AKTEN DER GESELLSCHAFT FÜR GRIECHISCHE UND HELLENISTISCHE RECHTSGESCHICHTE
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INHALT

JOSÉ LUIS ALONSO (ZÜRICH)

AGRAPHOS GAMOS: MARRIAGE, FAMILY AND INHERITANCE IN ROMAN EGYPT[1]

Abstract: For over a century, the discussion of marriage law and practice in Hellenistic and Roman Egypt has been dominated by the mysterious distinction between written and unwritten marriages and the strange consequences associated with it. This paper is a new attempt at solving a puzzle that has perplexed generations of papyrologists and legal historians.

Kewords: legal pluralism, paternal power, dowry-loan, panprasion/proprasis, family katoche

I. Problem, Sources and Method

The mysterious distinction between written and unwritten marriage – *engraphos* and *agraphos gamos* – and its strange legal consequences have been known for over a century, since the publication of the first volume of CPR and the second volume of the Oxyrhynchos papyri in 1895 and 1899. With it, three documents came to light that have shaped the discussion ever since and will also be at the centre of this paper: *P. Oxy*. II 267 = *MChr*. 281 (37 CE), the marriage loan between Tryphon and Saraeus, the inheritance trial in CPR I 18 (124 CE Arsinoites) and *P. Oxy*. II 237 (after June 27th, 186 CE), the famous petition of Dionysia against her father Chairemon.[2]

[1] Research financed by the National Science Centre of the Republic of Poland (Narodowe Centrum Nauki, Opus 14, nr. 2017/27/B/HS3/01350: How to Apply Law in Egypt? A Practical Guide for the Roman Judge: A Case-study of *P. Oxy*. II 237 and Other Papyrological Evidence on Legal Pluralism in the Roman Times). I am thankful to the Symposion organisers and most especially to Gerhard Thür for a most fruitful dialogue. These pages have greatly benefited from the work on the Dionysia papyrus with Jakub Urbanik and his team at the University of Warsaw.

[2] A new commented edition of *P. Oxy*. II 237, which will include the columns left unpublished by Grenfell and Hunt (col. 1–3 and 9), is in course of preparation by Jakub Urbanik, Constantinos Balamoshev, Kacper Zochowski and myself. Since its publication, the papyrus has attracted much attention in great part due to the legal materials appended to the petition proper, in Col. 7, l. 19 onwards: the 89 CE Edict of Mettius Rufus on the correct functioning of the property record offices, the 109 CE Edict of Sulpicius Similis on the registration of marriage *syngraphai* and the ensuing *katochai* (*infra* VII), and the 142 CE Edict of Valerius Eudaimon on debtors' protests against the authenticity of credit deeds; the opinion of a *nomikos* on paternal *exousia* (*infra* II), a

Ever since the publication of these documents, the distinction itself and its consequences have remained one of the most puzzling mysteries in the whole legal history of Greco-Roman Egypt. Properly addressing or even summarising the many theories proposed to solve it would exceed the limits assigned to this paper.[3] I will therefore limit myself to presenting an outline of my own take on the problem, which builds on important connections between the Greek and the Demotic marriage practice detected by Traianos Gagos and others in 1992[4] and first linked to our problem by Uri Yiftach in his 2003 reference work on marriage and marital arrangements in the Greek papyri from Egypt.[5]

In building the hypothesis I outline here, I have observed an important methodological caution kept also by Uri Yiftach in his careful and balanced treatment of the topic: namely, respecting the terminology of the sources, limiting the attestations of the phenomenon to those documents where the terms themselves, *agraphos* or *engraphos*, are actually used, avoiding unwarranted assumptions that marriage deeds where the terminology does not occur refer to one or the other category.[6]

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second part of which will come now to light as part of the newly edited col. 9; and a whole series of court precedents – to the five we already knew at least two more must be added, in the fragmentary col. 9. The petition itself has been studied mostly from the point of view of Chairemon's attempt against Dionysia's marriage: lit. *infra* in n. 24. Their financial conflict, obscured by the fragmentary preservation of col. 4–5, remains to be clarified: this is one of the main purposes of the new commented edition, aided by the publication of what remains of col. 1–3.

3 Among the vast literature: Mitteis 1901: 343–351; Wilcken 1901: 487–490; Brassloff 1902: 70–71; Nietzold 1903: 1–12; De Ruggiero 1903; Révillout 1903: 1120, 1139–1142 passim; Bortolucci 1904; Spiegelberg 1906: 190–195; Wilcken 1906: 507–508; De Ruggiero 1908; Frese 1909: 38–51; Mitteis 1912a: 200–213; Mitteis 1912b: 313–317; Marci 1915; Taubenschlag 1916: 188–189 = Taubenschlag 1959: 274–275; Möller 1918; Sethe 1918: 376–378; Spiegelberg-Partsch 1918; Kreller 1919: 155–156, 167–168; Meyer 1920: 40–43; Sethe-Partsch 1920: 578–590; Jüncker 1921: 47–52; Spiegelberg 1923: 36–37; Partsch-Wilcken 1927: 15–25, 60–61; Wilcken 1927: 578–584; Wenger 1928: 66–81; Kunkel 1928: 664–668; Arangio-Ruiz 1930: 61–84; Edgerton 1931; Petropoulos 1931; Huwardas 1931: 46–57; Bozza 1934: 205–228; Thompson 1934: XXIII; Montevecchi 1936; Schönbauer 1938: 42–60; Erdmann 1939; Wolff 1939; Erdmann 1940: 165–169; Erdmann 1941: 54–57; Wolff 1952: 164–181; Taubenschlag 1955: 112–119, 141, 184–185; Mélèze Modrzejewski 1956; Préaux 1959: 150–153; Lüddeckens 1960: 347; Pestman 1961: 30, 42; Seidl 1962: 170; Häge 1968: 111–116, 182–183 passim; Seidl 1973: 213–217; Wolff 1973: 68–71; Πανταζόπουλος 1984; Cotton-Yardeni 1997: 227–229; Cotton 1998: 117; Wolff 1998: 79–83; Yiftach-Firanko 2003: 81–104; Oudshoorn 2007: 427–432; Kreuzsaler-Urbanik 2008: 135–138; Lippert 2008: 120; Platschek 2015: 157–160; Czajkowski 2017: 44.

4 Gagos-Koenen-McNellen 1992.

5 Yiftach-Firanko 2003: 81–104.

6 This leaves out documents traditionally understood as transformations of an *agraphos* into an *engraphos gamos*, but where the terms themselves are not used, like *PSI* I 36a

The first effect of this methodological caution is a drastic reduction of the material, not only in quantity (20 papyri in all) but also in its temporal arch, that starts as late as 12 BCE and ends in the late 4th cent. CE.[7] This means, whatever roots the phenomenon may have in institutions and practices that go back to the Ptolemaic period and even beyond, to pre-Ptolemaic law, Greek or Egyptian (on this, *infra* V–VII), it cannot be assumed (also in this respect Yiftach's treatment of the subject is exemplary) that the distinction as such had any relevance before the beginning of the Roman Era. This unwarranted assumption contaminates much of the 20th century literature on the subject.

Paying attention to the actual terminology of the sources yields yet another important insight. Since the publication of the Dionysia papyrus, it has been assumed that *engraphos gamos* was the technical denomination of the type of marriage to which the peculiar regime of the *agraphos gamos* did not apply. This is indeed what Dionysia claims in a crucial part of her argumentation.[8] And yet, the term *engraphos gamos* is attested only in Dionysia and in an improvised argumentation *ex parte* in the trial recorded in *CPR* I 18 (infra VIII). Most

(11–13 CE Arsinoites), *P. Mich*. V 339 (46 CE Tebtynis), *CPR* I 28 = *MChr*. 312 (110 CE Ptolemais Evergetis), or *P. Oxy*. XLIX 3491 (157–8 CE Oxyrhynchos)

7 Chronologically: *SB* XXIV 16073 (12 BCE Alexandria) l. 7 (and l. 5 of the verso); *P. Oxy*. II 267 = *MChr*. 281 (36–43 CE Oxyrhynchos) l. 19; *P. Mich*. V 322 a (46 CE Tebtynis) l.2; *APF* 60 (2014) 123 Nr. 1 (83 CE Antaiopolites?) l. 14; *PSI* VII 777 (96 CE Hermopolis?) l. 11; *P. Fam. Tebt*. 20 (120–1 CE Tebtynis) l. 12; *CPR* I 18 = *SPP* XX 4 = *MCh*r. 84 = *Jur. Pap*. 89 (124 CE Arsinoites) ll. 10 and 26; *PS*I XII 1223 (131 CE Alexandria) l. 11; *P. Kron*. 52 = *P. Mil. Vogl*. II 85 = C. *Pap. Hengstl* 79 (138 CE Tebtynis) l. 10; *SB* III 7239 (141 CE Alexandria) l. 19; *PSI* VIII 921 R (143–4 CE Arsinoites) l. 28; *BGU* IV 1045 = *MChr*. 282 (154 CE Alabanthis) l. 10; *PSI* XII 1224 (156–157 CE Alexandria) l. 10; *P.Mil. Vogl*. II 71 = SB VI 9264 (172–5 CE Ptolemais Evergetis) l. 4; *P. Oxy*. II 237 (186 CE Oxyrhnychos) Col. 7, l. 13, Col. 8, ll. 4–6; *P. Dura* 31 (204 CE Dura Europos) l. 6; *BGU* IV 1084 = *WCh*r. 146 (222 CE Arsinoites) ll. 24–25; *SB* XVI 12527 (224 CE unknown provenance) l. 17; *P. Flor*. I 24 = *MChr*. 187 (3rd cent. CE Ptolemais Evergetis) l. 7*; P. Lips*. I 41 = *MCh*r. 300 (late 4th cent. CE Hermopolis) l. 5. Pure conjecture is the term ἀγράφως in *P. Hamb*. III 220 (223–4 CE Arsinoites) l. 3, and also, entirely arbitrary, in *P. Strasb*. VII 668 (2nd cent. CE unknown provenance) ll. 1–2. To the list, *P. Oxy*. LXXIII 4961 (223 CE Oxyrhynchos) must be added: a copy of a petition to the prefect, presented by a woman regarding the testament of her father –with whom there had been previous litigation– and some property registered to her name; in l. 26 an expression until now unattested is used, *asyngraphos gamos* (καὶ μὴ εἶναί με ἐξ ἀσυνγράφων γάμων), in a way that suggests that descending from such marriage would have been an obstacle for her petition; whether the expression is synonymous with *agraphos gamos* remains an open question.

8 Col. 7, l. 12–13: οὐδεὶς μὲν γὰρ νόμος ἀκούσας γυναῖκας ἀπ᾽ ἀνδρῶν ἀποσπᾶν ἐφείησιν, εἰ δὲ καὶ ἔστιν τις, ἀλλ᾽ οὐ πρὸς τὰς | ἐξ ἐνγράφων γάμων γεγενημένας καὶ ἐνγράφως γεγενημένας: For no law permits to drag wives away from their husbands against their will; and if there is any such one, then not against those | who come from written marriages and have become (wives) in written form.

significantly, the learned opinion on which Dionysia bases her assertion (*infra* III) does not use it, and the *ephebeia* certificates that disclose the form of the parents' marriage do not ever refer to those which are not *agraphos*[9] as *engraphos*, but merely as existing καθ' ὁμολογίαν.[10] This advises caution in treating *engraphos gamos* as a technical term – Dionysia's petition is particularly adept at bending the formulation of the law to better serve her interests– and will be quite relevant for us later.

Important for our hypothesis will also be another peculiarity of the temporal arch traced by the material: the evidence for the peculiar legal consequences associated with the 'unwritten' character of the marriage is limited to two 2nd century sources: the 124 CE trial record in *CPR* I 18 (*infra* III) and Dionysia's petition, *P. Oxy*. II 237, dated to 186 CE. In both cases, as we will see, the only sources available both to the judges and to the parties in conflict regarding the practical relevance of the 'unwritten' nature of the marriage are legal experts, *nomikoi*. This imposes caution in assuming that such practical consequences were already in place when the term *agraphos* is first attested in our sources and remained in place throughout until the last attestation. Certain is only that *agraphia* was decisive in second century Egypt, but it could well be that its consequences were only at that time first associated with it. A confirmation that this warning is to be taken seriously: although the legal consequences that *CPR* I 18 and *P. Oxy*. II 237 associate to *agraphia* belong to the 'laws of the Egyptians' (*infra* n. 19), understood as the law applicable to all inhabitants of the Roman province of Egypt who lacked citizen status (*infra* III), the notion of *agraphos gamos* itself is attested outside of Egypt, in *P. Dura* 31 (204 CE Dura Europos), where it could hardly have had the same consequences, and also in late 4th century Hermopolis (*P. Lips*. I 41 = *MChr*. 300), long after 'Egyptians' in that sense of non-citizens had ceased to exist.

II. *Agraphos*

Why the topic is so puzzling can be easily summarised. The first surprise comes with the meaning of *agraphos* in this context: for convenience, I will often speak of 'unwritten' marriages, but *agraphos* does not seem to mean unwritten in the ordinary sense of the term. Not every marriage document was enough, it seems, for a

[9] Even though the total number of certificates containing the indication is too small to allow statistical inferences, *agraphos* marriages seem notably more frequent – six out of eight: *APF* 60 (2014) 123 Nr. 1 (83 CE Antaiopolites?) l. 14; *PSI* VII 777 (96 CE Hermopolis?) l. 11; *SB* III 7239 (141 CE Alexandria) l. 19; *PSI* XII 1224 (156–157 CE Alexandria) l. 10; *BGU* IV 1084 = *WChr*. 146 (222 CE Arsinoites) l. 24–25; *SB* XVI 12527 (224 CE unknown provenance) l. 17.

[10] So, most significantly, in *PSI* XII 1223 (131 CE Alexandria), where the marriage was initially *agraphos*, then καθ' ὁμολογίαν (ll. 10–12: φάμενοι συνεῖναι | ἑαυτοῖς πρότερον μὲν ἀγράφως, νυν|εὶ δὲ καθ' ὁμολογίαν), and in *P. Bodl*. I 66 (225 CE) ll. 13–14: φάμενοι συνεῖ]|ναι ἑαυτοῖς καθ' ὁμ̣[ολογίαν].

marriage to cease being considered *agraphos*: a marriage based on a written document could be still deemed 'unwritten'. Of this we are aware since the problem first came to light in 1899: in the second volume of the Oxyrhynchos papyri, a text that will be crucial for us was first published: *P. Oxy*. II 267 = *MChr.* 281 = *Biscottini* 12 (37 CE Oxyrhynchos), an agreement between a certain Tryphon and the woman who would be his wife for at least 15 years, Saraeus.[11]

Tryphon was a weaver in mid first century Oxyrhynchos. Of him we have a substantial archive of 44 documents, spanning from year 11 to 66 CE,[12] that present the picture of a family of modest means even if in the privileged class of the *metropolitai.*[13] On May 22nd 37 CE Tryphon, following a turbulent separation with his first wife Demetrous,[14] concluded this agreement with Saraeus, who seven weeks later appears in another document[15] as pregnant. It can well be that she was

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[11] For a detailed analysis, cf. in particular, together with those quoted *supra* in n. 1, Whitehorne 1984, Yiftach-Firanko 2003: 91–94, with further lit., and *infra* V.

[12] Biscottini 1966; Vandoni 1975; Whitehorne 1984; Pestman 1989: 74–80; Gagos-Koenen-McNellen 1992: 189–192; Rowlandson 1998: 112–118; Piccolo 2003: 197–213; Kelly 2011: 131–133, 313–315; Waebens 2019: 206–208. Trismegistos (https://www.trismegistos.org) archive number: TM Arch 249.

[13] Cf. the reduced rate of twelve drachmas for the poll tax in *P. Oxy*. II 288 = *Biscottin*i 9 (25 CE Oxyrhynchos) and *SB* X 10243 = *P. Oxy. descr*. II 308 = *Biscottini* 25 (50 CE Oxyrhynchos). About the family's ethnic and cultural background nothing can be said, neither regarding Tryphon nor Saraeus: regarding the latter, Rowlandson's suggestion that in the trial recorded in *P. Oxy*. I 37 = *MCh*r. 79 = Jur. Pap. 90 = *Biscottini* 23 (49 CE Oxyrhynchos), her child was identified as hers by the *strategos* because he may have seemed to him 'Egyptian rather than Greek' is unwarranted.

[14] Cf. Tryphon's petition against Demetrous upon her alleged desertion in *P. Oxy*. II 282 = *MChr*. 117 = *Biscottini* 10 (29–37 CE Oxyrhynchos): the date of the petition being lost, there is no certainty about the temporal distance between Demetrous' departure and Saraeus' pregnancy and marriage to Tryphon. Yet, the attack on Saraeus by Demetrous and her mother (*infra* n. 15) weeks after our document was executed, and the fact that Saraeus was then pregnant, strongly suggests that her pregnancy, Demetrous departure and Tryphon's new marriage are all related in a full-fledged family drama. Vandoni further supposes, on the basis of a new reading of *SB* XIV 11415 = *SB* X 10235 = *P. Oxy.* II 321 descr. = *CPGr* I 16 = *Biscottini* 207, that Saraeus was employed as wetnurse for a daughter of Tryphon and Demetrous when the whole situation exploded: but her reading is highly conjectural and not free from problems (Whitehorne 1984: 1268–1269) and, crucially, the date of the document is lost – it could well be a document related to Saraeus' (well attested) occupation as wetnurse after her marriage.

