

Jewish Oath in Ptolemaic Egypt*

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In June 132 B.C.E., a Jewish lady, Berenike, daughter of Archagathos, an inhabitant of Aphroditopolis, most likely the nome capital of Aphroditopolis on the right bank of the Nile, turns to the archons of the *politeuma* in Herakleopolis¹ with a complaint against her business partner Demetrios son of Philotas, who notwithstanding the Greek names is also a *Ioudaios*, a Jew, and a member of the *politeuma*:²

5 τοῖς τὸ λη (ἔτος) ἄρχουσι
παρὰ Βερενίκης τῆς Ἀρχαγάθου
Ἰουδαίας τῶν ἐξ Ἀφ[ρο]δίτης πόλε[ω]ς.
τοῦ λζ (ἔτους) Φάμεν[ώ]θ Δημήτριος

* This is an expanded version of a part of my speech presented at the ceremony of renewal of my doctorate by the University of Warsaw on June 6, 2011. My best thanks are due to my friend Jakub Urbanik, who prepared the English translation of my Polish original. I am happy to dedicate it now to my friend Ranon Katzoff in honor of a long friendship which, since our first meeting in 1968, has never been perturbed.

¹ COWEY & MARESCH 2001. See the critical review by HONIGMAN 2002, developed in *ead.* 2003, and the answer of the editors COWEY & MARESCH 2003. See also FALIVENE 2002; KRUSE 2008; KUGLER 2007 and 2011. I have indicated the historical interest of this collection in my article of synthesis MÉLÈZE-MODRZEJEWSKI 2003.

² P.Polit. Iud. 9 – P.Köln inv. 21031 (20 June 132 B.C.E.)

Φιλώτου Ἰουδαίος τῶν καταγινο-
 μένων ἐν Πειμπασβύτει
 προήκατό μοι ἐπιστολὴν ὄρκου
 πατρίου διομολογούμενος ἀποδώ-
 10 σειν μοι τὴν συνκεχωρημένην
 τιμὴν ἧς ἐώνητο παιδίσκης Ῥώμης
 καὶ τοῦ ἐκ ταύτης τέκνου ἐν
 μηνὶ Παῦνι τοῦ αὐτοῦ (ἔτους) χα(λκοῦ) (τάλαντα) η,
 15 ἐὰν δὲ μὴ ἀποδῶι, ἀποτεῖσειν
 ἐν τῷ ἐχομένῳ μηνὶ Ἐπειφ
 σὺν ἡμιολίαι καὶ εἰς τὸ βασιλικὸν
 ἐπίτιμον ἀργ(υρίου) (δραχμᾶς(?)) σὴ ἄνευ πάσης
 κ[ρ]ίσεως καὶ καταστάσεως,
 20 δώσειν δὲ καὶ μισθὸν κατὰ
 μῆνα τροφῶι τοῦ μὲν
 ἰματισμοῦ χα(λκοῦ) Βφ ἕως ιε τοῦ
 Φαμενώθ καὶ (πυροῦ) (ἀρτάβας) μέτρα δύο
 μηνῶν δ κατὰ μῆνα ἐλαίου
 25 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
 περιχοῦσης καὶ τοῦ Φιλώτου
 μηθὲν μοι ἀποδεδωκότ[ο]ς μέχρι
 30 το[ῦ] γῆν, ἀλλὰ πα[ρα]βεβηκότος τὸν
 πατέρα ἰον, διὸ ἠναγκασ[μ]ένη
 ξενητείας πείραν λαμβάνειν καὶ
 παρακεκομκυία πρὸς ὑμᾶς ἄ[λ]-
 λη[ν] τῶ[ν] ἐν Ἀφροδίτης πόλει Ἰουδαίων
 35 περὶ τούτ[ου] ἐπιστολὴν ἀξιῶ
 ἐὰν φαίνηται σ[υν]τάξιαι τῷ ὑπηρέτη
 παραπέ[μ]ψαι τὸν Δημήτριον καὶ ἀνα-
 καλεσαμένους αὐτὸν ἐπαναγκ[ά]σ[α]ι
 40 παραχρήμα ἀποδοῦναι καὶ ἀποτεῖσαι
 σὺν ἡμιολίαι (τάλαντα) ιβ καὶ τ . [.] - ca. 9 - Βφ
 καὶ τὸν πόρον καὶ τὰλλα ἀκολούθως
 τῷ ὄρκῳ, περὶ δὲ [τ]οῦ εἰς τὸ βασιλικὸν ἐπίτιμου
 κατὰ τοῦ παραβεβηκότος διαλαβεῖν μισοπονήσως.

