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THE GUARDIAN (ΕΠΙΤΡΟΠΟΣ) OF A WOMAN IN THE DOCUMENTS FROM THE
JUDAEAN DESERT

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THE GUARDIAN (ΕΠΙΤΡΟΠΟΣ) OF A WOMAN IN THE DOCUMENTS FROM THE JUDAEAN DESERT*

The documentary texts from the Judaean Desert are mostly legal texts. They were written in a number of languages: Hebrew, Jewish Aramaic, Nabataean Aramaic and Greek. However, regardless of the language in which they were composed, with very few exceptions all of them were written by Jews or at least involve Jews.¹ Those Jews who wrote their documents in Greek are by no means Hellenized Jews. This is amply demonstrated by their Aramaic subscriptions and signatures, and sometimes by the faulty Greek they use.² What does the use of different languages tell us about this society? Does the use of one language, as against others, reflect no more than the diplomatics of the documents, or does it reveal to us the coexistence of different legal systems within this society? It seems to me that the topic of this paper, the presence or absence of a guardian of a woman in a document, can profitably be used to address these questions.

The legal representative, the guardian of a woman, appears only in the Greek documents, and never in the Hebrew, Aramaic or Nabataean ones. What is the implication of this absence? That the legal system reflected in the Semitic documents did not recognize, or did not call for, the institution of a guardian for a woman? In that case what legal system is reflected in the Greek documents? I deliberately take no account here of the evidence of the rabbinic sources. In defence of this, it should be said that in view of the late date of the redaction of the Jewish legal code in the Mishnah, reliance on these sources would involve us in a vicious circle: we are totally dependent on the papyri for evaluating the influence exercised by the rabbis on the law used by Jews at the time.³

We may start with a random example from the Babatha archive: in P.Yadin 17 of 21 February 128 Judah son of Eleazar Khthousion, Babatha's second husband, acknowledges that he has received 300 *denarii* from her as a deposit to be paid on demand; her guardian is present with her: ὡμολογήσατο Ἰούδας Ἐλεαζάρου [X]θουσιώνος Ἀιναγαδηνός πρ[ὸς] Βαβαθαῖν Κίμωνος ἰδίαν γυναῖκαν αὐτοῦ, συνπαρόντ[ι]ος αὐτῆς ἐπιτρόπου τοῦδε τοῦ πράγματος χάριν Ἰακώβου Ἰησοῦ . . . ὥστε τὸν Ἰούδαν ἀπεσχηκέναι π[α]ρ' αὐτῆς εἰς λόγον παραθήκης ἀργυρίου καλοῦ δοκίμου νομίματος δηναρίων τριακείων ἐπὶ τῷ αὐτὸν ἔχειν αὐτὰ καὶ [ὀ]φείλειν ἐν [πα]ραθήκῃ μέχρι οὗ ἂν χρόνου δόξη τῇ Βαβαθαῖ etc.⁴

* The papyri cited here as XHev/Se ar or XHev/Se gr are published in H. M. Cotton and A. Yardeni, *Aramaic, Hebrew and Greek Texts from Nahal Hever and Other Sites with an Appendix Containing Alleged Qumran Texts* [The Seiyāl Collection 2], *Discoveries in the Judaean Desert*, vol. 27. Oxford, 1997 (henceforth Cotton and Yardeni); the Greek part of the Babatha archive was published in N. Lewis, *The Documents from the Bar Kokhba Period in the Cave of Letters. Greek Papyri (with Aramaic and Nabatean Signatures and Subscriptions)*, edited by Y. Yadin and J. C. Greenfield, Jerusalem, 1989 (henceforth Lewis), and are designated P.Yadin; the Hebrew, Aramaic, and Nabatean Documents found by Yadin in the Cave of Letters in Nahal Hever, also designated P.Yadin, and XHev/Se nab are not yet published. I am grateful to Ada Yardeni and to the late Jonas Greenfield for showing me the texts in advance of publication.

¹ For surveys see H. M. Cotton, W. Cockle and F. Millar, 'The Papyrology of the Roman Near East: A Survey', *JRS* 85, 1995, 214–35; H. M. Cotton, 'The impact of the documentary papyri from the Judaean Desert on the study of Jewish history from 70 to 135 CE', *The Study of Jewish History in the First and Second Centuries CE: From Schürer to the Revised Schürer – A Century of Scholarship*. Kolloquien des Historischen Kollegs, ed. A. Oppenheimer, Munich 1998 (forthcoming); *eadem*, 'Documentary Texts' in *Encyclopedia of the Dead Sea Scrolls*, Oxford (forthcoming).

² See A. Wasserstein, 'A Marriage Contract from the Province of Arabia Nova: Notes on Papyrus Yadin 18', *JQR* 80, 1989, 124f.; *idem*, 'Non-Hellenized Jews in the semi-Hellenized East', *Scripta Classica Israelica* 14, 1995, 111–37. For their 'faulty Greek' see Cotton and Yardeni, 136f.; 206ff.

