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The Legal Register of Ramesside
Private Law Instruments

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« *C'est un bon testament, un testament, morbleu,
Bien fait, bien cimenté, qui doit vous tenir lieu
De tendresse, d'amour, de désir, de ménage,
De femme, de contrats, d'enfants, de mariage.* »

Jean-François Regnard, Le légataire universel, acte I, scène 7.

Introduction

This work is the logical sequel to my earlier *Syntactic and Lexico-Semantic Aspects of the Legal Register in Ramesside Royal Decrees* (David 2006) that dealt with the language of the normative genre of public law in the Ramesside Period. Pursuing the analysis of the legal registers of the Ramesside Period, the obvious next step was to investigate the language of documents pertaining to the private sphere, in order to establish the linguistic features of that specific genre, and to compare them with the dialect used in public sphere normative instruments. The corpus of the Ramesside private law instruments was the basis of a *genre-oriented* grammar of a definite period in the context of a specific *état de langue*. The purpose of this series (which should be completed by a further volume devoted to the *contentious* genre) is to survey the various written legal registers of an epoch (synchronous approach) and compare them with parallel registers during previous and sometimes later periods (diachronic approach) in order to assess patterns and changes.

The typological qualification of the genre under examination may be approached in several ways¹. Danet (1980: 459) used Searle's taxonomy of speech acts where the philosopher of language² qualified the utterances involved in contracts and wills as *commissive speech acts* that 'commit the speaker to do something in the future.' As a basis for the qualification of the genre of private law instruments, the *commissive legal genre*, this definition poses some problems. First of all, wills, gifts and contracts are complex documents involving many kinds of provisions, and thus many other categories of speech acts; some of their provisions display for instance, assertive (e.g. general statement), directive (e.g. imposition of specific conditions to the other party)³, even expressive aspects (e.g. praise of the legatee's positive behavior). Furthermore, a typical public law genre, the statute may also involve commissive speech acts (for instance when a state such as Belgium commits itself in a law to remedy an environmental issue in the context of international cooperation).

My typological approach is based on the general legal concept of the freedom of private individuals to take decisions concerning their property⁴, as expressed in private law instruments covering bilateral acts (involving the consenting wills of two parties at least, e.g. contracts⁵) as well as unilateral expressions of *will* such as wills and gifts⁶. Of course this

1 Of course, the qualification of the legal genre under discussion was neither conceived of, nor expressed by the ancient Egyptians in this fashion.

2 Searle (1976); Searle & Vanderveken (1985).

3 Concerning directive and commissive acts in contracts, see Trosborg (1997: 59-62).

4 French: *autonomie de la volonté des particuliers, libre disposition des biens*.

5 In the broad sense of agreements between parties having legal consequences; we do not take into consideration here the notion of unilateral contracts and will not broach the issue of agreement versus promise(s).

involves the notion of commitment (commissive acts), but does not exclude other types of speech acts. As in modern legal systems, the principle of individual freedom in the domains of contracts or gratuities does not mean that all matters are left to the discretion of the disposing party (or parties), but that the willingness to contract or to make a will/gift, the determination of the content of the deed within the limits imposed by the legal system, and the source of undertakings are decisions of the disposing party or parties only. As a matter of fact, this autonomy concept was formulated in a Ramesside document as a principle enunciated by the king: *hr dd [Pr]-ꜥ3 ꜥ.w.s. imi iry s nb 3bwtw.f m 3hwtw.f* ‘And Pharaoh L.P.H. said: “Let every man do what he wants with his assets.”’ (pTurin 2021, line II.11).

Private law deeds therefore belong to a specific *consentient legal genre* associated with a specific language, subject, style and communicative purpose, and determined by the private interests of individuals. As for the purpose of the genre, it may be *archival*, as described by Jackson (1995: 112): ‘to put certain information (...) “on the record” as having been agreed, in case it should ever need to be retrieved and used in the future.’ The communicative purpose of the Ramesside written law deed is to record an expression of will having legal consequences, related to an immediate or postponed transfer of assets or to the rendering of services. And as we shall see, one of the major issues of our Egyptian material concerns the legal force attached to the record as opposed to the verbal commitment.

