

The legal papyri from Elephantine, which date to the 5th century BCE, stand within a long stream of scribal tradition that stretches back both many centuries earlier into the cuneiform record and many centuries later into Aramaic legal corpora of the Middle Ages. This distribution is quite broad chronologically as well as geographically, including materials from the northern Babylonian city of Sippar, up north through Syria, down through the Levant into Egypt. One characteristic that binds this stream of tradition together is its consistent use of certain metaphors within its formularies. My talk today will focus on two types of metaphors, those related to emotions and those related to cleanliness.

Metaphors of Emotion

One general characteristic of the aforementioned stream of tradition is the dynamic way it describes transactions. This dynamism manifests itself in a number of details that, for example, convey a party's disposition or reaction to a certain aspect of the transaction. These details are expressed through metaphors of emotion, and I will consider three examples of such metaphors.

In our first example, joy is used as a metaphor for volition. The role of volition in, say, property conveyances is crucial because whether a property owner conveys a piece of real estate free-willingly or out of economic duress can have material legal consequences. In Akkadian property conveyances, at least within the tradition under discussion here, the operative section often includes a phrase such as *ina hud libbišu* "in the joy of his heart" to indicate that the transaction was done willingly and not under economic duress. This metaphor turns up in the Aramaic tradition in real estate conveyances from Elephantine, which express it through the phrase ברהמן "in affection." In these documents, the metaphor is restricted to transactions in which no consideration is involved, such as deeds of gift. Here in *TAD* B3.10, a father grants a house to his daughter:

ביתא זנה זי משחתה ותחומיהי כתבן בספרא זנה אנה ענני בר עזריה יהבתה לך ברחמן

(1) “This house whose measurements and boundaries are written in this document—I, PN son of PN, gave it to you in affection.”

Further evidence that this is a legal term of art rather than a mere display of paternal fondness can be seen in *TAD* B2.10, a ספר מרהק or document of withdrawal. With the principle party having relinquished all ownership claims to a house and any right to bring suit over this property, the no-contest clause relinquishes these rights with regard to any party to whom this property may be conveyed:

אף לא נכהל נרשה לבר וברה לכם אח ואחה אנתה ואיש לכם או גבר זי תזבנון לה ביתא זך
או זי ברחמן תנתון לה

(2) “Moreover, we shall not be able to bring (suit) against son or daughter of yours, brother or sister, woman or man of yours, or a person to whom you sell that house or to whom you give (it) in affection” (*TAD* B2.10:10–11)

The clause here clearly distinguishes between sales and gifts with the metaphor of affection applying exclusively to the latter.

Our second example of a metaphor of affection is the well-known satisfaction clause, one whose meaning is a little subtler. This clause has deep roots in the cuneiform tradition and occurs in a variety of contract types. Yochanan Muffs, in his famous study of this clause, described it as a kind of quitclaim, whereby one party acknowledges that the other has satisfactorily performed his or her contractual obligations. As an example, let us consider the declaration of sale clause from *TAD* B3.4, a real estate sale. Having described the property’s boundaries and contents, the sellers declare:

אנחן זבנהי לך ויהבת לן דמוהי כסף כרש 1 שקלן 4 באבני מלכא כסף זוז לכרש 1 וטיב
לבבן בדמיא זי יהבת לן

(3) “We have sold it to you, and you have given us its payment, silver, 1 karsh and 4 shekels, 4 in the stones of the king, silver zuz to one karsh, and our heart was satisfied with the payment that you gave us.” (lines 5–7)

At the end of the clause, the sellers declare “*tiv levavan*” “our heart is satisfied,” using an emotional metaphor to acknowledge receipt of the sale price in full and their readiness to transfer ownership of the property to the buyer.

