THE GUARDIANSHIP OF JESUS SON OF BABATHA: ROMAN AND LOCAL LAW IN THE PROVINCE OF ARABIA*

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The Babatha archive contains documents of a Jewish woman who lived in the village of Maoza situated on the southern shore of the Dead Sea, in what had been the kingdom of Nabataea and became in 106 C.E. the Roman province of Arabia. The first dated document in the archive dates to 22 Elul (August/September) 94 and the last to 19 August 132; some of the documents therefore precede the annexation of Arabia, but the majority follow it. This offers a rare opportunity to examine the consequences of Roman annexation: by examining in detail the changes effected by the Roman presence in the newly acquired province of Arabia, we may improve our picture of Roman provincial government and the relationship between Roman law and native local law, as well as our understanding of the reaction of the provincial population to Roman rule.

Although I have not attempted to do so, I believe that the results of the investigation could usefully be compared with what is known about the annexation of Egypt in 30 B.C.E., since the answer bears directly on the question of the alleged special status of Egypt: to what extent was Egypt different from other provinces?[1]

The remarkable rate of Romanization in the new province of Arabia struck scholars first introduced to the archive.[2] How were we to account for the fact that a young province which had previously been ruled by vassal kings was so swift to adopt Roman forms? The publication of the Greek part of the archive by Lewis only strengthened the first impression.[3] 'The most prominent Roman elements' are now conveniently summed up for us in the General Introduction; special emphasis is rightly put on the adoption of the Roman pattern of dating by consuls.[4]

Romanization, however, is not the only issue at stake. The owner of the archive was a Jewish woman. Although the term Ἰουδαίου is mentioned only in connection with her orphaned son by her first husband (*P.Yadin* 12, l. 7), there can be no doubt that she is Jewish.[5] And so are her second husband and his wife and children, as well as most of her adversaries. How is their Jewishness expressed in the archive?

I propose here to concentrate on a single issue, that of the guardianship of Babatha's orphaned son, Jesus (Joshua), her son by her first husband,[6] and to examine its implications for the questions raised above, namely the extent of Romanization and its nature, seen against the background of the local Nabataean and Jewish milieu.

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[1] N. Lewis, '"Greco-Roman Egypt": fact or fiction?', *Proc. XIIth Int. Congr. Papyrology 1968* (1970); J. Keenan, 'Papyrology and Roman history: 1956–1980', *The Classical World* 76 (1982–3), 30–1; N. Lewis, 'The Romanity of Roman Egypt: a growing consensus', *Atti del XVII Con. Int. di Papirologia* (1984). For the legal situation in Egypt in the first two centuries after the Roman conquest, see J. Modrzejewski, 'La règle de droit dans l'Egypte romaine', *Proc. XIIth Int. Congr. Papyrology 1968 = American Studies in Papyrology* 7 (1970), 317–77; and see 1 → A. K. Bowman and D. Rathbone, 'Cities and administration in Roman Egypt', *JRS* 82 (1992), 107–27 and D. Rathbone, 'Egypt, Augustus and Roman taxation', *Cahiers du Centre G. Glotz* 4 (1993), 81–112.

[2] e.g. H. J. Wolff, 'Römisches Provinzialrecht in der Provinz Arabia', *ANRW* II.13 (1980), 763–806, most poignantly on p. 785: 'Wie konnte ein so spezifisch römisches Gebilde wie eine Prozessformel überhaupt in das peregrine Rechtsleben dieser entlegenen und erst kürzlich eingerichteten Provinz gelangen?'

[3] N. Lewis, *The Documents from the Bar Kokhba Period in the Cave of Letters. Greek Papyri* (1989) = *P.Yadin*; henceforth 'Lewis'. This volume contains also 'Aramaic and Nabataean Subscriptions' to the Greek documents edited by Y. Yadin and J. C. Greenfield. The Aramaic and Nabataean documents themselves — *P.Yadin* 1–4; 6–10 — have not yet been published.

[4] Lewis 16ff. and 27ff. It should be noted that the unpublished Aramaic documents (*P.Yadin* 6–10), as I am kindly informed by J. C. Greenfield, also carry consular dates, in addition to the era of the province and the regnal year of the emperor (the latter replaces the regnal year of the Nabataean kings of the Nabataean documents *P.Yadin* 1–4; see also *Revue Biblique* 61 (1954), 163, frag. a, l.1 with note 9 below).

[5] Goodman's arguments for her possible non-Jewishness → ('Babatha's Story', review of Lewis in *JRS* 81 (1991), 170 [her name]; 175) seem to me far less convincing than the genealogical table in Lewis, 25.

[6] It is interesting to note that the deeds concerning his guardianships were tied together in the leather purse where the archive was found; see Y. Yadin, 'Expedition D — The Cave of the Letters', *IEJ* 12 (1962), 235. One would like to know if *P.Yadin* 28–30, the three copies of the *actio tutelae*, were tied together with them.

I

The guardianship of Jesus is mentioned for the first time in a document of 124 C.E. (*P.Yadin* 12, ll. 4–8):[7] which is an extract from the minutes of the city council of Petra: ἐγγεγραμμένον καί ἀντιβεβλημένον κεφαλαίου ἑνὸς <ἐπιτροπῆς> ἀπὸ ἄκτων βουλῆς Πετραίων τῆς μητροπόλεως ... καί ἔστιν καθὼς ὑποτέτακται· καί Ἰασσούου Ἰουδαίου υἱοῦ Ἰασσούου κώμης Μαωζα Ἀβδοβδας Ἰλλουθα καί Ἰωάνης Ἔγλα.[8] The καί 'copied from the minutes indicates that other items preceded this one' (Lewis ad loc.); the omission of the predicate after the genitive Ἰασσούου Ἰουδαίου υἱοῦ Ἰοσσούου and the nominatives Ἀβδοβδας Ἰλλουθα καὶ Ἰωάνης Ἔγλα suggest very strongly that the predicate was common to a list of items, and thus it must have read: 'have been appointed as guardians'.[9] Hence it is quite likely that the minutes contained a list of similar appointments, and as a whole could be described as a 'register of guardians'.[10]

The appointment of guardians by the city council, οἱ κατασταθέντες ἐπίτροποι ὑπὸ βουλῆς τῶν Πετραίων (*P.Yadin* 13, ll. 19–21), recalls immediately the Roman institution of *tutoris datio* (appointment of guardian) by a magistrate.[11] It fits well with the Roman character of the entire document, which is in fact a literal translation when it is not a transcription into Greek (e.g. ἀπὸ ἄκτων)[12] of a Latin document. It is true that the testimony of the *Digest* does not speak of the appointment of guardians by the city council, but rather by the city magistrates: 'Ius dandi tutores [tutorem?] datum est omnibus magistratibus municipalibus' (Ulpian, *Dig.* XXVI.5.3).[13] However, the Lex Municipii Salpensani,[14] and now also the Lex Irnitana[15] — IIIC <29>: *De tutorum datione* — demonstrate that the appointment of guardians to children under age (*impuberes*) by city magistrates, in their case *duoviri*, is done — in certain circumstances[16] — *ex decreto decurionum*.[17] The same phrasing appears in a wax tablet from Herculaneum (albeit in a case of a guardian for a woman):[18] 'Cassius Cr[ispu]s IIvir ex decurionum decre[to, quo ne ab] iusto tutore [tutela abeat, ex] lege Iulia [et Titia dixit

[7] *P.Yadin* 7 assumes that Babatha was still married to her first husband on 24 Tammuz 120: it declares that if she were to become a widow she could live in one of the houses on her father's property. There is no mention of a son. Since she acknowledges the receipt of money from guardians on 19 April 132, the boy must have been quite young in 124, when the guardians were first appointed. It is less likely that by then she had already been married to her second husband.

[8] 'Verified exact copy of one item of [guardianship] from the minutes of the council of Petra the metropolis ... and it is as appended below: "And of Jesus, a Jew, son of Jesus of the village Maoza, 'Abdobdas son of Illouthas and John son of Eglas [are appointed guardians]"'.

[9] cf. e.g. *P.Yadin* 13, ll. 19–21 (οἱ κατασταθέντες ἐπίτροποι [ὑπ]ὸ βουλῆς τῶ[ν] Πετρα[ί]ων Ἀβδοοβδα<ς> Ἐλλουθακαὶ Ἰωάνης[Ἔγλ]α); 14, ll. 23–4; 15, ll. 4–5 = 18–19. The verb καθίστημι is commonly used in Egyptian papyri for the appointment of guardians: e.g. *P.Ryl.* 121 (II C.E.), ll. 11–12: καὶ ἐπίτροπος [α]ὐτοῦ οὐ κατεστάθη; ll. 15–16: [ἐ]πίτροπον αὐτῷ καταστα[θῆ]ναι; *P.Oxy.* 898 (123 C.E.), ll. 28–9: ἕτερόν μου ἐπίτροπον κατασταθῆναι.

[10] So H. J. Polotsky, 'The Greek papyri from the Cave of Letters', *IEJ* 12 (1962), 260, but not for the whole province, as assumed by Wolff, op. cit. (n. 2), 789f. The occurrence of 'metropolis' in the title of Petra does not make it into the capital of the province, see G. Bowersock, 'The Babatha papyri, Masada and Rome', *JRA* 4 (1991), 340, n. 7 summing up his previous references. On administrative divisions and boundaries, see B. Isaac, 'The Babatha archive', *IEJ* 42 (1992), 63–4; 67–70.

[11] The need to appoint a guardian by a magistrate arose only when no guardian had been nominated in the will of the deceased (*tutor testamentarius*) and there was no agnate available to be *tutor legitimus*, see A. Watson, *The Law of Persons in the Later Roman Republic* (1967), 114–30.

[12] For Latinisms in the archive, see Lewis, Introduction III.2, pp. 16ff. However, we do find ἀπὸ ἄκτων βουλῆς elsewhere, e.g. *OGIS* 595 (Tyre, 174 C.E.): for more examples for the use of *acta* in connection with a *boulê* see H. J. Mason, *Greek Terms for Roman Institutions* (1984), 20, *s.v.*; see now ἐπὶ τὰ ἄκτ[α] in Sh. Dar and N. Kokkinos, 'The Greek inscription from Senaim on Mount Hermon', *PEQ* 124 (1992), p. 13: No. 2, line 4 and p. 16.

[13] cf. *Dig.* XXVI.5.24; XXXVIII.17.2.23: 'quoniam et magistratibus municipalibus dandi [sc. tutores] necessitas iniungitur', and the whole tenor of *Dig.* XXVII.8 (suits against magistrates). Admittedly there are texts which suggest that the municipal magistrates had but a limited authority for appointing guardians: e.g. *Dig.* XXVI.7.46.6: 'praesidis provinciae praecepto a magistratibus alius tutor datus est'; XXVII.8.1.5: 'si curatores fuerunt minus idonei dati, dicendum est teneri magistratus oportere, si ex suggestu eorum vel nominibus ab eis acceptis praeses dederit'; XXVI.5.24 (when the city magistrates have to look elsewhere for suitable guardians) 'nomina praesidi provinciae mittere, non ipsos arbitrium dandi sibi vindicare'; XXVII.10.2; *Cf* V.34.6.

[14] *FIRA* I², no. 23.

[15] *JRS* 76 (1986), 157.

