Taubenschlag, Rafał

Customary law and custom in the papyri

The Journal of Juristic Papyrology 1, 41-54

1946

CUSTOMARY LAW AND CUSTOM IN THE PAPYRI

Custom[1] as a source of law is already expressly acknowledged in a decree of the third cent. B.C., in BGU. 1185 II, 28ff. The King issued an order that nobody had to justify the κράτησις[2] of temple-goods by means of documents, if the κράτησις was granted by the King's decision: [κατ]ὰ τά τε τείμια[3] καὶ τοὺς ἐθισμούς. Similarly in BGU. 1127,[4] a contract of 18 B. C., a seller who received only a part of the price and conveyed possession to the buyer, stated that he would not make us of (v. 22) νόμος ἢ εἰθισμός regarding such transactions. And in a contract of the same period, BGU. 1118 (25/4 and 24/3 B.C.),[5] we read that the buyer would pay (v. 20ff.) τάξονται τὰ παρ' αὐτ[ῶ]ν . . [. . . . κατὰ τὰ] προστάγματα καὶ διαγράμματα καὶ τοὺς ἐξ ἀρχῆς ἐθ[ισμούς]. Significant is SB. 7696 (250 A.D.)[6] where in a trial held before the prefect of Egypt, Appius Sabinus, a rhetor points out that the ἔθος may derogate a νόμος.

The ἔθος plays an important part in all fields of law, private, penal and administrative law as well.

I. As we all know private law includes the law governing domestic relations: marriage, guardianship, *patria potestas,* law of inheritance, law of property and obligations. Now let us go through all these domains.

With regard to the law governing marital life, a marriage contract from Alexandria, BGU. 1050 = M. Chr. 286 = P. Meyer, *Jur. Pap.* N° 19 deserves consideration.

---

[1] For custom, customary, to be the custom the nouns: ἔθος, ἐθισμός, ἀκολουθία, συνήθεια, the adjectives: ἔθιμος, συνήθης, the verbs: ἔθω, ἐθίεω are employed cf. Preisigke, *Wörterbuch* s.h.v.

[2] Cf. on κράτησις of temple land, Otto, *Priester u. Tempel* I 236; II 39, 2.

[3] On τίμια cf. Tebt. II 294, 20.

[4] Cf. Berger *Strafklauseln* 76; Schwarz, *Urkunde* 194 and the literature quoted there; see also Johnson, *Roman Egypt* 380.

[5] Cf. Berger l.c. 156; Johnson l.c. 101.

[6] Cf. T. C. Skeat and E. P. Wegener, *J.E.A.* XXI (1935) p. 224ff.; Wenger, *Actes Oxford* 540, 543ff.

In this συγχώρησις the parties to the contract agree that the sacral contract before the ἱεροθύται should include provisions on dowry καὶ τἆλλα τὰ ἐν ἔθει ὄντα, that is, other customary provisions.[7] An application of 362 A.D.[8] informs us that τὰ ἐξ ἔθους δεδόμενα ἔδνα used to accompany the conclusion of a marriage, and a marriage contract of the 6th cent. A.D., CPR. 30 = M. Chr. 290, provides that the wife will (v. 22) ὑπακούειν to her husband καθὰ τῷ νόμῳ καὶ τῇ ἀκολουθίᾳ συμβαίνει.[9]

SB. 5589 (cf. also SB. 5276 a-b) mentions an ἔθος τοῦ κάστρου, according to which illiterate people in making their last will and testament have to be represented by literate people.

The division of the inheritance by lot goes back to an ἔθος, and such a division is considered δίκαιος καὶ ἀκίνητος.[10]

Whether the opening proceedings of a last will and testament in the Roman period were regulated by custom, is rather a difficult problem[11]. Arangio-Ruiz[12] answers in the affirmative, Kreller[13] in the negative. The truth seems to lie, as usual, in the middle, as some provisions are seemingly of legal,[14] while others are of customary provenance.

As for guardianship of women, the papyri speak of guardians appointed upon the woman's application pursuant to the provisions of the *lex Julia et Titia* and a *S.C.*[15] But there are also instances of appointments κατὰ τὰ τῶν Ῥωμαίων ἔθη. As the term ἔθη sometimes means *jura,* it is very

---

[7] Cf. H. J. Wolff, *Written and unwritten marriages in Hellenistic and postclassical Roman law* 36; Bozza, *Aegyptus* XIV, 243.

[8] Cair. Preis. 2, 7 (362 A.D.) cf. Taubenschlag *The law of Greco-Roman Egypt* 91; abbreviation: Taubenschlag, *Law.*

[9] Cf. also Lond. 1711, 27 (=Cair. Masp. 67. 310, 19) (566/573 A.D.) a marriage contract, which runs: διαθρέψαι σε γνησίως καὶ ἐνδιδάσκειν καθ' ὁμοιότητα πάντων [τῶν σ]υμμετρίων μου.

[10] Cf. Gen. 11, 7 (350 A.D.) cf. my art. in *Arch. f. Pap.* VIII, 27ff.

[11] Cf. Lond. 171 (b), 18q. (3rd cent. A.D.) ἀξιῶ λυθῆναι ἐπὶ σοῦ κατὰ τὸ ἔθος; Ryl. 109, 9 (235 A.D.) ἐκ διαθήκης τῆς καὶ ἀνοιχθε[ίσ]ης κατὰ τὸ ἔθος ἐν τῷ ἐφ' Ἑρμοῦ πόλεως Κα[ι]σαρείῳ κτλ.

