GRAECA TERGESTINA
STORIA E CIVILTÀ **2**

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Studi di Storia greca coordinati da Michele Faraguna

Legal Documents in Ancient Societies

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Legal Documents in Ancient Societies V

Sale and Community Documents from the Ancient World

Individuals' Autonomy and State Interference in the Ancient World

Proceedings of a Colloquium supported by the University of Szeged
Budapest 5-8.10.2012

edited by
Éva Jakab

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Table of Contents

Foreword

Plato found it necessary to restrict every exchange of goods, every selling and buying to a public market place in his ideal state. Any market should be strongly controlled by state authorities like *nomophylakes*, *agoranomoi* and *astynomoi* with entire responsibility for fair business and fair prices. No honorable citizen should be engaged in trade because it corrupts good moral … and so on.

Ancient societies entertained heavy prejudices against merchants although needed instantly their services. Functioning markets, long-distance and large-scale trade were of utmost interest for every ancient community.

The legal framework of selling and buying was mostly a product of individual's autonomy and state interference. The main rules of liability or risk allocation were usually formed by every day practice as some kind of law in action. Besides, state authorities tried to shape the outlines of the "law of sale" interfering through statutes or jurisdiction. The access to court was granted to foreigners mostly under the condition of a publicly controlled market.

There are several tensions in the legal framework of sale, for instance between individuals and state, vendors and buyers, citizens and foreigners …

A Colloquium held in October 5-8, 2012 in Budapest under the title "Sale and Community" focused on the main problems and discussed the fascinating

topic. The meeting was supported by the research project TAMOP 4.2.2/B-10/1-2010-0012 of the University of Szeged.

Beside the contributors of this volume, distinguished scholars participated, discussed or moderated sessions: *Roger Bagnall (New York), Sophie Démare-Lafont (Paris), Michele Faraguna (Trieste), Rudolph Haensch (Munich), Denis Kehoe (New Orleans), Francois Lerouxel (Paris), Anne Regourd (Vienna-Leeds)* and *Cornelia Wunsch (London)*.

It was the 5th meeting of the research group "Legal Documents in Ancient Societies", established in 2008 for comparative studies on the field of ancient legal history. The main aim of this research group is to enhance a fruitful cooperation between scholars of Ancient Near East, Ancient Greece, Ancient Egypt, the Hellenistic World and the Roman Empire. After successful conferences in Rom, Washington D.C., Leuven and Trieste the honor felt to Szeged to be able to host excellent colleagues from all over the world. For further information see http://www.ldas-conf.com.

Many thanks are due for motivating discussions and encouraging ideas to all participants. During the seven years of our collaboration I learned a lot from different methods, approaches and ideas.

Eva Jakab

Szeged, July 2014

The Legal Framework of a "Marketless" Economy in the Old Babylonian Period with regard to "Sale and Community"

GUIDO PFEIFER

1. Introduction

In his book "Debt. The first 5000 Years" David Graeber, the *spiritus rector* of the occupy-movement, claims that markets in Mesopotamia were a by-product of the complex administrative systems there, both of them based on credit.[1] Of course, this is not the place to give a review of Graeber's analysis of the history of debt, but at least one of the consequences that he draws from his analysis may catch our attention, when he postulates with respect to the actual crisis we face these days the need for a general debt release[2] – a political and economic measure which seems rather familiar to ancient legal historians and to which we will refer to later in this paper. At the same time the characterization of markets as a "mere" by-product fits in well with the perspective of quite a number of scholars who deny categorically the effectiveness of market principles for Ancient Near Eastern economies.[3] One of the most prominent representatives of this perspective is definitely Johannes Renger,

[1] Graeber 2012, 404.

[2] Graeber 2012, 410.

[3] Cf. Pfeifer 2013, 261. For abbreviations cf. the indices in vol. 12 of the Reallexikon für Assyriologie und Vorderasiatische Archäologie (Berlin/Boston 2009-2011).

the German Nestor of Ancient Near Eastern economic and social history, to whom the combination of the *oikos*-system of the temple up to the end of the third and the redistributional system of the palace from the second millennium BCE onwards on one hand and a sustenance-oriented production on the other hand leave little space for competition and therefore for exchange that follows market rules.[4] On the other hand we have, of course, numerous and clear evidence of both, individual and official exchange of goods. From Renger's point of view this exchange marks but an additional fulfillment of demand.[5] Again, the purpose of this paper is not, and cannot be, to find a definite answer to the question if there was a "market" in Ancient Near Eastern societies or not. This paper rather asks for the meaning of the framework that was provided by the legal system to the participants of economic exchange as such.

For Max Weber the legal order is one of the decisive factors of an economic system.[6] The foreseeability of legal rules and their enforcement by the political power design the conditions under which the individual participates in the economic system and which determinate his or her expectations. The chances for a successful participation of the individual that derive from those conditions can either be conceived as a mere reflex of the legal rules or even as a guarantee.[7] Needless to mention that the legal order for Weber doesn't only exist in positive legal rules, but also in customary law with fluent transitions between custom, convention and law.[8] Against this background it seems reasonable to ask, if, on one hand, our sources show evidence of legal rules that refer to economic behavior in a specific way, and if the records of economic and legal practice correspond in any way to this reference.

Due to the general topic of this volume the following analysis will concentrate on sale, which is, besides of loan and exchange, one of the most fundamental institutions and forms of economic behavior. At the same time the presentation will be limited to the Old Babylonian period, which provides a large number of records as well in the shape of normative texts as texts from the legal practice. But as a first step, we will take a short look at the surrounding conditions of the Old Babylonian society and economy.

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[4] For the essence of his reasoning on the basis of several profound studies see the according articles in DNP: RENGER 1998, 873; RENGER 1999, 922; RENGER 2000, 1137-1138 and RENGER 2002, 523-526. One of his main references is the work of Karl Polanyi, in particular POLANYI 1957 and POLANYI 1977, which Renger locates in the tradition of Max Weber, cf. RENGER 1993, 88.

[5] RENGER 1993, 103-105.

[6] WEBER 1922, 368-385.

[7] WEBER 1922, 371.

[8] WEBER 1922, 374-381.

2. Continuities and changes in Old Babylonian economies

Since at the beginning of the Old Babylonian period[9] we still can find quite a number of smaller city states or kingdoms on the political landscape, it seems more accurate to speak of several economic systems rather than one economy. Yet, all of them share common features of continuity as well as change, as they are compared to earlier times, especially to the Neo-Sumerian period.

2.1 Geographical settings and need for trade

The geographical settings of Ancient Mesopotamia made agriculture based on irrigation the main characteristic element of all economic systems of that area. The need for irrigation required from the earliest times an effective administrative management of the resources of water and soil, including the organization of additional sectors as the rearing of livestock, pottery or textile processing.[10] At the same time the permanent need for trade is obvious: As the alluvial land was lacking of stone, metals and wood for timber these materials had to be imported from the surrounding countries.[11] But of course there also were forms of an inner-Mesopotamian trade which were brought forward by the water routes of the rivers.

2.2 The "individualistic turn" of the Old Babylonian period

The political change of the Old Babylonian period and in particular the establishment of the empire of the first Babylonian dynasty under king Ḫammurabi also led to variations of the economic system. As already mentioned with reference to Johannes Renger a general shift can be noticed regarding the meaning of the temple in favor of the palace and his redistributional system, whereas the production as such still remains sustenance-oriented. Under Hammurabi's rule this is closely connected with the implementation of the so-called *ilku*-system, i.e. mainly the allocation of land by the crown in favor of individuals and the performance of contributions and military services in return.[12] At the same time we face a phenomenon which is often described in the sense of an

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[9] The time from the end of the dynasty of Ur III to the end of the first dynasty of Babylon, i.e. the first four centuries of the second millennium BCE, cf. Leemans 1960, 2. For the character of the period up to the unification of Babylonia under king Ḫammurabi as a "Zwischenzeit" see Edzard 1957.

[10] Marzahn 2008, 236.

[11] Leemans 1950, 1; Leemans 1960, 4.

[12] For further details see Kienast 1976-1980, 52-59.

"individualistic turn" of the Old Babylonian period[13] and which is economically connected to the increase of individual property,[14] tenancy and private loans, but also socially in the self-reflection of the individual person which can be traced in a vast number of private letters from that period[15] and which indicates an increased self-confidence. This aplomb is also reflected in legal documents, particularly from the legal practice.

3. Legal framework of sale provided by normative texts

Contracts on sale count among the earliest records of business transactions and the impression of the basic meaning of this economic and legal institution also holds true for the Old Babylonian period. Yet, the turn to normative texts could possibly modify this impression, since there the meaning of sale seems to be limited compared to other institutions. As normative texts in a broader sense we can understand state treaties, law collections and the so-called *mīšarum*-acts.

3.1 State treaties

State treaties have been manifold the *sedes materiae* for legal rules on trade and commerce as we can see from the clear evidence by Old Assyrian treaties, e.g. from Kanesh, which provide stipulations on taxes, tariffs, compensation for losses, means of conflict resolution etc.[16] Unfortunately there are no texts with comparable content from the Old Babylonian tradition,[17] so this category of sources has to be left aside.

3.2 *Law collections*

The so-called law collections from Mesopotamia represent to many scholars the most fascinating and most important sources of Ancient Near Eastern legal history; at least the intense discussion of their nature and function lasts down to the present day.[18] This paper acts on the assumption that the law collections

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[13] Klengel 2004, 67-70; Marzahn 2008, 244.

[14] Especially of fields, cf. Edzard 1957, 4.

[15] Klengel 2004, 112-115. For the meaning of letters as a source of information about economic conditions see Renger 1993, 87 with fn. 1 and 105 f.

[16] Veenhof 2008, 183-218; Veenhof 2013.

[17] Cf. Leemans 1960, 119 f.

[18] For an overview and bibliography of the discussion see Jackson 2008, 69-113 and 257-276.

cannot be considered as codifications in a modern sense, but with regard to their context of scribal schools they depict a more or less realistic view of daily legal life. Given at the same time that they were means of political governance there should be no doubt that they at least were meant to be efficient.

a) *Laws of Eshnunna*

The first law collection that shows clear evidence of legal rules on sale is the Laws of Eshnunna (LE) from ca. 1770 BCE.[19] However, the §§ 38-41 LE[20] that contain substantial legal rules on sale, deal with quite special cases: § 38 LE applies to the right of pre-emption of a part of a family estate among brothers,[21] § 39 LE establishes the right of an impoverished man to redeem the house he sold, when the purchaser decides to resell,[22] § 40 LE refers rather to delicts in the context of lost property than to sale as such, when it postulates that the seller has to be established by the buyer to avoid the suspicion of theft; and § 41 LE is (probably) related to a sale of beer on consignment by a woman innkeeper.[23] At large and without discussing each section for its own, none of those rules seems in a special way likely to determine the economic behavior of individuals in a narrower sense, but rather to establish particular decisions of practical problems and conflicts in the context of sale. What might be generalized from those sections is the fact that sale was principally regarded as a valid transaction which created, if performed in certain manners, a more or less protected legal position (§ 40 LE) which we tend to call "property" or "ownership". At the same time it seems to become clear that the transaction of sale could not be executed free from any restriction (§ 38 LE) and that its effect could be cancelled under certain conditions, especially in the context of social distress (§ 39 LE).

Of further interest for our topic might be the first two sections of the LE.[24] § 1 lists several articles in certain capacities, all of which equal the price of 1

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[19] The Laws of Lipit-Ishtar from Isin (ca. 1930 BCE) do not deal with sale, cf. ROTH 1997, 23-35; the sections q and r of the so-called Laws of X (ca. 2050-1800 BCE) are too fragmentary to get reliable information from, cf. ROTH 1997, 38.

[20] For the edited and translated text see ROTH 1997, 65.

[21] YARON 1988, 227-232; PETSCHOW 1968, 139. ROTH 1997, 65 with fn. 19 understands the section in the sense of a right to pre-emption within a partnership.

[22] WESTBROOK 1985, 109-111; YARON 1988, 232-234.

[23] PETSCHOW 1968, 139; YARON 1988, 227-235. ROTH 1997, 65 with fn. 20 (70) suggests with reference to WESTBROOK 1994 that the terms *ubarum, napṭarum* and *mudū* refer "to categories of persons outside of the common social and jural protective networks".

[24] For the edited and translated text see ROTH (1997) 59. For measures and weights see POWELL 1987-1990, 497 and 509.

shekel of silver, whereas § 2 gives different amounts of grain as equivalents to the capacity of one *sila* (ca. 1 liter) of different articles. Both sections are usually understood as tariffs or maximum prices,[25] the parallelism of silver and grain as standards of value and media of exchange here is often explained with a shift from barter to a monetized economy between the Neo-Sumerian and the Old Babylonian period.[26] The function of these sections right at the very beginning of the laws, however, doesn't become clear by itself: The sections could have served as a kind of benchmark for the following sections that deal with hire – those would have to be understood as minimum rates then, in relation to the maximum prices of commodities,[27] the same function as a benchmark could also hold true in a more general sense, if we think of the sanctions for delicts in the LE and other law collections which are expressed as fines in weighed silver. The concept of maximum prices could also be seen in a further context of social measures, if we consider the law collections to be connected with social reforms and debt releases which were also carried into effect by the so-called *mīšarum*-acts, a phenomenon and category of legal literature we come back to only a little later. As all of these legal provisions are closely related to the idea of establishing justice as a universal principle with both political and cosmological dimensions and as a duty of the king, it seems justified to locate maximum prices as well in a context of social measures as it might similarly apply to standardizations of measures and weights as they are established e.g. in the prologue of the Laws of Ur-Namma (LU) from Ur around 2100 BCE.[28]

Altogether the legal framework for sale provided by the Laws of Eshnunna is, optimistically spoken, rather vague.

b) *Laws of Ḫammurabi*

The most prominent law collection of the Old Babylonian period is, of course, the Laws of Ḫammurabi (LH).[29] But also among their 282 sections substantial legal rules on sale are rather an exception: § 7 LH and §§ 9-13 LH deal with sale as far as lost property is concerned;[30] the analogy to § 40 LE is evident, although Ḫammurabi's laws are much more elaborated and give a

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25 GOETZE 1956, 32; PETSCHOW 1968, 135; YARON 1988, 106 f. and 224 f.

26 KOROŠEC 1964, 87.

27 YARON 1988, 225 f.

28 Cf. LU A III 135-IV 149 and C I 11-21, ed. and transl. ROTH 1997, 16.

29 For the edited and translated text see ROTH 1997, 46-140.

30 The comprehension of the details is still difficult; for the discussion see KOSCHAKER 1917, 73-84 and DRIVER – MILES 1956, 82-105.

detailed procedure of a persecution of lost property with all possible eventualities. § 108 LH penalizes the fraudulent woman innkeeper who accepts only silver instead of grain for the price of beer and thereby reduces the value of beer in relation to the value of grain,[31] §§ 278, 279 LH apply to the warranty for quality and title of the sale of slaves,[32] whereas §§ 280, 281 refer to the purchase of slaves abroad and the possibilities of the former owner to release them.[33] The laws also show rates of hire and wages in §§ 268-277 LH,[34] but no tariffs or maximum prices. The extent of evidence for a legal framework of sale in the Laws of Ḫammurabi insofar doesn't go beyond the impression we got from the Laws of Eshnunna: The transaction of sale creates a protected legal position, if performed by means of proof as witnesses and contract (§§ 7, 9-13 LH) which of course has to be seen in the context of litigation. Furthermore the legal position of the buyer comprises certain claims of warranty for quality and title (§§ 278, 279 LH) to which the seller is correspondently liable. And again under certain conditions the effect of the transaction can be withdrawn (§§ 280, 281 LH).

As a legal framework in the sense of Max Weber's view of the legal order as a decisive factor of an economic system[35] these provisions may seem rather rudimental; applied to the transaction of sale as a fundamental economic activity they mark at least basic points outlining the scope of sale as an economic institution.

3.3 mīšarum-acts (Edict of Ammi-ṣaduqa)

The so-called *mīšarum*-acts were political measures by which the Old Mesopotamian kings established "justice" (akkad. *mīšarum*) in the sense of a social relief periodically, even though not in identical intervals,[36] and thus complied with their duty towards the gods.[37] They are documented in various forms, namely in letters, records and date-lists that refer to them,[38] yet the clearest evidence comes from several fragments of edicts from the Old Babylonian

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31 Driver – Miles 1956, 202-205.

32 Driver – Miles 1956, 478-482.

33 Koschaker 1917, 85-100; Driver – Miles 1956, 482-490.

34 Driver – Miles 1956, 469-478.

35 See above fn. 6 f.

36 This marks the difference to the Sabbatical and Jubilee year of the Bible; for the parallels see Westbrook 1995, 149-163.

37 Westbrook 1995, 159 f.; Pfeifer 2012, 23 f.

38 Pfeifer 2005, 178-182.

period of which the one of Ammi-ṣaduqa (1647-1626 BCE) is with respect to its relative completeness the most important.[39] Even though the edicts do not prove to have the generalizing character of the legal rules in the law collections they might be understood as normative in a broader sense: The core of the *mīšarum*-acts is the release from debt and the release from forced labor as a consequence of debt.[40] Thus their immediate institutional legal context is one of private interest-bearing loan as e.g. § 3 Ed. A-ṣ[41] shows.

A reference to sale is made as part of the exception to the debt release in § 8 Ed. A-ṣ.[42] Here four different forms of commercial transactions are exempted from the debt release; one of them is sale, indicated by the term *šīmum* (price, proceeds of a sale). The three other transaction forms have the character of an investment business in common; therefore it is more than likely that *šīmum* here alludes to sale against cash in advance which usually took the face of a loan.[43] The reason behind this provision seems to be a privilege of commercial business transactions,[44] whereas private interest-oriented transactions and their consequences were subjected to the social remedy of the edict. The impact of this exception on economic behavior should not be underestimated: Whereas the release of debts as such could hardly be foreseen and thus marks a factor of uncertainty for participants of the economic system,[45] the exceptional privilege from the debt release for commercial investment transactions minimizes the risk of the investors at least in this respect.

mīšarum-acts are insofar less significant for the legal framework of sale than rather for the general setting of economic activity.

4. Correspondence to the legal framework in texts from the economic and legal practice

As mentioned before the legal practice of the Old Babylonian period is well documented in a vast number of records which certainly also holds true of the institution of sale. If we ask for correspondence of this legal and economic

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39 For an overview of Old Mesopotamian legal acts see Kraus 1984, 14-110.

40 Pfeifer 2012, 22.

41 For the edited and translated text see Kraus 1984, 170 f.

42 For the edited and translated text see Kraus 1984, 174 f.

43 Pfeifer 2005, 181 with fn. 18.

44 For the privilege of business in the context of the palace (§§ 10-12 Ed. A-ṣ) see Kraus 1984, 215-235.

45 Pfeifer 2013, 262 and 264 f.

practice to the (admittedly rather small) evidence of a legal framework provided by normative texts there are two aspects of increased interest: prices and legal positions.

