *ἐταιρεία* rarely occurs in Byzantine law, the hypothesis for the appearance of *ἐταιρεία* in the Basilica must be that, as a result of the Digest text 47,22,4, a sixth century *antecessor* had breathed new life into *ἐταιρεία* as juridical term for *societas* by using the term at D. 3,4,1pr. In doing so, this *antecessor* emphasized the special sort of partnership, not a profit seeking one.⁶⁴ Finally, the term *ἐταιρεία* arrived in the Basilica text (B. 8,2,101 = D. 3,4,1pr.). The confusion can also have arisen from the use of the term *ἐταιρεία* in the Basilica text: B. 11,1,14 = D. 2,14,14.

To prove that the meaning of *ἐταιρεία* in D. 47,22,4 is archaic, it is necessary to investigate other Byzantine sources. The – as far as I can examine – *only* fragment with *ἐταιρεία* in a not yet mentioned Byzantine law source confirms my hypothesis.⁶⁵ In the Ec-

Thalelaeus is discussed which seems to be mixed up in the Basilica text: B. 60,3,61 = C. 3,35,5 (BT 2769/5-8).

60 In doing so, I do not give a thorough and detailed explanation of the historical development of the term *ἐταιρεία* in the entire classical literature.

61 See § 2.3 above.

62 Ciulei refers to the historical development of *sodalitates*. These *sodalitates* were originally (official) religious communities, which could be entrusted by the state to *gentes*. The members were connected to each other by profession or neighbourliness. Sometimes Roman citizenship was sufficient. Together with the disappearance of the old political system of the Romans, the interest in these religious communities fade away. Only political communities acquiring the term *sodalitates* were created. They were equated with *collegia sodalicia* and became general in nature. These *collegia* were called *ἐταιρίαί*, as Plinius mentions (see note 13 above). Ciulei states that by *sodalitas* Gaius meant each *collegium*; G. Ciulei, 'D. 47.22.4', *SZ* 84 (1967), 371-375 (373-374). Cf. PWRE, s.v. *Sodalitas* col. 785-786.

63 See for example Cic. *Planc.* 15,37. Cf. also Plu. *Moralia* 787 E (note 13 above). For the eldest use of *ἐταιρεία* see PWRE, s.v. 'Ἐταιρεία' col. 1373.

64 See note 49 above.

65 See for another use by the Greek historian Dio Cassius, Stolte, 'The Lexicon Μαγκίπριον' (note 58 above), 377 (T 46).

THE (NON-)APPEARANCE OF HETAIREIA

loga Basilicorum, an extensively commented synopsis of the first ten books of the Basilica compiled most likely in Constantinople in 1142,⁶⁶ the term *ἑταιρεία* occurs once in a scholion at 9,1,16, which corresponds with D. 49,1,16.⁶⁷ In this fragment, various persons who are qualified for direct punishment are mentioned separately:

Ecl.B. 9,1,16: (...) εἰ γάρ τινες κατηγορηθεῖεν ὡς ληστὰι καὶ ἐλεγχθῶσιν ἢ ὡς ἐρεθίζοντες (...) ἢ ὡς συνιστῶντες φατρίας ἤτοι ἑταιρείας καὶ ὡσανεὶ συστήματα χάριν τοῦ κλέπτειν (...).

(...); for when some people should be accused, such as robbers, and are condemned, or such as agitators (...) or such as they who form a φατρία i.e. an *ἑταιρεία* as it were a σύστημα to steal (...).

The gathering gang is equated with *ἑταιρεία* and σύστημα.⁶⁸ In addition, it is stated that this has to do with stealing. Apparently, σύστημα (and *ἑταιρεία*) also had a positive connotation and the negative connotation had to be explained explicitly. We also find the same words – now συνιστῶν φατρίαν (*factionem habent*) – without the term *ἑταιρεία* in B. 60,51,11,2⁶⁹ (= D. 48,19,11,2).⁷⁰ In this case too, it concerns a gang which commits a crime.⁷¹ In these fragments, *ἑταιρεία* is not associated with the legal concept of *societas* (κοινωνία).