In *TAD* B2.2, we have another ספר מרחק, in which the principal party relinquishes his claim regarding a boundary dispute on a specific piece of real estate. In the course of the litigation that had led up to this settlement, the judges had required the other party to affirm these boundaries through an oath on the party. In response to this oath, the principal party states:

ימאת לי בה' והוטבת לבבי על ארקא זך

(4) “You swore to me by DN and satisfied my heart about that land.”
(lines 11–12)

Here again, we appear to have the satisfaction clause acting as a form of quitclaim. There are other cases, however, where such an understanding of this clause’s legal nuance does not fit. In *TAD* B4.4, a fragmentary bill of lading, the carriers in question use the satisfaction clause to acknowledge receipt of the goods consigned to them. Without getting too far afield into the details here, the relationship between the parties here are quite different from the others in terms of the types of claims that could be raised and the contracted obligations.

Raymond Westbrook disputed that the satisfaction clause served as a quitclaim on a couple of grounds. First, there are the problematic cases such *TAD* B4.4, the bill of lading, that Muffs himself acknowledged were difficult to explain. Second, as a quitclaim, this clause would be redundant as other adjacent clauses seemed to serve adequately as quitclaims by either acknowledging receipt of contracted payment or by waiving the right to any future claims against the other party.

Muffs argued that the satisfaction clause served to bolster the functions of these adjacent clauses by expressing the principal party’s emotional state through this metaphor. Westbrook

ultimately found this unconvincing and alternatively explained the clause as a “conclusive evidence clause.” In his view, the common thread uniting all the attestations of the satisfaction clause was the affirmation that certain specified quantities and measures had been rendered accurately. Thus, while the content itself may seem rather dry, the response elicited is expressed through a metaphor of emotion.

Our third example of an emotional metaphor occurs in the so-called investiture clause, a clause unique to Aramaic deeds of conveyance. In this clause, the conveyer of the property (be it a seller or one bestowing a gift) invests its new owner with all the rights of ownership. One of the most important of these rights—a true test of good title—is the ability to convey property to another party. Among the Elephantine papyri, this delineation of rights is phrased in the attested versions of the investiture clauses in one of the following two ways:

אנתי שליטה בה מן יומא זנה ועד עלם ובניכי אחריכי למן זי רחמתי תנתנן

(5) “You are empowered regarding it from this day and forever and (so are) your children after you. To whomever you want/love you may give (it).” (TAD B2.3:9–10)

אנת ענניה בר עזריה שליט בביתא זך ובניך מן אחריך ולמן די צבית למנתנן

(6) “You, PN, are empowered with regard to this house and (so are) your children after you, and to whomever you desire to give (it).” (TAD B3.4:11–12)

The key term here comes at the end of the clause, expressing the new owner’s right to alienate title. Some instances of the investiture clause use the verb רחם, “to love”, whereas others use the verb צבי, “to desire”. Bezalel Porten and Henry Szubin argue that the terms have distinctive legal nuances, specifically that the former term is more restrictive, limiting alienation to heirs and descendants, whereas the latter term allows alienation to any party. This explanation is quite attractive, though there are a couple cases that it fails to account for, such as *TAD* B2.7, which uses both verbs seemingly interchangeably. Nonetheless, their view finds support in *LH* 150:

*šumma awīlum ana aššatīšu eqlam kirām bītam u bīšam išrukšim
kunukkam īzibšim warki mutīša mārūša ul ipaqqarūši ummum warkassa
ana mārīša ša irammu inaddin ana ahīm ul inaddin*

(7) “If a man awards to his wife a field, orchard, house, or movable property, and makes out a sealed document for her, after her husband’s death her children will not bring a claim against her; the mother shall give her estate to whichever of her children she loves, but she will not give it to a stranger.”

In light of this, we should also take note of LH 179, which also deals with questions of discretion in alienating property.

*šumma ugbabtu nadītu ulu sekretu ša abuša šeriktam išrukušim
kunukkam išturušim ina tuppim ša išturušim warkassa ēma elīša tābu
nadānam išturšimma mala libbīša uštamšīši warka abum ana šīmtim
ittalku warkassa ēma elīša tābu inaddin ahhūša ul ipaqqarūši*

(8) If there is an *ugbabtu*, a *naditu*, or a *sekretu* whose father awards to her a dowry and records it for her in a sealed document. and in the tablet that he records for her he grants her written authority to give her estate to whomever she pleases and gives her full discretion—after the father goes to his fate, she shall give her estate to whomever she pleases; her brothers will not raise a claim against her.