[15] *SB* X 10239 = *P. Oxy*. II 315 *descr*. = *Biscottini* 17 (37 CE Oxyrhynchos), a petition of Tryphon to the *strategos* dated to July 37 CE, regarding an aggression suffered by Saraeus at the hands of his former wife Demetrous and of the latter's mother. The attack happened on Epeiph 10th of the first year of Caius Caesar, July 4th 37 CE (our marriage deed is dated May 22nd 37 CE), and at that point Saraeus was pregnant: [ἄ]λόγον ταύτης ἠνέγκαντο | [καὶ συν]εστήσαντο ἔνκυον | [οὖ]σαν καὶ π̣ .[. . . .] . . . . |[. . .]πει δ̣εκο[. .]ν πλη̣γῶν | [. . .] . .[. .] .[.] .[. .] . [. . .] .ρ̣ῳ( ) (ll. 13–17, corrections by M. Vandoni, *BL* VII 217). The text is usually understood in the sense that the blows did not

already pregnant when our deed was executed, and that this is precisely the reason why it was executed – and possibly the reason for the separation from Demetrous. In any case, Tryphon agrees to pay her a sum of money on account of childbirth expenses, should they separate in pregnancy:

> ἐπεὶ δὲ σύνεσμεν |19 ἀλλήλοις ἀγράφω[ς] προσομολογῶι (l. προσομολογῶ) ἐὰν ὡσαύτως ἐκ διαφορᾶς |20 ἀπ[αλλαγ]ῶμεν ἀπ᾽ ἀλλήλ[ων] ἐνκύου σ[ο]ῦ οὔση[ς] δώσειν σοι (Whitehorne; prev. ed.: ἕως ἄν σοι) |21 [εἰς λόγον δ]απάν[ης λ]οχ[είας δραχμάς - ca.17 -][16]

This arrangement regarding a possible future separation in pregnancy, we read, is necessary because Tryphon and Saraeus live together in an unwritten manner.[17] This clearly implies that the present contract is not enough to change the nature of their union in that respect; it also seems to imply that otherwise wife and children would be somehow protected without the need for such explicit arrangement. We will later (*infra* VIII) come back to the possible reasons why.

Important for us is the fact itself that the term *agraphos* is not used here in its ordinary sense, as often in the papyri, simply referred to an undocumented transaction,[18] but has acquired a highly artificial, technical sense – whether the specific rules associated with it in the 2nd century were already here in place or not (*supra* I). As we will see (*infra* VIII), this artificial sense is present already in the first attestation of the term, in *SB* XXIV 16073 (12 BCE Alexandria). It does not seem farfetched to assume that also in later documents the term tended to keep in marriage contexts this technical meaning – as it is certainly the case in the two crucial 2nd century texts where the specificities of *agraphos gamos* come to light, *CPR* I 18 and *P. Oxy*. II 237 –, but an absolute certainty is not always possible: the atechnical meaning remains a distinct possibility particularly in the latest 4th century attestation (*P. Lips.* I 41 = *MChr.* 300, Hermopolis) and in that of Dura Europos (*P. Dura* 31, 204 CE).

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just risk a miscarriage but actually caused one: Vandoni 1975: 336; Rowlandson 1998: 115–116. Saraeus' firstborn, in fact, seems to be Apion, born almost a decade later: cf. the Solomon-like trial against Saraeus in *P. Oxy*. I 37 = *MChr*. 79 = *Jur. Pap*. 90 = *Biscottini* 23, dated 49 CE, when Apion must still have been a baby, and Rowlandson 1998: 114.

[16] *P. Oxy*. II 267 (37 CE Oxyrhynchos), ll. 18–21: since we live | together in an unwritten way, I further agree if as aforesaid owing to a quarrel | we separate from each other while you are in a state of pregnancy, I will give you | on account of childbirth expenses [the sum of ... drachmas …]. Cf. Whitehorne 1984: 1271 and n. 14.

[17] Rightly emphasised by Yiftach-Firanko 2003: 92: "it is precisely in the framework of that *locheia* provision that the couple is said to be living together *agraphos*".

[18] Particularly frequent in clauses like the ubiquitous "ηδὲ περὶ ἑτέρου ἁπλῶς πράγματος ἐγγράπτου ἀγράφου" or "κατ᾽ ἔγγραπτον ἀσφάλειαν".

III. *Agraphos gamos* and paternal *exousia*

Even more perplexing than this peculiar meaning of *agraphos* are the legal consequences of the *agraphia* itself, as they result from *CPR* I 18 and *P. Oxy*. II 237. The very position of the father in the family, his power over his children and their property, seems to have depended on it, under the so-called 'laws of the Egyptians'.[19]

A small *excursus* regarding these 'laws of the Egyptians' is perhaps here necessary.[20] Crucial for us is the following: in Roman Egypt, the laws of the Egyptians are not necessarily native Egyptian laws. Egyptians, *Aigyptioi*, are in fact for the Roman administration all those who are nothing else than inhabitants of the province. All those, that is, who have no citizenship: neither the Roman nor that of any of the *poleis* of pre-Severan Egypt, namely Naukratis, Alexandria, Ptolemais and later Antinoopolis.[21] The category thus comprises the immense majority of the population of Egypt: all the inhabitants of the *chora* who, for Rome, are *apolides*, *peregrini nullius civitatis*, and precisely for that reason cannot be referred to with any other denomination than 'Egyptians'. This means: not just ethnic Egyptians, but also the Greeks of the *chora*, including the *metropolitai* and the gymnasial elite, together with those of mixed descent, the Jewish communities of the *chora* and all others, at least as far as they were not organised in *politeumata*. This has for us an important consequence: all legal traditions that the Romans find in Egypt, and in particular both the Egyptian and the Greek, fall now, with the only exception of the *politikoi nomoi* of the *poleis*, under the category of the 'laws of the Egyptians' and

[19] *CPR* I 18 refers generically to "the law" or "the laws": ll. 9–10, τοῦ νόμου καλοῦντος τοὺς πατέρας ἐπ[ὶ] τὰ[ς] κληρονομίας | τῶν ἐξ ἀγράφων παίδων; ll. 11–13, ἔχοντος ἐκεί|νου ἀπὸ τῶν νόμων ἐξουσίαν περιόντος πατρὸς εἰς ἄλλον τινὰ | γράφειν δ[ια]θήκην. *P. Oxy*. II 237 confirms that these are indeed the "laws of the Egyptians", cf. in particular: (a) Col. 7, ll. 40–42: τὰ πρόσωπα Αἰγ[ύ]πτια ὄ̣ν̣τ̣α̣ παρ' οἷς ἄκρατός ἐστιν ἡ τῶν ν[ό]μων ἀποτομ[ί]α·| διοριζόμενος γάρ σοι λέγω [ὅ]τι Α̣ἰ̣γ̣[ύ]π̣τ̣ι̣οι οὐ μόνον τοῦ ἀφελέσθαι τὰς [θυγατ]έρ[ας ὧ]ν ἔδωκαν ἐξουσίαν, ἔχουσιν δὲ καὶ ὧν ἐὰν κ̣α̣ὶ̣ ἴδια | κτήσωνται, clearly related to the same paternal power on the children's property behind the decision in *CPR* I 18; (b) Col. 7, ll. 31–33, referred to the alleged paternal right to take the daughter away from her husband against her will: Ἰσίδωρος ῥήτωρ ὑπὲρ Φλαυήσιος εἶπεν, τ̣ὸ̣ν̣ οὖν α̣ἰ̣τ̣ι̣ώ̣μενον | ἀποσπάσαι βουλόμενον τ[ὴ]ν θυγατέρα αὐτοῦ συνοικοῦσαν τῷ ἀντιδίκῳ δεδικάσθαι ὑπογύως πρὸς αὐτὸν ἐπὶ τοῦ ἐ̣[πι]σ̣τ̣ρ̣α̣τ̣ήγου | καὶ ὑπερτεθεῖσθαι τὴν δίκην ὑ̣μ̣ε̣ῖ̣ν̣ ἵνα ἀναγνωσθῇ ὁ τῶν Αἰγυπτίω[ν νό]μος; (c) now also, in Col. IX l. 20, τὰ τ̣ῷ̣ν̣ Αἰγυπτίων νόμιμα, in the previously unpublished second half of the opinion of the *nomikos* Ulpius Dioskourides (on him, *infra* n. 30).

[20] On the notion, Alonso 2023, with sources and literature.

[21] Cf. Jördens 2012. This purely administrative meaning of Egyptians as non-citizens, as opposed to Romans, Alexandrians, and all others with a *status civitatis* is especially clear in the *Gnomon of the Idios Logos*: cf. in particular the rules concerning marriage and inheritance in §§ 38 – 56.

are in principle applicable to everyone who is not a citizen, no matter their ethnic origin or their culture.[22]

It is to this common normative mass that the rules associated with the *agraphos gamos* belong, according to our sources. And yet, *agraphos gamos* is not a category that we find in the previous Greek or Egyptian legal traditions. In second-century Egypt, instead, as it results from *CPR* I 18 and *P. Oxy*. II 237, it seems to be decisive for the power of the father within the family, in the most peculiar, counter-intuitive way. Fathers married *agraphos*, in fact, had under the 'laws of the Egyptians' an enormous power, *exousia*, over their children and their children's belongings. It seems to follow that they would entirely lack such power when their

[22] Mélèze Modrzejewski 2014: 259–271 greatly underestimates the Egyptian component in these 'laws of the Egyptians' and assumes all too readily a Greek origin for the institutions attested as part of them. Nevertheless, despite Platschek 2015: 148–149, he is quite right in rejecting Wolff's identification of the '*nomoi ton Aigyption*' of Roman Egypt with the Ptolemaic '*nomoi tes choras*', i.e. with the native Egyptian law *tout court* (Wolff 1953: 42–44), as we find it compiled in the so-called *codex Hermopolis*. As explained above, 'Egyptian' in the Roman administrative parlance of the 2nd century is every *peregrinus nullius civitatis* of the province, including the Greeks. Platschek's assumption that the majority of the population in the *chora* lived under native Egyptian law is hardly compatible with our sources – already when one considers the dominance of Greek in the documentary practice, despite the fact that the Egyptian tradition had at the time of Alexander's conquest embraced written documentation more thoroughly than the Greek. It is true that the native Egyptian tradition remained vital even after the Roman annexation, but the dominant culture since the establishment of the Ptolemaic monarchy was and remained the Greek: native Egyptians had no chance of social ascent beyond the priestly milieu without Hellenisation, which paved the way to intermarriage; likewise, Egyptian legal traditions could only survive the disappearance of the *laokritai* with the fall of the Ptolemies and the gradual extinction of the Demotic notarial practice thereafter only in the measure in which they had found an *interpretatio graeca*, a Greek documentary expression. The autochthonous developments of Greek culture in the *chora* already under the Ptolemies (often strikingly new: cf. the *ekdosis* of the mother already in *P. Eleph*. 1), the Greek form that the Egyptian legal tradition started adopting in the late Ptolemaic period (most visible for us through the activity of the bilingual *agoranomoi* of Pathyris, giving Greek notarial form to native Egyptian practices: Alonso 2016: 137–139, with lit.), and the interaction between both, facilitated by the Roman annexation, as both Egyptians and Greeks became administratively '*Aegyptioi*', all subjected to the same jurisdiction, so that the formal barrier between both legal cultures fell down: all this is what falls now under the category of the 'laws of the Egyptians'. Remarkably, when Sulpicius Similis and Mettius Rufus characterise the family *katoche*, which most certainly (*infra* VII) had native Egyptian roots, they use, instead of the usual *nomoi ton Aigyption*, the expression *enchoria nomima* (*P. Oxy.* II 237, Col. 8, l 22) or *epichorios nomos* (*P. Oxy*. II 237, Col. 8, l. 34), echoing the Ptolemaic '*nomoi tes choras*' – one wonders if consciously, to refer to institutions that they knew or suspected were of native Egyptian origin.

marriages were not *agraphos* or had ceased being *agraphos*,[23] although such assertion we find only in the petition of Dionysia (*P. Oxy*. II 237). If we are to trust Dionysia – on this, later – whatever it was that made a marriage not be *agraphos*, or not anymore, it also deprived the father of his power over the children and their property.[24]

The aspect of the paternal power that Dionysia fights against is the supposed right of the fathers, under the laws of the Egyptians, to take their daughters away from their husbands, the so-called *apospasis*.[25] Dionysia's father, Chairemon, an ex-gymnasiarch and therefore – whatever his ethnic origin – part of the Greek elite of the *metropolis*, after a long financial conflict with his daughter, invokes the laws of the Egyptians against her in order to separate her from her husband,[26] either

[23] That marriages could cease being *agraphos* is confirmed by the *ephebeia* certificate in *PSI* XII 1223 (131 CE Alexandria) ll. 10–12: φάμενοι συνεῖναι | ἑαυτοῖς πρότερον μὲν ἀγράφως, νυν|εὶ δὲ καθ' ὁμολογίαν. The marriage of the parents in P. Bodl. i 66 (225 CE), instead, seems to have been ab initio *kath'homologian*: ll. 13–14, [φάμενοι συνεῖ]|ναι ἑαυτοῖς καθ' ὁμ[ολογίαν]. Uncertain remains whether this would change the legal position of the children, since both *P. Oxy*. II 237 col. VII, l. 13, col. VIII, l. 5. and *CPR* I 18, l. 26 refer to those ἐξ ἀγράφων γάμων γενόμενοι.

[24] Among the recent literature on Dionysia's petition: Lewis 1970; Katzoff 1972: 257–268; Katzoff 1982; Anagnostou-Cañas 1984: 351–353; Urbanik 2002: 316–322; Kreuzsaler 2008; Kreuzsaler-Urbanik 2008; Urbanik 2008; Yiftach-Firanko 2009: 550–552; Bryen 2013: 143–150, 191–199; Platschek 2014; Platschek 2015; Urbanik 2016: 1063–1067; Dolganov 2019: 42–58; Urbanik 2019: 318–327; Besson 2020: 209–215; Alonso 2023: 250–253 (§§ 63–68), with further lit. From the earliest literature, particularly valuable Gradenwitz 1901.

[25] The substantive *apospasis* for this 'taking back' of the daughter, frequent in the literature, is our own neologism; Dionysia uses only the verb ἀποσπάω: (a) in the decision of the deputy *strategos* Harpokration who presided over a hearing of the case in Oxyrhynchos upon Chairemon's second petition against Dionysia, authorising her to present the present petition, Col. 7, ll. 4–5: ἐπεὶ δὲ | ὁ Χ[αιρ]ήμων δι' ἧς καὶ νῦν πεπο[ίη]ται παρὰ τῷ [λ]αμπροτάτῳ ἡγεμόνι ἐντυχίας ἠξίωσεν τὴν θυγατέραν ἄ̣ρ̣[ο]ụ̣σ̣α̣ν̣ ἀποσπᾶν; (b) in her *petitum*, where she denies its existence (probably because the court precedents she presents could support the idea that it had been overridden by the Roman jurisdiction), Col. 7, l. 12: οὐδεὶς μὲν γὰρ νόμος ἀκούσας γυναῖκας ἀπ' ἀνδρῶν ἀποσπᾶν ἐφείησιν; (c) in her second court precedent, dated 133 CE, col. 7, ll. 31–32: τ̣ὸν οὖν α̣ἰ̣τ̣ι̣ώ̣μενον | ἀποσπάσαι βουλόμενον τ[ὴ]ν θυγατέρα αὐτοῦ συνοικοῦσαν τῷ ἀντιδίκῳ δεδικάσθαι ὑπογύως πρὸς αὐτὸν ἐπὶ τοῦ ἐ̣[πι]σ̣τ̣ρ̣α̣τ̣ήγου. The verb does not seem to be used in any technical sense, though. Indeed, in Dionysia's first court precedent, dated 128 CE, the verb is ἀποζευχθῆναι: col. 7, l. 25, αἰτ̣ε̣ῖσθαι̣ ο̣ὖ̣ν̣ ἐὰν δοκῇ μὴ ἀποζευχθῆναι γυναικὸς οἰκείως πρὸς αὐτὸν ἐχούσης; in her third court precedent, which is also the earliest, dated to 87 CE, ἀφαιρεῖσθαι: col. 7, l. 43, χεῖρόν ἐστι ἀνδρὸς ἀφαι[ρεῖσθαι]. Moot seems the discussion whether we are dealing with a forced divorce or with the mere factual 'taking away' of the wife by the father (Platschek 2015: 146: "Die Quellenlage gestattet es nicht, dieses Recht als ein originäres 'Eheauflösungsrecht' zu qualifizieren"): marriage being understood as marital cohabitation, the dissolution of the latter necessarily ends the marriage.

[26] Much discussed is the origin of this paternal *exousia*. Mélèze Modrzejewski 2014: 261–262, following Lewis 1972, argued for a Greek origin, related to the Athenian *aphairesis*, and deemed unlikely that a member of the Greek elite like Chairemon (a fair characterisation

because he sees him as responsible for her behaviour or because in this way he expects to regain control over it.[27]

When Dionysia, after a long summary of the conflict, comes to her *petitum* (Col. 7, ll. 8–19), her main argument against his father's attempt is that the law he invokes does not exist (indeed, as the court precedents she appends show, its application had been at least twice rejected by the Roman courts)[28] and, if it does exist (since those specific cases of rejection may not yet mean abrogation) it does not apply to wives who – as she claims to be – come from a written marriage (*engraphos gamos*) and are themselves married in a written form:

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for an ex-gymnasiarch, regardless of how purely Greek his ancestry may have been) would appeal to native Egyptian law. The hypothesis, while not incompatible with the characterisation of the *exousia* as part of the 'laws of the Egyptians' (understanding 'Egyptians' not ethnically or culturally, but in its Roman administrative sense, as the *peregrini* of the *chora*, Greeks included: *supra* n. 21), is in view of the sources (problematic even for the supposed Greek *aphairesis*) highly conjectural and the argumentation inconclusive, cf. Wolff 2002: 75 n. 18. For our purposes, the question is less relevant: suffice to say that, whatever its origin, this *exousia* was invoked both by the Greek elite and by Egyptians so uncontaminated by Greek culture that they needed an interpreter in court (*P. Oxy*. II 237, col. 7, l. 37–38, in the 133 CE case before Paconius Felix). Against the idea that Chairemon articulates his petition on the basis of the Roman *interdictum de liberis exhibendis vel ducendis* (Dolganov 2019: 42–58), cf. Alonso 2023: 251 n. 155. On the Greek *aphairesis*, the incidence of the Roman *patria potestas* on the marriage of the *potestate subiecti*, the *interdictum de liberis exhibendis*, and Dionysia's *apospasis*, cf., most extensively, Urbanik 2002 and Urbanik 2016.