Evidently, only the written legal register has been analyzed, the *legalese* associated with provisions concerning the regulation of relationships between people and the fate of goods and property. Characteristic situational parameters of this Ramesside register are the following⁷:

- participants: mainly single private addressor (testator, donor, contracting party), one or more private addressees (legatees, donees, cocontracting party⁸), with or without audience (witnesses, court);
- relations addressor/addressee(s): addressor of same or higher status (owner of assets, elder, sometimes office holder), shared personal knowledge (of persons, assets, general context); extensive interactiveness (contracts), slight interactiveness (e.g., a will recorded in court with a cross-examination procedure), or none (unilateral deeds); usually personal relationship of kin or contractual type;
- setting: private (domestic place) or public (court, workplace), generally familiar to participants, usually in immediate time-space (at least for the verbal transmission of the contents, although epistolary transactions do exist and the instrument may constitute an after-the-fact record), the specific place and time of communication either known (dated record) or unknown;

6 Although consensus is obviously a matter of multiple parties, consent may be used ‘Par ext[ension], [concernant] la volonté de l’auteur d’un acte unilatéral (consentement de la partie qui s’oblige)’ (Cornu 2003: 210).

Both Common Law and Roman Law (Civil Law or Continental) systems have been taken in consideration in an attempt to throw light on the legal mechanisms in the corpus; sometimes one of these systems seemed better suited to highlight the material, sometimes the other. In any case, modern terminology and concepts are inadequate to render the precise meaning of institutions that are still largely an enigma to us, but they represent one of the comparative tools used to explain to ourselves and to communicate to the readers legal mechanisms, since one can only relate to such a material by using a terminology meaningful to both the writer and the reader. Concerning the inadequacy of using ‘classical’ terminology and institutions when dealing with ancient Egypt material, see Mrosich (1975: 1235-7).

7 Based on Biber’s model framework (1994: 40-1).

8 Each party to a bilateral contract should be considered as being both addressor and addressee.

- channel: mixed mode (spoken/written), handwritten medium, usually not embedded in a text associated with a different register (although a letter may include contractual or testamentary provisions);
- relation of participants to the text: usually edited speech of addressor (production), comprehension of the addressee remaining unknown (except in cases of recorded cross-examination procedures), probably perceived as important by addressor/addressee (personal attitude of the addressor perceived in grounding/oath/curse provisions, personal attitude of the addressee perceived in answer during a cross-examination procedure);
- purpose: deeds purported to be based on facts, recording an expression of will related to the transfer of rights/assets and/or the creation of obligations;
- topic: specialized level of discussion, on specific legal subjects (inheritance, gift, partition, contractual relationship).

One of the main challenges encountered during the research was establishing the corpus, as the nature of documents potentially relating to private law is not always clear. The authors of the texts were generally not explicit, many texts are fragmentary, and the specificities of the Egyptian pharaonic legal system and social organization are often quite elusive, making it a laborious task to evaluate whether documents may be qualified as a) wills, gifts or contracts; and b) as an autonomous legally binding act, self-sufficient to produce full legal effects⁹.

Concerning the first issue, the existence of wills in ancient Egypt is still denied for instance by Mrsich (2005: 157-8) because he feels that the idea of *Letztwilligkeit* contradicts the Egyptian belief in life after death; but it seems unreasonable to take such a narrow view of Egyptian pragmatism, as the texts collected in our corpus show¹⁰. Written contracts, on the other hand, as we shall see, are not attested for the Ramesside Period. The qualification of borderline cases as wills, gifts. or contracts is a problem of legal categorization common to all legal systems, be they ancient or modern. I decided to include an analysis of some borderline cases as well as partitions, which are clearly not consentient legal genre documents, as they add important information concerning wills. All dubious cases and texts not belonging to this genre were explicitly signaled as such.

The second issue (autonomy of legally binding acts) relates to the nature of the legal system in ancient Egypt until the end of the Ramesside Period: was it predominantly oral or written? What was the value of the written act in the Ramesside cultural context? Ramesside Egypt's paucity of written *contracts*, *wills*, and even *laws* is not only due to a severe case of archaeological bad luck, but must be explained by the slow maturation of the oral legal practice to a written one and by the perception of the legal act *per se*. The primary vehicle for

⁹ *Actes fondateurs, source de droit*.