[12] *Success. testam.* 15f. no. 3.

[13] *Erbrechtl. Unters.* 396₃.

[14] Cf. Mitteis, *Grundz.* 241.

[15] Cf. Taubenschlag, *Law* 131.

probable that in the phrase mentioned above the term is used in the latter sense.[16] The same holds for applications in which women claim *jus liberorum* κατὰ τὰ ʿΡωμαίων ἔθη.[12]

In the deed of disownment (ἀποκήρυξις) in Cair. Masp. 67, 353 verso (569 A.D.) we read (v. 25) : ἐξορκίζω δὲ ἅμα καὶ τ[ὸ]ν δημόσιον [σ]κρίβα καὶ [τ]αβουλ[άριον κ]αὶ δημέκδικον . . . . . τὴν συνήθη [ἀ]ποδημίωσιν προσθέσθαι τοῖς διατυπωθῖσι παρ᾽ ἐμοῦ ὁρισμοῖς t. i. "to give the customary publicity to the decisions formulated by me" (i. e. the person who made the deed of disownment).

The law of property includes legal remedies concerning relations between neighbors. In this respect, a Ptolemaic papyrus, Tebt. 50 of the sec. cent. B.C. may be mentioned in which a βασιλικὸς γεωργός sues his neighbor for preventing him, in disregard of an old established custom, from watering his land from the royal conduct which passed through royal land and through his neighbor's property.[19] Accordingly in Mil. Univ. 26, 12 the drawer of the contract grants to the buyer : χρωμένην ταῖς τῶν ἀρουρῶν ἰσόδοις καὶ ἐξόδοις καὶ ποτισμοῖς καὶ ἐκχύσεσι καὶ ταῖς ἄλλαις χρήσεσι πᾶσι κατὰ τὴν ἐπάνωθεν μέχρι τοῦ νῦν συνήθειαν, not only the right of using channels but also entrances and exits and other advantages according to an custom practised up to the present time.

In the field of obligations, provisions of customary character are frequent in leases of land such as the provision concerning management of land,[20] transport of fruits,[21] the amount of rent,[22] as well as payments in installments[23] and

[16] Cf. Kreller l.c. 396, ₃.

[17] Cf. Taubenschlag, *Law* 133.

[18] Cf. Taubenschlag, *Law* 102₂₂.

[19] Cf. Taubenschlag, *Law* 196.

[20] SB.4774, 8 (Byz. period) δεχόμενος παρά σου τὴν ἐμὴν ἐξ αὐτῆς γεωργί(αν) πρὸς τὸ ἔθος.

[21] Oxy. 1692, 11, 12 (188A.D.), lease of ἀμπελουργικὰ ἔργα in a vineyard and adjoining reed plantations: μεταφορὰ τούτου εἰς τὸν συνήθη τόπον; (v. 22) καὶ ἔτι ψυλάξι ἐν ἀγρῷ τὸ σύνη[θες?].

[22] Tebt. 815 fr. 3 verso v. 12 (218-221 B.C.) ὁμολογεῖ— [μεταδε] δωκέναι— ἐκφορίου κατὰ [τὸ ἔθος?] τῆς κ(ώμης); Gen. 16 = W. Chr. I 354, 13 (207 A.D.) μισθοῦται καὶ σπείρεται κατὰ τὴν συνήθεια[ν] [ἐ]κφορίο[υ κατ᾽ ἄρουραν]; PSI. 953, 87 (6th cent. A.D.) ; 954, 53 (6th cent. A.D.) ὑπὲρ μισθοῦ κατὰ ἔθ(ος). cf. PSI. 1058, 11 (5th/6th cent. A.D.) ἔθιμος μισθὸς with re-

of additional gifts,[24] payments of public charges[25] and reduction of rent for ἀβροχία.[26]

In *Or. Gr. Inscr. Sel.* II, 669 (v. 10)[27] the prefect Tiberius Gallus Alexander, declares that the practice to force people to farm taxes, violates the old provincial custom and promises to restore the former situation.

Other papyri give information on the *locatio-conductio operarum*. In Flor. 180,8 (Apion's correspondence) the writer of the letter informs the addressee: δηλωθῆναί σοι τὸν μισθὸν ὃν εἰώθασι λαμβάνειν οἱ ἐποικιῶται, ἔστιν δ᾽ ἐξ ἔθους αὐτῶν κτλ, Oxy. 1427 (3rd cent. A.D.) mentions the "customary" rate of payments for diggers employed by the government in repairing canals on the river, and Strassb. 40, 48 (569 A.D.) and SB. 4490, 24 (7th cent. A.D.) the additional customary gifts in contracts with servants.[28]

---

gard to a goldsmith-shop.

[23] Ryl. 99, 12 (3rd cent. A.D.) καὶ τὸν συναγόμενον φόρ[ο]ν διαγράψω ἐπὶ τὴν ἐν Ἑρμοῦ πόλει δημοσίαν τράπεζ[α]ν ταῖς εἰθισμέναις ἀριθμήσεσιν.