³ See H. M. Cotton, 'The Rabbis and the Documents', *The Jews in the Graeco-Roman World*, ed. Martin Goodman, Oxford (forthcoming).

⁴ 'Judah son of Eleazar Khthousion from Ein Gedi acknowledged to Babatha daughter of Shim'on, his own wife, present with her as her guardian for the purpose of this matter Jacob son of Yeshu'a . . . that he has received from her on account of a deposit three hundred *denarii* of silver in coin of genuine legal tender, on condition that he hold them and owe

The presence of a legal representative of a woman is well attested in contemporary Egyptian papyri. But there is a difference of usage: the term used for the guardian of a woman in the passage just quoted and elsewhere in the papyri from the Judaean Desert is ἐπίτροπος; in the Greek papyri from Egypt, however, the guardian of a woman is designated κύριος. The term ἐπίτροπος is reserved in the Egyptian papyri for the guardian of a minor; and for good reason too. The two terms are not synonyms; they stand for two distinct legal concepts. The ἐπίτροπος can only refer to the person who administers someone else's patrimony.⁵ The κύριος on the other hand was in the old Attic law from which the term derives the master of a person who could not own property. It is a fossilized remnant of an older social structure in which the woman lacked altogether the competence to own property. The κύριος, as the term indicates, was the woman's lord and master. With time women could and did own property and the κύριος was no longer the person in whose power the woman was. His function degenerated therefore into that of an assistant of the woman in the performance of certain legal actions, mere lip service to an older legal system.⁶ He survived thus in Ptolemaic Egypt, but perhaps not in the Seleucid sphere of influence, since he is absent from the Greek papyri from Dura-Europos and from the recently published papyri from Mesopotamia.⁷

In the Greek papyri from the Judaean Desert the term ἐπίτροπος is used – even in a single document – both for the guardian of a woman and for the guardian of a minor, as in the following example: Βησαῖς Ἰησοῦς Ἡνγαδηνὸς οἰκῶν ἐν Μαζραᾷ ἐπίτροπος ὀρφανῶν Ἰησοῦς Χθουσίωνος . . . Σελαμειοῦ Ἰούδου Ἡνγαδηνῆ διὰ ἐπιτρόπου αὐτῆς Ἰούδας ὁ καὶ Κίμβερος Ἀναγίου Ἡνγαδηνοῦ τοῦδε τοῦ πράγματος χάριν.⁸ But the identity of terms does not in fact reflect an identity of function. As I hope to prove in the following discussion, the low profile kept by the guardian of a woman in the Greek documents from the Judaean Desert is conspicuous. It contrasts sharply with that of the guardian of the minor⁹ but resembles that of the κύριος in the Egyptian papyri.

That the lack of distinction was not due to the influence of the Aramaic environment is proved by the fact that in the Aramaic subscriptions the distinction is made: the guardian of a woman is called אָדוּן = κύριος,¹⁰ as in P.Yadin 15 line 37: יהודה בר כהושן אָדוּן בבתה,¹¹ and in P.Yadin 22 line 34: יוחנא מכוּתא אָדוּנה כתבה,¹² whereas for the guardian of the minor the Aramaic borrowed the Greek term ἐπίτρο-

them on deposit until such time as it may please Babatha . . . etc.', P.Yadin 17 lines 3–5 = 22–24.

⁵ 'Ἐπίτροπος . . . kann sich niemals auf eine andere Person beziehen als einen Verwalter fremden Vermögens', H. J. Wolff, 'Römisches Provinzialrecht in der Provinz Arabia', *ANRW* II.13, 1980, 794; as the *tutor* in Roman law, see M. Kaser, *Das Römische Privatrecht* I², Munich 1971, 85–86.

⁶ For the κύριος in Egyptian papyri see R. Taubenschlag, 'La compétence du κύριος dans le droit gréco-égyptien', *Opera Minora* II 353–77; Cl. Préaux, 'Le statut de la femme à l'époque hellénistique principalement en Egypte', *Rec. Société Jean Bodin* XI 1959, 139ff.; H.-A. Rupprecht, 'Zur Frage der Frauentutel im römischen Ägypten', *Festschrift für Arnold Kränzlein*, Graz 1986, 95–102.

⁷ P.Dura 28–32, see also C. Bradford Welles, R. O. Fink and J. Frank Gilliam, *The Excavations at Dura-Europos. Final Report V. 1: The Parchments and Papyri* (New Haven, 1959), 12; in P.Euphr. 6–7 the brother of Maththabeine, daughter of Abbas son of Goras, who subscribes for her, is not called κύριος, see D. Feissel & J. Gascou, 'Documents d'archives romains inédits du Moyen Euphrate (III^e siècle après J.-C.) II. Les actes de vente-achat' (P.Euphr. 6 à 10)', *Journal des Savants*, forthcoming.

