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Encomium papyrologiae

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Józef Méléze Modrzejewski

ENCOMIUM PAPHYROLOGIAE*

I HAVE JUST HEARD A LOT ABOUT MYSELF, I have found out a number of interesting things, but I will not, taking the floor, take it any further or alter the praise of the one celebrated here. I will rather present you with an encomium of the discipline thanks to which I have just been showered with so many honours and joys at this magnificent celebration.

I am profoundly grateful to the University of Warsaw and its Senate for the resolution granting me today the honour to renovate my doctorate presented in May 1957. Nine years before this memorable event, *i.e.* in 1948, my home city of Lublin witnessed an encounter from which this doctorate and perhaps even my whole scientific career arose. At a pre-finals celebration at my Stanisław Staszic Secondary School, in which I was just about to pass my finals, I recited *Hymn to Aphrodite* by the Greek poetess Sappho

*Ποικιλόθρον', ἀθάνατ' Ἀφροδίτα,
παῖ Δίος, δολόπλοκε ...,*

*Iridescent-throned Aphrodite, deathless
Child of Zeus, wile-weaver...* (tr. Elizabeth Vandiver)

* The paper is a version of a speech delivered by Józef Méléze Modrzejewski on 6 June 2011 during the ceremony of the renewal of his doctorate that took place in the Senate Hall of the University of Warsaw.

An eminent Warsaw papyrologist, Prof. Jerzy Manteuffel, was present at the function; he beckoned me to approach and praised my Sapphic strophe. Having heard I was about to go to Warsaw to study, he invited me to the Institute of Papyrology. He had recently begun to direct this institution, and shared this responsibility with the great jurist Rafał Taubenschlag who, freshly returned from the U.S., was installed at the University of Warsaw. And so, after a successful admittance exam to the Faculty of Law of the University, I decided to visit the papyrological rooms. I opened the door, entered, and papyrology enchanted me, captivated me and has let not go for my entire life. So are the Aphrodite's wiles ...

The collaboration of Jerzy Manteuffel and Rafał Taubenschlag symbolised one of the features of a – then – still young discipline. It was an alliance of history and philology with science of law. The countless Greek papyri, discovered in Egypt at end of the nineteenth century, secured thanks to their number and content the position and independence of papyrology among the sciences of Antiquity. They brought about unexpected revelations enriching our knowledge of Greek literature with works such as *The Constitution of Athens* (Ἀθηναίων πολιτεία) of the School of Aristotle, new Attic Comedy of the Athenian Menander – predecessor of Plautus, Terence and Molière. Yet, the richest harvest of all from this immense mass of new sources was reaped by the history of law. The papyri brought a multitude of new and precious information on the legal cultures which co-existed in Egypt from Alexander the Great until the Arabic conquest of the country (332 BC – AD 641). We became better acquainted with their normative form – such as the legislative efforts of the Ptolemies or the edicts of the Roman governors – but also with the innumerable testimonies of the everyday legal practice: contracts, receipts, wills, and, let us not forget about them, countless private letters which sometimes reveal secrets of history totally unknown from elsewhere. The study of papyrology and history of law, closely bound to each other, entered the arena of the science of antiquity as a homogeneous discipline, called in German, *Papyrusforschung und antike Rechtsgeschichte* – in compliance with the formula of the pioneers of papyrology of hundred or so years ago, Ulrich Wilcken and Ludwig Mitteis; this discipline I have managed to revive in Paris as *Papyrologie et histoire des droits de l'Antiquité*.

The richness of the discipline so-defined reveals itself in many facets. The first aspect thereof is probably the multitude of the legal cultures which encounter in the same territory, over the Nile and its Delta: Egyptian, Greek, Roman law, joined by Hellenised Jews and their law, the biblical law, which the Ptolemies recognised as the 'civil law' of the Jewish people. Following in the footsteps of the ancient Lords of Egypt, a historian discovers awe-inspiring methods aiming at preventing possible conflicts, which may have been risen by such a pluralism of the legal life of the country. The Ptolemies did not look for them in an impossible reform aspiring at making the law uniform. They preferred the organisation of justice which respected the national traditions of the locals and immigrants, as long as they were not contrary to the benefit of the state, or more precisely, to the interest of the royal treasury.

