

CHAPTER I

Introduction and historical framework

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Introduction

J. G. Manning

The study of ancient law has blossomed in recent years. In the English language alone there have been dozens of monograph-length studies devoted to classical Greek and Roman law, to the Roman legal codes, and to the legal traditions of the ancient Near East including ancient Egyptian, biblical, and Coptic law, among many other topics. In 1995, an important conference was held at the University of California at Berkeley's law school (Boalt Hall) that brought together specialists in ancient legal documents and legal historians (*Chicago-Kent Law Review* 70–71 [1995]). Among the many important outcomes of that conference, two stand out. The first was the realization that ancient legal sources have value outside of the realm of those who specialize in the language and scripts of the ancient texts themselves. The second, and more immediately important, outcome for this volume was that pre-Roman legal systems could and indeed should be studied out from under the shadow of Roman law.¹

Legal documents written on papyrus began to be published in some abundance by the end of the nineteenth century – not of course in time to be used by Henry Maine in his great *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas* (1861). Even after a substantial history of publication down to the present time, however, legal papyri have not received due attention from legal historians, and have only gradually been incorporated into broader synthetic work. The legal papyri remain by and large in their own world although that world has now expanded beyond the Nile River valley.² The legal texts from Egypt, taken

¹ For one recent volume, although with little analysis of the papyri, examining ancient law from the point of view of economics, see Miller (2010). Several of the pieces in the volume derive from the Berkeley meeting.

² *Inter alia*, see Katzoff and Schaps (2005) on the Babatha archive from Roman Judea.

as a whole, are among the most valuable records from antiquity for the study of the ancient law, the ancient economy, and for social history more broadly. But that greater value of the papyri has often been lost in the technical occupation of publishing and correcting and commenting on an ever-growing corpus of documents.³ The papyri are the raw material of history and the basis of institutional analysis, but the underlying questions, often unstated and problematic, usually center around questions like: what kind of history, and whose? This in turn relates to the bigger question of the presumptive status of Egypt in the Hellenistic and Roman periods as a place “set apart,” and therefore easily dismissed as merely an unusual, if embarrassingly well-documented, part of the Mediterranean world.⁴ This is referred to as the *Sonderstellung* problem.⁵ Although legal papyrology has been a major aspect of the study of the papyri from the very beginning of the field in the late nineteenth century, the subject is generally known only to a small circle of specialists, and it is rarely taught as a regular feature of graduate programs in ancient or in legal history.

A recent treatment of ancient law, for example, did not mention the Greek or Egyptian papyri, or indeed any pre-Roman legal tradition outside of the Old Testament (Donahue 2006). We, however, believe strongly that the legal papyri are an important part of the story of law and of legal institutions. We hope, therefore, that this volume will serve as an introduction to the rich legal sources from Egypt in the later phases of its ancient history as well as a means by which to compare legal documents from other cultures. There are other languages that record legal agreements which we do not have the space to treat here. There was a long history of written legal instruments in ancient Egypt. There are also the Aramaic papyri from the island of Elephantine that are of special significance for the history of Aramaic legal forms and the interaction of Egyptian and ancient Near Eastern legal forms (Botta 2009). And indeed there is the burgeoning field of Arabic papyrology with more than its share of legal documents.

But, apart from two Arabic documents (6.6.6 and 7.4.8), the texts translated in this volume are written in three different languages, Greek, Demotic, and Coptic, the latter two being the final stages of the ancient Egyptian language. Some are bilingual: Demotic–Greek and Greek–Latin.

³ On the estimate of total number of papyri, see Van Minnen (2007: 705–06).

⁴ Bagnall (2011) is a brilliant exposition of the extensiveness of written documents throughout the ancient world.

⁵ Keenan (2009b).

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We can only hope to give an impression here of a very complicated linguistic environment.⁶ Most of the documents were written on papyrus, the most common form of ancient “paper,” some on ostraca (small sherds of stone or pottery), and some, in later periods, on parchment (6.6.4) and paper (6.6.6, Arabic). Some of the papyri from the Ptolemaic period were preserved in what is termed cartonnage, recycled documents, much like the Turfan documents from China, used in the wrapping of human mummy masks and sacred animal mummies.⁷ The legal texts recorded in these languages are usually treated by different groups of scholars using a variety of approaches. The reader of this volume may come to perceive differences between the formal Continental approach and the socio-economic focus of Anglo-American tradition. These differences are intentionally preserved.