[24] Giss. 46, 20 (6th cent. A.D.) [π]αρέξω δὲ κατ᾽ ἔτο[ς] τοὺς σηνήθεις τῶν τρυγῶν κ[άδους] cf. Grenf. I 57, 16 (561 A.D.) ; Hamb. 23, 25 (569 A.D.) ; S.B. 4483, 19 (7th cent. A.D.) ; Cair. Masp. 104, 14 (530 A.D.) [Δώσω δὲ καὶ τ]ὸν φόρον τῶν ψοινίκων καὶ τὰ ἄλλα ἔθειμα κατὰ τὴν δύν[αμιν] τῆς αὐτῆς μισθώσεως; SB. 7369, 25 (512 A.D.) ; Wess. Stud. XX. 218, 28 (7th cent. A.D.) ; Lond. 1771, 8 (6th cent. A.D.) ; Lond. III 1036, 8 (p. 268), (6th cent. A.D.) ; PSI. 936, 3 (6th cent. A.D.) ; Ross. Georg. V, 42, 18 (602 A.D.).

[25] Tebt. 373, 13 (110/11 A.D.) δημόσ[ι]α φόρ[ετρα πάντα ἀκο]λούθως [τῇ τῶν ἀρο]υρῶν συνηθείᾳ κτλ. Cf. Tebt. 376, 19 (162 A.D.) see also D 26, 7, 32§6 (Mod. lib. VI resp.) *Lucius Titius coheres et curator sororis suae, cum esset ex civitate, in qua usitatum erat ipsos dominos praediorum, non conductores onera annonarum et contributionum temporariarum sustinere, morem hunc et consuetudinem semper observatam secutus est.*

[26] P. Brem. 36, 14 (117 A.D.) παραδεχομένης μοι ἐν ἀβρόχῳ καὶ τῆς ἡμισέας τῆς ἐπηντλημένης κατὰ τὸ ἔθος. Cf. Giss. 4, 21; 5, 14; 6, 21 see Waszynski, *Bodenpacht* 121ff.; cf. C. 4, 65, 18 (a. 290) *Excepto tempore, quo edaci lucustarum pernicie sterilitatis vitium incessit, sequentis temporis fructus, quo tibi iuxta praeteritam consuetudinem deberi constiterit, reddi tibi praeses provinciae iubebit;* C. 4, 65, 19. (a. 293) *Circa locationes atque conductiones maxime fides contractus servanda est, si nihil specialiter exprimatur contra consuetudinem regionis. quod si alii remiserunt contra legem contractus atque regionis consuetudinem pensiones, hoc aliis praeiudicium non possit adferre.*

[27] Cf. Wilcken, *Ostraka* 592.

[28] Cf. Taubenschlag, *Law* 282.

Significant is the *locatio-conductio operis* in Cair. Masp.
67,001 (514 A.D.), a contract with ποιμένες and ἀγροφύλακες
with the κοινὸν from Aphrodito. The formers declare to the
latter (v. 11): Ἔθος ἐστι εἰώθαμεν ἐκ πατέρων ἡμῶ[ν κα]ὶ
[π]ρ[ογ]όνων [ἐκτελέσαι] παραφυλακὴν ὅλων κτημάτων πάσης
τῆς αὐτῆς κώμης and in SB.6266 (6th cent. A.D.) the corporation
of ἀγρευταὶ takes the obligation upon it to execute all orders
(v. 14ff.): πρὸς τὸ παλαιὸν καὶ γονικὸν ἡμῶν ἔθος ἀόκνως.[29]
Ross. Georg. III, 47 (6th cent. A.D.) refers to a part of a
μισθὸς paid (v. 4): ἐξ ἔθους for services in a bath-installa-
tion. Noteworthy are the customs concerning sales. In SB.
5275, 25 (11 A.D.) the seller declares: ἔχει δὲ καὶ τὴν κατ'
αὐτῆς ἠθισμένην ἀποστα[σί]ου [γε]γονυῖαν, indicating that the
συγγραφὴ ἀποστασίου is of customary provenance. In PSI.
905, (26/7 A.D.) the seller promises βεβαίωσις against any
attack on the concerned catoecic land (v. 13): κατὰ τὰς ἔτι
ἄνωθεν συνηθίας.[30]

BGU. 362, XV, 4 (3rd cent. A.D.) mentions συνήθης τόκος
in loans.[31] The contract of deposit in Wess. 20,45 (237 A.D.)
shows a characteristic feature. As we know the Roman
legislation provided that the depositee was liable to pay
duplum for denial.[32] In this papyrus, however, the depositee
promises (v. 7ff.): ἅσπερ φυλά[ξω] παρ' ἐμαυτῷ πιστῶς καὶ
ἀμέμπτως ἀποδ[ώσω] σοι ὁπότ' ἐὰν ἀπαιτηθῶ [ὑ]πὸ σοῦ ἄνευ
δίκης καὶ κρίσεως καὶ πά[σ]ης [ε]ὑρησιλογία[ς κατὰ τὸν] τῶν
παραθηκῶν νόμον τε καὶ εἰθισμ[ό]ν. The quotation of παρα-
θηκῶν νόμος and εἰθισμός seems to indicate that some provi-
sions as, for instance, those concerning the sanction for denial
can be traced back to νόμος, while other, as to *custodia,* to
custom.

In connection with private law, some remarks on cus-
toms in notary-activities may be in order.