27 Lit. *supra* in n. 24.

28 *P. Oxy*. II 237 (186 CE Oxyrhynchos), col. 7, ll. 19–29 and ll. 29–38. Both cases were quite close in time: the first arrived to the court of the prefect Flavius Titianus in 128 CE after being tried by the *epistrategos* M. Aemilius Bassus (for the identification, Thomas 1982: 194–195); the second, in 133 CE, was judged by the *epistrategos* Paconius Felix, following explicitly the precedent set by Titianus five years earlier. Whether these two decisions sufficed as abrogation of the paternal *apospasis*, we would be in a better position to decide if we had Chairemon's court materials, and not only Dionysia's; but her own argumentation – no law permits to drag wives away from their husbands … and if there is any such one, then not against those who come from written marriages – strongly suggests that this was far from certain even for her. Contrary to what sometimes assumed (cf. for instance Kreuzsaler-Urbanik 2008: 141 n. 38; Mélèze Modrzejewski 2014: 262 n. 17), the paternal *apospasis* does not seem to be the *thema decidendi* in the 87 CE trial before the *iuridicus* Umbrius (*P. Oxy*. II 237, col. 7, ll. 39–43), where the plaintiff seems to be the daughter and what she claims against her father is to effectively deliver the dowry he granted her; the *iuridicus*' assertion 'It is worse to take her away from her husband' (l. 43, χεῖρόν ἐστι ἀνδρὸς | ἀφαι[ρεῖσθαι]), unfortunately interrupted by the broken papyrus, is no conclusive evidence of him overruling the paternal *apospasis*.

> ἐντυγχάνω σοι καὶ νῦν πάντα παρατιθεμένη τὰ ἐν τῷ πράγματι, |10 καθὼς καὶ ὁ βασιλικὸς διαδεχόμενος καὶ τὴν στρατηγίαν ἠθέλησεν, καὶ δέομαι κελεῦσαι γραφῆναι τῇ στρατηγίᾳ τάς τε χορηγίας |11 ἀποδίδοσθαί μοι κατὰ καιρόν, ἐπισχεῖν τε (*corr. ex* δε) αὐτὸν ἤδη ποτὲ ἐπειόντα (*l.* ἐπιόντα) μοι, πρότερον μὲν ὡς ἀνόμου κατοχῆς χάριν, νῦν δὲ προφάσει νό|12μου οὐδὲν αὐτῷ προσήκοντος· οὐδεὶς μὲν γὰρ νόμος ἀκούσας γυναῖκας ἀπ᾽ ἀνδρῶν ἀποσπᾶν ἐφείησιν, εἰ δὲ καὶ ἔστιν τις, ἀλλ᾽ οὐ πρὸς τὰς |13 ἐξ ἐνγράφων (*l.* ἐγγράφων) γάμων γεγενημένας καὶ ἐνγράφως (*l.* ἐγγράφως) γεγενημένας.[29]

To prove her point, Dionysia reproduces the opinion of a legal expert, the *nomikos* Ulpius Dioskourides,[30] dated some decades earlier, to 138 CE, regarding an unrelated Dionysia. According to Dioskourides, in fact (Col. 8, ll. 2–7), only fathers married *agraphos* have such power (and even these not anymore if they have given their daughters in *ekdosis*: an important caveat that I will leave aside for the purposes of this paper):[31]

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[29] *P. Oxy*. II 237 (186 CE Oxyrhynchos), col. 7, ll. 9–13: I now once more make my petition to you, giving a full account of the case, | as also the royal scribe and deputy-strategus has wished, and beseech you to give orders that written instructions be sent to the office of the *strategos* so that the provisions | are paid to me at the proper time, and he finally stops his attacks upon me, previously on account of an allegedly unlawful lien and now under the pretext of a | law which does not apply to him. For no law permits to drag wives away from their husbands against their will; and if there is any such one, then not against those | who come from written marriages and have become (wives) in written form. The text above, that of our new edition (supra n. 2), corrects in l. 11 the inf. pres. ἐπίσχειν by the likelier aor. ἐπισχεῖν, and reintegrates in l. 12 the clearly readable μὲν.

[30] The *nomikos*' name results from a correction of our new edition: (*supra* n. 2): in *P. Oxy*. II, Grenfell and Hunt had read Ulpius Dionysodoros, and it is under such name that our *nomikos* appears in the literature so far. The correction is not only palaegographically sound: prosopographically also, it is supported by the fact that Dioskourides is well-known for his activity as *nomikos* in the thirties and forties of the 2nd century: *SB* XX 15147 (ca. 138 CE Oxyrhynchos) l. 8; *PSI* V 450 col. 2 (2nd cent. CE Oxyrhynchos) l. 37, l. 45; *BGU* XX 2863 (133–137 CE Arsinoites?) l. 19; *P. Fouad* I 25 (144–149 CE Arsinoites) verso, l. 4–5.

[31] An interesting attempt at solving the riddle of the relation between *ekdosis*-marriage and paternal *exousia* in Lewis 1970. In the light of Dioskourides' answer, two observations on the role of the *ekdosis*' seem to me important: (i) the *nomikos*' opinion in this respect is anticipated (Yiftach-Firanko 2003: 47–48) by a similar argument made by an advocate in one of the precedents appended by Dionysia (Col. 7, ll. 28–29); (ii) the text presupposes that not every marriage contracted in the lifetime of the wife's father required the latter's *ekdosis*; (iii) the answer is best understood not as a fiction (so Platschek 2015: 154–157), in the sense that *ekdosis* wives are dealt with as if they came from a 'written marriage' (notice that the *nomikos* does not use the latter term: on this, *supra* I and *infra* VIII), but rather in the sense that the *ekdosis* severs the daughter's connection to her parents' marriage: it does not change, not even as far as the daughter is

ἀντίγραφον προσφων̣[ήσεως νομ]ικοῦ. Οὔλπιος Δ[ι]οσ[κ]ο̣υ̣[ρίδης] τῶν ἠγορανομηκό|3των νομικὸς Σαλουιστ[ίῳ Ἀφ]ρικανῷ ἐπάρχῳ στόλου καὶ [ἐπὶ τῶ]ν κεκριμένων τῷ τειμιω[τά]τῳ (*l.* τιμιωτάτῳ) χαίρειν. Δ̣[ιον]υ̣σί̣α |4 ὑπὸ τοῦ πατρὸς ἐκδοθεῖσα [πρ]ὸς γάμον ἐν τ̣ῇ̣ τοῦ π[α]τρὸς ἐξουσ[ίᾳ οὐ]κέτι γε῎ίνεται (*l.* γίνεται). καὶ γὰρ ε̣ἰ̣ ἡ μήτηρ ἀ̣υ̣τ̣ῆ̣ς τῷ πατρὶ ἀγράφως |5 συνῴκησε̣ [κ]αὶ διὰ τοῦτο αὐτὴ δοκεῖ ἐξ ἀγράφων γάμων γεγενῆσθαι, τῷ ὑπὸ τοῦ πατρὸς αὐτὴν ἐκδόσθαι πρὸς γάμ̣ον οὐκέτι |6 ἐξ ἀγράφων γάμων ἐστίν. πρὸς τοῦτο ἴσως γράφεις, τειμιώτα[τε] (*l.* τιμιώτατε)· καὶ δι᾽ ὑπομνηματισμῶν ἠσφᾴ[λι]σται περὶ τῆς πρ[οι]κὸς ἡ παῖς |7 ὑπὸ τοῦ πατρός, καὶ τοῦτο αὐτῇ̣ βοηθεῖν δύναται. vac. (ἔτους) κβ θεοῦ Ἀδριανοῦ, Μεχεὶρ κ. vac.[32]

The unwritten quality of the marriage was therefore decisive – even if, according to Dioskourides not the only relevant factor – for the power of the fathers over their daughters' marriage. But this is not all. Another link between paternal power and *agraphia* was already known before the publication of the petition of Dionysia, through *CPR* I 18 = *SPP* XX 4 = *MChr*. 84 = *Jur. Pap*. 89 (124 CE Arsinoites):[33] fathers married *agraphos* were called to the inheritance of their children, so that these could not make testament in favour of someone else as long as their father lived. So we read in the plaintiff' plead:

τοῦ Ἀ[φ]ροδεισίου διὰ Σωτηρί|7χου ῥήτορος εἰπόντος [σ]υνελθόντα ἑαυτὸν ἀγράφως Σαραποῦτί |8 τινι ἐσχηκέναι ἐξ αὐ[τ]ῆς Ὡριγένην ὃς ἐτελεύτησεν καὶ |9 ἄλλους· τοῦ νόμου καλοῦντος τοὺς πατέρας ἐπ[ὶ] τὰ[ς] κληρονομίας |10 τῶν ἐξ ἀγράφων παίδων τὸν ἀντίδ[ι]κον θέλειν κατὰ δια|11θή[κ]ην κληρονόμειν ε[ἶ]ναι τοῦ Ὡριγένους, οὐκ ἔχοντος ἐκεί|12νου ἀπὸ τῶν νόμων ἐξουσίαν περιόντος πατρὸς εἰς ἄλλον τινὰ |13 γράφειν δ[ια]θήκην, παραξίου [π]αρ[α]νόμο[υ] οὔσης [τ]ῆς εἰς τὸν ἀντί|14δικον δι[α]θήκης ἀντιποιεῖσθ[α]ι τῶν ὑπὸ τοῦ υἱοῦ καταλειφθέν|15[των·] [34]

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concerned, the nature of her parents' marriage, but merely results in her not 'coming from it' in a legally relevant sense any more (notice the emphatic ἐξ ἀγράφων γάμων ἐστίν).

[32] *P. Oxy*. II 237 (186 CE Oxyrhynchos), col. 8, ll. 2–7: Copy of the opinion of a legal expert. Ulpius Dioskourides, former *agoranomos*, | legal expert, to his most esteemed Salvistius Africanus, commander of the fleet and (appointed) for judicial matters, greetings. Since Dionysia | has been given away in marriage by her father, she is no longer under the father's power. For even though her mother lived with her father in an unwritten way, | and for this reason seems to be issue of an unwritten marriage, by the fact of her having been given away in marriage by her father, she is no longer | from an unwritten marriage. It is probably about this issue that you write to me, my good friend. Moreover, there are minutes of trials which regarding the dowry protect the girl | against her father, and this too can help her. (*vacat*) 22nd year of the deified Hadrian, Mecheir 20th. (*vacat*)

[33] Purpura 2005.

[34] *CPR* I 18 (124 CE Arsinoites), ll. 6–15: Aphrodisios through Soteri|chos, rhetor, declares that he joined in an unwritten manner a certain Sarapous | and had from her Origenes, who

The judge, Blaesius Marianus, a *praefectus cohortis* acting by delegation of the prefect (ll. 1–3), who presides over the case (as often in 2nd cent. Egypt when the intricacies of local family law were involved) with the aid of a legal expert, the *nomikos* Claudius Artemidoros, accepts that the law is indeed as described by the plaintiff:

> Βλαίσιος Μαριανὸς |$_{23}$ ἔπαρχος σπεί[ρη]ς πρώτης Φλα[υ]ία[ς Κι]λίκων ἱππικῆς συ<λ>λαλήσας |$_{24}$ Ἀρτε[μι]δ[ώρῳ τ]ῷ νομ[ι]κῷ [π]ε[ρὶ το]ῦ πράγματος ὑ[πη]γόρευσεν ἀπό|$_{25}$[φ]α[σιν ἢ καὶ ἀν]εγνώσθη κατὰ λέξ[ιν ο]ὕτως· ὁ τελευτήσας Ὡρι|$_{26}$[γένης ἐξ ἀγρά]φ[ω]ν [γάμων γε]νόμ[ε]ν[ος τῷ πα]τ̣ρ̣ὶ φαίνεται κ̣α̣τ̣[α]||$_{27}$[λείπειν τὰ ἴδια δι]α̣θήκη[ς] ἐξουσία[ν] μὴ ἐσχ[η]κὼς τ[οῦ] πατρ[ὸς αὐτ]οῦ |$_{28}$ [ζ]ῶν[τ]ος [35]

Here, the father's power refers to the property of the children and not to their person, but in truth, also the *apospasis* in Dionysia's petition has a patrimonial side. In the legal materials she appends, in fact, the father's power to take back his daughter is presented together with his power to take back the dowry, as two sides of the same coin. In the first court precedent she quotes on her behalf, for instance, a case tried directly before the prefect Flavius Titianus in 128 CE (Col. 7, ll. 19–29), the defence argues against a father who wishes to take his daughter back from the husband in the following terms:

> Προκ̣λ̣ηιανὸς ὑπὲρ Ἀντωνίου προσέθηκεν: ἐὰν ἀπερίλυτος ᾖν ὁ γάμος, τὸν πατέρα μήτε τῆς προικὸς μηδὲ τῆς παιδὸς τῆς ἐκδεδο|$_{29}$μένης ἐξουσίαν ἔχειν. [36]

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died, and | others: (although) the law calls the fathers to the inheritances | of the children from unwritten (marriages); (that) the adversary wishes | according to the testament to be the heir of Origenes, (although) he has | according to the laws no faculty, living the father, to write a testament | in favour of anyone else, (that) the testament in favour of the adversary being inequitable and illegal | he lays claim to what was left by the | son.

35 *CPR* I 18 (124 CE Arsinoites), ll. 22–28: Blaesius Marianus | praefect of the first equestrian cohort Flavia of the Cilicians, having consulted | Artemidoros the legal expert about the case, dictated on the question a de|cree which was also read, word for word in these terms: the deceased Ori|genes, conceived in an unwritten marriage, seems to have left his property | to his father, since he did not have the faculty to write a testament while his father | was alive. — The situation of such children, who, despite being owners, cannot bestow their inheritance on anyone but their fathers is akin to that of the *latini Iuniani*, whose property, despite being their own, returns upon their death to their patrons *iure peculii*: Gai. 3.56.

36 *P. Oxy*. II 237 (186 CE Oxyrhynchos), col. 7, ll. 28–29: Prokleianos on behalf of Antonius added that if the marriage was not cancelled the father had no power over the dowry any more than over the daughter whom he had | given in marriage. For the advocate's name, Προκλ̣ηιανός instead of Grenfell and Hunt's Προβατιανός, see our new edition of the text (*supra* n. 2).

And, in Dionysia's third court precedent (Col. 7, ll. 39–43 – Col. 8, ll. 1–2), in the context of an 87 CE trial before the *iuridicus* regarding an apparently undelivered dowry, the father's advocate argues that Egyptian fathers have power to deprive their daughters not only of what they have given them, but also of whathever they may acquire as their own:

> διοριζόμενος γάρ σοι λέγω [ὅ]τι Αἰγ[ύ]ππ̣τ̣ιοι οὐ μόνον τοῦ ἀφελέσθαι τὰς [θυγατ]έρ[ας ὧ]ν ἔδωκαν ἐξουσίαν, ἔχουσιν δὲ καὶ ὧν ἐὰν κ̣α̣ὶ̣ ἴδια |42 κτήσωνται [37]

IV. Written law and legal expertise

Two central questions raised by the sources must be kept separate from each other: (a) where does this power come from, what is its source? (b) why is it linked to the form, written or unwritten, of the marriage?

Concerning the source: through Dionysia's petition we know that the paternal *exousia* was a part of the laws of the Egyptians that could be read in court.[38] The information comes from the second court precedent she appends in her defence (Col. 7, ll. 29–38), a case tried in 133 CE before the *epistrategos* Paconius Felix, where the hearing had been adjourned so that the law could be presented in court:

> Ἰσίδωρος ῥήτωρ ὑπὲρ Φλαυήσιος εἶπεν, "τ̣ὸν οὖν α̣ἰ̣τ̣ι̣ώ̣μενον |32 ἀποσπάσαι βουλόμενον τ[ὴ]ν θυγατέρα αὐτοῦ συνοικοῦσαν τῷ ἀντιδίκῳ δεδικάσθαι ὑπογύως πρὸς αὐτὸν ἐπὶ τοῦ ἐ̣[πι]σ̣τ̣ρ̣α̣τ̣ήγου |33 καὶ ὑπερτεθεῖσθαι τὴν δίκην ὑ̣μ̣ε̣ῖ̣ν (*l.* ὑμῖν) ἵνα ἀναγνωσθῇ ὁ τῶν Αἰγυπτίω[ν νό]μος. [39]

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[37] *P. Oxy*. II 237 (186 CE Oxyrhynchos), col. 7, ll. 41–42: For I declare to you that the Egyptians have power to deprive their daughters not only of what they have given them, but also of whatever they may | acquire as their own.

[38] That this particular law could be read in court does not mean, as often assumed, that the 'laws of the Egyptians' had been object of a compilation. Such compilations existed for the native Egyptian law: cf. the so-called *Zivilprozessordnung* (*P. Berlin P* 13621 r., *P. Cairo CG* 50108a–b, *P. Giessen* UB 101), *P. Berlin P*. 23890 r., *P. Carlsberg* 236, and especially the so-called *codex Hermopolis* (*P. Matha*), conjectured by Lippert 2008: 85 to be fragments from the codification ordered soon after the Persian conquest by Darius I, according to the so-called Demotic chronicle (*P. Bibl. Nat*. 215 *verso*, c 6–16). That such compilations remained in circulation in Roman times, in the Greek versions we also know existed, would not be surprising: and indeed, it may well be that the law was read in our case from one of them. That the 'laws of the Egyptians' in the 2nd cent. sense of the term, comprising all legal traditions present in the *chora*, could have been compiled, is instead hardly thinkable – and our text does not require it either.

[39] *P. Oxy*. II 237 (186 CE Oxyrhynchos), col. 7, ll, 31–33: Isidorus, advocate for Phlauesis, said that the plaintiff therefore, wishing | to take away his daughter who was living with

And in fact, the continuation of the court record confirms that the law was indeed presented in court and read before the *epistrategos*:

> Πακώνιος Φῆλιξ· ἀναγνωσθητο (*l.* ἀναγνωσθήτω) ὁ ν[ό]μ[ος. Ἀ]να|$_{36}$γνωσθέντος Πακώνιος [Φῆ]λιξ· ἀνάγνωται (*l.* ἀνάγνωτε) καὶ τὸν Τειτιανοῦ ὑπομ[ν]ηματισμόν. [40]

The paternal *exousia* itself, therefore, was written law. For the link between the *exousia* and the form of the marriage, instead, Dionysia cannot quote any law, but merely (Col. 8, ll. 2–7) the opinion of the *nomikos* Dioskourides reproduced *supra sub* III.[41] Also for the link between *testamenti factio* of the children and the form of the father's marriage the plaintiff in *CPR* I 18 does not produce any written law, and the judge himself seeks instead confirmation through a legal expert (see *supra* in III).