(hand 2) (ἔτους) [λ]η Παχῶν κθ . . .
 45 λ[]π .. τ .. ν -ca. 9- τ
 λ[]π .. τ .. ν -ca. 9- τ traces?

 ται αυτ[] [.] . . . [-ca. ?-]
 καὶ ταύτης ε . [. .] . . . ξ

verso

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

To the archons being in charge in the 38th year (of Ptolemy VIII) from Berenike, daughter of Archagathos, a Jewess of the (living) in Aphroditis Polis.

In the year 37, month Phamenôth, Demetrios son of Philotas, 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 Rhome 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 drachmas 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 artabas 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. Demetrios) 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 Aphroditis Polis, I request, if it pleases you, to command the hyperetes to conduct Demetrios 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 drachmas (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, 29 day of the month Pachôn (traces of the endorsement of the archons?)

Verso: Year 38, Pauni 6: Berenike against Demetrios.

The controversy between Berenike and Demetrios arose because of two agreements, connected with one another. The first concerned a sale of a slave-girl with her child;³ the second, breast-feeding of the infant by a wet nurse hired for the purpose.⁴ Berenike sold to Demetrios the slave-girl, named Rhome, “the Strong”, with her baby. Since the mother had no milk, Berenike let Demetrios a second slave-girl to breast-feed the child. A year has passed and Demetrios 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. Berenike therefore applies to the tribunal of the archons of the *politeuma*, deriving very probably its jurisdictional powers from a royal delegation, to compel the debtor to fulfill his obligations. In her eyes he is a criminal who has transgressed “the law of the fathers”: παραβεβηκότος τὸν πατρίον 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 in Israel. The difference is that in Egypt liability of the debtor does not arise from the non-fulfillment of the promise, but because of the damage (βλάβη) the creditor has suffered. This

³ On sale of slaves, see STRAUS 2004.

⁴ MANCA MASCIADRI & MONTEVECCHI 1984. Juridical analysis: HERRMANN 1959; more recently CHRÉTIEN-VERNICO 1997.

was the Greek concept of contractual responsibility.⁵ And yet how would that constitute a breach of the Jewish ancestral law? How to search for it in Moses' *Pentateuch*, which – as I have tried to show elsewhere⁶ – the Ptolemaic Monarchy considered to be the “civic law” (πολιτικὸς νόμος) of the Hellenized Jews who had settled in Egypt? The writer of the documents which gave rise to the complaint of Berenike, who belonged, 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 Jewish law by “a letter of oath according to the ancestral law” (ἐπιστολὴ ὄρκου πατρῶου).

Such an oath in conformity to the law of the fathers can be found in two more documents from Herakleopolis. The first one refers to commitments taken under oath in respect to the constitution of a dowry.⁷ In the second one the oath is used on the occasion of a land lease.⁸ It means that we are dealing here with a practice well-established in the Jewish community, as the oath would be applied to such different acts as sale, rent of a wet nurse or land lease. The Greeks, on the contrary, only rarely used oaths to strengthen obligations.⁹ We can quote as example a papyrus of the end of the Ptolemaic period in which one Thaïs, daughter of Tarouthinos, swears to her partner by “Osiris, Isis, Horus, Zeus and all the gods and all the goddesses” to remain beside him throughout his life as his “lawful wife” on the condition of undergoing no wrong of his part.¹⁰ Otherwise, the usual kind of oath was a promise in 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, συγγραφὴ βασιλικοῦ ὄρκου, may have served the contract-writers in Herakleopolis as a model. It was enough to replace the name of the king by the name of the evoked divinity, as in Alexandria, where a statute ordered to swear by Zeus, Hera and Poseidon, and forbade calling any other name.¹¹ In a Jewish oath, it could only be the name of the God

⁵ See WOLFF 1957; 1966. Cf. MÉLÈZE-MODRZEJEWSKI 1994.

