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THE ROLE OF THE *SYNGRAPHE* “COMPILED THROUGH THE *HIEROTHYTAI*”
A RECONSIDERATION OF W. SCHUBART’S THEORY IN LIGHT OF A RECENTLY
PUBLISHED ALEXANDRIAN MARRIAGE CONTRACT (*P.BEROL.* 25423)

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In 1912 Wilhelm Schubart published seven marriage contracts from the city of Alexandria.² These contracts attracted the attention of various scholars, who tried, each according to his own point of view, to understand the law of marriage of the city.³ These contracts do not differ much in their content from Greek marriage contracts written in the Ptolemaic era in the *khora*. In their form, however, the difference is twofold. First, Alexandria is the only place where marriage contracts are formulated as a *synkhoresis* - an address to a governmental authority, in this case municipal jurisdiction, informing it of the accomplishment of a transaction - in our case the act of marriage.⁴ Second, the Alexandrian marriage contracts are the only ones containing a regulation such as the following:⁵

καὶ ἐν ἡμέραις δὲ χρηματιζούσαις πέντε ἀφ’ ἧς ἐὰν ἀλλήλοις προείψῃσι (συγχωροῦσι) θήσεσθαι καὶ τὴν δι’ ἱεροθυτῶν συγγραφὴν ὡς ἂν ἐπὶ τοῦ καιροῦ κοινῶς κρίνῃσι (*BGU IV* 1098 41-44).

“and within five business days, after the day in which they give notice to each other, they (i.e. the married couple) [should] draw up the *syngraphe* through the *hierothytai*, as they decide together at the time.”

What was the reason for drawing up this *syngraphe*, which seems to be a second marriage contract besides the *synkhoresis*? What was its content? Who were the *hierothytai* who were to be involved in some way or another in its compilation? Unfortunately, no *syngraphe* compiled by the *hierothytai* was ever retrieved. The sources relating to this question apart from the above-mentioned marriage *synkhoreseis* refer to it, if at all, only implicitly.⁶ Hence, the only source we have to rely on in answering these questions are the marriage *synkhoreseis* themselves.

Yet even the *synkhoreseis* do not offer us a clear picture. In matter of fact, we can not determine the *syngraphe*’s exact name.⁷ The only explicit reference to the content of the *syngraphe* before the recent

¹ I would like to thank Dr. W. Brashear who allowed me to view and evaluate this document before its publication and Prof. R. Katzoff for his tremendous assistance in reading, editing and improving this paper.

² *BGU IV* 1050; 1051; 1052; 1098; 1099; 1100; 1101. cf. Schubart, ‘Alexandrinische Urkunden aus der Zeit des Augustus,’ *ArchPF* 5 (1913) 35-131.

³ E.g. L. Mitteis, *Grundzüge und Chrestomatie der Papyrskunde* (Leipzig - Berlin 1912) II, 1 214-5; S.G. Huwardas, *Beiträge zum griechischen und gräkoägyptischen Eherecht der Ptolemäer- und frühen Kaiserzeit* (Leipzig 1933) 22ff; H.J. Wolff, *Written and Unwritten Marriages in Hellenistic & Postclassical Roman Law* (Haverford 1939) 34-47; Cl. Vatin, *Recherches sur le mariage et la condition de la femme mariée à l’époque hellénistique* (Paris 1970) 173-74; J. Mélèze-Modrzejewski, ‘La structure juridique du mariage grec,’ *Scritti in onore di Orsolina Montevicchi* (Bologna 1981) 255-58; J. Winand, ‘Le rôle des hiérothytes en Égypte,’ *CdE* 60 (1985) 398-411; Allam, S., ‘Note sur le mariage per deux contrats dans l’Égypte gréco-romaine,’ *CdE* 65 (1990) 323-33, et ceteri apud Mélèze-Modrzejewski *ibid.*, 255 n. 98.

⁴ *BGU IV* 1050, 5-6: Συγχωροῦσιν Ἰσιδώρα καὶ Διονύσιος συνεληλυθέναι ἀλλήλοις πρὸς γάμον. cf. *BGU IV*, 1051, 7-9; 1052, 5-7; 1099, 5-6. cf. Wolff, *Das Recht der griechischen Papyri II* (München 1978) 91-94. The συγχώρησις was a contract form used in other parts of Egypt too. Nevertheless, as far as I know, only in Alexandria marriage contracts were compiled in this form.