[16] The city council participates in the *duovir*'s appointment of guardians only in cases in which he was unable to make the appointment in consultation with his fellow-magistrates, ibid., ll. 22ff. For the participation of the decurions, see *Dig.* XXVI.5.19 *pr.*; 6.3; XXVII.8.1 *pr.*

[17] ibid., ll. 25–9: 'Is a quo ... postulatum erit, causa cognita in diebus X proxumis, ex decreto decurionum ... eum, qui nominatus erit ... ei [sc. pupillo pupillaeve] tutorem dato'; 'the person from whom the request has been made, once the case has been examined, within ten days, *according to the decree of the decurions* ... is to grant as guardian to him (or her) the person who has been nominated'.

[18] M. della Corte, 'Tabelle cerate ercolanesi', *Parola del Passato* 6 (1951), 228, no. 13; for the reconstructed text, see V. Arangio-Ruiz, 'Due nuove tavolette di Ercolano relative alla nomina di tutori muliebri', *Studi P. de Francisci* 1 (1954), 3–12.

Aresc]usae Q. Vibidius [A]mpliatus sit tuto[r]'. Thus the phrase οἱ κατασταθέντες ἐπίτροποι ὑπὸ βουλῆς τῶν Πετραίων is not incompatible with the interpretation that here too the magistrates acted 'according to a decree of the council'.[19]

The application of Roman legal forms to Petra is surprising: translated into Latin, the document could have been issued by a municipality with Latin rights in the West. Since it is impossible to believe that Petra possessed Latin status, the document assumes a high degree of Romanization in a native city that had just come within the Roman sphere of influence.[20]

If we compare the situation with that in Egypt[21] we discover that it was the Strategos,[22] the Grammateus[23] or the Exegetes[24] who appointed guardians for peregrine orphans.[25] This could well reflect the absence of city councils and magistrates there.[26] It would be interesting to know the practice in other cities in the eastern part of the Empire where these did exist.

In Egypt we find the mother exercising guardianship alongside a male guardian and sometimes alone — obviously a remnant of peregrine law,[27] perhaps modified under Roman influence.[28] Roman law, as we shall see below in greater detail, barred women from the exercise of guardianship in no uncertain terms.[29]

Nevertheless, we do have another woman in the archive who seems to share the duties of a guardian with a Jew called Besas. I refer to the 'mysterious' Iulia Crispina.[30] She appears for the first time with Besas in *P.Yadin* 20: 'Besas son of Jesus, En-gedian domiciled in Mazraä, guardian — ἐ<πί>τροπος — of the orphans of Jesus son of Khthousion, and Iulia Crispina, supervisor — ἐπίσκοπος' (ll. 4–5; see ll. 23–5). Together they concede rights over a courtyard: 'We acknowledge that we have conceded to you, from the property of Eleazar (also known as Khthousion) son of Judah, your grandfather, a courtyard ... etc,';[31] and promise to register it with the authorities: 'This courtyard I will register for you with the public authorities wherever you wish',[32] as well as defend it against any counterclaim: 'And if anyone enters a counterclaim for the said courtyard, we will conduct a firm legal defence and will clear it for you of any counterclaimant at our own expense'.[33] In *P.Yadin* 23–4 Besas acts alone, disputing Babatha's right to a date orchard that had belonged to her late second husband. But in *P.Yadin* 25, because of her partner's ailment, Iulia Crispina is on her own, launching a παραγγελία.[34]

[19] N. Lewis in 'Two Greek documents from the Provincia Arabia', *Illinois Classical Studies* 3 (1978), 110 rightly cites Ulpian, *Dig.* XXVII.8.1: 'si a magistratibus municipalibus tutor datus sit, non videtur per ordinem electus', for 'possible involvement' of the entire city council.

[20] There is nothing to suggest that Petra even had the constitution of a Greek *polis* before 114, see G. Bowersock, *JRS* 72 (1982), 198. Note, however, that it became a *colonia* under Elagabalus, see S. Ben-Dor, 'Petra *Colonia*', *Berytus* 9 (1948–9), 41–3; F. Millar, 'The Roman *coloniae* of the Near East: a study of cultural relations', in H. Solin and M. Kajava (eds), *Roman Eastern Policy and Other Studies* (1990), 51.

[21] R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri (332 B.C.–640 A.D.)* (2nd edn, 1955), 161; Mitteis, *Grundzüge* 1, 254.

[22] *P.Brem.* 39 (113/120 C.E.); *P.Oxy.* 898 (123 C.E.)

[23] *P.Oxy.* 487 = *M.Chr.* 322 (156 C.E.), but see Hunt's reservation in *P.Ryl.* 121 about the *grammateus*' authority to appoint guardians.

[24] *P.Mich.* 23 → *JEA* 18 (1933), 139 (36 C.E.) = *SB* 7568; *P.Ryl.* 121 (II C.E.); *M.Chr.* 323 (218 C.E.).

[25] cf. N. Lewis, *BASP* 7 (1970), 116–18.

[26] But see now Bowman and Rathbone, op. cit. (n. 1).

[27] M. Kaser, *RP*[2] (1971), §85 and n. 5; Taubenschlag, op. cit. (n. 21), 153–5; 158f.; Mitteis, *Grundzüge* 1, 253. By virtue of provisions laid down in the father's will or in the marriage contract, the mother could either share the guardianship with a male relative, or even exercise it alone: for appointment by will, see e.g. *SB* 9065 (I B.C.E. = E. P. Wegener, 'Petition concerning the dowry of a widow', *Mnemosyne* 13 (1947), 302–16), ll. 5–8; and for marriage contracts, see *P.Oxy.* 265 (81–95 C.E.), ll. 28–30, 496 (127 C.E.), l. 12 and 497 (II C.E.), ll. 12–13. In *BGU* 1813 (62/1 B.C.E.), *P.Mich.* 232 (= *SB* 7568, 36 C.E.) and *P.Oxy.* 898 (123 C.E.) the mother is designated ἐπίτροπος with no mention of a will or a marriage contract.

[28] See O. Montevecchi, 'Una donna "prostatis" del figlio minorenne in un papiro del II[a]', *Aegyptus* 61 (1981), 114 and see below at n. 36.

[29] 'There was no exception': see W. W. Buckland and P. Stein, *A Text-Book of Roman Law from Augustus to Justinian* (3rd edn, 1966), 150.

[30] Y. Yadin, *Bar Kokhba* (1971), 247; and see the ingenious reconstruction → T. Ilan, 'Julia Crispina daughter of Berenecianus, a Herodian princess in the Babatha archive — a case study in historical identification', *JQR* 82 (1992), 361–84.

[31] ὁμολογοῦμεν συνκεχωρηκέναι σοι ἐξ ὑπαρχόντων Ἐλεαζάρου τοῦ καὶ Χθουσίωνος τοῦ Ἰούδου πάπου σου αὐλὴν (ll. 6–8, see ll. 27–9).

[32] ταύτην δὲ τὴν αὐλὴν ὅπου ἂν βουληθῇς τευχίσω σοι διὰ δημοσίων (ll. 12–13, see ll. 34–6).

[33] ἔαν δέ τις ἀντιποιήσῃ τῆς προγεγραμμένης αὐλῆς σταθόντες ἐγδικήσωμεν καὶ <κα>θαροποιήσομεν ἀπὸ παντὸς ἀντιποιουμένου ταῖς εἰδίαις ἀναλώμασιν (ll. 13–16, see ll. 36–9). The switch from plural to singular (i.e. from 'we' to 'I') may be nothing more than inadvertence; it is quite common in Egyptian papyri (as pointed out to me by N. Lewis); thus the τευχίσω may not prove that, unlike Besas, Iulia Crispina could not register land with the authorities.

[34] [ἐπὶ τῶν ἐπι]βεβλημένων καὶ ἐπισφραγισαμένων [μαρ]τύρ[ων π]αρ[ήνγιλ[εν Ἰου[λία Κ[ρ[ισπῖν]α θ[υ]γατὴρ Βερνικιανοῦ [ἐπίσκο]πος τῶν [[ν]] ὀρφανῶν Ἰησούου Χθουσίωνος Βαβαθ[ας Σί]μωνος· ἐπιδὴ ὁ ἐπίτροπος Βησᾶς Ἰησούου τῶν αὐτῶν [ὀρ]φανῶν ἀσθενέστερός ἐστιν καὶ οὐκ ἠδυνάσθη παρ[ανγῖλε] ἐσ[ὲ σ]ὺ[ν] ἐ[μο]ί (ll. 1–6).

It is true that she is called ἐπίσκοπος rather than ἐπίτροπος. Ἐπίσκοπος is used in a technical legal sense only once — so far as I know — in pre-Christian Egyptian papyri:[35] this is too early to have any relevance to our case. Perhaps it is because the term lacks a technical legal sense, that it could be applied to Iulia Crispina in order to describe her position *vis-à-vis* the orphans:[36] she is their caretaker, she looks after them and their interests.[37] John Rea has recently pointed out the similarity between Iulia Crispina and the Egyptian ἐπακολουθήτρια,[38] or παρακολουθήτρια,[39] who also appears accompanied by a male guardian, but who is attested in Egyptian papyri only from the second half of the second century.[40] If indeed, as seems quite likely, the later institution was created to satisfy the strictures imposed by Roman law on the exercise of guardianship by women,[41] then we may have in Arabia the first example for such an adaptation of local custom, and another expression of Romanization. Admittedly, this contrasts sharply with Babatha's total exclusion from the guardianship. There may be circumstances unknown to us which may explain the special status enjoyed by Iulia Crispina. One notices immediately that she is not represented by a male guardian[42] like the other women in the archive.[43]

II

If Babatha's legal position *vis-à-vis* her orphaned son is not easily explained by the so-called 'law of the papyri', this is hardly a cause for surprise, since the latter was to a large extent

[35] In *P.Petr.* iii 36 (a) (= *M.Chr.* 5), ll. 16–17: ἐπὶ τῶν ἀποδεδιγμένων ἐπισκόπων. It is used 'to describe the judges specially qualified to judge complaints made against officials' (so Turner in *P.Hib.* 2, p. 109), but this belongs to the iii B.C.E., as does *P.Hib.* 2.198, l. 242, where ἐπισκοπεῖν ... is said to 'evoke the idea of an administrative enquiry' (p. 109). Cf. also ἐπισκοπείτ[ω ὁ οἰκονόμος in *P.Rev.* (259 B.C.E.), col. 33, l. 2 (re-edited by J. Bingen in *SB* Beiheft 1 (1952)) and ἐπισκοπεῖν in *P.Tebt.* 3.1.703, ll. 47; 183 (late iii B.C.E.) instructions of the *dioiketes* to the *oikonomos* 'to look into controversies between the farmers and the village scribes or the *comarch*' Finally περὶ τῶν τοιούτων ἐπισκ[οποῦσι] [οἱ] δικασταί in *P.Oxy.* 46, 3285, l. 34 appears in a second-century C.E. copy of a Greek translation of a demotic legal code which itself goes back to the Pharaonic period; see J. Rea's introduction in *P.Oxy.* vol. 46, pp. 30–1.

We find ἐπίσκοποι as municipal or village magistrates in the inscriptions (e.g. M. Sartre, *Bostra*, Bibliothèque Archéologique et Historique CXVII (1985), 81–2 and H. I. MacAdam, *Studies in the History of the Roman Province of Arabia*, BAR 295 (1986), 169f., iii C.E., Trachonitis). See also *Dig.* L.4.18.7 (Arcadius Charisius' list of civil liturgies): 'item episcopi, qui praesunt pani et ceteris venalibus rebus, quae civitatium populis <ad> cotidianum victum us<ui> sunt, personalibus muneribus funguntur' ('The *episcopi*, in charge of the daily supply of bread and other victuals to the population of the cities, also perform personal liturgies'). But I do not think that Iulia Crispina was a magistrate.

