

# Adoption practices in Late Antique and Byzantine Egypt

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## Abstract

Details regarding adoption in Egypt (in relation i.e. to age and status of those being adopted, adoptive candidates, their motives etc.) can be found in extant adoption/fosterage contracts dating from the fourth century A.D. onwards. This study concentrates on the clauses contained in adoption/fosterage contracts and examines the reasons dictating the compilation of a written contract in Late Antique and Byzantine Egypt.

## Keywords

Adoption, Fosterage, Written contract

This paper focuses on adoption practices in Late Antique and Byzantine Egypt, as the earliest extant adoption contract dates from 335 A.D.<sup>1</sup> Though we have numerous references to adoptive status in legal papyrus texts from the first three centuries of Roman rule,<sup>2</sup> no adoption contract prior to 335 A.D. has survived. This peculiarity seems to suggest that formal adoption did not gain special significance until the fourth century,<sup>3</sup> since declaring an adopted child as one natural probably had the same effect.<sup>4</sup> Moreover, adoption in Ancient Egypt, Athens and Rome was clearly associated with inheritance of wealth, perpetuation of family name and care of elderly parents,<sup>5</sup> whereas adoption contracts from Late Antique and Byzantine Egypt demonstrate an interest in the welfare of the

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<sup>2</sup> On the terms used for adoption, see Taubenschlag 1916, 178-179; Kurylowicz 1983, 61; Huebner 2013 a, 181-182.

<sup>3</sup> Cf. Rupprecht 1998, 232-233. According to Huebner 2013 a, 182, «this does not mean that adoptions necessarily occurred less frequently before this point, just that from the fourth century onward a written contract seems to have become more important».

<sup>4</sup> See Huebner 2013 a, 176; Kacprzak / Nowak 2018, 49-50.

<sup>5</sup> For P.Ashmolean Museum 1945. 96, on an adoption from Ancient Egypt, see Gardiner 1941, 23-29; Eyre 1992, 207-221; McDowell 1998, 217-218. On the purpose of adoption in Athens, see Rubinstein 1993, 62-86; Harris 1996, 123; Ghiggia 1999, 5-6; Huebner 2007, 27-28 and 2013 a, 179. On the case of Rome, see Lindsay 2011, 354-355.

adopted children. The paper aims to explain the reasons for the importance of a written contract from the fourth century onwards, simultaneously attempting to interpret the clauses of surviving adoption contracts from a historical and social point of view.

The first reference to adoption in Greek papyri is found in P.Col.Zen. 58 (248 B.C.), which contains records of adoption contracts (συγγραφὰς τῶν τεκνοθεσιῶν).<sup>6</sup> Nonetheless, this document provides little information with regard to the form or the adoption procedure. From 248 B.C. and up to the fourth century A.D. no evidence for the contractual form of adoption has survived though attestations of θέσει children in papyri indicate that adoption or fosterage was in fact widely practiced. Furthermore, according to §41 and §107 of *Gnomon of Idios Logos*, adoption of exposed children occurred in Greco-Roman Egypt without being compulsory.<sup>7</sup> However, the circumstances under which this type of adoption took place do remain unknown. In view of the above, we may assume that an adoption contract was necessary only when a substantial asset had to be protected,<sup>8</sup> while for the lower strata the compilation of a contract was an uncommon occurrence, at least before the fourth century.

In order to provide some answers to the questions above, the social aspect of adoption and the children's place in Greco-Roman and Byzantine Egypt have to be taken into consideration. A child's life in antiquity was not by any means characterized by stability. Any time parents were unable to afford the rearing of their children they could expose them, use them as collateral against a debt or give them up for adoption. In Roman Egypt, public care for children is only attested in Antinoopolis where parents who had registered their children within thirty days from their birth received, under Hadrian's regulations, state support for their upbringing.<sup>9</sup> Later, emperor Constantine introduced some innovative laws towards the improvement of children's lives.<sup>10</sup> His support to parents in need, initially expressed through relief programs, aimed at the discouragement of the sale or exposure of children. More particularly, the emperor decreed, via implementation of CTh XI 27. 1, that food and clothing was to be provided to those who were forced to expose their children due to poverty and through CTh XI 27. 2 he took measures against the sale of children in Africa by providing food from imperial stocks. Ultimately, Constantine legalized the finality of the act of exposure with a law introduced in 331 A.D.,<sup>11</sup> according to which fathers or masters who abandoned newborns would lose