In a similar way, sometime later, the provincial authorities of the Roman State extended their legal protection over the inhabitants of Egypt, which had become a province of the Roman Empire. And so they tolerated and guarded foreign customs, sometimes even these contrary to Roman law, as long as they did not compromise the state security and keeping of public order.

Another, equally interesting dimension of the richness of the papyrological documentation are the respective influences of the neighbouring traditions. The possible loans and transformations or transplants resulting from this neighbourhood were studied in the light of the understanding of the Hellenistic World, long dominating the scholarship, as the synthesis of Orient and Occident. And thus, the hypothesis was advanced that the Graeco-Egyptian law was to be a new legal system. It was to be an order born from the union of the law of Egypt of pharaohs with the Greek law imported by Alexander's soldiers and their successors. I must confess that in the first years of my research on papyri I also sought evidence of the new system, created through unification of the Greek and Egyptian elements. Today I reject this concept, as it must be firmly rejected. The vicinity of the legal traditions, Greek and Egyptian, leads to a few, at most, reciprocal borrowings, but it does not create an amalgam, which remains a creation of the first papyrologists' imagination. Instead the Hellenistic world is indeed the place where the Greek law was unified, in the same

respect as *koinê* was: from the Hercules Pillars to Euphrates and Tiger, from Balkans to the Nile cataracts the same language was heard and the legal deeds could be produced in the same forms. The Greek law we read in the papyri, spread in the kingdoms grown on the ruins of Alexander's Empire, not due to the statutes, but thanks to notary forms and everyday practice. From this point of view it is the first law with universalistic tendencies in the Mediterranean environment, and this long before the law of Romans. With their ascent to power and the reduction of the Hellenistic monarchies to the level of Roman provinces, the interest of the scholars is turned to the issue of relation between the Roman law and the provincial practice, which survives long the conquest, in the spirit of the tradition established in the Hellenistic period. Particular attention is drawn to the evaluation of this practice after popularisation of Roman citizenship for the benefit of all free inhabitants of the Empire by the Edict of Emperor Caracalla in AD 212. In the historic work *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs*, published in Leipzig in 1891, Ludwig Mitteis dramatised this problem. The grand German scholar presented it as a battle between Roman law – theoretically now universally in force, and, in his view, illegal local traditions, which were to resist the thoughtlessly imposed Romanisation. Further studies, however, put paid to this drama. The local laws subsisted Caracalla's Edict as the customary provincial law *mores regionis, consuetudines provinciae*. Popularisation of the Roman citizenship brought about only injunction on such practices which contrasted the Roman public order.

I would like to illustrate now these general considerations, this overview of the most important research problems in papyrology, with a more tangible example. I will search for it in the corpus of documents published more or less a decade ago. They regard a Jewish colony (*πολίτευμα*) in Herakleopolis, the modern Ihnasiya el-Medina, located at the gates of the Fayum. In June 132 B.C. a Jewish lady, Berenikê, daughter of Archagatos, an inhabitant of Aphroditês polis, turns to the archons of the *politeuma* with a complaint against her business partner Dêmêtrios son of Philotas, who notwithstanding the Greek names is also a *Ioudaios*, a Jew, and a member of the *politeuma* (*P. Polit. Iud.* 9 – P. Köln inv. 21031). The controversy between the lady and the gentleman arose because of two, rather banal,