Albrecht Goetze has shown that the tariffs of the Laws of Eshnunna more or less correspond to the prices we find in contracts of sale from the Ur III period, whereas contracts from the time of Ḫammurabi show comparatively a rise of most prices.[46] As the Laws of Ḫammurabi don't deliver any tariffs or maximum prices of sale, the evidence of a correspondence of the legal practice to the legal framework from Goetze's analysis remains questionable in the context of our topic. A good example for the rather "free" formation of prices gives the tablet VS 8, 81/82.[47] Here the commissioner Adad-rē'um is bound to sell the received quantity of paint at the *kārum* of Eshnunna, whereas the principal Sin-iqîšam takes the risk or chance to lose or make profit as he is obliged to pay a fixed price of 4.5 shekels of silver. Despite of the definite meaning of *kārum*, in particular the question, if the term describes a market in a technical sense or not,[48] the record makes clear that tariffs or maximum prices were at least not always taken into account.

In respect of legal positions the composition of sale contracts shows the decisive elements of the transaction: performance of object of sale and price, warranty of title and warranty of quality are the crucial points of interest that are recorded.[49] An example for this practice can be found in the sale of slaves in TD 156:[50] ll. 15-19 and in particular the phrase *kīma ṣimdat šarrim izzazu* suggest that the clauses refer to the provisions given in §§ 278 and 279 LH, a fact which has given rise to an intense discussion.[51] Still, the question remains – and maybe will never be answered satisfactory –, if the law collections merely depicted the legal practice as such or had a decisive impact on it. But taken into account that – not only according to Max Weber[52] – the legal order consists as well of positive rules as of customary law which is documented by the legal practice, we have clear evidence that the transaction of sale was

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[46] GOETZE 1956, 30, supporting there the dating of the LE close to the Ur III period.

[47] = VAB 5, 44 = HG 4, 877; for the edited and translated text see LEEMANS 1960, 86.

[48] Cf. RENGER 1993, 109.

[49] WESTBROOK 2003, 400 f. The general character of Old Babylonian sale as a cash transaction as assumed by SAN NICOLÒ 1974, 7 f., should be modified with respect to the legal practice; cf. WESTBROOK 2003, 401 f. and for the achaemenid period PFEIFER 2010, 145-149.

[50] = VAB 5, 85 = HG 5, 1155. Another example, even though not in the context of sale, gives the tablet BM 97067, recently published by VEENHOF 2012, 627 f.

[51] See WESTBROOK 2003, 401 with fn. 124 and the literature cited there.

[52] See above fn. 8.

regarded as effective and created valid legal positions. This impression is confirmed by the large number of litigation documents concerning sales, which mainly refer to the vindication of sold commodities, in most cases land and houses, of which the tablet TCL 1, 157 gives a good example.[53] The litigation documents show that the formalities of the sale contracts, in particular witnesses and the record itself,[54] enabled the parties to prove and thus assure their legal positions in the trial.[55]

5. Conclusion

Normative texts and texts from the legal practice of the Old Babylonian period don't hand us an elaborated "law of sale" in a modern sense or even in the forms we know from the Roman world.[56] The extent of the legal framework of the economic institution of sale refers to rather basic points of interest, even though there is no doubt about the effectiveness of the transaction in principal. Therefore the control and allocative function of law for the economic behavior in this context has to be described as limited. At the same time it becomes obvious that, regardless of the question, if the Old Babylonian economy worked on the basis of market principles or not, the economic system was not an unlimited and unrestricted apparatus of its own. In fact the consequences of this – from a modern point of view – rather liberal economic system that potentially endangered social and political stability and peace were managed by normative measures such as release of debts and of forced labor which applied to sale as much as to other economic activities. This management of social, economic and legal aspects of community is closely connected to the idea of justice as a universal concept[57] – which today is as up to date as back then.

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53 On this text see recently Pfeifer 2015.

54 Westbrook 2003, 399.

55 On the further question of conditions and effects of the judgment see recently Pfeifer 2015.

56 For this general result also cf. (related to the LH) Petschow 1957-1971, 268 and Korošec 1964, 122.

57 Pfeifer 2012, 32.

Laws of Eshnunna

§ 1 LE (A I 8-17)

1 kur še'um ana 1 šiqil kaspim	300 silas of barley for 1 shekel of silver
3 qa šaman rūštim ana 1 šiqil kaspim	3 silas of fine oil – for 1 shekel of silver
1 (sūt) 2 qa samnum ana 1 šiqil kaspim	12 silas of oil – for 1 shekel of silver
1 (sūt) 5 qa nāḫum ana 1 šiqil kaspim	15 silas of lard – for 1 shekel of silver
4 (sūt) ittûm ana 1 šiqil kaspim	40 silas of bitumen – for 1 shekel of silver
6 mana šipātum ana 1 šiqil kaspim	360 shekels of wool – for 1 shekel of silver
2 kur ṭabtum ana 1 šiqil kaspim	600 silas of salt – for 1 shekel of silver
1 kur uḫūlum ana 1 šiqil kaspim	300 silas of potash – for 1 shekel of silver
3 mana erûm ana 1 šiqil kaspim	180 shekels of copper – for 1 shekel of silver
2 mana erûm epšum ana 1 šiqil kaspim	120 shekels of wrought copper – for 1 shekel of silver

§ 2 LE (A I 18-20)

1 qa šamnum ša nisḫātim 3 (sūt) še'ušu	1 sila of oil, extract (?) – 30 silas is its grain equivalent
1 qa naḫum ša nisḫatim 2 (sūt) 5 qa še'ušu	1 sila of lard, extract (?) – 25 silas is its grain equivalent
1 qa ittûm ša nisḫatim 8 qa še'ušu	1 sila of bitumen extract (?) – 8 silas is its grain equivalent

§ 38 LE (A III 23-25, B 7-9)

šumma ina atḫi ištēn zittašu ana kaspim inaddin u aḫušu šâmam ḫašeḫ qablīt šānim umalla	If, in a partnership, one intends to sell his share and his partner wishes to buy, he shall match any outside offer

§ 39 LE (A III 25-27, B III 10-11)

šumma awīlum īnišma bīssu ana kaspim ittadin ūm šājimānum inaddinu bēl bītim ipaṭṭar	If a man becomes impoverished and then sells his house, whenever the buyer offers it for sale, the owner of the house shall have the right to redeem it

§ 40 LE (A III 28-29, B III 12-13)

šumma awīlum wardam amtam alpam u šīmam mala ibaššū išāmma nādinānam la ukīn šûma šarrāq	If a man buys a slave, a slave woman, an ox, or any other purchase, but cannot establish the identity of the seller, it is he who is a thief

§ 41 LE (A III 30-31, B III 14-16)

šumma ubarum napṭarum u mudû šikaršu inaddin sābītum maḫīrat illaku šikaram inaddinšum	If a foreigner, a *napṭaru,* or a *mudû* wishes to sell his beer, the woman innkeeper shall sell the beer for him at the current rate.

§ 7 LH (VI 41-56)

šumma awīlum lu kaspam lu ḫurāṣam lu wardam lu amtam lu alpam lu immeram lu imēram ulu mimma šumšu ina qāt mār awīlim ulu warad awīlim balum šībī u riksātim ištām ulu ana maṣṣarūtim imḫur awīlum šû šarrāq iddâk

If a man should purchase silver, gold, a slave, a slave woman, an ox, a sheep, a donkey, or anything else whatsoever, from a son of a man or from a slave of a man without witnesses or a contract – or if he accepts the goods for safekeeping – that man is a thief, he shall be killed

§ 9 LH (VI 70-VII 47)

šumma awīlum ša mimmûšu ḫalqu mimmāšu ḫalqam ina qāti awīlim iṣṣabat awīlum ša ḫulqum ina qātišu ṣabtu nādinānummi iddinam maḫar šībīmi ašām iqtabi u bēl ḫulqim šībī mudē ḫulqijami lublam iqtabi šājimānum nādin iddinušum u šībī ša ina maḫrišunu išāmu itbalam u bēl ḫulqim šībī mudē ḫulqišu itbalam dajānū awâtišunu immaruma šībū ša maḫrišunu šīmum iššāmu u šībū mudē ḫulqim mudūssunu maḫar ilim iqabbûma nādinānum šarrāq iddâk bēl ḫulqim ḫuluqšu ileqqe šājimānum ina bīt nādinānim kasap išqulu ileqqe

If a man who claims to have lost property then discovers his lost property in another man's possession, but the man in whose possession the lost property was discovered declares, "A seller sold it to me, I purchased it in the presence of witnesses," and the owner of the lost property declares. "I can bring witnesses who can identify my lost property." (and then if) the buyer produces the seller who sold it to him and the witnesses in whose presence he purchased it. and also the owner of the lost property produces the witnesses who can identify his lost property – the judges shall examine their cases, and the witnesses in whose presence the purchase was made and the witnesses who can identify the lost property shall state the facts known to them before the god. then it is the seller who is the thief, he shall be killed; the owner of the lost property shall take his lost property, and the buyer shall take from the seller's estate the amount of silver that he weighed and delivered

§ 10 LH (VII 48-61)

šumma šājimānum nādinān iddinušum u šībī ša ina maḫrišunu išāmu la itbalam bēl ḫulqimma šībī mudē ḫulqišu itbalam šājimānum šarrāq iddâk bēl ḫulqim ḫuluqšu ileqqe

If the buyer could not produce the seller who sold (the lost property) to him or the witnesses before whom he made the purchase, but the owner of the lost property could produce witnesses who can identify his lost property, then it is the buyer who is the thief, he shall be killed; the owner of the lost property shall take his lost property

§ 11 LH (VII 62-VIII 3)

šumma bēl ḫulqim štbī mudē ḫulqišu la itbalam sār tuššamma iddi iddâk

If the owner of the lost property could not produce witnesses who can identify his lost property, he is a liar, he has indeed spread malicious charges, he shall be killed

§ 12 LH (VIII 4-13)

šumma nādinānum ana štmtim ittalak šājimānum ina bīt nādinānim rugummē dīnim šuāti adi ḫamštšu ileqqe

If the seller should go to his fate, the buyer shall take fivefold the claim for that case from the estate of the seller

§ 13 LH (VIII 14-24)

šumma awīlum šû štbūšu la qerbu dajānū adannam ana šeššet warḫī išakkanušumma šumma ina šeššet warḫī štbīsu la irdiam awīlum šû sār aran dīnim šuāti ittanašši

If that man's witnesses are not available, the judges shall grant him an extension until the sixth month, but if he does not bring his witnesses by the sixth month, it is that man who is a liar, he shall be assessed the penalty for that case

§ 278 LH (XLVI 58-66)

šumma awīlum wardam amtam išāmma waraḫšu la imlāma benni elišu imtaqut ana nādinānišu utârma šājimānum kasap išqulu ileqqe

If a man purchases a slave or slave woman and within his one month period epilepsy then befalls him, he shall return him to his seller and the buyer shall take back the silver that he weighed and delivered

§ 279 LH (XLVI 67-71)

šumma awīlum wardam amtam išāmma baqrī irtaši nādinānšu baqrī ippal

If a man purchases a slave or slave woman and then claims arise, his seller shall satisfy the claims

§ 280 LH (XLVI 72-87)

šumma awīlum ina māt nukurtim wardam amtam ša awīlim ištām inūma ina libbū mātim ittalkamma bēl wardim ulu amtim lu warassu ulu amassu ūteddi šumma wardum u amtum šunu mārū mātim balum kaspimma andurāršunu iššakkan

If a man should purchase another man's slave or slave woman in a foreign country, and while he is traveling about within the (i.e., his own) country the owner of the slave or slave woman identifies his slave or slave woman – if they, the slave and slave woman, are natives of the country, their release shall be secured without any payment

§ 281 LH (XLVI 88-96)

šumma mārū mātim šanīttim šājimānum ina maḫar ilim kasap išqulu iqabbīma bēl wardim ulu amtim kasap išqulu ana tamkārim inaddinma lu warassu lu amassu ipaṭṭar

If they are natives of another country, the buyer shall declare before the god the amount of silver that he weighed, and the owner of the slave or slave woman shall give to the merchant the amount of silver that he paid, and thus he shall redeem his slave or slavewoman

§ 3 Ed. A-ṣ (B I 8’-17’, A Rs. 1’-2’)

B I 8’	[*ša š*]*e-am ù* kù.babbar*^{am}*	[Who b]barley or silver
9’	[*a-na* lú *ak-k*]*a-d*[*i*]*-i ù*	[to a man from Akk]ad[e] or
	lú *a-mu-ur-ri-i*	a man from Amurru
10’	[x x x x m]áš *ú-lu a-na*	[..... i]nterest or for
	me-el-qé-tim	“receipt”
11’	[x x x x x x] x *a id-di-nu-ma*	[.....] ... has given and
12’	[du]b-[*p*]*a-a*[*m ú-š*]*e-zi-bu*	a [in]st[ru]me[nt] has had issu[ed];
13’	*aš-šum šar-rum* [*mi-š*]*a-ra-am*	because the king [ju]stice
14’	*a-na ma-tim iš-ku-nu*	for the land has reestablished,
15’	dub^{pa}*-šu ḫe-pi*	his instrument is broken.
16’	*še-am ù* kù.babbar *a-na pí-i*	Barley or silver according to the wording
	dub*-pí-ma*	of his instrument
17’	*ú-ul ú-ša-ad-da-an*	he will not collect.

§ 8 Ed. A-ṣ (B III 1-6)

B III 1	lú *ak-ka-du-ú*	A man from Akkade
	ù lú *a-mu-ur-ru-ú*	or a man from Amurru,
2	*ša še-am* kù.babbar *ù*	who barley, silver or
	bi-ša-am	merchandise
3	*a-na ši-m*[*i*]*-im a-na* kaskal	as purchase [pri]ce, for a *ḫarrānu*-business,
	a-na tab.ba	for a company
4	*ù ta-ad-mi-iq-tim il-q*[*ú*]*-ú*	or as non-interest-bearing loan has ta[ke]n,
5	dub*-pa-šu ú-ul iḫ-ḫe-ep-pí*	his instrument will not be broken up,
6	*a-na pí-i ri-ik-sa-ti-šu*	according to the wording of his agreement
	i-na-ad-di-in	he will give.

Prices of commodities (Goetze 1956, 30)

1 šekel of silver	barley	wool	copper	oil
Ur III (contracts)	1 kur	10 minas	2-2.5 minas	9-15 qa
Eshnunna (tariffs)	1 kur	6 minas	2-3 minas	12 qa
Ḫammurabi (contracts)	0.5-0.6 kur	5 minas	-	9-10 qa

(1 šekel
ca. 8,3 g; 1 mina
60 šekel
ca. 500 g; 1 qa (sila)
ca. 1 l; kur
300 qa (sila)
ca. 300 l)
VS 8, 81/82 (VAT 1490 A-B) – tablet –

obv. 1	1 gún 30 ma.na	1 talent 30 minas
	ši-im-tum	of paint
	ki ^{d}zuen-*i-qí-ša-am*	has from Sîn-iqišam
	$^{I.d}$iškur-sipa	Adad-rē'ûm
5	šu-ba-an-ti	received.
	ki-ma kar	According to the market(price)
	èš-nun-na^{ki}	of Eshnunna
rev.	kù.babbar ì-la-e	he (Adad-rē'ûm) will pay silver
	ù 4 1/3 gín kù.babbar	And 4 1/3 shekels of silver
10	*i-na ša-la-mi-šu*	on his safe return
	ì-la-e	he (Sîn-iqišam) will pay.
	igi 30-*i-din-nam*	Before Sîn-idinnam,
	dumu dingir-*šu-a-bu-šu*	son of Ilšu-abušu.
	^{itu}[xxx]	In the month of [xxx],
15	mu *am-mu-ra-pí*$^{(1)}$ lugal	year "Ḫammurabi became king"

TD 156 (AO 4499), ll. 15-19

	[…]	
15	itu 1^{kám} *be-en*$_6$*-n*[*u*]	One month for *bennu*-disease,
	3 u$_4^{mi}$ *te-eb-i-tum*	3 days for investigation,
	a-na ba-aq-ri-šu	(and) for vindication
	ki-ma ṣi-im-da-at šar-ri	according to the royal decree
	iz-za-a-a[*z-z*]*u*	they will be responsible
	[…]	

TCL 1, 157 (AO 4657)

Vs. 1		
2		
3	[1sar é	„[1 Sar Hausgrundstück,
	šà 2sar é]	gehörend zu 2 Sar Hausgrundstück]
4-8	*Vermerk über vorausgegangene Veräußerungen*	
9	1sar é *šu-*[*a-ti* …]	– di[eses] 1 Sar Hausgrundstück
10-12	*Lage beschreibung*	
13	*it-ti* dingir-*ša-*ḫé.gál nu.gig	hat von Iluša-ḫegal, der *qadištu*,
	dumu^{mí} ^{d}*é-a-*illat-*sú*	der Tochter des Éa-ellassu,
14	*a-n*[*a*] 1[5] gín kù.babbar	fü[r] 1[5] Šekel Silber
	[*be-le-sú-nu* lukur ^{d}amar].utu	[die Bēlessunu, die *nadītu* des Mard]uk,
	aš-ša-ti	meine Ehefrau,
15	dumu^{mí} […]	die Tochter des […]
16	*i-na* mu *am-mi-d[i-ta-na* …] …	im Jahr, als Ammi-d[itana …] …,
	iš-ša-am-ma	gekauft, und
17	*k*[*a*]*-ni-ik*	ich habe die gesiegelte U[rk]unde
	ši-ma-[*tim lu e*]*l-qí*	des Kau[fs gewiss ge]nommen
18	*ù a-na ši-b*[*u*]*-tim*	und zum Zeu[gn]is habe ich
	^{I}*ì-lí-i-qí-ša* dumu-*ša*	den Ili-iqīša, ihren Sohn,
19	*ša* 2 sar é	der die 2 Sar Hausgrundstück
	ḫa.la-*šu il-qú-ú*	als seinen Erbteil genommen hatte,
	ú-ša-ak-ni-ik	siegeln lassen.
20	*i-na-an-na* dingir-*ša-*ḫé.gál	Jetzt hat Iluša-ḫegal,
	nu.gig dumu^{mí} ^{d}*é-*(*a-*)illat-*sú*	die *qadištu*, die Tochter des Éa-ellassu,
21	*ša k[a]-ni-ik ši-ma-tim ik-nu-kam*	welche die U[rk]unde des Kaufs gesiegelt hatte,
22	1sar é *šu-a-ti ip-ta-aq-ra-an-ni*	dieses 1 Sar Hausgrundstück von mir ergriffen.“
23	*ki-a-am iq-bi-i-ma*	So sprach er und
24	^{I}dingir-*ša-*ḫé.gál nu.gig	Iluša-ḫegal, die *qadištu*,
	dumu^{mí} ^{d}*é-a-*illat-*sú*	die Tochter des Éa-ellassu,
25	*ki-a-am i-pu-ul [u]m-ma ši-ma*	so antwortete sie [wi]e folgt: „Den Kaufpreis
26	1sar é	für 1 Sar Hausgrundstück,
	šà 2sar é	gehörend zu 2 Sar Hausgrundstück,
27	*ša [i]t-ti be-le-sú-nu* lukur	das ich [v]on Bēlessunu, der *nadītu*
	^{d}*za-ba-ba a-ša-mu*	des Zababa, gekauft hatte,
28	*a-n*[*a*] 1[5] gín kù.babbar *a-na*	fü[r] 1[5] Šekel Silber der
	be-le-sú-nu lukur ^{d}amar.utu	Bēlessunu, der *nadītu* des Marduk,
29	[*aš-ša-a*]*t ad-di-li-ib-lu-uṭ*	der [Ehefra]u des Addi-libluṭ
	ad-di-in-ma	habe ich es verkauft und