[36] As suggested by O. Montevecchi to explain the term προστάτις acquired by the mother of an orphan by the terms of her marriage contract: [προστάτις] τῆς οὔσης αὐτοῦ (*sc.* ὀρφανοῦ) ἀπὸ συγγραφῆς συνοικισίου, τῆς αὐτοῦ μητρός (*P.Med.Bar.* 1 (142 B.C.E.), ll. 4–6): '*Prostatis* è usato qui ad indicare una funzione di responsibilità della donna nei riguardi del figlio, un potere su di lui, che si avvicina alla tutela pur senza averne il carattere giuridico', op. cit. (n. 28), 107.

[37] Like the faithful shepherd, ἐπίσκοπος, of the New Testament, on which see G. Kittel, *Theologisches Wörterbuch zum neuen Testament* (1935), 2, p. 611ff. For the association of ἐπίσκοπος and Hebrew 'Mebaqqer' (מבקר, e.g. *Damascus Covenant* 14:12–16), see now J. C. Greenfield and M. Stone, 'Two notes on Aramaic Levi', in H. W. Attridge *et al.* (eds), *Of Scribes and Scrolls, Studies in the Hebrew Bible, Intertestamental Judaism and Christian Origins presented to J. Strugnell* (1990), 153–61, esp. 158–61.

[38] For example in *P.Mich.Inv.* 20 → *JEA* 18 (1932), 70 [172/3 C.E.] = *SB* 7558 = *FIRA* III², no. 30) a grandmother is appointed in the father's will joint guardian with two other men; they are designated ἐπίτροποι (l. 6) whereas she is called ἐπακολουθήτρια (l. 7).

[39] *P.Oxy.* 3921, ll. 6; 49 (219 C.E.) and see J. Rea ad loc. I find it hard to believe, though, that she is the mother of the orphans and the widow of Jesus, son of Eleazar. In the Egyptian papyri the relationship of the ἐπακολουθήτρια/παρακολουθήτρια to the ward(s) is always pointed out. I agree, though, that she may not be a Roman citizen. Had she been one, it would have made it less rather than more likely that she would be exercising the duties of a guardian. For her Roman name, see Rea.

[40] See Montevecchi, op. cit. (n. 28), 109 and nn. there for a full list.

[41] So Montevecchi, op. cit. (n. 28), 111ff. She points out that all the occurrences of a female ἐπίτροπος come from peregrine contexts, and that the terms ἐπίτροπος and ἐπακολουθήτρια do not overlap: there is no female ἐπίτροπος after 123 C.E.

[42] Note that in the archive the word ἐπίτροπος is used both for the guardian of minors and for that of women; in Greek-speaking lands the traditional term for the latter was κύριος. See H. J. Wolff ('Le droit provincial dans la province romaine d'Arabie', *RDIA* 23 (1967), 279–83) for the significance of the confusion here. Note, however, that in the Aramaic the guardian of a woman is called אדון — *Adon* — κύριος: e.g. *P.Yadin* 15, l. 37: יהודה בר כתושין אדון בבתה 'Yehudah son of Khthousion "lord" of Babatha'.

[43] Babatha is represented by her second husband, Judah son of Khthousion (*P.Yadin* 14, ll. 22–3; 15, ll. 31–2; 16, ll. 35–6), by Jacob son of Joseph (*P.Yadin* 17, ll. 4–5 = ll. 22–3), by John son of Makhouthas (*P.Yadin* 22, ll. 28–9) and by Babelis Son of Menahem (*P.Yadin* 27, ll. 4–5; 18). Salome (alias Komais) is represented by X son of Menahem (*P.Yadin* 37, l. 15). Could the mere fact of her literacy — she signs her name in Greek (*P.Yadin* 20, ll. 43–4) — have made the difference between Iulia Crispina and the other women in the archive? There is no simple answer to this question, see R. Taubenschlag, 'La compétence du κύριος dans le droit gréco-égyptien', *Opera Minora* II (1959), 353– → H. C. Youtie, 'ΑΓΡΑΜΜΑΤΟΣ: An aspect of Greek society in Egypt', *HSCP* 75 (1971), 166 = *Scriptiunculae* II (1973), 616.

shaped by a mixture of Egyptian and Greek legal practices and customs.[44] Whether her situation as well as her course of action could be accounted for by Nabataean legal practices, we have no means of knowing. Whatever there is to know about Nabataean law is enshrined in the unpublished part of the archive. But in view of Babatha's Jewishness, it is legitimate to ask what rights she would have had under Jewish law and practices. In other words, what do we know about the rules governing the appointment of a guardian as well as about the status of the mother of an orphan in Jewish law of the time? I shall then use the information contained in the archive itself, namely Babatha's own awareness and behaviour, in order to address the more fundamental question of whether there was any operative Jewish legal system in the period concerned.[45] Traditionally interpreted, the Jewish legal texts from this period (see below) give us the biased view that Rabbinic or Halakhic Judaism as we know it has always been there and that Rabbinic Judaism was the only manifestation of Judaism.[46]

Naturally I shall base my study of the principles governing the Jewish law on guardianship in this period only on Tannaitic sources,[47] that is sources that roughly belong to the period 70 C.E. — the destruction of the Temple — and the end of the second century C.E. — the redaction of the *Mishnah* by Judah the Patriarch (R. Yehudah *ha-Nasi*).[48] The *Mishnah* is the authoritative collection of religious law which had been formulated in the rabbinic schools during that period. There is, however, Tannaitic material outside it. *Barayta*[49] 'designates all Tannaitic teachings and sayings outside the *Mishnah*',[50] and thus is assumed to be roughly contemporary with it.[51] A special collection of *baraytot* is the *Tosefta* ('addition, supplement'), which is much more extensive than the *Mishnah*;[52] the relationship between the two is still far from clear.[53] Greater precision for individual passages can sometimes be achieved on the basis of rabbinic names cited in them.[54]

Jewish law does not have its own term for the institution of guardianship, but borrowed the Greek term ἐπίτροπος to describe a guardian.[55] Gulak assumed that the institution developed under the influence of Hellenistic and Roman law.[56] On the other hand the conceptual differences between the Roman and the Jewish forms of guardianship put this

[44] J. Modrzejewski, 'La règle de droit dans l'Egypte ptolémaïque', *Essays in Honor of C. Bradford Welles* (1966), 125–73.

[45] See above all M. Goodman, *State and Society in Roman Galilee, A.D. 132–212* (1983), *passim*, but esp. 3–24; 93–118; 155–71; 178–81, who thinks that the authority of the Rabbis was slow in evolving and became dominant only from mid-third century onwards. See also E. Goodenough, *Jewish Symbols in the Greco-Roman Period* (1953–1968), vol. 12, 184–98; *con* → M. Smith, 'Goodenough's *Jewish Symbols* in retrospect', *JBL* 86 (1967), 53–68; E. E. Urbach, 'The rules of 'Abodah Zara (idolatry) and the archaeological-historical reality in Eretz Israel in the second and third centuries', *Eretz Israel* 5 (1958), 189–205 = *The World of the Sages: Collected Studies* (1988), 125–78 (Hebrew); L. Levine, *The Rabbinic Class of Roman Palestine in Late Antiquity* (1989), ch. 3.

[46] H. L. Strack and G. Stemberger, *Introduction to the Talmud and Midrash* (1991), 54–5.

[47] 'Aramaic *tanna*, from Hebrew *shanah* "to repeat, learn"', *tannaim*: 'the masters of teaching transmitted by continual oral repetition', Strack-Stemberger, op. cit. (n. 46), 7. The *Tannaim* were active in the first two and half centuries of our era and were followed 'by the *Amoraim* (*amar*, "to say", comment: the commentators of the Tannaitic teachings) up to *c.* 500' (Strack-Stemberger).

[48] Strack-Stemberger, op. cit. (n. 46), 123; 155–6.

[49] 'Lit. the "outside" teaching (short for Aramaic *matnita baraita*)', Strack-Stemberger, op. cit. (n. 46), 195.

[50] ibid. The term usually refers to Tannaitic teachings quoted verbatim and commented on in the Palestinian and Babylonian Talmuds.

[51] This assumption sometimes proves to be wrong: some *baraytot* were either mistakenly or falsely ascribed to the Tannaim, see Strack-Stemberger, op. cit. (n. 46), 216–17, see also 54.

[52] Strack-Stemberger, op. cit. (n. 46), 168–9.

[53] Strack-Stemberger, op. cit. (n. 46), 168–77. Both the *Mishnah* and the *Tosefta* as we now have them consist of six main divisions or orders (*sedarim*), each of which consists of tractates, subdivided into chapters and sentences. The method of citation is by work (*m* or *t*), tractate, chapter and sentence, but the 'order' is omitted. The two Talmuds are also cited by work (*y* for *Yerushalmi*, i.e. the Palestinian Talmud and *b* for the Babylonian Talmud), and respective Mishnaic tractate. In the Babylonian Talmud tractate is followed by page number, with the front and back of each leaf counted as a and b; in the Palestinian Talmud (the Venice edition) the tractate is followed by page number; each page has four columns (a–d). The Talmuds, being later commentaries on Tannaitic material by the *Amoraim* (see above, n. 46), are cited here only to corroborate Tannaitic traditions, but never as evidence for the status of Jewish law in the earlier period.

[54] There are no absolute dates; chronology is determined by the relationship of one rabbi to another as his teacher: 'in this way *generations* of rabbis can be co-ordinated' Strack-Stemberger, op. cit. (n. 46), 63; however attributions are not always reliable or certain, ibid., 63ff.

[55] Rendering it אפיטרופוס — *epitropos*; אפוטרופוס — *apotropos*; אפיטרופא — *epitropa*, etc. see D. Sperber, *A Dictionary of Greek and Latin Legal Terms in Rabbinic Literature* (1984), 56ff. This is the term used to this very day in modern Hebrew.

[56] A. Gulak, *Principles (Institutions) of Jewish Law* III: *Family Law* (1922), ch. 7, p. 146 (Hebrew); Z. W. Falk, 'Zum fremden Einfluss auf das jüdische Recht', *RIDA* 18 (1971), 11–23, is much more affirmative.

assumption in question.[57] At all events, by the second half of the second century C.E. the main lines of the institution had already been drawn.[58]

There is no doubt that a woman could serve as a guardian, if appointed by her husband in his lifetime, whether as guardian of his property[59] or of that of his orphans.[60] The *Tosefta* adds the restriction that the courts would not appoint a woman as a guardian, unless she had already served in this capacity in her husband's lifetime: 'the courts should not take the initiative (לכתחילה — *lekhathilah*) and appoint women and slaves as guardians, but if the father had appointed any of them in that capacity during his lifetime, the courts should confirm the appointment' (*tTerumoth*[61] 1.11).[62] Neither in the *Mishnah* nor in the *Tosefta* is it suggested that a man could appoint his wife a guardian of their common children in his will. However, a *barayta* in the Babylonian Talmud, while repeating the restriction on the courts to appoint a woman as guardian, can be interpreted in such a way as to mean that a man could make his wife a guardian of their common children in his will: 'Women, slaves and minors[63] should not be made guardians: if, however, the father of the orphans chooses to appoint one, he is at liberty to do so — ואם מינן אבי יתומין הרשות בידו' (lit. 'it is in his hand', *bGittin* 52a).[64] It seems to have remained the rule that the courts were prohibited from initiating the appointment of a woman.[65]

It is likely that the orphan Jesus was living with Babatha, his mother, at the time documented in the archive, for the guardians hand her the money for his upkeep.[66] We do not know whether or not she insisted on having him with her. A Jewish mother could indeed demand that the orphan be left with her. For many reasons she may have appeared more trustworthy than those entitled to be the orphan's heirs.[67] And in fact such a claim was accepted by the Jewish courts: 'If a man dies leaving a son, and the mother says: "let him be brought up by me" and the heirs say: "let him be brought up by us", then the son may not be brought up by those who are entitled to be his heirs' (*tKet.* 11.4).[68]

It seems that boarding with his mother did not have the legal consequence of turning Babatha into the guardian of her orphaned son, Jesus. This needs to be said since in Jewish law not only did there exist two legal ways of creating a guardianship (appointment by the father in his lifetime or in his will, and appointment by the court); there also existed a *de facto* sort of

[57] See Y. K. Reinitz, 'The Guardian of Orphans in Jewish Law: His Responsibility, Methods of Supervision', (unpub. Ph.D. dissertation, the Hebrew University of Jerusalem 1984), introduction, pp. ivf. and bibliography cited in the notes; M. Block, *Die Vormundschaft nach Mosaïsch-Talmudischem Rechte* (1904).