⁵ The Alexandrian marriage contracts which contained this clause are: *P. Berol.* 25423, *BGU IV* 1050, 1051, 1098, 1101. Uncertain: *BGU IV* 1099, 1100. The only one which clearly did not contain it is *BGU IV* 1052.

⁶ Cf. Damascius in *Phot.* Bibl. 242 referred to by Wolff, *Written...*, 39-40.

⁷ In *BGU IV* 1050 it is called ἡ ἐφ’ ἱεροθυτῶν περὶ γάμου συγγραφὴ (“the contract concerning marriage (drawn up) in the presence of the *hierothytai*”). In *BGU IV* 1098 it is briefly called ἡ δι’ ἱεροθυτῶν συγγραφὴ (“the contract (drawn up)

publication of P.Berol 25423 was *BGU* IV 1050 24-30, where the above-cited *syngraphe*-clause contains a lapidary remark, according to which the future *syngraphe* should include regulation concerning “the *pherne* (= dowry), the other customary matters and the matters related to the death of one of the partners.”⁸

Schubart, as all who came after him, based his explanation of the role of the Alexandrian marriage-*syngraphe* on this remark. Since, according to his interpretation, the *pherne* and the customary matters - i.e. the clauses establishing the standards of good behaviour of the couple during the joint life - are already dealt with in the *synkhoresis*, it seems that the only new regulations the *syngraphe* were to contain were those dealing with the death of one of the partners. Since, as he presumes, it is **property matters** which are implied to in this remark, in its major part the *syngraphe* would function as a **reciprocal testament** of the couple.⁹

According to Schubart, the custom of deferring the settlement of hereditary questions to a later contract was already apparent in earlier times in the *khora*. Such was the case in *P.Eleph. 2*, in which the couple settled hereditary questions many years after their joint life begun.¹⁰ But whereas in the *khora* during the later Ptolemaic period a trend is traceable to settle these questions in the marriage contract itself,¹¹ the more conservative Alexandrians stuck to the older custom as late as the Augustan era, thus preferring to deal with these matters in the *syngraphe* of the *hierothytai*.¹²

Schubart’s theory has few weak points. First, the definition of *P.Eleph. 2* as testament is completely unfounded. Testaments share in Ptolemaic and Roman Egypt strict formal features this document did not have.¹³ If we were to assume that the Alexandrian *syngraphe* shared the same features as *P.Eleph. 2*, we could not possibly regard it as testament of any kind. Second, in divergence from the theory of Schubart, we must assume that the later *syngraphe* was as much a marriage contract as the *synkhoresis*. This is clearly shown by its dealing with the *pherne* and the “other habitual things” - which I believe to be the clauses on good behaviour - both essential elements of any marriage contract in the Ptolemaic period. *P.Eleph. 2* was, on the other hand, certainly not a marriage contract but rather an “*homologia and syngraphe*”, as its compilers name it. Furthermore, *P.Eleph. 2* does not mention the *hierothytai* or

through the *hierothytai*”). In *BGU* IV 1101 and *P.Berol. 25423* it is called συγγραφὴ συνοικισίου and the couple is ordered to compile it through the *Hierothytai* just as in the case of *BGU* IV 1098. This seems to be the proper name.

⁸ Ll. 24-30: θέσθαι [δ]ὲ αὐτοὺς καὶ τὴν ἐφ’ ἱεροθυτῶν περὶ γάμου συγγραφὴν ἐν ἡμέραις χρηματιζούσαις πέντε ἀφ’ ἧς ἂν ἀλλήλοις προεἴπωσιν καθ’ ἣν ἐνγραφῆσεται ἢ τε φερνὴ καὶ τὰλλα τὰ ἐν ἔθει ὄντα καὶ τὰ περὶ τῆς ὀποτέρου τῶν γαμούντων τελευτῆς, ὡς ἂν ἐπὶ τοῦ καιροῦ κοινῶς κριθῆι.

⁹ This view seems to be supported by two other Alexandrian marriage contracts. In *BGU* IV 1098, after the clause requiring the drawing up of a *syngraphe* we find in lines 44-51 regulations relating to the right of the bride to maintain her parent’s property after their death. In *BGU* 1101 we find in the same sequence the obligation to mention in the future *syngraphe* a daughter who was born to the couple during an earlier marriage to each other: ll. 21-22: ... καὶ τὰ καθήκοντα καὶ τὸ γεγονός ἡμεῖν ἐξ ἀλλήλων παιδίον θῆλυ ᾧ ὄνομα Ἀμμωνάριον Cf. e.g. Erdmann, B., ‘Die Eheschließung im Rechte der gräko-ägyptischen Papyri von der Besetzung bis in die Kaiserzeit,’ *ZRG* 60 (1940) 151-84, at. 170-76.

