

Legal Incapacity in Ancient Egypt

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ABSTRACT

This paper studies the phenomenon of legal incapacity in Ancient Egypt throughout the ages, with special attention for the Graeco-Roman evidence in Demotic, the late stage of the indigenous language and script. Because the concept of guardianship is in many ways problematic for the Egyptian tradition, the paper looks at some areas of legal discrimination, and examines how differently women, the under-aged or the old were treated in the case of capitation taxes or the performance of legal acts, specifically inheritance. In all, the evidence points towards very minor discrimination of certain population categories: they were probably considered as constitutive members or membres-to-be of society. While they had most rights and could perform legal acts, as «weaker» individuals they were often assisted by others. As is typical for Egyptian law, much remains implicit. This is certainly annoying for legal historians, but may well be symptomatic of a strong sense of what was legally «proper».

INTRODUCTION

Guardianship seems a very natural concept to us today. Those who cannot act legally themselves need to be represented by someone who can: young children need an adult, slaves need a master, while the mentally challenged need someone who is *compos mentis*. The inclusion of women in this list is almost shocking to 21st century western society, as gender is no longer seen as a valid criterion to determine whether a person is able to act legally or contractually.

Ancient Egyptians may well have shared some of that indignation, as in contrast with Greek or Roman society, women did not need a male guardian to represent them: they could be a party in a legal transaction or in court proceedings in their own right. At first sight, the entire concept of guardianship may seem inapplicable to Ancient Egypt. This is illustrated nicely by the dearth of attention the subject gets in Egyptological compendia. Thus the *Lexikon der Ägyptologie*, that landmark achievement of the late 20th century, under Vormundschaft («Guardianship») suffices with the following brief entry:

Eine V[ormundschaft] ist selten erwähnt: sicher in einem Kahun-Papyrus des MR, vielleicht in einem Totenbrief. Wenn wir die Angaben des pWilbour verallgemeinern dürfen, so war im NR die Mutter für die Kinder verantwortlich, und es war keine Notwendigkeit für einen Vormund.¹

Although in German law the term «Vormundschaft» has since 1992 been exclusively used for legal representation of those under age (with the other cases falling under «Betreuung»),² this short entry (dated 1986!) also illustrates Egyptological conceptions: in Ancient Egypt women are not even mentioned as possibly needing a guardian, since they can act in their own right.

Despite the fact that the concept of guardianship thus seems rather unproductive for ancient Egypt, it may be instructive to examine whether the population segments that needed guardians in other societies were legally treated any differently than the (free) male adults. After all, the autobiographies boasting to have supported widows and orphans (or the elderly and orphans) prove that these were considered population groups in need of protection in Egypt also.³ In the following I will thus look for «legal discrimination» of children and women, and occasionally also the old and those not *compos mentis*. I will only mention slaves and their «guardians» in passing, as the word «guardian» is not normally used in that context and the social situation is indeed quite

¹ HELCK 1986.

² See Wikipedia <<http://de.wikipedia.org/wiki/Vormundschaft>> accessed 15.10.2014.

³ See, e.g., KÓTHAY 2006. For autobiographies in general, see GNIRS 1996 and FROOD 2007.

different. Moreover the concept of slavery itself is also problematic in Egypt, certainly for the earlier, pre-Hellenistic times.⁴

In what follows I will use evidence from all periods of Egyptian history, trying to discern evolutions where possible. In many cases, however, the dearth of sources makes it problematic to observe changes in the social and legal position. Before the late period (from ca. 700 BCE onwards), there are only few hieratic papyri and ostraca to reconstruct the legal praxis of the Old (ca. 2650-2200 BCE), Middle (ca. 2050-1650 BCE) or New Kingdoms (ca. 1550-1050 BCE). Afterwards, the abnormal hieratic and demotic documents are much more numerous, especially in the early Ptolemaic period, from the 4th to the 2nd century BCE, and strikingly illustrate many facts of Egyptian law.⁵ There are even some legal manuals in Demotic that inform us about its principles.⁶

1. LEGAL INCAPACITY, CAPITATION TAXES AND CENSUS

The right to pay capitation taxes is a fundamental one: by contributing, the tax-payer is fully recognized as a constitutive member of society. Tax liability is often linked to the right to perform other legal acts, e.g. voting in early Western democracies.⁷ Capitation tax thus confirms the individual's legal status, with exemptions for the elite or otherwise privileged populations groups on the one end of the spectrum, and with non-liability for those incapable to act at the other.