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<sup>6</sup> Kurylowicz 1983, 62; Huebner 2007, 33-34 and 2013 a, 181. On the case of Ptolemaic Egypt, see Legras 2006, 175-188. On adoption in earlier periods in Egypt, see Seidl 1968, 80-81; Allam 1974, 277-295; Kacprzak / Nowak 2018, 39-44.

<sup>7</sup> BGU V 1210. Meyer 1920, 329-330; Maroi 1925, 377-406; Montevicchi 1984, 965-975; Kacprzak / Nowak 2018, 17-18.

<sup>8</sup> Huebner 2013 b, 521. See also Hands 1968, 73 arguing that: «provisions relating to orphans and adoption in both the Greek and Roman worlds, dealt mainly with the protection of property rights and so concerned only orphans of the propertied class; they had little or nothing to do with the welfare of orphans as such». On the use of written contracts, see Rupprecht 2005, 335-6.

<sup>9</sup> See for example SB V 7602, SB XVI 12742, P.Vindob.Bosw. 2. See also Bell 1933, 518; Schubert 2000, 51-52; Jördens 2012, 253-254; Huebner 2013 a, 80.

<sup>10</sup> Evans Grubbs 1993, 133; Nathan 2000, 65.

<sup>11</sup> Nathan 2000, 66-67.

any right to recover the child at a later time. Additionally, the rescuer could raise the foundling either as a free citizen through adoption or as slave.<sup>12</sup> In 374 A.D. Valentinian,<sup>13</sup> Valens and Gratian imposed the death penalty for infanticide and much later in 529 A.D., Justinian prohibited enslavement of foundlings outright.<sup>14</sup>

These laws, concerning the exposure and protection of children, are, most probably, closely associated with the clauses of adoption contracts. In the first of these documents (P.Oxy. IX 1206) a couple gives their two-year old son Patermouthis up for adoption to a certain Horion. The parties mutually agree that the adoption will be permanent and Patermouthis is recognized as the legitimate son and heir of the adoptive father. What is most interesting in this case is the special emphasis on the preservation of the child's status. The adoptive parent pledges never to turn him away or reduce him to slavery as his parents are of free status.<sup>15</sup> On the other hand, the natural parents promise to give the boy up permanently and without any right of reclamation.<sup>16</sup> It is worth noting that contemporary legislation on abandoned children dealt with the same two issues; possible enslavement by the foster parents and eventual reclamation by the natural parents.<sup>17</sup> In a further document (P.Lips. I 28) a grandmother surrenders her grandson to be adopted by his uncle, who agrees to adopt the boy and protect his inheritance in good faith until he comes of age.<sup>18</sup> In this adoption contract no reference is made to abandonment or enslavement of the child, and yet great emphasis is paid to the protection of the relevant property. Petitions from Greco-Roman Egypt show that uncles as guardians did not always fulfill their obligations towards their wards.<sup>19</sup> Thus, preservation of the property of the adopted could not be taken for granted despite their blood relations.<sup>20</sup>

<sup>12</sup> CTh V 9. 1. See also Miller 2003, 150; Evans Grubbs 2010, 306-307. According to Volterra 1939, 472, such a rule is not to be found in Roman or Greek law. Lanfranchi 1940, 41 interprets this law as an attempt of the legalization of the foundlings' adoption, a practice already known in Egypt. According to Bianchi Fossati Vanzetti 1983, 200, the loss of *patria potestas* clearly possessed a punitive nature. Kacprzak / Nowak 2018, 23 suggest that adoptions of foundlings do not appear in juristical sources before Constantine, because the exposed child remained under the paternal power and no adoption could take place without the consent of the original father. On the reasons behind this law, see also Hunger 1965, 146-147; Boswell 1988, 71-73; Lovato 2015, 245. According to Cameron 1939, 51, Constantine was influenced not only by the popular custom, but also by Christianity which was opposed to exposure. Cf. Pudsey 2015, 218. On the Christian aspect of Constantine's legislation, see Dalla 1988, 98; Evans Grubbs 1993, 135; Evans Grubbs 1995, 39-40; Dillon 2012, 63-65.