30	1[5] gín kù.babbar [*ú-u*]*l*	1[5] Šekel Silber haben sie mir nicht
	id-di-nu-nim	gegeben.“
31	*ki-a-am i-pu-ul*	Dergleichen antwortete sie.
32	di.ku$_5$^{meš} dingir-*ša-* ḫé.gál	Die Richter haben von Iluša-ḫegal
	lú^{meš} *ši-bi*	Männer als Zeugen (dafür),
33	*ša* lukur *be-le-sú-nu*	dass die *nadītu* Bēlessunu
	kù.babbar *la id-di-nu-ši-im*	das Silber ihr nicht gegeben hat,
34	*ú lu-ma ḫi-ša-am ša*	oder doch einen Schuldschein, den
	a-na íb.tag$_4$ kù.babbar *iz-bu-ši*	sie ihr für den Rest des Silbers ausgestellt hat,
35	*i-ri-šu-ši-ma*	verlangt, aber
	ú-ul i-ba-aš-šu-ú-ma	sie (d.h. die Zeugen und der Schuldschein) existieren nicht und
36	*ú-ul ub-lam*	sie (d.h. Iluša-ḫegal) hat (sie) nicht herbeigebracht.
37	^{l}*ad-di-li-ib-lu-uṭ-ma*	Addi-libluṭ aber hat
38	*ka-ni-ik*	eine gesiegelte Urkunde über das
	1sar é *ub-lam*	1 Sar Hausgrundstück herbeigebracht
39	di.ku$_5$^{meš} *iš-mu-ú*	Die Richter haben (ihren Wortlaut) gehört.
40	lú^{meš} *ši-bi ša i-na ka-ni-ki*	Als die Zeugen, die auf der gesiegelten
	ša-aṭ-[ru]	Urkunde geschrie[ben] waren,
41	*i-ša-lu*(!)*-ma*	sie sie befragten und,
Rs.	*ki-ma* 15 gín kù.babbar šám	dass 15 Šekel Silber als Kaufpreis für
42	1sar é.[dù.a]	1 Sar
		[bebautes] Hausgrundstück
43	^{l}dingir-*ša*-ḫé.gál	Iluša-ḫegal
	il-qú-ú ši-bu-us-s[ú]-n[u]	genommen habe, als ihr Zeugnis
44	*ma-ḫar* di.ku$_5$^{meš}	vor den Richtern
	a-na pa-ni dingir-*ša*-ḫé.gál	der Iluša-ḫegal ins Angesicht
45	*iq-bu-ú-ma*	sagten,
46	dingir-*ša-* ḫé.gál *a-an-nam i-pu-ul*	hat Iluša-ḫegal (es) zugegeben.
47	di.ku$_5$^{meš} *a-wa-ti-šu-nu i-mu-ru-ma*	Die Richter haben ihre Angelegenheit geprüft und
48	^{l}dingir-*ša*-ḫé.gál nu.gig dumu^{mí} ^{d}*é-a*-illat-*sú*	der Iluša-ḫegal, der *qadištu*, der Tochter des Éa-ellassu,
49	*aš-šum* ^{zá}kišib^{ki}-*ša ú-pá-aq-qí-ru*	weil sie ihr Siegel abgeleugnet hat,
50	*ar-nam i-mi-du-ši*	ihr eine Strafe auferlegt
51	*ù ṭup-pi la ra-ga-mi-im*	und diese Urkunde des Nichtklagens
52	*an-ni-a-am ú-še-zi-bu-ši*	haben sie sie ausstellen lassen:
53	u$_4$.kur.šè^{tim}	„In Zukunft werden bezüglich
	1sar é.dù.a	1 Sar bebautes Hausgrundstück,

54-57 *Lage beschreibung*

58	*ši-ma-at be-le-sú-nu* lukur ^{d}amar.utu	gekauftes Gut der Bēlessunu, der *nadītu* des Marduk,
59	*aš-ša-at ad-di-li-ib-lu-uṭ*	Ehefrau des Addi-libluṭ,
60	^{l}dingir-*ša*-ḫé.gál dumu^{meš}-*ša aḫ-ḫu-ša*	die Iluša-ḫegal, ihre Söhne, ihre Brüder,
61	*ù ki-im-ta-ša a-na be-le-sú-nu*	oder ihre Familie gegen die Bēlessunu
62	*ù ad-di-li-ib-lu-uṭ mu-ti-ša*	und Addi-libluṭ, ihren Ehemann,
63	*ú-ul i-[r]a-ag-ga-mu*	nicht klagen,
64	mu ^{d}amar.utu *ù am-mi-di-ta-na šar-ri*	haben sie bei Marduk und Ammi-ditana, dem König,
65	in.pà.dè^{meš}	geschworen.“

66-74 *Namen von 8 Richtern und des „Bürgermeisters“*

75-76 *Kontrollvermerk zweier Archivare*

l. Rd. *11 Siegel*

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Politics and Social Needs in 2nd Millennium Syrian Sale Formularies: the Case of Emar*

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In the 13th and 12th centuries B.C. Emar, a Syrian city situated on middle Euphrates, was a vassal of the Hittite empire, subjugated to the viceroy of Karkemish. It is probable that in the previous century, Emar bowed to the authority of Mitanni, and only after its demise it fell under Hittite rule.[1] What remains today of the once thriving trading center are numerous cuneiform documents, mostly cultic and literary. But among them, also ca. 500 legal texts may be found, mostly from the 13th century, though there is also a relatively small

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* The following abbreviations are used for the Emar texts: ASJ 12=TSUKIMOTO 1990, 177-259. AuOr 5=ARNAUD 1987, 211-241. Westenholz=WESTENHOLZ 2000. Emar=ARNAUD 1986. Dalley=DALLEY 1992, 83-111. RE=BECKMAN 1996. Sigrist=SIGRIST 1993, 165-184. TBR=ARNAUD 1991. The other abbreviations follow the *AfO Abkürzungen Liste*, accessible online: http://orientalistik.univie.ac.at/fileadmin/documents/Abk%C3%BCrzungen_gesamt_ONLINE_Liste_1x.pdf; http://orientalistik.univie.ac.at/ fileadmin/documents/Abk%C3%BCrzungen_gesamt_ONLINE_Liste_2x.pdf (accessed 30.05.2013).

[1] For the history of Emar see in general essays collected in: CHAVALAS 1996; also ADAMTHWAITE 2001; more recently, see the proceedings of the Emar conference in Konstanz: D'ALFONSO – COHEN – SÜRENHAGEN 2008. For Hittite administration in Emar, see for instance ARNAUD 1987, 9-27; IMPARATI 1987, 187-207; BECKMAN, 1992, 41-49; BUNNENS 1989, 23-36; YAMADA 1998, 323-334. For the political system of the city and the role of the rulers and the diviners: FLEMING 2008, 207-217; DEMARE – LAFONT 2008; COHEN 2009.

amount of earlier (14th century) and later (12th century) documents, the latest thereof written probably in the 1180s B.C.[2]

Sale contracts are by far the most numerous legal texts originating from Emar; there are 179 real estate sales and 22 sales of persons. Just for the sake of comparison, the number of testaments, the second most abundant category, does not even reach a hundred. Those documents give us insight into the legal system of the city, making it possible to follow, at least partially, the development of civil law under the Hittite rule, and especially to observe the way law would adjust to the changing reality in order to meet new needs of the community it served.[3]

One of the most striking features of Emar sales, as well as of other legal texts, is the existence of two various scribal styles, in the scholarship referred to as "Syrian" and "Syro-Hittite".[4] Differences between them are both formal and material. The first and most obvious one is the shape of the tablet – in Syrian tablets, which are narrow and longish, the text runs parallel to their shorter side, whereas the Syro-Hittite ones, much wider and shorter, are inscribed parallel to the longer side. Other differences lie in the way of sealing and the location of seals,[5] in the paleography (similar to Old Babylonian in Syrian documents, reminding of Middle Babylonian in Syro-Hittite) and language (again, similar respectively to Old and Middle Babylonian). Last but not least, the content of the sale contracts of both styles differs significantly, and also changes with time. Therefore, before analyzing the content itself, a few words on the chronology of both scribal formats are necessary.

Since most of Emarite documents do not contain dates, it is very difficult to establish their chronology, either relative or absolute, and the scholarly discussion thereof is ongoing.[6] However, it is reasonably certain that the Syrian style is the older one, its first texts probably going back as far as the beginning of the 14th century (or even the end of the 15th), the last ones originating from the end of the 2nd dynasty of Emar rulers,[7] well before the fall of the

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[2] For the Akkadian texts from Emar in general see: DIETRICH 1990, 35-48. For the Hurrian and Hittite documents see LAROCHE 1982, 53-60.

[3] For a complete online edition of Emar texts see http://virgo.unive.it/emaronline/cgi-bin/index.cgi (last accessed 30.05.2013). For a presentation of the legal documents see LEEMANS 1988, 207-242; DÉMARE – LAFONT 2010, 43-85.

[4] See WILCKE 1992, 115-150; SEMINARA 1998, 1-27; DÉMARE – LAFONT 2010, *passim*.

[5] For the analysis of seals, see BEYER 1982, 62-63; BEYER 2001.

[6] See notably SKAIST 1998, 45-71; COHEN – D'ALFONSO 2008, 3-25; DI FILIPPO 2008, 45-64.

[7] Emar, the capital of a strategically important border province, was probably ruled by two consecutive dynasties. The first one, reigning before the Hittite conquest, was founded by Ir'ib-Ba'al. The second one, installed by the conquerors themselves, started with Iași-Dagan, and probably (the

city (which still existed, although not for long anymore, in the year 1185), i.e. from the end of the 13th century. In turn, the Syro-Hittite format emerged sometime during the 13th century, coexisting for a while with the Syrian one, and continuing after its disappearance, till the end of the archives due to the destruction of the town.

As the Syrian style was used for a longer time, its documents are much more numerous. There are 134 Syrian real estate sales and only 45 Syro-Hittite ones. Most of the Syrian texts date from the reigns of two 13th century kings – Pilsu-Dagan and Elli, and most of the Syro-Hittite ones – from the reign of Elli alone. Only 17 Syrian contracts, 14 of them featuring city authorities as sellers, are as old as the 14th century.[8] Furthermore, Syro-Hittite documents from the last period of the site, after the end of the ruling dynasty and direct power takeover by Hittite magistrates, are not at all in abundance; only 7 out of 45 may be with some certainty ascribed to this period.[9] On the other hand, all but one (i.e. 21) sales of persons are Syro-Hittite; however, they also come mostly from the time of Elli.[10]

Differences between the legal content of sale contracts of both styles are numerous and striking.[11] The first one is the apparent rigidness and inflexibility of the Syrian formulary, contrasting with the high variability of the Syro-Hittite one. It is well shown by the number of possible schemas (and variations thereof) of texts of both styles as well as of documents that might be called "atypical". In fact, there is just one main schema of Syrian real property sales,[12] with little diversity, mainly due to the number of objects sold and of

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sequence of rulers is not certain) went on with Ba'al-kabar, Abbānu, Pilsu-Dagan, Elli, Zū-Aštarti and Ba'al-kabar II. Afterwards the dynasty ended for unknown reasons, and during a troubled period that followed the control of the city was taken over by Hittite magistrates, the so-called "supervisors of the land", first Mutri-Tešub, then Ahī-malik. Finally, sometime in the first half of the 12th century, Emar fell victim to a wave of migrations, hunger and plague, that is to the same disaster that wiped out the Hittite empire and changed forever the political map of the whole Near East. For the order of rulers see among others: SKAIST 2005, 568-574; SKAIST 2005, 609-619; on the end of the city see COHEN – D'ALFONSO 2008, 3-25; DI FILIPPO 2008, 45-64.

8 AuOr 5 3, AuOr 5 4 (=ASJ 12 12), TBR 14; TBR 16, TBR 17, TBR 18, TBR 19, TBR 63, RE 91, ASJ 12 2, Emar 12, Emar 148, Emar 149, Emar 150, Emar 153, Emar 171, ASJ 12 14 (=AuOr 5 5). Sales by private persons are AuOr 5 4, Emar 171, TBR 63.

9 TBR 33, RE 12, RE 51, RE 68, ASJ 12 9, Emar 225, Sigrist 3.

10 Dalley 5.

11 For an analysis of sale documents see DI FILIPPO 2008a , 419-456; FIJAŁKOWSKA 2014.

12 1. Object of sale (situation, measurements). 2. Object belongs to PN. 3. From PN, owner (*bēlu*, litt. lord) of the object PN_2 for x shekels silver, full price bought the object. 4. The silver was received, his heart is satisfied. 5. Whoever claims the object, will pay 1000 shekels of silver to (institution), 1000 shekels of silver to (institution). 6. Clauses of the tablet (optional, see below). 7. Witnesses, scribe included.

transactions registered in one document. There are also two clearly atypical texts, written *ex latere venditoris* instead of *ex latere emptoris* like all the other ones.[13] On the other hand, among the three times less numerous Syro-Hittite texts at least 4 schemas with a lot of variation can be distinguished,[14] and, added to that, at least four very atypical documents exist.[15] Clearly, contrarily to the Syrian texts, very few elements were mandatory in a Syro-Hittite sale – probably only the names of the parties, the object of sale and its price, the verb for "buy" or "sell" and names of witnesses. Even the description of the object is left out in circa half of the texts.

Another important difference concerns the final clauses, and especially the ways of securing the irrevocability of the contract.[16] In Syrian texts, there is just one tool used to that end – a penal clause stating that if someone raises claims (*baqāru*) to the object of sale, they will pay 1000 shekel (in rare cases 100 or 500) mostly to either the city god Ninurta and the City each, to the City and the Palace, or to the Palace alone. In Syro-Hittite contracts the clauses are more numerous, and more varied too. The main formula used not only in sales, but in most types of legal documents simply states that "if someone/the parties/one of the parties raise claim, this tablet (the one on which the contract is written) will defeat (*le'û*) the claimant". It is beyond the scope of this paper to analyze the legal meaning of both clauses. However, two main points should be emphasized. First, the Syrian clause may be interpreted either as creating a contractual obligation for any claimant to pay a fine, or simply as stating the existence of such a legal obligation resulting from customary or statutory law. Be it as it may, it is clear that the Syrian philosophy of preventing claims weighs heavily towards severe financial penalties, in accordance with earlier, local legal tradition. Conversely, the Syro-Hittite formula does not mention

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For the meaning of the clause "His heart is satisfied" see WESTBROOK 1991, 219-224; for the "full price" clause: SKAIST 1995, 619-626.

[13] Emar 156, Emar 163.

[14] *Ex latere venditoris* with and without description of the object, *ex latere emptoris* with and without description of the object. The Syrian clauses "Silver was received" and "His heart is satisfied" are not used. The "full price" clause is used very inconsistently. The order of the clauses is generally as follows: 1. Object, with or without cadastral description 2. Operative section ("the object for x shekels silver PN sold to PN_2" or "the object for x shekels of silver PN_2 bought from PN") 3. Clause "Whoever claims, this tablet will defeat him" 4. Warranty against eviction/ redemption clause (see below) 5. Clauses of the tablet (see below) 6. Witnesses, sometimes including the scribe.

[15] The atypical texts include: RE 7 (sale of a *haba'u* building; the meaning of this term is unknown as yet), Emar 225 (a sale between two brothers, who sell to each other their inheritance parts), Westenholz 12 (redemption of a mortgaged property by the brother of the debtor), ASJ 12 5 (=AuOr 5 8, sale of a kiln).

[16] For the law of Emar, including the law of sale, see LEEMANS 1992, 3-33; WESTBROOK 2003, 657-691.

punishment at all, and its character is obviously declaratory, pointing to the tablet as means of proof in case of litigation. As it seems, this was not always deemed sufficient, and some documents contain a warranty against eviction, obligating the seller to answer any claim arising in future (i.e. to substitute for the buyer in the trial) and, in case of successful eviction, to pay twice the price of the object of sale as damages.[17]

Moreover, some Syro-Hittite sales are not irrevocable at all, since they contain a redemption clause, allowing either family members of the seller, or simply "anybody", to pay twice the price of the real estate and take it back; no time limit is ever set. The same goes for slave sales, although there the redemption price varies from 1 to nearly 3 times the price of the object sold.[18]

Another feature of the Syro-Hittite sales, as well as of the whole Syro-Hittite style, is the importance seemingly attached to the role of the tablet. One proof thereof is the widespread use of the aforementioned clause "the tablet will defeat him", ubiquitous in all kinds of contracts. Another one may be a double clause concerning the transmission of the tablet – "the old/whole tablet of the object of sale is in the basket of its owner/is lost. If it turns up, this tablet will defeat it/it will be broken". One of these clauses may be found in 8 Syro-Hittite texts (17%)[19] and both – in 7 (15%). The numbers for Syrian texts are, respectively, 1 for the first formula alone,[20] 9 for the second (6%)[21] and 3 texts for both together (2%).[22]

The data resumed above seem to suggest, at first sight at least, that under the Hittite rule, two scribal formats mirroring two sets of rules of customary law were in use. The Syrian style, older and deeply anchored in the local legal tradition, inflexible or even "fossilized" in a way, did not respond anymore to the needs of the developing society. Therefore another set of customary rules, and hence another scribal style emerged, the so-called Syro-Hittite one, much more flexible and easier to adjust to the needs of a concrete transaction. How-

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17 For instance real property sales ASJ 12 9, ASJ 12 11, AuOr 5 9, TBR 20, and sales of persons such as Emar 83, Emar 84.

18 For instance real property sales TBR 33, TBR 68; sales of persons ASJ 13 18 (sale of wife, the redemption price is "one pretty woman"; Emar 217 (sale of four children, redemption price: "four souls").

19 First clause: RE 11, TBR 24, TBR 38, ASJ 12 13, Emar 90; second clause: TBR 24, TBR 33, ASJ 12 9; both together: Emar 76, Emar 85, Emar 206, Emar 207, ASJ 12 11, AuOr 5 9, TBR 37 (only real property sales are taken into account, although the clause may be found also for instance in a document concerning debts).

20 AuOr 5 5(=ASJ 12 14; again, only real property sales are included).

21 Emar 137, Emar 141, Emar 158, TBR 10, TBR 62, RE 9, Westenholz 5 et 6, ASJ 12 7.

22 TBR 55, TBR 57, RE 3.

ever, a closer analysis of the textual material shows that such a picture would be too simplified.

