

RANON KATZOFF – NAPHTALI LEWIS

UNDERSTANDING P.NESS. 18

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Understanding *P. Ness. 18*

I. The Non-Existent Brother

P. Ness. 18 is a marriage contract of A.D. 537 drawn up in Nessana (present-day Nitsana), a village in the northwestern part of the Negev, a region which, before its absorption into the Roman Empire (A.D. 106), was a part of the land of the Nabateans.

The parties to the contract are named and described in lines 4-7 of the document, where the edition reads (we omit unessential parts of the editor's restorations at the right):

4 νίων Φλ(άουιος) Αλοβαῖος Ἡλίου ϸ[τρ]α[τιώτης]
 Ἀνιαν ὑπεξουσίαν αὐτοῦ θυγατήρα ν[εωτέρων] . . . Φλαουίῳ]
 Οὐάλεντι τοῦ Αλοβαίου, Αλγεβ Αλ[οβαίου δὲ καὶ Οὐάληϸ]
 τῶν ὁρμωμένων ἐκ κτλ.

As interpreted by the editor, "The parties to the settlement are 'Āniyah daughter (and ward, since she is a minor) of Flavius al-Ubayy son of Elias, and Flavius Valens son of al-Ubayy who is represented by his brother al-Ghubb, and who may also be a minor" (p. 54). The presumed presence of the brother is further explained in the note to line 6: "If this line is correctly restored (following the plural in line 7), Valens was given in marriage by his brother al-Ghubb, his father being absent or dead." But the plural of line 7 can just as easily—indeed more likely, in the light of *P. Yadin 18* (ed. pr. in *Israel Exploration Journal* 37 [1987] 229-50)—refer to the two consenting parties, the bride's father (*not* the bride) and the bridegroom. Furthermore, the existence and presence of the latter's presumed brother are suspect on two grounds: the restored patronym in line 6 is far from certain, and that combination of name and patronym is unsupported by any other occurrence in the Nessana papyri.

In our view there was no brother mentioned in *P. Ness. 18*. The clue to what we regard as the correct understanding of the string of names in line 6 is found in the Yadin papyri, which, dating from the early second century, also come from the land of the Nabateans. In several of those documents we encounter a man styled Judah son of Eleazar Khthousion. (Ἰούδας Ἐλεαζάρου Χθουσίωνος does *not* mean Judah son of Eleazar son of Khtousion; that is made abundantly clear by the documents themselves.) Another man is similarly named John son of Joseph Eglas. In the eastern Mediterranean in Hellenistic and Roman times individuals frequently had two names, usually one of native the other of Greek (or later, Latin) origin, e.g., in Egypt, Ἀρρώτης ὁ καὶ Ἀρίτων. From the Yadin papyri it appears that in the Nabatean area such double names were written quite simply together, without ὁ καὶ or any similar formula. Therefore, on the analogy of Eleazar Khthousion we remove the editor's comma from *P. Ness. 18.6* and read the line as recording that the bridegroom's name was Οὐάληϸ (Valens), and his father's name was Ἀλοβαῖος Ἀλγεβ (al-Ubayy al-Ghubb). This double name clearly distinguishes him from the bride's father, who was also named Ἀλοβαῖος (line 4).

To connect with line 7 the remainder of line 6 is likely to have read Ἄλ[οβαίου (the bride's father) δὲ καὶ Οὐάλεντος ἀμφοτέρων καὶ αὐ]τῶν ὀρμωμένων κτλ. In *P. Yadin* 18, and in some extant examples from Roman Egypt,¹ the two consenting parties are also the bride's father and the bridegroom.

II. The Non-Existent Minors

The explanation in Part I provides the opportunity to clear away a further misunderstanding in the passage from the editor's introduction quoted above. The editor represents the bride and possibly also the groom as minors. Within the context of Roman law, "minor" may signify either of two states: (1) *minor XIV annis* for males and *minor XII annis* for females (i.e. younger than the age of puberty; but under Justinian it is the age that counts for both males and females, not the physical fact of puberty: *Cod. Just.* 5.60.3 [A.D. 529], *Inst.* 1.22 pr.), or (2) *minor XXV annis*.

Minority in the former sense may be excluded here. It was an elementary (*Inst.* 1.10. pr.) and long-standing (*Epit. Ulp.* 5.2) rule that persons under the age of puberty were not capable of marriage; and no action or authority of a parent or guardian (*tutor*) could make them capable. The rule may have been violated on occasion, as practically all rules are, but in this matter probably less than is often asserted.² In *P. Ness.* 18 the principals are Roman citizens, and they make explicit reference to Roman law at two points (lines 20 and 41). To be sure, such reference to Roman law is no guarantee that that law is observed in all its particulars, as we ourselves have argued in our study of *P. Yadin* 18. Nonetheless, the burden of proof rests on whoever would assert that there was a violation of Roman law here, and as we shall see, such proof is not forthcoming.

Minority in the second sense is theoretically possible for the bridegroom of *P. Ness.* 18. The authority of a *curator* (the guardian of the minor over puberty but under twenty-five) is unnecessary for the marriage of a person *sui iuris* who is under twenty-five. Such authority would be useful, however, for certifying the dowry arrangements.³

As it happens, there is no evidence in *P. Ness.* 18 of either type of minority or of guardianship. As for the groom, the disappearance of the non-existent brother clears away any reason to think he was under guardianship. The bride, it is true, is said in line 5 to be ὑπεξουσία. But this signifies neither "ward" nor "minor," but rather *in potestate*, that is *filia familias*.⁴ She was, then, in her father's *patria potestas*, and would remain so, no matter what

¹ E.g. *M. Chr.* 287, 289; *Sel. Pap.* 4, 5. This is the case in two (*CPR* 3 = *M. Chr.* 290 and *P. Cair. Masp.* I 67006) of the half-dozen well-preserved sixth century marriage contracts.

² Especially M.K. Hopkins, "The Age of Roman Girls at Marriage," *Population Studies* 18 (1964) 309-27 at 313-14, based on earlier work of Harkness, Bang and Durry, and followed e.g. by Jane F. Gardner, *Women in Roman Law and Society* (London-Sydney 1986) 38-41. Contrast the more skeptical attitudes of Beryl Rawson, in B. Rawson, ed., *The Family in Ancient Rome* (Ithaca 1986) 22, and Brent D. Shaw, "The Age of Roman Girls at Marriage: Some Reconsiderations," *JRS* 77 (1987) 30-46 at 32. A detailed examination of the texts, which cannot be presented here, will show that there is in fact no reliable evidence for under-age marriage of Roman girls.

³ P.E. Corbett, *The Roman Law of Marriage* (Oxford 1930) 66-67.

⁴ Cf. *Corp. Gloss. Lat.* and LSJ s.v.

her age, until he died or emancipated her. His participation in the marriage agreement is essential, for a union entered into against the will or without the knowledge of the *paterfamilias* was null.⁵ A comparable situation is found in *P. Cair. Masp. I 67006* (whose importance for understanding *P. Ness. 18* is much stressed by the editor of that document), where the father of the groom is actively involved because the groom is ὑπεξούσιος (line 15).

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⁵ Cf. Corbett, *op. cit.* [see n. 3] 62.