Despite the fact that there was clearly a census of citizens,⁸ there is very little evidence for capitation taxes in kind in the non-monetary economy of ancient Egypt before the Ptolemies. Under the Greek and Roman rulers of Egypt, however, the capitation tax was one of the main sources of income,⁹

⁴ See LOPRIENO 2012. For a recent introduction to slavery in the Graeco-Roman and Byzantine periods, which probably is not too dissimilar from earlier times, see ROTMAN, SCHOLL & STRAUS 2014.

⁵ The Demotic texts of the Ptolemaic and Roman period should of course be studied together with their Greek counterparts, as is the case, e.g., KEENAN, MANNING & YIFTACH-FIRANKO 2014 or LIPPERT 2008.

⁶ The most famous one is the so-called Demotic Legal Code (TM 48855 – for the TM text identifiers see www.trismegistos.org/text/ followed by the number). For another example see P. Berlin P. 23757 Ro (TM 56178; studied by LIPPERT 2004).

⁷ Compare also the famous «no taxation without representation» in British history: see Wikipedia <http://en.wikipedia.org/wiki/No_taxation_without_representation> accessed 15.10.2014.

⁸ For which, see KRAUS 2004, 69-98.

⁹ CLARYSSE & THOMPSON 2006, 1-35.

and the fluctuation of the precise modalities could be revealing about the status of certain population categories. Although many uncertainties about details remain, the history of the capitation tax in Egypt may thus shed some light on the issue of «full citizenship» and thus indirectly guardianship.

For Ptolemaic Egypt we have firm evidence about a listing of all inhabitants, male and female, (young and) old, free and slave, and even human or animal, from the reign of Ptolemy II onwards (earliest evidence 263 BCE).¹⁰ The main purpose of this irregular census, which probably already existed in the pre-Ptolemaic era, in this case was the levy of the “salt tax” or *halike*. This may have been an innovation, replacing the earlier capitation tax, called “yoke tax”. For the early history of these two taxes there is also plenty of evidence in the form of receipts, which show an evolution in the rates (A, B, C) applied.¹¹ The receipts, however, disappeared after 219 BCE, despite the fact that the tax itself in all likelihood survived until the advent of Roman rule. The new Roman rulers introduced the *laographia*, a much higher tax based on a periodical census every fourteen years. In this case the primary evidence are declarations by taxpayers (combined with lists from the administration).¹²

Table 1 lists the liability of various population categories in comparison with the rate of a free adult male.

Table 1. Liability of population categories
We have no evidence at all about physically or medically handicapped people

	MALE	FEMALE	YOUNG	OLD	SLAVE
Yoke tax	100%	Exempt	?	?	?
Salt tax A	100%	66%	-14 exempt?	100%?	Same
Salt tax B	100%	50%	-14 exempt?	100%?	Same
Salt tax C	100%	37.5%	-14 exempt?	100%?	Same
Laographia	100%	Exempt	-14 exempt	+62 exempt	Same

¹⁰ CLARYSSE & THOMPSON 2006, 36-89.

¹¹ CLARYSSE & THOMPSON 2006, 36-52.

¹² See BAGNALL & FRIER 1994.

If it is assumed that the young did not pay capitation taxes and that they were only levied from the age of 14 onwards, the main difference between the various stages is the position of women. Discounting the scarce evidence for the very early period, a progressive decline of the proportional rate for women can be observed, culminating in their exemption in the Roman period. Nevertheless women can still be listed as heads of households, on their own, and they also are found paying the salt tax itself.¹³