agreements, connected with one another. The first concerned a sale of a slave-girl with her child; the second, breast-feeding of the infant by a wet-nurse hired for the purpose. Berenikê sold Dêmêtrios the girl, charmingly named Roma, with the baby. Since the mother had no milk, Berenikê let Dêmêtrios a second slave-girl to breast-feed the child. A year passed and Dêmêtrios has not paid a penny, – or rather, not a single obol – neither for the purchased slave, nor for the rent of the wet-nurse. The whole amount would be augmented by a penalty contractually due to the royal treasury for the breach of terms of the agreement. Berenikê, therefore, applies to the tribunal of the archons of the *politeuma*, deriving its jurisdictional powers from a royal delegation, to compel the debtor to fulfil his obligations. In her eyes he is a criminal who has broken the law of the fathers: παραβεβηκότος τὸν πατριὸν νόμον (ll. 29–30). The fact that a party does not keep his promises is rather banal, be it in Ptolemaic Egypt, be it in modern France or Poland. The difference is that in Egypt his liability does not arise from the non-fulfilment of the promise, but because of the damage (βλαβή) the creditor has suffered. This was a Greek concept. And yet how would that constitute a breach of the ancestral law? How to search for it in the Moses' *Pentateuch*, which – as I have just mentioned – the Ptolemaic Monarchy considered to be the civil law (πολιτικὸς νόμος) of the Hellenised Jews who had settled in Egypt. The writer of the contracts which gave rise to the complaint of Berenikê, belonging, if we judge by her possession of slaves, to the local elite, found a way to subordinate the formally very Greek contracts to the ancestral law of the parties. The debtor's obligations are inscribed into civil law by a letter of oath according to the ancestral law (ἐπιστολὴ ὄρκου πατρίου). A moral and religious sanction for perjury is added to the usual one for the damage caused to the creditor. The skilful notary has Judaicised Greek contracts. That is where the vicinity of various legal cultures leads.

Such an oath in conformity to the law of the fathers could be found in two more documents from Herakleopolis (*P. Pol. Iud.* 3, l. 28 and 12, l. 10). It means that we deal here with a practice well-established in the Jewish community; the Greeks instead only rarely use oaths to strengthen obligations. In such cases the usual kind of oath was a promise upon the royal name (βασιλικὸς ὄρκος). It assisted all types of services burdening the

officials and duties of the lay people towards the omnipotent royal administration. This oath, in its written form, *συγγραφή βασιλικού ὄρκου*, may have served the contract-writers in Herakleopolis as a model.

How was such an oath formulated? It is certain it did not follow the Alexandrian pattern, where a statute, known thanks to *Papyrus Halensis* commanded to swear upon Zeus, Hera and Poseidon (*P. Hal.* I, 214–218). Jesus of Nazareth in the *Sermon on the Mount* rebukes his brethren who take oaths on heavens, earth, Jerusalem or their own heads: we read about it in Matthew 5:34. Did this admonishment concern the oath in accordance to the law of the ancestors in the contracts of the Ptolemaic Jews? I doubt it. The oath in Egypt seems rather to have been an promise upon divine name, such as was the one that strengthened the alliance of Abraham and Abimelek as we read in the Book of Genesis (Gn 21:23–24). Not keeping such a promise meant a breach of the Third Commandment: ‘Thou shalt not take the name of the Lord thy God in vain’ (*lo tisa et shem Adonai elobecha la shave*: Ex 20:7; Dt 5:11). The popularity of the custom is testified by the *Wisdom of Sirach*, translated into Greek in Egypt by the author’s grandson: ‘Accustom not thy mouth to swearing; neither use thyself to the naming of the Holy One’ says Siracides (Si 23:9). Both Jesus in his *Sermon on the Mount* and the *Book of Ecclesiasticus* sound very much like Plato who bewails that *δεινὸν γάρ που, δικῶν γ’ ἐν πόλει πολλῶν γενομένων, εὖ εἰδέναι μικροῦ δεῖν τοὺς ἡμίσεις αὐτῶν ἐπιωρκηκότας, ἐν συσσιτίοις τε ἀλλήλοις εὐχερῶς συγγιγνομένους καὶ ἐν ἄλλαις συνουσίαις τε καὶ ἰδιωτικαῖς συγγενήσεσιν ἐκάστων*. ‘(...) well-nigh half the citizens are perjurers, although they have no scruple in associating with one another at common meals and at other public and private gatherings’ (*Laws* XII 948d, tr. R. G. Bury).