First of all, the Syrian style certainly does seem rigid when compared to the Syro-Hittite one, but it is neither inflexible nor "fossilized". All the clauses are standardized only to a certain degree and could be rephrased if necessary. The penal clause is a case in point. Not only may the fine have various beneficiaries, established according to rules so far unknown (but for the fact that if city authorities are sellers, they also receive the fine, and that the so called "Brothers",[23] a rather shadowy group of highly respected citizens, appear as fine beneficiaries rarely and only in transactions between private individuals), but those beneficiaries also change with time. The Palace, a new and important recipient of the fine turns up (in transactions between private persons or the ones with a member of royal family as a party) only as late as the times of king Pilsu-Dagan. This development has been interpreted by D. Fleming as a sign of growing royal power and of weakening of the collective municipal authorities.[24] In any case, if the penal clause was really only a "fossilized" relic of the past, there would be no need at all to change its phrasing.

Similarly, the "clause of the broken tablet" ("if another tablet turns up, it will be broken") is mostly formulated with no variation whatsoever, but in two cases, where obviously the parties deeply distrusted each other, a tablet turning up "in the basket (i.e. in hands) of the sellers", named by names, is specifically mentioned.[25] It seems therefore valid to suggest that the Syrian style was not as rigid as it seems to be, and that also the Syrian scribes tried to adjust to the changing reality while keeping up the main features of the local tradition.[26]

An important question to ask would be how the Syro-Hittite style, and especially the customary law of sale it reflects were created. Of course, one can only speculate, but it is interesting to notice that each particular clause of the Syro-Hittite sales has a predecessor in the local legal tradition. Thus, the description of the property sold, mostly identical to the one in Syrian documents, is closest (in fact, mostly identical) to the formulary of Middle Baby-

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[23] See BELLOTTO 1995, 210-228; DÉMARE – LAFONT 2012, 129-142.

[24] FLEMING 1992, passim.

[25] TBR 62, Emar 158. In other words, the buyers suspected that the sellers might one day produce an old tablet, using it as a title deed in order to unlawfully claim ownership of the object sold; hence the need to specifically mention this possibility in the written contract.

[26] On the changes in the content of the tablets due to the transition of power see FIJAŁKOWSKA 2012, 543-550.

lonian texts from Terqa on the Middle Euphrates.[27] The operative section[28] was probably taken from the Syrian style and often cut short; perhaps the scribes did not understand the full meaning of all its clauses.[29] As for the final formulae, the warranty against eviction is known from Old Babylonian and Middle Babylonian texts, but also from Old Assyrian documents from Kanesh and, more importantly, from the Syrian town of Alalakh. The redemption clause can be found in Alalakh as well, and the clause "this tablet will defeat the claimant" obviously originates from Ugarit, where it appears mainly in trial protocols. To sum up, it would seem that what is called the Syro-Hittite scribal (and legal) tradition is in fact a mix of local tradition and foreign (but never from too far away) borrowings, ingeniously put together in order to create a new set of legal rules, responding to the needs of the changing society and of the legal turnover.[30]

Now, another problem is why this new set of rules and hence a new formulary had to emerge. Why not simply further adjust the Syrian style? To find the answer, it is necessary to analyze the sale documents of both styles with respect to the parties involved and to the objects sold.

As far as the former are concerned, two things become immediately obvious. First, only the Syrian texts feature the city authorities as sellers (described as "Ninurta and the Elders of Emar"). Second, members of Emarite royal families appear exclusively in the texts of this format, either as sellers (kings or crown princes), or as buyers (other royals, especially Pilsu-Dagan's brother Iṣṣur-Dagan), and finally also as witnesses (the king with or without the crown prince and other royals).[31] On the other hand, the new elite, connected with the Hittite rulers, seem to have taken a liking to the other style, as proven by numerous Syro-Hittite documents featuring the diviner Zu-Ba'la, a powerful man protected by the Great King himself,[32] and his male progeny. Prosopography also shows that usually people who were parties to contracts of one

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[27] For Terqa see PODANY 2002, esp. 155-170.

[28] Part of the document registering the act of relinquishment of rights by the seller and of paying the price by the buyer. In Syrian texts usually: „Buyer from seller the object for x silver, full price, bought. The silver was received. His heart is satisfied".

[29] This might be suggested by the way they used the clause of the "full price" ("For x shekel of silver, full price, he bought it") nearly always present in the second part of the operative section of Syrian sales. In Syro-Hittite documents, its use seems erratic to say the least. As many as 10 real estates sales are devoid of it, and the same goes for most slave sales. Moreover, the decision whether to use it or not seems to have been an arbitral choice of the scribe, with no legal significance.

[30] On the origins of the operative section of both styles see SKAIST 2008, 219-229.

[31] For a detailed analysis of this phenomenon, see DÉMARE – LAFONT 2008, *passim*.

[32] To whom he successfully appealed after being unjustly (in his opinion) burdened with a tax he did not wish to pay. See SINGER 2000, 65-71.

style did not participate in contracts drafted according to the other one, nor were they witnesses thereto, although they are sometimes enumerated among neighbors of the sold property.

From the above it becomes clear that on the one hand there was some connection between political allegiance and the preferred type of sale contract and that on the other hand people preferring one style apparently did not mix much with their fellow citizens who chose to use the other one. Still, the reasons for such situation remain to be elucidated.

As for objects of sale, the first difference has been already stated – with one exception, all sales of persons are Syro-Hittite, and so are all contracts of personal antichresis (*amelūtu*).[33] But there are also discrepancies in the proportions, if not the types, of immovables. The most popular kind of real estate sold by private persons in the Syrian texts are houses (25, i.e. 35%) and fields (19, i.e. 27%), then *kirṣitu* buildings (14, 20%; probably a kind of ruined or old house[34]). By contrast, Syro-Hittite sale contracts feature mostly houses (18, 35%), then come the *kirṣitu* (12, 23%) and only 6 fields (11%).

Moreover, significant differences may be observed in the cadastral descriptions of houses in documents of both styles. In Syrian texts, houses are often irregularly shaped (10 out of 40, i.e. 25%), whereas there is just one example of such house in the Syro-Hittite ones.[35] This corresponds well with archeological finds, according to which there were two types of houses in Emar – rectangle- and trapezium-shaped, the particular shape being chosen according to the terrain configuration.[36]

Another interesting "geographical" point is connected with the location of *kirṣitu* buildings. In the Syro-Hittite texts, out of 8 buildings whose situation is described, 7 give on a road (kaskal); out of this number, 5 roads are named with theophoric names. On the other hand, *kirṣitus* in Syrian contracts mostly face *huhinnu* passages; only 3 front a kaskal road, and only one of those roads bears a divine name. Therefore, it might be supposed that adherents of both styles lived, at least partly, in different districts of the city.

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[33] Contracts whereby the debtor (often together with his family) entered the service of the creditor, who cancelled his debt in exchange. The minimum service period was life (of the debtor or of the creditor). Such a contract could be advantageous for both sides: the creditor acquired servants, and the debtor had at least his survival assured (since he lived at the creditor's home), while keeping the status of free citizen. See SKAIST 2001, 237-250.

[34] The term is not clear and the discussion thereof – still ongoing. See for instance MAYER 1989, 269-270; HUEHNERGARD 1991, 2, n. 58, 39; ZACCAGNINI 1992, 42-48; SEMINARA 1995, 468-480; MORI 2003, 48-53; PENTIUC 2001, 99-102; FAIST 2006, 471-477.

[35] RE 55, a confirmation of ownership rights.

[36] See MARGUERON 1976, 193-232; MCCLELLAN 1997, 29-59.

On the basis of the material presented above, it seems reasonable to assume that the two styles were used by different groups of Emar population. Since the royal family and the city authorities obviously chose the Syrian tradition, the same might have been true for the local aristocracy. This would also explain why there are no Syrian sales into slavery – those people simply did not need to resort to such drastic means in order to survive. The same explication would be valid for the small number of Syrian real estate sales caused by indebtedness and a much larger amount of the Syro-Hittite ones brought about by the same reason.

On the other hand, the meager quantity of fields sold in Syro-Hittite texts could be interpreted as the result of the Syro-Hittite style being used either by people too poor to own fields, or by "nouveaux riches" whose main areas of activity did not lie in agriculture, but for instance in slave trade (most buyers in sales into slavery belong to a few rich families) or divination and teaching, as it was the case of the Zu-Ba'la family. This would also correspond well with the hypothesis of S. Démare-Lafont, that the "Brothers" appearing as witnesses in Syrian sales and testaments were in fact rich real estate owners, guarding, and by the same token limiting, the possibility to join their privileged circle. Therefore, the Syrian style would be open mostly, or even exclusively to them and their families, whereas the Syro-Hittite format would be the one of the "ordinary people".[37] As mentioned above, political allegiance also might have played a role in the development of the latter format, perhaps even created with the cooperation of foreign scribes coming to Emar with Hittite magistrates and their entourage.

To conclude, it can be said that Late Bronze Age Emar is a very good example of how political environment provoked and influenced changes in the legal system without forcing them. The Hittites did not intervene in civil law, but their mere presence and social transformations that followed (for instance emerging of new privileged groups or pauperization due to wars and duress) were sufficient for such changes to occur. Not only did it force the existent customary law to adjust, it also inspired the creation of a whole new set of customary rules, parallel to those already in use.

[37] Démare – Lafont 2012, *passim*.

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Public Registers of Land Sales in Ancient Greece*

RACHEL ZELNICK-ABRAMOVITZ

This paper examines inscriptions that record land sales, aiming to find out whether and how they can teach us the extent to which the polis intervened in private transactions or even instigated them, and under what circumstances. Studying inscribed records of transactions in real estate contributes to our knowledge of the development of practices of recording and publishing contracts. But examining the evidence of state intervention as it emerges from such records may also contribute to our understanding of the ancient Greeks' definition of 'public' and 'private' and of the process leading to the crystallization of these concepts. Of course, definitions of public and private spaces and spheres of activity were not monolithic. They changed over time and may have differed from one polis to another. However, I hope to show that in respect of land sales, public intervention in the private sphere increased over time in several places, so that sharper lines were drawn between these spaces in the process.

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The terms *idios* and *koinos* are generally considered to correspond to 'private' and 'public' respectively, but modern concepts of public and private are not equivalent to these terms, both of which may contain elements alluding to individuals and to community.[1] Still, the opposition between private and public can be detected already in Homer.[2] Another word that served to describe what belongs to the community, as against the private, was *dēmosios*. The latter usually described specific items, such as property, finances or buildings (whereas *koinon* seems to have been a more general term for the community itself), and according to Alain Fouchard it best translates the notion 'public'.[3] More important to the subject of this paper is Fouchard's observation that the adjective *dēmosios* was also applied to public territory on which it was not permitted to encroach.[4] He suggests that *dēmosios* was first applied to whoever administered the *dēmos* as an entity, in the first place to the management of the 'common' lands – lands not yet distributed.[5] Similarly, David Lewis observes that in Athens there were areas which had been in the public domain for so long that no question of private property could arise: the Agora, the Kerameikos, and the Pnyx (all delimited by boundary-markers, *horoi*).[6]

According to Aristotle (*Pol*. 1267b 33ff.), Hippodamos of Miletos suggested that the territory of the polis be divided into three categories: sacred (*hiera*), public (*dēmosia*) and private (*idia*). The question of the relation between public and sacred land and of their possible opposition has been much discussed by scholars. Recently Nikolaos Papazarkadas has argued that the polis of Athens held no property that could be termed 'public' other than sacred property, but that the demes (in contrast to the polis itself and the tribes) held lands as their common public properties (in addition to managing sacred lands).[7] Papazarkadas claims that 'public realty did exist in Classical Athens, but it did not fall under the category of arable revenue-generating estates.

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1 See DESCAT 1998.

2 CASEVITZ 1998, 41-5, assembles and analyzes the occurrences of *idios* and its derivatives down to the fifth century B.C. He argues that in Homer *idion* means the individual as belonging to a group, and that originally the 'private' was the 'particular', the smallest communal unit of the public.

3 FOUCHARD 1998, 59-60. Fouchard bases his conclusions on the examination of some 600 occurrences of *dēmosios* in the literature, down to Aristotle, and in epigraphic collections.

4 See Ps.-Xen. *Ath. Pol*. 3.4; *Ath. Pol*. 52.1; Arist. *Rhet*. 1374a5; *Syll*.[3] 279; 936; 938; 1009.

5 FOUCHARD 1998, 60.

6 Other possible sites were the various gymnasia; LEWIS 1990, 245-63, esp. 249.

7 PAPAZARKADAS 2011.

Rather it consisted of landed zones in mainly marginal areas, used, if at all, for the common benefit of members of the political community.'[8]

Whether these arguments are sound or whether the polis had its own 'public' lands from which it derived its public (*dēmosion*) income, private assets were undoubtedly distinguished from other categories – legally, if not always in practice.[9] But already in the early sixth century B.C. the state intervened in the private sphere by enacting laws pertaining to private lands.

According to Plutarch (*Sol*. 21.2-3), until Solon an Athenian could not bequeath his land even if he was childless; by permitting the citizens to make wills, Solon καὶ τὰ χρήματα κτήματα τῶν ἐχόντων ἐποίησεν ('made a man's possessions his own property'). On the other hand, Solon restricted this right to those who were not under the influence of sickness or drugs or imprisonment, or under compulsion or yielded to the persuasions of their wives.

Likewise, Lykourgos the Spartan lawgiver prohibited the sale of a family's estate, but allowed those who wished to give away their estate by gift or bequest (Aristotle, *Pol*. 2, 1270a 19-21); and at Locri a man could sell his land only if he could prove that a misfortune had befallen him (Aristotle, *Pol*. 2, 1266b 20). Other legislators limited the amount of land sold or leased (Arist. *Pol*. 2, 1266b 5-7; 6, 1319a 7-13).

Evidence also seems to imply that in several poleis sales and leases of land were registered in the local public archives, at least from the fourth century B.C. Usually this move was initiated by the parties to the transaction, seeking to protect their rights; but sometimes registration was also a legal requirement. Fragment 21 of Theophrastos' *Nomoi* (written towards the middle of the fourth century B.C.) is often cited as proof. Concerning Athens, however, Theophrastos mentions only the *prographē*, the registration of the transaction *before* its implementation: the sales were registered with the magistrate no fewer than sixty days in advance and the purchaser had to deposit one percent of the property's price (ἑκατοστή).[10] Outside Athens, he says, a law requiring

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[8] Ibid. 235-6. Papazarkadas also argues that the supervision of these outlying areas was left to the demes, but the latter functioned merely as agents and had no rights of possession over these lands; their own landed properties constituted a different sub-category. The *Rationes Centesimarum*, he argues, were 'the only recorded effort by Athens to make some profit out of her non-sacred landed resources. Paradoxically, the principle of privatization meant that the project could never again be repeated.' On the *Rationes Centesimarum* see below.

[9] See the three categories 'sacred', 'public' and 'private' (εἴτε ἱερὸν εἴτε δαμόσιον εἴτε ἴδιον) in *IG* V,2 6, line 39, in Tegea (fourth century B.C.), and the contracts made by the polis of Arkesine with individuals who lent it money, mortgaging the common as well as the private property (τὰ κοινὰ καὶ τὰ ἴδια): *IG* XII,7 66, 67 A and B, 68, 69, 70 (cf. MIGEOTTE 1984, nos. 49-54; GABRIELSEN 2008, 128-30).

[10] Theophrastos, *Nomoi*, Fr. 21.1 (Szegedy-Maszak): ἔνιοι δὲ προγράφειν παρὰ τῇ ἀρχῇ πρὸ

the parties to realty transactions to swear upon a sacrifice as a precondition to registration (ἐγγράφειν) existed among the Aineans (21.3).[11] Philosophers too may reflect existing practices. Thus Plato (*Laws* 5, 745a) prescribes that every man's property that is over and above his allotment should be openly written down (ἐν τῷ φανερῷ γεγράφθω) and be kept by the magistrates appointed by law;[12] Aristotle (*Pol*. 6, 1321b 34-35) recommends the appointment of magistrates to write down private contracts and verdicts of law (ἑτέρα δ᾽ ἀρχὴ πρὸς ἣν ἀναγράφεσθαι δεῖ τά τε ἴδια συμβόλαια καὶ τὰς κρίσεις τὰς ἐκ τῶν δικαστηρίων).[13]

Registration of land sales in Ptolemaic and Roman Egypt, the *katagraphē*, was required by law in order to render the transfer of title valid (see *P.Hal*. 1, ll. 242-59; *P.Adler* 13).[14] In his Rhodian oration, Dio Chrysostomos mentions as a matter of fact the registration in the city's records of purchases of land, boats or slaves, alongside loans, manumissions of slaves and gifts (31.51). Yet as Moses Finley noted, although the state had an interest in public records and public knowledge of the legal and economic position of the land, public record-keeping was 'generally spasmodic, impermanent, and unreliable'.[15]

Sometimes, the parties to transactions in real estate decided to inscribe the deeds on stone or metal. Examples of such private advertisements come from different parts of the Greek world. The fourth-century B.C. *horoi* in Athens and places under her influence certified that a certain piece of property had been mortgaged, for example, *IG* II² 2658 (ca. 350-300 B.C.): ὅρος χω/ρίο πεπρ/αμένο ἐπ/ὶ λύσει πα/ιδὶ Καλλις/τράτο ⁝Η – ('boundary marker of land sold upon redemption to Kallistratos' son for the price of ---'). Unlike the Egyptian *katagraphē*, which could be carried about, the *horoi* were fixed in the ground and were meant to make public the transactions indicated by them.[16]

Other examples are the lead tablets from Sicily, which record individual transactions and date to between the fourth and the first century B.C. For ex-

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ἡμέρων μὴ ἔλαττον ἢ ἑξήκοντα, καθάπερ Ἀθήνησι.

[11] Theophrastos also mentions other poleis' legislation that does not involve actual registration but makes sure that the sale is publicized and the ownership guaranteed. Thus at Cyzicus the sale had to be announced many times for five days (21.1); see also on Thurii (21.2). For a discussion of Theophrastos' *Nomoi* see also FARAGUNA 2000, 71-4.

[12] Cf. 754d, 850a, 855b, 914c.

[13] For a thorough discussion of Plato and Aristotle on land sales registration see FARAGUNA 2000, 65-71. See also FARAGUNA 2005.

[14] See WOLFF 1948; FARAGUNA 2000, 75-82. See also YIFTACH-FIRANKO 2014.

[15] FINLEY 1985, 13-14. For other testimonies to registration of lands and sales see FARAGUNA 2000, 82-7.