We have two primary aims in publishing these texts together. First, we intend this volume to serve as an orientation to the field of legal papyrology. Second, by translating and discussing Ptolemaic-, Roman-, and Byzantine-period texts together in thematic chapters, we hope to illustrate the continuities in language and conception of the law across more than a millennium of legal history in one place, Egypt, which was the core of the Ptolemaic empire before becoming in 30 BC a province of the Roman empire, and, later, a part of the Byzantine empire down to its conquest by Arabs in AD 642.

Papyrology has traditionally concerned itself solely with Greek texts written on papyri or ostraca.⁸ Although Greek papyri have been found outside of Egypt, we shall focus on Egypt; but we shall include not only Greek texts but also texts written in Demotic and Coptic. These last two sets of documents tend to be treated as separate from Greek papyrology despite obvious overlaps (including bilingual archives). The documents included in the volume (with the notable exception of those in 2.6) are in the main concerned with private law (not administrative or public law) because that represents the bulk of what the papyri have to offer. The volume’s initial chapter organization ruled out including large or continuous extracts from some famous legal texts like the Alexandrian regulations in *P.Hal.* 1 (see extract at 6.5.3) or the rules of the Gnomon of the *Idios Logos* in (mainly) *BGU* v 1210; for these and other “codes and

⁶ See, for example, the eighth-century AD trilingual tax document discussed by Sijpesteijn and Clackson (2009), and 3.4 below.

⁷ On the Chinese documents, see *inter alia* Hansen (1995).

⁸ For a comprehensive survey of the field, see Bagnall (2009).

regulations” the reader is referred to the excerpts in *Sel.Pap.* II 201–206 (for the brief extracts in this volume, please refer to the Concordance). Important but lengthy Demotic papyri similarly have not been included here. The most important of these are *P.Mattha*, a kind of legal manual of document forms and of legal procedure, and *P.Brit.Mus.* 1059I, a copy of a court transcript of a trial concerned with an inheritance dispute between relatives.⁹ Our concern here, in the main, is less with the normative than with the actual functioning of law on the ground. How did the purchaser of land get his or her acquisition duly recorded? What procedures did a defaulting debtor face? How did a victim of violence seek justice? And so on.

This volume will focus chronologically on the Ptolemaic, Roman and Byzantine periods. We do this merely to put some limits on what could have become a large, multi-volume work. For example, if we were to go back before the Ptolemaic period, we could easily have covered both the earlier history of Egyptian law as well as the important corpus of legal material from Elephantine island written in Aramaic. If we were to extend ourselves beyond the Arab Conquest, we could have included many more Arabic documents.

Legal documents from Egypt indeed have a long history, extending almost back to the origins of the state c.3100 BC.¹⁰ From the Old Kingdom there are preserved records of private conveyances of property recorded in tombs. By the Middle Kingdom, there are preserved wills, literary texts presenting an idealized version of private pleadings before officials, and by the New Kingdom, a fuller array of legal documentation, including a text recorded inside two officials’ tombs known as “The Duties of the Vizier,” an instruction manual of legal procedure and administration by the chief official in charge of the state legal system (van den Boorn 1988).

This long history of the use of written legal instruments in private contexts as well as the public administration of justice surely played a strong role in the continuity of legal practice under the Ptolemies and beyond. At the same time, there were enormous social, political, and economic changes brought about by successive regimes in the last millennium BC and the first millennium AD that had an impact on legal practice and on the form of legal documents.

⁹ For *P.Mattha*, see briefly below, pp. 17–18. Both texts are discussed in Manning (2010: 165–206).

¹⁰ For an excellent overview of Egyptian law, see Lippert (2008).

1.1 The Ptolemaic period (332–30 BC)

J. G. Manning

The Ptolemaic period began when Ptolemy, one of Alexander the Great's generals, established himself in Egypt, claiming the title "king" in 304 BC after having been proclaimed such by his army in the previous year.¹¹ The Ptolemaic empire, stretching into the Aegean, Cyprus, parts of Asia Minor, Judea, and Cyrenaica, became one of the largest and most powerful of the Hellenistic kingdoms. Greeks from around the eastern Mediterranean flocked to Egypt to seek their fortunes as soldiers, merchants, and in other occupations (3.1). Ptolemy II, one of Ptolemy's sons, enjoyed one of the most successful reigns of the ancient world, and effected reforms of the economic and legal systems as part of the larger process of state formation. The entire political system relied on local cooperation, and in particular that of the local priests who legitimated Ptolemaic rule throughout Egypt. Local legal traditions, including the property rights regime and local trials before priestly tribunals, were continued, but under Ptolemaic supervision.