⁸ 'Besas son of Yeshu'a from Ein Gedi residing in Mazra'a, the *epitropos* of the orphans of Yeshu'a son of Khthousion . . . to Shlamzion daughter of Judah from Ein Gedi through Judah also known as Kimber son of Hananiah from Ein Gedi, her *epitropos* for this matter', P.Yadin 20 lines 23–27.

⁹ For the guardian of the minor in the Babatha archive see H. M. Cotton, 'The Guardianship of Jesus son of Babatha: Roman and Local Law in the Province of Arabia', *JRS* 83 (1993), 94–108; see also T. J. Chiusi, 'Zur Vormundschaft der Mutter', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Röm. Abt.)* 111, 1994, 155–196.

¹⁰ Note אָדוּן i.e. the Hebrew term for κύριος and not מְרַא, i.e. the Aramaic term. On אָדוּן see Yadin and Greenfield in Lewis, p. 139, n. 6.

¹¹ 'Judah son of Khthousion, Babatha's κύριος'.

¹² 'Yohana son of Makhoutha, her κύριος, wrote this'.

פּוֹס: פּאָפּטראַ, as in P.Yadin 20 line 41: פּאָפּטראַ דִּיתָמָּוּ. ¹³ Judah son of Eleazar Khthou-sion is attested for the first time as Babatha's husband in P.Yadin 17 of 21 February 128. We do not know if he was already married to her at the time that P.Yadin 15 was written, i.e. October 125. ¹⁴ However, even if he were married to her by then, Yohana son of Makhoutha of P.Yadin 22 is certainly not married to her at the time. Thus פּוֹס cannot mean 'husband' but must stand for κύριος. The distinction between פּוֹס and פּאָפּטראַ in the Aramaic subscriptions is all the more striking since as I pointed out above the guardian of a woman is absent from the Semitic documents.

It was, therefore, suggested with great plausibility by the late Hans Julius Wolff that the use of a single term for the two kinds of guardians is due to the influence of the Roman legal system, where at least originally no legal distinction existed between the guardian of a minor and that of a woman, and, consequently, the same term, *tutor*, was used for both. Both, if they were *sui iuris*, were represented by the *tutor*. ¹⁵ Why did the local notaries writing in Greek adopt the Roman terminology, when, as we see from the Aramaic subscriptions, they must have been familiar with the term κύριος which they translated by פּוֹס? Again, it was suggested that the notaries copied from the proclamations of the Roman authorities, which demanded the representation of a woman in court by a guardian, and made provision for the nomination of guardians for orphans. ¹⁶ The Roman authorities, thinking in Latin, even if writing in Greek, may well have used the term ἐπίτροπος for the two kinds of *tutor*. ¹⁷

Hans Julius Wolff in his pioneer study of the legal system in the documents from the Judaeen Desert could not know that the confusion in terminology was not unique to documents from the new province of Arabia which came under Roman rule only in 106, and whose accelerated Romanization is so well attested in the archives from Maḥoza/Maḥoz 'Aglatain, but is present also in documents from the province of Judaea, which was under Roman rule from 6 CE. In a cancelled marriage contract of 130 CE written in Aristoboulias, 7 km south of Ḥebbron, a mother who gives her daughter in marriage is assisted by a guardian designated ἐπίτροπος and not κύριος: "Ἐτους τεσερεσκαιδεκάτου Αὐτ[ο]-κράτορος Τραϊανου Ἀδριανου Καίσαρος Σεβαστου ἐπὶ ὑπάτων Μάρκου Φλακονίου Ἀπρου καὶ Κοίντιου Φαβίου [Κατουλλίνου. 19 letters] ἐν Ἀριστοβουλάδι τῆς Ζειφηνῆς ἐξέδετο Σελα.ε[c.30 letters] διὰ Βορκ. Ἀ γλα ἐπιτρόπ[ου] αὐτῆς τοῦ δε τοῦ πράγμα[τος] χάριν. ¹⁸ The absence of the ἐπίτροπος of a woman in Mur 115, a contract of remarriage from Judaea, written in 124 CE, might be explained by the role of the bride in this contract in contrast to that of the mother, in XḤev/Se gr 69: the latter is the subject of the *homologia* (see below).

The person who is often found signing for the woman in the Semitic documents from the Judaeen Desert must be carefully distinguished from the ἐπίτροπος. This is the subscriber, designated in the Egyptian papyri by the term ὑπογραφεύς ¹⁹ and in one of the Greek papyri from the Judaeen Desert by the term χειροχρήτης: ἵος Λειουου ὄμνυμι τύχην Κυρίου Καίσαρος κ[α]λῆ πίστει ἀπογεγράφθαι ὡς προγέγραπται μηθὲν ὑποστειλάμενος. ἐ[γ]ράφη διὰ χειροχρήτου Ουαίνου Κααδαλλου. ²⁰ The latter

¹³ 'Besa son of Yeshu' a ἐπίτροπος of the orphans'.

