

Daniel Boyarin

STUDIES IN THE ARAMAIC LEGAL
PAPYRI FROM ELEPHANTINE
By Yochanan Muffs.
Leiden: E.J. Brill, 1969.
xi plus 311 pp., Fl. 79.

Studies in Aramaic Legal Papyri from Elephantine (hereafter Studies) is a tour de force. The body of the monograph is an extensive and intensive application of comparative dialectology (the Landsberger-Held method) to a specific set of texts and terminology. The footnotes include hints and often excurses on the ramifications and possibilities for future research dormant in the text itself. It is a tour de force in that it demonstrates the superior control, accuracy, and efficacy of the Landsberger-Held method vis-à-vis the old etymological method.

The primary burden of the monograph is to prove through careful philological argument the exact legal and semantic meaning of the phrase tyb lbby ("my heart is satisfied") in Aramaic legal papers found on the Egyptian island of Elephantine and its analogues in cuneiform and Demotic traditions. Previous studies including that of Yaron on the Aramaic material, Seidl on the Demotic, and Klima on the cuneiform have either concluded that the terms express volition-consent, or in the case of Yaron, that they are purely narrative elements having no legal force. Muffs, through exhaustive analysis of the antecedents, grammatical structure, complements, and seeming synonyms of the terms involved comes to the conclusion that, far from being expressions of a volitional-consensual nature, they are "the terminological expression of Entgeltlichkeit¹ par excellence!" (P. 28.)

¹Entgeltlichkeit is a legal term which is derived from the word Entgelt, denoting compensation, recompense, payment, etc.

Daniel Boyarin is a graduate student in the Rabbinical School of the Jewish Theological Seminary and in the Department of Middle East Languages and Cultures.

As an example of one of the many types of reasoning brought to bear on this problem, the following is typical. Muffs first demonstrates through a distribution chart (p. 25) that the expression hwṭbt lbby/tyb lbby, "You have satisfied my heart/my heart is satisfied with (the performance)," appears only in sale and quit-claim documents. It is completely absent from deeds of gift. In the latter, its structural equivalent is an expression such as yḥbt lk brḥmn/t, "I (hereby) give to you in affection/as a gift," or the like (p. 36). Since it can be demonstrated that the latter expressions express volition, their mutual exclusivity with tyb lbby in sale and quit-claim documents would tend to exclude volition/consent as an interpretation of tyb lbby (p. 40 ff.).

The clearest proof of the value of Muffs' method as opposed to the etymological method comes at the end of the chapter on semantic equivalents and contrasts of the Akkadian term which corresponds exactly to Aramaic tyb lbby, i. e., libbašu ṭāb (p. 140). Muffs, having completed a study of the isoglosses² of the Akkadian term, proves thereby that the root metaphor of libbašu ṭāb is satisfaction with performance and therefore *Entgeltlichkeit*. He then shows that the etymologically similar term ina ṭūb libbi(m) functions as a term of volition in gift deeds of various types and that its root metaphor is "joy" (=volition). The occurrence of ṭāb with libbu(m) in both cases is one of the factors which led (or misled) earlier scholars to interpret libbašu ṭāb as a term of volition. The strict application of the Landsberger-Held method, however, reveals that the etymological identity of the idioms is a red herring and that indeed the two terms reflect very different legal facts.

Because of the exceedingly compact nature of the argumentation in *Studies* and the organic relationship between the various parts of the reasoning, there are, of necessity, passages requiring clarification or commentary. The following paragraphs include such clarification as well as brief philological remarks on several of the adumbrations in the footnotes. These remarks primarily refer to the points of correspondence with Talmudic law and philology.

P. 32, n. 1: A concrete example of the value of Muffs' use of the Landsberger-Held method is his examination of the term ṭṭ. He shows that in Elephantine Aramaic it is used in the sense of "to impose/load on an oath" and

²"Isoglosses (= functionally identical but mutually exclusive terms belonging to different branches of the same language..."(p. 116).

that it seems to be a loan translation from the Akkadian emēdu "to load/to force to take an oath." The connection with the rabbinic term לעב "to raise an objection" is drawn, and Muffs observes that this and another usage of the same root in rabbinic Hebrew are both "based on the metaphor of loading." It seems that a slight modification of this view is in order. The rabbinic expression is used also in the sense of "to bring an action at civil law," e.g., B.M. IV.7 הטענה שתי כסף "the minimum claim allowable is two X." We would argue that the usage of the term in this sense is directly derived from the Elephantine usage or independently translated from the Akkadian and should be rendered into English literally as "the imposition of an oath is (executed on a minimum claim of) two X."³ The usage, then, of לעב in the sense of "raise an objection" would be a secondary development from its usage in court procedure. In any case, the Mishnaic phrase had been clarified by the method of comparative dialectology.⁴

P. 36, n. 1: Muffs discusses here the term bhyy wbmwt, "In my life and after my death," which in the Elephantine documents indicates the final nature of a gift. He then compares it with the Talmudic discussion⁵ on the use of this term in such deeds, in which Rab and Shemuel disagree on whether such a deed is to be termed a "gift of the dying" (conditional on the death of the donor and revocable until then) or a "gift of the healthy" (irrevocable). Muffs argues that since the force of the term in the Elephantine documents is finality, Rab's interpretation of "gift of the dying" seems functionally unlikely. However, it seems to us that in the Talmudic discussion it is not truly the revocability or irrevocability of the gift which is at issue, but rather the conditions of its taking effect. As such, the phrase בהיים ומות can retain its connotation of finality whether it refers to a "gift of the dying" or its opposite. Our interpretation is supported by at least one of the deeds brought by Muffs himself, of which the crucial phrase (in Muffs' translation) is "...I have turned my thoughts to you in my lifetime, and I give to you part of my house....I on my part, (hereby) assign (it) to her (as final property) after my death" (BP 9, Studies, pp. 38-39). Here we see the phrase

³This is the sense in which this phrase is understood in the commentaries, but now its etymological exactitude is shown.