2. LEGAL INCAPACITY, CONTRACTING AND SUING

2.1. WOMEN

In ancient Egypt, women had the right to appear as parties in a contract without a guardian, probably already from the Old Kingdom onwards. They apparently could also be plaintiffs in court in their own right.¹⁴ The situation does not seem to change markedly in the later periods of Egyptian history, although some have pointed towards women moving to the somewhat «softer» sectors of the economy.¹⁵ Also, the (rare) cases where women appear as witnesses to an agreement no longer occur. This is possibly related to loss of independence, which could be explained by influence of Greek and later Roman law. In those legal systems they need a *kyrios* or “guardian”, at least in theory. And although some women may have disobeyed this law and others may not have taken the concept seriously,¹⁶ the evidence clearly points out that in most Greek contracts women appear with a male guardian, even if the same ladies appear in Demotic deeds on their own, including in the Roman period.¹⁷

Nevertheless the contrast between Greek law (with guardian) and Egyptian law (without) may not be so black and white. Indeed nothing impeded women to be represented occasionally by men for certain transactions. A New Kingdom text talks about fields owned by a woman but sold by a man described as her *šnw*, perhaps “male kinsman”.¹⁸ For several consecutive years the woman

¹³ CLARYSSE & THOMPSON 2006, 301-304 for women as heads of households; O. Varia 20 (TM 3016) for an example of a woman paying the salt tax.

¹⁴ LIPPERT 2008, 14, 35, 57.

¹⁵ MENU 1989, 201-202.

¹⁶ See PESTMAN 1995, 83-84 for the examples of Nahomsesis appearing without *kyrios* in Greek contracts and Sennesis choosing the other party to play that role.

¹⁷ SCHENTULEIT 2009, 192-212.

¹⁸ P.Brooklyn 16.205, as published in PARKER 1962, 50 (TM 372045). See also LIPPERT 2008, 57.

Tetehathyris leases out her own land in Ptolemaic Thebes.¹⁹ Twice she does this by herself, and three times her husband Totoes implicitly acts on her behalf. Did Tetehathyris really act on her own and was she unaccompanied in the other two cases, or in further contracts for that matter? The incorrect use of male second or third person suffixes rather than their correct feminine counterparts sheds doubt on this. Of course, these errors may be mere mistakes of the notary caused by habit. Indeed, although women did have the right to figure as a party in contracts, most of the contracting parties did remain men: in my database of Demotic contracts only 17% and 29% (n = 777) of the first and second parties are women.²⁰ Just as in current western society nurses are typically women and truck drivers are typically men, thus the archetypical contracting parties for an ancient Egyptian notary will have been male. But there is more: in another contract from the earlier generation of the same family, a woman Tanouphis (Totoes' mother) is stated to have acquired property.²¹ But four years later Tanouphis' husband sells the same property, stating that he acquired it himself from the vendor, and adding that he had caused "to write out the contract in the name of Tanouphis".

This evidence suggests that in some cases the independence of women may have been apparent only. On the other hand the famous Siut trial papyrus shows us a woman, Chratianch, suing against the eldest son of her father-in-law's second marriage, Tefhape, on account of the inheritance of their common father or father-in-law respectively, Petetum.²² The amazing thing is that Chratianch, although only an in-law, is the only one to appear in the trial for the suing party, her husband Totoes being remarkably absent, despite being alive. Chratianch even states that she acts "in the name of Totoes", which led the first editor to speculate that he was perhaps *non compos*. Even more puzzling is the brief appearance of a certain Ouertes, when the judges ask her:

Is there a man who makes your plea (*hrw*, literally "voice")?

¹⁹ PESTMAN 1995, 83-85.

²⁰ For the database see DEPAUW 2007. Compare also JOHNSON 1998, 1417-1420 or O'BRIEN 2002. Compare also the forthcoming investigation of Renate FELLINGER (Cambridge), as illustrated by her presentation on 4.9.2014 at the Demotic congress in Würzburg: «The legal role of women in Ptolemaic Thebes: A case study of cross-cultural influence».

²¹ PESTMAN 1995, 85.

²² P. BM 10591 Ro (TM 43343; published in THOMPSON 1934). The best introduction to the archive as a whole is probably in Dutch: VLEEMING 1989. A new edition of the entire archive is now in preparation by Bahar LANDSBERGER in Heidelberg (supervision K. DONKER VAN HEEL and J.F. QUACK).

To which Chratianch replies:

Ouertes is he who makes my plea; my plea is his plea. If he is justified, I am justified; if he is false, I am false.