The most important reforms included the introduction of a new taxation system, including payments required in coin in some cases, a household census (whose frequency is not known), the use of banks, and the issuance of tax receipts. The whole system suggests strong state supervision and monitoring, and an increase in the use of writing. There is good reason, however, to question both the existence of strong state supervision of the economic system as a whole and the normative use of written instruments.

The Ptolemaic state was challenged by outside powers, particularly that of the Seleukids to their east, and by internal unrest throughout the second and first centuries BC. While from the end of the third and throughout the second century BC the Ptolemies' external empire shrank, the legal papyri suggest gradual improvement in administrative capacity and control, as well as new types of contract forms, an increase in the bureaucratic supervision of private disputes, and an apparent decline in the use of older Egyptian contract forms such as the so-called witness copy contract (2.2). Civil and dynastic unrest, both in Alexandria and in the countryside, was a feature of the last two centuries of Ptolemaic rule. The Theban revolt (206–186 BC) removed Ptolemaic administrative control of much of the

¹¹ A good, short overview of the period is provided in Vandorpe (2009b). An excellent political history is provided by Hölbl (2001).

south of the country. Roman intervention to expel Antiochus IV from Egypt in 168 BC marks the beginning of direct Roman influence upon the dynasty. The last serious uprising occurred at Thebes from 88 to 86 BC and elicited a strong reaction from Ptolemy IX against the rebels. The last twenty years of the dynasty saw the rise of Kleopatra and the effort once again to establish Ptolemaic hegemony in the eastern Mediterranean. Octavian's defeat of the Ptolemaic fleet at Actium in 31 BC put an end to such dreams, as Egypt was added to the Roman empire.

1.2 The Roman period (30 BC–AD 284)

Uri Yiftach-Firanko

After 30 BC, Egypt became one of the most important provinces of the *imperium Romanum*. Not only did Egypt yield much of Rome's *alimenta* – according to Flavius Josephus the entire provision of a period of four months a year¹² – but also its strategic position on the Red Sea accorded Egypt paramount importance with regard to overseas trade with India and the Far East.¹³ The unique position of Egypt finds expression in an especially tight control exercised over its administration by the emperors. Known and often cited is the prohibition of senators and other *illustres* from visiting Egypt without imperial authorization,¹⁴ as well as the attempts to curtail any accumulation and manifestation of power by the heads of its administration, as manifested in the story of the rise and fall of Cornelius Gallus, the first prefect of Egypt.¹⁵

One way of securing the loyalty of Egypt was to keep it in the emperor's hands: Egypt became an imperial, not a senatorial province, and to decentralize power within the province it was managed by several *equites* (Roman “knights”), who were all appointed by the emperor in person and thereby owed allegiance to him rather than the local governor.¹⁶ Besides the *Praefectus Alexandriae et Aegypti* himself, the following were strategically important: the *procurator* of Nea Polis, in charge of receiving, storing, and shipping grain destined for Rome and other places in need; the *procurator* in charge of the *dioikêsis*, the general office for administering state income; officials supervising domain lands (*ousiai*), the *bona caduca*, and *bona vacantia* (the *idios logos*) (see *BGU* v 1210, extracts from which are

¹² *BJ* 2.386; and Montecocchi (1988: 451–54, 456).

¹³ See, in particular, the “Muziris Papyrus” (*SB* xviii 13167, unknown provenance, mid-second century AD) and, e.g., Rathbone (2001b).

¹⁴ Tacitus, *Ann.* 2.59. ¹⁵ Montecocchi (1988: 428). ¹⁶ Montecocchi (1988: 439).

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at 2.6.4 and 4.6.6 in this volume); and the *iuridicus*, the only *procurator* with strictly jurisdictional competences. The province was divided into three, and eventually four *epistrategiai*, each headed by a Roman *eques*, appointed by the emperor in person as well.¹⁷

One of the first measures taken by the Romans was the abrogation of earlier status groups with their individual privileges. These included Egyptian priestly elites and the *politeumata* (for the latter see 10.2). Egypt was now divided into three population groups: (1) Roman citizens, (2) citizens of the autonomous *poleis* (*politai*), and (3) the rest, conveniently labeled as “Egyptians,” *Aigyptioi*.¹⁸ The effort invested in keeping these groups apart is shown by many of the regulations of the Gnomon of the *Idios Logos*.¹⁹

