

The Jewishness of the Babatha Archive

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ABSTRACT

In the 1960s, in a cave at Nahal Hever near the western bank of the Dead Sea, archaeologist Yigael Yadin discovered the bones of many bodies belonging to men, women, and children, along with copious amounts of papyri stowed away in a crevice of the cave. This discovery dates back to the second-century AD. This study will examine the significance of one of the archives that belonged to a woman named Babatha and which provides a rich array of evidence regarding the life of Jewish women under Roman rule in second-century Arabia Petraea. More significantly it will reveal that Jews living in this Roman occupied region were not as romanized as some historians claim.

Keywords: Hellenization, Mishnah, Pentateuch, Aramaic, Justinian, Arabia Petraea, Nabatean, Ketubba, Rabbinic

El judaísmo de los archivos de Babatha

RESUMEN

En la década de 1960, en una cueva de Nahal Hever cerca de la orilla occidental del Mar Muerto, el arqueólogo Yigael Yadin descubrió los huesos de muchos cuerpos pertenecientes a hombres, mujeres y niños, junto con copiosas cantidades de papiros guardados en una grieta de la cueva. Este descubrimiento se remonta al siglo II d.C. Este estudio examinará la importancia de uno de los archivos que perteneció a una mujer llamada Babatha y que proporciona una rica variedad de pruebas sobre la vida de las mujeres judías bajo el dominio romano en la Arabia Petraea del siglo II. Más significativamente, revelará que los judíos que vivían en esta región ocupada por los romanos no estaban tan romanizados como afirman algunos historiadores.

Palabras clave: Helenización, Mishná, Pentateuco, Arameo, Justiniano, Arabia Petraea, Nabateo, Ketubba, Rabínico

Babatha档案的犹太性

摘要

20世纪60年代，在死海西岸附近的纳哈尔赫维尔河谷（Nahal Hever）的一个洞穴中，考古学家Yigael Yadin发现了许多男性、女性和儿童的尸骨，还在洞穴的一条缝隙中发现了大量的莎草纸。该发现追溯到公元二世纪。本研究将分析其中一个档案的重要性，这份档案属于一个名叫Babatha的女人，它提供了丰富的证据，关于公元二世纪阿拉伯佩特拉地区的犹太女人在古罗马统治下的生活。更重要的是，本研究将揭示在该古罗马占领地区中生活的犹太人并不像一些历史学家认为的那么罗马化。

关键词：希腊化，《密西拿》，《摩西五书》，阿拉姆语，查士丁尼，阿拉伯佩特拉，纳巴泰人，婚书，拉比

The Bar Kokhba Revolt of 132 CE was the final in a series of Jewish rebellions against Roman occupation. When Hadrian first became the Roman emperor in 118 CE, he initially allowed the Jews to return to Jerusalem to rebuild the Holy Temple, which the Romans had destroyed in 70 CE following the failure of the first Jewish revolt (66–73 CE). However, Hadrian quickly retracted his word. By 123 CE, the Jews began to launch surprise guerilla attacks against the Romans. Roughly nine years later they began an organized rebellion under the guidance of Jewish military leader Simon Bar-Kokhba, who had previously succeeded in expelling Roman officials stationed in En-Gedi, a fertile desert oasis located within the boundaries of Arabia Petraea on the western banks of the Dead Sea near Masada and the Qumran caves. Simon Bar-Kokhba exerted unlimited authori-

ty over his army of 400,000 soldiers. In 132 CE, he led them on this final revolt against the Romans, which lasted three years.¹ Hadrian had pushed the Jews to the limit when he established the city of Aelia Capitolina on the ruins of Jerusalem and began to build a temple to Jupiter on the site of the destroyed Holy Temple.²

Historian Werner Eck echoed second century historian Cassius Dio when he stated that the war was widespread, extending from Judaea to Arabia, and even into Syria.³ In *Roman History*, Dio said, “all Judaea had been stirred up, and the Jews everywhere were gathering together, and giving evidence of great hostility to the Romans, partly by secret and partly by overt acts; many outside nations, too, were joining them through eagerness for gain, and the whole earth, one might almost say, was being stirred up over the matter.”⁴



Figure 1. Cave of Letters where Babatha's archive was found. Israel Antiquities Authority. Licensed under Creative Commons.