<sup>13</sup> CTh IX 14. 1. See Horn 2017, 303.

<sup>14</sup> CJ VIII 51. 3. See Miller 2003, 151; Riel 2009, 100-101; Evans Grubbs 2011, 28-29; Lovato 2015, 242-243.

<sup>15</sup> P.Oxy. IX 1206. 10-12: καὶ οὐκ ἐξέστε μοι τοῦτον ἀπόσασθαι οὔτε εἰς / δουλαγωγείαν ἄγειν διὰ τὸ εὐγενῆ αὐτὸν εἶν[α] κ[αί] ἐξ εὐγενῶν / γονέων ἐλευθέρων. See Huebner 2013 a, 183. For the *apokeryxis*, see Wurm 1972, 85-86; Kurylowicz 1983, 71.

<sup>16</sup> P.Oxy. IX 1206. 12-14: οὐδὲ καὶ ἡμῖν τῷ τ]ε Ἡρακλείῳ καὶ / τῇ γυνεὶ Εἰσαρη ἐξέστε τὸν παῖδα ἀποσπᾶν ἀπ[ὸ σο]ῦ τοῦ Ὀρίωνος / διὰ τὸ ἀπαξαπλῶς εἰς ὑειοθεσίαν ἐκδεδοκέναι [σοι α]ὐτὸν. See Winter 1933, 58; Migliardi Zingale 1992, 42-43.

<sup>17</sup> Miller 2003, 163.

<sup>18</sup> P.Lips. I 28. 18-19: ὡς υἱὸν γνήσιον καὶ φυσικὸν ὡς / ἐξ ἐ[μ]οῦ γενόμενον. See Rowlandson 1998, 297-298. On the role of the grandmother in adoption, see Beaucamp 1992, 165-167; Miller 2003, 164. According to Arjava 1998, 160, «whoever drafted these documents had little respect for Roman legal concepts. Of course, the terms did not as such conflict with Roman law: the adoptive father could fulfill his promise by emancipation or a *peculium*».

<sup>19</sup> Cf. P.Münch. III 74, P.Oxy. XXXIV 2713, P.Oxy. XVII 2133, P.Sakaon 40. See Pudsey / Vuolanto 2017, 81.

<sup>20</sup> Cf. SB XXIV 16253, P.Oxy.Hels. 29, apprenticeship contracts involving children and their uncles.

In the third adoption contract (P.Oxy. XVI 1895) a widow gives her nine-year old daughter to a couple as she cannot afford to provide for her following her husband's death. The girl is thenceforth the legal daughter of the adoptive couple and receives all necessary provisions.<sup>21</sup> In contrast to the other two contracts, the child is not established as an heiress of the adoptive parents. However, the girl's reclamation is prescribed on the proviso the mother compensates all expenses to date.<sup>22</sup> In earlier times, exposed freeborn children status was a main issue for discussion between Pliny and the emperor Trajan. In the case of Bithynia, Trajan adhered to Greek custom focusing on the protection of the exposed child's rights and not allowing the claim of *alimenta*.<sup>23</sup> In 319 and 329 A.D. Constantine permitted the recovery of children sold by their parents and raised by another person on the condition that the natural father would cover the expenses for their upbringing.<sup>24</sup> Similarly, the widowed mother admits that she is forced to give her daughter up due to poverty, whilst keeping open the possibility of reclaiming her whence her financial situation improves. This adoption therefore, does not intend to safeguard the rights of the child as an heiress, but serves as a substitute for abandonment.<sup>25</sup> Moreover, this contract shows that even the poor in Late Roman and Byzantine Egypt preferred to have written proof so as nothing would remain in abeyance regarding the child's life.