[16] On the Attic *horoi* see FINE 1951; FINLEY 1985.

ample, *SEG* 34,940 from Kamarina (= ed. pr. F. Cordano, *BA* 26, 1984, 34-41; Dubois 1989, 131-5, no. 124), dated to the third or second century B.C., reads:[17]

> [ἐπὶ — — —], Ἡραίου ἕκ[ται ἱστα]μένου, συ[ν]αλλακτήρων π[ρ]οστάτας / Δίνα[ρχος] Κλεάνδρου. Σω[σί]στρατ[ο]ς Θέων[ο]ς νή(τα) πρ(ῶτα) ἐπρίατο οἴκησιν καὶ / τὰ<ν> καπήλειαν τὰν Δίων[ος] πᾶσαν καὶ τὰ θυρώματα, τοίχους κοινοὺς / ποτὶ Φιλόξενον καὶ Θράσυλλον, λαύρα [ὑ]πὲρ Γάου κα Φ[ε]ρσσ{σ} οφάσας, / πὰρ Δίωνος τοῦ Ἡρακλείδα τέ(τρατα) πρ(ῶτα) τετρώκοντα ταλάντων· ἄμποχοι· / Ἀρίστων Ἐμμενίδα νή(τα) πρ(ῶτα), Φίλιππος Παυσανία νή(τα) πρῶτα, / Ἀρταμίδωρος Ἡρακλεί[δ]α τέ(τρατα) πρ(ῶτα), Παυσανίας Σωσικράτεος νή(τα) πρ(ῶτα), / Ἡράκλειος Νίκωνος τρ(ίτα) πρῶ(τα), Σάννω[ν] Ζωπύρου τέτρα(τα) πρώ(τα), / Σῖμος Γελωίου νήτ(α) πρ(ῶτα), Νίκων Εὐθυμένεος ἕκτ(α) πρῶτ(α), / δφ΄. / Θεύδω[ρ]ος Δάμωνος ἕκ(τα) πρ(ῶτα), Γέλων Καλλιστράτου ἕκτ(α) πρῶ(τα).
>
> [In the year of…], on the sixth day of the month of Heraion, when Dinarchos son of Kleandros was the president of those responsible for drawing the contracts: Sosistratos son of Theon, of the last phratry, first tribe, bought the house and the shop of Dion, in entirety with the planks, its walls adjacent to those of Philoxenos and Thrasyllos, the street above (the sanctuary) of Gaos and of Pherssophasa, from Dion son of Herakleidas, of the fourth phratry, first tribe, for the price of forty talents. Guarantors: [here follows a list of names].

Cordano understood the συναλλακτήρων προστάτας mentioned in line 1 as a magistrate in charge of drawing up contracts. It has been suggested that this person was rather an official who acted as the president of a *collegium* responsible for drafting contracts.[18] If this interpretation is correct, it might indicate the existence in Kamarina of an institution similar to the Egyptian *katagraphē*. In any case, only one other document from Kamarina, dated to the second/first century B.C., seems to refer to the same official.[19] The letters δφ΄ in line 10 have also been subject to several interpretations.[20] But whatever the correct interpretation, Faraguna rightly stresses that these elements in the inscription indicate the active intervention of magistrates in the drafting and keeping of contracts, akin to the *astynomoi* in Tenos (on which see below).[21]

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[17] For the whole corpus of lead tablets from Kamarina see CORDANO 1992 (*SEG* 41,778-795), who argues that these tablets served as allotment plates during elections of magistrates. See also DUBOIS 1989, 131-5, no. 124, and cf. GAME 2008, 151-3, no. 79.

[18] DUBOIS 1989, 131-5, no. 124: 'il est vraisemblable que le nom d'argent en -τήρ désigne un collège, présidé par un προστάτας chargé de veiller à la légalité des actes entre particuliers et, sans doute, de rédiger ces contrats' (p. 133). FARAGUNA 2000, 92-99 (apparently unaware of Dubois' suggestion), postulates a similar view and compares this office to the *astynomoi* of Tenos (see below). For a summary of the interpretations offered see GAME 2008, 152.

[19] *SEG* 39,1001 (ed. pr. G. MANGANARO, *PP* 44, 1989, 196-9 = GAME 2008, 153-4, no. 80), line 1-2: προστάτας Παυσανίας / [Φιλιστίω(?)]νος.

[20] See FARAGUNA 2000, 96; GAME 2008, 152.

[21] FARAGUNA 2000, 96.

The inscribed records from Olynthos are private documents as well. One example is *TAPA* 69 (1938), 47-50, no. 3 (ca. 375-350 BC):

> θεός. οὐνὴ εὐθε]ῖα· ἐπὶ / [Ἀριστοβούλου] Καλλι/κράτ̣ε̣ος [ἱερέω]ς· μεὶς / Ταργηλιών. Ζωΐλ[ο]ς / Φιλοκράτεος πα[ρ]ὰ / Διοπείθεος τοῦ Ἀ[ν]/τιπάτρου τὴν [οἰ]κίην / τὴν ἐχομένην [τ]ῆς / [Δ]ιοκλέος τοῦ [Χάρω]/[ν]ος οἰκίης καὶ τῆ[ς] / τῶν Ἀπολλοδώ[ρ]ου / πα<ί>δων {[8]1200 dr.}[8]· βεβαι[ω]/τὴς Πολεμάρχη[ς Σ]/[τ]ράτωνος· μάρτυ/ρες Διοκλῆς Χάρω/νος, Εὐξίθεος Ξαν/θίππου, Φίλων Θεο/δότου.
>
> God. A straight purchase.[22] When Aristoboulos son of Kallikrates was the priest. In the month of Targelion. Zoïlos son of Philokrates (bought) from Diopeithes son of Antipatros the house adjoining the house of Diokles son of Charon and that of the children of Apollodoros, for 1,200 drachmas. Guarantor: Polemarches son of Straton; witnesses: Diokles son of Charon, Euxitheos son of Xantippos, Philon son of Theodotos.[23]

Although Zoïlos, the purchaser, and Diopeithes, the vendor, made sure that their transaction be valid by dating it, specifying the location of the property sold, using a guarantor and witnesses, and giving it publication, this is still a private document. And we do not even see evidence for the intervention of magistrates (as was the case in the inscription from Kamarina cited above). The inscriptions from Amphipolis, on the other hand, show state intervention, although the documents are still private initiatives. Thus *SEG* 41,556 = Hatzopoulos, *Meletemata* 14, 1991, 19, no. 2 (ca. 357/6 B.C.):

> ἐπρίατο Λυκόφρων *νν* / παρὰ Μενάν{ν}δρ{ρ}ου οἰκία/ν δραχμῶν διακοσίων *νν* / ὀγδοήκοντα, ἧι γείτων / Κάσων καὶ Δρουβις καὶ Νί/κανδρος, ἐπὶ ἐπιστάτου / Σπ<ά>ργεως· βεβαιωτὴς / Ἀγλαΐ{αι}νος · μά<ρ>τυρες Πολύ/βουλος, Ποίανθος, *νννν* / Ἄρχιππος· *ν* τὰ δὲ τέ/λη οἴσει ὁ πριάμεν/ος ἅπαντα καὶ εἴ τ/ι ἄλλο ὑπὲρ τῆς οἰ- *νν*/κίας. *rasura*.
>
> Lykophron bought from Menandros, for 280 drachmas, a house whose neighbours are Kason, Droubis and Nikandros, when Sparges was the *epistatēs*. Guarantor: Aglaïnos. Witnesses: Polyboulos, Poianthos, Archippos. The purchaser will pay all the taxes and anything else concerning the house.

It is remarkable that the document from Amphipolis mentions taxes (*telē*, lines 10-11) paid by the purchaser. This means that at least in the year of the epon-

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[22] HATZOPOULOS 1988, 24, argues that this expression meant that the purchase immediately resulted in acquisition of ownership ('achat direct'), whereas the phrase οὐνὴ κάτοχος (as in e.g. *SEG* 38,671 from Stolos) which was a definitive purchase without the possibility of repurchase ('achat ferme'). See, however, THÜR 2008, 180-4, who contends that οὐνὴ εὐθεῖα means a sale which 'does not face objection from any third party', whereas οὐνὴ κάτοχος is a purchase that is bound or blocked by protest.

[23] On the inscriptions from Olynthos see also FARAGUNA 2000, 99-108.

ymous *epistatēs* Sparges, the polis of Amphipolis intervened in the private sphere of economic activity by taxing transactions of immovable properties, as was the case in Egypt and in Attica.[24] Hatzopoulos believes that a similar tax system existed in Kellion in Chalcidike, where other inscribed deeds of land sale were found.[25] Faraguna too argues that despite its being attested in only two inscriptions from Amphipolis (a fact he ascribes to the documents being extracts from the original documents), such a tax was the general rule there, and that it was exacted for the public registration of the acts.[26]

The above examples show that some people in the fourth and third (or second) centuries B.C. decided to publicize their transactions in real estate on stone, probably in addition to their registration in local archives.[27] The dating of the inscriptions by eponymous magistrates, the involvement of special magistrates, such as the συναλλακτήρων προστάτας in Kamarina, and the mention of taxes in Amphipolis and Chalkidike attest – where such constituents are found – to the intervention of the state in private economic activity and its control of real estate transactions.[28] In this respect, these inscriptions support what we know from the literary texts discussed above. Still, the publication of these transactions was not a state enterprise and nothing implies that it was dictated by the state.

Although the time of the first inscribed transactions roughly corresponds to that of Aristotle's and Theophratos' prescriptive and descriptive evidence, there is a difference between registering an act on papyrus or a wooden tablet and depositing it in a local archive and inscribing it on imperishable material which is set up in a public place. As far as I know, there is no evidence of any legislation in the various poleis that required the inscription of land transactions on stone, in addition to or instead of registration before a magistrate and deposition of the documents in the local archives. A logical explanation for the decision of parties to transactions in real estate to use inscriptions is the wish for wider and permanent publication as a guarantee of their preservation

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[24] Another document from Amphipolis, dated to the same year (*SEG* 41,557 = no. 3 in Hatzopoulos 1991), specifically mentions this tax (line 14); Hatzopoulos suggests that in nos. 6 and 9 (*SEG* 41,560 and 41,563 respectively) the quoted prices of the sold properties may have included taxes. He also argues that the rates of the tax were 20 dr. for prices lower than 500 dr., and 30 dr. for prices higher than this.

[25] See HATZOPOULOS 1988, 31-3, no. 4 from Kellion (identified by the author with Stolos), where a house is sold for 238 dr.; Hatzopoulos suggests that the real price of the house was 200 dr., to which were added a sale price (ἐπώνιον) of thirty dr. and a surtax (κηρύκειον) of two dr.

[26] FARAGUNA 2000, 105-6.

[27] FARAGUNA 2000, 106-7, concludes that these inscriptions do not reproduce the content of contracts, which could be deposited with a third person, but that of the record made before the magistrate. See also THÜR 2008, 176-7; GAME 2008, 172.

[28] Cf. FARAGUNA 2000, 115.

or, if the property was given as security for a loan (as attested in the Attic *horoi* or in some of the inscriptions from Olynthos – see below), to warn potential purchasers or lenders that the property was encumbered.[29] Concerning the inscriptions from Olynthos, Lisa Nevett has also suggested that advertising these transactions increased the purchasers' personal prestige.[30] Others propose that the uncertainties connected with the expansion of Macedon could have motivated the citizens of neighbouring cities or confederacies to inscribe the acts, so that proofs of the private contracts would remain intact after an eventual conflict.[31] But as Game comments, one may ask why they kept on inscribing acts when the situation became more stable, as is the case in Amphipolis.[32] Still, political events may have induced people to give a more public and endurable form to the document recording their contract.

Another question, related to that of motivation, is whether these inscriptions, most of them found in situ, in the houses or fields to which they referred, record real sales or lands put as securities for loans (πρᾶσις ἐπὶ λύσει).[33] However, since my concern is with the publication of the documents, not the nature of the transaction, I do not intend to discuss this issue here.

But how should we interpret long inscriptions listing numerous transactions, sometimes mentioning taxes, and undoubtedly done within the framework of legal restrictions and registration practices pertaining to the relevant poleis? Should we see them as identical in purpose and motivation to the documents discussed above?

In a short while I shall discuss several documents of such character from different parts of the Greek world. My working assumption is that unlike the individual documents discussed above, inscriptions recording *numerous* real estate transactions were inscribed by a state decision because of special circumstances. To make my case clearer, let us examine first an inscription that belongs to the group of individual, private acts from Olynthos, an example of which was discussed above; but this one mentions the polis of Olynthos as a vendor in a real estate transaction. *TAPA* 69 (1938) 52, 6 (400-348 B.C.) reads:

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[29] See GAME 2008, 171-2; NEVETT 2000, 334.

[30] NEVETT 2000, 334, 341. But see THÜR 2008, 177.

[31] HATZOPOULOS 1988, 72-7, and DOUKELLIS 1988, 156, argue that this situation is reflected in the low prices of the properties. See also FARAGUNA 2000, 107-8.

[32] GAME 2008, 172.

[33] See FARAGUNA 2000, 103, who argues that unless the inscription explicitly mentions security it records real sale. For a detailed discussion of the documents recording securities see THÜR 2008, 176-84.

θεός. τύχη ἀγαθή. ὠνὴ / εὐθεῖα· μηνὸς Πανθεῶ/ νος ἐπὶ Κλεάνδρο Σ̣ώσω/ νος ἱερέως, Στρ̣ήν[ιος] Ἀσπία / παρὰ Φειδίππο τῶ Φείδ/ωνος τὴν οἰκίαν ἣν ἐπρ/ίατο Φείδιππος παρὰ τῆς / πόλεως τῆς Ὀλυνθίων / τὴν ἐχομένην τῆς Τηλ/εκλέως τετράκις χιλίων / πεντακοσίων· βεβαιωτα[ὶ] / Ἡρόδωρος Ἡροδώρο, Ἀθη/νόδωρος Ἀριστοδήμο, Στ/ρήνιος [(*patronymic*)]· μάρτυρες...

God. Good Fortune. A straight purchase. In the month of Pantheon, when Kleandros son of Soson was the priest, Strenios son of Aspias (bought) from Pheidippos son of Pheidon the house which Pheidippos had bought from the polis of the Olynthians, adjoining that of Telekles, for the price of 4,500 (drachmas). Guarantors: [names]. Witnesses: [names].

It has been suggested that the earlier sale by the polis of the house to Pheidippos, the vendor in this document, may have been the auction of a confiscated property.[34] If this property was one item in a list of confiscated properties auctioned by the polis, which is a reasonable guess, the polis might also have decided to engrave on a stele an inventory of the confiscated properties, with the names of the former owners and the names of purchasers, as well as the proceeds from this auction – the sort of publication we see, for example, in the Attic Stelai (*IG* I^3 421-430).[35] But no such inscribed inventory for Olynthos has been found, and what we have here is only an allusion to a state transaction within a private document.

Another case which seems to teeter between the categories of private and state publication is a somewhat unique inscription found in Mieza in Macedon: *SEG* 53,613 (ed. pr. E. Stefane, *AE*, 2003 [2005], 155-196; ca. 250-225 B.C.).[36] Here I quote from col. I (fragments A and B), lines 1-18:

A [Ζώπυρος Γοργία ἐπρίατο παρὰ- -πλέ]-
[θρ]α̣[:] Ρ̣Ο̣Θ : ἀκαίνας : ΟΕ : τὸ[ν περὶ Δροιέστα]ς, τὸ πλέθρον δραχμῶ(ν)
: Ο : τὴν τιμὴν ἔχει πᾶσαν· [βεβαιωτ]αὶ Ἔ{Σ}κτωρ Μαννία Σκυδραῖ-
ος, Ἀττίνας Ἀνδρόνικου Νε[απολίτ]ης · ἡ ὠνὴ ἐγένετο μηνός
4 Περιτίου, ἐπὶ ἐπιστάτου Ὀν̣[ομάρχ]ο̣υ, ἱερέως Νικάνορος, ταγω-
νατῶν Εὐπολέμου, Νικάνο[ρος· μ]ά̣ρτυρες Ἀσσκληπιόδωρος
Σωπάτρου, Ἀντίφιλος Βα̣[. . . . . .], Δ̣ιογένης Πυθογένους,
Φίλος Δροπίδα, Φίλιππος Ἀμ[. .]ύκτου Σκυδραῖος, Μένων
8 Μόλωνος Σκυδραῖος, Τόλων Ἀδ[ύμο]υ

[34] *Bull. Ép.* 1939, no. 168. On the expression ὠνὴ εὐθεῖα ('straight purchase') see above.

[35] See also Blümel 1993 (= *Syll.*^{3} 46; cf. *SEG* 43,713), an inscribed record from Halikarnassos (425-350 B.C.) of properties confiscated and re-sold, listing the names of the purchasers.

[36] The inscription consists of five fragments; Stefane re-published fragment A and published the other four fragments (B-E). For a summary, see Hatzopoulos in *BE* (2006), no. 252; Game 2008, 93-101, no. 39.

B Ζώπυρος Γοργία ἐπρίατο παρὰ Ἀδ̣[ρ]ά<σ>του γῆν τὴν περὶ Νέαν
πόλιν καὶ Δροιέσστας, πλέθρα : ΡΟΘ̣ : [ἀ]καίνας : ΟΗ : τὰ ἐχόμενα
ὧν παρὰ Κρατεροῦ ἠγόρασεν̣ καὶ [τ]ῶν Αττίνα · τὸ πλέθρον
12 δραχμῶν : Ο : · βεβαιωτὴς Ὀρέσστης Ζ[ωΐ]λου Μαρινιαῖος · τὴν τι-
μὴν ἔχει πᾶσαν · ἡ ὠνὴ ἐγένετο μηνὸς Περιτίου ἐπὶ ἐπ<ι>-
στάτου Ὀνομάρχου, ἱερέως τοῦ [Ἀ]σσκ[λ]ηπιοῦ Νικάνορος, τα-
γωνατῶν Εὐπολέμου, Νικάνορος · μάρ[τ]υρες δικ<α>στῶν Λυσανί-
16 ας Σικίττου, Εὐπόλεμος Τάρτιρ̣ος · {Μ} [ἀν]τία δικαστῶν Νίκαν-
δρος Σιβυρτίου, Ὀλύμπιχος Σακόλα, Τ[ό]λων Ἀδύμου, Ἀσσκλη-
πιόδωρος Σωπάτρου.

(A) Zopyros son of Gorgias bought from [---] 179 plethra, 75 akainai of land in the vicinity of Droiestai, at the rate of 70 drachmas a plethron. He paid the entire sum. Guarantors: Hektor son of Mannias, a Skydraian, and Attinas son of Andronikos, a Neopolitan. The sale took place in the month of Peritios, when Onomarchos was the *epistatēs*, Nikanor was the priest, and Eupolemos and Nikanor were the *tagōnatai*.[37] Witnesses: [names].
(B) Zopyros son of Gorgias bought from Adrastos a plot in the vicinity of Neapolis and Droiestai, 179 plethra, 78 akainai, adjoining the properties he had bought from Krateros and from Attinas, at the rate of 70 drachmas a plethron. Guarantor: Orestes son of Zoïlos, a Marinian. He paid the entire sum. The sale took place in the month of Peritios, when Onomarchos was the *epistatēs*, Nikanor was the priest of Asklepios, and Eupolemos and Nikanor were the *tagōnatai*. Witnesses of the judges: [names]. Against(?) the judges: [names].