Figure 2. Obverse and reverse of the first coin issued in Judaea, Aelia Capitolina. Struck 136 CE. Classical Numismatic Group, Inc. Licensed under Creative Commons.



Figure 3. A scroll found in the cave; part of the Babatha archive. Second century CE. Licensing: this work is in the public domain in its country of origin.

As the Roman soldiers marched along the western shore of the Dead Sea toward the Jewish stronghold stationed in En-Gedi, many of the inhabitants fled to the Judean desert and hid in the desert caves. Along with valuable and necessary daily items, some of the inhabitants also brought with them numerous important legal documents that affirmed legal rights to their possessions. They hoped to remain in the caves only until the end of the rebellion and then return home to pick up

the pieces of their lives. But that was not to be. Presumably, the Romans discovered their hiding place and forced them to either surrender to provincial authorities, or to stay there and die of starvation. Many surrendered and were sold into slavery; some were transported to Egypt.⁵ Simon Bar-Kokhba eventually died in a massive battle in the year 135 CE.

Nearly two thousand years later, in the 1960s, in a cave at Nahal Hever, archaeologist Yigael Yadin discovered the bones of many bodies belonging to men, women, and children, along with copious amounts of papyri stowed away in a crevice of the cave. This study examines the significance of an archive of legal documents found in the cave that belonged to a woman named Babatha.

While papyrological evidence supports the fact that she had been in the cave, there is no record of whether she surrendered to the Romans or whether some of the bones found in the cave belonged to her. Nevertheless, Babatha's archive provides a rich array of evidence regarding the life of Jewish women under Roman rule in second-century Arabia Petraea. More significantly, this study reveals that Jews living in this Roman occupied region were not as romanized as some historians claim.

The documents of the desert caves demonstrate that legal practitioners and scribes drafted most legal papers in Greek, which was the official language of Roman legal administration in the provinces. Although the Romans had introduced their legal system in the

region, they left local customs, such as marriage and law of succession, to indigenous traditions. However, at this time, Jewish rabbis had not yet com-

pleted the *Mishnah*—a book of Jewish laws written by scholars throughout the second century and codified at the beginning of the third.



Figure 4. Talmud Readers by Adolf Behrman (1876–1942).

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Because of this, there is a trend in Jewish historical study of the second century CE to claim that rabbinic influence had no significant impact on the lives of Jews. This claim relies, in part, on the assumption that by this time the Roman legal system had influenced most Jews, and that this was the reason they wrote their documents in Greek. However, this claim fails to consider that the Romans may have not been familiar with the local indigenous dialects of their provinces. They were, however, very familiar with the Greek language since they had annexed Greece centuries earlier. Some Roman

provinces, such as Egypt, were also familiar with the Greek language, since Alexander the Great (356–323 BCE) had conquered it in the fourth century BCE. Professor of Calvary Baptist Theological Seminary Larry R. Thornton stated that Alexander's founding of cities, minting of money, training of soldiers, encouraging intermarriage, and funding Greek arts and sciences all contributed to the enduring Hellenization of the regions he conquered.⁷ This is likely the reason why the Romans chose to use a language their provinces understood: Greek. However, knowledge of the Greek language was not as

ingrained in Arabia Petraea the way it was among the peoples of other Roman provinces. While Alexander had conquered Arabia around 324 BCE, he had left that region autonomous; hence, the Greek conquest of Arabia never led to the Hellenization of that region. Nevertheless, since Greek was the most commonly understood language throughout the other Roman provinces, it became the language of choice for Roman legal administration in Arabia Petraea as well.

Historian Jacobine G. Oudshoorn further stated that a legal practitioner's choice of language and legal forms was not necessarily related to the court or legal system that the provincials used.⁸ Some documents written in Greek, on Greek forms and presented in the Roman courts, clearly reflected Jewish customs. Some also reflected Roman and Jewish influences in a single papyrus. In other words, the choice to draft legal documents in the Greek language for the Roman courts should not automatically imply that the provincial population of Arabia Petraea had abandoned their own legal traditions in favor of Roman ones.