¹⁴ No date is preserved in P.Yadin 10, Babatha's marriage contract: see Y. Yadin, J. C. Greenfield, A. Yardeni, 'Babatha's *Ketubba*', *IEJ* 44, 1994, 75–99.

¹⁵ Wolff (n. 5), 796–7; cf. Lewis, *Documents*, 17.

¹⁶ These are likely to have been mentioned in the provincial edict.

¹⁷ 'Es scheint nicht einmal undenkbar, dass die römische Provinzialregierung selbst in griechisch herausgebracht, aber römisch gedachten, wenn nicht geradezu aus dem Lateinischen übersetzten, Verlautbarungen beide Arten der Tutel in dieser vom Standpunkt der griechischen Sprache her anfechtbaren Weise gleich benannt hatte', Wolff (n. 5), 796; see also his comments there on the ἐπίτροπος τοῦδε τοῦ πράγματος.

¹⁸ 'In the fourteenth year of the Emperor Tra[jan] Hadrian Caesar Augustus, in the consulship of Marcus Flavius Aper and Quintus Fabius [Catullinus . . .] in Aristoboulias of the Zeiphênê. Sela.e[] gave in marriage [her daughter (?) Selam-pious . . .] through Bork. Agla, her guardian for this matter [. . .]', XḤev/Se gr 69 lines 1–4.

¹⁹ See H.C. Youtie, 'ΥΠΟΓΡΑΦΕΥΣ: the social impact of illiteracy in Graeco-Roman Egypt', *ZPE* 17, 1975, 201–221.

²⁰ 'X son of Levi, swear by the *tyche* of the Lord Caesar that I have in good faith registered as written above, concealing

term χειροχρήτης is revealing of the true function of this person: he lends his hand by signing for someone who is legally competent to do so, but who happens to be illiterate (or otherwise incapable of writing), when a subscription and/or a signature in his or her own hand is required to render a document valid. No technical term exists for this person in the Semitic documents,²¹ but the graphic notion of borrowing someone else's hand is present in the Aramaic XHev/Se ar 13, where a woman called Shlamzion daughter of Yehosef renounces all claims against her former husband. She is said to have 'borrowed the hand of Mattat so[n] of Shim'on, who wrote what she said': שאלה . . . יהוסף ברת שלמצין שאלה שמתן מרמא כתב מן הן בר [ר]. The subscriber is present also in documents in which the principal is a man, probably in cases of illiteracy, as is the case in XHev/Se gr 61.²²

The ἐπίτροπος could fulfill the function of the subscriber at the same time as he served as an ἐπίτροπος, in which case the verbs γράφω or ὑπογράφω are used to describe his action. Thus Judah son of Eleazar Khthousion is both an ἐπίτροπος and a subscriber in Babatha's land declaration: Ἰουδάνης Ἐλαζάρου ἐπιτρόπου[ς] καὶ ἔγραψα ὑπὲρ αὐτῆς (P.Yadin 16 lines 35–36), as is Iohannes son of Makhoutha in Babatha's deed of sale: [δι]ὰ ἐπιτρο[ύ]που αὐτῆς καὶ ὑπογράφοντος Ἰωά[α]νης Μαχχουθας τῆς αὐ[τῆ]ς Μαωζα<c> (P.Yadin 22 line 29), and Babelis son of Menaḥem in Babatha's receipt: Βαβαθας Σίμωνος, συνπαρόντος αὐτῆ [ἐπιτρο[ύ]που] κ[α]ὶ ὑπὲρ αὐτῆς ὑπογράφοντος Βαβελί[ς] Μαναήμου (P.Yadin 27 lines 4–5).²³ And yet the ἐπίτροπος is to be distinguished from the subscriber, as is apparent in P.Yadin 15 where both an ἐπίτροπος and a subscriber take part in the legal proceedings. This is a case of deposition against the guardians of Babatha's son. Babatha's guardian for this matter, Judah son of Eleazar Khthousion, did not write the subscription for her; instead, Eleazar son of Eleazar wrote it for her, since her illiteracy prevented her from doing it herself: [ἐμαρ]τυροποιήσατο ἡ Βαβαθα ὡς προγέγραπται διὰ ἐπιτρόπου αὐτῆς τοῦδε τοῦ πράγατο[ς] Ἰούδου Χ[θ]ουσίωνος ὅς παρὼν ὑπέγραψεν. (second hand) Βαβαθας Σίμωνος ἐμαρτυροποιήσάμη<ν> κατὰ Ἰωάνου Ἐγλα καὶ Ἀ<βδ>αοβδα Ἐλλουθα ἐπιτρόπων Ἡσοῦς υ<ι>ο<υ> μου ὀρφανοῦ δι' ἐπιτρόπου μου Ἰούδα Χαθουσίωνος ἀκολλοῦθως τῆς προγεγραμμένεσ ἐρέεσιν. Ἐλεάζαρος Ἐλαζάρου ἔγραψα ὑπὲρ αὐτῆς ἐρωτηθεὶς διὰ τὸ αὐτῆς μὴ ε<ι>δέναι<ι> γράμματα.²⁴