¹⁰ Another issue still subject to debate is the existence of private immovable property in ancient Egypt (see e.g. Eyre 1994; Jasnow 2003: 120-1, 2003b: 276-7, 2003c: 328-31, 2003d: 801; Manning 2003: 838; Menu 2004: 195-6, 275 'la propriété privée ne porte que sur de très petits terrains à condition qu'ils servent à la construction (tombeaux, maisons)' and 'le propriétaire d'une maison n'est pas propriétaire du terrain sur lequel la maison est construite'; Mrsich 2005: 165-75). But the conclusion seems inescapable that such ownership did in fact exist in Ramesside society in which there was a transmission of assets, both movable and immovable, not limited in scope by the transmitter (see *infra*). See also McDowell (1992: 197).

expressing one's will remained oral, the *source de droits et d'obligations*¹¹ being the constitutive or *dispositive*, legally binding verbal act, of which the written document represented an *a posteriori* record, not an authoritative text¹². In certain cases however, this record of a primary oral expression of will seems to have acquired a legal force demanding attention in our research.

Multiple dilemmas had thus to be faced:

1. *Textual genre: consentient legal vs. other genre*

Some fragmentary texts could be part of epistolary or narrative constructions, although they are classified as 'non literary' on the basis of their script and general layout¹³. Other documents may be personal notations and memos, 'book-keeping' records, transaction accounts and quittances, entries in an administrative journal, or even apprenticeship exercises¹⁴. Litigation or arbitration proceedings, thus belonging to the *contentious* genre, may not always be excluded, even if not expressly referred to. Janssen (1982: 256) contends that the 'majority of the non-literary ostraca do not consist of official documents, but *aide-mémoire*'; nevertheless, there is still room for doubt in assigning communicative purposes to many documents. Moreover, the same document may mix two genres, such as the epistolary and *consentient* legal genres.

The issue is linked, although not limited, to uncertainty concerning the *origin and use of the instrument: private vs. public sphere* (administrative, court) **instrument**.

An administrative brief record of a private deed could occur if the transaction had a bearing on tax imposition for instance, the text belonging to a bureaucratic recording genre. Summaries of private law instruments or excerpts thereof could be embedded in the minutes of a trial, produced as evidence of one party's legal right, thus belonging to the judicial *contentious* genre. Nevertheless, both *authentic* (written by a public official or body acting as a notary) and *olographic* (handwritten by the testator) or *quasi-olographic* (written by a professional scribe for an illiterate testator) wills do belong to the *consentient legal genre*.

2. *Value of the instrument: original vs. copy, draft, excerpt, summary.*¹⁵

11 'tout élément générateur de droit subjectif ou d'engagement (...), vertu créatrice propre des actes et des faits juridiques ou de l'autorité seule de la loi' (Cornu 2003 : 846). In modern systems based on Roman Law, the expression of will, source of rights and obligations, may be effected orally, in writing or even tacitly.

12 It is worth recalling Černý's remark concerning the will of *Naunakhte* (1945: 42): '[It] follows the pattern of all Egyptian legal documents; like them it consists of an oral deposition made by the party before the court or witnesses and written down by a professional scribe. Thus it was not the written word alone, but the spoken word subsequently recorded as an actual event on a papyrus or ostrakon that conferred upon the document its legal validity.'

13 A problematic issue with epistolary texts, for instance, see Gasse (1992: 52).

14 In spite of the fact that many 'non literary' ostraca are written in a very cursive, rapid and professional script, deprived of usual *class exercises* errors, see Černý (1931: 213). See also McDowell (2000) concerning the features of students' exercises and her remark (p. 223) that they may 'go unrecognized unless they are signed, dated, or furnished with verse points'. The sole recognized exercises concerning bureaucratic language and style are to be found in the Miscellany-type corpus (mostly letters), quite different from the texts forming the present corpus.

15 Concerning draft and duplication issues, see *inter alii* Allam (1968) and Donker van Heel & Haring (2003: 1-38), but also Janssen (1961: 4-5) concerning the relationship between the businesslike hand and the original value of *pLeiden I 350 v°* (ship's log).