In BGU. 1771 (63/2 B.C.) in an act concerning μετεπι-

[29] Cf. Taubenschlag, *Law* 284, 4.
[30] Cf. D 21, 2, 6 (Gaius lib. dec. ad ed. prov.) *Si fundus venierit, ex
consuetudine eius regionis in qua negotium gestum est pro evictione caveri
oportet.*
[31] Cf. Otto l.c. I 321.
[32] Cf. Taubenschlag, *Law,* 264/5.

γραφὴ the expression (v. 20): οἰκονομεῖν ὡς ἐπὶ τῶν ὁμοίων εἴθιστα[ι] occurs. In a letter, Oxy. 1666, 18 (3rd cent. A.D.) the writer addresses his brother. "Do you then, brother, see to the deed of mortgage, so that it be prepared in the customary way; καθὼς ἔθος ἐστίν," and in Grenf. II, 71, II, 26 (244/8 A.D.) refers to the publication of private documents as to τὴν συνήθη δημοσίωσιν. Significant is the order in Oxy. 3418 = M. Chr. 188 (12 A.D.) that the clerks employed in local archives throughout the country should, following the traditional custom, make list of the contracts deposited in the public record offices, giving a short description of the contents.

Finally we know that in the Byzantine period a practice developed that some juristic facts arising outside, could be incorporated in a record by an authority equipped with *jus actorum conficiendorum*.[33] Thus we read in Oxy. 1885 (509 A.D.), a petition to a *defensor* to order "that the certified statement on the matter be given me (i.e. to the applicant) as usual by the town-clerk."

II. The earliest mention of ἔθος in penal law is Edg. Mich. 55, 26 (248 B.C.). The papyrus points out that the order to release prisoners must be read by the king "as this is the regular procedure: παρὰ τὸ ἔθος εἶναι." Papyri of the 2nd cent. B.C. knew of εἰθισμέναι παραγγελίαι[34] directed to police-authorities. Lips I 33 II 17 = M. Chr. 55 = P. Meyer, *Jur. Pap.* N° 88 (368 A.D.)[35] refers in (v. 17) to συνήθη ὑποσημίωσις in παραγγελία ἐξ αὐθεντίας τοῦ δικάστηρίου. It may be noticed that in Jand. 139 (148 A.D.) a dig-overseer swears to the idiologos (v. 34ff.): ἔθος μὴ εἶναι that a dig-overseer report to him on mulberry-trees which have fallen to the ground as this is the κωμογραμματεὺς duty.

III. Now we proceed to the administrative law. As the administrative law has different branches—law concerning the state-officials, finances, including monopolies, banks, forced labor and liturgies, measures and weighs, traffic

---

[33] Cf. Taubenschlag, *Law,* 401.
[34] Cf. Taubenschlag, *Law,* 411.
[35] Cf. P. Meyer, l.c. note ad 88, 17.

(land, sea), population, sanitation, education—we have to go through all these branches.

It is well known that the salary, συνήθεια, of public officials has its origin in custom.[36] Συνήθεια is, as the commentator of P. Jand. 37 says, *"pensio quae ex consuetudine praestatur, quae plerumque primo voluntaria, postea autem perpetua et necessaria videtur fuisse."* Such are the salaries of the *riparius*,[37] *tribunus*,[38] *commentariensis*,[39] *defensor*,[40] *numerarius*,[41] *ordinarius*,[42] the defensor's assistant.

In the field of financial administration, it may be noticed that special treatment with regard to poll-tax was by custom accorded to persons who served the state in certain official capacities.[43] The total amount of a tax seemed to be fixed by "tariffs and custom." In Tebt. II 287 (161 A.D.) the fullers and dyers of the Arsinoite nome appeal against the exaction by minor officials of what they held to be an undue amount of the tax upon their respective trade as (v. 5) against τὸν [γν]ώμονα καὶ τὴν συνήθειαν. In Lond. 1674 (570 A.D.) the villagers complain that the pagarch had attempted to enforce too high an assessment for the village (v. 23): [πα]ρὰ τὸ ἔθος.[44]

It happened in the Ptolemaic and in the Roman period that officials, charged with the collection of taxes, spontaneously, set up innovations. Innovations of this kind are mentioned in UPZ. 191 (111 B.C.) where the οἰκονόμος τῶν

[36] Cf. Gelzer, *Arch. f. Pap.* V, 353.

[37] Cf. Jand. 37, 8ff. (5th/6th cent. A.D.) ὑπὲρ συνηθείας τοῦ ῥιπαρ(ίου) κατὰ τὸ ἔθος.

[38] Cair. Masp. 67, 040, 2 (6th cent. A.D.) τὰς συνηθείας· κατὰ τὸ ἔθος δοθέντων, παρ' ὑμῶν τῷ κατὰ καιρὸν τριβούνῳ κτλ; *on tribunus* the commander of troups in a pagarchy of Just. Ed. XIII, 1, 7 and passim.

[39] Cair. Masp. 67, 284, 2 (6th cent. A.D.) τὴν κατὰ τὸ ἔθος διδομένην συνήθειαν.

[40] Oxy. 1860, 10 (6th/7th cent. A.D.) cf. also Ross. Georg. III 34 (523/4 A.D.), see Rouillard, *Administration*² 76.

[41] Jand. 45 (6th/7th cent. A.D.) cf. note 2.

[42] Ross. Georg. III 35 (523/4 A.D.)