There is *another* argument for the hypothesis that *ἑταιρεία* is not commonly used for a specific *societas* in Byzantine law, and that this term must have originated from a sixth

66 See L. Burgmann, *Ecloga Basilicorum*, [Forschungen zur byzantinischen Rechtsgeschichte, Band 15], Frankfurt/M. 1988, vii-xviii. Cf. Σπ. Τρωιάνος, *Οι πηγές του βυζαντινού δικαίου*, Αθήνα/Κομοτηνή 2011³, 279.

67 D. 49,1,16: *Modestinus libro sexto differentiarum: Constitutiones, quae de recipiendis nec non appellationibus loquuntur, ut nihil novi fiat, locum non habent in eorum persona, quos damnatos statim puniri publice interest: ut sunt insignes latrones vel seditionum concitatores vel duces factionum.*

68 In this article, I do not discuss the meaning of *ἑταιρεία* as a ‘unit of the emperor’s bodyguard’; cf. A. Kazhdan, *ODB*, s.vv. Hetaireia and Hetaireiarches; N. Oikonomides, *Les listes de préséance byzantines des IXe et Xe siècles*, Paris 1972, 327-329 and P. Karlin-Hayter, ‘L’Hétériarque. L’ évolution de son rôle et De Cerimoniis au Traité des Offices’, *JÖB* 23 (1974), 101-143. See also H.-G. Beck, *Byzantisches Gefolgschaftswesen*, München 1965 and N. Oikonomides, ‘Some Byzantine State Annuitants: Epi Tes (Megales) Hetaireias And Epi Ton Barbaron’, *ByzSym* 14 (2001), 9-28.

69 BT 3074/19-20.

70 D. 48,19,11,2: *Marcianus libro secundo de publicis iudiciis: Delinquitur autem aut proposito aut impetu aut casu. proposito delinquent latrones, qui factionem habent: impetu autem, cum per ebrietatem ad manus aut ad ferrum venit: casu vero, cum in venando telum in feram missum hominem interfecit.*

71 Cf. note 22 above.

century *antecessor*. From D. 3,4,1pr. – and indirectly from the speech *Pro Sestio* by Cicero (106-43 BC)⁷² –, it can be deduced that *societas vectigalium*⁷³ in classical Roman law should be entitled to *ἐταιρεία* (or even *was?*):⁷⁴

D. 3,4,1pr.: (...) Corporate bodies of this sort are permitted in only a few cases. For example, partners in tax farming,⁷⁵ gold mines, silver mines, and saltworks are allowed to form corporations. (...)⁷⁶

This fragment with an example of a permitted *societas*, a *societas vectigalium*, is translated into Greek by [κοινωνία] ἐπὶ δημοσίων τελῶν.⁷⁷ And when the remaining – all

72 Cic. *Sest.* 14,32: *Erat igitur in luctu senatus, squalebat civitas publico consilio veste mutata, nullum erat Italiae municipium, nulla colonia, nulla praefectura, nulla Romae societas vectigalium, nullum collegium aut concilium aut omnino aliquod commune consilium quod tum non honorificentissime de mea salute decrevisset: cum subito edicunt duo consules ut ad suum vestitum senatores redirent.* (...). R.A. Kaster, *Marcus Tullius Cicero. Speech on Behalf of Publius Sestius. Translated with Introduction and Commentary*, Oxford 2006, 189: ‘C. uses the term (*vectigal*) that originally denoted revenue derived from Rome’s public properties (e.g. rents from land, profit from mines) (...)’. See also Malmendier, *Societas publicanorum* (note 33 above), 267: ‘Jedenfalls gab es eine ‘Generalversammlung’ der Gesellschafter, die sich mit den wichtigen Entscheidungen für die Gesellschaft befähigte und die so groß sein konnte, daß Cicero sie als *multitudo* bezeichnet’.

73 In literature of classical Roman law, the concept of *societas vectigalium* always denotes *societas publicanorum* which do not appear in the Digest. See for example M. Kaser, *Das römische Privatrecht*, I, München 1971², 308: ‘(...) schwächer in den Vereinen der Unterbeamten (*decuriae apparitorum*), in den Gesellschaften der Steuer- und Zollpächter (*societates publicanorum*), in den gleichfalls sehr alten Berufsverbänden (Zünften) der Handwerker, Kaufleute, Reeder usw.; schließlich in den Begräbnis- und Kultvereinen, zu denen unter dem Prinzipat noch die christlichen Kongregationen treten.’, and also R. Zimmermann, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Oxford 1996, 468: ‘Furthermore, there was the interesting phenomenon of the *societates publicanorum* (or *vectigalium*), financial companies in which the farmers of public revenue organized themselves. Despite their name, they were corporate entities of public law rather than private partnerships’. See also M.R. Cimma, *Ricerche sulle società di publicani*, Milano 1981; Malmendier, *Societas publicanorum* (note 33 above) and F.-S. Meissel, *Societas. Struktur und Typenvielfalt des römischen Gesellschaftsvertrages*, Frankfurt/Main 2004, especially 205-217.