Here, we have language similar to some of our other legal metaphors, such as *ēma elīša tābu nadānam*, literally, “wherever it is good for you to give” and *mala libbīša uštamšīši*, literally something like “he makes it for her however much her heart is.”

Returning to the Aramaic, assuming Porten and Szubin are correct, perhaps one could dispute whether הקח is in fact a metaphor as it refers specifically to family members, people for whom the property owner presumably had a distinctive emotional affection. That being said, in light of the role that emotional metaphors play elsewhere within this scribal tradition, we can compartmentalize these differing aspects of the property owners’ offspring and describe the metaphor as LOVED ONE = HEIR.

Metaphors of Cleaning

Let us now move to metaphors of cleanliness. In English, we use metaphors of cleanliness in different sorts of legal contexts. Those with criminal liability or ethical lapses can be described as “dirty” as opposed to those who do not and are thus “clean”. Another metaphor you may have heard if you have followed American politics in recent years turns up in discussions of legislative horse trading wherein politicians refer to a “clean” bill, as opposed to one that is encumbered with other legislative interests. Aramaic formularies use a metaphor of cleanliness more akin to this latter type. I have in mind a particular element that occurs in the warranty clauses of various types of Aramaic contracts. As an example, let us consider *TAD* B3.4, a real estate sale contract. In the contingency clauses of this contract, there is a warranty clause that obligates the seller to defend the buyer’s ownership rights against any adverse claims brought by a third party in the future:

והן גבר אחרן יגרנך ויגרה לבר וברה לך אנהן נקום ונפצל וננתן לך בין יומן 30
(9) “And if another person institute (suit) against you or institute (suit) against son or daughter of yours, we shall stand up and cleanse (it) and give (it) to you within 30 days.” (*TAD* B3.4:19–20)

In the face of these adverse claims, the seller promises (1) to “arise” or “stand up”, meaning to appear in court or some analogous legal setting, (2) to “cleanse” the property of any claims, and (3) to return it to the buyer’s possession. The one philological sticking point here is the verb פצל, translated here as “to cleanse.” Its general meaning is not in dispute, and it even occurs in another Elephantine contract in almost exactly the same context. What remains obscure, however, is its etymology, and therefore, the claim of its metaphorical usage.

To build the case for this claim, let us consider some more evidence. *TAD* B1.1 comes from a site further north in Egypt and is slightly older than the Elephantine papyri, dating to the late 6th century BCE. Some of the content of this Aramaic contract is lost due to its fragmentary

state of preservation, but it appears to be a joint venture involving a land lease. Fortunately for us, its warranty clause is well-preserved, wherein the land owner promises the following:

אקנס אקם ואנקה ואנתן ל[ך ו]הן לא קמת ונקת ונתנת לך אתננהי לך מ[ן] חלקי למלך
 (10) “I swear to stand up and cleanse and give (it) to [you. And] if I do not stand up and cleanse and give (it) to you, I shall give it to you fr[om] my portion from the king.”

The phrasing of this clause is quite similar to our example from *TAD* B3.4, except that instead of the verb פצל, we have the verb נקי, “to cleanse.” There is no disputing the meaning here, as this verbal root is well-attested in Aramaic and in other Semitic languages, and so it helps us to establish the existence of a legal metaphor whereby “to clean” means “to clear something of legal claims.”

To broaden our scope further, within the wider tradition of which the Elephantine papyri are a part, we can find many more examples of this specific metaphor. In the cuneiform record, going back many centuries, we have sales contracts that include a warranty clause that employs verbs of cleaning such as *ellelu*, *ebbebu*, and *zakû* in a similar manner. All of these Akkadian verbs have well-established usages in both the non-metaphorical sense of “to clean” and the metaphorical sense of “to clear of legal claims”.