⁶ See MÉLÈZE-MODRZEJEWSKI 2001, 183-199.

⁷ P.Pol. Iud. 3 (140 B.C.E.?), l. 6, 29-30.

⁸ P.Pol. Iud. 12 (135 B.C.E.), l. 10.

⁹ See HELMIS 1991, who renews the subject left uncultivated since the works, already ancient, of SEIDL 1929 and KUNKEL 1931.

¹⁰ PSI I 64 (first cent. BCE?): see YIFTACH-FIRANKO 2003, 192f., who summarizes the discussions aroused by this document and pronounces in favor of the hypothesis that it deals with the conclusion of a marriage.

¹¹ P.Hal. 1, 214–218 (Alexandria, third cent. BCE): *The one who takes the oath, has to lend it in the agora, on the scene reserved for the oaths, and to make a libation in front of the altar; the one*

of the Jews. In other words, the “ancestral oath” of our documents probably was a promise in the name of God, such as was the one that strengthened the alliance of Abraham and Abimelech of which we read in the Book of Genesis.¹² Not keeping such a promise was a violation of the Third Commandment: *Thou shalt not take the Name of the Lord thy God in vain*.¹³ It was to prevent a breach of the contract that it was sworn in the name of God. Thus, if someone promises by the Name of God to do something and then fails to do it, that would qualify as “having taken the Name of the God in vain”. In our document, a religious sanction for perjury was added to the usual one for the damage caused to the creditor. The skillful notary has “Judaized” Greek contracts.¹⁴

Neither the Bible nor the Greek law provides external legal sanctions for false oaths.¹⁵ In Biblical law punishment is in the hands of God, who “will not hold him guiltless that taketh His Name in vain”.¹⁶ The perjurer “profanes the Name of his God”;¹⁷ he will not receive “the blessing from the Lord”.¹⁸ In Greek tradition, Horkos, the deified oath, is in charge of punishing perjurers.¹⁹ A Ptolemaic document of the third century B.C.E. states a “traditional oath” (πάτριος ὄρκος, as in our documents) “on the River”: the punishment of the perjurer belongs to the god Nile.²⁰ The perjurer is guilty of impiety (ἀσέβεια).²¹ The moral blame he incurs could come along with similar prohibitions to those which refuse the access of holy places to persons being in a state of impurity.²²

who called him to take the oath will supply the sacrificial animals. We shall swear by Zeus, Hera and Poseidon; nobody is allowed to take another oath, nor to provoke somebody to take it, nor to the descendants to attend.

¹² Gen. 21:23: *Now therefore swear unto me here by God that thou wilt not deal falsely with me, nor with my son, nor with my son's son; but according to the kindness that I have done unto thee, thou shalt do unto me, and to the land wherein thou hast sojourned.*

¹³ Ex. 20:7; Deut. 5:11. A good synthesis: COHN 1927.

¹⁴ Ex. 20:7.

¹⁵ See HELMIS 1986, vol. 1, 38-39; 1991, 142-144; 2008, 26.

¹⁶ Ex. 20:7.

¹⁷ Lev. 19:12.

¹⁸ Ps. 24:4-5.

¹⁹ SOMMERSTEIN & FLETCHER 2007.

²⁰ P.Petrie III 56d, 11-12 (Gurob, c. 270-258 B.C.E.): ὄμοσά σοι τὸν πάτριον ὄρκον ἐπὶ τοῦ ποταμοῦ. See BONNEAU 1964, 324; cf. HELMIS 1991, n. 16.

²¹ See HELMIS 1986, 129.

²² The inventory of these prohibitions is compiled by POULAIN 1982. See also MOULINIER 1952, 63-73 (purification rites) and 103-109 (purity of the sacred places).