[43] Cf. Oxy. 1210, 9 (late first cent. B.C. or early first cent. A.D.) καὶ τῶν διὰ τὸ χρείας τοῖς δημοσίοις παρέχεσθαι συνήθως ἀπολυομένων.

[44] Cf. also Cair. Masp. 67. 283, 2 (548 A.D.) Ἰουλιανὸς—βού[λεται παρὰ τὸ ἔθος ἡμᾶς ἕλκ[εσ]θαι εἰς παγαρχίαν.

ἀργυρικῶν, in contradiction with royal ordinances, imposed additional payments on παστοφόροι. The παστοφόροι made an application on this behalf to the epistrategos who ordered the epistates not to let (v. 16): μὴ προσέχειν τοῖς ἐπὶ χρειῶν τεταγμένοις καινίζειν τι μηδὲ πράσσειν παρὰ τοὺς ἐξ ἀρχῆς ἐθ[ι]σμοὺς τοὺς σημαινομένους πασ[το]φόρους.[45] Similar innovations are also blamed in the edict of Tiberius Julius Alexander.[46]

Under Diocletian, a new system of taxation was inaugurated, which called for a careful survey of land. The survey was attested by two surveyors, three iuratores, the adjutant of the decaproti and the horiodeiktes.[47] The owner of the property made a declaration, taking an oath by the Fortune and Victory of the Emperors. Should the surveyor find that the survey did not agree with the declaration then the practice was to make objections to his report.[48]

The execution of taxes is executed according BGU. 1062, 14 = W. Chr. I 276 (236/7 A.D.): κατά [τ]ε τὸν τῆς ὠνῆς γνώμ[ονα καὶ] τὴν τοῦ νομοῦ συνήθειαν.[49] Such customs are mentioned in Lond. II N° 306 (p. 118/9) = W. Chr. 263 (145 A.D.) that the πράκτωρ shall hand over the accounts of the taxes, and therewith, presumably, the money received in the customary installments, to the competent authorities. Oxy. 1887, 12 (538 A.D.) indicates that with the imports some customary charges were combined.[50]

In Amh. 92 = W. Chr. 311 (162/3 A.D.), an application for lease of oil-monopoly, the applicant declares (v. 20): δώσω [δ]ὲ καὶ ὑπὲρ διπλώματος ἵππων δύο τ[ὰ] κατὰ συνήθιαν νόμιμα. The δίπλωμα is the permission to drive horses on pub-

---

[45] UPZ. 185 Col. II, 4ff. εἴπαμεν κατ[α]κολουθεῖν τοῖς ἐξ ἀρχῆς ἐθισμοῖς καὶ μη[δὲν ἐνκαινί]ζειν. cf. Wilcken, *Ostraka* 568, cf. also Tebt. 40, 19 (117 B.C.).

[46] *Or. Gr. Inscr. Sel.* II 669 (v. 47 and 62).

[47] Cf. Boak, *Etudes de papyrologie* III 25ff.

[48] Princ. II 119, 47 (4th cent. A.D.) ἐὰν δὲ καὶ ὁ κηνσίτωρ ὁ ἀποσταλεὶς ἐκμετρήσας εὕρῃ τι [π]λείῳ πλέον φιλεργηθεῖσαν ὑφ' ἡμῶν, οὐ παραιτούμεθα τότε, καθ' ὁμοιότητα τῆς ἐπαρχίας καὶ ἀπογράψασθαι . . . ὡς δὲ ἐπιδὴ πονηρὸν ἔθος εἰσάγει κτλ.

[49] Cf. Fay. 34 (161 A.D.) see Oertel *Liturgie* 134, 2.

[50] v. II, [τελέσματα μ]ετὰ τῶν ἐξ ἔθους αὐτῶν παντοίων ἀναλωμάτων.

lic roads supervised by the government⁵¹ for which a cus-
tomary fee used to be paid. BGU. 697 = W. Chr. 321 (145
A.D.) concerning the aloe-monopoly states that the καμηλοτ-
ρόφος received his expenses for the import-duty and his cus-
tomary transport-wages.

The delivery of garment supplied to the gladiatorial
school in Alexandria, as in Lips. 57 (261 A.D.)⁵² or to the
army, as is probably the case in Oxy. 1448⁵³ (about 318
A.D.) is based on an ἔθος:⁵⁴ This custom persisted also in
the Byzantine period. Lond. 1352; 5 (710 A.D.)⁵⁵ contains
an order for seventy καμίδια intended for the Muslims in
Egypt. Grenf. II 80 (402 A.D.)⁵⁶ is concerned with the
affairs of a certain man who was burdened with the heredi-
tary λειτουργία of either serving as a rower in the state-galley
belonging to the governor of the Thebaid, or of paying the
wages of the substitute κατὰ τὴν συνήθειαν. Oxy. I 86 = W.
Chr. 46 (338 A.D.) reads: Ἔθος ἐστὶν τοῦ παρασχεθῆναι πρὸς
[ὑπ]ηρεσίαν τοῦ αὐτοῦ δημοσίου πλοίου [ἐκ] τῆς πόλεως ναύτην
ἕνα. As the official of the φυλὴ protracts the case, the pilot
applies to the *curator civitatis* to force the official to present
the sailor. In Cair. Masp..67, 006, 5 a widow complains
that she had been forced to a γεωργικὸν λειτούργημα παρὰ τὸ
ἔθος. Oxy. 900 (322 A.D.) is a petition to a λογιστής from a
functionary who had been nominated as an annual superin-
tendent of the express-post and who complained of the
failure of certain donkey-drivers to support him in carrying
on his duties (v. 7) : ἐχρῆν τοίνυν τοὺς ἐξ ἔθους ταύτην τὴν χώραν
ἀποπληροῦντας—ὑπακούειν. An order of the praeses of the
Thebais mentions that the riparios enjoys, Cair. Masp. 67,
281, 5: ὑπούργουσαν καὶ τὴν ἐξ ἔθους δημοσίαν βοήθειαν.⁵⁷