The inscription as a whole mentions ten deeds of land sale (four of them almost complete, the other six fragmentary). Each deed records the name of the vendor, the nature and/or the location of the land sold, its size and price, the witnesses and the guarantors. Each deed is also dated by the month, the *epistatēs*, the priest of Asklepios and the *tagōnatai*. The purchaser in *all* the recorded transactions is one and the same person, Zopyros son of Gorgias, and he seems to have bought these properties in the course of three consecutive years.[38]

It is not clear why Zopyros' land acquisitions (more than 32 hectares for more than 26,500 drachmas[39]) were inscribed on stone and set up in a public place. On the one hand, this inscription seems to belong to the category of privately inscribed land sales discussed above (such as those from Kamarina or Amphipolis), except it clusters together several acts instead of inscribing them

[37] Stefane explains that these ταγωνᾶται were annual officials. Hatzopoulos (*BE*, 2006, no. 252, pp. 676-7) reads ταγῶν ἀτῶν. See also GAME 2008, 97-8.

[38] Hatzopoulos, *BE* (2006), no. 252, p. 677. Cf. GAME 2008, 98.

[39] Hatzopoulos, *BE* (2006), no. 252, p. 676. Hatzopoulos corrects the ed. pr. in the calculation of the total size of the lands bought and the price paid. On the amounts paid by Zopyros see also GAME 2008, 100, who infers that Zopyros belonged to the elite of Mieza.

on separate steles. It may be that because the landed properties that Zopyros bought were situated in a relatively small area (hence also the repetition of names in different capacities: officials, vendors, and witnesses),[40] he wished to give publicity to the fact that he was the new owner in that vicinity.

However, there are some elements that render this classification difficult. First, these acts, all of which start with the name of Zopyros as the purchaser, were probably arranged month by month, year by year, as a kind of inventory. This led Game to propose that the register was intended as an evaluation of Zopyros' property, perhaps for tax purposes.[41] Game also suggests that the use of formulaic forms in these records may be a sign of the rationalization of the administrative system under the Antigonids. But why was it considered necessary to inscribe this assessment on stone? Another confusing constituent of the inscription is the mention in act B of μάρτυρες δικαστῶν, 'witnesses of the judges', and ἀντία δικαστῶν, those 'against the judges' (lines 15-16). Act C has a slightly different formulation: μάρτυρες δι[καστῶ]ν Λυσανίας / Σικίττου καὶ τῶν ἄλλων (lines 25-26), followed by four names, and in act D the text after μάρτυρες δικαστῶν (lines 34-35, followed by four names) has not survived, but might have been formulated as in act C. Stefane proposes that these μάρτυρες δικαστῶν might have been the same as the βασιλικοὶ δικασταί, the 'royal judges' mentioned in another Macedonian inscription, *SEG* 47,999 from Tyrissa (ed. pr. P. Chrysostomou, *Tekmeria* 3, 1997, 23-43), dated to the early second century B.C. and recording two transactions concerning the same vineyard.[42] Lines 5-7 of the inscription read δίκης γενομένης / [πρὸς] τοῖς βασιλικοῖς δικα[σ]/[τ]αῖς ('the trial being conducted in front of the royal judges'). Chrysostomou notes that this is the first time that this magistracy is attested in Macedon, and suggests that the trial may have been connected with the fact that the vineyard was sold by Philagros' son and widow. He raises the possibility that the 'royal judges' of Tyrissa were identical to the 'witnesses of the judges' in Mieza (where they acted as witnesses) and to the judges mentioned in other Macedon inscriptions.[43] Chrysostomou proposes to see in these 'royal judges' a secondary legal body, called to approve cases on appeal.

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[40] In the course of the month of Peritios Zopyros bought three plots in the same neighbourhood (περὶ Δροιέσστας; acts A – C) and another which bordered on his estate (act D).

[41] Game 2008, 99.

[42] In the first transaction Philagros had bought the vineyard from Philippos; he then gave part of it to Boukartas, probably his son. In the second transaction, after Philagros' death, the vineyard was sold by Boukartas and Philagros' widow to Polyainos. See also Game 2008, 101-3, no. 40.

[43] E.g., *Meletemata* 22, Epig. App. 50 (= *IG* X(2) 1, 1028; Thessalonike, 240-230 B.C.); *IG* X,2 1, 3 (Thessalonike, 187 B.C.).

Since nothing is known about this magistracy, it is not possible to draw any definite conclusion. However, if the inscription from Mieza indeed refers to judges, this might indicate, as Game suggests,[44] that the sales were executed according to a court ruling. Although, as the ed. pr. notes, the 'witnesses of the judges' appear only in three of the ten transactions on the stone, it is still possible that all the acts were of the same category. It may be that the register of Zopyros' acquisitions was displayed publicly because these lands were now put up for auction following a court decision – perhaps in a way similar to the Attic Stelai (*IG* I^3 421-430) and to *SGDI* 5653 from Chios (475-450 B.C.). The latter seems to have contained two inscriptions: the first [A] records the delimitation of a plot of public land, probably because of acts of usurpation by private citizens; the second [B-D] records the auction of lands confiscated from citizens.[45] The list of Zopyros' acquisitions in Mieza might have been similarly compiled and inscribed because it was deemed essential to publicize the exact location and the identity of the former owners of each plot, now being put up for a re-sale. However, the mention of the μάρτυρες δικαστῶν as witnesses to the various purchases made by Zopyros may speak against this interpretation, which assumes that they were involved at a later stage when Zopyros' purchased landed properties were perhaps confiscated. Yet even if this interpretation is wrong, the μάρτυρες δικαστῶν apparently were state officials; the use of their services – whether as judges or witnesses – shows the involvement of the state in realty transactions. I therefore suggest as an alternative interpretation that the μάρτυρες δικαστῶν or the βασιλικοί δικασταί were in charge of registering landed (and perhaps other) transactions in third-century B.C. Macedon; in the process of registering land sales (which was perhaps conducted as a trial), challenges to the transactions may have been raised by rival claimants, hence the mention of ἀντία δικαστῶν.[46] The absence of this term in act A of the Mieza inscription may be accidental and the result of the negligence on the part of of whoever drafted the text (or copied it from the original, hand written contract). The other acts are too fragmentary to decide whether they alluded to these 'judges'.

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[44] GAME 2008, 100.

[45] FARAGUNA 2006. Cf. the list of confiscated properties and their purchasers in an inscription from Halikarnassos, mentioned in n. 35 above.

[46] Or perhaps we may see Zopyros' case as similar to the process attested in *Syll.*^{3} 279 from Zeleia (shortly after 334 B.C.), where an elected committee of nine citizens (called ἀνευρεταί) is to check public lands (χωρία δημόσια), supposedly usurped by private citizens. For the process of legal decisions to be taken in case of disputes, eleven elected citizens are to serve as δικασταί, judges, aided by three συνήγοροι (lines 27-30). Could it be that the μάρτυρες δικαστῶν and ἀντία δικαστῶν of Mieza were involved in a legal dispute between Zopyros and the polis over the ownership of lands, a dispute that Zopyros eventually won?

The first document I discuss in the category of "state publications" is the so-called *Rationes Centesimarum*, from which I cite two passages:[47]

(a) Stele 2, Face A, col. 1 (*IG* II² 1594), lines 15-22: Attica; mid fourth century B.C.:

ἑτέρα ἐσχατιὰ ἐν Βή[σαι]
ὠνη Κλεομέδων Λέοντος Α/[— — —]·
ἑτέρα ἐσχατιὰ ἐν Πόρω[ι τὸ δη]-
μόσιαι ἅλωι καλούμε[νον],
ἑτέρα ἐσχατιὰ ἐμ Πόρω[ι τῆς]
αὐτῆς ταύτης *vac*.
ὠνη ἀμφοτέρων Εὐκλῆς Λ[ακλέους]
Ἁλαιεὺς ΗΔΔΓ·

Another outlying estate in Besa; buyer: Kleomedon son of Leon of[--]. Another outlying estate in Poros, called 'the public threshing floors'; another outlying estate in Poros, of the same name; buyer of both: Eukles son of Lakles of Halai: 125 dr.

(b) Stele 3, Face A, col. 1 (*IG* II² 1596), lines 5-11: Attica; mid 4th century B.C.:

[Ἡ]ρακλέους ἱερομνήμο[νες]
Χαρίσανδρος Δημοκρίτο[υ Ἀλωπ(εκῆθεν)?]·
Δημοκλῆς Γναθ[ί]ου Ἀλωπ[(εκῆθεν)]
ἀπέδοντο χωρίον Ἀλωπε[κῆσι]
ὠνη Λυσικράτης Λυσιμάχου Ἀφι[(δναῖος) – ἑκατ(οστὴ) –]
κεφάλαιον : 𐅄TTTXXXHHH :
τούτο ἑκατοστή : 𐅅 HHHΔ┣┣┣·

Of Herakles, *hieromnemones*: Charisnadros son of Demokritos of Alopeke and Demokles son of Gnathios of Alopeke sold a site in Alopeke. Buyer: Lysikrates son of Lysimachos of Aphidnai. Total: 13 talents 3,300 dr. *hekatostē*: 807 dr.

The *Rationes Centesimarum* (or the *hekatostē*-inscriptions) comprise four steles that record sales of land by Attic corporate groups (demes, phratries, etc.) to individual citizens in the second half of the fourth century B.C. The entries are very concisely formulated, describing the sold property in outline, naming the selling group and the purchaser, and noting the price and the one percent tax paid (in passage b cited above a grand total is given).[48] Lambert has convincingly argued that these inscriptions should be understood in the context of the processes of accountability, characteristic of democratic Athens. Hence, the *Rationes* are no mere copies of the transactions but accounts of the proceeds from the *hekatostai* collected in these transactions; the *hekatostai*, he

[47] I follow the edition of LAMBERT 1997.

[48] LAMBERT 1997, 270-1, suggests comparing the *hekatostē* in these inscriptions with the payment of one percent put down sixty days in advance by purchasers of landed property, as reported by Theophrastos (see above). Contra, FARAGUNA 1998, 179.

suggests, went to Athena, and the accounts were probably issued by the joint board of the treasurers of Athena and the Other Gods.[49] In this respect the *Rationes* are analogous to the fifth-century Athenian Tribute Lists (*IG* I^3 259-90), as the latter record not the sums paid as tribute but the taxes due to the goddess.[50] That the record of the transactions themselves 'was incidental, as it were, to the formal purpose of the texts – to record the payment of Athena's due portion' can be inferred from the absence of an accurate description of the properties sold: the terms χωρίον and ἐσχατιά, the demes' names, and the occasional designation of the asset were apparently considered sufficient.[51] This is not the case in the private documents discussed above, nor in other formal Attic accounts stemming from sales or leases of landed and other properties. For instance, *IG* I^3 424, one of the Attic Stelai recording the sale of the confiscated property of the Hermakopidai in 414/3 B.C., describes in detail the boundaries and location of the houses sold. This feature of the *Rationes Centesimarum* also relates to the circumstances of their publication.

Lambert argues that the *Rationes* reflect Lykourgos' policy to increase Athens' revenues and to improve the exploitation of land resources.[52] Lykourgos first appears in 343/2 B.C., hence Lambert assigns *stelai* 1 and 2 of the *Rationes* to ca. 343-340 B.C., dating the other two *stelai* (3-4) to 330-325 B.C. It is roughly at this time that other inscribed accounts of sacred leases appear, probably also connected with Lykourgos' policy.[53] Lambert also suggests that the *Rationes* may represent a shift from the public sphere to the private, consonant with a contemporaneous trend of shifting the burden of communal euergetism from the obligatory liturgical system to reliance on the goodwill of wealthy individuals.[54] Faraguna, in his review of Lambert, suggests two other motives: the need to intensify agricultural production at a time when Philip II was ominously approaching the straits, and to increase the efficiency of the fleet by raising the number of those potentially liable to the trierarchy (formerly exempted from this liturgy).[55] Faraguna rightly points to reasons which are beyond, or – more accurately – additional to the financial purposes,

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[49] LAMBERT 1997, 272-3.

[50] Ibid. 273-4.

[51] LEWIS 1973, 199; LAMBERT 1997, 228. See also FARAGUNA 1998, 175. For a typical description of the asset's location, see e.g. passage "a" above, lines 17-18: ἑτέρα ἐσχατιὰ ἐν Πόρω[ι τὸ δη]/μόσιαι ἄλωι καλούμε[νον] ('Another outlying estate in Poros, called "the public threshing floors"').

[52] LAMBERT 1997, 280-91. See also PAPAZARKADAS 2011, esp. 235-6.

[53] LAMBERT 1997, 289-90.

[54] Ibid. 291.

[55] FARAGUNA 1998, 179.

but these reasons do not fully explain why it was decided to inscribe on stone not only the amounts of money paid as taxes but the details – sketchy and general as they are – of the transactions. As noted above, the *Rationes Centesimarum* record the identity of the selling groups, the officials conducting the sales, the properties sold and the names of the buyers, as well as the prices paid. Lambert suggests that these records were also relevant to the accounting processes of the other officials involved and could be consulted in case of dispute.[56] I would like to suggest that the *Rationes Centesimarum* served also as permanent proofs for the landed transactions they recorded: disputes could also have arisen between the selling groups and the buyers, not only between the officials involved. The ascendancy of Macedon and the involvement of Athens in military operations might have induced the Athenians to safeguard the transfers of ownership on landed property by inscribing them on stone. If Lambert is right that the inscriptions are the result of Lykourgos' policy, these records are a unique combination of state initiative, privatization of public (or demotic) lands, and official publication of the sales and of the state's revenues derived from the taxes paid on these sales.

Several inscriptions listing land sales in the late fifth or early fourth century B.C. have been found in Erythrai. Each inscription consists of numerous deeds, again concisely and identically formulated. Here is an example:

SEG 37,917A, lines 1-14 (ed. pr. Engelmann, *Epigraphica Anatolica* 9, 1987, 134-138, no. 3):[57]

A. [- - - - 19 - - - -]λιος, ἐπωλ̣[ήθη - - 6 - -]
[- - - - 14- - - ἐπ]ώνιον δέκα, ἐπρία[το - 4 -]
[- - - - 14- - -] ν Ἀπολλωνίδευ τοῦ Ἀντι[. . .]
[. γῆ ἥτις ἦν Ἀπ]έλλιος, ἐπωλήθη μυριέων ἑπτ[ακ]-
[οσιέων ε] ἴκοσιν, ἐπώνιον τεσσαράκοντα, ἐπ[ρί]-
[ατο Μιν]νίων Ἡροφάνευς ν Ἑκατομβίου τοῦ Ζ[ωπ]-
[ύρο]υ̣ ἄμπελοι ἐν Ἀργαδεῦσιν, αἵτινες ἦσαν [Ἀπ]-
[έλλ]ιος, ἐπωλήθησαν ἑξακοσιέων, ἐπώνιον δ[έκ]-
[α], ἐπρίατο Ἀριστήμων Δόρκωνος ν ἄλλη γῆ ἐν [Αὐ]-
λικοῖς, ἐπωλήθη χιλιέων ἑξακοσιέων δέκα, [ἐπ]-
ώνιον εἴκοσιν, ἐπρίατο Ζηνόδοτος Πυθέρμ[ο]

[56] LAMBERT 1997, 275.

[57] Other Erythraian inscriptions recording land sales are *I. Erythrai* 153 (*SEG* 37,918), and possibly 154, 156; S. ŞAHIN, *EA* 9 (1987), 52, no. 1 (*SEG* 37,921), 52-53 no. 2 (*SEG* 37,919), recording the payment of *epōnion*.

12 Νικάνδρου τοῦ Ἡρακλείτου γῆ ἐν Αὐλικοῖ[ς, ἥτ]-
ις ἦν Μύσκωνος, ἐπωλήθη ἑπτακισχιλιέων [τρι]-
ακοσιέων δέκα, ἐπώνιον τεσσαράκοντα…

[---]lios, sold [for ---], *epōnion*: 10. [---] bought from [---] a plot, the one which belonged to Apellis, sold for the price of 10,720 drachmas, *epōnion*: 40. Minion son of Herophanes bought from Hekatombios son of Zopyros vineyards in Argadeusis, those which belonged to Apellis, sold for 600 drachmas, *epōnion*: 10. Aristemon son of Dorkon bought another plot in Aulikoi, sold for the price of 1,610 drachmas, *epōnion*: 20. Zenodotos son of Pythermos bought from Nikandros son of Herakleitos a plot in Aulikoi, that which belonged to Myskon, sold for the price of 7,310 drachmas, *epōnion*: 40. Etc.

For each deed of sale the *epōnion*, a sales tax, was paid.[58] Like the *Rationes Centesiamrum*, this document is very different from the individual acts cited above. The Erythraian inscription was formulated in such a way as to accommodate on the stone as many transactions as possible. Again we may ask, what was the motivation behind this publication? If the parties sought legal protection, was not registration in the public archives enough? If it was publicity that they wanted, why not make an individual, private inscription as in Sicily, Amphipolis or Olynthos? The record of the sums paid as *epōnion* may suggest that, as in the case of the Attic *Rationes Centesimarum*, the state wished to have an official and public account of the taxes paid on sales of land. But, again, this cannot be the sole motivation.

We do not know the *exact* date of the inscriptions. An Athenian decree, found at Erythrai and dated to shortly before 386 B.C. (that is, before the Peace of Antalkidas), might be of help. It promises support for the democrats in Erythrai, who seem to have just managed to re-establish democracy after some civil strife; it also mentions exiles driven out of the city by the democrats (ed. pr. S. Şahin, *Belleten* 40, 1976, 566-571).[59] Rhodes and Osborne date the inscription 'to the end of the period between c.390, when Thrasybulus re-established an Athenian presence in the Aegean, and 386'.[60] Another inscription, a decree of Erythrai dated to ca. 400 B.C. (*SEG* 36,1039),[61] records the oracle brought back by citizens who had been sent to Delphi (οἱ θεοπρόποι) and the subsequent decision of the polis to build a temple and set up a statue to Aphrodite Pandemos, ἐ[πὶ σ]/[ωτηρ]ίηι τοῦ δήμου τοῦ Ἐρυθραίων ('for

[58] For another example see n. 25 above. ENGELMANN (1987) suggests that the *epōnion* was assessed thus: on prices up to 100 dr., 2 dr.; between 100 and 200 dr., 5 dr.; between 200 and 1000 dr., 10 dr.; between 1000 and 2000 dr., 20 dr.; and over 2000 dr., 40 dr.

[59] Cf. *SEG* 26,1282; RHODES – OSBORNE 2003, 74-77, no. 17.

[60] RHODES – OSBORNE 2003, 74.

[61] Ed. pr. R. Merkelbach, *EA* 8 (1986), 15-18.

the safety of the Erythraian People', lines 4-5). The ed. pr. suggests that the Erythraians sent to Delphi to consult about the best way to attain ὁμόνοια, concord, among the citizens. Although this word does not appear in the extant text of the inscription, the decision taken for the sake of *sōtēria* implies that Erythrai has recently recovered from internal, and possibly external, strife.

These two inscriptions, then, refer to troubles in Erythrai, and although the second (the decision to erect a temple and statue to Aphrodite Pandemos) was perhaps inscribed at least ten years earlier than the Athenian decree for Erythrai,[62] it seems plausible that both should be placed in the same context. In war, whether external or internal – and the Erythraians experienced both – uncertainties could arise concerning ownership, threatening the stability of the regime. Hence *SEG* 37,917A may well reflect the need to set up a solid and lasting proof of real estate transactions made during these difficult times. The state would also be in need of resources, here supplied by the collection of the *epōnion*.