[58] Reinitz, op. cit. (n. 57), ix puts it earlier: 'by the first half'. In evidence he mentions the controversy between Abba Saul and R. Eliezer b. Jacob about the taking of the oath by the guardian of orphans at the end of his term of office (*bGittin* ('divorce certificates') 52b); however, R. Eliezer b. Jacob (the Younger) and Abba Saul belonged to the third generation of Tannaites, *c.* 130–160 C.E., see Strack-Stemberger, op. cit. (n. 46), 83–6; see also A. M. Heiman, *History of the Tannaim and Amoraim* (1964), 1, *s.vv.* (Hebrew).

[59] cf. *mKetubboth* (= *Ket.* 'marriage contracts') 9.4: 'If a man set up his wife as a shopkeeper or appointed her as a guardian (*epitropa*) he may exact of her an oath whensoever he will'. The presence of Rabbi Eliezer ben Hyrcanus in this *Mishnah* dates it to the early ii century (see Strack-Stemberger, op. cit. (n. 46), 77); cf. *tKet.* 9.6; *bKet.* 86b; *yKet.* 54a; cf. *bBaba Bathra* (= *BB* 'last gate' i.e. the last tractate of Seder *Nezikqn* 'Damages') 131b: 'If a [dying] man gave all his property to his wife in writing, he [thereby] only appointed her guardian (אפוטרופא. — *apotropa*)'; cf. *bBB* 144a; *bGittin* 14a. See also *yShevu'ot* ('oaths') 93a, where both the guardian and the woman who manages her husband's property are required to take an oath: 'And these [must] take an oath [even] when there is no claim [laid against them]: (1) partners (2) tenants (3) guardians (4) a woman who manages her household and (5) son of the household'.

[60] cf. *mKet.* 9.6: 'If she was made a guardian [i.e. in her husband's lifetime], the heirs may exact an oath from her concerning [her trust during] the time after [her husband's death], but not the time before'. After the husband's death, the widow is entitled to continue holding the guardianship over his property which has now become the orphans'; cf. *bKet.* 86b–88b; *yKet.* 55a.

[61] *Ter.* 'levies' or 'heave offerings' (e.g. priestly heave offering).

[62] I have adopted B. Cohen's translation, *Jewish and Roman Law* 1 (1966), 243; see S. Lieberman, *Tosefta Ki-feshutah* Part I: *Order Zera'im* ('Seeds') (1955), 304 (Hebrew, the most important modern commentary on the *Tosefta*) cf. *tBB* 8.17.

[63] 'Minors' must be a mistake, see Lieberman, op. cit. (n. 62), 303.

[64] The Rashba (R. Shlomo b. Aderet, 1235–1310) in his *Commentary on the Babylonian Talmud* (חידושי הרשב"א על הש"ס — *hiddushim on the SHAS*) on *bGittin* 52a suggests reading '*they* are at liberty to do so (lit. 'in their hands' בידן)', i.e. the courts, thus bringing the *barayta* into line with *tTer.* 1.11. His reading of the *Barayta* leaves us with no Tannaitic authority for the appointment of a woman as a guardian in the father's will. His proposed correction of the text of *bGittin* 52a from בידו ('in his hand', i.e. the father's) to בידן ('in their hands', i.e. the courts') is minuscule: the mere lengthening of the *waw* (ו) to produce a final *nun* (ן).

[65] See S. Assaf, 'The appointment of women as guardians', *Ha-Mishpat Ha-'Ivri* (1927), 75–81 (Hebrew); Y. K. Reinitz, 'The appointment of women as guardians', *Bar-Ilan Law Studies* 4 (1986), 167–203 (Hebrew).

[66] *P.Yadin* 13–15 (124–5 C.E.); 27 (132 C.E.).

[67] Note that a similar provision for the children to stay with their mother till they come of age is found in Egyptian marriage contracts: e.g. *P.Oxy.* 497 (early ii century), l. 13: τῶν [τέκνων] διαιτωμένων παρὰ τῇ [μ]ητρὶ μέχρι τοῦ εἰς ἡλικίαν ἐλθεῖν; see also *P.Oxy.* 496 (127 C.E.), l. 12; Roman orphans also tended to be brought up by their mothers, see J. F. Gardner, *Women in Roman Law and Society* (1986), 147.

[68] In the *barayta* it says explicitly: 'they leave him with his mother', *bKet.* 102b.

guardianship: guardianship acquired by virtue of 'orphans boarding with the householder' (סמיכה *semikhah*).[69] This form may well have been the original and authentic Jewish form of guardianship.[70] This could offer a way for women to become *de facto* guardians of their children.[71]

We may mention in passing that one of Jesus' guardians was not a Jew.[72] It is hard to know why the *boule* of Petra appointed a non-Jew as one of the guardians of the Jewish orphan Jesus. The indifference to the principle of personality could have been a local custom,[73] as has been suggested for the naming of two guardians instead of one.[74]

None of the Jewish practices and rules delineated above regarding the orphan's mother is present in this archive. Indeed there is nothing to show that Babatha was aware of any of them.

The example of the Jews of Egypt springs to mind. The editors of the *Corpus Papyrorum Iudaicarum* expressed their surprise at the absence of any documents reflecting the existence of Jewish courts in Egypt and of the exercise of Jewish law there;[75] not even for Alexandria, where we know that a Jewish tribunal existed, do we possess any evidence.[76] 'On the other hand, the papyri contain rich evidence of Jews using freely the common Hellenistic law.'[77] They conclude, therefore, that 'the laws and regulations forming the legal basis for the business life of the Jews are the common laws of the Greeks in Egypt ... the family life of Alexandrian Jews, their marriages and divorces, were regulated by Greek contracts in accordance with the principles of Hellenistic law'.[78]

Thus not even in Egypt where documents do exist, do we possess any proof that Jews did use their own courts and laws. What is, therefore, the precise meaning of the privilege successfully sought and granted to Jews by the Roman government, namely to live according to their ancestral laws or customs (νόμοι or ἔθη)?[79] Surely the papyri from Egypt and Arabia render the evidence for legal autonomy elsewhere very difficult to interpret.[80]

[69] *mGittin* 5.4: 'If orphans were supported (סמכו *samkhu*) by a householder, or if their father appointed a guardian for them, he must give tithe from the produce that belongs to them. If a guardian was appointed by the orphans' father he must take an oath; if he was appointed by the court he need not take an oath. Abba Saul says: "The rule is to the contrary etc."; cf. *tTer.* 1.12; *tBB* 8.13.

[70] See Falk, op. cit. (n. 56): 'Das erste Verhältnis, das man vielleicht *proto-epitropé* nennen kann ...', p. 14 and *passim*; cf. Y. K. Reinitz, 'Guardianship by virtue of "orphans boarding with the householder"', *Bar-Ilan Law Studies* 1 (1980), 219–50. Gradually this *de facto* sort of guardianship was assimilated into the legal institution of guardianship and made equal with the other two forms: 'The householder with whom the orphans boarded has all the legal rights possessed by guardians appointed by the court or by the orphans' father', R. Asher b. Yeḥiel (1250–1327), *Responsa*, 87a; cf. Reinitz, op. cit. (n. 57), 93ff.

[71] As some interpret the famous story of the old woman (ההיא סבתא), *bGittin* 52a: 'Certain orphans who boarded with an old woman had a cow which she took and sold. Their relatives appealed to R. Nahman (third generation of *Amoraim* in Babylonia) saying: what right had she to sell it? He said to them: we learn "if orphans boarded with the householder"'. See the Rashba's (see above, n. 64) *Responsa* (שאלות ותשובות), II, no. 49: 'And even if they boarded with a woman whom the court does not appoint as guardian ... she is like a guardian to them, as we learn from the story of the old woman [*bGittin* 52a], and it seems to be the same in the case of a mother ...'; see also *Responsa* II, no. 285; cf. Reinitz, 'Guardianship by virtue of "orphans boarding with the householder"', *Bar-Ilan Law Studies* 1 (1980), 223–4, and esp. 243–7: 'The Guardianship of the widow by virtue of the orphans boarding with her'.

[72] Ἀβδοβδας Ἰλλουθα of *P.Yadin* 12 is clearly a Nabataean: see *P.Yadin* 15, l. 38; p. 139 (Yadin and Greenfield, op. cit. (n. 3), no. 15), and pl. 12.

[73] It thus contrasts with Roman law which demands that the guardian should come from the same nationality as his ward, see Taubenschlag, op. cit. (n. 21), 158; Mitteis, *Grundzüge* 1, 252–3, on Egypt. J. Juster (*Les Juifs dans l'empire romain* II (1914), 24, n. 1) takes *Dig.* XXVII.1.15.6: Ἤδη δὲ καὶ οἱ Ἰουδαῖοι τῶν μὴ Ἰουδαίων ἐπιτροπεύσουσιν, ὥσπερ καὶ τὰ λοιπὰ λειτουργήσουσιν, to refer to Jews who possessed Roman citizenship, and thus not to constitute an infringement of the principle of personality; see Juster, 62–4; A. Linder, *The Jews in Roman Imperial Legislation* (1987), no. 4.

[74] See Lewis p. 48 on *P.Yadin* 12. See below Appendix 1.

[75] The one clear exception is *CPJ* II no. 143 which mentions the depositing of a will (διαθήκην) in the τὸ τῶν Ἰουδαίων ἀρχεῖον ll. 7–8; for Jewish archives in Asia Minor, see *CIJ* 741 (burial inscription from Smyrna): ταύτης τῆς ἐπιγραφῆς τὸ ἀντίγραφον ἀπόκειται εἰς τὸ ἀρχεῖον; 775 (Hierapolis) mentions τῷ ἀρχίῳ τῶν Ἰουδαίων; see also 776; 778; 779. See also Jos., *BJ* VI.354.

[76] Strabo apud Jos., *AJ* XIV.117 (= M. Stern, *Greek and Latin Authors on Jews and Judaism* 1 (1974), no. 105; *tKethubboth* 3.1 = *tPeah* ('corner') 4.6; *CPJ* II, pp. 4–5; Bowman and Rathbone, op. cit. (n. 1), 117.

→ *CPJ* I (*Prolegomena*), 33; see also II, 4–5.

[78] ibid., 33–4; cf. V. Tcherikover, *The Jews in Egypt in the Hellenistic-Roman Age in the Light of the Papyri* (1963), 103–15 (Hebrew).

[79] → T. Rajak, 'Was there a Roman charter for the Jews?', *JRS* 74 (1984), 107–23.