If our sources do not mislead us, therefore, the power of the father was written law; its connection to the form of the marriage, instead, resulted from the interpretation of the legal experts. This means: it is not the remnant of a remote tradition or of old laws the purpose of which might have become obscure with time, but arises in the 2nd century from a certain legal logic that was still then very much alive and which therefore we can aspire to reconstruct. There must have been something in the difference between *agraphos* and *engraphos gamos* that led the 2nd century *nomikoi* to link them to the paternal *exousia*. This logic, I believe, can be reconstructed going back to Tryphon's unwritten marriage, *P. Oxy.* II 267 = *MChr*. 281 (36 CE).

V. The loan-dowry tradition

Two aspects of Tryphon's document will be particularly significant for us: it is a non-notarial document, a *cheirographon*; and it is not fashioned as a marriage deed, documenting the marriage itself and the duties of the spouses, but as a bank-confirmed receipt, in the typical Oxyrhnchite form of a *cheirographon kai diagraphe*:[42]

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the defendant, had recently brought an action against him before the *epistrategos* | and the case had been deferred in order that the Egyptian law might be read.

[40] *P. Oxy*. II 237 (186 CE Oxyrhynchos), col. 7, ll. 35–36: Paconius Felix said, 'Let the law be read.' When it had | been read Paconius Felix said, 'Read also the minute of Titianus.'

[41] In the same sense, Platschek 2015: 158: "Dass das Gesetz beide von Dionysia genannten Negativbedingungen für das Heimholrecht des V aters formulieren würde, ist zu bezweifeln".

[42] The equation of bank-*diagraphai* to public documents occurred only with the advent of the so-called 'independent' *diagraphe* – no longer mere confirming of payment regarding a transaction otherwise documented, v.gr. through *cheirographon* as in our case, but execution of the entire document through the bank – and only regarding the latter, not earlier than the turn of the 1st to the 2nd century CE: Wolff 1978: 95–105. There is, therefore, little doubt that Tryphon's document, as all the other *cheirographa kai diagraphai* that we

ὁμολογῶι (l. ὁμολογῶ) ἔχειν |3 παρὰ σοῦ ἐπὶ τοῦ πρὸς Ὀξυρύγχων πόλει Σαραπιείου διὰ τῆς |4 Σαραπίωνος τοῦ Κλεάνδρου τραπέζης ἀργυρίου Σεβαστοῦ |5 καὶ Πτολεμαικοῦ νομίσματος δραχμὰς τεσσαράκοντα καὶ |6 τιμῆς ἐνωτίων χρυσῶν ζεύγους ἑνὸς ἀργυρίου δραχμὰς (corr. ex δραχμαι) |7 εἴκοσι καὶ χιτῶνος γαλακτίνου ἀργυρίου δραχμὰς δέκα δύο, |8 ὥστ᾽ εἶναι ἐπὶ τὸ αὐτὸ ἀργυρίου δραχμὰς ἑβδομήκοντα δύο |9 κεφαλαίου αἷς οὐδὲν τῶι καθόλου προσῆκται, ὑπὲρ ὧν καὶ |10 συνπέπεισμαι. τὰς δὲ τοῦ ἀργυρίου δραχμὰς ἑβδομήκον|11τα δύο ἀποδώσω σοι τῇ τριακάδι τοῦ Φαῶφι τοῦ ἰσιόντος (l. εἰσιόντος) |12 δευτέρου ἔτους Γαίου Καίσαρος Γερμανικοῦ Νέου Σεβαστοῦ |13 Αὐτοκράτορος, χωρὶς πάσης ὑπερθέσεως. [43]

Tryphon acknowledges to Saraeus that he has received from her through a bank at the Serapeum 40 silver drachmas – with the bank's subscription in ll. 32–34 – and, in addition, a pair of gold earrings and a robe, typical dotal objets, given, as it is typical for dowries, under estimation: 20 and 12 drachmas respectively. All in all, 72 drachmas, which he promises to repay. Remarkably, not in case of separation, but in roughly 5 months: the document was executed on May 22nd (i.e. Pachon 27th of the first year of Caligula, l. 22) and the sum must be repaid on October 27th (Phaophi 30th of Caligula's second year, ll. 11–13). Why this exact term we do not know, but it might be related to Saraeus pregnancy (*supra* II).

Together with this general obligation to return the entire sum in five months, Tryphon promises: in ll. 18–21, as we have seen (*supra* II), to pay a sum on account of childbirth, should they separate during her pregnancy; and in general in case of separation (l. 17–18), to return the earrings:

ἐὰν δὲ |17 ἀπαλλαγῶμεν ἀπ᾽ ἀλλήλων ἐξέστα̣ι σοι ἔχειν τὸ τῶν ἐνω|18τίων ζεῦγος ἐν τῆι ἴσῃ διατιμ[ή]σει. ἐπεὶ δὲ σύνεσμεν |19 ἀλλήλοις ἀγράφω[ς] προσομολογῶι (l. προσομολογῶ) ἐὰν ὡσαύτως ἐκ διαφορᾶς |20 ἀπ[αλλαγ]ῶμεν ἀπ᾽ ἀλλήλ[ων] ἐνκύου σ[ο]ῦ οὔση[ς] δώσειν σοι (Whitehorne; prev. ed.: ἕως ἄν σοι) |21 [εἰς λόγον δ]απάν[ης λ]ο̣χ[είας δραχμάς - ca.17 -][44]

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will review in this section, were yet purely private documents and would not have been recognised at the time of their execution as *demosioi chrematismoi*.

[43] *P. Oxy*. II 267 (37 CE Oxyrhynchos), ll. 2–13: I acknowledge the receipt | from you at the Serapeum at Oxyrhynchus through the bank of | Sarapion, son of Kleandrus, of 40 silver drachmae of the Imperial | and Ptolemaic coinage, and | for the value of one pair of gold earrings, 20 drachmae of silver, | and for a milk-white robe, 12 drachmae of silver, | making a total sum of 72 drachmae of silver, | to which nothing at all has been added, in consideration of which | I have consented. And I will repay you the 72 drachmae of silver | on the 30th of Phaophi in the coming | second year of Gaius Caesar Germanicus Novus Augustus | Imperator (Oct. 27th. 37 CE) without any delay.

[44] *P. Oxy*. II 267 (37 CE Oxyrhynchos), ll. 16–21: If | we separate from each other, you shall be empowered to have the pair of | earrings at their present value. And since we are

The earrings clause is best understood in the sense that Tryphon needs to return them immediately if a separation occurs before the established 5-month term, the rest becoming due only then.[45] In any case, both the earrings and the pregnancy clause show that this is indeed a marriage document of some sort, with the earrings and probably also the robe and the money functioning as a dowry. A dowry articulated in such a way, though, that both espouses are free to depart from each other, if they so wish, after five months: Saraeus by claiming back the sum, Tryphon by giving it back to her – with the only addition of childbirth expenses if the pregnancy progresses without problems and he nevertheless repudiates her. And yet, the term dowry is avoided, and the entire agreement is articulated as a loan would be.

This is not the only case known to us of a dowry given as a loan. In the early nineties, Traianos Gagos, Ludwig Koenen and Brad McNellen[46] called attention to a series of marital loans in the archive of Pausiris – like Tryphon, a weaver in 1st century Oxyrhynchos.[47] These are, like in Tryphon's case, loans granted by a wife to her husband through a bank at the Serapeum of Oxyrynchos; again, by non-notarial document; and just like for Tryphon and Saraeus, they clearly function as a dowry. Unlike Tryphon's, the loans in Pausiris' archive do not always include a preestablished term for payment: most are open ended, to be returned only if the wife requests them, and then within thirty days.

As an example, let us consider *P. Mich. inv*. 92: three hundred drachmas are here documented as received through a bank at the Serapeum of Oxyrhynchos – although the sum in truth arises from the estimation of typical dotal objects like earrings and a chain, granted to Pausiris by his wife Tauris. The document was given in Tybi of Vespasian's sixth year, December 73 CE to January 74 CE, as we learn through its repayment in *P. Mich. inv*. 89, despite which the marriage continued:[48]

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living | together in an unwritten way, I further agree if as aforesaid owing to a quarrel | we separate from each other while you are in a state of pregnancy, I will give you | on account of childbirth expenses ...

45 So, convincingly, Whitehorne 1984: 1272, and Yiftach-Firanko 2003: 92, with further lit., against Wolff's interpretation, that Saraeus would be entitled to the sum only if the couple remains together, while in case of separation she would lose everything except the earrings.

46 Gagos-Koenen-McNellen 1992.

47 Pauriris' archive, in the Michigan collection, and Gagos' work on it, remain unfortunately unpublished.

48 *P. Mich. inv*. 92 was Published as Appendix I in Gagos-Koenen-McNellen 1992; in their document list (ibid.: 202–204), the loan is nr. 13, its likely repayment in P. Mich. inv. 89, nr. 18; for a detailed analysis of both and of the complex financial situation of Pausiris, Gagos-Koenen-McNellen 1992: 184–187.

ὁμολογῶι (l. ὁμολογῶ) |6 ἀπ[έχε]ιν παρὰ σοῦ [ἐπὶ] τοῦ πρὸς Ὀξυρύγχων πόλει Σαραπιείου |7 διὰ τῆς Ἀμμ[ωνίου κα]ὶ Σαραπίωνος καὶ τῶν μετόχων τρα|8πέζης ἀργυρ[ίου Σεβασ]τοῦ νομίσματο[ς δραχμὰς] τριακο|9σίας, (γίνονται) [ἀρ]γ[υ(ρίου)] (δραχμαὶ) [τ̄, κεφαλα]ίου, ἐν αἷς ἐστιν ἐν[ω]τίων χρ[υ]σῶν ζεῦ|10γος ἓν ἐν συντειμήσει δραχμῶν τε[σσαρ]άκοντα [κ]αὶ ἄλυ|11σιν ἀργυρίου ὁλκῆς ἀσήμου δραχμῶν τριάκο[ν]τα κ[α]ὶ ... |12 ἐν συντειμήσει δραχμῶν ἑκατὸν [ἑξ]ήκοντα καὶ κα̣|13[. . .]ενα δραχμῶν ὀγδοήκοντα. τὸ δὲ προκείμενον |14 κ[ε]φ[άλ]αιον ἀποδώσω σοι ἐν ἡμέραις τριάκοντα ἀφ' ἧς ἐὰν |15 ἀπαιτηθῇ. προσομολογῶ δὲ καὶ ἐὰ[ν] ἀπαλλα̣γὴ γένη|16ταί σου ἐνκύ̣ου̣ οὔσης ἀποδώσειν σοι χωρὶς τοῦ προκειμένου |17 κεφαλαίου εἰς τὴν τῆς λοχείας δαπάνην ἄλλας <ἀ>ργ(υρίου) δ̣ρ̣[αχ]μ̣[ὰ]ς ρ̣. [49]

Like Pausiris' and Tryphon's, most of the preserved dowry-loans from Oxyrhynchos and their repayments are executed as *cheirographon kai diagraphe* through the banks at the Serapeum,[50] suggesting that this was a model kept alive particularly in their scribal tradition. In any case, as Gagos realised,[51] these dowry-loans are related to a well-known Demotic practice. One of the best pieces of evidence for this is a Demotic papyrus, of which only the Greek subscription has been published, as *P. Tebt*. II 386 = *MChr*. 298 (12 BCE Hiera, Arsinoites):

[49] *P. Mich. inv*. 92 (73–74 CE Oxyrhynchos): I acknowledge | that I have received from you at the Serapeum in the city of Oxyrhynchos | through the bank of Ammonios, Sarapion and Co, | [the capital sum of] three hundred [drachmas] | of Augustan silver coinage, [that is 300 drachmai of silver], which includes one pair of gold | earrings, forty drachmas in value and a | chain of a weight of thirty drachmas of uncoined silver and […] | one hundred and sixty drachmas in value, and […] | […] worth eighty drachmas. The aforesaid | capital I shall repay to you within thirty days of | request. I further acknowledge that if there is a separation | while you are pregnant, I shall pay you, aside from the aforesaid | capital, another 100 drachmas of silver for the expense of childbirth.

[50] Linked to the Serapeum banks are, in Pausiris' archive (document numbers after Gagos-Koenen-McNellen: 202–204): nr. 18 (*P. Mich. inv*. 89, 74 CE), the repayment by Pausiris of the loan above; nr. 6 (*P. Mich. inv*. 79, 60 CE), a 20 dr. two-month loan granted to Pausiris' older brother Dioskous by his wife Thermouthion, and its repayment in nr. 10 (*P. Mich. inv*. 77, 60 CE). Also through the Serapeum banks had been executed the loan repaid by a certain Sarapion to his wife Taÿsoreus in *P. Oxy*. XLIX 3487 (65 CE Oxyrhynchos). Agoranomic are instead a second loan granted to Pausiris' brother Dioskous by his wife Thermouthion (nr. 9, *P. Mich*. III 191–192 *dupl*. 60 CE) and its repayment a year later (nr. 11, *P. Mich.* III 194, 61 CE); a draft of an agoranomic loan is also *P. Yale* I 64 (75–76 CE Oxyrhynchos), granted by Thaesis to her husband Aperos. A pure *cheirographon* instead is *P. Lund*. VI 3 = *SB* VI 9353 (139 CE? unknown provenance), cf. Gagos-Koenen-McNellen 1992: 196–199.

[51] Gagos-Koenen-McNellen 1992: 198–199.

|12 ἔτους ιη Καίσαρος Παῦνι ιβ, κεχρη(μάτισται) |13 διὰ Ἡρώδου συναλλαχ(ματογράφου) ̣α̣ . .( ) |14 (hand 2) Πακῆμις Πακήμιος τῶν ἀπὸ Εἰερα|15ν (l. Ἰερα|ς) τῆς Πολέμων[ο]ς μερίδος Πέρσης τῆς |16 ἐπιγονῆς ἔχω τὸ δάνηον (l. δάνειον) παρὰ Ταμεισ|17χε̣[ως] τῆ[ς Σ]οκ[ο]νώπιος τῆς γυναικός μ[ου] |18 φερνὴν σὺν ἱματισμῷ ἀργυρίου δραχμ|19ὰς εἴκοσι τέσσαρ[α]ς ἃ[ς] καὶ ἀπο[δ]ώσ[ω]. |20 ἐὰν δὲ χωρισμὸς γένηται ἀπ᾽ [ἀ]λλή|21λων ἐκτ<ε>ίσω ἐν ἡμέραις τριάκοντα ἀ|22φ᾽ ἧς ἐάν μοι παρανγ<ε>ίλῃ ἄνευ πάση[ς] |23 ὑπερθέσεως καὶ εὑρησολογία<ς> καθότι |24 προγέγραπται [52]

Crucial for us here is the explicit assimilation of the estimated dowry to a loan – ἔχω τὸ δάνηον παρὰ Ταμεισ|χε̣[ως] … τῆς γυναικός μ[ου] | φερνὴν σὺν ἱματισμῷ ἀργυρίου δραχμ|ὰς εἴκοσι τέσσαρ[α]ς ἃ[ς] καὶ ἀπο[δ]ώσ[ω]. The text confirms beyond any doubt the Demotic roots of this loan-dowry practice, typically articulated as open-term loans to be returned within thirty days of being claimed by the wife. It is the exact same legal structure that we find in Pausiris' archive, and indeed it corresponds to a well attested Demotic practice, that Pieter Pestman, in his ground-breaking study on marriage and marital property in Egyptian law, classified as type B.[53] An example of this Demotic type B is *P. Cairo* 50129 = *P. Eheverträge* 51 = *Spiegelberg, Demotische Denkmäler* III, p. 93 = *Acta Orientalia* 23, p. 119 = *Pasek, Urkunde Hawara* 46 = *SB* vi 9297 (86 BCE Hawara, Arsinoites), the central clauses of which read as follows:

(a) You have given to me 500 (deben) of money, half of it is 225 (deben) of money, is 500 (deben) of money again, by which 24 (obols) of copper (go into a stater) as your money to become a wife to me (*ḥḏ n ỉr ḥm.t*), which you have given to me (in) Hawara (and) Nablu, the villages the Pharaoh has made (into) a place of oath; I [have received] it from your hand, my heart is content with it, (for) it is complete and without any remainder; I have nothing, not a single claim in the world on you on the grounds thereof from this day and afterwards; I cannot [impose] on you an oath before a God or before (the) Pharaoh from this day and afterwards; you have a right to it, at my charge;
(b) I shall give you emmer, 27 artabas of 40 hin, is barley 18 artabas of 40 hin, is emmer 27 artabas of 40 hin again and 200 (deben) of money, half of it is 100

[52] *P. Tebt.* II 386 = *MChr*. 298 (12 BCE Hiera, Arsinoites): Year 18 of Caesar, Pauni 12th, executed | through Herod the notary (…) | (hand 2) I, Pakemis son of Pakemis, of those from Hiera | of the division of Polemon, Persian of the | descent, have the loan from my wife Tameis|chis daughter of Soknopis, | a dowry with clothing (to the value) of twenty-four drachm|as of silver, which I will also return. | If a separation from each | other shall take place, I shall pay it within thirty days | after she will claim it from me, without any | delay or pretext, in accordance with | what is written above.

[53] Pestman 1961: 32–37. In *P. Tebt.* II 386, the husband's duty to pay the sum back upon divorce clearly points to model B rather than C: *infra* VI and Pestman 1961: 36.

(deben) of money, is 200 (deben) of money again, (by which) 24 obols of copper (go into a stater) as your maintenance (ꜥḳ ḥbs), annually.
(c) On your day you demand from my hand the above 500 (deben) of money, I shall give it to you thereupon, on a day within 30 days after it being claimed from my hand which you will do; if I do not give you (back) the above 500 (deben) of money within the above 30 days, from [my] hand [(then) I shall] give you maintenance in accordance with the maintenance as written above: the (same) emmer and copper-money above described, till I give you the above 500 (deben) of money (back);

Central to the model is the clause (a) where the husband acknowledges that the bride has given him the so-called 'money to become a wife' (*ḥḏ n ỉr ḥm.t*), and the clause (c) where he promises to give it back within 30 days of being required - thus securing the right of the wife to recover the sum upon separation. Having accepted the sum and, with it, the woman as his wife, the husband untertakes to provide for her maintenance, at a carefully specified annual rate.