In the next document (P.Cair.Masp. III 67305) a man agrees to accept a boy in his household and provide him with board and lodgings. Although it is not clear whether this case concerns an adoption, it would be useful to contribute certain comments.<sup>26</sup> Confusion is caused by the infinitive ἐνδιδύσκειν, literally «to provide somebody with clothing», which was misread as ἐνδιδάσκειν «to teach» by Preisigke (SB I 5656). Were we to accept ἐνδιδάσκειν, the text claims that the recipient undertakes to teach the boy a trade or craft. We should take into account that the combination of adoption and apprenticeship was already known in Mesopotamia, where a craftsman adopted and raised a son to succeed him in his business. If the adopting parent did not manage to teach his craft or the adopted child failed to learn it, he would then have to be returned to his natural parents.<sup>27</sup> However, such provisions appear to be absent in the document in question.<sup>28</sup> On the other hand, with the verb ἐνδιδύσκειν, the father pledges to provide for the child's clothing. This scenario seems

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<sup>21</sup> P.Oxy. XVI 1895. 9-11: καὶ ὁμολογῶ παρα[δεδοκῆναι αὐτὴν ὑμῖν ἀπὸ τοῦ] / [νὺν εἰς τὸν ἐξ]ῆς ἅπαντα χρόνον εἰς θυγατέρα νομίμην, [ὅστε ὑμᾶς χορηγοῦντας τὰ δέον/][τα χώραν γον]ξέων εἰς θυγατέρα ἀποπληρῶσαι εἰς α[ὐτήν].

<sup>22</sup> P.Oxy. XVI 1895. 11-13: μὴ δύνασθαι / [με ταύτην ἀ]ποσπάσαι ἀφ' ὑμῶν. Εἰ δὲ τοῦτο ποιήσ[ω, ὁμολογῶ ὑμῖν ἀποτίσειν] / [ἅπαντα τὰ ἀ]ναλώματα λόγῳ τῶν αὐτῆς ἀποτρο[φῶν]. See also Winter 1933, 59; Rowlandson 1998, 298-299; Miller 2003, 164-165.

<sup>23</sup> Plin., *Epist.* X 66. Volterra 1939, 451-453; Sherwin-White 1998, 654; Kacprzak / Nowak 2018, 24-25.

<sup>24</sup> CTh V 10. 1. See Bianchi Fossati Vanzetti 1983, 190 ff.

<sup>25</sup> Miller 2003, 165.

<sup>26</sup> On the different definitions of the document, see Kurylowicz 1983, 64-65.

<sup>27</sup> Code of Hammurabi §188: «If a craftsman has taken a son for bringing up (in his craft), and teaches him his handicraft, he shall not be (re)claimed». § 189: «If he does not teach him his handicraft, that adopted child may return to its father's house». Trans. G. R. Driver / J. C. Miles, S. I 392-5 II 246, 1960. See Kohler / Peiser 1904, 57; Johns 1905, 41; Saggs 1965, 143; Donner 1969, 93; Roth 1995, 119; Paulissian 1999, 13-14; Lindsay 2001, 192; Huebner 2013 a, 185.

<sup>28</sup> Cf. SB XIV 11982, an apprenticeship contract dating from 554 A.D.; P.Coll.Youtie II 92, a loan of money with *Hypothek* in which different terminology can be found.

plausible since the boy is not a complete stranger to the recipient as he is his second wife's son, who hence becomes a member of the family. The last contract (P.Köln. VII 321) dates from the seventh or eighth century. The adopted child takes his assets, mobile or otherwise with him, which is also found in the second contract (P.Lips. I 28). No reference is made to the adopted child's hereditary rights, but the safeguard of the fortune and a happy social life seem to be crucial.<sup>29</sup>