[80] I refer of course to the famous charters mentioned in Josephus, *AJ* XIV. 185–267. Admittedly an explicit grant of judicial autonomy is attested only for Sardis, where the Jews claimed before L. Antonius that they used to adjudicate cases between themselves in a court of their own: (σύνοδον ἔχειν ἰδίαν κατὰ τοὺς πατρίους νόμους ἀπ' ἀρχῆς καὶ τόπον ἴδιον, ἐν ᾧ τά τε πράγματα καὶ τὰς πρὸς ἀλλήλους ἀντιλογίας κρίνουσιν, Jos., *AJ* XV.235); as a result of this appeal the city council issued a ruling that the Jews were to: κατὰ τὰ νομιζόμενα ἔθη [συνάγεσθαι] καὶ [πολιτεύεσθαι] καὶ [διαδικάζεσθαι] πρὸς αὐτούς (ibid. 260). I find it hard to believe with Rajak, op. cit. (n. 79), 116 and n. 35 there, that this was unique to Sardis. See L. Roth-Gerson, 'The Civil and Religious Status of the Jews in Asia Minor from Alexander the Great to Constantine 336 B.C.–A.D. 337' (unpub. Ph.D. dissertation, the Hebrew University of Jerusalem, 1972), 65–92 (Hebrew); T. Rajak, 'Jewish rights in the Greek cities under Roman rule: a new approach', in W. S. Green (ed.), *Approaches to Ancient Judaism* (1985), 19–36.

Finally but most importantly: what conclusions should be drawn about the authority and influence of the Rabbis and of Halakhic Judaism at the time from the fact that Jews in this corner of Arabia, close to the border with Judaea,[81] although not Hellenized Jews — for most of them sign in Aramaic — did not resort to Jewish laws and practices in matters that concerned personal law[82] and property? How shall we account for the total absence of Jewish law and Jewish law courts in the Greek part of the archive?[83]

The answer must be that the existence of a coherent and operative Jewish system of law at the time is thereby called into question. Such a system, if already being formulated in the schools of the Rabbis, has yet to become normative. It has certainly left no trace here. 'It was only through centuries of development that [Rabbinic Judaism] became the 'normative' Judaism which it has often been assumed to have been for the entire period'.[84]

This conclusion, although based solely on the Greek part of the archive — which is all we have so far — seems to me hardly likely to change with the publication of the rest of the archive. It is true of course that Babatha's own marriage contract is written in Aramaic,[85] and is said to be in harmony with the rules formulated in *Mishnah Kethubboth*.[86] It seems though that the Greek language takes over with time: types of contract that were written before in Aramaic and Nabataean[87] are now written in Greek.[88] The marriage contract of Shelamzion, Babatha's second husband's daughter from his other wife (*P.Yadin* 18, 5 April 128), is written in Greek and so is that of Salome-Komais of *P.Yadin* 37 (7 August 131).[89] And when the document is written in Greek, the rules formulated in the Rabbinic schools seem no longer to apply. It reads then like a Greek legal instrument.[90]

Once we accept, however, that the Jews often used foreign laws and practices — alongside their own — the absence of documents with a distinctly Jewish flavour from the Greek part of the archive is not as striking as it seemed at first. The Jews used the Greek language for the same reason that they used Greek diplomatics, Greek practices and Greek laws: they had to make sure that their documents were valid and acceptable in non-Jewish courts of law, and that they could be deposited 'with the public authorities',[91] which must refer to the city archives

[81] 'En-gedi — the *patria* of Babatha's second husband, Judah son of Eleazar, where he owned property (*P.Yadin* 11; 19–20) and where his first wife was living (*P.Yadin* 26) — is already in the province of Judaea: κώμης Αἰνγαδδῶν περὶ Ἱερειχοῦντα τῆς Ἰουδαίας (*P.Yadin* 16, l. 16).

[82] The two marriage contracts in the archive (*P.Yadin* 18 and 37) have nothing distinctly Jewish about them; see A. Wasserstein, 'A marriage contract from the province of Arabia Nova: Notes on Papyrus Yadin 18', *Jewish Quarterly Review* 80 (1989), 105–30 and J. Geiger, 'A note on *P.Yadin* 18', *ZPE* 93 (1992), 67–8; contra R. Katzoff in N. Lewis, R. Katzoff and J. Greenfield, '*Papyrus Yadin* 18', *IEJ* 37 (1987), 236–47; N. Lewis rallies to Katzoff's defence in 'The world of *P.Yadin*', *BASP* 28 (1991), 35–41; see → Katzoff, 'Papyrus Yadin 18 again: A rejoinder', *JQR* 82 (1991), 171–6 (where the *interpretatio Hebraica* is modified); idem, 'P. Yadin 19: A gift after death from the Judaean desert', *Proceedings of the Tenth World Congress of Jewish Studies, Jerusalem 1989* Div. C, vol. I (1990), 1–8 (Hebrew); 'An interpretation of P. Yadin 19 ... etc.', *Proc. XXth Int. Congr. Papyrology 1992* (forthcoming).

[83] See also the Greek remarriage contract from Wadi Murabba'at (*DJD* II, no. 115 of 124 C.E.): although it comes from Judaea itself, it has nothing to mark it as Jewish apart from the names; the same is true of an unpublished marriage contract in Greek (said to come from Wadi Seiyal, but in all likelihood also from Naḥal Ḥever), now in the Rockefeller Museum in Jerusalem. *DJD* II, no. 116 is too fragmentary, but I suspect that the same applies to it (see below, n. 89).

[84] Strack-Stemberger, op. cit. (n. 46), 5f. Furthermore, we still find unresolved disputes in the *Mishnah*, see S. Cohen, 'The significance of Yavneh: Pharisees, Rabbis and the end of sectarianism', *HUCA* 56 (1984), 27–53 *passim*.

[85] *P.Yadin* 10 (unpub.). This contract is of her second marriage, to Judah son of Eleazar Khthousion, between 122 and 125.

[86] See Yadin, op. cit. (n. 6), 244–5. See L. J. Archer, *Her Price is Beyond Rubies: The Jewish Woman in Graeco-Roman Palestine* (1990), 171–88, on the development of the Jewish Kettubah in Tannaitic times. I do not accept, however, her interpretation of *DJD* 115 as a Jewish instrument.

[87] The Nabataean contract published sometime ago by J. Starcky ('Un contrat Nabatéen sur papyrus', *Revue Biblique* 61 (1954), 161–81), may well have been part of the archive; see Yadin, op. cit. (n. 6), 228–9; 242, n. 21, and Bowersock, op. cit. (n. 10), 340, since it mentions property (גנתא — *ganatha* — 'orchard') which belonged to Babatha's second husband's family and which later on passed into her hands; see *P.Yadin* 21, l. 10 and 22, l. 11: γανναθ Νικαρκος. This document will be republished as *P.Yadin* 36.

[88] With the exception of the unpublished *P.Yadin* 6–10, but these belong to the early 120s.

[89] cf. also the marriage contracts in *DJD* 11: two marriage contracts in Aramaic: no. 20 is from 116/7 C.E. ('the eleventh year of the Province', i.e. Arabia); no. 21 is probably from 126/7 (assuming that 'twenty-one' refers to the province); and two marriage contracts in Greek: nos 115 (124 C.E.) and 116 (first half of ii C.E. according to the editors); the unpublished marriage contract in the Rockefeller Museum in Jerusalem dates from 130 (see above, n. 83). On Jewish marriage contracts, see M. A. Friedman, *Jewish Marriage in Palestine: A Cairo Geniza Study:* I: *The* Ketubba *Traditions of Eretz Israel*; II: *The* Ketubba: *Texts* (1980).

[90] I use 'Greek' here in the sense used by Wasserstein, op. cit. (n. 82), to explain the use of ἑλληνικὸς νόμος in *P.Yadin* 18 and 37, namely as that amalgam of laws of various origins which seems to be called Hellenic in the Roman East. I suppose Goodman, op. cit. (n. 45), means something similar by 'simple Semitic common law' (p. 160) 'into which some Greek ideas had crept' (p. 161).

[91] See the τευχίζει διὰ δημοσίων of *P.Yadin* 19, ll. 26–7 and the τευχίσω σοι διὰ δημοσίων of *P.Yadin* 20, l. 13 = ll. 35–6.

(ἀρχεῖα). That these were frequently used by Jews we learn for example from *mGittin* 1.5: 'Any writ is valid that is drawn up in the registries of the gentiles except a writ of divorce or a writ of emancipation. R. Simeon[92] says: "These, too, are valid; they were not mentioned [as invalid] unless they were prepared by such as were not [authorized] judges".'[93]

I have been able to find only two Tannaitic passages which explicitly discourage Jews from using gentile courts. Rabbi Tarfon, who lived before the Bar Kokhba revolt,[94] is cited in a *barayta* in *bGittin* 88b: 'In any place where you find gentile law courts,[95] even though their judgements [דינים] are the same as those of Israel, you must not resort to them since it says, "These are the judgements which thou shalt set before them" [*Ex.* 21:1], that is to say, "before them" and not before gentiles.' This follows a discussion of whether or not a deed of divorce given under compulsion by a gentile court is valid. The second passage is again a commentary on *Ex.* 21:1, by Rabbi Eleazar ben Azariah,[96] cited in the *Mekhilta d'R. Ishmael*:[97] 'If the gentiles pronounce judgements in accordance with Jewish law [דנו כדיני ישראל], are their judgements valid? No, for it is written: "These are the judgements": you judge them but they do not judge you.'[98] The harsh language employed by the Rabbis in the prohibition on using gentile courts may well indicate that the Jews *did* use them. We may assume that in the absence of a Jewish court in Maoza or its vicinity, the parties had to attend non-Jewish courts where local customs were followed. Alternatively, perhaps these Jews preferred non-Jewish courts. However that may be, these local customs seem at times extremely Roman in character, and the courts preferred by the parties turn out to be Roman. The rest of the discussion will be devoted to the form and shape of Romanization in Arabia soon after its annexation as revealed in this archive.

III

We have discovered (above, Sections I and II) that neither the 'law of the papyri' nor Jewish law explains Babatha's situation. We may look therefore more closely at Roman law.[99]

Women were excluded by Roman law from the exercise of guardianship: 'Feminae tutores dari non possunt' (*Dig.* XXVI.1.18); the father cannot make the mother a guardian of their common children in his will: 'Iure nostro tutela communium liberorum matri testamento patris frustra mandatur' (*Dig.* XXVI.2.26). The fact that Babatha seems to be excluded from the guardianship of her son also fits the Roman legal practice — this time substantive law rather than procedure.[100]

Although excluded from the guardianship of her children, the mother is expected to take an interest in their welfare, and the guardians would do well to heed the mother's advice, if instructed to do so by the testator — with no diminution of their competence and responsibility (*Dig.* XXVI.7.5.8).[101] The Senatus Consultum Tertullianum of Hadrianic date, which gave a mother (with *ius trium liberorum*) the right to inherit from her children in case of intestacy, made it her duty under sanction to ensure that guardians were legally appointed; should she

[92] R. Simeon without patronym means R. Simeon ben Yohai (= Yohanan), third generation of *Tannaim*, *c.* 130–160, see Strack-Stemberger, op. cit. (n. 46), 83–4, but he is clearly referring to an earlier rule (לא הוזכרו 'they were not mentioned').

[93] cf. *tGittin* 1.4; *bGittin* 11a; See G. Alon, *The Jews in their Land in the Talmudic Age (70–640 C.E.)* II (1984), 553–7; A. Gulak, *Towards a Study of the History of Jewish Law in the Talmudic Period* I (1929), 54ff. (Hebrew).