Not only the legal structure of the *ḥḏ n ỉr ḥm.t* as open debt, to be returned whenever demanded, rendered in Greek subscriptions like *P. Tebt*. II 386 = *MChr*. 298 simultaneously as *pherne* and *daneion*, finds a clear echo in Pausiris (thirty-day term included) and Tryphon. Noteworthy also, as underlined by Gagos,[54] is the clause ὑπὲρ ὧν καὶ | συνπέπεισμαι in Tryphon (*P. Oxy*. II 267, l.9–10), lit. 'by which I am persuaded', referred to the amount of the dowry. Such clause is not attested in Greek loan or dowry models, and indeed, would not make much sense there, considering that the party receiving the sum does not have any claim to it – but rather takes on a debt – and that her consent is already expressed by taking the sum. Instead, συμπείθω, as Gagos observed, was routinely used in the early Roman time to translate the standard Egyptian consent locution 'my heart is content with it',[55] precisely the expression we find in model B when the husband receives the *ḥḏ n ỉr ḥm.t*: a further trace, even in the formulation of the clauses, of the Egpytian origin of these Greek dowry-loans.

VI. The Demotic 'universal sale' marriage tradition

In the Demotic tradition there was yet another form, deeply different, to create a wife's right to an annuity: the so-called "endowment document" (*sḫ n sꜥnḫ*), which Pestman

[54] Gagos-Koenen-McNellen 1992: 190.

[55] Cf. already Biscottini 1966: 201 n. 2 i.f. Gagos' example is *SB* I 5231 = *Jur. Pap*. 28 (11 CE Psinachis, Arsinoites), a Demotic 'document for silver' translated into Greek, 'as far as possible', as such translations routinely warn – [ἀν]τί[γ]ρ[αφ]ον Αἰγυπτίας π[ρά]ς̣ε̣ως Ἑ[λ]ληνιστὶ μ̣ε̣ῳ̣ρμηνε[υ]μένης [κα]τὰ [τὸ δ]υνατόν (l. 1); the clause 'my heart is satisfied with the silver, the price of my house' is there rendered πέπε[ι]κάς με ἀργυρίωι | τῆι τι[μῆι] τῆς ὑπαρχού[σ]ης μοι οἰκία[ς]. Yet a better example may be *CPR* XV 1 = *SB* I 5246 (3 BCE Arsinoites), from the archive of Satabous, a Greek translation of a Demotic *apostasion* (ll. 1–20) and its equally Demotic subscriptions, the first of which reads: [ἀντίγραφον ὑπογραφῆς Αἰγυπτίας Ἑλληνιστὶ μεθηρμηνευμένης κατὰ τὸ δυνατόν. Σαταβοῦς] Πετεσο̣[ύ]χου . .[. . . . .]ασω καὶ [ὁμολογῶ συμ]πεπεῖσθαι (l. 18).

labelled as model C.[56] As an example, *P. Bibl. Nat*. 224 = *P. Eheverträge* 10 D = *Rev. Ég. 2,* p. 92 = *SB* I 2 = *UPZ* I 137 = *P. Précis* p. 1007 n. 1 (69 BCE Memphis), the central clauses of which are articulated thus:

> (a) You have caused my heart to be satisfied by giving to me 21 (deben) of pure silver from the treasury of Ptah, is 20 (deben) of silver and 9 kite 2/3 1/6 1/10 1/30 1/60 1/60, is 21 (deben) of pure silver from the treasury of Ptah again, as your endowment (*sʿnḫ*).
> (b) To the god's seal-bearer Peteesis, son of Hereius, my eldest son, your eldest son, and of the same status to Petosiris, son of Hereius, my son, your son, both, my children, your children that you have born to me, and to the children that you will bear to me, belongs everything and all that belongs to me and that I shall acquire.
> (c) I shall give you emmer, 37 artabas of 40 hin, is barley 24 artabas of 40 hin, is emmer 37 artabas of 40 hin again, and 2 (deben) 4 kite of pure silver from the treasure of Ptah, is 2 (deben) 3 Kite 2/3 1/6 1/10 1/30 1/60 1/60, is 2 (deben) 4 kite of pure silver from the treasure of Ptah again, for your food (and) clothing (and) money, annually in the house, as you wish.

Here, the sum received by the husband (a) did not serve to turn the woman into a wife, but directly to establish his duty (c) to provide alimonies. Called *sʿnḫ*, lit. 'what enables to live', often translated as endowment, this sum and the ensuing arrangement could indeed be granted also in non-marital contexts and its repayment did not depend on divorce but exclusively on the will of the woman.[57] Unlike in model B, the sum does not seem to have depended on the specifics of the situation and the bride's possessions, but was determined at a stereotype rate, most often of 21 deben of silver.[58] That the sum could at least in some cases have been not just stereotype

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[56] Pestman 1961: 37–50; Lippert 2008: 167–169.

[57] Pestman 1961: 69–71. Procedural solutions and documentary models regarding some of the possible conflicts arising from such endowment arrangements can be found in a long section of codex Hermopolis col. 4, l. 6 – col. 5, l. 31.

[58] 21 deben are equivalent to 420 drachmas. This is the sum in practically every preserved endowment contract from the 2nd and 1st cent. BCE: *P. Mich*. 4526 A1/AII = *P. Eheverträge* 4D/Z (199 BCE Philadelphia); *P. Mich*. 4244/4a = *P. Eheverträge* 6Z (142 BCE Heliopolis), wrongly labelled by Lüddeckens as a document for silver; *P. Hamb. dem*. 14 = *Urk. Hawara* VIII a (129 BCE Hawara); *P. Kairo* 30607 = *P. Eheverträge* 7D (128 BCE); *P. Kairo* 30608–30609 = *P. Eheverträge* 8D–Z (123 BCE); *P. Kairo* 30616b–a = *P. Eheverträge* 9D–Z (78 BCE Tebtynis); and *P. Bibl. Nat*. 224–225 = *P. Eheverträge* 10D–Z (68 BCE Memphis), used above as example. The 21-deben tradition seems to have solidified only in the 2nd. century BCE: previous endowment deeds were given at 30 (*P. Chic*. 17481 = *P. Eheverträge* 1D, 365 BCE Arsinoites) and 6 deben (*P. Bibl. Nat*. 219 = *P. Eheverträge* 2D, 316 BCE Memphis); at 50 deben still in the early 2nd century (*P. BM* 10591B VI 21–VII 5 = *P. Eheverträge* 5D, 181 BCE Siut). Significantly, when in later Ptolemaic and early Roman times the sum oscillates again, it does not return to round numbers but insists on adding one: not 50 but 51 deben in *P. Heid. Aeg*. 10–11 = *P. Eheverträge* 11D–Z (late Ptolemaic, Karara), not 10 but 11 in *P. Mich*. 347 = *P. Eheverträge* 12D (21 CE Tebtynis); also in the early Roman examples

but also fictitious, rather than actually received by the husband, is suggested by the famous episode of Tabubu in Setne's cycle (*infra* in this same section).[59]

Two further differences between this model C and model B will be crucial for us:[60]

(i) In model C, the acknowledgement that the sum has been paid (clause a) leads to the recognition of the – future or already born – common children as heirs (clause b). This is never the case in model B, where no inheritance rights whatsoever are bestowed on the children, who are not even mentioned. Securing the inheritance rights of the common children seems therefore one of the main specific goals of model C.

(ii) In model C, the entire property of the husband, present and future, is sold to the wife – without her paying any actual price.[61] This is done in a separate document, a so-called "document for silver" (*sḫ ḏbꜣ-ḥḏ*), the standard form of the Demotic sale, labelled in Greek simply as *prasis*. As illustration, the counterpart of the previous document, concluded by the same parties on the same day – Mesore 29th of the 13th year of Ptolemy XII Auletes –, *P. Bibl. Nat.* 225 = *P. Eheverträge* 10Z = *Rev. Ég.* 2, p. 93 = *UPZ* I 138 (69 BCE Memphis) will suffice. Its central clauses are the following:

> (a) You have satisfied my heart with the money, the price of everything that belongs to me and that I shall acquire, house, field, yard, land, wall, square, garden, vineyard, male servant, female servant (…) all household goods, every prebend, and of all things, all writings, all documents, agreements with any free person (…) of everything on earth. They belong to you from today onwards. I have no claim in the world against you in their regard.
> (b) Whoever comes against you because of them I will cause to be far from you with regard to them necessarily without delay. And I will make them be clear for you from every document (…) everything on earth.

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from the *grapheion* of Tebtynis the sum is 21 or 11, now not in silver deben but in gold pieces, proving that decisive in these endowment documents is less the currency value than the number symbolism – which again suggests that the sum may often have been fictitious. Behind this tradition of adding one to a round number there is probably no other reason than the imperative to avoid illiberality at least when marrying: to the round sum one is added, for the exact same reason that makes imperative in modern discount sale practice to detract one, even if it is only one cent, from the round price, leaving 20 at 19.99.

[59] In the regime outlined in Codex Hermopolis, though, lawsuit can be brought by the part owing the alimonies, claiming not to have actually received the *sʿnḫ* documented in the endowment deed: should his adversary refuse to swear under oath that the sum was given, the document will be torn up: col. 5, ll. 7–11.

[60] Cf., in extenso, Pestman 1961: 48–50.

[61] Pestman 1961: 39–41. Unlike the symbolic (and probably often fictitious) sum of the *sʿnḫ*, which constitutes the core of the endowment document and is thus never omitted, no sum is ever mentioned as price in the 'document for silver' when executed in a marriage context.

(c) To you belongs every document that has been made concerning them, and every document that has been made for me concerning them, and every document due to which I have a right with regard to them. They and their rights belong to you. To you belongs all on the basis of which I have rights regarding them.

Unlike Greek sales, Demotic 'documents for silver' are not enough to deprive the seller –here the husband– of ownership. This would have required a deed of surrender called 'document of being far' (*sḫ n wꜣy*), *apostasion* in Greek, which of course is not granted in marriage contexts. Without it, the husband remains owner, but the wife becomes owner as well, in a form of functionally divided ownership.[62] In

[62] The careful fashioning of the clauses in the 'document for silver' and in the 'document of being far' clearly shows that the buyer acquired already through the former. The core clause of the document for silver reads (*P. BM* 262 + *MChr*. 181 = *P. Dime* III 5, 11 CE Soknopaiu Nesos, right column, l. 3): "you have satisfied my heart with the money, the price of my house …"; and, after the description of the object (ll. 5–6), "they belong to you | from today onwards". In actual sales, where a 'document of being far' is also granted, usually on the exact same day, the core clause reads (in the same *P. BM* 262 + *MChr*. 181 = *P. Dime* III 5, 11 CE Soknopaiu Nesos, left column, l. 3): "I am far from you concerning your house …"; and, after a description of the object, identical to that of the first document (ll. 5–6), "I do not have any claim at all on you concerning them | from today onwards". The quite deliberate form (Zauzich 1968:152–153) in which the 'my' of the first document gives way to the 'your' in the second speaks for itself: when the latter document is executed, the house belongs already to the buyer, by virtue of the former. It would be a mistake, though, to consider the 'document of being far' – with Depauw 2014: 56–57 – as 'secondary' and 'mere confirmation' of the sale. It is true that the sale version of the 'document of being far' belongs to a wider genre used for many other purposes, like quitclaims after judgment, after payment or among heirs. But it is far from obvious that such quitclaims merely confirm an existing situation, as often held: the assumption that, without explicit quitclaim, no lawsuit would be possible after a first trial, a payment or a distribution of inheritance, is, in fact, an unwarranted *petitio principii*; it rather seems that the 'document of being far' is the actual way in which a claim that otherwise would remain possible is excluded. Regarding sales, law historians have tended – as Depauw does, cf. also Lippert 2008: 153–154 – to unreflectedly use the modern paradigm of 'transfer of rights', and ask themselves when ownership is transferred, which obviously can only happen once, either with the document of silver (as Depauw holds) or with the document of being far. But the idea of something called 'ownership' being 'transferred' is a rather artificial, ontologising view of subjective rights as substantial realities passing from alienor to acquirer; even in Roman law, this idea arose comparatively late – to the point that in the early 20th century the idea itself of a '*dominium transferre*' came to be dismissed as a later Byzantine interpolation in the classical sources, cf. De Francisci 1924, and now Stagl 2009: 1191–1206. If, instead of thinking in terms of 'transfer of ownership', we consider the situation of the two individuals involved, a buyer who will acquire something and a seller who will lose it, it is no longer a logical necessity for the seller's loss to be simultaneous with the buyer's acquisition. This is precisely what the Demotic two-step model allows the parties to decide for themselves, depending on their aims: the document for silver is, as we have seen, sufficient for the buyer to acquire; for the seller to lose his right, his actual surrender through the document of being far is nevertheless necessary. When the parties

practice, this means that no alienation by the husband without her consent can be opposed to her: a limitation of the husband's alienation power that the Greek sources (*infra* VII) will construct as a 'hold' or 'lien' (German: 'Verfangenschaft'), a *katoche*. Only in case of divorce, if the husband is not in the position to return the endowment sum (*sʿnḫ*), will he have to forfeit his entire estate to the wife through a 'document of being far'.[63] Securing the wife's right to the *sʿnḫ* is the first function of this 'universal sale' that the Greek sources (*infra* VII) call *panprasion* (since it refers to his entire property) or *proprasis* (since it is not a definitive sale with loss of ownership).[64]

The two peculiarities of model C, the veto arising from the *panprasion*, and the inheritance rights of the children, are related. It is, in fact, not only to secure her *sʿnḫ* but also the future inheritance for the common children that the wife acquires a veto right. The most effective illustration can be found in a famous Demotic novel, the story of Prince Setne Khaemwaset, son of Ramses II, preserved in the part relevant for us in *P. Cair*. 30646 (probably 3rd century BCE).[65] The story, and particularly the episode of Tabubu that will interest us, has fascinated readers since the late nineteenth century, when Gaston Maspero included it in his 'Contes populaires de l'Égypte ancienne'.[66]

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aim at an actual sale, both documents are executed immediately one after the other, as in the above mentioned *pBM* 262 + *MChr*. 181 = *P. Dime* III 5 (11 CE Soknopaiu Nesos). When they aim instead at securing a debt, the same two-step model allows them to do so by just postponing the second step, the *apostasion*, to the moment of the debtor's default: cf. *P. Hauswaldt* 18 = *Berlin Äg. Mus*. inv. 11337 (212–211 BCE Edfu), where land is given as security for a loan, and the document of being far is written a year later than the document of silver, on the same papyrus; in the meantime, the debtor does not lose the land, even though the creditor is also already owner (what other position could he acquire as security in a system that unlike the Roman does not know the category of the 'limited real rights'?), with the result that the debtor, who will typically retain possession, use and enjoyment, will not be able to alienate without his consent – exactly the same practical effect that this truncated sale without 'document of being far' had in the marriage context that interest us, see *infra* in text. On 'functionally divided ownership', Alonso 2016: 123 n. 11.

63 An example, in *P. Louvre* 2428 (277 BCE), cf. Pestman 1961: 40–41.

64 On this function of the *panprasion*, Pestman 1961: 133–136.

65 This is the so-called 'first Setne papyrus', Setne I. For an English translation, Lichtheim 1980: 125-138; Ritner 2003. Another part of Setne's saga is preserved in *P. BM* 10822, the so-called Setne II. On the historical figure of Ramses' son Khaemwaset, Fischer 2001; Ray 2002: 78–96. Fist detailed studies: Révillout 1887 and Griffith 1900. Even if the legendary stories associated with Setne may go back to the Saitic time or even beyond, the legal practice used as narrative device in the Tabubu episode is anchored in the Demotic tradition of the Persian and Ptolemaic period: the earliest preserved *sḫ n sʿnḫ* is dated 365 BCE (*P. Chic*. 17481 = *P. Eheverträge* 1D (Arsinoites); the earliest example of a 'type B' marriage agreement comes from just a few years after the Persian conquest (*P. BM* 10120 A = *P. Eheverträge* 6 = *P. Tsenhor* 3, 517 BCE Thebes).

66 Maspero 1911: 123–182, first edition 1882; the episode of Tabubu (144–150) captured immediately the imagination of its time, as a new Judith, Dalila or Salome. As soon as 1892,

As the story goes (col. 4, l. 38 – col. 5, l. 30), prince Setne sees one day in Memphis the most fascinating woman, covered in jewels, followed by servants, and proceeds to make one of the most appalling advances in literature history, offering ten pieces of gold for one hour with her. She, by name Tabubu, is horrified and haughtily rejects him: "I am pure, I am not a nobody. If you desire to do what you wish with me, you must come to Bubastis, to my house". Tabubu is in fact the daughter of the prophet of Bastet, the cat goddess of domestic life, but also, in her dual manifestation as Sekhmet, the blood-thirsty lion goddess of war and destruction: both 'nurturing mother' and 'mistress of dread'. As Setne, after long search, finds her splendid house, she presents her conditions: "I am pure, I am not a nobody. If you desire to do what you wish with me, you will make for a me a endowment document (*sḫ n sʿnḫ*) and a document for silver (*sḫ ḏbꜣ-ḥḏ*) for everything you own". In other words: in exchange for the hour that Setne wishes, Tabubu requests a marriage arrangement of Pestman's C type. Setne consents, but Tabubu has a further demand: "I am pure, I am not a nobody. If you desire to do what you wish with me, you must make your children subscribe to my deed. Do not leave them to contend with my children over your property". The children, who magically happen to be present, confirm the sale, but Tabubu is still not satisfied: she wants them dead. Setne, full of desire, consents. The children are killed in his presence and thrown from the window to be devoured by the dogs and cats on the street. As he approaches Tabubu to finally embrace her, her mouth opens in a horrifying cry … and Setne wakes up, on the street, naked, just on time for his father, the pharaoh, to pass by and find him in such state.