---

⁵¹ Cf. Wilcken, *Ostraka* 361.
⁵² Cf. Leipz. 59-60 (371 A.D.).
⁵³ It may be mentioned that the persons discharging their duties had to
produce τὰ ἐξ ἔθους γράμματα cf. Oertel l.c. 217.
⁵⁴ Cf. Princ. 27, 2 (191¹/192 A.D.).
⁵⁵ Cf. the introd. with reference to Becker, *Beiträge* II 85.
⁵⁶ Cf. Wilcken, *Grundzüge* 410; Oertel, *Liturgie* 226ff.
⁵⁷ Cf. Oxy. 904, 4 (5th cent. A.D.) παρέχων μοι καὶ πρὸς βοήθειαν οἰκέτας
τε καὶ συμμάχους καὶ [ἄ]λλους τοὺς ὀφείλοντας τὴν παραφυλακὴν τῆς πόλεως
ποιεῖσθαι κτλ.

Banks were in the Ptolemaic period state-institutions which developed their own routine. Noteworthy in this respect is Edg. Mich. 9 verso 4 (257 B.C.) which refers to a τύπος τῆς εἰθισμένης διαγραφῆς.[58] Quite different are the orders of payments carried out by officials. As Amh. 61 (163 B.C.) shows these orders were supplied with signatures of the officials authorising payments (v. 16/7) : δι ὧν καθήκει καὶ ὡς εἴθισθαι.[59] Frisk, *Bankakten* informs us that for orders of the ὁ ἐπὶ προσόδων to the banks the signature of the βασιλικὸς γραμματεὺς and another adequate official is required,[60] while the payees state (I, 9, 21) ἂς ἐξωδιασθήμ(εθα) ἀπόλογον διοικήσεως κατὰ τὸ ἔθος. The same holds for payments carried out by municipal authorities.[61] The municipal senate had to be κατὰ τὸ ἔθος informed that paymeht was carried out.[62]

In this connection auctions made by the state may be noted. Oxy. 370 (1st cent. A.D.)[63] is a conclusion of an agreement concerning a payment of 3320 drachmae ending: ἂς καὶ διαγράφομεν εἰς τὴν δημοσίαν τράπεζαν ταῖς ὡρισμέναις προθεσμίαις κατὰ τὸ ἔθος καὶ εἰσόσοιμεν τὰ ὑπαλλάγματα κτλ.

Measures and weights are the last branch of financial administration. Eleph. XIV, 9, 10, a regulation concerning lease of temple-land, provides an εἰθισμένη ἀλλαγή, an earnest money of 17 obols, on the occasion of the conversion of different kinds of money, and the same holds in a late Byzantine papyrus which indicates that the conversion from (nominal) silver to gold is carried on ἐξ ἔθους.[64] BGU. 732 (sec. cent. A.D.) mentions μέτρον φοινικηγὸν. συνήθως, similarly Ross. Georg. III 32, 10 (504 A.D.) : μέτρ[ῳ τ]ῷ ἀπὸ ἔθους παρεχ[ο]μένῳ.

[58] Cf. Gen. 20, 8 (109 B.C.) λαβὼν τὴν εἰθισμένην διαγραφήν.

[59] Cf. the authorizations of various officials in Amh. 31 = W. Chr. 161 (112 B.C.), cf. also Oxy. 55 = W. Chr. 196, 15 (283 A.D.) τὸν ἐξοδιασμὸν ἡμεῖν ποιήσασθαι κατὰ τὸ ἔθος; Oxy. 1104, 24 (306 A.D.) τὰς συνή(θεις) ἀποχάς.

[60] Cf. l.c. p. 44.

[61] Cf. P. Strassb. Graec. 1168 (258 A.D.) [Wilcken, Arch. f. Pap. IV, 115] Col. II, 14 ὑπογράψαντος τῷ ἐξοδιασμῷ Αὐρηλίου Διδυμίων[ος . . .].

[62] Col. II, 15.

[63] Cf. Oxy. 1633 (275 A.D.).

[64] Cf. Oxy. 1904, 2 (618 A.D.).

In the field of cult and worship, the decree Tebt. 6, 40 =
W. Chr. 332 (140/39 B.C.), enumerates the means by which
the revenues of the temples were damaged. Such were for
instance (v. 40): οἰκεῖν (in the temples) παρὰ τὸν εἰθισμόν.
The king opposes this bad custom which had come to stay.