Among these three groups, Roman citizens were an important though distinct minority, sometimes identifiable in the documentary papyri by their use of the traditional *tria nomina*, or variants thereof (e.g., Gaius Longinus Castor and the various participants in his mancipatory will, 3.3.1), or, following the legal principle of personality, by their use of clearly Roman legal forms (see especially 3.3 and 4.3). Roman citizenship was gradually extended in Egypt through various individual and group grants, whose beneficiaries adopted the gentile name (*gentilicium*) and sometimes the *praenomen* (first name) of the benefactor, often the emperor himself, to whom their citizenship was owed or could be traced (e.g., the Marci Aurelii in 4.6.5a-b). By the *Constitutio Antoniniana* of AD 212, all free residents of Egypt became Roman citizens; those so blessed can be traced in the papyri by their use of Caracalla’s *gentilicium* Aurelius without associated *praenomen* (see, e.g., 3.3.5, 4.6.5a). In some cases this is made explicit, as in those of “Aurelius Zosimus, before the divine gift called Zosimus son of Leonides” (*BGU* II 655, 16 August AD 215), and “Aurelius Aelurion, *kosmêtês* in office, councilor of the city of Athribis, before obtaining Roman citizenship, (called) Aelurion son of Zoilus, of the Neokosmian tribe and Althaiian deme” (*P.Oxy.* XII 1458, AD 216/7).

Politai, more numerous than Roman citizens at the start of the Roman period, but still restricted in number, were associated with four specially designated *poleis*: in chronological order of foundation, Naukratis, Alexandria, Ptolemais, and Antinoopolis. Even though citizens of these *poleis* played a significant role in the country’s administration, society,

¹⁷ Montevecchi (1988: 436–39).

¹⁸ See Méléze Modrzejewski (1989).

¹⁹ *BGU* v 1210 (Theadelphia, after AD 149), especially articles 38–53.

and economy as individuals,²⁰ the civic bodies associated with their *poleis* as such did not play a role in the general administration of the province, at least not to the extent of the far more numerous cities in other provinces. Things changed, in this respect, only after the grant in AD 200 of civic status to the nomes' *metropoleis* throughout the *chôra* (the term given to the province of Egypt minus Alexandria).

The third group of Egypt's residents, the *Aigyptioi*, was by far the largest, comprising all those who were neither Roman nor *politai*. But within this mass the Romans did single out certain elite groups. Most significant in this respect is the fostering of Greek socio-cultural institutions, in particular the *gymnasion* of the *metropoleis*, whose members formed a privileged, closely monitored cadre through which Greek culture was preserved and disseminated throughout the Egyptian *chôra*.²¹ The incentive was practical no less than cultural. In the course of the generations following the occupation, much of the land's administration was undertaken by local manpower. As the language of the administration had for some time been Greek, the propagation of local hellenized elites was essential for the functioning of this apparatus.

The Roman period was also marked by a growing sophistication in the engagement of manpower. In the early Roman period, the administration was not based on large numbers of permanent civil servants; like the rest of the Roman empire, the province of Egypt is usually considered, in Weberian terms, to have been "underbureaucratized." Rather, after initially adopting the Ptolemaic tax-farming system, the provincial administration of Egypt gradually introduced a system of liturgies, which involved the compulsory engagement of the inhabitants of the provinces in service to the state.²² The place and nature of a liturgy were decided on by the person's individual status. If a liturgist, such as a tax collector, was unable to collect the due amount of taxes, he would initially have had to pay the deficit out of his own resources (*poros*). This was one (though by no means the sole) incentive for the rise of private property, in particular of landed property, in Egypt in the course of the early Roman period.

One of the most significant institutions introduced by the Romans was the *epikephalaion* or *laographia*, a new type of poll-tax, to be paid annually by all male *Aigyptioi* between the ages of 14 and 61.²³ The introduction of this tax not only had economic and social implications but also far-reaching bureaucratic consequences. As every male subject aged 14 or over

²⁰ Montevecchi (1988: 442): Alexandrians as nome *stratêgoi*. ²¹ Montevecchi (1975).

²² Montevecchi (1988: 458–60). ²³ Montevecchi (1988: 448).