¹⁰ = *M.Chr.* 311 = *Jur. Pap.* 23 = *Sel. Pap.* I 82 = Hengstl, *Griechische Papyri* 78.

¹¹ One should make a clear distinction between hereditary settlements made by couples in benefit of each other and the joint children, and donations made by third party. This distinction is supported by formal and contextual features not to be elaborated here. Hereditary settlements of the first group appear in the Ptolemaic period in *P.Gen.* 21 = *M.Chr.* 283 = *P.Mon.* III, 62 15-21 (cII BCE); *P.Freib.* III 29 12-19 (Fayum 179/8 BCE); 30 6-16, 23-28 (?) (Fayum 179/8 BCE); *SB* IV 8974 fr. I 1-7, fr. III 1-9 (cI BCE). In the Roman period we find them primarily in marriage contracts from the Oxyrhynchite nome, and we may consider their inclusion in marriage contracts to be at that time a regional phenomenon. *P.FAO* III 5 9-15 (cII - Oxyrhynchite nome); *P.Oxy.* II 265 27-34 (81-96 CE - Oxyrhynchos); *P.Oxy.* III 496 = *M.Chr.* 287 10-16 (cII - Oxyrhynchos); *P.Oxy.* III 497 11-20 (cII CE - Oxyrhynchos); *PSI* V 450 recto, col. I 1-6 (cII-cIII - Oxyrhynchite nome). The only post-Augustean appearance of this clause which could originate from another area is *P.Col.* VIII 227 20-2 the provenance of which is unknown. For a similar clause outside Egypt cf. *P.Mur.* III 115; 116 from the Judean desert. Cf. H.-A. Rupprecht, ‘Ehevertrag und Erbrecht,’ *Miscel-lània papirologica Ramon Roca-Puig en el seu vuitante aniversari* (Barcelona 1987) 307-11.

¹² Schubart, *ArchPF* 5 (1913) 75-76.

¹³ Cf. Kreller, *Erbrechtliche Untersuchungen*, 337-42.

any functionaries parallel to them who were involved in its compilation. It is a *syngraphophylax*-document drawn by private people. Schubart's attempt to link the "*syngraphe* drawn up through the *hierothytai*" to *P.Eleph. 2* seems to be unfounded.

These obvious deficiencies of the theory of Schubart may have been the reason for its dismissal by later scholars, who looked for other explanations of the question of the *syngraphe* of the *hierothytai*.¹⁴

A reconsideration of Schubart's theory - in spite of its above-mentioned deficiencies - is called forth by *P.Berol. 25423*, an eighth marriage contract from the same cartouche as the other above-mentioned Alexandrian marriage contracts, recently published by Dr. W. Brashear.¹⁵

The contract does not differ greatly from the rest of the Alexandrian marriage contracts. After living together for some time in a *agraphos symbiosis*¹⁶ and bearing two daughters, Hermias and Thaubarion decided in 14 BCE to compile the present document. After the appeal to Protarchos, the head of the *Kriterion* [1-5], they state the reasons for their wish to establish a written instrument [5-14].¹⁷ There follow the declaration of the husband that he received the dowry [14-17], his obligations during marital life [17-29] as well as those of his wife [29-38]. After the declaration of the wife that she comply with the arrangements included in the contract [38-39] the possibility of divorce is dealt with [39-43]. The regulations regarding the future drawing up of the *syngraphe* of the *hierothytai* follow next [43ff.]:

καὶ ἐν ἡμέραις δὲ χρηματιζούσ' ἀ(ις) πέντε ἀφ' ἧς ἂν ἀλλήλοις προείπω[σιν] θέσθαι καὶ διὰ τῶν ἱερο]θυτῶν τὴν [τοῦ σ]υνοικεσίου συγγραφὴν δι' ἧς ἀναλημφθή-
σεται ἢ τε φερνὴ καὶ τὰ ἐν ἔθε(ι) ὄντα. καὶ ἐὰν πρότερόν τι πάθῃ ὁ Ἑρμίας εἰ(ν)αι τὰ ὑπ'
αὐτοῦ Ἑρμίου ἀπολε(ι)φθησόμενα ὑπάρχοντα [πάντα σὺν] τῇ φ[ερ]νῇ αὐτῆ Θ[αυβ]αρίω
μόνη· ἐὰν δέ τι [αὐτῆ] Θαυβ[άρι]ον πρό[τερόν] τι πάθῃ εἰ(ν)αι τὴν τε φερ[ν]ὴν καὶ
[πάν]τα τὰ ὑπ' α[ὐτῆ]ς Θαυβαρίου ἀπο[λ]ι(ε)φθησόμενα ὑπάρχοντα [π]άντα τοῦ
Ἑρμίου μόνου, ἔχοντος ἐξουσίαν ἑκατέρου αὐτῶν ἐπιτελ(ε)ῖν κατ' αὐτῶν ὅτι ἐὰν
βούληται· ἐὰν δὲ πρὶν τίθεσθαι τὴν τοῦ συνοικε[σ]ίου συγγραφὴν συμβῆ πρότερον
ὀπότερον αὐτῶν μεταλλάξαι καὶ οὕτως εἰ(ν)αι αἱ ἐπιλησόμενοι τῆς αὐτῆς διαστολὰς
περὶ ἃς τῆς δὲ συγγραφῆς τεθ(ε)μιμένης με ἰν τὸ ὑστεραίως α[ὐτῶ]ν
μεταλλά[ξαι] τὰ τῶν ἀμφοτέρ[ω]ν ὑπάρχοντα πάντα τῶν γεγονότως (r. -των) ἐξ ἀμφο-
τέρων θυγατέρων Φιλουταρίου καὶ Διονυσαρίου καὶ τῶν γενησομένων αὐτοῖ[ς] ἐξ
ἀλλήλων παίδων ἑκάστου κατ' ἴσον τοῦ παραβαίνοντο[ς] ἐνεχομένου τῷ ὠρισμένῳ
προστίμῳ. (ἀξιοῦμεν) ----- (ἔτους) ἡ Καίσα(ρος) Παχὺ ὠ(ν) [. . .].

Translation (adapted from Brashear):

... (They furthermore declare that they will deposit) a *syngraphe* with the *hierothytai* within the five business days, counting from the day (on which) they have mutually agreed, by means of which marriage contract both the dowry and the customary provisions shall be the objects of concern. If

¹⁴ According to H.J. Wolff's explanation, the prime duty of the *hierothytai* was to sanction and approve unions of Alexandrian couples so that the children born out of these unions would confront at puberty fewer obstacles in their admission into the body of citizens than those born out of a union not sanctioned by *hierothytai*. Cf. Wolff (*Written and Unwritten Marriages*, 34-47). The scholars dealing with this problem after Wolff all share a common presumption, according to which the *hierothytai-syngraphe* should be understood in the unique context of an autonomous Greek polis. For a discussion and summary cf. Allam, *CdE* 65 (1990) 324-27.

¹⁵ W. Brashear, 'An Alexandrian Marriage Contract,' in R. Katzoff, ed., *Classical Studies in Honor of David Sohlberg* (Ramat-Gan 1996) 367-84.

¹⁶ This is, so it seems, the earliest appearance of this term in marriage instruments.

¹⁷ The mutilation of these lines prevents a clear understanding of the circumstances which the contract was drawn up in. The couple seems to have already drawn up a marriage contract, now drawing up a second one in order to "secure" (ἐξασφαλίσασθαι) what was regulated there.

something should happen to Hermias before (Thaubarion), his (entire) remaining property along with the dowry shall belong to her, Thaubarion, (alone). If something should happen to her, Thaubarion, before (Hermias), then the dowry and her entire remaining possessions shall all belong to Hermias, each of them alone having the power to transact (concerning the possessions) whatever each might want. However, if it should happen that either one of them die before submitting their marriage contract, the terms of this present contract should be valid as they are (?) ... as marriage contract has already been submitted ... [After] the death of the latter of the two (?), all their belongings shall belong in equal parts to their daughters, Philutarion and Dionysarion, and to whatsoever other children who may yet be born to them (Hermias and Thaubarion) from each other. The transgressing party shall be liable to the prescribed fine. (We request it). Year 18 of Caesar, Pachon ...

The last part of *P.Berol. 25423* contains five clauses:

- 1) 43-47: Regulation of the drawing up of the future *syngraphe*.
- 2) 47-57: Property settlements in case the husband dies first [47-50] and in case the wife dies first [50-54]. The rights of the one who stays alive to the property of the deceased [54-57].
- 3) 57-62: In spite of the mutilation in these lines it is clear that they contain a clause regulating the property settlements in case one of the partners dies before they draw up the *syngraphe*.
- 4) 62-68: the fate of the family property after both partners die.
- 5) 68-70: fine on action contrary the regulated terms. date.