A close inspection of some of Babatha's legal affairs reveals the way people sometimes used Jewish customs and Roman laws on opposing sides of a single case. *P. Yadin 21*, *P. Yadin 23*, and *P. Yadin 25* prove this claim.⁹ *P. Yadin 21* was a contract that Babatha had drawn up to settle her late husband's debt—money he owed to her—by temporarily seizing his date orchards and collecting the money from the sale of the crop.

However, the orchards now legally belonged to her late husband's sons from a previous marriage. Apparently, they did not repay Babatha what their late father owed to her. By temporarily seizing the orchards, Babatha was acting in accordance with an old Jewish custom of self-help, which sometimes allowed Jews to circumvent the court system to settle a dispute. *P. Yadin 23* was a summons that her late husband's sons served to Babatha, which stated the illegality of her action, but it was based on a Roman law that considered her appropriation of the orchards a violent act. With clear Jewish legal tradition in mind, in *P. Yadin 25*, Babatha rejected her stepson's summons, calling it a "false charge."¹⁰

Prior to the Bar Kokhba revolt, Jews in Arabia Petraea appeared to interact in a relatively diplomatic fashion with their new rulers. Roman authorities had not prohibited them from using their age-old oral laws. The oral laws were a legal interpretation of the first five books of the Torah known as the Pentateuch. These books (Genesis, Exodus, Leviticus, Numbers, and Deuteronomy) are collectively known as the *Law*.

While the authors of the Mishnah would not complete their written book of laws until the early third century CE, Jews did continue to live by their age-old Jewish mores.

During the early years of the Roman occupation of Arabia Petraea (106 CE), legal practitioners initially continued to follow Jewish tradition by writing legal documents in Aramaic and Nabatean on local juridical forms. Historian Kimberley Csajkowski attributed

this to several different reasons, one of which assumed that since access to reliable Greek scribes may not have initially been commonplace, Jews continued to rely on their own local scribes.¹¹ Nevertheless, historian Adi Wasserstein observed that rabbinic customs did not oppose the use of non-Jewish legal forms or procedures and perhaps even arranged for incorporating its own rules with non-Jewish ones.¹²

At some point between 122 and 124 CE, however, Jewish litigants began to draft many of their legal documents in Greek, on Greek legal forms, but this did not necessarily mean that the Jewish people had abandoned their own legal traditions. While none of Babatha's documents contain the kind of religious language typically stressed in the divine Jewish commandments, it is clear that some of the documents do explicitly reflect the use of Jewish legal customs. This calls into question historian Hannah M. Cotton's strong affirmation that the "Jewishness" of the desert archives is expressed only in the Aramaic signatures.¹³ Both Cotton and historian Zé'ev Safrai have also suggested that Greek was used to enforce the validity of the legal documents in a Greek-speaking court.¹⁴ Historian Tiziana J. Chiusi similarly stated that Babatha might have felt that Roman legal instruments would be more effective in achieving her goals.¹⁵

Oudshoorn questioned some of these conclusions because they never really attempted to address the larger issue: that perhaps Roman and local laws might have been co-equal legal systems and that both systems might have even



Figure 5. *Presentation of The Torah*, by Édouard Moïse, 1860. Museum of Jewish Art and History. Licensed under Creative Commons.

been used contemporaneously.¹⁶ However, although the Jews began to make use of Roman laws, the rabbis did urge them not to totally abandon their own legal traditions, especially since the Romans allowed Jews the freedom to use their own laws. *P. Yadin 21*—a contract regarding the sale of dates—seems to represent a strategy that was acceptable in Jewish tradition (even for Jewish widows like Babatha). Jewish people were able to legitimately circumvent the legal system by taking matters into their own hands. Because of this, historian Ranon Katsoff stated that scholars should not make blanket statements that the society reflected in the Judaeen Desert doc-