Tabubu's preoccupation with Setne's children, and their terrible fate in his dream, illustrate quite effectively the function of the veto right acquired by the wife in Pestman's model C: it served, as Tabubu proclaims, to protect the entitlement of the common children (the future children that Tabubu's marital demands imagine) to the paternal inheritance. When the children come of age, it is their consent – typically the consent of the eldest son – that is required: it is for this reason that Tabubu wants to have her documents subscribed by Setne's children; she assumes that Setne had concluded a similar arrangement with the children's mother and therefore no alienation – and certainly no new universal sale – would prevail over their right without their consent. So much is confirmed by one of the legal rules quoted in the famous lawsuit before the *laokritai* of Siut, in *P. BM* 10591 (170 BCE Siut) *recto*, col. 10, ll. 7–9:

> If a man draws up an endowment document (*sḫ n sʿnḫ*), for a woman and he gives goods of his to another person, without the woman or her eldest son having approved of said deed: If the woman or her eldest son brings an action against the man to

an adaptation entitled "Taboubou" was published by J.-H. Rosny (pseudonym of the borthers Boex), lavishly republished in the thirties with Art Déco illustrations by Maurice Lalau.

whom the goods are given, they (the goods) will not be pure for him and he shall not be allowed to be full of them.[67]

Notice that the acquisition of the buyer yields only to a claim of the beneficiaries of the universal sale: it is in this sense that the goods are 'not pure' for him – he does acquire, and his right prevails over third parties, but is outmatched by that of wife and children, in a form of relative ownership. Properly speaking, therefore, it is not so much that the assets become inalienable, but rather that without the consent of wife or eldest son the alienation does not prevail over their right.

If this position of wife and children is in the Siut rule associated with the endowment document, it is certainly because – aside from cementing by itself the latter's inheritance rights – the practice linking it to the universal sale was so constant that it could be assumed the former would not be granted without the latter. How common this practice remained in later Ptolemaic and early Roman Egypt is illustrated by the invariable mention of the wife's or eldest son's consent in sale documents, whenever the selling party is Egyptian. In such universal-sale marriages, the husband's property becomes family property, secured as inheritance for the common children, and no longer disposable for him without their consent.

VII. Loan-marriages and Sale-marriages in Early Roman Egypt

In early Roman times, as it became increasingly clear how unpractical Demotic had become – with the eradication of the Egyptian *laokritai* – for deeds needed in court,[68] a Greek version of Pestman's model B became widespread, as we have seen through the cases of Tryphon and Pausiris, and many other examples attest well into the 2nd century, in Oxyrhynchos[69] and elsewhere.[70] Onomastics are

[67] Cf. also, in the same *P. BM* 10591 (170 BCE Siut) recto, the previous rule, regarding precisely the case feared by Tabubu, namely a man who after divorce from a type C marriage, concluded yet another one of the same kind: "If a man marries a woman and he draws up a deed for her concerning a *sꜥnh* and he has a child by her and he divorces her and he marries another woman and he draws υρ a deed concerning a *sꜥnh* for her and he has a child by her and said man dies: his possessions shall be given to the children oí the first wife for whom he first drew up a deed concerning a *sꜥnh*." This exclusion of the children of the second marriage by those of the first can only be avoided if the latter waive their rights by consenting to the new universal sale.

[68] Demotic execution of model B, like the Demotic documentary practice in general, does not seem to have survived beyond the first century CE: the latest attestations of model B in its Demotic original are the unpublished Demotic part of *P. Tebt*. 386 (12 BCE Tebtynis), and three documents from Soknopaiu Nesos: *P. Dime* III 39 (11–10 BCE), 40 (28 CE) and 41 (53 CE).

[69] In Oxyrhynchos, Greek dowry-loans like those of Tryphon and Pausiris we find also, twice, between Pausiris' older brother Dioskous and his wife Thermouthion: nr. 6 and 9 in the list of Gagos-Koenen-McNellen 1992: 202–204, namely *P. Mich. inv. 79 (60 CE)* and *P. Mich*. III 191–192 *dupl*. (60 CE), repaid in *P. Mich. inv*. 77 (60 CE) and *P. Mich.* III 194 (61 CE), respectively. Beyond Pausiris' archive, between a certain Sarapion and

notoriously unreliable, more so as we advance in time, but the frequent presence of Greek names in this material, alongside others with Egyptian roots, suggests that the practice was not confined to purely Egyptian circles. Indeed, now that in the *chora* both Egyptians and Greeks are equally *Aigyptioi* in front of the administration, no formal barrier is left between their legal traditions that would prevent them from freely using the forms that best suit their interests, no matter their ethnic or cultural background.

Even better attested is the success of model C in the first two centuries of our Era. At the beginning of the 1st century, multiple examples appear among the records of the *grapheion* of Tebtynis. These belong still to a clear Egyptian milieu, are executed in Demotic, with the preceptive Greek subscription, and registered at the *grapheion* as *syngraphe trophitis* – the endowment deed – and *proprasis* – the

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his wife Taÿsoreus in *P. Oxy*. XLIX 3487 (65 CE); between a certain Aperos and his wife Thaesis in *P. Yale* I 64 (75–76 CE Oxyrhynchos); and in *P. Lund*. VI 3 = *SB* VI 9353 (139 CE unknown provenance), preserved only in its final part, where a man receives from his father-in-law a loan to be returned within 60 days from being requested – and at the latest in ca. 4 months, within which the husband undertakes to have notarial *syngraphe gamou* executed for his wife. For a detailed analysis of these documents, Gagos-Koenen-McNellen 1992: 192–199. Nothing indicates, instead, that the 'chirographarian *syngraphe*' predating the notarial one in *P. Oxy*. XLIX 3491 (157–158 CE Oxyrhynchos), had the form of a loan; on the document, Gagos-Koenen-McNellen 1992: 195.

70 The Fayumic *P. Mich*. V 339 (46 CE Arsinoites) seems another example of dowry-loan: when this deed was executed, dowry and *parapherna* had already been documented in a previous one, not through a marriage *syngraphe*, but through an alimentary contract (*syngraphe trophitis*) referred to an amount of money secured by the husband's parents: μέν<ε>ιν ταί σοι τῇ Ταορσενοῦφι ἣν ἔχ<ε>ις <παρά> μου | μεδενκοίων (l. μετεγγύω) τῶν γωιναίων (l. γονέων) μου συνγραφὴν τροφῖτην (l. τροφῖτιν) ἑτέρας ἀργυρικῆς φερνῆς καὶ παραφέρνου̣ | {ἣν καὶ μένιν} κοιρίαν (l. κυρίαν) καὶ των (l. τὰ) διὰ αὐτῆς δεδηλωμενων (l. δεδηλωμένα) διαστωλων (l. διάστολα) πασων (l. πάντα) κοιριων (l. κυρία), καὶ ἕκα|στα ποήσωι (l. ποιήσω) καθὼς πρόκιται. Both the security, unusual otherwise in dotal context, and the fact that no actual dotal or paraphernal items were given but a sum of money, suggest that the whole had been treated as a loan. Also the addition to that previous dowry brought to the present document, even if not explicitly labelled as *daneion* but merely as *pherne*, is articulated following the standard loan model: ὁμολογῶι (l. ὁμολογῶ) ἔχ<ε>ιν παρὰ τῆς προούσις (l. προούσης) καὶ σοινούσης (l. συνούσης) γυναικὸς | Ταορσενοῦφις (l. Ταορσενούφεως) τῆς Ἀφροδισίου παραχρῆμα διὰ χ<ε>ιρὸς ἐξ ὔκου (l. οἴκου) ἐν προσδόσ<ε>ι ἐφ' αὐτης (l. αὐτῇ) φερνὴν ἀργυρίου | ἐπισήιμου (l. ἐπισήμου) δραχμὰς ἑκατὸν καὶ χρήσωιμαι (l. χρήσομαι) ὡ<ς> γυναικὶ γαμετῆι καὶ ἂν χ<ω>ρισμὸς ἀπ' ἀλλήλων γένηιτα(ι) (l. γένητα(ι)) | ἀποδώσωι (l. ἀποδώσω) τὰς προκιμένας ἀργυρίου δραχμὰς ἑκατόν. Gagos-Koenen-McNellen 1992: 194 mention also *P. Mich*. II 121 IV 7 (42 CE Tebtynis) and *SB* XII 10924 (114 CE Theadelphia), but only the former could be a case of dowry-loan, and also there the question must remain open, since the clauses regarding devolution – would shed light on the legal articulation of the document – are left out of the abstract.

universal sale –.[71] In the turn from the 1st to the 2nd century, despite the extinction of the Demotic notarial practice, the universal sale marriage model remained alive – necessarily in Greek form – and became widespread enough that it arrived repeatedly to the attention of the prefect. Through a collection of Roman court decisions on peregrine testamentary freedom preserved in *P. Oxy.* XLII 3015 (after 117 CE Oxyrhynchos) we learn that one such case reached the court of Sulpicius Similis, prefect of Egypt between 113/4 and 117 CE. He seems to have deemed the institution important, because, despite the consistent prefectural practice of delegating cases of pure private law[72], he decided on the case personally, in deliberation with his *consilium* and consulting a *nomikos*:

> [(ἔτους) . .] θεοῦ Τρα[ι]αν[ο]ῦ Τῦβι κ̣ ἐπὶ τῶν κατὰ Τρύφωνα |14 [πρὸ]ς Διὸ[. . . . .] μεθ᾽ ἕ[τερα]· Σουλ[πίκι]ος Σίμιλις |15 [συνλ]α̣λή[σας τοῖ]ς συνβ[ούλοις] καὶ ἀνα[κοιν]ωσαμέν̣[ος] |16 [Ἀρ]τ̣εμιδώρ̣ῳ ν̣ομικῷ ἔ[φη·λ]έγεται .[. . .] .ονε .[. . . .] |17 [. .] . . οὔτε ἡ γυνὴ ἐφ᾽ ἧς καινότερόν τι συνεφών̣η[σεν] |18 ὁ πατὴρ τοῦ γαμοῦντος οὔτε οἱ υἱοὶ αὐτῆς περίεισι |19 οἷς ἐδύνατο κατέχεσθαι τὰ κατὰ τὴν συμφωνίαν, |20 ἄκυρόν ἐστιν ἤδη τοῦτο τὸ γράμμα. ὁ δὲ νόμος ὡς λέ|21γεται δίδωσιν ἐξουσίαν τῶι τὸ

[71] Six in total are the examples from the Tebtynis *grapheion*: a Demotic endowment contract with Greek subscription with indication that a universal sale (*proprasis*) was also concluded, dated 21 CE (*P. Eheverträge* 12D + *P. Mich*. V 347), and five Greek abstracts of *syngraphe trophitis* and *proprasis* from the *grapheion* records of 42 CE: *P. Mich*. II 121 r. col. 2 ii; col. 3 i, vii and xii; col. 4 iv, first edited in Boak 1926. Curiously, they all refer to the *apostasion* as already executed – a clear indication that certain aspects of the legal logic behind the Demotic tradition were no longer properly understood. The contracting espouses are not in their first youth (in 3 i, forty and twenty-six; in 3 vii forty-six and thirty-six; in 3 xii, thirty-eight and thirty; in 4 iv, fifty-six and fifty), and the husband often refers to all or some of the property he 'sells' to his wife as inherited (3 i, vii and xii), suggesting that the document was typically executed not upon marriage but after inheriting; the only exception is 2 ii, a deed executed not by the husband but by his parents, securing their son's future inheritance; despite the *apostasion*, they do not lose the listed assets but merely bestow on their son and daughter in law a right on them – the right that the Roman administration will articulate as a *katoche* (so, rightly, Arangio-Ruiz 1930: 51–53): in fact, 2 ii begins by explicitly underlining that the property will devolve upon the son only after the death of his parents, μετὰ τὴν ἡμῶν τελευτὴν (l. 1).

[72] Cf., in *SB* XII 10929 (133–137 CE unknown provenance), the Edict of Petronius Mamertinus restricting the cases he will adjudge personally to criminal offenses and the behaviour of children and freedmen: Seidl 1972, Lewis 1972, Lewis 1973, Jördens 2011. The restriction seems to have been kept in place throughout the 2nd century, cf. in the petition of Dionysia, *P. Oxy*. II 237 (186 CE Oxyrhynchos) col. 6, ll. 6–7: καὶ σοῦ τοῦ κυρίου πάλιν καθ᾽ ὁμοιότητα τῶν ἄλλων ἡγεμόνων ὑπογύως διαταξαμένου περὶ ἰδιωτι|κῶν ζητήσεων ἐπιστολάς σοι μὴ γράφειν: and although you, my Lord, in the same way as the other governors, recently again proclaimed that | letters concerning private lawsuits are not to be written to you.

πανπράσιον \οἰ/κονομή|$_{22}$σαντι καὶ κατασχόντα τοῖς τέκνοις τὰ ἴδια ἐκλέ|$_{23}$ξασθαι ἐξ αὐτῶν ἕνα καὶ κληρονόμων ποιῆσαι. οὐκοῦν |$_{24}$ παραπεσούσης τῆς δευτέρας ἀσφαλείας εἰς τὴν προ|$_{25}$τέραν ἀνέκαμψεν τὸ δίκαιον. ἐξῆν αὐτῷ ὡς ἐβούλετο |$_{26}$ διαθέσθαι κληρονόμους καταλιπόντι τοὺς παῖδας αὐ|$_{27}$τοῦ ἐφ' οἷς ἐποιήσατο τὸ πανπράσιον. [73]

A *panprasion*, a general sale, made in the context of a marriage (cf. ὁ πατὴρ τοῦ γαμοῦντος, l. 18) through a written agreement (*symphonia*, *gramma*, *asphaleia*) out of which a hold, a *katoche*, arises for the children on their father's property, can only be the universal sale of Pestman's C model. This is indeed one of the main sources that show how the Roman jurisdiction, likely following Ptolemaic precedents, had articulated the effects of the Egyptian universal sale as a lien on the father's property: instead of functionally divided ownership of father and children, a hold of the latter on the former's property. The practical effect remains the same: no alienation without the consent of wife and children can be opposed to them. There is no need to underline how deeply un-Greek this notion is, that a man needs the consent of his wife or children to dispose of his own property. True to its Egyptian origins remains also the function of the institution: like in Tabubu's story four centuries earlier, the *katoche* serves to protect the inheritance rights of the common children: as we learn from our text, so long the *panprasion* remains in force, it is among them that the father must choose an heir.[74]

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[73] *P. Oxy.* XLII 3015 (after 117 CE) ll. 13–27: [Year …] of the deified Trajan, Tybi 20. In the case of Tryphon | against Did[...] After other questions. Sulpicius Similis, | after talking with his advisers and referring the case | of Artemidoros the legal expert, said: "I am told [...] | […] neither the wife, over whom the father of the groom | made a new agreement, nor her sons, are alive, | for whom it was possible to have the (property) under lien according to the agreement – | this document is now without force. The law, I am | told, gives to a man who has negotiated | a 'general sale' (*panprasion*) and granted a lien (*katochê*) over his property to his children, the power | to choose out one of them and make this one his heir. It is therefore the case | that, with the disappearance of the second bond, the right | reverts to the first one. It was lawful for him to make his will on whatever terms he wished, | (provided that?) he left as heirs those children of | his on whose behalf he made the 'general sale'."

[74] In the case submitted to Similis, the wife and children for whom the *panprasion* had been made – not by the groom but by his father – have all died, but the father had granted a previous *panprasion*. The later one falling out of force, "the right" – as we read – "reverts to the first one", so that the (father's) heirs must be chosen among its beneficiaries: or rather, should have been chosen, since the question is clearly posed after his death, regarding the validity of the testament he left. The *katoche*, as it seems, would allow the children to claim the inheritance against a testament where none of them is made heir. Two hypothesis are possible regarding the earlier *panprasion*: (a) it may have referred to a previous marriage of the grantor's son; in such case, since the text makes clear that the later *panprasion* would have prevailed if its beneficiaries were alive, we would have to assume that the son's first family had waived their rights by

The text not only confirms that the practice remained common in the early 2nd century, but also that the rules derived from it had become 'the law', applicable, it seems, to all peregrines of the *chora*, no matter their ethnic origin or cultural background: the rights arising from the *panprasion* are in fact, in the words of Similis, ὁ νόμος. Of course, such *nomos* would apply only to those who concluded a *panprasion*. In the early 1st century, if the *grapheion* of Tebtynis is any indication, these were mostly Egyptians. It would be vain to speculate on the basis of the – rather Greek – names of the parties in Similis' case, Tryphon and Did[…]. But it is enough to remember that Dionysia's conflict with her father, the ex-gymnasiarch Chairemon, in *P. Oxy*. II 237, had arisen from a *katoche* over part of his property that she obtained from her mother's marriage *syngraphe*, in order to realise how widespread the institution had become also among the Greek elite of the *metropoleis*.[75]

By far the most striking confirmation of the importance that the family *katoche* had gained in early Roman Egypt are the two prefectural Edicts concerning its registration, preserved to us among the materials appended by Dionysia to her petition: the famous 89 CE Edict of Mettius Rufus regarding the correct functioning of the property record offices (*bibliothekai enkteseon*) and a 109 CE Edict of (again!) Sulpicius Similis on the registration therein of our *katochai*. Let us start with the latter:

> Σέρουιος Σουλπίκιος Σίμιλις ἔπαρ[χος] Αἰγύπτου λέγει· διαζη|$_{22}$τοῦντί μοι μαθεῖν ἐκ τίνος ὑποθέσεως ἐτελεῖτο τὰς Αἰγυπτιακὰς γυναῖκας κατὰ ἐνχώριον (l. τὰ ἐγχώρια) νόμιμα κατέχειν τὰ ὑπάρχοντα τῶν |$_{23}$ ἀνδρῶν διὰ τῶν γαμικῶν συνγραφῶν (l. συγγραφῶν) ἑαυταῖς τε καὶ τοῖς τέκνοις,

consenting to the later deed; a surrender that – as it would seem – would hold only as long as the deed they had consented to; (b) a second, much simpler and hence likelier hypothesis, is that the earlier *panprasion* had been given by the father for his own wife and children; nobody's consent was therefore needed to make a second one in favour of one of the sons, in the occasion of his marriage; and, after the demise of the latter's family, the right reverts to that of the father, namely to his own children – including, unless he had also died – the one for whose family he had executed the later deed.

[75] In Dionysia's case, the *katoche* referred to an '*ousia*' (Col. 6, ll. 21–22, κατοχῆν τῆς οὐσίας) described as 'maternal' (Col. 6, l. 24: ἐπὶ τῆς μ[η]τρῴας οὐσίας). It was created for Dionysia (Col. 6, l. 40: ἡ κατοχὴ γέγονέν μ[οι]) by the marriage *syngraphe* of her mother (on which Chairemon's contestation of the *katoche* centers in the yet unpublished col. 2, but cf. also col. 7, ll. 16–18: ἀλλὰ | δὴ καὶ ὅτι τὰς συνγραφὰς πα[ρα]τίθεσθαι τοῖς βιβλιοφυλακίοις νόμιμον καὶ τὰς ἐκ τούτων γενομένας κατοχὰς πάντες ἡγεμόνες | καὶ αὐτοκράτορες κυρίας [εἶν]αι καὶ βεβαίας τεθελήκασι), quite likely by Dionysia's (maternal) grandfather (repeatedly mentioned in col. 2), who would have bestowed the ownership on Chairemon with *katoche* for the common children: for a parallel, cf. *P. Oxy*. XLIX 3491 (157 – 158 CE Oxyrhynchos) ll. 15–17. The '*ousia*' was 'maternal' because it was part of what was given to Chairemon on behalf of Dionysia's mother when marrying her.