It seems clear that διὰ τὸ αὐτῆς μὴ ε<ι>δέναι<ι> γράμματα, 'because she did not know her letters' in Babatha's case, does not mean that she could not write Greek, but that she was illiterate in any language. A Greek subscription was not required: Judah son of Eleazar, her guardian, wrote his own subscription in Aramaic: יהודה בר כהושין אדון בבתה בקמי השרת בבתה ככל די על כתב יהודה כתב. ²⁵ If Judah son of Eleazar did not write a subscription for Babatha, although he was her guardian and could write Aramaic, but Eleazar son of Eleazar did, then we must look for some legal reason: evidently she was legally competent to do so, but incapable of doing so because of her illiteracy. This is where a subscriber, and not a guardian, must have been used.

What was then the function of the guardian of a woman? As observed above the low profile kept by

nothing. W[ritten by] the *chirocrista* Onainos son of Sa' adallos', XHev/Se gr 61 lines 1–4.

²¹ Nor does the term ὑπογραφεύς appear in the Greek papyri from the Judaean Desert, only the verb, see P.Yadin 22 line 29 and P.Yadin 27 line 5, quoted in the text. See H. M. Cotton, 'Subscriptions and signatures in the papyri from the Judaean Desert: the χειροχρήτης', *JJP* 25, 1996, 29–40.

²² Cf. Yardeni's new reading of Mur 18 lines 9–10: ממרה [כתב יהוסף בר] מרמא [שאלה שמתן מרמא] (נזכר) ריה בר יהוד[ן] ג[ע]ל נפשה [כתב] יהוסף בר [ר].

²³ Likewise in the verso of XHev/Se gr 64 the first signature, of which only traces are left, is likely to have been that of the mother, Salome Gropthe, the donor, although she did not write it herself. The second signature is probably that of her husband and guardian, Joseph son of Shim'on, who signed for her – the traces of ink are compatible with his name, see Cotton and Yardeni, p. 220 ad XHev/Se gr 64 lines 42–43.

²⁴ 'Babatha deposed as aforesated through her guardian for this matter, Judah son of Khthousion, who was present and subscribed. [second hand] I, Babatha daughter of Shim'on, have deposed through my guardian Judah son of Khthousion against John son of Eglas and 'Abdoöbdas son of Ellouthas, guardians of my orphan son Jesus, according to the aforesated conditions. I, Eleazar son of Eleazar, wrote for her by request, because of her being illiterate', lines 31–35.

²⁵ 'Judah son of Khthousion lord of Babatha: in my presence Babatha confirmed all that is written above. Judah wrote this', P.Yadin 15 line 37.

the guardian of a woman in the Greek documents from the Judaean Desert is conspicuous. Nevertheless, he seems to be taking a more active part in those contracts in which the woman is the one in whose name the *homologia* is written or another kind of legal obligation is undertaken. Here, with one exception²⁶ we find the formula διὰ ἐπιτρόπου αὐτῆς, that is ‘through her ἐπίτροπος’. Thus a mother gives her daughter in marriage διὰ Βορκ. Ἄγλα ἐπιτρόπ[ου] αὐτῆς τοῦδε τοῦ πράγμα[τος χάριν].²⁷ Babatha summons Iohannes son of Joseph, her son’s guardian, to appear before the governor (παρήγγειλεν Βαβαθα Cίμωνος του Μαναήμου): διὰ ἐπιτρόπου αὐτῆς τοῦδε τοῦ πράγμα[τος] Ἰουδα Χθουσίωνος etc. (P.Yadin 14 lines 22–23). Similarly Babatha writes a deposition against her son’s guardians ‘through her guardian for that matter, Judah son of Khthousion, who was present and subscribed: [ἐμαρ]τυροποιήσατο ἡ Βαβαθα ὡς προγέγραπται διὰ ἐπιτρόπου αὐτῆς τοῦδε τοῦ πράγμα[τος] Ἰουδα Χθουσίωνος ὃς παρὼν ὑπέγραψεν (P.Yadin 15 lines 31–32). On the occasion of selling the date crop of three date groves to Shim’on son of Yeshu’a, Babatha uses Iohannes son of Makhoutha as guardian and subscriber: [δι]ὰ ἐπιτρόπου αὐτῆς καὶ ὑπογράφοντος Ἰωά(α)νης Μαχχουθας: ‘through her ἐπίτροπος who also subscribed Iohannes son of Makhouthas’ (P.Yadin 22 lines 28–29). Babatha summons Julia Crispina to come before the governor in Rabbathmoab: ‘through her *epitropos*, Maras son of Abdalgas from Petra (P.Yadin 25 lines 46–47): διὰ ἐπιτρόπου αὐτῆς Μαρὰς Ἀβ[δ]αλγού Πετραῖος. Finally Babatha acknowledges the receipt of maintenance money for her orphaned son through her ἐπίτροπος, Babelis son of Menaḥem: [δι]ὰ ἐπιτρόπου αὐτῆς Βαβελίς Μαναήμου (P.Yadin 27 line 18).