[94] See Strack-Stemberger, op. cit. (n. 46), 80; Heiman, op. cit. (n. 58), II, 524–9.

[95] The Hebrew has Agorai'oth (אגוריאות) from ἀγορά.

[96] He belonged to the second generation of *Tannaim* (90–130); contemporary of Rabban Gamaliel II, the leader of rabbinic Judaism between 80/90–110, whom he replaced temporarily, Strack-Stemberger, op. cit. (n. 46), 76; 78.

[97] *Mekhilta* 'is the Aramaic equivalent of Hebrew *midda or kelal*, "rule, norm" ... the derivation of halakhah ['law'] from Scripture according to certain rules', Strack-Stemberger, op. cit. (n. 46), 275. The *Mekhilta d'R. Ishmael* is a commentary on some chapters of Exodus 'with a core going back to the school of R. Ishmael' [middle of the second century], although its final redaction took place 'in the second half of the third century', Strack-Stemberger, (above, n. 46) 278–9.

[98] H. S. Horovitz and I. A. Rabin (eds), *Mekhilta d'R. Ishmael* (2nd edn, 1960), 246. The two passages, however, are not unrelated: both refer to *mGittin* 9.8 and to *Ex.* 21:1; see Juster, op. cit. (n. 73), II, 95f.

[99] The following discussion benefited a great deal from the pertinent criticism of J. F. Gardner.

[100] I refer to the manner of appointing guardians, the *tutoris datio* described above.

[101] 'Viris bonis conveniet salubre consilium matris admittere ...' etc.

fail to do so, she lost her claim to the inheritance.[102] However, the law stopped short of saying that it was the duty of a mother to prosecute a guardian who failed in his duty (*Dig.* XXVI.6.4.4).[103] Finally and most crucially for the discussion here: 'even women are admitted [to bring a charge of untrustworthiness],[104] but only those who take this step as a family duty, as for example a mother' (*Dig.* XXVI.10.1.7).[105]

We may examine Babatha's behaviour in the light of these statements. Shortly after the appointment of the guardians by the city council of Petra, Babatha took the case against them to the governor of the province.[106] *P.Yadin* 13 is a petition (ἀξίωμα) to the governor, and *P.Yadin* 14 is the actual summons of one of them to his court.[107] It is only in *P.Yadin* 15 that we get the full grounds for her complaint against her son's guardians: (1) that they did not give her son 'the maintenance money commensurate with the income from the interest on his money and the rest of his property',[108] but only half a per cent (l. 7 = ll. 22–3), which as we learn elsewhere came to two denarii per month;[109] (2) that the amount was insufficient to maintain the style of life the boy was accustomed to (or his social standing?);[110] (3) that if they gave her the money on security, she could invest it in such a way as to get 'a denarius and a half [per month] per hundred denarii' (ll. 9–10 = l. 26).

We do not know at what rate the guardians had invested the money; they may have invested it at the usual rate of 12 per cent per annum and added to the capital whatever was left over after they gave the boy his allowance, unless we take the words εἰ δὲ μή, ἔσται τοῦτο [τὸ μαρτυρο]ποίημα εἰς δικαίωμα κέρδους ἀργυρίου τοῦ ὀρφανοῦ εἰ διδόντες ... (ll. 29–30) to mean that they appropriated the profits.[111] At any event her last offer seems to imply that they had made a poor investment with the money; she could get 18 per cent per annum.[112]

[102] *Dig.* XXXVIII.17.2.23 (Ulpian): 'Si mater non petierit tutores idoneos filiis suis vel prioribus excusatis reiectisve non confestim aliorum nomina *ediderit*, ius non habet vindicandorum sibi bonorum intestatorum filiorum'; cf. *Dig.* XXVI.6.2.2 (Modestinus); XXVI.6.4.2 (Tryphoninus); Gardner, op. cit. (n. 67), 149, has a different interpretation for the purpose of the injunction; cf. *CJ* V.31.6: 'Matris pietas instruere te potest, quos tutores filio tuo petere debes, sed et observare, ne quid secus quam oportet in re filii pupilli agatur' (224 C.E., 'Your maternal piety can instruct you which guardians to request for your son, but also to see to it that his property is being looked after properly'; ibid., 8; 9; 11 (even unmarried mothers).

[103] 'Quae autem suspectum tutorem non fecit, nec verbis nec sententia constitutionis incidit, quod eiusmodi facta diiudicare et aestimare virilis animi est et potest etiam delicta ignorare mater ...', see below on the *crimen suspecti tutoris*.

[104] The *crimen suspecti tutoris*, see *Dig.* XXVI.10; *Inst.* 1.26. Kaser (*RP*[2] (1971), § 88, p. 364) cautions that the *accusatio suspecti* may have applied in classical times to testamentary guardians only and not to those appointed by the magistrates.

[105] 'Quin immo et mulieres admittuntur [suspectos postulare], sed hae solae, quae pietate necessitudinis ductae ad hoc procedunt, ut puta mater', but also a nurse, a grandmother, a sister as well as others motivated by *pietas necessitudinis*; cf. *Inst.* 1.26.3.

[106] About four months later: see *P.Yadin* 13, ll. 19–21.

[107] *P.Yadin* 14, ll. 28–9 seem to suggest that 'Abdobdas son of Ellouthas was not guilty of the same offence in Babatha's eyes; and although *P.Yadin* 15 is directed against both (ἐπὶ τῶν ἐπιβεβλημένων μαρτύρων ἐμαρτυροποιήσατο Βαβαθα Σίμωνος τοῦ Μαναήμου κατὰ Ἰωάνου Ἰωσή[που το]ῦ Ἔγλα [κ]αὶ Αβδοοβδα Ἐλλουθα ἐπιτρόπων Ἰησοῦ Ἰησοῦτος υἱοῦ αὐτῆς ὀρφανοῦ ('before the attending witnesses Babatha daughter of Simon son of Menahem deposed against John son of Joseph Eglas and 'Abdoöbdas son of Ellouthas, guardians of her son Jesus son of Jesus, appointed guardians for the said orphan'), ll. 3–4 = ll. 17–19; cf. ll. 32–3), the actual summons is given only against John son of Eglas: ἐπὶ οὗ (the governor) περὶ τῆς ἀπειθαρχείας ἀποδόσεως τῶν τροφίων παρήγγειλα ἐγὼ Βαβαθα Ἰωάνῃ τῷ προγεγραμμένῳ, ἐνεὶ τῶν ἐπιτρόπων τοῦ ὀρφανοῦ ('before whom I, Babatha, summoned the aforesaid John, one of the guardians of the orphan for his refusal of disbursement of the [appropriate] maintenance money') ll. 11–12 = ll. 28–9. Perhaps at this point she has to serve separate summons to each of them.

[108] διὰ τὸ ὑμᾶς μὴ δεδωκέναι τῷ υἱῷ μο[υ ὀρφανῷ] τροφῖα πρὸς τὴν δ[ύ]ναμιν τ[όκ]ου ἀργ[υ]ρίου αὐτοῦ καὶ τῶν λοιπῶν ὑπαρχόντων αὐτοῦ, ll. 5–7 = ll. 20–1.

[109] From *P.Yadin* 13, ll. 19–24: καὶ οἱ πρὸ μηνῶν τεσσ[άρ]ων κ[α]ὶ πλείω κατασταθέντες ἐπίτροποι [ὑπ]ὸ βουλῆς τῶ[ν] Πετρα[ί]ων Αβδοοβδα<ς> Ελλουθα καὶ Ἰωάνης [Ἔγλ]α οὗδ[ὲ] α[ὐτοὶ τρ]οφῖα το[ῦ ὀρ]φανοῦ ἔδωκα[ν] εἰ μὴ μ[όν]ον δηνάρια δύω [κατὰ μ]ῆνα, it follows that they had 400 denarii to invest; see also a receipt for six denarii for three months, *P.Yadin* 27.

[110] *P.Yadin* 15, ll. 6–7 = l. 22: καὶ μάλιστα πρὸς ὁμειλίαν ἣν εἰκου[σα] ... αὐ]τῷ (for the reading see Lewis ad loc., pp. 62–3). The recent publication of 'Annual Account of a Guardian' from 219 C.E. (*P.Oxy.* 3921–2 see above, n. 39), allows us to compare Jesus' allowance with an early third-century one: the two boys' maintenance came to 99 dr. per month = roughly 8 denarii, i.e. 4 denarii per child; twice as much as that provided for Babatha's son. Babatha might have had grounds for complaint.

[111] Lewis translates: 'Otherwise this deposition will serve as documentary evidence of [your] profiteering from the money of the orphan by giving ...', p. 61; see also Lewis, op. cit. (n. 19), 111: '[she] is here accusing the guardians of profiting from their trust by pocketing the rest of the interest themselves'.

[112] The usual rate seems to be 12 per cent per annum, see *P.Yadin* 11, ll. 6–7 = ll. 20–2. Lewis suspects that 'a usurious squeeze' is concealed in the erasure of forty and the interlinear insertion of sixty in l. 3 of the inner text: 'he was compelled to sign the note for sixty denarii but actually received only forty denarii in hand' (p. 41). This would yield an interest of more than 60 per cent per annum, see M. Broshi, 'Agriculture and economy in Roman Palestine: seven notes on the Babatha archive', *IEJ* 42 (1992), 239–40.

With such an income she could ensure that her 'son . . . be raised in splendid style rendering thanks to *the[se] most blessed times* of the governorship of Julius Julianus'.[113]

It is somewhat surprising to find here an echo of the imperial advertisement of the good times ushered in by Nerva and Trajan. When Pliny the Younger asked Trajan to bestow the praetorship on Attius Sura, he assured the emperor that his friend 'is encouraged to hope for such an honour by his distinguished antecedents, his exceptional integrity in the midst of poverty, and, above all, by *the happiness of your times* which encourages your best citizens to make use of your paternal indulgence' (Pliny, *Ep.* x.12).[114] This is not the only Roman sentiment in this document. Babatha's demand for an income befitting 'the style of life the boy is accustomed to'[115] is familiar from the Roman juristic sources dealing with guardianship: 'Since a guardian is put in charge not only of his ward's property, but also of his conduct and character, he should not assign the lowest possible wages to the teachers, but [pay them] *in accordance with the resources of the inheritance and the rank of the family*; he will provide maintenance for the slaves and freedmen, sometimes even for those outside the household if this will be advantageous to the ward etc.' (*Dig.* XXVI.7.12.3);[116] 'a guardian has to consider the rank and the resources of his ward in estimating the number of slaves who are to be in attendance' (*Dig.* XXVI.7.13.*pr.*).[117] It looks as if whoever composed the document was familiar with Roman turns of thought and sentiment, and perhaps with Roman legal argumentation; he was certainly acquainted with the imperial propaganda of 'these most blessed times'.

We may well inquire into her reasons for not approaching the city council of Petra:[118] was it her fear that they might not prove impartial, since it was they who had appointed the guardians, or was there some other, technical or legal, obstruction? Were charges against guardians within the exclusive competence of the governor of the province?

The legal sources offer some help here. As pointed out above, a mother could lay charges against an untrustworthy guardian and ask for his removal under the *crimen suspecti tutoris*.[119] 'There was no definite list of grounds of removal; it was at the discretion of the Court'.[120] 'The right of removing untrustworthy (*suspectos*) tutors' was granted 'at Rome to the praetors and in the provinces to their governors' (*Dig.* XXVI.10.1.3).[121] Further on in the same source we are told that 'a guardian who does not use his resources to provide for his ward is untrustworthy and can be removed' (*Dig.* XXVI.10.3.14).[122] The instruction in *CJ* V.50.1 fits our case admirably: 'If a guardian does not provide maintenance to his ward, the latter may approach the provincial governor'.[123] Although the rule postdates our text by almost a hundred years (it dates from 215 C.E.), it may well have been in force earlier. Whether aware of these legal niceties or not (or alerted to them by her lawyers), Babatha confidently approaches the governor of the province, and no one else, with her complaint against the guardians.