Later in the Aramaic tradition, we find similar usages in real estate sale contracts found in the Judaean Desert. Here, the more common verb used in this element of the warranty clause is מרק as in this example from the real estate sale contract, P. Hever 50 + P. Mur 26:

ואנה או...ס מזבנה וכל די איתי לי ודי אקנה אחראין ו[ערבין] למרקא ולקימא זבנה דך
 קדמ[כן] וקדם ירתכון
 (11) “And I, PN, the seller, and all that I own and whatever I will acquire, are responsible and [guarantors] for cleansing and establishing that sale before[you]and before your heirs”

The evidence for מרק’s non-metaphorical sense, as a verb meaning simply “to clean,” is a bit sparser, but it exists. In Akkadian, the cognate verb *maraqu* meaning “to crush finely” is attested

at Mari, in Middle and Standard Babylonian, and in Neo-Assyrian. In Neo-Babylonian Akkadian, we find our particular legal usage as it used to mean “to clear something of claims.” This particular usage, however, likely stems from Aramaic influence. We also find this verbal root in Biblical Hebrew, where it occurs a handful of times and means “to polish, scour, or cleanse”.

We can thus establish this particular metaphor across a wide geographic and chronological distribution. Even if the specific vocabulary or phraseology changes, the metaphor remains the same. Returning to the verb used in the Elephantine papyri, פצל, it may be related etymologically to the Akkadian verb *pešû*, another verb meaning “to clean.” Various philological suggestions have been proposed to account for the presence of the *lamed*. One suggestion is that it resulted from a direct object marker that was misanalyzed on analogy with the verb נצל, “to save,” a verb that is used in legal contexts—including the Elephantine papyri—with the meaning “to reclaim.” However one wants to explain the Aramaic verb פצל, the legal use of this metaphor is well established.

The Lifespan of an Aramaic Legal Metaphor

Let us conclude by looking at the respective lifespans of these metaphors (to use another metaphor). The use of these metaphors, or the lack thereof, reflects the continuity and change within these broader traditions. The two types of metaphors described here are not equally distributed throughout the Aramaic tradition. The metaphors of emotion I have discussed before have a long history in the cuneiform record and find robust expression among the Elephantine papyri. In later Aramaic corpora, however, these metaphors are not present. While the Elephantine papyri use the phrase ברהמין to express a party’s full willingness to relinquish ownership of a piece of real estate, in later Aramaic conveyances, this disposition was expressed

through the decidedly non-metaphorical phrase מן רעותי “from my own will” (or variations thereof). In addition, this latter phrase was incorporated into sale formularies, not only deeds of gift.

These later Aramaic conveyances also do not make use of the satisfaction clause. Rather, to indicate full payment in sales transactions, they include another non-metaphorical phrase, דמין גמירין “the full price,” when specifying how much the buyer had paid. This phrase also has a long history in the cuneiform record.

Our last metaphor of emotion, which specifies legal heirs as those “whom you love,” is also unknown in later Aramaic corpora. Instead, the investiture clause grants the new owner the right to convey the property to whomever he or she desires. This may reflect a substantive change in the law as much as in style, but we cannot be entirely sure due to the relative paucity of evidence.

Conversely, the warranty clause’s metaphor of cleaning remained part of the Aramaic legal tradition well into the Middle Ages. The distribution of these metaphors reflects the variegated influences on the Aramaic tradition as a whole. While some elements—and we are not speaking merely about the use of metaphors here—are ubiquitous in this tradition, others are not. The cuneiform record was obviously quite diverse and influenced the Aramaic traditions in different ways at different points, leaving one sort of imprint on some Aramaic corpora and leaving other types of imprints on other Aramaic corpora. The full price element I just mentioned is an interesting example. This seems to have come into Aramaic from cuneiform traditions, but only at a relatively late date. In summary, these metaphors and their history afford us a glimpse into the development of a long and multi-layered tradition both within Aramaic and without.