In contrast, in those contracts in which the woman is the recipient of an *homologia* – in all but one of the cases²⁸ –, we have merely the formula recording the presence of the ἐπίτροπος. Thus in P.Yadin 17, where Judah son of Eleazar Khthousion, Babatha’s second husband, acknowledges that he has received 300 *denarii* from her as a deposit to be paid on demand, only the presence of the *epitropos* is recorded: ὡμολογήσατο Ἰούδας Ἐλεαζάρου [Χ]θουσίωνος Ἰνγαδηνός πρὸς Βαβαθὰν Cίμωνος ἰδίαν γυναῖκα αὐτοῦ, συνπαρόντος αὐτῆ ἐπιτρόπου τοῦδε τοῦ πράγμα[τος] χάριν Ἰακώβου Ἰησοῦ (lines 21–24).²⁹ A similar case is that of XḤev/Se gr 65 (= P.Yadin 37): in this marriage contract the husband acknowledges the receipt of a dowry which transforms the union from an unwritten marriage (*ἀγραφος γάμος*) into a written marriage (*ἐγγραφος γάμος*). This is one of the reasons for restoring the text in the lacuna in lines 14–15 so as to record simply the presence of the ἐπίτροπος: συμπρόντος *c.* 8 letters] Μαίναημου ἐπιτρόπου τῆς αὐτῆς Κομαΐτης (lines 14–15).³⁰

It should be pointed out that in the last two cases the ἐπίτροπος of the woman is not her husband, for the obvious reason that P.Yadin 17 and XḤev/Se gr 65 involve the husband and wife as the two opposing parties to a contract creating a state of obligation between them.³¹

The opposite rule, however, does not seem to hold: the formula διὰ τοῦ ἐπιτρόπου αὐτῆς ‘through her ἐπίτροπος’ does not always occur in contracts in which the woman is the one in whose name the *homologia* is written or another kind of legal obligation is undertaken; here too, the mere presence of the *epitropos* can be recorded. In P.Yadin 16 Babatha declares her lands in the census held in the province of Arabia by its governor in 127, recording that her ἐπίτροπος, her second husband Judah son of Eleazar, is present with her: Βαβθα Cίμωνος Μωζηνῆ τῆς τῆς Ζοαρηνῆς περιμέτρου Πέτρας, οἰκοῦσα ἐν ἰδίῳ ἐν αὐτῆ Μωζα, ἀπογράφομαι ἃ κέκτημαι, συνπαρόντος μοι ἐπιτρόπου Ἰουδάνου Ἐλαζάρου

²⁶ The exception is P.Yadin 20, where Besas son of Yeshu’a and Julia Crispina concede a courtyard in Ein Gedi to Shelamzion, the daughter of Babatha’s second husband, who is said to act through her guardian: Cελαμιου Ἰούδου Ἰνγαδηνῆ διὰ ἐπιτρόπου αὐτῆς Ἰούδας τοῦ ὃς καὶ Κίνβερ Ἀναβίου Ἰνγαδηνοῦ τοῦδε τοῦ πράγμα[τος] χάριν, lines 25–27 = lines 5–6.

²⁷ ‘Through Bork., her *epitropos* for that matter’, XḤev/Se gr 69 line 4.

²⁸ P.Yadin 20, see above n. 26.

²⁹ The συμπρόντος αὐτῆ ἐπιτρόπου may be considered the equivalent of μετὰ κυρίου of the Egyptian papyri, see Rupprecht (n. 4), 98 and n. 47 there.

³⁰ ‘X son of Menaḥem, the ἐπίτροπος of the above-mentioned Komaiṣe, was present with her’.

³¹ See comments ad XḤev/Se gr 65 lines 14–15 in Cotton and Yardeni, 235–7.