⁴I am pleased to note that Prof. E.Y. Kutscher concurs with this point. (Private communication.)

⁵TB B.B. 153 a.

being used to indicate final assignation, but taking effect only after death, exactly as in Rab's interpretation of the clause in the Talmud. More germane to the discussion is the Mishnah at the beginning of the ninth chapter of Ketuboth in which the phrase "in your life and in your death" is required for complete renunciation by the husband of his rights to usufruct and inheritance of his wife's property. The object of the phrase "in my life" or "in your life" is indeed reversed there because of the particular transaction involved, but its function is virtually identical to its use in the Aramaic conveyances.

P. 40, n. 1: The author discusses the use of an apparent Persian loanword to denote the adverbial component of the phrase "to set free." He deduces from such borrowing that Aramaic probably lacked an indigenous term equivalent thereto. Support for this deduction is offered from the use of a circumlocution in Targum Onkelos. To render Ex. 21:26 לחפשי ישלחנו , the Targum has לבר-חורין , "he will release him into (being) a free man." Further support for this point can be adduced from the usage of the Jerusalem Targum of the verb שחרר with the same meaning.⁶ This verb, which appears only in the Targum and in Mishnaic Hebrew,⁷ seems to be a late coinage on the analogy of borrowed š forms, and its use would again support the hypothesis that there was no indigenous term in older Aramaic for the complex "to set free."

P. 53, n. 1: On tyb lbby Muffs remarks, "However, there is a possibility that by the fifth century, the term had become stereotypic and non-evocative and that the scribes, even if they employed the term in ways which may seem subtle to us, were merely following time-honored usage whose original significance was not always clear to them." While it is obvious that Muffs is observing proper caution in recording an important qualification with respect to his general thesis, nevertheless this statement tends to vitiate his whole argument. Fortunately, he later clarifies by implication the confusion which might be created here. In discussing the Sumerian equivalent to tyb lbby/libbašu t̄āb (p. 74), he points out that the idiom seems to have lost some of its constitutive/evocative significance in Sumerian usage, because it is placed as one of a string, and indeed the last, of redundant phrases. The appearance in sequence gives us a

⁶Cf. Gen. 30:4, 9.

⁷C. Rabin, "The Nature and Origin of the šafcel in Hebrew and Aramaic," Eretz-Israel 9 (1969), p. 149.

criterion by which to judge critically the constitutive power remaining in a given deed-formula. Muffs states this methodological rule himself on p. 80 where he writes "libbašu t̄āb still preserves its juridical significance in deeds where it is the only or the central term," i.e., it expresses the idea of quittance-satisfaction. Moreover, the observation that we can demonstrate the evocative nature of the clause in the fifth century Aramaic deeds and that in this sense, they are closer to deeds of the early Old Babylonian Period than to those of the late Old Babylonian, serves as an occasion for Muffs to note the "uneven tempo of cultural development in the Near East" (p. 75, n. 1). The significance of this point extends far beyond its immediate context.

P. 193: Muffs defines the rabbinic term לשון הדיוט⁸ as "layman's formulary" and implies that it refers to all of the formulae of deeds preserved in the Talmud. The traditional commentators, however, distinguish between the layman's formulary and the rabbinically instituted formulary.⁹ Since, as Muffs observes, the phrase "layman's formulary" implies possible inter-cultural borrowing of terminology, only an independent investigation of each of the formulae mentioned in the Talmud, both those called לשון הדיוט and those not designated as such, will determine the proper interpretation of the term and the Talmudic passage involved. This is essentially an inner-Talmudic problem which Muffs' approach would go far toward solving.

Technical Remarks

P. 36, n. 1: There is no entry in the bibliography for Y. Yaron, Gifts in Contemplation of Death in Jewish and Roman Law (Oxford University Press, 1960).

P. 83, l. 13 from the bottom: for "Egyptian" read "Akkadian."

P. 110: here "below" means later in the book, whereas in other places, such as p. 134, it means earlier.

P. 200, addendum to p. 117, line 2 of addendum, read Susa zīzū mešû for zīzū gamrū.

P. 207, first addendum to p. 188: addendum obviously out of place.

Indices, p. 296: read "Samoan Law, 16" for "Samoan Law, 19."

Aside from these and a few other minor points, the indices and bibliography are exhaustive and quite useful. Much important information is also included in the addenda.

⁸TB, B.M. 104 a-b.

⁹Rashi, s.v. שרר and Tos., s.v. היה.

Studies will have interest and value for the student of legal history; the significance for comparative law of the role of Entgeltlichkeit in Near Eastern law remains to be realized in future studies. Anthropologists will find the examination of the background of sale in the ancient Near East of importance, particularly the fascinating discussion of the concept of "eating the price" of the field on pp. 110-111.¹⁰

The greatest value of this book will be to scholars in the ancillary disciplines: cuneiform, Aramaic, Talmudic, and Egyptian law, as well as the dialects involved. Professor Muffs has brought together an impressive body of knowledge in a broad range of related fields, and in his great care has demonstrated the usefulness of these fields in elucidating the problem at hand. We fully recommend the book, both as a methodological model and for the myriad avenues of future research which it opens up.

¹⁰This is, incidently, a further demonstration of the necessity of tracing these terms back to their earliest antecedents for proper understanding thereof, contra Yaron in his review of Studies in Israel Law Review 4 (1969), p. 588.