[113] ὅθεν λαμπρῶς διασωθῆ μου ὁ υἱὸς εὐχαριστῶν (ll. 10–11: εὐχαριστοῦντα) *τοῖς μακαριωτάτοις καιροῖς* ἡγεμωνείας Ἰουλίου Ἰουλιανοῦ ἡγεμώνος (ll. 10–11 = ll. 26–7). Fergus Millar reminds me of *Acts* 24:2 (the rhetor Tertullus to Felix): πολλῆς εἰρήνης τυγχάνοντες διὰ σοῦ, καὶ διορθωμάτων γινομένων τῷ ἔθνει τούτῳ διὰ τῆς σῆς προνοίας ('Seeing that by thee we enjoy great quietness and that very worthy deeds are done unto this nation by thy providence').

[114] 'Ad quam spem [*sc.* praeturae] ... hortatur et natalium splendor et summa integritas in paupertate et ante omnia *felicitas temporum*, quae bonam conscientiam civium tuorum ad usum indulgentiae tuae provocat et attollit'; cf. Pliny, *Ep.* x.58.7: 'Quaedam sine dubio, Quirites, ipsa *felicitas temporum* edicit'; Tacitus, *Agr.* 3.1: 'augeatque cotidie *felicitatem temporum* Nerva Traianus'; *Hist.* 1.1: 'rara *temporum felicitate* ubi sentire quae velis et quae sentias dicere licet'.

[115] Above, n. 110.

[116] 'Cum tutor non rebus dumtaxat, sed etiam moribus pupilli praeponatur, imprimis mercedes praeceptoribus, non quas minimas poterit, *sed pro facultate patrimonii, pro dignitate natalium constituet*, alimenta servis libertisque, nonnumquam etiam exteris, si hoc pupillo expediet, praestabit ... etc.'; cf. *CJ* V.50.2: 'ut arbitrio praetoris alimenta *pro modo facultatum* pupillis vel iuvenibus constituantur'; and *Dig.* XXVII.2.1: 'si vero praetor non est aditus, *pro modo facultatum pupilli* debet arbitrio iudicis aestimari'.

[117] 'Tutor *secundum dignitatem facultatesque pupilli* modum servorum aestimare debet'. Lewis, op. cit. (n. 19), 110, cites *CGL* III, 36, 5–14: 'Adrianus dixit curatori: "propter hoc ergo datus es, ut fame neces pupillum? pro modo ergo facultatis alimenta ei praesta"' ('Hadrian said to a guardian: "Was it for this purpose that we appointed you, so that you would starve your ward to death? Give him provisions in accordance with his (your) means!"').

[118] Assuming that nomination implies jurisdiction in matters arising from it, see Isaac, op. cit. (n. 10), 63–4.

[119] At nn. 99–100.

[120] See Buckland and Stein, op. cit. (n. 29), 160.

[121] 'Damus autem ius removendi suspectos tutores Romae praetoribus, in provinciis praesidibus earum' (Ulpian, *Ad Edictum* 35); cf. *Inst.* 1.26.1.

[122] 'Tutor, qui ad alimenta pupillo praestanda copiam sui non faciat, suspectus est poteritque removeri', Ulpian, *Ad Edictum* 35.

[123] 'Pupillus, si ei alimenta a tutore suo non praestantur, praesidem provinciae adeat', see M. Lemosse, 'Le procès de Babatha', *The Irish Jurist* 3 (1968), 372ff., who finds in this claim the explanation for her approaching the governor rather than the *boule* who appointed the guardians. Lewis, op. cit. (n. 111), maintains that she is charging the guardians with fraud.

It has to be emphasized that at no stage does she contest the guardianship or ask to be made guardian herself. Z. W. Falk[124] and B. Klein[125] are wrong to maintain that Babatha's first offer (which the guardians must have rejected) to lend her the orphan's money on security[126] is tantamount to a request to have the guardians removed so as to be made guardian herself. On the contrary this proposal demonstrates that she recognized their ultimate authority.[127] If anything she was seeking compensation, as the presence of the *actio tutelae* in *P.Yadin* 28–30 seems to suggest.[128] Admittedly the presence of these documents here is disconcerting; the legal proceedings and remedies envisioned in them are quite distinct from those of the *crimen suspecti tutoris*, so far discussed.

The use of the formulary system, in a provincial setting, between *peregrini* — and to make matters more complicated, in a newly-created province — has naturally invited much speculation.[129] In addition, the language of the textbooks leaves no room for doubt that actions on tutelage became available only when the tutelage has ended: it could be ended either when the ward came of age or by the death of either the guardian or the ward (*Dig.* XXVII.3.4*pr*).[130] This certainly is not the case here. We know that Jesus was a minor as late as 19 August 132, the date of *P.Yadin* 27, the latest dated document in the archive. There his mother acknowledges the receipt of maintenance money from his guardian, Simon 'the hunchback'. The latter is, as we learn, the son of John son of Eglas, one of Jesus' two guardians; he had been appointed by the council of Petra to replace his father.[131] Thus neither the death of one of the guardians nor Jesus' coming of age can account for the presence of three copies of the *actio tutelae* in our archive. Various explanations have been offered.[132] It has been claimed that we have evidence from Egypt that 'the *actio tutelae* may also be entered *durante tutela*'.[133] This is tantamount to saying that there were no fixed rules and that the system accommodated more than the legalists would assume. At the very least the presence of the three copies of the *actio tutelae* suggests that whoever supplied Babatha with them acted in the belief that they could be put to use.[134] Since they are Roman legal instruments, they were intended for a Roman court of law, that is for the governor's court.[135]

Babatha may well have been misinformed about the applicability of the *actio tutelae* in her case; was she also wrong about the accessibility of the Roman governor? In the next section the role of Roman authority as arbitrator will be examined.

[124] *Introduction to Jewish Law of the Second Commonwealth* II (1978), 330.

[125] 'Die Stellung der Frau in Judentum: Rabbinische Initiative oder Legitimation? Demonstriert am Beispiel des jüdischen Vormundschaftsrechts' (unpub. Magisterarbeit, Hochschule für Jüdische Studien, Heidelberg, 1991), 44–5.

[126] *P.Yadin* 15, ll. 23–6 = ll. 7–10: ἔ[χουσ]α ὑπάρχο[ντα] ἀξ[ιόχρεα] το[ύτ]ου [τοῦ ἀργυρίου] οὗ ἔχετε τοῦ ὀρφανοῦ, διὸ προεμαρτυροποίησα ἵνα εἰ δοκεῖ ὑμεῖν δοῦναί μ[οι τὸ] ἀργύριον δι' ἀσφαλείας ... περὶ ὑποθήκης τῶν ὑπαρχόντων μου κτλ. ('as I have property equivalent in value to this money of the orphan's that you have, therefore I previously deposed in order that you might decide to give me the money on security ... involving a hypothec of my property', etc.).

[127] Wolff, op. cit. (n. 2), 801; Wolff, op. cit. (n. 42), 287.

[128] A similar case of tutors refusing to pay the amount of maintenance money stipulated in the will to the person with whom the orphans are living is mentioned in *Dig.* XXXIII.1.7*pr*., discussed by Watson, op. cit. (n. 11), 143f.; but the implication of the ruling there, if I understand it correctly, is that such conduct does not give rise to *actio tutelae*; in fact, the tutors run the risk (*periculum*) of being sued by means of the *actio* if they spend too much on living expenses.

[129] For the norm, see Kaser, *Das römische Zivilprozessrecht* (1966), 119f.; for speculations on *P.Yadin* 28–30, see Wolff, op. cit. (n. 2), 784–8 with the older literature cited in the notes.

[130] 'Nisi finita tutela sit tutelae agi non potest: finitur autem non solum pubertate, sed etiam morte tutoris vel pupilli'; cf. XXVII.3.9.4.

[131] Βαβαθας Σίμω[ν]ος ... Σίμωνι κυρτῷ Ἰωάνου Ἐγλα [τῆ]ς αὐτ[ῆ]ς Μαωζας χαίρι[ν]· σοῦ δευτέρου ἐπιτρόπου καταστα θέντος [*c.* 16 letters missing] ὑπ[ὸ βουλῆς Πετρ]αίων Ἰησο[ύ]ου Ἰησούου ὀρφανοῦ υ[ἱοῦ] μου ('Babathas (*sic*) daughter of Simon ... to Simon the hunchback son of John son of Eglas, of the said Maoza, greetings. You having been appointed by the council of Petra to be the second guardian of my orphan son Jesus son of Jesus'). Lewis rightly holds that 'the lacuna is likely to have been ἀντὶ τοῦ πατρός σου. Even without that explicit statement, the names alone are sufficient to reveal that the son had succeeded the father as the second guardian of Babatha's son' (p. 117).

[132] Lemosse, op. cit. (n. 59), 375–6; E. Seidl, 'Ein Papyrusfund zum klassischen Zivilprozessrecht', *Studi G. Grosso* II (1968), 345–61.

[133] Taubenschlag, op. cit. (n. 21), 168 and n. 60. However, only one of the examples cited there is of an *actio tutelae*, and even this one (*BGU* 136 (135 C.E.) = *M.Cr.* 86) takes place after the ward came of age, see O. Gradenwitz, 'Protocol von Memphis aus Hadrianischer Zeit', *Hermes* 28 (1893), 321–34; A. Biscardi, 'Nuove testimonianze di un papiro arabo-giudaico per la storia del processo provinciale romano', *Studi in Onore di Gaetano Scherillo* I (1972), 116–17 has no other evidence.

[134] See Biscardi, op. cit. (n. 133), 140–51 for conjectures on the origin of such copies.

[135] See below, Appendix II.

