

Preface

The collection of articles in this volume does not include all the articles that I have written, nor is it centered around one or two themes. I have chosen most of my favourite pieces, though this was not the sole criterion for selection. Most, but not all, of the pieces included, are devoted to legal and administrative issues, both private and public, which emerge from a close reading of literary and documentary texts. Despite the title of the book, some of the articles have nothing specifically to do with Jews – nor do the issues treated in them concern only Jews.

I began my career as an historian by exploring the administrative and legal problems in the Roman Empire that are revealed in literary texts such as Cicero's speeches and letters, and the earliest articles in this collection reflect this. Later I began to use the other primary sources at our disposal, in particular inscriptions and above all papyri. Reading of papyri not only brings one down from the Olympian heights of grand literary history and monumental public epigraphy: it reveals the texture of life itself as lived by ordinary people all over the Roman Empire.

My first experience with the decipherment and interpretation of non-literary texts took place while working together with Joseph Geiger on the Greek and Latin part of Yigael Yadin's 'Nachlass' from Masada: ostraca in Latin and Greek and a few, but exciting, fragmentary papyri – all published in *Masada II*. It was uplifting to come across a fragment from Virgil's Aeneid IV: [An]na [s]or[o]r, o quae me susp[ensam insomnia terrent], or to become aware of the daily life of a Roman soldier through reading a salary bill with its list of deductions, which was left behind in the camps at the foot of Masada.

The appearance of the Dead Sea Scrolls encouraged both Bedouin and archaeologists to explore the Dead Sea area and the wadis leading to it in search of more such survivals. Once again, when in the 1990s it was decided to make a combined effort to publish all the known documents from the Dead Sea which had accumulated but remained unpublished for so long, I was fortunate to be granted the opportunity to publish that portion of the discovered documents which was written in Greek.

The Babatha Archive was discovered, intact, by Yigael Yadin's mission in the Cave of Letters in Naḥal Ḥever: the papyri were labelled *P.Yadin*. The Salome Archive, once believed (wrongly, as we know now) to come from Naḥal Şe'elim, comes from Naḥal Ḥever as well. It was published by the late Ada Yardeni and myself, in a volume dedicated to our mothers. Our intense collaboration, two women working on the remains of the lives of women who lived long ago, made us close friends until Ada's death in 2018. Working together in a bilingual context had great advantages. It so happened that when the illiterate Greek of the scribes

made no sense to the experts, my native knowledge of the Semitic languages turned out to be an asset. From time to time I had to guess what the writers meant to express in what they believed to be written in Greek. *DJD XXVII*, no. 64, a deed of gift in Greek, is a salient example: without having Ada Yardeni's edition of an Aramaic deed of gift (*P.Yadin* 7) before me, it would have been quite difficult to understand its content.

I have derived great pleasure from my long acquaintance with Babatha, daughter of Shimeon and with Salome Komaise, daughter of Levi. Were it not for their numerous legal contracts and endless disputes my life would certainly have been much duller. However, I have left it to others to compose books and invest in reading and studying the vast bibliography which has accumulated over the years both on the relevance of these documents to the subjects I have addressed, and to other issues which I have not touched.

But although the documents from the Judean Desert have generated an enormous amount of literature, some of it taking issue with my interpretations, the articles in this collection reflect my views and the state of knowledge when they were published. I have deliberately not tried to bring them up to date, nor to revise them in light of subsequent publications.

Nonetheless, my views on some of the themes in the articles published here have developed and somewhat changed since their first appearance in print. These new views have been presented in lectures which I gave in several academic conferences from 2017 onwards which have not yet appeared in print. These changes were stimulated by my growing understanding of the importance in Jewish law and tradition of oral acts such as that of betrothal – an understanding that is reflected in the article 'The Conception of Jesus' in this volume. I would like to give a summary of these views here.

For a long time I assumed that the use of the Greek language in Jewish legal contracts reflected the flexibility of an age where Rabbinic authority was weaker and was an adjustment to conditions of life then: bringing a case before a Greek-speaking court of law, whether that of the governor or a polis, would have made it more likely that the verdict would be carried out. From time to time, the unidiomatic Greek in some of the contracts makes the attempt look quite pathetic, as for example in the literal translation into Greek of מִתְּנָה עַל (ל)ם as δόσις αἰώνιου: not being aware of the idiomatic expression δόσις εἰς αἶν, they translated literally the Semitic term.