κώμης Ἀινγαδδων περὶ Ἱερειχοῦντα τῆς Ἰουδαίας οἰκοῦντος ἐν ἰδίῳ ἐν αὐτῇ Μαωζα.³² In XHev/Se gr 64, the mother, Salome Gropte, writes a deed of gift in favour of her daughter, Salome Komaise, with her guardian merely recorded as present: Καλωμη ἡ καὶ Γροπτη Μαναημου συνπαρόντος αὐτῆς ἐπιτρόπου τοῦδε τοῦ πράγματος χάριν Ἰωσηπου Σιμωνος ἀνὴρ αὐτῆς.³³

The presence of the formula διὰ ἐπιτρόπου αὐτῆς in a case where the woman is not the subject of the *homologia*, but the receiver of one,³⁴ combined with its absence in contracts in which she is the one in whose name the *homologia* is written casts doubt on the attempt to draw a legal distinction between διὰ ἐπιτρόπου αὐτῆς and συνπαρόντος αὐτῆς ἐπιτρόπου; the two formulae might have been used interchangeably. If so, this further accentuates the minor role played by the guardian of a woman in these documents.³⁵

Furthermore, there are documents where a woman is involved, but no ἐπίτροπος accompanies her: in P.Yadin 19 Shlamzion receives a gift from her father; in P.Yadin 21 Shim'on son of Yeshu'a acknowledges purchase of a date crop from Babatha; in P.Yadin 23 Babatha receives a summons from Besas son of Eleazar to appear before the governor's court; in P.Yadin 24 Besas son of Eleazar challenges Babatha to prove that she is entitled to the date groves of her late husband which she has seized; in P.Yadin 26 Babatha and Miriam summon each other to appear before the governor's court; in XHev/Se gr 63 Salome Grapte receives a renunciation of claims from her daughter Salome Komaise; in XHev/Se gr 64 Salome Komaise receives a deed of gift from her mother Salome Grapte; finally in Mur 115 Elaios son of Shim'on acknowledges that he has been paid the two hundred drachmae of dowry by Salome son of Iohannes Galgoula: ὠμολόγησεν ὅτι αὐτὸς Ἰελαῖος Σίμωνος ἠριθμηθεῖται [c.34 letters] π[ρογε]γραμμένα] ζε εἰς λόγον προικὸς παρὰ Καλωμη Ἰωάνου Γαλγοῦλα, lines 6–7.³⁶ In none of these cases is there an ἐπίτροπος present with the woman.

To conclude the argument so far: in the majority of cases where the woman is the one in whose name the *homologia* is written or another kind of legal obligation is undertaken, she is said to be acting 'through her ἐπίτροπος' (διὰ τοῦ ἐπιτρόπου αὐτῆς), but sometimes even here his presence is merely recorded (συνπαρόντος αὐτῆς ἐπιτρόπου), as it is in transactions in which the woman is not the one in whose name the *homologia* is written or another kind of legal engagement is undertaken. And sometimes in such cases no ἐπίτροπος appears at all. There is certainly no question of the ἐπίτροπος, who is normally her husband except in the cases in which he is himself one of the parties to the transaction,

³² 'I, Babtha daughter of Simon, of Maḥoza in the Zoarene [district] of the Petra administrative region, domiciled in my own private property in the Maḥoza, register what I possess, present with me as my guardian being Judah son of Elazar, of the village of En-Gedi in the district of Jericho in Judaea, domiciled in his own private property in the said Maḥoza . . .', lines 13–17.

³³ 'Salome who is also known as Gropte, present with her her ἐπίτροπος for this matter, Josephus son of Shim'on, her husband', lines 3–5.

³⁴ I.e. P.Yadin 20 (see above, n. 26) lines 6–7 = line 27: ὁμολογοῦμεν συνκεχωρηκεῖν σοι ἐξ ὑπαρχόντων Ἐλεαζάρου τοῦ καὶ Χθουεῖωνος τοῦ Ἰούδου πάπου σου αὐτὴν ἐν παντὶ δικαίῳ αὐτῆς . . . etc.'.

³⁵ Further proof may be 'the rapid turnover' of ἐπίτροποι in the documents; in addition to Judah son of Eleazar Khthousion, her second husband, Babatha is represented by no less than four different ἐπίτροποι between 128 and 132: Jacob son of Yeshu'a (P.Yadin 17), Yoḥana son of Makhoutha (P.Yadin 22), Maras son of Abdaglos of Petra, a Nabataean (P.Yadin 25) and Babelis son of Menaḥem (P.Yadin 27). None of them is said to be related to her; see É. Puech, 'Présence Arabe dans les manuscrits de "la Grotte aux Lettres" du wadi Khabra', *Actes de la table ronde internationale organisée par l'Unité de recherche associée 1062 du CNRS, Études sémitiques, au Collège de France, le Novembre 13 1993*, ed. H. Lozachmeur, Paris, 1995, 37–46.