uments was devoid of rabbinic authority.¹⁷ Jewish people at this time were still clearly using rabbinic laws and traditions even when their documents were written in the Greek language, on Greek forms, and perhaps even for the Roman courts. The date orchards mentioned in *P. Yadin* 21 belonged to Babatha's late husband, Judah, son of Eleazar Khthousion. Babatha did not have any legal rights to hire permanent laborers through a labor contract. That right belonged to her late husband's heirs (adult sons from a previous marriage). But Judah died owing Babatha money. Because of this, Babatha temporarily seized the orchards by way of a sale contract. Her intent was to sell the seasonal crop for financial restitution of her husband's debt.¹⁸ In *P. Yadin* 21, the buyer confirms his purchase from Babatha: "I acknowledge that I have bought from you the date crop of the orchards of Judah son of Khthousion, your late husband, in Maoza called Pherora orchard and Nikarkos orchard and the third called Molkhaios's, which properties you distraint, as you say, in lieu of your dowry and debt [owed you]."¹⁹

Only Jewish law allowed for what Katsoff referred to as a "dodge."²⁰ Neither Hellenistic nor Roman law permitted a widow to protect herself in this fashion.²¹ Oudshoorn stated that Babatha based her right to self-help on her *ketubba* (dowry)—a document written in Aramaic and clearly reflecting Jewish law.²² Babatha was acting in accordance with Jewish oral tradition that the rabbis would eventually postulate seventy years later in the Mishnah. This Mishnaic law states, "[a] widow,

whether she became a widow after betrothal or after wedlock, may sell [property that was security for her *Ketubah*] without the consent of the court."²³ In Babatha's *ketubba* (*P. Yadin* 10) her husband, Judah, stipulated,

if I should go to my eternal h[ome] before you, you will [re]side, and (continue to) be provided for from my "house" and from my properties, [until the time that my [heir]s will agree to give you the silver of your *ketubba*. And whenever [you] tell me, [I will exchange] for [you this document, as is fitting. And all properties that I possess and that I will acquire are guaranteed and pledged.]"²⁴

Judah eventually died. In her book *Chattel or Person?* historian Judith Romney Wegner stated that upon the death of a husband, a Jewish widow can immediately gain access to her dowry.²⁵ She could also defer this claim, in which case the rightful heirs of the deceased husband would support her. In the Mishnah, *M. Ket.* 11:1 states, "The widow receives her maintenance from the property of the orphans."²⁶ It is clear from Babatha's *ketubba* that this Mishnaic law had already been practiced long before the Mishnah was ratified. However, Babatha's problem was that while her deceased husband's heirs might have been providing for her maintenance as stipulated in her *ketubba*, her husband had died owing her 300 denarii of silver, which she had loaned to him so that he could provide for his daughter, Shelamzion's, marriage.²⁷ *P.*

Yadin 17 stated that if her husband did not promptly reimburse Babatha, he would be liable to repay her “twofold in addition to damages, and he shall also be answerable to a charge of illegality in such matters.”²⁸ More significantly, it stated that Babatha had “the right of execution upon Judah and all his possessions everywhere—both those which he possesses and those which he may validly acquire in addition.”²⁹

Judah’s sons and rightful heirs clearly did not repay Babatha what their late father owed to her. Perhaps they continually postponed or disregarded Babatha’s requests, for whatever reason. In all likelihood, this gave rise to antagonism between Babatha and her late husband’s heirs. In accordance with the Jewish custom of self-help, Babatha settled her late husband’s debt by seizing the date orchards and collecting the money from the sale of the seasonal crop. Although the money her late husband owed to her was not part of the security for her ketubba, Babatha likely felt that she could use the conditions of *P. Yadin* 17 to justify her right to temporarily seize the orchards in accordance with the Jewish tradition of self-help.

This throws into question Cotton’s statement: “Babatha and her litigants show no awareness of an existing normative rabbinic law, but are strongly influenced by Roman law.”³⁰ Babatha may have been an illiterate—as archival evidence shows—but this does not necessarily mean that she was uninformed.³¹ Even if she had been uninformed about the intricacies of existing rabbinic practice, people close to her may have warned her that Roman law

would not have protected her and that in Jewish practice, a dodge was permissible. Her adroit use of the dodge reveals the way she (and no doubt many other Jews of her time) continued to turn to Jewish practices even while under Roman rule. The people who outlined *P. Yadin* 21 had Jewish law in mind even though they wrote the contract in Greek.³² Babatha likely did not want to deal with all the legal wrangling by petitioning the governor to oblige her late husband’s heirs to repay the debt, so she bypassed this approach by taking matters into her own hands.