The couple is obliged to draw up the *syngraphe synoikesiou* through the *hierothytai* within five days after deciding to do so. Property settlements in the case of death are dealt with immediately afterwards. This sequence of clauses is not accidental. Clearly, the hereditary clause in lines 47-57 was meant to be part of the later *syngraphe* and to be applicable only after it is drawn up. This fact is proven clearly by the following clause, dealing with the property-hereditary settlements if the death occurs before this *syngraphe* was compiled [57-62]. The preceding clause could not, therefore, deal with any situation other than death of the husband and wife after the drawing up of the *syngraphe*.

This conclusion is supported by a comparison of structure of the above-cited clauses with that of *BGU IV 1050*. In *BGU IV 1050* it is stated that the *syngraphe* will deal with “the *pherne*, the usual matters and those concerning the death of one of the partners”.¹⁸ This very formulation is found again in identical wording in *P.Berol. 25423*, with distinct divergence in its later part. Here, instead of stating the need of establishing hereditary settlements for the case of death in the future *syngraphe*, these settlements are regulated in detail in advance. If, then, we can draw any conclusion from the meagre sources in our possession, it seems that in Alexandria it was common to postpone any detailed settlement of property-hereditary questions to a later *syngraphe*. In the *synkhoreseis* it was felt to be enough to order this future settlement.

In the case of *P.Berol. 25423* the partners preferred rather to include the hereditary settlements in the *synkhoresis* itself. In order not to do it in divergence from the established norm, it was done in a roundabout way. The property settlement was regarded as part of the future *syngraphe*, but through the following clause, stating that “If, however, it should happen that either one of them dies before submitting the contract of marriage, [the terms of this present contract] should be valid as they are,” it became applicable instantly.

Nevertheless, we should not assume that the difference between the *synkhoresis* and the *syngraphe* is the lack of reciprocal hereditary rights between the husband and the wife in the first and its creation in the latter. The couple was regarded as a lawfully married even before the drawing up of the *synkhoresis* (!), thus enjoying any *ab intestato* reciprocal hereditary rights which their status as married people

¹⁸ Cf. n. 8.

granted them - independent of the existence of any written instrument.¹⁹ All that we may conclude is that in each case that the *syngraphe* included a property and hereditary settlement these were meant to serve the unique family situation each couple was in, thus diverging in each case considerably. These specific settlements were to be dealt with in the *syngraphe* and, consequently, to be valid only after it is compiled.²⁰

In summary, even though we would not go so far as Schubart, claiming that the *syngraphe* was a kind of reciprocal testament, he was right in the sense, that much like testaments, the *syngraphe* was used as a written instrument to establish hereditary settlements, in case these diverged from the hereditary custom. It was not a testament, but served on occasions the same purpose.

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¹⁹ The existence of *ab intestato* reciprocal right of or succession of the marriage-partners is controversial. According to one view the partners did not inherit each other. Cf. H. Kreller, *Erbrechtliche Untersuchungen auf Grund der Gräko-Ägyptischen Papyrusurkunden* (Leipzig 1919; Reprint 1970) 175; H.-A. Rupprecht, 'Zum Ehegattenerbrecht nach den Papyri,' *BASP* 22 (1985) 291-95, at 291 n. 6 and n. 9. According to other scholars such an *ab intestato* right of the couple to succeed each other did exist. See O. Montevocchi, 'Ricerche di sociologia nei documenti dell'Egitto greco-romano: I. I testamenti,' *Aegyptus* 15 (1935) 67-121, at 100-104; R. Taubenschlag, 'Die Geschichte der Rezeption des griechischen Privatrechts in Ägypten,' *Atti del IV Congresso Internazionale di Papirologia, Firenze 1936* (Milano 1936) 257-81, at 279 = *Opera Minora* (Warsaw 1959) 573-600, at 597; idem, *Law of Greco-Roman Egypt in Light of the Papyri, 332 B.C. - 640 A.D.* (Warsaw 1955) 187; H. J. Wolff, 'Das hellenistische Privatrecht,' *ZRG* 90 (1973) 63-90, at 74. For a summary of this discussion see in R. Katzoff, 'Polygamy in P.Yadin?,' *ZPE* 109 (1995) 128-32, at 129 n. 7.

²⁰ Settlement appearing here only is that according to which the surviving partner should control the property of the deceased alone, where in most hereditary settlements within other marriage contracts he/she controls it together with the joint offspring; cf. e.g. *P.Gen.* I 21 ll. 15-16.