IV

Babatha first (*P. Yadin* 13, second half of 124) approaches the governor (πρεσβευτῇ Σεβαστοῦ ἀντιστρατήγῳ) with a petition (ἀξίωμα), the exact content of which is now lost. Nevertheless, the sequel demonstrates that her petition was answered and that she was instructed to proceed. In *P.Yadin* 14 Babatha uses the *parangelia* procedure, known to us from Egyptian papyri: a summons to appear before the governor's court; in the Egyptian papyri, however, the petition is addressed to the *strategos* who serves it on the plaintiff through his subordinate (the ὑπηρέτης).[136] Here these links in the chain are missing; Babatha herself serves the summons on the defendants:[137] 'before the attending witnesses Babatha daughter of Simon, son of Menahem ... summoned (παρήνγειλεν) John son of Joseph Eglas ... saying: on account of your not having given ... etc. ... I summon (παρανγέλλω) you to attend at the court of the governor Iulius Iulianus in Petra [the metropolis of] Arabia [until we are heard] at the tribunal in Petra.'[138]

It seems that as a rule a petition to the governor preceded a summons. This we learn from a later suit in which Babatha was involved. In *P.Yadin* 25 (9 July 131) Iulia Crispina summons Babatha to appear before the governor in Petra: 'I now summon (παρανγέλλω) you pursuant to the subscription (ὑ[πογρα]φή) of his Excellency the governor to accompany me to Petra.'[139] Clearly the governor's subscription was affixed to a petition submitted to him previously by Iulia Crispina. Babatha replies that seeing that she has been summoned to the governor, she too has given (ἔδωκα) a petition (πιττάκιν) to the governor and he has written under it a subscription ([ὑπέγρα]ψέν μοι) to perform the legal formalities in Petra.[140]

Thus the sequence 'petition — subscription — summons' should be assumed to have existed also in Babatha's suit against the guardians, even though the middle stage is not explicitly present. Furthermore, everywhere in the archive it is assumed by the litigants that they can present themselves or call on others to attend, whenever they wish and in whichever assize centre the governor might be.[141] Thus Besas son of Jesus summons Babatha 'to meet him before Haterius Nepos legate and propraetor in Petra or elsewhere in his province . . .';[142] and Babatha forestalls Iulia Crispina's summons to appear before the governor in Petra later in the year (*P.Yadin* 25, 9 July 131, ll. 7–20 = ll. 37–54), by summoning her to appear before him now in Rabbath-Moab.[143] Finally Babatha summons Miriam, her late husband's first wife, to appear with her before the governor Haterius Nepos 'wherever he happens to be exercising justice in the province ... and to attend before the said Nepos until judgement'.[144]

P.Yadin 27, from 19 August 132, the latest dated document from the archive and the last one to deal with the guardianship of Jesus, shows Babatha acknowledging the receipt of maintenance money in the amount of six denarii of silver for a period of three months: the sum

[136] On the *parangelia* in Egypt, see Kaser, op. cit. (n. 129), 374; Taubenschlag, op. cit. (n. 21), 500ff.; G. Foti Talamanca, *Ricerche sul processo nell' Egitto Greco-Romano* II.1: *Introduzione del giudizio* (1979), 65ff. and 81–2, n. 72 for a list.

[137] A much later example of this is *P.Colt* 29 (590 C.E.), where the editor observes that 'The document is unique, since παραγγελίαι have hitherto been known only by reference, principally in petitions containing a request that a summons to appear in court be served to the accused'.

[138] *P.Yadin* 14 (11 or 12 October 125): ἐπὶ τῶν ἐπιβεβλημένων μαρτύρων παρήνγει[λεν Βαβαθα Σίμονος τοῦ Μαναή]μου ... διὸ παρανγέλλω σοι παρεδρεῦσαι [ἐπὶ βήμα]τος Ἰουλίου Ἰουλιανοῦ ἡγεμόνος ἐν Πέτρᾳ [μητροπόλει τῆ]ς Ἀραβίας [μέχρι οὗ διακουσθῶμεν ἐ]ν τῷ ἐν Πέ[τρᾳ τριβουναλίῳ (ll. 20–32). A reference to the summons in *P.Yadin* 14 can be found in *P.Yadin* 15 (of the same date): ἐπὶ οὗ [*sc.* Ἰουλίου Ἰουλιανοῦ ἡγεμόνος] περὶ τῆς ἀπειθαρχείας ἀποδόσεως τῶν τροφίων παρήνγειλα ἐγὼ Βαβαθα Ἰωάνῃ τῷ προγεγραμμένῳ, ἐνεὶ τῶν ἐπιτρόπων τοῦ ὀρφανοῦ (ll. 28–9 = 11–12, see above, n. 107).

[139] [π]αρανγέλλω σοι κατὰ τὴν ὑ[πογραφ]ὴν τοῦ κρατίστου ἡγεμόνος συνεξελθεῖν αὐτὴ<ν> εἰς [Π]έ[τραν] (ll. 6–8).

[140] ἐπὶ πρὸ τού<του> παρήνγιλές με εἰς [Ἀδριανὴν Πέτραν πρὸς τὸν] κράτ[ι]σ[τ]ον [ἡ]γ[ε]μόνα ... καὶ ἔδωκα καθ' ὑμ]ῶν πιττάκιν τῷ κρ[ατί]στῳ ἡγεμόνι καὶ [ὑπέγρα]ψέν μοι [εἰς Π]έτρ[αν σὺν ὑμ]ῖ[ν τ]ὰ [νόμι]μα χρᾶ[σ]θαι (ll. 15–21).

[141] Thus I cannot agree with Isaac, op. cit. (n. 10), 64–5 that 'this demonstrates the hardships caused by the Roman judicial system, which *forced* provincials to travel to assize cities' (italics mine); there does not seem to be any question of coercion.

[142] *P.Yadin* 23 (17 November 130), ll. 1–5 = ll. 10–16: 'Besas son of Jesus ... εἰς Πέτραν ἢ ἄλλου ἐν τῇ αὐτοῦ ἐπαρχίᾳ'.

[143] See Lewis on ll. 21 and 55 (p. 112).

[144] *P.Yadin* 26, ll. 2–11: 'Babatha ... summoned Miriam ... to accompany her in person before Haterius Nepos ... ὅπου ἂν ᾖ ὑπ' αὐτοῦ ὑπαρχ[ί]α ... καὶ παρεδρεύιν ἐπὶ τὸν αὐτὸν Νέπωτα μέχρι διαγνώσεως'. I translate ὅπου ἂν ᾖ ὑπ' αὐτοῦ ὑπαρχ[ί]α by 'wherever he happens to be exercising justice in the province' in agreement with what Lewis says on p. 115: it does not mean here a subdivision of the province, and *pace* Isaac it can hardly be used as evidence that 'Arabia was divided into districts called *hyparcheia*', cf. Isaac, op. cit. (n. 10), 69. One would have expected something like παρουσία here, as in *P.Yadin* 14, l. 14: ἢ εἰς τὴν αὐτοῦ ἔνγιστα παρ[ουσίαν (cf. ll. 32–3 and Lewis, p. 57 on παρουσία), but the υ before παρ[is very clear.

of money had not been increased.[145] Either she dropped her charges against the guardians or the governor ruled against her. Whichever explanation we choose to accept, there seems no good reason to assume that Babatha's confidence in the governor's accessibility was unfounded or misguided.[146]

Was the recourse to Roman law and Roman courts required by the Roman authorities?[147] This would be out of character with the rest of the archive — as well as with much evidence to the contrary from other parts of the Roman world — where the initiative is seen to be taken by the subjects. There is nothing in the documents we have reviewed here to suggest that recourse to Roman law and Roman courts was anything but voluntarily adopted. Without coercion or attempts to impose uniformity, the very presence of the Romans as the supreme authority in the province invited appeals to their authority, to their courts as well as to their laws. The provincials seem more than willing to let the central government handle their disputes; they take the trouble of preparing blank forms of the *actio tutelae*, of searching for Roman legal arguments and of introducing into their personal claims Roman propaganda slogans of 'the most blessed times'. They are active and enterprising in inviting intervention. Having previously used Aramaic and Nabataean, they now resort to Greek in their legal documents, for no other reason, it seems, than to make them valid in a Roman court of law. No other courts occur in this archive, and there is no good reason for assuming that Nabataean and Aramaic could not be used in a local court.

Most of the people involved in this archive are Jews; but, as there is nothing specifically Jewish about the Greek part of the archive, we are perfectly justified in regarding the Jews as representative of the provincials in general. Moreover, they represent that part of the provincial population which was less tainted by the 'epigraphic habit' of the Graeco-Roman world, i.e. they come from the less Hellenized section of the provincial population, those who would have left us no inscriptions — in this case the great majority of the population. Precisely because of this we can be sure that their dealings with the Roman authorities constitute a faithful picture of the realities of life in the province.

APPENDIX I

Having explored the Roman legal system to explain Babatha's appeal to the governor of the province, I would like to raise, with all due caution, an altogether different hypothesis, namely that under Nabataean law such cases came before the King; the Roman governor, therefore, replaced in this instance royal authority. We know very little about Nabataean legal practices — and most of our knowledge derives from this archive, to which as we have seen (above, n. 87) the Nabataean contract published sometime ago by J. Starcky belongs; but it seems that royal authority was involved in private contracts, as witnessed by *P.Yadin* 1–3 where all three contracts end with 'a specification of the fine to be paid, in the event of the purchaser's non-observance of the contract, both to the vendor and to the Nabataean king: ("ולמראנא רבאל מלכא כות— and to our lord Rabel the king likewise")', Y. Yadin, op. cit. (n. 6), 241. This formula is rendered into Greek and applied to the Emperor in *P.Yadin* 5 (2 June 110), frg. a, col. ii, ll. 9–11: δ[ι]πλοῦ[ν] τῶν[ ] καὶ Καίσαρι ὡσαύτως κ[ ] προγέγραπται ... (pointed out by Bowersock, op. cit. (above, n. 10), 340). One need not go here into any extended argument to prove that the Romans frequently accepted and continued local practices, especially when they did not directly contradict their own (for private contracts containing clauses for the benefit of the fiscus, see F. Millar, 'The fiscus in the first two centuries', *JRS* 53 (1963), 37–8). Likewise, royal property became imperial property as witnessed by a comparison of the unpublished *P.Yadin* 2 (from 99 C.E.): ולימינא גנת מראנא רבאל מלך נבטו— 'to the south the grove of our lord Rabel the king, king of the Nabataeans' (Yadin, ibid., 240–1) and *P.Yadin* 16, ll. 23–4: γείτονες μοσχαντικὴ κυρίου Καίσαρος. On the meaning of μοσχαντική, see Bowersock, ibid., 341.

[145] See above, at n. 109.

[146] Goodman, op. cit. (n. 5), 172, quite rightly draws attention to the absence from the documents of evidence 'for an effective local ruling class interposed between ordinary provincials and the machinery of the Roman state'; this observation should make it easier to accept the view of the governor's accessibility and involvement in the legal affairs of the *peregrini* in the provinces put forward some time ago by G. Burton in 'Proconsuls, assizes and the administration of justice under the empire', *JRS* 63 (1973), esp. 101–2. As far as jurisdiction is concerned, no distinction should be made between proconsuls and *legati*.

[147] cf. Wolff, op. cit. (n. 2), 788ff.; Isaac, op. cit. (n. 10), 64–5 and see n. 141 above.

APPENDIX II

There is some evidence for limitations on the competence of local courts in cases involving *tutela*. The Lex Irnitana IXA <84>, ll. 10–11 (*JRS* 76 (1986), 175) makes it quite clear that the local *duovir* who is in charge of the administration of justice ('qui ibi iure dicundo praeerit') does not have jurisdiction in cases involving *tutela*. (See A. Rodger, 'The jurisdiction of local magistrates: Chapters 84 of the Lex Irnitana', *ZPE* 84 (1990), 147–51.) Further on, though, there is a mitigating circumstance in which the *duovir* can exercise jurisdiction (ll. 17–18): 'and even about these matters if each of the two parties is willing' ('de is rebus etiam, si uterque inter quos ambig{er}etur volet'). One could mention also the provision in the municipal charter known as the *Fragmentum Atestinum* to the effect that municipal magistrates might appoint a judge in cases involving *tutela* only when the sum of money involved does not exceed 10,000 sesterces, or 2,500 denarii (*FIRA* I², no. 20, ll. 1–7). This sum of money happens to be mentioned twice as the upper limit in the *actio tutelae* contained in *P.Yadin* 28–30: judges are to be appointed only if the matter involves up to 2,500 denarii; and again: their judgement cannot involve a sum of money which will exceed 2,500 denarii. But see the *Edictum Augusti de Aquaeductu Venafrano*, *FIRA* I², no. 67, ll. 65ff. which mentions the same sum of money; perhaps the sum of 10,000 sesterces was used arbitrarily for convenience, and no special significance should be attached to it (I owe both the observation and the reference to Professor M. Crawford). Moreover, assuming that it is the governor rather than local magistrates who would issue the *actio tutelae*, it is hard to see why a limit was set at all in the present case.

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