Expenses of the temples were regulated according to an
old custom. Aberd. 62 (first cent. A.D.) is an account of
temple expenditure: [ἀκολούθως τῇ] συνηθ[ε]ίᾳ. Persons who
do λειτουργίαι to gods are entitled to get compensation. Such
is the case of the διδύμαι who in Lond.ʾ I 22 Recto (p. 7), 15
= UPZ. 17 (163 B.C.) complain: οὐδὲν εἰλήφαμεν ποιούμεναι
μεγάλας λειτουργίας τῶι θεῶι οὐδὲ τὰ γινόμενα ἡμῖν ἐκ τ[ὸ]ῦ ἱεροῦ
δέοντα, καθότι κα[ὶ] ἔθος ἐστίν.[65]

In the Roman and Byzantine period, offerings dedicated
for vows and pious reasons as coming in a customary way
into being, are mentioned. We read, for instance, in Oxy.
1449, 12 (213/7 A.D.) : "And with regard to other offerings
which were dedicated in accordance with ancient custom
for vows or pious reasons: ἐκ τῆς ἄνωθ(εν) συνηθ(είας)."[66]
Accordingly Oxy. 1910, 2 (6th/7th cent. A.D.), containing
receipts from and expenditure on estates, has the following
passage: ἀναλώμ(ατος) ἐν ἁγίοις εἰς τὰς ἁγί(ας) ἐκκλ(ησίας)
τῶν ἐξῆς κτημ(άτων) κατὰ τὸ ἔθος.[67]

The papyri of the Ptolemaic period show that libations
and sacrifices to the God also were an ἔθος.[68] The writer in a
letter of the Roman period Oxy. 1464, 4 (250 A.D.) points
out: ἀεὶ μὲν θύειν καὶ [σπέ]νδειν καὶ σέβειν θεοῖς εἰθίσμενος
[κατ]ὰ τὰ κελευσθέντα ὑπὸ τῆς θείας κρίσεως "in accordance
with the orders of the divine decree."

As for festive processions, in Bad. 89 (provisions on the

[65] Cf. Wilcken l.c. 178/9.
[66] Cf. Oxy. 1492 (3rd/ 4th cent. A.D.), a christian letter, cf. Ghedini
Lettere cristiane N° XII "If then you háve decided in accordance with
ancient custom to give the arura to the place."
[67] Cf. PSI. 89, 2 (6th cent. A.D.) ; PSI. 786, 11 (581 A.D.) τὴν ἐξ
ἔθους ἁγίαν προσφοράν, cf. P. Meyer, *Griech. Texte* 97.
[68] Lond. I 41 (p. 27) (161 B.C.) ; cf. also SB. 5827, 12 (69 B.C.)
where in a petition to the king the terms καὶ τῶν εἰθισμένων ἐπιτελεῖσθαι
ὑπέρ τε ὑμῶν καὶ τῶν τέκνων θυσιῶν καὶ σπονδῶν are used ; see also Par. 69 = W.
Chr. 41 (232 A.D.) Col. II, 13ff. [ἔνθα τῶν συ]νηθῶν ἱερουργιῶν.

cult of Severus Alexander and Julia Mamaea in Hermupolis magna), the following passage is to be found (verso v. 27) : καὶ συνήθια ἀπὸ δημοσίων ὀνηλα[τ]ῶν ἀμφόδο[υ] [φρουρίου] ἀπηλιώτου, ἐν ᾧ ἐστιν τόπῳ τὸ καισά[ρ]ων ἱερόν, ἐξ αἰων[ίας]. [ἐπιδόσεως εἰς ...]ς καὶ τροφάς. The festive procession is paid from an eternal foundation.

As to the appointments of priests, Gen. 7, 8 = W. Chr. 80 deals with reclamations of an ἀρχιπροφήτης, whose titles to certain priest offices: κατὰ τὸ ἐξ ἀρχῆς ἔθος, have been misregarded. Oxy. 1116 = W. Chr. 403 (363 A.D.) refers to the presentation of a liturgy at the temple of Augustus for a year (v. 10) : ἐξ ἔθους.

For the discipline of the priests, Fuad III, 10, 10 (120 A.D.) (an excerpt from an edict of T. Haterius Nepos) prescribes: ἀλλὰ τῇ ἱερᾷ καὶ ν[ε νο]μισμένῃ ἐσθῆ[τι χ]ρῆσθ[αι] κ[αὶ μὴ κα]ταλύειν τῆς τῶ[ν] τὰ ἔθη. Their revenues were secured in the Ptolemaic and in the Roman periods as well, by the state: ἀκολούθως τῇ ἄνωθεν συνηθείᾳ.[69]

Some sacerdotal duties such as circumcision, were performed "in accordance with custom."[70] Very characteristic is BGU. 250 = W. Chr. 87 (130 A.D.), where a priest is requested, after a few years have elapsed, to explain why he did not submit a certificate on the sealing of a bull at the time of offering. He apologizes with reference to the fact that the custom to submit certificates (v. 17) : ὡς ἔστιν καθαρὸς κατὰ τὸ ἔθος καὶ ἐσφράγισθαι, was introduced by the idiologos in 122/3 A.D. and was not in force in that time. The papyrus shows how customs came into being.

In a letter Oxy. 1848 (6th/7th cent. A.D.) we read about a request that certain dues in kind belonging to a bishop should in accordance with the bishop's requests, be given to a man with a large family and in reduced circumstances

[69] Hib. 77, 5 (299 B.C.) ; Tebt. 298, 61 (107/8 A.D.) return of priests and revenues, ἀκολούθως τῇ ἄν[ωθ]εν συνηθείᾳ; BGU. 707, 13 (2nd cent. A.D.) cf. Otto l.c. 142ff.