Although Babatha’s appropriation of these date orchards was legally permissible under Jewish custom, Judah’s sons, represented by an elite Roman woman, Julia Crispina, challenged her right to do so in the court of the provincial Roman governor. In *P. Yadin* 23 Besas, one of Judah’s sons and heirs, summoned Babatha to meet him before Haterius Nepos, the provincial magistrate, “in the matter of a date orchard devolving to the said orphans which you hold in your possession by force.”³³ Roman law considered Babatha’s forceful arrogation of her late husband’s orchards a violent act.

Justinian’s *Digest* represented Roman laws. When Justinian became the ruler of the Byzantine Empire in 527 CE, he ordered the compilation of three books representing Roman laws. One of these books was the *Digest*. Known also as the *Code*, a team of sixteen academic lawyers assembled it in an effort to legally bind everything of value from earlier Roman law.



Figure 6. Excerpt from the manuscript “Codex Justiniani I-IX.” Medieval copy of the famous Code of Justinian. Copied by Franciscus Accursius in the 13th century. Preserved in the Ghent University Library. Licensed under Creative Commons.

Oudshoorn stated that some of the lawyers cited in the *Digest* lived in the second century CE; hence, the legal opinions of some lawyers cited in the *Digest* date from the same period as Babatha’s archive.³⁴ A violent act, according to the *Digest*, is not limited solely to physical injury, but includes “whenever anyone demands what he thinks is owed to him otherwise than through the agency of a judge.”³⁵ This Roman law could apparently be (and indeed was) applied to a summons that clearly reflected Jewish law—in this case, the Jewish law of succession. Per-

haps Judah’s heirs, with their representative Julia Crispina, felt that they had an edge over Babatha by forcing her to appear before the Roman governor to fight for their rights in accordance with Roman law.³⁶

Historian Ann Ellis Hanson states that stressing the violent behavior of an adversary was an acceptable stylistic strategy in the legal documents of Egypt (more specifically Greco-Roman Egypt).³⁷ One such example can be found in *Women & Society in Greek and Roman Egypt*, edited by Jane Rowlandson, which shows the way a woman appealed to the prefect for compensation from two dishonest business managers she had hired. Using emotional language, the petition states,

[t]hese men conducted themselves dishonestly and robbed me, and depriving me of the property I placed in their hands, they never submitted to me proper accounts; and similarly, by giving way in the business they conducted, they stole from me two oxen from those which I have for [ploughing? or irrigation?] of my same estates, despising my lack of business sense.³⁸

However, the use of such emphatic, accusatory language in legal documents was not customary to the Jews in Arabia Petraea even after Roman occupation. *P. Yadin* 15 provides a good example of this. Babatha had been previously married to another man by the name of Jesus. Together they had a son, also

named Jesus. Upon the death of her first husband, two guardians were appointed to provide Babatha with a monetary allowance for the financial welfare of their underage son. Over time, one of the guardians fell short of his duty. In 125 CE, Babatha issued a summons—*P. Yadin* 15. In poised, official language, her summons states,

On account of your not having given . . . to my son, the said orphan . . . just as ‘Abdoobas son of Ellouthas, your colleague, has given by receipt, therefore I summon you to attend the court of the governor Julius Julianus in Petra the metropolis of Arabia until we are heard in the tribunal of Petra on the second day of the month of Dios(?) or at his next sitting in Petra.³⁹

Several years later, using the same temperate tone in *P. Yadin* 25, Babatha rejected her second husband’s son’s emphatic claim of a violent act, calling it a “false charge.”⁴⁰ Using Jewish law, which allowed Babatha to take legal matters into her own hands, Babatha counteracted a summons that was clearly based on Roman law.