There are some important parameters to consider in order to better understand the provisions in the aforementioned contracts: the first is their provenance and the second their form. Our contracts come from Oxyrhynchos, Hermoupolis, Heracleopolis and Antinoopolis. The first three cities were the administrative capitals of their *nomes*, while Antinoopolis was one of the four Greek *poleis*. After *Constitutio Antoniniana*, Roman law was applied to all the citizens of Egypt. The influence of Greek and Egyptian law on family matters, however, was so strong that it is believed that Roman law had little impact.<sup>30</sup> Moreover, provincial law consisting of edicts and rescripts did not have the form of the codified law of the sixth century, passed and enforced in Byzantine Egypt.<sup>31</sup> As a result, the elite of the *poleis* and *metropoleis* may have been familiar with imperial edicts and laws,<sup>32</sup> but legal rules remained a complicated issue even for scribes who sometimes understood only the gist of the law.<sup>33</sup> Consequently, we can explain why adoption contracts reflect people's old habits, but also show an underlying respect for imperial law. Another striking issue is that these contracts do not demonstrate uniformity concerning the clauses and the formulae followed.<sup>34</sup> This seems to suggest that they were not based on an established pattern and that adoption may have been informal until the fourth century.

To sum up, the clauses of the adoption contracts reveal that their compilation aimed at the child's welfare and protection. Adoption contracts may have evolved in the Ptolemaic era and reflected local customs,<sup>35</sup> yet it is difficult to believe that their clauses remained unaltered through time. It seems that Christian emperors established a new reality in familial and social relationships, which rendered the compilation of a contract significant. On the other hand, as attestations of θέσει children show, fosterage and informal adoption were commonplace in Roman Egypt. This type of adoption could raise issues, since the rights of those raising children were not legally safeguarded and the natural father could petition their return at a later time. This precarious situation came to an end with

<sup>29</sup> P.Köln. VII 321. 16: εἰς μίαν ὁμοζωεῖαν ἀποζώησουσιν μετ' ἀταλληλους. Cf. P.Cair.Masp. III 67305. 7-8: ἐτο[ί]μω[ς] ἔχειν ἐν μιᾷ εὐζωίᾳ καὶ κοινῇ / βιώσει.

<sup>30</sup> On the Romanization of family law, see Arjava 2014, 175-191. On the coexistence of legal systems in Roman Egypt, see Taubenschlag 1959, 327-330; Wolff 1974, 54-105; Maehler 2005, 121-140; Yiftach-Firanko 2009, 541-560; Alonso 2013, 351-404; Yiftach-Firanko 2014, 20-23. On the debate concerning the law in Byzantine Egypt, see Keenan 2014, 23-25.

<sup>31</sup> Palme 2008, 57-60. On the edicts in *Codex Theodosianus*, see Dillon 2012, 35 ff. On the implementation of Justinian imperial law, see Steinwenter 1952, 131-137; Keenan 1975, 246-247; Arjava 2005, 8; Beaucamp 2007, 275-285.

<sup>32</sup> Beaucamp 2007, 282-283; Keenan 2014, 25-26. On the cities in late Roman Egypt, see van Minnen 2007, 207-225.

<sup>33</sup> Arjava 1997, 30. Hobson 1993, 193-219 studies the impact of law on village life of Egypt in the first three centuries A.D.

<sup>34</sup> Cf. old Babylonian contracts containing standard clauses. See Donner 1969, 94-96; Ellis 1975, 130-151.

<sup>35</sup> See Huebner 2013 a, 186; Kacprzak / Nowak 2018, 44-45.

Constantine's legislation on exposure. It is, therefore, plausible that from the fourth century on, the interested parties interpreted current legislation on exposure as an obligation to sign a written contract for adoption, though this does not necessarily suggest traditional customs were renounced.<sup>36</sup> Of course, though exposure and giving a child up for adoption are not identical concepts, their resulting effect was the irrevocable separation of a child from his or her parents.<sup>37</sup>

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<sup>36</sup> According to Beaucamp 1992, 172, «mais des pratiques attestées par les documents il n'est pas impossible d'induire des normes juridiques, lesquelles peuvent être comparées à la législation contemporaine ainsi qu'aux coutumes de l'Égypte du Haut-Empire».

<sup>37</sup> Evans Grubbs 2013, 98 suggests that: «Constantine's legislation simply legalized two long-standing fates for *expositi* who survived: enslavement or adoption. Ostensibly these fates are quite different, but in reality they were intertwined, as the ambiguous status of *threptoi* and *alumni* shows».

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