I now turn to the famous and much discussed long inscription from Tenos, recording transactions in real estate, registered with the *astynomoi* over a period of less than two years. I quote here the opening lines of the inscription (*IG* XII,5 872, lines 1-15: Tenos; ca 300 B.C.):[63]

[κατὰ τάδε πράσεις ἐγέ]νοντο χωρίων [καὶ οἰκιῶν καὶ προικ[ῶν] δόσεις [ἐ]π' ἄρχοντος Ἀμ[ει]νό[λα πρὸς τ]οὺς ἀστυ[νόμου]ς Σωσιμ— — — — — —
— — —c.21— — —σονα Ἀρισ[τώνακτ]ος Θεσ[τιά]δημ· [μην]ὸς Ἀρτ[ε]μισιῶνος· {²I}² Κρινύλ[ιον . . .]ίδου Θεστιά[δ]ο[υ μ]ε[τὰ κ]υρίου [Σωμβρότου Στρυμονίδου [Δονακέως]
[παρὰ — — — — — — — — — — — — — — — — —]λόχου ἐκ [πό]λεως ἐπρίατο τὴν οἰκ[ίαν και] τὰ χωρία τὰ ἐ[ν Δ]ονακέα[ι, οἷς γείτονες(?) — — — — — —]
[— — —c.15— — — κ]αὶ [τὰ] οἰκία, οἷς γείτονες Εὐσ— — —c.14— — — δραχμ[ῶν ἀρ]γυρίου δισχιλίων π[εντακοσί]ων· πρατ[ῆ]ρες . . .ιστος — — — — — — — — —
5. . . . . σι. . . . . σίας. ἔνει καὶ νέαι μ[η]ν[ὸς Ταυρε(?)ὼν]ος· {²II}² Καλλ[ιστ] αρέτη Καλλιφόρου [. . . . . ἧς] κύριος Ἀνδ[ρογέν]ης Μυρτ[ώσιος Ἐσχατιώτης παρὰ Τεισιμάχου]
[. . . . .]ου Ἐ[σχατιώτου(?)], οὗ κύριος Ἀνδρογένης Μ[υρτώσιος Ἐσχατ]ιώτης, ἐπρίατο τὴν οἰκίαν τὴν ἐν ἄσ[τ]ει ἥ ἐστιν ἐν [τ]ό[ν]ω[ι ἐ]βδόμωι, ἧ[ι γείτονες — — —c.18— — — —, ἦν]
. . . . . τει. . λατο(?) [καὶ] ὑπέθετο Τεισίμαχος, παρὰ [τῆς μητρὸς] Εὐτελείας [ἀ]ργυρίου δραχ[μὰς δισχιλί]α[ς τ]ριακο[σίας ε]ἴκοσι [λαβών, Καλλισταρέτηι καὶ] [Ἀνδρογέν]ει Μυρτώσιος Ἐσχατιώτει, Καλλισταρέτη[ι τεῖ γυναικὶ] τεῖ αὐτοῦ. {²III}²

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[62] The ed. pr. suggests that the inscription is 'aus dem 5. oder dem Beginn des 4. Jahrhunderts'. On the basis of paleographical considerations C. Brixhe, *BSL* 84, 1 (1989) 33-4, argues that it should be dated later than ca. 400 B.C. (*SEG* 39,1238).

[63] The bibliography on the Tenos inscription is vast. See FARAGUNA 2000, 87-92.

Εὐτέλει[α . . . . .] Γυραῖς μετὰ [κυρίου Μν]ησικ[— — — — — — — — παρὰ]
[. . . . . Γρ]υπίωνος Ἡρακλείδου ἐπρίατ[ο . . . . . τ]ὰ οἰ[κ]οδομημένα
πάντα [— — ὅσα ἐστὶν ἐν — — — —τ]ωι, οἷς [γείτονες — — — — — — — — — —]
[δραχμῶν ἀ]ργυρίου [ἑκα]τόν. {²IV}² Πραξίας .....δ.....ω.....σανδρος Ἀρισ[τω]ν—
— — — — — — — — —καρτ— — — — — — — — —
..... ὧι γείτ[ων] Θεόφαντος ἀριστερᾶς εἰσιόντι ....λη ἐ.....ομ μέρος καὶ τον[— — —
— — — — — — — — — δραχμ]ῶν ἀργυρίου .....
[..... Δον]ακεύς, Α.....ος Φιλ[ο]φά[ν]του Ἐσχατιώτης [καὶ μ]έσω[ι κ[αὶ] χωρὶς
ἑκάτερος πα[ντ]ὸς τ[οῦ ἀργυρίου. {²V}² Φερεκρά]της Φερε[κράτους ..... παρὰ]
[Νικοδρόμου] Θρυησίου ἐπρίατο τὰ χωρία τὰ ἐν Σίχνει πάντα ὅσα ἐπρίατο
Νικόδρομος παρὰ Φερεκράτους, οἷς γείτονες Α— — — — —, — — — —, δραχμῶν
[ἀργυρίου — — — — — — —]
{²VII}² .....ρατος Ἡρακλείδ<ο>υ Κλυμενεὺς παρὰ Στρατίου Παντ[α]λέοντος
Θρυησίου ἐπρίατο οἰκόπεδον ἐμ Πανόρμωι, ὃ καλ[ε]ῖτ[αι ..... ὧι γεί]των
Πεισικ[ράτης .....]·
πρατὴρ Πανταλέων Στρατίου. Ἀπελλαιῶνος πέμπτει ἐπὶ δέκα·

According to the following (details) transactions of lands and houses and grants of dowries took place in the archonship of Ameinolas, in front of the *astynomoi* [----]. In the month of Artemision: Krinylion son of [---], a Thestiad, with his *kyrios* Sombrotos son of Strymonides, a Donakean, bought from [---] the house and lands in Donaka, whose neighbours are [---], and the buildings whose neighbours are [---], for the price of 2,500 drachmas. Guarantors: [names]. Etc.

This inscription reveals the control exercised by the state on sales:[64] the *astynomoi* here are in charge of registering the transactions. The question is again why these records were inscribed on stone. As Faraguna notes, this inscription is one in a series of approximately contemporaneous inscriptions of similar content.[65] We do not know the exact dates, either of the inscription from which I quote here or of the other inscriptions (they are all dated to ca. 300 B.C.); but a series of inscriptions published by a state decision, like the series from Erythrai, may imply that this was not an exceptional or single publication. It has also been argued that the sums involved indicate that the polis needed cash.[66] Furthermore, the heading of the inscription states that it records donation of dowries as well (though none appear in the preserved text);[67] such an

[64] See FARAGUNA 2000, 90-2, who draws a parallel between the Tenos inscription and the Alexandrian *dikaiomata*; GAME 2008, 171.

[65] FARAGUNA 2000, 88. The other inscriptions are *IG* XII,5 874-877; new inscriptions were published by ÉTIENNE 1990, Appendix III, 268-269, no. 27 (*SEG* 40,698), and 269, no. 28 (*SEG* 40, 699).

[66] OSBORNE 2010, 124.

[67] FARAGUNA 2000, 88 n. 81, suggests that the dowries were inscribed on a twin stele, of the same type as *IG* XII, 5 873 from Tenos (late fourth/early third century B.C.), which does record dowries. On the legal and economic status of women in Tenos in the Hellenistic period see ÉTIENNE 1985; STAVRIANOPOULOU 2006, 62-4, 97-8, 137-40.

inscribed register (except for *IG* XII,5 873 of Tenos) of dowries is known only from one other place, the neighbouring island of Mykonos in the third century B.C. (*Syll.*[3] 1215). Vérilhac and Vial argue that the publication on stone of dowries in the two islands was intended to allow husbands to demand what remained unpaid.[68] But neither the need for cash nor the need to publicize debts explains fully the official inscribed register. Here, too, the reason should be sought in political and economic circumstances which could have caused social unrest.

Again, our information is meagre, but such circumstances may have been the frequent changes of hegemony and wars following the death of Alexander the Great.[69] The Cyclades frequently changed hands between Ptolemy I and the Antigonids in the period 314 to 286 B.C. In 308/7 Ptolemy I, commanding a naval force, sailed through the islands and seems to have weakened Antigonos Monophthalmos' control of the Cyclades, since he liberated Andros from a garrison, presumably Antigonid; Ptolemy then took possession of cities in mainland Greece: Megara, Corinth and Sicyon.[70] A year later Antigonos sent his son Demetrios to Greece restore his control. In an article discussing the relations between Athens and Tenos, Reger suggests that in 307/6 B.C. the Athenians granted the Tenians access to their law courts (*IG* II[2] 466) because Demetrios used Tenos as a base and the Tenians helped him liberate Athens.[71] Whatever the relations between Tenos and Athens and whether or not Tenos was involved in Demetrios' actions in Athens, it is reasonable to assume that the island, as well as the other Cyclades, was prey to the conflicting ambitions of the Hellenistic kings. The military conflicts between Alexander's successors may have induced the islands to give a more substantial form to official records in fear that existing claims to real estate and dowries would not be honored or remembered.

In Chersonesos too, political circumstances may explain an inscription recording land transactions (of which again, I quote only a part). *SEG* 40,615, Fragment B, lines 7-20 (edd. pr. E.I. Solomonik and G.M. Nikolaenko, *VDI* 1990, 2, 79-99), with new readings by J.G. Vinogradov[72] (270-250 B.C.), reads:

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68 VÉRILHAC – VIAL 1998, 149.

69 See BURASELIS 1982, 39-60.

70 Diod. Sic. 20.37.1; BURASELIS 1982, 49; cf. REGER 1992, 367. On the Nesiotic League and its relations with the Hellenistic kings see BURASELIS 1982, 60-87.

71 REGER 1992, 367-8. See also BURASELIS 1982, 52 and n. 58.

72 In *Stuttgarter Kolloquium zur historischen Geographie des Altertums* 4 (1990) [1994] 366-9. Here I adopt Vinogradov's restorations of lines 7-9 and 13-15.

[- - -Τοίδε ἐπ]-
ρίαντο [τ]οὺς ἐκατώρυγ[ας] τοὺς [ἀ]πὸ τᾶς χε[ίρονος γᾶς ?
πο]λεύειν Γ καθ᾽ ἕνα· Προμ[α]θ(ί)ων [Διο]νυσ[ίου, ὁ δεῖνα]
[Ν]άγωνος ⏃Ο ⊢ Νικάνω[ρ- - -] ϛ ⊢ Πρ[ομαθίων Διονυσίου ?]
⏃ Χ ⏃CC Προμαθίων Διο[νυσί ?]ου Δ ⏃ [- - - - - - - - - Καλλι?]-
άδα Ο)Ψ Πασιχάρης ΔΔΟϘ[ΟΟ]C‘ʹΗΗ<ρακ[λείδας - - - -]
ν Κεφαλὰ ΕΑΟΟΟnCCC Ἀπότ̣ο[μα τ]ὰ πε[πραμένα - - -]
ΠΟΟΟ · ἄτ᾽ ὥρωι. τῶι Φοινι̣κίδ̣ο[ς παρακείμενα καὶ τῶι . . . . . .]
ωντος οὐκ ἔχομες ΓΟΟ [- - - - - - - - - - - -]
Δ ⏃ Ο ⏃ Μ[Υ]ΣΠΧΕΙΟ Λεύκω[ν - - - - - - - - -]
[Κ]εφαλὰ ἑκατωρύγων τῶ[μ πεπραμένων κατ΄]
αὐτὰν τὰν πρᾶσιν τὰ[ν ἐποίησαν κατὰ τὸ ψάφισμα ?]
[ἐ]πιμελητα̣ὶ α[ἰρ]εθέντ[ες ὁ δεῖνα τοῦ δεῖνός],
Ν̣ευμήνιος Φιλιστίο[υ, ὁ δεῖνα τοῦ δεῖνος]

The following persons bought the *hekatōrygai*[73] of the inferior land(?) for turning over the soil(?), [---] per one (parcel): Promathion son of Dionysius, [---] son of Nanon 48.78 hectares [etc.] Total of the parcels bought in this sale, (performed) according to the decree, supervised by the elected *epimelētai*: [---], Neumenios son of Philistios, [--]

The quoted text is part of Fragment B of an opistographic marble plaque which, together with Fragment A, was published by Solomonik and Nikolaenko in 1990. Two other fragments, published as fragment b, face A and B in *IosPE* I^2 403, belong to the same plaque. To these also belongs *SEG* 40,616 (edd. pr. E.I. Solomonik and G.M. Nikolaenko, *VDI*, 1990, 2, 97-98), which comes from a different plaque. Hence, as in Erythrai, we should think of a series of (or at least two) inscriptions recording sales of land by the polis, that is, public land.[74]

A recurring formula in all fragments of *SEG* 40,616 and *IosPE* I^2 403 is τοίδε ἐπρίαντο ('the following persons bought'), followed by the specification

[73] SOLOMONIK – NIKOLAENKO 1995, 193-5, read ἑκατωρύγ[ους and interpreted this *hapax* word as a unit of measurement of an area (36 Chersonitan plethra = 4.4 hectares). VINOGRADOV 1990 understands this word as referring to a certain kind of land from which shattered rocks were to be dug out and then used to build walls around it.

[74] VINOGRADOV 1990 argues that the inscription does not record sales of land, but is an inventory of lands leased by the polis. The possibility that the inscription records leases was already raised by LATYCHEV in *IOSPE*, because of the double meanings of the word πρᾶσις as both 'sale' and 'lease', but he left the question open. SOLOMONIK – NIKOLAENKO 1995, 202, argue persuasively that the more common term for lease and leasing was μίσθωσις and μισθόω, and tend to assume that this is a record of lands sold.

or location of the land, names of purchasers, and numbers – which the edd. pr. argue refer to the size rather than to the price of plots. Twice in the section quoted above (lines 13 and 17) the inscription gives a total – which, by Solomonik and Nikolaenko's interpretation, is the total measure of the land bought. In the section quoted here we also learn that the transactions were carried out according to a *psēphisma*, a decree, and under the supervision of *epimelētai* (lines 18-19). These indeed are unquestionable indications that the polis initiated both the transactions and the publication of the record. What induced the action and its subsequent publication on stone?

As Solomonik and Nikolaenko suggest, two other inscriptions imply that in that period an attempt had been made to overthrow the democracy at Chersonesos: the famous inscription recording the oath of allegiance to the democratic regime, taken by the citizens of Chersonesos (*IosPE* I^2 401 = *Syll*.^{3} 360; ca. 300-280 B.C.); and a fragmentary law of ca. 300-275 B.C., probably concerning the return of exiles and judiciary problems it entailed (*SEG* 34,750 = 40,614). At the same time, the pressure from the neighbouring Skythian tribes increased and some of the territory was lost. A severe political (and perhaps also economic) crisis, following civil strife, gave rise to the demand for the redistribution of lands. The democrats decided to lease or sell land to landless citizens and thus also raise the polis' revenues.[75] If indeed the land in question was public, leased out to citizens in private tenure, it is all the more understandable why it was decided to inscribe the re-distribution on stone.

Saprykin offers a slightly different scenario. He argues that the land division and the farm building activity, apparent from the inscriptions and land surveys, were 'the result of a concerted, centralized, policy of the state' (a policy he attributes to Agasikles, honored in *IosPE* I^2 418). He suggests that *IosPE* I^2 403 refers to plots of land which had been taken from the public land and leased out to private citizens; later, as a result of internal political crisis and the attacks of the Skythians, part of these plots were abandoned or were concentrated in the hands of rich citizens – which caused an attempt to establish an oligarchy or tyranny. Saprykin argues that when the democrats came back to power they re-distributed the land and leased these abandoned or usurped plots to their supporters.[76] If these interpretations are right, the Chersonesos witnessed a process of privatization of public land, similar to the one

[75] Solomonik – Nikolaenko 1995, 203, 207. See also Saprykin 1997, 179-208; Nikolaenko 2006, 170.

[76] Saprykin 1994, 73-9, 87-94; Saprykin 1994, 191-2, 206-8.

suggested by the *Rationes Centesimarum*.[77] But whatever the exact arrangement, it is clear that the inscription recording the land transactions attests to state involvement in land tenure.

The inscriptions from Athens, Erythrai, Tenos, and Chersonesos, discussed above, have features that clearly distinguish them from inscriptions such as those from Kamarina, Olynthos, and Amphipolis. As noted above, although evidence for obligatory registration of transactions exists in some places already in the fourth century B.C., and systems for the keeping of documents concerning transactions are attested from the early third century, there is no evidence of their obligatory publication on stone. The inscriptions that record land sales, as in Kamarina, Olynthos, and Amphipolis (and other places), were private documents, giving the essentials of transactions whose full records must have been kept in local archives. The dating by eponyms and the occasional mention of taxes paid were designed to guarantee the validity of the transactions. But each such inscription recorded a single act (except Zopyros' purchases in Mieza, an inscription which is unique in nature). Reversely, the *Rationes Centesiamrum* and the inscriptions from Erythrai, Tenos, and Chersonesos consist of lists, each recording numerous acts of land sales or leases, unmistakably initiated and publicized by the state.

The public inscriptions do not reflect a change of policy in the poleis where such inscriptions were found, by which land transactions were required to be inscribed on imperishable material. Despite the obvious advantages of such a measure for the economic and political stability of the polis, and its potential use as a means of control, I believe that these inscriptions were ad hoc responses to immediate political and economic conditions that forced the poleis to act as they did. On the other hand, we should not see these inscriptions as peculiar, one-time actions. If Lambert is right in his explanation and dating of the *Rationes Centesimarum* in Athens, there was a gap of some fifteen years between the publication of the two first *stelai* and that of the other two; so the circumstances that motivated the program of selling groups' lands, and the publication on stone of these sales persisted for some time. Similarly, the inscription from Erythrai discussed above is one of three that have survived (and perhaps there were more).[78] In Tenos, seven inscriptions listing land transactions, dated to the same period, have been found, and in Chersonesos at least two.[79]

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[77] SAPRYKIN 1994, 78, compares the events in the Chersonesos with Agis IV's and Kleomenes III' reforms in third-century B.C. Sparta.

[78] See n. 57 above.

[79] For Tenos see n. 65 above; for Chersonesos see *SEG* 40,616.

These "state publications", then, were the manifestation of the poleis' control over their citizens in the economic sphere in response to certain circumstances, and as such there may have been others yet to be discovered.[80]

[80] Cf. the fragmentary list of sales from Philippoi in Macedon (ca. 350-300 B.C.): ed. pr. P. DUCREY 1988, 207-13 (= *SEG* 38,658), where ἐπώνιον is exacted for each item sold. But this is a list of sales of sacred lands.

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Sale in Demotic Documents: an Overview

MARK DEPAUW

Preliminaries

Demotic is a stage of the ancient Egyptian script and the ancient Egyptian language. The script is attested between the 7th century BC and the 5th century AD. The range for the language stage is roughly the same. The script developed when the Lower-Egyptian (Delta) variants of hieratic, another cursive script, became more and more cursive, so much that they started to form a separate script. Initially in Upper Egypt (the South) another cursive variant was used, somewhat unhappily called abnormal hieratic. This gradually disappeared in favour of the Northern variant when the 26th Dynasty from Sais (in the Delta) consolidated its power in the entire Nile Valley. Abnormal hieratic died out around the middle of the 6th century BC.