³⁶ In XHev/Se gr 63, where the daughter renounces her rights vis-à-vis her mother, we could have expected the formula διὰ τοῦ ἐπιτρόπου αὐτῆς 'through her ἐπίτροπος'. However, this formula fails to fill the entire space in the lacuna in line 1, and the longer formula which records the presence of the ἐπίτροπος has to be restored there: ἐξωμολογήσατο καὶ συνεγράψατο Καλωμη Ληουεῖ τρουῖ . . . συνπαρόντος αὐτῆς ἐπιτρόπου + 7 letters] Σιμωνος ἀνδρὸς αὐτῆς τοῦδε τοῦ (. . .) πράγματος χάριν] πρὸς Καλωμην τὴν [καὶ Γραπτη]ν Μαναημου: '[Sa]lome daughter of Levi . . . present with her as her guardian for the purpose] of this matter, her husband [Sammou]os(?) son of Shim'on – [acknow]ledged and agreed in w[riting], vis-à-vis Salome also (called) [Grapt]e daughter of Menaḥem', lines 1–2.

managing the woman's property; and there is no doubt at all that women could own property and dispose of it as they wished.

In view of the conspicuous passivity of the ἐπίτροπος of a woman in the Greek documents, it would seem that his absence from the Semitic documents is just a matter of form and procedure required by the courts for which the Greek contracts were intended. Which courts are these? One notices that all Greek documents in which a woman appears with her guardian, both in Arabia and in Judaea, were written under Roman rule, and, as suggested above, under the influence of Roman law. Does the presence of an ἐπίτροπος of a woman show incontrovertibly that the Greek documents were intended for a Roman court of law, and his absence from the Semitic documents that they were intended for other courts? In order to claim this we should have to prove that the Semitic documents too were written under Roman rule. Unfortunately the nature of the evidence hampers us in this attempt: 1) in some of the documents the date is missing;³⁷ 2) others are too lacunose for us to know if an ἐπίτροπος was present there;³⁸ 3) the absence of the ἐπίτροπος in Semitic documents dated to the Roman period may be due to the role played by the woman in them: Mur 19 (18 October 111 CE) is a writ of divorce given to the wife by her husband; Mur 20 (117 CE) is a marriage contract, and in fact an acknowledgement by the husband of the debt of the *ketubba*; XHev/Se ar 12 (30 January 131) is a receipt given to Salome Komaïse by the tax or rent collectors – all three documents might not have called for the presence of an ἐπίτροπος even under Roman rule; 4) other Semitic documents in which a woman takes part in the proceedings were not written under Roman rule: the Nabataean P.Yadin 1 (94 CE) and P.Yadin 2–3 (99 CE), XHev/Se nab 2 (ca. 100 CE) were written under Nabataean rule; Mur 29 (133 CE), 30 (135 CE), XHev/Se ar 7 (135 CE), 8a (134 or 135 CE) and 13 (134 CE) were all written during the Bar Kokhba revolt. The dating by the year of the revolt shows clearly that the contractors recognized the rebels as the only legitimate government. In some of these documents we find the women acting together with their husbands: in X^eev/Se ar 7 the wife is selling property together with her husband; in Mur 30 and XHev/Se ar 8a (perhaps also Mur 29) the wife waives all claims on the property sold by her husband, presumably because it guaranteed the return of her *ketubba* or dowry. Consequently, it could be claimed that the absence of a guardian may well be due to the fact that he would be superfluous, even under Roman legal procedures.

A single document belonging to the last-mentioned group shows a woman unaccompanied by an ἐπίτροπος as the principal to an action: XHev/Se ar 13 of 134 CE is a deed of renunciation of all claims on the wife's part after a divorce.³⁹ Three times, in different variations, the phrase 'I have no claim against you' recurs. In lines 8–9 we find: [מ]לח מדעה ל[א] איה' לי עמך א[נת] אלעור על צבת כל מדעם. We know from XHev/Se gr 63, a deed of renunciation of all claims, which repeats twice or three times the same phrasing in Greek: μηδένα λόγον ἔχειν πρὸς αὐτήν (lines 4, 8, 11), that under Roman rule such a deed required the presence of the ἐπίτροπος of a woman.⁴⁰ It seems obvious that under Bar Kokhba's rule a woman did not need an ἐπίτροπος. What remains obscure is whether a similar deed, although written in Aramaic, if written under Roman rule, would have required the presence of an ἐπίτροπος.⁴¹

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³⁷ Mur 20 (marriage contract); XHev/Se ar 50 + Mur 26 (deed of sale).

³⁸ XHev/Se ar 11 (marriage contract, perhaps of 113/4 CE).

³⁹ Contra T. Ilan ('Notes and Observations on a Newly Published Divorce Bill from the Judaean Desert', *Harvard Theological Review* 89, 1996, 195–202), this document is *not* a writ of divorce, even though it refers to such an instrument.

⁴⁰ See Cotton and Yardeni, 195–6 (Introduction to XHev/Se gr 63).

⁴¹ This paper is based on a lecture given at the International Congress on 'The Dead Sea Scrolls – Fifty Years after their Discovery' held at The Israel Museum, Jerusalem, July 20–25, 1997; I am grateful to the participants for their comments, and to Dieter Hagedorn and Werner Eck for insightful criticism of an earlier version.