This Ouertes then upon the request of the judges adds an apparent detail to Chratianch's long pleas, but otherwise just confirms that what has been stated by Chratianch is the plaintiff's case.²³ The presence of this Ouertes is very puzzling: is he a lawyer, contradicting Diodorus' famous statement that these did not exist in Egypt?²⁴ Or is he the guardian, who only turns up at this stage of the procedure? The latter seems implausible, certainly in a trial before the Egyptian court of the *laokritai* rather than the Greek *chrematistai*.

On the whole, the picture is thus complex. In some contexts, and perhaps more in the later periods under Greek influence, women in fact did not do the dirty work themselves, but relied on men. Like the lack of women witnesses, however, this may equally be related to lower levels of female literacy: since women were often not able to write, they were more likely to be accompanied at the transaction by a man who could. That not all women were illiterate and that their statement could be legally valid is shown by a procedure described in a law manual: when all witnesses had died and they had left no sons, daughters could confirm their fathers' agreement, at least if they «knew letters».²⁵

2.2. YOUNG AND OLD

As to age requirements for contracting and suing, even less can be said. Although some have postulated fourteen as the moment of coming of age, there is actually no hard evidence in favour of this before the Greco-Roman period.²⁶ Others have suggested that there was no fixed age for maturity in ancient Egypt, and that marriage played an important role.²⁷ What complicates matters further is that the age of contracting parties was normally not indicated, making it very problematic to recognize children appearing as contracting parties. Thus in a contract the son receiving liturgical days (i.e. income from priestly offices) turns out to be less than six years old at the time of the con-

²³ P. BM 10591 Ro (TM 43343), col. 6 lines 11-16.

²⁴ MANNING forthcoming.

²⁵ LIPPERT 2004, 37-38.

²⁶ For some arguments for 14 as the age of legal majority in the Graeco-Roman period: CLARYSSE & THOMPSON 2006, vol. 2, 41-42.

²⁷ JANSSEN & JANSSEN 1990, 99. See also LIPPERT 2008, 35, 57, 116-118.

tract, and probably was brought to the notary's office by his mother, although this is not made explicit anywhere.²⁸ In another case, we know that a woman who appears to buy part of a house is in fact a twelve year old girl, perhaps about to marry, in which case the father may have played a crucial role in the transaction.²⁹ This raises questions about the interpretation of the switch observed in marriage settlements: in earlier contracts the bride's father appears to deal with her husband, while later the bride herself is the other party in the agreement. Perhaps this is not related to the age of the bride to be,³⁰ although twelve is older than the traditional age of ten, before which children in ancient Egypt were not assumed to be able to distinguish between good and evil and which may have constituted a limit for the under-aged.³¹

3. A CASE STUDY: LEGAL INCAPACITY AND INHERITING

A crucial legal act involving property is of course inheriting.³² In inheritance law, society clearly stipulates whose rights to property prevailed over those of others, and who could own e.g. real estate in his/her own right. In the oldest ancient Egyptian law the ideal scenario apparently was for the oldest (first-born) son to inherit everything from his father, and becoming the new head of the family with all that entailed. If there were no sons, and even no adopted sons, the oldest daughter could take over the role of legal heir, and her rights were higher than those of brothers of the deceased. Spouses had no rights to inherit: special arrangements had to be made for them to become the owners of their husband's property, although they were entitled to a third of his property by mere marriage.

Gradually, however, the pressure from the siblings against the monopoly of the legal heir seems to have risen, and in the New Kingdom there is evidence for a new role of the oldest son as *rwḏw*, which can be translated as "agent" or "caretaker". This implies that the legal heir of the estate had the duty to manage it for the entire family. Not very different from the role commonly associated with that of a guardian, actually. At least from the Late Pharaonic Period onwards, these claims had developed into rights, and all children had a right to a part of the estate of their father. Nevertheless the share of the oldest

²⁸ P. Turin Suppl. 6069 (TM 45082): see PESTMAN 1995, 87.

²⁹ P. Louvre N 2410 (TM 3570): see PESTMAN 1995, 86.

³⁰ LIPPERT 2008, 146, 75.

³¹ Insinger (TM 55918) col. 17 line 22.