What I had failed to recognize was that some legal acts required then, as they do now, the use of a specific language. Thus, although the languages of the Jewish diaspora were and still are reflected in many contracts, they were (and still are) completely excluded from many others. To be binding, so far as traditional Jews are concerned, such legal acts did not need to be written, they needed to be *said*,

and this could only be done in a language appropriately empowered to do so: these are legal speech acts, as one would call them nowadays. As such, they do not always leave a record. Consequently, the historian, beholden to texts, can mistakenly overlook them.

The Greek marriage contracts, as they have been labelled, which mention the sanction of the *Nomos Hellenikos* (or the variant ‘according to the laws’ κατὰ τοὺς νόμους), did not establish the legal status of the marriage. The change of legal status from unmarried to married follows the oral act of betrothal (קידושין). The *ketubba* (literally a ‘written document’) given to the bride at the wedding ceremony is the equivalent of the Greek marriage contract, and it specifies property arrangements and obligations. Neither the Greek marriage contract nor the *ketubba* established the personal status of marriage.

The divine and immaculate conception of Jesus by a virgin in the New Testament takes the ‘two-stage marriage’ for granted: Miriam was betrothed to Joseph, but not yet married to him: ‘he did not *know* her yet’ (see the discussion of this in the paper ‘The Conception of Jesus,’ below). As is made clear in *P.Polit.Iud.* 4, the cancellation of a betrothal would call for a divorce: μετ’ οὐ π[ολὺν] χρόνον ὁ Λυσίμαχος συνήρμοκεν ἄνευ λόγου ἐτέρῳ ἀνδρὶ τὴν Νεΐκαιαν πρὶν ἢ λαβεῖν παρ’ ἐμοῦ τὸ εἰθισμένον τοῦ ἀποστασίου τὸ βυβλίον (cf. Deut. 24:1 for the term); ‘Not long afterwards, Lysimachos without justification joined Nikaia to another man before having received from me the customary bill of divorce.’

Thus the Greek marriage contract presumed an oral betrothal, and it contained mainly provisions concerning property. It is quite likely that it was written in Greek to provide for the option of bringing it before a Greek-speaking court of law.

All that *agraphos gamos* ‘unwritten marriage’ can mean when people refer to the Greek *P.Hever* 65 (= *P.Yadin* 37) is the period before the dowry was given, and once it was given it needed to be recorded in a document; there was no reason to write a contract so long as the dowry had not been paid. In Egyptian marriage papyri we even find the expression *engraphos gamos*, i. e. written, recorded marriage, which implies that the dowry has been paid. The phrase ‘continue life together as before’ (ll. 5–6) does not attest to our modern sexual relations out of wedlock, as some have tried to make it mean. All it does is acknowledge a delayed payment of the dowry. Once the marriage had come to an end by divorce or death and the financial provisions specified in the Greek marriage contract had been fulfilled, the document was, so to speak, cancelled, as is implied by the diagonally crossing pen strokes (*DJD* XXVII, no. 69).

The act of divorce, like the act of betrothal, is a legal speech act pronounced by the husband; the latter repeats three times the word מגורשת (literally ‘divorced’), that is to say: ‘you are herewith divorced by me.’ Only now is the deed of divorce,

in which conditions and terms are specified, handed to the divorced woman. Once received, the deed is torn up: all that matters is that the words have been said – and witnessed. No wonder then that *no deed of divorce has survived from antiquity* – with the exception of *P.Mur* 19, written ‘in the 6th year on Masada,’ and discovered in a cave in Wadi Murabba‘at (not far from Jerusalem). The divorced wife left Masada (more likely escaped from there) in possession of the means to prove in the future that she was free to marry another (see ‘The Conception of Jesus’).