74 Cf. Fleckner, *Antike Kapitalvereinigungen* (note 1 above), 401/402 nt. 287.

75 See D. 50,16,17,1. The word *publica* is related to the Roman people (D. 50,16,16), to which *ἐταιρεία* – originally – refers.

76 D. 3,4,1pr.: *Gaius libro tertio ad edictum provinciale: (...) paucis admodum in causis concessa sunt huiusmodi corpora: ut ecce vectigalium publicorum sociis permissum est corpus habere vel aurifodinarum vel argentifodinarum et salinarum.* (...).

77 B. 8,2,101 = D. 3,4,1 (BT 433/20-23). It should be noticed that this combination in the *Basilica* rarely explicitly occurs; cf. sch. Ca 23 ad B. 12,1,61 = D. 17,2,63 (BS 506/2; Cyrillus); sch. Ca 24 ad B. 12,1,61 = D. 17,2,63 (BS 506/7; Stephanus) and sch. Ca 47 ad B. 13,1,5 = D. 13,6,5 (BS 613/29-30; Anonymus). In a remark at D. 2,14,14, *κοινωνία* is equated with *ἐταιρεία* and *τέλος*. Further investigation is called for in this. The question is in what way the classical Roman and Justinianic

to be taught by the *antecessor* – Digest fragments from D. 17,2 (*pro socio*) with (explicitly) *societas vectigalium* are studied,⁷⁸ the Greek words mentioned are always used. These words are never combined with the – expected – *ἐταιρεία*.

One can conclude that the term *ἐταιρεία* in Byzantine law for a *societas (vectigalium)* was not common and incorrect. The appearance of the term *ἐταιρεία* – in a context different from D. 47,22,4 – was based on a comprehensible mistake. As a result of this mistake the term assumed a life of its own.

5. Conclusion

In literature the (non-)appearance of *ἐταιρεία* in the Basilica is obscure. On the one hand, *ἐταιρεία* arises unexpectedly for *societas*, on the other hand the term *κοινωνία* in the same context is inexplicably used. The reason for this disproportion has to be found in the misunderstanding of the historical development of the meaning of *ἐταιρεία* and its tradition. It appears to concern a term which has been taken out of its own – old and archaic – context of D. 47,22,4. This gave *ἐταιρεία* a different – incorrect – meaning. The term could indicate a religious, social or political community, or even a gang. It certainly does not fit in with the ordinary meaning of the legal concept of *societas (κοινωνία)*. Since *ἐταιρεία* only occurs – with the exception of D. 47,22,4, in which the term is explicitly mentioned – in Basilica fragments corresponding with Digest books which were taught by the sixth century *antecessores* in their teachings, it has to be assumed that the (mis)use of the term, to emphasize the special sort of partnership, also originated from that time. The term *ἐταιρεία* with its specific archaic meaning from D. 47,22 (*de collegiis et corporibus*), because of its place in this title, was probably taken as a general organizational form. Consequently, with this – incorrect – meaning, the term is used in the discussion of two other Digest fragments. Owing to lack of understanding, the archaic *ἐταιρεία* finally got mixed up in the Basilica text.

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societas vectigalium should be interpreted with respect to content in Byzantine law. This is a different question from that posed in this article (De Jong in prep.).

78 D. 17,2,5pr. (= B. 12,1,5; BT 677/5); D. 17,2,59pr. (= B. 12,1,57pr.; BT 688/2-3); D. 17,2,63,8 (= B. 12,1,61,8; BT 689/18-19); D. 17,2,65,15 (= B. 12,1,63,15; BT 692/3). The same holds for the remarks at these fragments. See for example sch. Ca 2 ad B. 12,1,5 = D. 17,2,5 (BS 454/16-17; Stephanus) and sch. Ca 1 ad B. 12,1,57 = D. 17,2,59 (BS 496/5-14; anonymous).