[70] Lond. I 24, 12 (p. 32) (161 B.C.) ὡς ἔθος ἐστὶ[ν] τοῖς Αἰγυπτίοις περιτέμνεσθαι; Tebt. 292 = W. Chr. 74 (180/90 A.D.) ; Strassb. Graec. 60 = W. Chr. 77 (149 A.D.), Col. III, 11 [κατὰ τὸ ἔθος?] περιτ[εμνέσθω]-σαν; see also Wess. Stud. XXII, 51, 18 (133 A.D.) ; SB. 15, 30 (155/6 A.D.) ; 16, 18 (155/6 A.D.)

(v. 5) : ὡς ἔθος διὰ τὴν κέλευσιν τοῦ αὐτοῦ ὁσιωτάτου ἀνδρὸς τοῦτο πρᾶξαι. PSI. 208 (3rd/4th cent. A.D.),[71] a Christian letter, orders (v.6) : τὸν ἀδελφὸν ἡμῶν . . . παραδέξαι [κ]ατὰ τὸ ἔθος.

The Ptolemaic papyri refer to a written royal oath introduced by custom.[72] The same holds for the Roman ἔθιμος ὅρκος on the Tyche of the Emperor.[73]

Proceeding to traffic customs on land and sea, Ent. 27 = W. Chr. 442 (Euerg. I) must, above all, be taken into consideration. The ναύκληρος prevented by an average from going to the Thebais for corn, requires with reference to an (v. 9) ἐθισμός: ἐάν τισιν τῶν ναυκλήρων τοιοῦ[τό] τι συμβῆι, ἐμφανίζειν τοῖς—τόπων στρατηγοῖς, that the strategos order to lade in Arsinoites, where he landed, the amount of corn, mentioned in his credentials, which he had to lade in Thebais. Oxy. 63,6 (2nd/3rd cent. A.D.)—the bearer of the letter is a captain—reads: "please, to see that his freight is embarked with all dispatch and let it consist as usual of what you have in hand and selected for ladings." And Cair. Masp. 67.030 (p. 64) (v. 8) (531 A.D.) contains orders for carrying off the annona εἰς τὴν τάξιν πρὸς τὴν συνήθη . . . . τῶν ὑπομνημάτων.[74] In this connection, Oxy. 1271 (246 A.D.), a petition to the prefect to permit the petitioner to leave the country via Pharos (v. 5) : κατὰ τὸ ἔθος, may be mentioned.

Lond. III 904 (p. 125) Col. II 18-43 = W. Chr. 202 = P. Meyer, Jur. Pap. 2a (104 A.D.), the edict of C. Vibius Maximus on census of the population requires all persons residing outside of their nomes to return to their homes (v. 24) : ἵν[α] καὶ τὴν συνήθη [οἱ]κονομίαν τῇ[ς ἀπο]γραφῆς πληρώσωσιν.

Oxy. 1202 (217 A.D.), a petition concerning an ephebus,

[71] Cf. Ghedini, Lettere cristiane N° XIII.
[72] Petr. II 29 (b), 7 = W. Chr. 334 (244/3 B.C.) κε[χει]ρογραφήκασι τὸν εἰθισμένον ὅρκον cf. Grenf. II 37, 8 (2nd or 1st cent. B.C.). See Seidl, der Eid im ptol. Recht 39, 87.
[73] Cf. Seidl, Eid im röm Provinzialrecht 33ff.
[74] Cf. Cair. Masp. 67, 280 B, 6 πρὸς τ[ὴ]ν συνήθη πρᾶξιν τῶν ὑπομνημάτων κτλ.

belongs to the field of education. "It is the custom (v. 5) : ἔθους ὄντος, since we gained, by the gift of our lord's Severus and the great Antoninus the contest of the ephebi, that those who are for the time being amphodogrammateis of the city, should, as the contest of each year approaches, submit and publish a list of those about to become ephebi, in order that each one may assume the status of ephebus at the proper season." Amh. II 70 = W. Chr. 149 (114/7 A.D.) informs us that the gymnasiarchs used to assign sums to the support of the gymnasium.[75]

Of sanitarian character is probably the provision in Oxy. 1454 (116 A.D.), a declaration of municipal bakers that they will expose bread for sale with the "customary sellers, either here or wherever we are ordered to expose." Giss. Bibl. 2 (2nd cent. A.D.) may also belong here. The application deals with forbidden import, slaughtering of pigs and their sale (v. 16) : [ἄν]ευ συντάξεως κ[αὶ] τῆς εἰθισμένης [συνχ]-ωρήσεως.

For the military administration Grenf. I 48 = W. Chr. 416 (191 A.D.) deserves attention as it informs us that in forced sales of goods for the army, their prices were fixed in advance by custom (v. 15) : ἐξ ἔθους.

RAFAEL TAUBENSCHLAG.

---

[75] Oxy. 42, 3 = W. Chr. 154 (323 A.D.), a proclamation by the *curator* with reference to an approaching gymnastic display by the youth of Oxyrynchus, "Tradition (ἔθος), no less than the distinguished character of the festival, requires that they should do their utmost in the gymnastic display."