Another instance in which I mistakenly found a pre-Rabbinic flexibility in Jewish marriage rules was in the attempt by myself together with E. Qimron to turn *DJD* XXVII, no. 13 – rightly described in its first publication as “a waiver of claims” (by a woman) – into an indirect record of a divorce given by a Jewish woman to her husband. The document should be read as a dialogue, as it had been by the late Ada Yardeni: thus, the crucial phrase *די הווי לך מני גט שיבוקין ותיירבין* (‘you have from me a deed of divorce’) comes from the husband’s mouth, as it does to this very day. Other documents written by the same scribe follow this idiosyncratic dialogue form (echoing speech), as Hillel Newman has pointed out. Moreover, the claim (namely, of a divorce given by a woman) contradicts the underlying assumption in the story of the divine Conception of Jesus in the Gospels of Matthew and Luke. We may recall that this story proves the constitutive force of the betrothal in post-biblical Jewish society and clearly confirms the existence of a two-stage union: namely, betrothal followed by marriage. At the same time it proves that the act of divorce comes from the husband: having discovered Mary’s pregnancy Joseph was about to divorce her when he was stopped by the divinity. The NT had no axe to grind – that was not the point of the story.

Finally, the law of succession. Since there exists *no* deed of gift for male heirs, I assumed that daughters were altogether debarred from intestate inheritance. In her book, *The Relationship between Roman and Local Law in the Babatha and Salome Komaise Archives* (2007), Jacobine G. Oudshoorn argues correctly that the law of succession in the documents from the Judaean Desert denies intestate inheritance to married daughters but not to unmarried ones. It was the change from unmarried to marriage *to an outsider* that called for a deed of gift to a daughter (ibid. pp. 244–45): “the law of succession of the time would not deny a daughter her right to inherit her father’s estate, as long as she was unmarried or married to the next of kin.”

Thus the articles in this volume should be read with these new considerations in mind. They do not undo the arguments I have made in them, but they do put them in a different light.

I used to believe that having published my views in print (once) was enough. Moreover, I anticipated writing more and adding more, so any collection appeared to me to be premature. It took me a long time to come to terms with the realisa-

tion that I will not produce many more articles, and that having them published together in a single volume is a gift to myself – when shared with others. With this realisation, the time was ripe to accept the generous offer made by Günter Stemberger to include them in the *Studia Judaica* series.

It is both customary and necessary in publications such as this to thank (and absolve from responsibility for mistakes) all those who have provided help, intellectual and technical, in research, in formulation of ideas, and in publication. I have never shied away from asking for help when I needed it, and as my full list of publications shows, a great deal of my research has been conducted and published in collaboration with others. Very many have helped me: teachers, colleagues, and students – too many to mention all, but I should like to single out some of them.

First, since I am *not* a trained papyrologist, I often resorted to picking the brains of well-known and patient papyrologists, in Oxford, Cologne and Heidelberg, who overlooked my ignorance and tolerated being exploited. I am most grateful to Roger Bagnall, James Cowey, Robert Daniel, Dieter Hagedorn, Peter Parsons and John Rea for their patience and generosity. They saved me from many errors.

Several devoted student assistants helped me to assemble printed texts and old files and convert them to a format that could be edited: I would like to thank Ori Shapir, Vladimir (Vova) Zuckerman, Nir Stern, and Doron Shomrony for having made this collection possible. Only then could these raw data be put into a uniform style, creating consistency and cross-references where none existed before. My Greek teacher, who has become a lifelong friend, Professor Ra'anana Meridor, went through many of these articles before they were submitted to press, and even afterwards, finding mistakes even in the offprints! Ofer Pogorelsky, my editor has inserted them all.

Not being a native speaker of English, I turned frequently to my friend of very many years, David Wasserstein, to give them the *manus ultima*. He did so at the speed of light which saved me the guilt of feeling I have imposed on him.

I have deliberately left my editor, Ofer Pogorelsky, to the end: I would never have been in the position to write a preface to this work without him. As I grew older, I had more or less put aside the idea of publishing this selection of my articles. Ofer came at the right time: his initiative, devotion, and painstaking, conscientious and intelligent editing brought the project to a happy end: it has made it possible for me to repay Günter Stemberger for his endless patience and trust in me.