We do not know whether the Ptolemaic Jews were more scrupulous with keeping their promises than the Athenians of the Plato’s era. We are exclusively interested here in the cultural duality revealed by the papyri. A Greek contract, a biblical sanction: that is how one may be at the same time – even if it seems mighty difficult – a Greek and a Jew. And we have learnt this thanks to the Greek papyri in Egypt. Three centuries later, the Greek notaries in Egypt will shine with a similar invention. After the generalisation of Roman citizenship, which I have already mentioned, the

agreements of the provincial populace did not oppose the law, but had no legal efficacy. These in the light of Roman law were mere pacts (*nuda pacta*), which execution could not be enforced in courts. The notaries overcame this obstacle providing a Greek contract with the Roman stipulation. The promise would be formulated as follows 'and being asked I have agreed' (*καὶ ἐπερωτηθεὶς ὁμολόγησα* equivalent to the Latin *et stipulatus spondi*). The stipulation converted a Greek agreement into a Roman verbal contract, which may be easily executed by a provincial judge. Greek contracts became Romanised.

These have been but a few facets of the fascinating field of study, of which I could speak for much longer: were I only allowed, we would be sitting in this beautiful hall long past midnight. I have been able to mention just a few aspects of the field of study, ready to be explored by a curious investigator under the crossed beams of lights of history and law, revealing the inexhaustible mysteries of the documents preserved by the Greek papyri in Egypt. It may not have been enough to light with my own fires the hearts of the audience, yet I would hope that this encomium of papyrology, abridged to the size proper for the occasion, has also been a speech of praise of my Warsaw colleagues who have made the University of Warsaw, just as it was to some extent 50 years ago, one of the most important centres of papyrological studies in the world.

The best proof of this is *The Journal of Juristic Papyrology*, founded in 1946 by Rafał Taubenschlag. It is not only still published today, but also now complemented by a series of *Supplements*. I am most happy and proud that among these there is my book on law and justice in Greece and the Hellenistic World. I wish Warsaw papyrology much success for the benefit of science (in the future). I am just about to conclude ...

To this symphony of joy and enthusiasm I would like to add a word of sorrow. I wish wholeheartedly that my late wife Lydia were present at this ceremony so amicably and generously organised by the University of Warsaw, but this does not diminish at any rate my gratefulness to the organisers and my pride because of the just renewed doctoral degree.

APPENDIX

A sale of slaves and a hire of a wet-nurse

(P. Polit. Iud. 9, 20 June 132 BC)

- τοῖς τὸ λη (ἔτος) ἄρχουσι
 παρὰ Βερενίκης τῆς Ἀρχαγάθου
 4 Ἰουδαίας τῶν ἐξ Ἀφ[ρο]δίτης πόλι[ω]ς.
 τοῦ λζ (ἔτους) Φαμεν[ὼ]θ Δημήτριος
 Φιλώτου Ἰουδαῖος τῶν καταγινο-
 μένων ἐν Πειμπασβύτει
 8 προήκατό μοι ἐπιστολὴν ὄρκου
 πατρίου διομολογούμενος ἀποδώ-
 σειν μοι τὴν συνκεχωρημένην
 τιμὴν ἧς ἐώνητο παιδίσκης Ῥώμης
 12 καὶ τοῦ ἐκ ταύτης τέκνου ἐν
 μηνὶ Παῦνι τοῦ αὐτοῦ (ἔτους) χα(λκοῦ) (τάλαντα) η,
 ἐὰν δὲ μὴ ἀποδῶι, ἀποτείσειν
 ἐν τῶι ἐχομένωι μηνὶ Ἐπίφ
 16 σὺν ἡμιολίαι καὶ εἰς τὸ βασιλικὸν
 ἐπίτιμον ἀργυρίου) (δραχμὰς(?)) οἷ ἄνευ πάσης
 κ[ρ]ίσεως καὶ καταστάσεως,
 δώσειν δὲ καὶ μισθὸν κατὰ
 20 μῆνα τροφῶι τοῦ μὲν
 ἱματισμοῦ χα(λκοῦ) Βφ ἕως ιε τοῦ
 Φαμεν[ὼ]θ καὶ (πυροῦ) (ἀρτάβας) μέτρα δύο
 μηνῶν δ κατὰ μῆνα ἐλαίου
 24 κοτύ(λας) β τοῦ μηνός, ἀπὸ δὲ τοῦ Παῦν[ι]
 κατὰ μῆνα (πυροῦ) (ἀρτάβην) α, ἐλαίου κοτύ(λας) β,
 τα[ῦ]τα δὲ καὶ ἄλλα τῆς ἐπιστολῆς
 περιεχούσης καὶ τοῦ Φιλώτου
 28 μηθέν μοι ἀποδεδωκότ[ο]ς μέχρι
 το[ῦ] νῦν, ἀλλὰ πα[ρα]βεβηκότος τὸν
 πάτριον νόμον, διὸ ἠναγκασ[μ]ένη
 ξενιτείας πείραν λαμβάνειν καὶ
 32 παρακεκομικυῖα πρὸς ὑμᾶς ἄ[λ]-