πλειστάκις δὲ ἐκ τούτου ἀμφισβητήσεων γενομένων, |24 ἐπὶ (l. ἐπεὶ) ἐδύναντο ἀγνοεῖν ο<ἱ> τοῖς γεγαμηκόσι συναλλάσσοντες εἰ τούτῳ [τ]ῷ δικαίῳ κατέχεται τὰ ὑπάρχο[ντ]α αὐτῶν ταῖς γυναιξὶ |25 διὰ τὸ καὶ ἑτέροις βιβλιοφυλακίοις τὰς συνγραφὰς (l. συγγραφάς) καταχωρίζεσθαι, [κ]ελευκέναι Μέ[τ]τιον Ῥοῦφον τὸ[ν] γενόμενον ἔπι . . . ν |26 ἔπαρχον τὰ ἀντίγραφα τῶν συνγραφῶν (l. συγγραφῶν) ταῖς τῶν ἀνδρῶν ὑποστάσεσι παρατίθεσθαι καὶ τοῦτο διατά[γ]ματι προστεταχέναι οὗ καὶ |27 ἀντίγραφον ὑπέταξα, φανερὸν ποιῶν κατακολουθεῖν τοῖς ὑπὸ Μεττίου Ῥούφου . . θεισι [. .] . vac. (ἔτους) κγ, Ἁθὺρ ιβ. [76]

The Edict confirms, once more, that the source of the family *katoche* was the parents' marriage contract – γαμικὴ συγγραφή – and that out of it the *katoche* arose both for the wife and for the common children. At least since Mettius Rufus (*infra*), such *katochai* had to be registered in the *bibliotheke enkteseon*, an annotation (*parathesis*) being made in the property record of the husbands "so that those who enter into agreements (with them) may not be defrauded by their ignorance". Our Edict concerns a rather specific problem in this regard: marriage deeds registered in one nome, despite the husband owning property elsewhere. That such a specific constellation had become enough of a problem to require a specific edict shows how widespread family *katochai* had become. Since such partial registration violated Rufus' Edict not just in its aims but, strictly understood, also in its text, which ordered copies of the marriage deeds to be attached to the property returns of the husbands – as many of these as there may be –, Similis merely reiterates Rufus' command and appends the latter's Edict. In the part relevant for us it reads thus:

παρατιθέτωσαν δὲ καὶ αἱ γυναῖκες ταῖς ὑποστάσεσι τῶν ἀνδρῶν αἷς κατά τινα ἐπιχώριον νόμον κρατεῖται (l. κρατῆται) τὰ ὑπάρ|35χοντα, ὁμοίως δὲ καὶ τὰ τέκνα ταῖς τῶν γονέων οἷς ἡ μὲν χρῆσεις (l. χρῆσις) διὰ δημοσίων

[76] *P. Oxy*. II 237 (186 CE Oxyrhynchos), col. 8, ll. 21–27: Servius Sulpicius Similis, prefect of Egypt, proclaims: When I | wished to know on what grounds it was established that Egyptian wives according to the tradition of the land have a lien upon their | husbands' property through their written marriage agreements both for themselves and for their children, since disputes were often arising from this, | because those who contract with married people could ignore if due to such right their property is under lien for their wives, | due to the written (marriage) agreements being registered at other record-offices, Mettius Rufus, the former […] | prefect, ordered copies of the written agreements be attached to the property-statements of the husbands, and established this through an edict, a | copy of which I have appended to make clear that I am following what Mettius Rufus had ordered. 23rd year, Hathyr 12th. The edict is preserved also, rather fragmentarily, in *P.Merton* III 101 (after 109 CE unknown provenance): there, in ll. 6–7, <τὰ> ἐνχώρια νόμιμα, brought above as correction to l. 22. New (*supra* n. 2) is here in l. 23 δὲ ἐκ τούτου instead of δι' ἐνιαυτοῦ (ed. pr.); Grenfell and Hunt's correction νόμι<σ>μα in l. 22 is unnecessary.

τετήρηται χρηματισμῶν, ἡ δὲ κτῆ|$_{36}$σις μετὰ θάνατον τοῖς τέκνοις κεκράτηται, ἵνα οἱ συναλλάσσοντες μὴ κατ᾽ ἄγνοιαν ἐνεδρεύονται (l. ἐνεδρεύωνται). [77]

Rufus' Edict was issued to address the deficient functioning of the property record office of the Oxyrhynchites, but in ordering everyone to present fully comprehensive property returns anew, it explicitly lists the rights that must be brought to registration: not only those of landowners, but also of hypothecarian creditors and holders of family *katochai*.[78] Rufus' presentation of the latter – wives who have a hold on their husbands property by virtue of some *epichorios nomos*, and children for whom their parents' property has been reserved through public instruments – might suggest, if we were not better informed, that we are in front of two different situations, articulated differently and arising from different sources, one *ex lege* and the other *ex contractu*. We know – also thanks to Similis' Edict – that this is not the case: the false impression arises from Rufus' need to list separate categories of people and describe each of their rights, and from the fact that although both wives' and children's right consists in their immunity to alienations made without their consent, this serves now exclusively to secure the children's inheritance – *panprasion/katoche* being now evidently independent from any endowment arrangement of the kind that the *katoche* once also secured.[79] Remarkable is the *interpretatio romana* of the right of the children: not as mere veto securing the inalienability of items destined to them but not theirs yet, but as

[77] *P. Oxy*. II 237 (186 CE Oxyrhynchos), col. 8, ll. 34–36: Also wives for whom by virtue of some law of the land the property (of their husbands) is under hold shall add (it) for registration to the property returns of their husbands, | and likewise children to those of their parents, if through public instruments these retain the enjoyment but the possession | after their death has been put under hold for the children, so that those who enter into agreements (regarding such properties) may not be defrauded by their ignorance.

[78] Unlike the rights of owners and of hypothecarian creditors, *katochai* are in truth not registered as rights of the *katoche*-holders, in their own *folium*, but in that of the owners, through marginal annotation (the literature often wrongly reserves the term '*parathesis*' for this marginal annotation: so Wolff 1978: 238–239; contra, Alonso 2010: 20 n. 36, with lit.), as a limitation of their freedom to dispose. This neatly corresponds to the nature of the *katoche* as a lien or hold that binds the owner, rather than a right. Yet, since the *katoche*-holders can oppose the *katoche* against third party acquirors, as the Edict of Rufus and Similis confirm, it was inevitable that it would come to be seen as a right: and indeed in Similis' Edict the *katoche* is described as existing by virtue of a right (l. 24: ε̣ἰ τ̣ούτ̣ῳ [τ]ῷ δ̣ι̣καί̣ῳ̣ κ̣ατέχε̣τ̣αι τ̣ὰ ὑπ̣άρ̣χο[ντ]α̣ α̣ὐ̣τ̣ῶ̣ν̣) and the *katoche* itself is characterised as a source or bundle of rights by Dionysia: τα περὶ τῆς κατοχῆς δίκαια (col. 4, l. 32; cf. also δίκαια and δίκαιον in col. 4, l. 23, col. 5, ll. 5, 22, 34, 38, 40, 43, col. 6, l. 23).

[79] Not only in the Demotic practice of the Persian and Ptolemaic time (*supra* VI) but quite likely still in the Demotic deeds registered at the *grapheion* of Tebtynis in the mid-first century CE: *supra* n. 71.

latent ownership over them, the father retaining only the usufruct (*chresis*), the possession (*ktesis*) reserved for them *meta thanaton*.[80]

Regarding this right of children and wife Mettius Rufus merely imposes a registration duty, so that third parties who conclude contracts regarding items affected by it are informed of its existence; registration seems therefore mere means of publicity, not constitutive. In fact, the *katoche* is explicitly presented as arising, by virtue of an *epichorios nomos,* from public deeds, *demosioi chrematismoi* – described more precisely by Similis as marriage deeds, *gamikai syngraphai*. Unlike other *katochai*, like those created through *hypallagma* or hypothec, family *katochai* therefore do not arise from registration, but from the marriage deed itself, which suffices for them to be opposable to third parties: precisely the risk that Rufus' Edict addresses in their regard. Indeed, if this were not the case, if unrecorded *katochai* could not be opposed to third parties, the problem addressed by Similis in his Edict would not have existed.

As the mechanics of the property record office are usually understood, registration should have had added to the *katoche* more than just publicity: it is generally assumed that items under registered *katoche* were denied the *epistalma* necessary for any notarised alienation or hypothecation[81] and therefore registration would effectively block any such attempt, at least through public document.[82]

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[80] On this articulation *chresis – ktesis* and the possible parallel of Gai. 2, 7 (*possessio vel ususufructus*), Kreller 1933. Remarkably, it is the exact same articulation that Constantine introduces for the *bona materna*, the property inherited from their mother by children still under *patria potestas*, which should therefore devolve to their fathers: the latter, since Constantine, acquire merely the usufruct, so that he cannot alienate, the ownership being reserved for the children. The parallel (precisely because with a notoriously Roman inflected articulation of the *katoche* by a Roman prefect) is completely independent from any speculation about Hellenistic influence on the Constantinian *bona materna*, starting with Mitteis 1891; Lit. in Kaser 1975: 217 n. 25, cf. also Castelli 1917. That Rufus speaks of *ktesis* instead of *kyreia* is perfectly in line with the denomination of the *bibliotheke* as *enkteseon*; instead, the fact that, unlike Similis, he avoids the language of the *katoche*, preferring *κρατέω* to *κατέχω*, may be yet another light Romanising trait.

[81] On this so-called *epistalma*-system, Mitteis 1912a: 97–103; von Woess 1924: 107–201; Wolff 1978: 247–253. The *epistalma* denial is explicit in some 2nd cent. CE *hypallagmata* contracted directly through the *bibliotheke* (*P. Wisc*. II 54, 116 CE Arsinoites; *P. Kron*. 18, 143 CE Tebtynis; *P. Vars*. 10 col. 3, 156 CE Arsinoites), following a model that forces the debtor to request from the *bibliophylakes* "not to cooperate with me in anything whatsoever until I present the receipts of the payment of everything", thus securing for their creditors that no *epistalma* will be issued until they receive their due.

[82] This still leaves open the possibility of alienation or hypothecation through *cheirographon*: the obstacle that prevented the registration of such purely private documents in the *bibliotheke* could be overcome through their notarisation by *ekmartyresis* or *demosiosis* (Wolff 1978: 129–135). Whether in these procedures possible registered *katochai* were checked remains an open question: in the abundant evidence there are no traces of any kind of scrutiny of the legal situation (Wolff 1978: 132 and n. 120) or of the

Regarding family *katochai*, instead, Similis and Rufus' language suggests that registration did not serve to formally preclude alienations but to ensure that interested third parties act knowing that rights exist that will prevail over their own[83] – even if this should in most cases suffice to dissuade them. If this interpretation is correct, it would show a remarkable accuracy and respect regarding the original articulation of the institution, which, indeed, under Egyptian law, did not entail objective inalienability, but rather immunity of the katoche holder regarding non-consented alienations.

The marriage deed from which the family *katoche* arises, γαμικὴ συγγραφή in Similis' Edict and variously called πανπράσιον, συμφωνία, γράμμα and ἀσφαλεία in *P. Oxy.* XLII 3015, is here explicitly presented as δημόσιος χρηματισμός, public – i.e. notarised – document. This notarial character of the document does not seem decreed by Rufus, but rather taken by him for granted. This is not surprising, when one considers the regulations under which these documents were executed, both in Ptolemaic and in Roman times. From the mid-second century BCE, Demotic documents required notarial registration through the *grapheion*, the so-called *anagraphe*: without it, as we know through Hermias' trial record, they would have no validity in court (τὰ μὴ ἀναγεγραμμένα Αἰγύπτια | συναλλάγματα ἄκυρα εἶναι).[84] Thus, for two hundred years, until the Demotic notarial practice dries out around the mid-first cent. CE, as long as the universal sale was concluded in Demotic among Egyptians it was necessarily through notarised deed (as indeed still at the *grapheion* of Tebtynis: *supra* n. 71). When in the course of the first century CE a Greek documentary form started replacing the Demotic one, not only the example of the latter but also the Roman institutional logic would have pushed in the same direction: a marriage document that secures the inheritance for the common children is in substance an inheritance contract, and therefore should require notarial form, as *diathekai* did.[85]

In fact, in our best example for the actual registration of a family *katoche* in the property record office, *P. Oxy*. IV 713 = *MChr.* 314 (97 CE Oxyrhynchos), the

involvement of the local *bibliothekai*, where the possible *katochai* would be recorded: Wolff 1978: 175–176. In any case, items other than land and – sometimes – slaves remain outside of the *bibliotheke* and therefore of the *epistalma* system.

[83] On the possibility that also other *katochai* functioned not by preventing the sale but by making third party buyers aware of their existence and explicitly accept their priority, Alonso 2010: 21–54.

[84] *P. Tor. Choach*. 12 = *MChr.* 31 = *Jur. Pap.* 80 = *UPZ* II 162, 117 BCE Thebes, col. 4, l. 14–15. Cf. also *UPZ* I p. 596 = *P. Par.* 65 = *Sel. Pap.* II 415 (145 BCE Memphis). On this registration procedure, which seems to have been introduced around 146 BCE, Kraus 1967; Wolff 1978: 36–40, 169–173; Rupprecht 1995. On the *anagraphe* of Greek documents from the late 2nd cent. BCE, Yiftach-Firanko 2008.

[85] Cf. the *Gnomon of the Idios Logos*, *BGU* V 1210 = *Jur. Pap.* 93 (after 149 CE Theadelphia) ll. 33–34: ζ δ[ι]αθῆκαι, ὅσαι μὴ κατὰ δημοσίους χρηματισμοὺς γείνων|ται, ἄκυροί εἰσι: §7 Testaments which are not executed as public documents | are not valid.

marriage deed that established the *katoche* had been executed in 52 CE, in Oxyrhynchos, as an agoranomic *syngraphe gamou*:

> καθ' ἣν οἱ γονεῖς μου Διόδωρος Δι[ο]|$_{8}$δώρου τοῦ Ἀγαθείνου καὶ Σαραεῦς |$_{9}$ Λεωνίδου τοῦ Ἀλεξάνδρου μη|$_{10}$τρὸς Ἰσιδώρας Κάλα ἀπ[ὸ] τῆς αὐτῆς |$_{11}$ πόλεως πεποίηνται πρὸς ἀλ|$_{12}$λήλους τοῦ γάμου συγγραφὴν διὰ |$_{13}$ τοῦ ἐν Ὀξυρύγχων πόλει ἀγορανο|$_{14}$μείου τῷ δωδεκάτῳ ἐτει θεοῦ |$_{15}$ Κλαυδίου μηνὶ Σεβαστῷ κατέσ|$_{16}$χον τῇ ἐξ ἀλλήλων γενεᾷ τὰ |$_{17}$ ἑαυτῶν πάντα πρὸς τὸ μετὰ τὴν |$_{18}$ τελευτὴν αὐτῶν βεβαίως καὶ |$_{19}$ ἀναφαιρέτως εἶναι τῶν τέκνων [86]

Quite explicit is here, once more, the genetic link between *katoche* and marriage deed, and the former's effect and function. Through their marriage deed, the couple, in fact, "placed under arrest for their common children the whole of their property, in order that after their death, secure and inalienable, it may be their children's". New instead is the fact that the *katoche* does not affect merely the paternal property but that of both spouses.[87] The institution, poured into new Greek documentary forms and expanding beyond its original native Egyptian milieu, was bound to become increasingly detached from the old Demotic models, to evolve and diversify. And thus, together with the unilateral *panprasion*, attested still in Similis, we find here a reciprocal *katoche* of the spouses, probably not contracted any more in the form of a general sale, but through a mere documentary clause. And yet, despite all differences, function and effect remain true to the original: securing through an encumbrance the inheritance of the common children.

In casu, the paternal inheritance has already devolved on the children upon the father's death, and although the mother still lives, the petitioner's brother and sister have equally received in advance their portions of the maternal inheritance through their own marriage deeds (ll. 20–34).[88] Thus, only the petitioner's *katoche* on his

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[86] P. Oxy. 713 = MChr. 314 (97 CE Oxyrhynchos) ll. 7–19: My parents Diodorus son of | Diodorus, son of Agathinus, and Saraeus | daughter of Leonides, son of Alexander, her | mother being Isidora, daughter of Kalas, from the same | city, according to the contract | of marriage made between them through | the notarial office in the city of Oxyrhynchos | in the 12th year of the divine | Claudius, in the month Sebastos (July–August 52 CE), placed | under arrest for their common children | the whole of their property, in order that after their | death, secure and | inalienable, it may be their children's.

[87] In truth, also in Rufus' Edict the children's *katoche* is referred generically to the parents' property (τῶν γονέων, l. 35), even if between spouses only as held by the wife on the property of the husband.