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was bound to pay the tax it was necessary to know who these subjects were. Every fourteen years, therefore, each individual head of a family had to submit a personal declaration (*kat' oikian apographé*), reporting the taxable residents in his household.²⁴ The said declaration could be updated by declarations of birth and death and by applications for recognition as members of privileged status groups. The system of individual declaration was also extended to other areas such as livestock and unincorporated land.²⁵ These declarations naturally needed to be preserved for future reference and the information they encompassed to be forwarded to higher authorities. The new system promoted the development of archival and bureaucratic skills that were also put into use in other spheres of bureaucratic activity, including those of legal significance (see especially 2.6).

In the course of the first and second centuries AD a set of archives, both local and Alexandrian, evolved, which allowed the processing of information on people and property in Egypt. The effectiveness of the bureaucratic system is shown, for example, in the case of tax reports. At the end of each month every tax collector had to send a report of his revenues to the nome's *stratégos*. Within two weeks the material would have been processed in the *stratégos*' office and would have reached the city of Alexandria.²⁶

The source material of the early Roman period bears witness to constant changes in the province's administrative apparatus. Every decade is marked by some change. Thus, for example, the creation of new archives occurred in the Neronian, Flavian, and Hadrianic periods and a reform of the taxation system under Trajan. Yet the pace of the reforms may have accelerated in the third century with the introduction of the nome *metropolis* as a key player in the provincial administration. These changes culminate in the administrative, fiscal, and monetary reforms of Diocletian, the beginning of whose reign, AD 284, may be taken to mark the end of the Roman period.

1.3 The Byzantine period (AD 284–640)

James G. Keenan

The naming of the period that follows the Roman is an unsettled topic. In this volume we have adopted for convenience's sake the term "Byzantine,"

²⁴ An excellent example of this type of declaration can be found in *P.Brux.* I 1–21, a *tomos synkollésimos* with declarations from the Prosopite nome, dating to AD 174.

²⁵ A thorough and relatively recent discussion by Kruse (2002: 63–251).

²⁶ Cf. e.g., *BGU* III 981 (Diospolites Parvus, AD 77) and Wallace (1938: 37, 320).

as used by Mitteis and Wilcken in 1912 – though the papyrological Byzantine period, from AD 284 to 640 or thereabouts, is probably too early to suit professional Byzantinists, whose field stretches down to AD 1453. At times during the twentieth century, some papyrologists felt that a distinction should be drawn between an early and a late Byzantine period, though the cutoff between the two was never precisely determined, perhaps because of the difficulties caused by the dearth of fifth-century papyri. It is probably safe to say that the early Byzantine period roughly corresponded to what these days may be called, as Roger Bagnall did in his famous book (Bagnall 1993b), ‘late antiquity’, marking a beginning with Diocletian and an ending at *c.* AD 450.

This “Byzantine” label is of course keyed to political history, or perhaps administrative history, because from *c.* AD 330 the eastern half of the Roman empire was no longer ruled from Rome but from Byzantium, or, better, Constantinople. Other labels sometimes used for Egypt in this period, “Christian” and “Coptic,” are based on religious, cultural, and, in the latter case, also linguistic criteria. The conversion to Christianity, progressive rather than radical, can be traced through the fourth century by, among other criteria, the changing repertoire of personal names (Bagnall 1982, 1987), including but far from restricted to names from the Old and New Testaments. From a fourth-century world in religious transition we arrive, by the fifth and surely the sixth century, at a world almost universally Christian.

In economic terms a distinctive feature of the Byzantine period derives from Constantine’s stabilizing of the standard gold coin, the *solidus* (*nomisma* or *nomismation* in Greek), struck at seventy-two to the pound and itself notionally divided, depending on the applicable local standard, into from 18 (as in 5.5.3 = 8.2.4, AD 569; *P.Lond.Herm.* introduction §5) to 24 carats (*keratia*); it can also be found in halves (as in 5.5.3 = 8.2.4) and thirds (6.6.2, AD 758), which divisions corresponded to actual coins (*semisses*, *tremisses*). This is an innovation that outlasted the Arab conquest (see 6.6 *passim*). Meanwhile, Egypt remained an imperial “breadbasket,” but now its grain, under the supervision of the Augustal prefect (despite the provincial divisions discussed in the next paragraph), was shipped through Alexandria to Constantinople instead of Rome. Overall control of Egyptian finances was in the hands of the *rationalis* (*katholikos* in Greek), also based in Alexandria.

In administrative terms the major innovation of the Byzantine period was the division of the Roman province of Egypt into a number of smaller provinces, each with its own governor and corresponding bureaucratic