³² This section is largely based on LIPPERT 2013.

son was higher (often by 100%) than that of his siblings, and he remained the “manager” of the property if it was indivisible (e.g. for a house). Exceptional is a single document from the 6th Dynasty appointing a trustee for the whole estate, “one who eats without being able to damage”.

The age of the heirs does not seem to have played a role, or majority of age is at least never specified as a criterion to qualify for inheritance. Of course the underage children who inherited needed someone to take care of their interests for them, a mother, an older sibling or other relatives. And of course a parent who remarried and somehow turned malignant could be a disaster for the children, as is illustrated by a moving Demotic letter to the local gods written by two brothers, complaining about the cruel behavior of their father.³³

Nor do we have any evidence that suggests that people in their old age were any less legally capable to act as testator. Several documents drawn up by fathers in favour of offspring may indeed function as wills, but these normally never refer to the testator’s forthcoming death, in all likelihood for magical reasons.³⁴ Their *post mortem* validity remains implicit, and placing the document in the hands of a trustworthy third party solved the problem of premature and unintended transfer of ownership. Nevertheless, at least some documents are more explicit: P. Kahun 7 thus states:

Deed of conveyance made by the controller of the watch X for his son Y. I am giving my (position of) controller of the watch to my son Y in exchange for (being) staff of old age, because I am now grown old. Let him be appointed at once.³⁵

In this case it seems certain that someone who retired because of old age – and infirmity as a result of that – opted to have his son installed as his successor in his lifetime. But this of course does not imply that he needed a guardian or was legally incapacitated. In fact the contract itself rather proves the opposite.

Perhaps, finally, it is time to have a look at the single certain case of a guardian mentioned in the LÄ-lemma, P. University College London 32058, a contract, perhaps a will, to be dated in the Middle Kingdom, around 1800 BCE.³⁶ A man called Wah transfers all the property his (elder?) brother gave him earlier, to his wife, Teti. Interestingly, a postscript (“codicil”) adds that he appoints a certain Gebu to act as *šd-hnw*, literally “child raiser”, for his son. The precise purpose of the addition, its meaning and its legality are all uncer-

³³ P. BM 10845 (TM 48779; HUGHES 1969).

³⁴ For the *donatio propter mortem*, see CLARYSSE 1995.

³⁵ P. University College UC 32037 (TM 372046), in the translation of COLLIER & QUIRKE 2004, 101.

³⁶ P. University College UC 32058 (TM 372047).

tain. It has even been suggested that this is just possibly a teacher for the boy, although this seems unlikely in this context. Even so, it remains puzzling why Wah's son would need a guardian, unless perhaps Wah's wife Teti was not his mother. But in that case the addition of an unrelated issue to this contract is very unexpected indeed.

4. CONCLUSION (PRELIMINARY)

Although the concept of guardianship remains a problematic one for Ancient Egypt, some population categories may indeed have been «more equal than others». Women, although they could independently perform legal acts such as paying taxes, appearing as contracting parties in various property transactions, and even inheriting their father's estate, also paid less than the full tariff, were probably regularly assisted by men, and had to give priority to male siblings. For children the evidence is meager, as in some cases abstraction seems to have been made of their young age. In the exceptional case where a trustee «child-raiser» is explicitly appointed, his precise role is unclear. The old may well not have been a separate category at all, although some did take a conscious step back from public life, appointing their beloved heirs in their stead. As a rule, mothers seem to take their children's interests at heart. For those not *compos mentis*, there is even less, not to say no material: their legal position must remain uncertain.

In all, I think the evidence points towards very minor legal discrimination of certain population categories in Ancient Egypt. Women, the old and the under-aged were probably considered constitutive members of society, or at least members-to-be in the case of children. They had most rights and could perform legal acts, although as «weaker» individuals they often needed assistance from others. Like the younger siblings in the case of an undivided inheritance, they often needed someone to manage certain things for them. Typical for Egyptian law is that much remains implicit: «sales» can in fact be donations, mortgages, or even wills, without this being specifically marked. In the same way, men may have acted for women and young children may have been represented by their mothers or other family. This lack of a precise and accurate description of affairs may be annoying for legal historians, but it may well be symptomatic for a strong sense of what was legally «proper», i.e. the right thing to do. For things that are self-evident, laws are after all considered unnecessary...

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