[88] *P. Oxy*. 713 = *MChr*. 314 (97 CE Oxyrhynchos) ll. 20–34: ἐπεὶ δὲ ὁ πατὴρ ἐτελεύτησεν ἐπ' ἐ|μοὶ καὶ ἀδελφοῖς μου Διοδώρῳ | καὶ Θαίδι καὶ τὰ αὐτοῦ εἰς ἡμᾶς | κατήντησε, ἡ δὲ μήτηρ ἀφ' ὧν | ἔχει περὶ μὲν Νέσλα ἀρουρῶν | ἐννέα ἡμίσους περὶ δὲ {περὶ δὲ} | Πεεννὼ ἐκ τῆς Θρασυμάχου παρ|ειμένης ἀρουρῶν δύο ἡμίσους | τῶν ἐπὶ τὸ αὐτὸ ἀρουρῶν δεκα|δύο ἐμέρισε τοῖς προγεγραμμέ|νοις μου ἀδελφο[ῖ]ς ἀπὸ τῶν πε|ρὶ Νέσλα ἑκατέρῳ

share of the maternal estate remains: it is this *katoche* that, abiding by Mettius Rufus' Edict, he brings for registration to the property record office of the Oxyrhynchites.[89]

About the ethnic background of the parties nothing can be said, but their onomastic pratice – Diodoros, Agathinos, Saraeus, Leonidas, Alexander, Isidora, Kalas, Thais – points to a fully hellenised family. When Mettius Rufus and Sulpicius Similis refer this practice to an *epichorios nomos* or to the *enchoria nomima*, one could imagine that these expressions, in Ptolemaic Egypt unequivocally referred to the native Egyptian law, are consciously preferred by them to the usual *nomoi ton Aigyption* precisely because they are seen as less neutral, perhaps because it was for them manifest – as one would expect – that the institution had no Greek roots. But whatever their impression about the institution's possible origins, our evidence, starting with the present text, strongly suggests that they could not have associated its use exclusively with the native Egyptian population: that by the second century the practice had expanded in its multiple new Greek forms up to the Greek metropolitan elite is obvious on the example of Dionysia's *katoche* (*supra* n. 75).

VIII. *Agraphos gamos*: A hypothesis

In a nutshell, the last sections (V–VII) boil down to the following: in first and second century Egypt we find, in addition to the earlier Greek marriage documentary forms, two strongly contrasting ones that originated in the Demotic practice and now spread, in Greek form, beyond their original Egyptian milieu: *daneion*-based marriages, like those of Tryphon and Pausiris, and *katoche*-based marriages, with or without *panprasion*, of the sort that Mettius Rufus and Sulpicius Similis address in the Edicts and decisions reviewed *supra* in VII. Among the differences between these two Egyptian-inspired models, one is crucial for us: in

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ἀρούρας τέσσα|ρας διὰ τῆς περὶ γάμου αὐτοῦ συγγρα|[φῆς] αἳ εἰσι τὸ τρίτον τῶν προκειμέ|νων ἀρουρῶν δεκαδύο: and whereas my father died leaving as heirs | me and my brother and sister Diodoros | and Thais, and his property devolved | upon us, and whereas our mother | owns at Nesla nine | and a half arouras | and at Peenno, from the concessional land | of Thrasymachos, two and a half arouras, | together making twelve arouras | and bestowed upon my aforesaid | brother and sister from the arouras at | Nesla to each of them four arouras | through their written marriage agreement, | that is, one third of the aforementioned | twelve arouras

89 *P. Oxy*. 713 = *MChr*. 314 (97 CE Oxyrhynchos) ll. 34–45: ἀπογρά|φομαι καὶ αὐτὸς πρὸς παράθεσιν | κατοχὴν τῶν λοιπῶν τῆς μη|τρὸς ἀρουρῶν τεσσάρων. ἡ δὲ προ|κειμένη τῶν γονέων μου συγγρα|φή ἐστιν ἔνθεσμος καὶ ἀπερί|λυτος εἰς τὴν ἐνεστῶσαν ἡμέραν. | (ἔτους) α Αὐτοκρά[τ]ορος Νερ[ού]α [Καίσαρος] | Σεβαστοῦ [H1] Φαμενὼθ ιθ. | Δημήτριος σεση(μείωμαι). ἔτους πρώτου | Αὐτοκράτορος Νερούα Καίσαρος | Σεβαστοῦ Φαμενὼθ ιθ.: I too | declare for registration | my hold on the remaining | four arouras of my mother. And the | aforesaid contract of my parents | remains in force and uncancelled | to the present day. Year 1 of Emperor Nerva Caesar | Augustus [H1] Phamenoth 19th. | [H3] Demetrios has signed. First year | of Emperor Nerva Caesar | Augustus, Phamenoth 19th.

katoche-based marriages the father is bound, has no autonomous power over his own property: not *inter vivos*, since he is no longer free to alienate without the consent of his wife or children, nor *mortis causa*, since the children are entitled to his inheritance, and he is thus bound to leave it among them. In a *daneion*-based marriage, instead, the father preserves full power over all his belongings, and neither wife nor children have on them any rights whatsoever: precisely for this reason, both Tryphon's and Pausiris' deeds include a clause covering child expenses if the wife is repudiated while pregnant (*supra* II and V).

How does this relate to our problem? The difference between *agraphos* and *engraphos gamos* (*supra* III) concerns the fathers' rights over their children's person and property; here, instead, the difference concerns the fathers' rights over their own property. I suspect that these could be two sides of the same coin: *daneion*-fathers, like Tryphon or Pausiris, would have been deemed as preserving all rights on the family property, both on their own and on that of their future children; *katoche*-fathers, instead, had no such power on their own property, let alone on that of their children. This postulates a conception of the property as family property, either fully in the father's hands, who then keeps a right over the children's acquisitions – to inherit them upon their death (*CPR* I 18, *supra* III) and, if he so wishes, to reclaim them in their lifetime, their own as well as those coming from him, like the dowry (*P. Oxy*. II 237, col. 7, ll. 28–29, ll. 41–42, *supra* III and nn. 36–37) – or not any more fully in the hands of the father, so that, conversely, it is the children who have a right over his property, which he cannot alienate without their (or his wife's) consent nor bestow *mortis causa* if not to among them.

The Egyptian marriage practice that Pestman labelled as model C, as its Greek offspring in Roman times, the family-*katoche*, lead by itself to the second construction, of a father who has entirely abdicated his autonomous power. The first construction instead, the autocratic paternal position linked in the 2nd cent. to the *agraphos gamos*, could be derived from the logic behind the inherited Demotic practice only through induction: from the *katoche* system, a conception of the father's property as family property could be quite naturally induced; generalised, this conception could be used to explain the paternal *exousia* over the children contained in the circulating versions of the *nomoi ton Aigyption*; that this was the case is evident in the fact that the *exousia* was understood as a power not just over their persons but also and foremost over their dowry and their own belongings; again a construction of the property as family property, this time entirely under the father's control: the mirror image of the position of the *katoche*-father, applicable therefore only to fathers who unlike these had not surrendered authority over their own property – *daneion*-fathers like Tryphon or Pausiris, but also all others, whatever marriage tradition they may have followed, who had not given to wife and children power over their belongings. Such construction could only have arisen inductively through interpretation of the *nomoi ton Aigyption* and of the actual marriage practice: and, in fact, as we know (*supra* IV), it is through the work of the

2nd century *nomikoi* that the paternal power came to be linked to the form of the marriage; whether they were further influenced in their construction by the Roman *patria potestas* must remain an open question.

A difficulty remains, though. What does this distinction between non-*katoche* and *katoche* fathers have to do with the written or unwritten form of the marriage? Also for this an answer is, I believe, possible. In the first decades of Roman rule, the two main marriage models inherited from the Demotic tradition that survived and found their way into the Greek practice were, as we have seen, the *daneion*-marriage and the *panprasion*-marriage. From the point of view of the Roman administration, there was a crucial difference between them: for a loan-based marriage, like for any loan, a non-notarial document, a *cheirographon*, was perfectly sufficient – and indeed, both Tryphon's and Pausiris' documents, as most other preserved loan-marriage deeds, are *cheirographa* (*supra* IV and nn. 42 and 50); a marriage deed, instead, that binds the husband to leave the inheritance to the common children is in essence an inheritance contract and therefore would have required notarial form, as we know *diathekai* did (*supra* n. 85) – and indeed, not only was the *katoche* marriage deed in *P. Oxy*. IV 713 an agoranomic *syngraphe gamou*, but, crucially, for Mettius Rufus in his Edict it is self-evident that *katochai* can only be established through *demosios chrematismos*.

This means: a *panprasion*-marriage and indeed any *katoche*-marriage would be impossible through non-notarial document. Here lies, in my opinion, the key to decipher the meaning of the expression *agraphos gamos*: as we have known for over a century, *agraphos* is not necessarily an undocumented marriage; it is simply – I submit – a non-notarised one (*LSJ* s.v. III; *DGE* s.v. I 2), a marriage for which no notarial document has been produced –whether no document at all or a non-notarial one changes nothing. Thus, the reason why the 2nd century *nomikoi* came to the conclusion that *agraphos* fathers preserved their full *exousia* becomes also obvious: since *katoche*-marriages require notarisation, fathers married without notarial document necessarily have preserved their whole power their own belongings and those of his children.

The hypothesis presented here has yet an important consequence: if it holds true, a specific uniform legal regime crystalised in the 2nd century only for *agraphos gamos*: only in the absence of a *demosios chrematismos – agraphia* in technical sense – is there certainty that the husband has not surrendered his power over property and family. No general legal framework could be predicated, instead, for marriages based on a *demosios chrematismos*: their legal regime depended, in fact, on the specific content of the document, which may or may not contain limitations to the husband's power.[90] The most invasive of such limitations at least,

[90] Even within the realm of the models inherited from the Demotic tradition, the execution of a *demosios chrematismos* did not imply a *katoche*, as the *daneion* marriage deeds executed through an *agoranomos* prove: *supra* n. 50.

namely a general *katoche* on all present and future belongings, would lead him to lose not only the power to decide autonomously over his own property but also over that of his children and over their persons. Whether less invasive limitations – partial *katochai*, on specific items or on part of the property, as in Dionysia's case in *P. Oxy*. II 237 – led to the same result, must remain an open question, even though an affirmative answer seems to me unlikely, despite Dionysia's protestations to the contrary.

This is consistent with the fact that in *CPR* I 18 (l. 32) it is not the *engraphia* but the *agraphia* that needs to be proven in order to ascertain the validity of the testament. Revealingly – and this seems to me a litmus test of the hypothesis here presented – it is only here and in Dionysia that we find the term *engraphos gamos*. Here not in the words of the judge, of the assisting *nomikos* or of the parties' advocates, but (II. 28–29) in an improvised intervention of the defendant himself, whose advocate's initial strategy, claiming unrestricted testamentary freedom for the *Aigyptioi*, had collapsed, confronted with the fact that *agraphos* children have no such freedom. Otherwise, the term is used only by Dionysia, in her attempt to argue that not being born *agraphos* she is free from parternal *exousia*. Not even the *nomikos'* opinion that she appends as her only substantiation of her claim that *engraphos* fathers necessarily lack such *exousia* contains the expression. It is not only that the term is otherwise unattested: when the rest of the sources refer to marriages that are not *agraphos*, they do not label them as *engraphos*, but as existing καθ' ὁμολογίαν (*supra* n. 10). The nuance is important: not only because it makes Dionysia's argumentation, around a category practically invented by her lawyers, suspicious, but also because it seems to confirm that indeed, as predicted by the hypothesis here presented, written marriages did not exist as a definite legal category, associated with a specific legal regime.[91]

[91] This is the crucial difference between the hypothesis presented here and the one proposed some years ago by Johannes Platschek 2015: 146, 157–160, also linking *agraphia* and *katoche*. Platschek identifies *engraphos gamos* with the *katoche*-marriage of the Egyptian tradition; in my opinion, instead, it is not the presence of a *katoche* that made a marriage *engraphos*, but rather the impossibility – due to lack of notarisation – of its presence, that made it *agraphos*. Platschek's theory consists of three equations: (a) the laws of the Egyptians are to be identified with native Egyptian law; (b) Egyptian law marriages are *katoche*-based; (c) such *katoche*-based marriages are what our sources call *engraphos gamos*. My disagreement with 'a' (*supra* n. 22) is here irrelevant: although the technical meaning of 'Egyptian' in the Roman administrative parlance of the 2nd century precludes identifying the 'laws of the Egyptians' *tout court* with the native Egyptian law, there is no doubt that the family *katoche* had indeed Demotic roots, as abundantly shown in sections VI and VII *supra*. These same sections, together with V, are enough to discard 'b': *katoche* marriages were by no means the only possibility within the Demotic tradition nor the only one to find continuity in the later Greek practice: crucial is here the survival in the *daneion* marriages of the first and second centuries of Pestman's model B. Regarding 'c': in the present state of our sources, Dionysia's *engraphos gamos* is a *hapax*, and multiple reasons suggest (see above), not

A final piece of evidence can still be added to the puzzle. In the mid-nineties, a marriage *synchoresis* dated 12 BCE, and on the verso a draft of the same text, were published by W. M. Brashear:[92] *SB* XXIV 16073 and *SB* XXIV 16072 respectively. Before the specific stipulations that the spouses bring to the *synchoresis*, and immediately after the address, we read the following (SB XXIV 16073):

> ἐ]|$_6$πεὶ σύν<ε>ισιν ἀλλήλοις ἥ τε Θαυ̣[βάριον καὶ] |$_7$ Ἑρμίας ἔτι πάλαι ἀγράφ[ης οὔσης] |$_8$ [τ]ῆ̣ς συ̣μβιώσεως γε̣ν̣ο̣[μένης Ἑρ|$_9$μίας] πεπο<ι>ημένος <ε>ἰς τ̣ὴ̣ν̣ [Θαυβάριον] |$_{10}$ η̣ν̣ διέχουσι̣ν δ̣ι̣κ̣α̣[στηρίῳ . . . . . |$_{11}$ τ]ὴν χιραν (l. χεῖρα) τὰ δὲ νῦν β̣ο̣υ̣λ̣[όμενοι τὰ] |$_{12}$ κ̣α̣τ̣᾽ ἑ̣αυτῶν ἐξασφαλίσ[ασθαι . . . . .] |$_{13}$ τ̣ῷ̣ χρηματισμῷ̣ συγχω[ροῦσιν πρὸς] |$_{14}$ ἀλλήλους …

Hermias and Thaubarion wish through the present *synchoresis* to make their affairs more secure: they have lived together for a long time, but their living arrangements were hitherto unwritten. This is, to date, the earliest attestation of *agraphos* in our context: its publication pushed the term's *terminus a quo* half a century earlier than Tryphon's document. Some help with the difficult lines 10–11 may be found in the draft, at this point better preserved and more detailed:

> |$_5$ [ἐπ]ε̣ὶ σ̣ύ̣ν(εισιν) ἀλλήλοις ἥ τε Θαυβάριον καὶ Ἑρμίας ἔτι π(άλαι) ἀγράφης |$_6$ [οὔ]σ̣(ης) [τ]\ῆ/ς συνβιω (l. συμβιώσεως) δι᾽ ἑ̣τ̣ε̣ρ συνθεσει (l.

by coincidence: it is to be suspected, in fact, that 'written marriage' did not exist as a category that could be associated with a specific legal framework. Platschek's theory results from a close reading of some sections of the Dionysia petition, rather isolated from the rest of the sources. His point of the departure (p. 157) is a correction of Grenfell and Hunt's – indeed implausible – interpretation of 'often' (πλειστάκις) in the Edict of Sulpicius Similis (Col. 8, l. 23: *supra* VII); as Platschek argues, the word most likely refers in Similis' Edict to 'disputes were arising' (ἀμφισβητήσεων γενομένων) and not to the wives' *katoche*; yet, this does not entail that every Egyptian wife had a *katoche* on her husband's property. The conclusion is logically unwarranted ('often' would have made such interpretation impossible but its removal does not make it necessary: we do not need to assume that when Similis asked on what grounds Egyptian wives had a *katoche* he believed that each and every one of them had one) and historically false: both if we understand 'Egyptian' in ethnic-cultural sense, as Platschek does, since we know that the native Egyptian tradition knew non-*katoche* marriages and that *katoche* marriages had spread also among the Greek and Hellenised; and also if we understand 'Egyptian', as in my opinion we should, in its pure Roman administrative sense, since *katoche* marriages were far from the only possibility open to the non-citizens of the *chora*.

[92] Brashear 1996. On the document, Sánchez-Moreno Ellart 2006; Rodríguez Martín 2020, with lit.

ἑτέρας συνθέσεως) – Ἑρμίας πεπο<ι>ημέν(ος) |7 [<εἰ>ς τὴν Θα]υβάριο(ν) τὴν διέχουσιν δικαστηρί᾽ῳ΄ χεῖρα{ν}

The couple's previous joint life, we read, had been established "through other kind of arrangement" (δι᾽ ἑτέρας συνθέσεως, l. 6). This suggests a written arrangement and, indeed, it is in this sense that χεῖρα must be understood in both the document (l. 11) and the draft (l. 7): the term is here shorthand for *cheirographon*,[93] in contrast with the notarial document now executed in form of *synchoresis gamou*.[94]

Important for us here is not just that the technical, artificial use of *agraphos* for a marriage based on a written document is already in place fifty years before Tryphon; but rather the fact that, as our theory predicts and Tryphon's case confirms, a marriage based on a *cheirographon*, a purely private document, no matter its content, remains *agraphos*. Together with Tryphon, the papyrus also shows that, although we must wait until the 2nd century to find a source associating paternal *exousia* to *agraphia*, and the link seems indeed – at the present state of our sources – a product of the *interpretatio iuris* of the 2nd century *nomikoi*, their construction relied on a technical meaning of *agraphos gamos* that can be traced back at least to the earliest years of Roman rule.

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[93] The draft, where τὴν διέχουσιν δικαστηρί᾽ῳ΄ χεῖρα{ν} clearly is the object of πεπο<ι>ημέν(ος), excludes an interpretation in the sense (Preisigke 1925–1931: 726 l. 5 ss.) of the mere giving of the hand as pledge. For χεῖρ as *cheirographon*, Preisigke 1925–1931: 728 l. 42 ss. In this sense, also Brashear in the edition. [Ἑρ|μίας] πεποημένος ἰς τ̣ὴν̣ [Θαυβάριον] | ᾗ̣ν̣ διέχουσ̣ιν δ̣ι̣κ̣α̣[στηρίῳ . . . . . | τ]ὴν χιραν (ll. 8–11) is translated by Brashear 'Hermias forfeiting in court the document he had made with Thaubarion'; van Minnen in his online publication of the Alexandrian *synchoreseis* suggests 'Hermias having made for Thaubarion the document they have separate from a ... court'. This is best understood as referred to the fact that unlike *synchoreseis*, *cheirographa* are executed outside of the court.

[94] Our *synchoresis* labels itself on l. 1 of the draft συμβ[ιώ(σεως)], document of 'joint life'; the term is used also in *BGU* IV 1103 ll. 1–30 (13 BCE Alexandria), a self-described synchoresis gamou (l. 8, συμ|βιώσεως κατὰ συγχώρησιν; l. 15, τὴν τοῦ γάμου συνχώρησιν).

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