- λη[ν τῶ]ν ἐν Ἀφροδίτης πόλει Ἰουδαίων
 περὶ τούτ[ου] ἐπιστολὴν ἀξιῶ
 εἶν φαίνηται σ[υντ]άξαι τῶι ὑπηρέτη
 36 παραπέ[μ]ψαι τὸν Δημήτριον καὶ ἀνα-
 κλησαμένους αὐτὸν ἐπαναγκ[ά]σ[α]ι
 παραχρῆμα ἀποδοῦναι καὶ ἀποτεῖσαι
 σὺν ἡμιολίαι (τάλαντα) ἰβ καὶ τ[.] c. 9 Bφ
 40 καὶ τὸν πόρον καὶ τᾶλλα ἀκολούθως
 τῶι ὄρκωι, περὶ δὲ [τ]οῦ εἰς τὸ βασιλικὸν ἐπιτίμου
 κατὰ τοῦ παραβεβηκότος διαλαβεῖν μισοπονήρως.

(2nd hand) (ἔτους) [λ]η Π-

- 44 αχὼν κθ . . . traces
 λ[.]π[.]τ[.]ν c. 9 τ
 —————
 46 ται αὐτ[.] . . . []
 καὶ ταύτης ε[.] . . . ς

verso

ἔτους λη Παῦνι ς
 Βεβενίκης πρ(ὸς) Δημή(τριον)

To the archons being in charge in the 38th year from Berenikê, daughter of Archagathos, a Jewess of the (living) in Arphroditês Polis.

In the year 37, month Phamenôth, Dêmêtrios son of Philôtas, a Jew of the ones residing in Peimpasbytis, sent me a letter of oath according to the ancestral law convening that he would give me in the month of Pauni of the same year the agreed price of the slave-girl Roma and the child of hers that he had bought for himself, (which is) 8 talents of copper coins. (And he conveyed), should he not give me, he would pay in the following month of Epeiph (the same amount) plus the half of it (as damages) and to the royal treasury 78 silver drachmae as penalty, without any judgment or litigation; and that he would give on account of rent for the nurse each

month 2500 copper coins for clothing until the 15th of Phamenôth and two artabaes of wheat during 4 months as well as 2 *kotylai* of oil each month, and from the month of Pauni on, one artaba of wheat and 2 *kotylai* of oil.

And given that, notwithstanding all these and other (conditions) contained in the letter, Philotas (i.e. Dêmêtrios) has not paid anything until now, but has breached the ancestral law, wherefore I have been forced to provide a proof of being away from home (because of this matter) and having conveyed over to you another letter of some of the Jews of Aphroditês Polis, I request, if it pleases you, to command the *hypêretês* to conduct Dêmêtrios here, and once you have summoned him, to compel him to pay and to recompense on the spot the amount (plus) the half of it, which makes 12 talents and ... 2500 drachmae (for the clothing) and all the rest according to the oath; as far as the penalty to the royal treasury is concerned, (I request) to treat the perjurer mercilessly.

(2nd hand) Year 38, 29th day of the month Pachôn (traces of the endorsement of the archons?)

Verso. Year 38, Pauni 6: Berenikê against Dêmêtrios.

*Translated from Polish
by Jakub Urbanik*