In spite of the penalties which threatened it, the practice of the oath by God seems to have been widespread in the Diaspora. Its popularity 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.²³ Philo of Alexandria²⁴ and the Gospel of Matthew²⁵ confirm this testimony. According to Philo, if you absolutely wish to swear, you can swear by the Earth, the Sun, the Stars, the Heaven, and the Universal World instead of calls upon the divine Name.²⁶ Jesus of Nazareth in the Sermon on the Mount rebukes his brethren who take oaths on heavens, earth, Jerusalem or their own heads.²⁷ Both Philo and Jesus sound very much like Plato who bewails that *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*.²⁸ The Wise men of the Talmud follow the same way when they recommend not getting involved in oaths, whether you are right or wrong.²⁹

We do not know whether the Ptolemaic Jews were more scrupulous with keeping their promises than the Athenians of Plato's era. We are only 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 from Egypt. Three centuries later, the Greek notaries in Egypt displayed similar inventiveness. After the universal extension of Roman citizenship by Caracalla (212) the agreements of the provincial population were not against the law, but had no legal efficacy. These in the light of Roman law were mere pacts (*nuda pacta*), whose execution could not be enforced in courts. The notaries overcame this obstacle providing a Greek contract with a Roman *stipulatio*, phrasing the promise being made in the deed as follows:

²³ Sir. 23:9: ὄρκω μὴ ἐθήσης τὸ στόμα σου καὶ ὀνομασίᾳ τοῦ ἁγίου μὴ συνεθισθῆς.

²⁴ Philo, *De specialibus legibus* 2:6-7. Cf. COWEY & MARESCHE, 2001, 26 n. 87.

²⁵ Matt. 5:34-37.

²⁶ Philo, *De specialibus legibus* 1:5.

²⁷ Matt. 5:34 *But I say unto you, Swear not at all; neither by heaven; for it is God's throne: 35 – Nor by the earth; for it is his footstool: neither by Jerusalem; for it is the city of the great King. 36 – Neither shalt thou swear by thy head, because thou canst not make one hair white or black. 37 – But let your communication be, Yea, yea; Nay, nay: for whatsoever is more than these cometh of evil.* See DOLING 1991.

²⁸ *Laws* XII 948d-948e (transl. R. G. Bury): δεινὸν γάρ που, δικῶν γ' ἐν πόλει πολλῶν γενομένων, εἰ εἰδέναι σμικροῦ δεῖν τοὺς ἡμίσεις αὐτῶν ἐπωρηκηότας, ἐν συσσιτίοις τε ἀλλήλοισ ἐυχερῶς συγγιγνομένους καὶ ἐν ἄλλαις συνουσίαις τε καὶ ἰδιωτικαῖς συγγενήσεσιν ἐκάστων.

²⁹ *Yer. Sheb.* 37b; *Bab. Git.* 35a.

“and being asked I have agreed” (καὶ ἐπερωτηθεὶς ὡμολόγησα, equivalent to the Latin *et stipulatus spoondi*). The stipulation converted a Greek agreement into a Roman verbal contract, which could easily be enforced by a provincial judge.³⁰ Greek contracts became Romanized.

A document like the one that we have just examined is an invaluable witness of the state of the *halacha* as it was followed in Jewish practice about four centuries before the redaction of the Mishnah. Just like the other papyri of the same dossier, it gives evidence of how well-anchored the Hellenized Diaspora was in Jewish law, being able to associate respect for the national tradition with recourse to Greek documents.³¹ I have had the opportunity to stress the contribution of the Herakleopolis archive to Jewish legal history as far as marriage and divorce were concerned.³² The present note corroborates the conclusions of this earlier study. The legal practice illustrated by the Herakleopolis documents enriches our knowledge of the way in which the Jews of Egypt took up the big challenge of their time: how to remain Jewish while being Greek?

³⁰ See MÉLÈZE-MODRZEJEWSKI 1970, esp. p. 362.

³¹ RITTER 2011 tries to demonstrate that the *politeuma* referred to in this dossier is not an organization of the Jews but the “civic body” of Herakleopolis, the nome capital being in his eyes a *polis* (city). This hypothesis will hardly find support among papyrologists, who know that the *metropoleis* of Egypt, in spite of their name containing the word *polis*, are big villages and not *poleis* in the institutional sense of the term. The importance of the Herakleopolis document for Jewish legal history remains intact.

³² See MÉLÈZE-MODRZEJEWSKI 2005.

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