For centuries, Judaism’s leading rabbis had resisted writing down the oral law. They believed that verbally imparting its principles would oblige students to maintain a close relationship with their teachers, whom they believed to be the best preceptors of Jewish legal tradition. However, the various rebellions against Roman occupation cost the Jewish population throughout Arabia Petraea well over a million lives—among them thousands of rabbinical scholars. The drop in the number of Jewish scholars may have played a decisive role in Rabbi Judah the Prince’s decision, in the second century CE, to set the oral law down in writing in an effort to avoid suffering the loss of their ancestral traditions.⁴¹ While archival evidence as to the outcome of Babatha’s case is lost to history, what is left to us does reveal that although the Romans had introduced their legal system in the region, the Jewish people of second-century Arabia Petraea often continued to turn to their own legal traditions to settle disputes. Despite the fact that the Mishnah would not be codified for another seventy years or so, they had not wholly abandoned their ancestral Jewish customs in favor of Roman ones.

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- 6 The Talmud is a set of two books: the Mishnah, an authoritative postbiblical collection of Jewish oral laws and the *Gemara*, a rabbinic commentary on—and interpretation of—the Mishna.
- 7 Larry R. Thornton, “Alexander the Great and Hellenization,” *Calvary Baptist Theological Journal* (1988): 36.
- 8 Jacobine G. Oudshoorn, *The Relationship between Roman and Local Law in the Babatha and Salome Komaise Archives: General Analysis and Three Case Studies on the Law of Succession, Guardianship and Marriage* (Boston: Brill, 2007), 36.
- 9 Babatha’s archive was published in a 1989 volume and dedicated to the memory of Yigael Yadin, the archaeologist who discovered the documents. In order to distinguish the various papyri and in honor of Yadin, the documents are numbered and referred to as *P. Yadin*. The letter “P” refers to “papyri.”
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- 18 Ibid., 566.
- 19 *P. Yadin* 21.
- 20 Katsoff, “*P. Yadin*,” 566.
- 21 Ibid.
- 22 Oudshoorn, *Relationship*, 77.
- 23 *The Mishnah, M. Ket.* 11.2; translation by Herbert Danby D. D. (United Kingdom: Oxford University Press, 1933), 260. Archive.org., <https://archive.org/details/DanbyMishnah/page/n9/mode/2up>.
- 24 *P. Yadin* 10.
- 25 Judith Romney Wegner, *Chattel or Person? The Status of Women in the Mishnah* (New York: Oxford University Press, 1988), 139.
- 26 *M. Ket.* 11:1.
- 27 Shelamzion was the sister of Judah’s sons and heirs—all were Judah’s children from a previous marriage.
- 28 *P. Yadin* 17.
- 29 Ibid.
- 30 Cotton, “A Cancelled Marriage Contract from the Judaean Desert,” 64–65.
- 31 *P. Yadin* 15, written in the Greek language, states that Babatha needed a guardian to write for her “because of her being an illiterate.”
- 32 Katsoff, “*P. Yadin*,” 568.
- 33 *P. Yadin* 23.
- 34 Oudshoorn, *Relationship*, 51.

- 35 *The Digest of Justinian D.* 48.7.7; trans. Tony Honoré and Olivia Robinson, vol. 4, English-language trans. ed. Alan Watson (Philadelphia: University of Pennsylvania Press, 1985), 370.
- 36 For further reading on Julia Crispina refer to, Ilan, Tal. “Julia Crispina, Daughter of Berenicianus, a Herodian Princess in the Babatha Archive: A Case Study in Historical Identification.” *The Jewish Quarterly Review* 82, no. 3/4 (1992): 361-81. <https://www.jstor.org/stable/1454863>.
- 37 Ann Ellis Hanson, “The Widow Babatha and the Poor Orphan Boy,” in *Law in the Documents of the Judaean Desert*, eds. Ranon Katsoff and David M. Schaps (Leiden Boston: Brill, 2005), 102.
- 38 Oxyrhynchus Papyri 171 col. lines 1-16 in *Women & Society in Greek and Roman Egypt*, ed. Jane Rowlandson (New York: Cambridge University Press), 239-240.
- 39 *P. Yadin* 15.
- 40 *P. Yadin* 25.
- 41 “Judaism: The Oral Law—Talmud & Mishna,” Jewish Virtual Library: A Project of AICE, accessed August 14, 2020, <https://www.jewishvirtuallibrary.org/the-oral-law-talmud-and-mishna>.