There are currently over 15,000 Demotic texts in the database *Demotic and Abnormal Hieratic Texts* [DAHT], which is part of the Trismegistos project.[1] Most of these are not immediately relevant to the subject of this meeting, sale,

[1] See www.trismegistos.org/daht: 15,465 records (20 November 2013). The abbreviation TM followed by a number refers to the id's in this database, leading to more information e.g. www.trismegistos.org/text/47179.

but nevertheless a substantial minority is. The most important for our purposes are the numerous legal documents that attest the transaction itself. Also valuable are legal manuals which discuss specific details of the procedure to be followed, obviously fewer in number. And finally an occasional narrative literary text, the odd funerary stela, or a detailed trial report, contain unexpected but all the more welcome information.

Sale documents: types of property and types of transfer

Sale documents are among the most common Demotic documentary papyri published. This is partially no doubt because the contracts, sometimes written on impressive pieces of papyrus, have received much more attention than some other, at first sight rather uninspiring types such as lists or accounts. But sales also figure rather prominently among the various types of legal declarations in Demotic that are commonly called 'contracts', 'deeds' or 'agreements'.

It is always problematic to develop a typology of documents. In my *Companion to Demotic Studies* I integrated one which closely followed that of Seidl's *Rechtsgeschichte*, and that found in Lippert's relatively recent publication *Einführung in die altägyptische Rechtsgeschichte* is similar.[2] Although I have started to integrate this in the DAHT database, I found that individual contracts often resist 'correct' classification, even within a single language and script, and there is still much work left to be done. The figures 1 and 2 must therefore be tentative only. Nevertheless I thought it worthwhile to give you at least a rough idea of numbers of contract types and subjects, based on the current data in DAHT.

Of the 1611 Demotic documents currently (18 September 2012) identified as 'contracts', for about 361 for various reasons (unpublished, too fragmentary, deficient data in the database) not enough information is available to determine the precise nature of the transaction documented. Of the 1250 remaining documents, 347 are labeled as 'sale'. In fact the percentage of property transfers lies even higher, since many of the contracts labeled as 'cession' (126), 'division' (54), 'donation' (40), and 'exchange' (10) equally concern transfer of property. This brings the total proportion of these types to 46% (577 exx.). If the 151 examples of marriage settlements are also included, since marriage is really also about property transfer, this brings the total to well over 50%.

The nature of the objects that change owner varies quite substantially. The following provides a rough survey of the 307 cases where the object of the

[2] Depauw 1997, p. 123-152; Seidl 1962, p. 49-68; Lippert 2008, p. 136-178.

sale document is known in the database. I should stress here that even more than for the classification of contract type, standardization is problematic and thus the figures are again merely indicative.

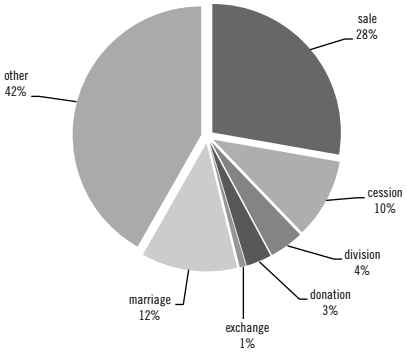

Figure 1 – Type of contract

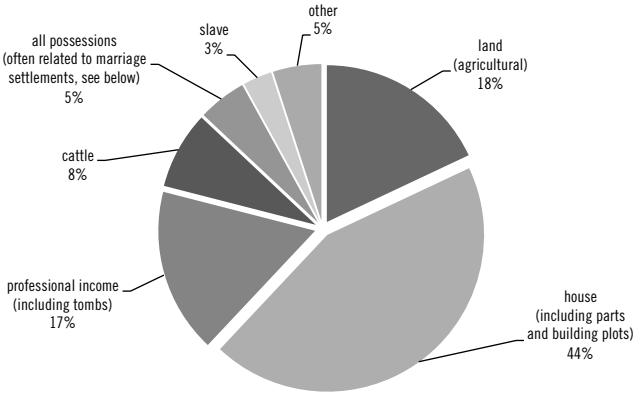

Figure 2 – Object sold

The category 'other' includes sales of wheat, of tools and objects (e.g. a loom, a winery, a set of ushabtis, thread/yarn, or resin), garden land and water rights.

There are some remarkable evolutions in the object of sales. Thus from the 6th and 5th century BC there are 9 cattle sales and only 4 sales of houses (n=16) are preserved. For the 4th to 1st century, the ratio is very different, with 11 sales

of cattle and almost 145 sales of houses and real estate (n = 254). The reasons for this are unclear.[3]

'Sale' documents in Demotic: sale and cession

In the above I have mentioned sales, cessions, donations, and divisions, but also marriage settlements as related 'genres'. Some 'legal' background is necessary to distinguish them.

What is commonly called 'sale' among demotists and egyptologists is a document in which after a date, the vendor ('party A') and the buyer ('party B') are identified in an objectively styled statement: 'What A has said to B'. This is followed by subjective declarations by the vendor in the first person, saying: 'You have satisfied me ('my heart') with the silver (money) for' to introduce the object of the sale. The vendor goes on to state that he has given it to the buyer, that he has received the price, that he guarantees to intervene against anyone else who will claim to have rights, and that he will swear an oath in court if needed. This can be followed by similar subjective declarations, again introduced by an objective identification clause, by interested third parties such as close family members with possible claims to the property. A signature of the notary closes the document.[4]

Many of these sale documents, however, are accompanied by a second document on the same papyrus, written on the same day by the same parties and the same notary, concerning the same object. In this document, traditionally called 'cession', the vendor declares to the buyer that he is far from him concerning his (i.e. the buyer's) property, and clauses similar to those of the 'sale' follow (but not that referring to transfer of silver (money)!). Often a reference to the sale document follows at the end, so that the cession is clearly secondary.

The traditional designation 'cession' suggests that only this document really cedes rights to the property, and this is echoed in Revillout's and Pestman's long-held interpretation that sales would only transfer the legal right to *use* the property, while cessions would actually transfer the *ownership*.[5] A historical study of the sales and cessions and a close reading of the documents suggests, however, that cessions do not transfer anything but are merely a confirmation on the part of the declarant that he no longer has any rights whatsoever vis-à-vis the object of the sale.

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[3] See Manning 1995, p. 237-268.

[4] For a survey of the clauses in Demotic sales (and cessions), see Zauzich 1968. Compare also the brief survey in Lippert 2008, p. 148-149.

[5] Revillout 1880, p. 3 n. 3; Pestman 1969, p. 62.

Evidence for this secondary role of cessions in comparison with sales is plenty.[6] Cessions themselves often refer to the sales they accompany, while the opposite is never the case.[7] In some sets of sale and cession documents, the cession has fewer witnesses or fewer witness-copies than the sale or even completely lacks copies.[8] There are examples of Greek translations of Demotic documents with sale and cession which meticulously render every element of the original, including the autograph subscriptions, but suffice with a simple reference to the cession at the end.[9] Finally, cessions are often absent in the sense that a sale of a house is the only document preserved of a specific transaction. Such an argument *e silentio* can be very dangerous because so much evidence is lost, but in some closed finds it seems highly unlikely that the cessions would have been discarded while the sales were carefully preserved.[10] If therefore the vendor in the sale states 'I have given you my house; it is yours', while he states in the related cession 'I am far from your house', this makes clear that the house was already owned by the second party when the cession was drawn up. An existing situation is confirmed rather than a new one created, which is nicely illustrated by the use of the qualitative form of the verb *wy* 'to be far' (referring to the resulting state) rather than the infinitive 'to remove'.[11]

The 'cession', 'quitclaim', or even better 'document-of-no-rights', thus confirms that the declarant is content with an already existing, albeit often recently changed situation. The oldest examples do not accompany sale documents, but are used in other contexts. Perhaps the most popular one is after a verdict in a trial, when the losing party can be forced to make a document in which he refrains from further actions on the object of litigation, the so-called withdrawals after judgement ('Streitverzichterklärung').[12] A cession could also be drawn up to confirm that an obligation had been fulfilled, for example when the document stipulating the obligation could not be given back for some reason.[13] Another typical use is when ownership changed at the occasion of an inheritance and the heirs and new owners wrote cessions to confirm that

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[6] This paragraph strongly relies on my contribution 'Cessions' in the forthcoming volume KEENAN – MANNING – YIFTACH-FIRANKO 2014.

[7] See ZAUZICH 1968, p. 151 nos. 67-70.

[8] See DEPAUW 1999, p. 67-105, esp. 96-97.

[9] E.g. CPR XV 2 (TM 9904).

[10] DEPAUW 2000, p. 4-7.

[11] The qualitative is a grammatical form indicating a state resulting from the action expressed by the infinitive of the verb: see JOHNSON 1976, p. 21-27.

[12] ALLAM 1994, p. 19-28.

[13] P.Tsenhor 15 (TM 47179).

they had no claims on the portions of other parties.[14] In all these cases, like in the cessions accompanying sales, party A acknowledges an existing, albeit often recently changed situation, to remove all doubts concerning the validity of party B's claims.

It is thus not unlikely that through the addition of a cession to a sale, the vendor anticipates on a potential (lost) trial concerning ownership. Sale and cession are often combined on the same papyrus sheet, although in many cases this is difficult to determine with certainty because the large papyri (up to 5 metres!) have often been cut in two in collections when they were framed. The earliest example of the combination seems to date to 304 BC.[15]

'Sale' documents in Demotic: 'conditional' sales

On the other hand it should be emphasized that sale documents without accompanying cession could also be used as security for the fulfilment of obligations. This is especially attested for two situations: mortgages and marriage settlements (perhaps better 'financial unity agreements').

The first are the so-called mortgages, 'hybrid' loan-sale documents from Ptolemaic Upper Egypt in which party A declares to have received a specific sum of money from party B, and to be satisfied with the money for his property, usually a house, if the debt is not paid back by a specific date. In case of default, the conditional sale was a fact and a cession was added at the date of default.

The second combination is found in a type of document which would perhaps best be called 'annuity contracts', but since they most often appear in the context of marriage, they are commonly known as the so-called marriage settlements belonging to a specific type 'C', the *sʿnḫ*-documents. In these documents party A acknowledges to have received from party B a sum of money described as *sʿnḫ*, which must mean something like 'dotation capital' or 'annuity'. In return for this sum party A promises a yearly income for party B, and states that everything that he owns and will own is the security for this promise. This document of annuity very often stands on itself, but there are examples where it is accompanied by a document of sale with the same parties, written on the same day by the same scribe. In this, party A declares that he has received the money for all his current and future possessions from party B, followed by the other customary formulae for sale. This is clearly just a

[14] P.Louvre N 2430 (TM 46113).

[15] P.Louvre E 2427 + 2440 (TM 43827 + TM 43828) from Thebes, Jan-Feb 304 BC.

more explicit formulation of the security clause in the annuity documents and the sale is fictional or conditional in the sense that party B (mostly the woman or wife) can only claim it as far as party A (the man) defaults on the annuity provided in return for the *sʿnḫ* 'dotation capital'. This condition is not made explicit in the text of the sale document itself, which somehow suggests that sale documents were insufficient for the transfer of property (thus apparently confirming the traditional interpretation). Lippert therefore argues that this supplementary document of sale was not given to the beneficiary but to a Urkundenhüter, a trustee of both parties who safeguarded the document as an impartial third party.[16] Perhaps this is a lot of trust to put in someone, however, and an alternative is to assume that the supplementary sale was always on the same papyrus next to the annuity contract, so that it clearly formed a whole with it. In some cases the two documents on these large papyri became separated in modern collections, but in others they still stand next to one another.[17] A third alternative is to assume that sales for all current and future possessions were readily recognizable as security for annuity contracts anyway.

An indication that a return to the traditional interpretation is unwarranted is also provided by the evolution of mortgage agreements. The procedure described above apparently changed in the Roman period. Mortgage agreements then became bilingual documents with a Greek loan on the right combined with a Demotic sale and cession (and a Greek summary of these underneath) to the left.[18] Here even the combination of sale and cession is still conditional upon non-repayment of the loan, effectively replacing the sale on its own of Ptolemaic times. This suggests that sale by itself and sale and cession combined had the same legal value. Similar is the only Demotic annuity contract preserved from Roman times.[19] Because of its fragmentary nature, it would have remained uncertain whether it was accompanied or not by another Demotic text, were it not for the Greek subscription, which describes the Demotic as a [κα]τ[ὰ] Αἰγυπτίαν συνγραφὴν τροφῖτιν ἀργυρίου [χρυσῶν ια] 'according to the Egyptian annuity contract for 21 silver drachmae' but also speaks of καὶ τὴν ἀποστασίου κ[αὶ πρ]όπρασιν 'the cession and preliminary sale'. The latter 'proprasis' is a standard rendering of the document of sale in this context, so we know that this must have been lost, but more

[16] LIPPERT 2008, p. 151.

[17] P.Cairo 30616 (TM 43284).

[18] Although the Demotic itself had probably become legally worthless by new measures favouring Greek, taken soon after the Roman conquest, in some cases the Egyptian scribes still added it above the Greek summary subscription which had become essential.

[19] P.Mich V 347 (TM 12157) dated AD 21.

interesting is that in this Roman contract apparently a cession (ἀποστασίου) accompanied the sale from the start. This addition is parallel to that found in mortgages, and seems to suggest that Roman regulations stipulated that sales should be accompanied by cessions at the conception of the agreement.

A final document shedding light on the relation between sale and cession is the only known Ptolemaic period cession written by a man for a woman in the context of a combined sale and annuity contract.[20] The man states that he is far from 'everything' (*nty nb nkt nb*) for which he has written her a sale 'before today' (*ḥ3.t p3 hrw*). He does not bother to specify it, but just refers to the list on the other document (houses, building plots, tombs, etc.). Initially he describes these as 'your houses, your building plots, ...', but as the enumeration proceeds he slips into 'my work as choachyte' etc. At the end he even adds *nty nb nkt nb nty mtw=y ḫnʿ n3 nty ỉw=y dỉ.t ḫpr=w* 'everything which is mine and what I will acquire (in the future)'. This transaction can hardly be put in the context of divorce, since this would have been a very painful deal for the former husband: he would effectively not be able to gather property ever again. Instead it seems more likely to assume that the marriage is not over at all, but that instead the husband is moribund and decides not to rely on the condition of not fulfilling his obligations, which would activate the sale which accompanies the annuity, but to confirm before dying that the transfer of property to his wife and children is effective. And indeed in 265/264 BC we see his wife in another document selling half of her property to her oldest son, on condition that he will take care of her during her lifetime and will bury her properly.[21]

So what was the condition of women who received such annuity contracts and became *s-ḥm.t n sʿnḫ* 'annuity woman', a title apparently born with pride since it appears when they are identified in contracts?[22] Initially these marriages were misunderstood as trial marriages, and then for a long time people believed they were the most 'decent' marriages in view of the equality of value of the *sʿnḫ* on the one hand and annual payments by the husband on the other. Although the latter is probably untrue,[23] it seems 'annuity wives' had the best possible status, since in the contracts the husband (or relative) confirmed that his entire possessions were the security for the dotation capital (theoretically?) paid in by the woman. Moreover the annuity contracts, unlike some of the other types of marriage contracts, do not say anything about the possibility of divorce.

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20 P.Louvre N 2428 (TM 46111) from 277 BC.

21 P.BM Andrews 1 (TM 310).

22 Depauw 2014, p. 80.

23 Lippert 2008, p. 168.

Yet in the famous Siut archive which deals with a case of divorce and remarriage, this is exactly what happened.[24] A man called Petetum had married his first wife, an annuity woman, and had two children by her. Shortly before he died in 181 BC he remarried with the agreement of his first wife, with a woman with whom he apparently already had two children. At the occasion of his second marriage, again with the consent of all parties involved, his property was divided: 2/3 for the children of his first marriage and 1/3 for those of his second. Eleven years later, however, in 170 BC his daughter-in-law Chratianch who had married his oldest son from his first marriage, protests against this arrangement. Unfortunately for her, however, she had consented to it herself three years earlier, in 173 BC, and thus lost the trial before the judges.

The final verdict quotes two existing laws that seem to put Chratianch in the right.[25] The first says that a man who marries and draws up an annuity contract, then divorces and marries again and draws up another annuity contract for his second wife, when such a man dies his possessions will go to his first wife and their common offspring. The second says that a man who has written an annuity contract cannot sell any of his possessions without the consent of his wife or her oldest son; if he does, the transaction will be invalid.

What thus ruined Chratianch's case was that she herself (and her husband earlier) had consented to both the new marriage of Petetum and the division of property between Petetum's offspring. Her claim that she was forced to agree is considered invalid, and it is explicitly pointed out that she has signed the contract in her own hand, a rather uncommon safety measure enhancing the legal value of the deed.[26]

Against this background, the story of Setne and Tabubu becomes more understandable. In this Demotic narrative, part of the so-called First Setne Story,[27] the hero Setne is walking around and suddenly spots the beautiful Tabubu, a daughter of the prophet of Bastet wearing a see-through dress, and falls head over heels in love with her. She allows him to come to her house, but when he wants to take 'appropriate action', she tells him that she is not a woman of the street but wants him to write a document concerning money (i.e. a sale) for all his possessions and an annuity contract. After he agrees and insists on going ahead with things, she then forces him to fetch his children, to make them sign underneath the contract. When he has again agreed, and the children have

[24] PESTMAN 1961, p. 187-188.

[25] PESTMAN 1961, p. 43-44.

[26] See DEPAUW 2003, p. 66-111.

[27] TM 55857: GOLDBRUNNER 2006. See also VINSON 2009, p. 283-303.

done what Tabubu wanted, Tabubu then decides that she wants the children dead. Blind of love and lust, Setne agrees and has his children slaughtered. With animals that are devouring his offspring howling in the background, he then mounts the stairs with Tabubu and finally get his way with her, only to wake up completely naked in a rather embarrassing position with pharaoh approaching. Almost like Bobby Ewing in the famous shower episode of the 'Dallas' soap, he realizes everything has been a dream. The story illustrates beautifully that death of possible rivals was the ultimate safety measure, because – like Chratianch – children and in-laws can still dispute settlements.

'Sale' in Demotic as immediate cash sale

Sale in Egyptian law is in principle cash sale: the sale document is a confirmation that the vendor has received the price in silver (money) (or in barter in the case of an exchange). Donations are very similar to sale documents but do not refer to a price, they just say 'I have given you ...'. Even so, the price itself is not mentioned in the Demotic documents, unlike in the abnormal hieratic contracts. This thus seems an idiosyncratic scribal tradition rather than a principle of Egyptian law. In any case this allowed the sale documents to be used also for donations or as security, as we have seen above.[28] This vagueness of purpose and even sometimes ambiguity of parties seems almost typical, and clarity can often only be achieved by study of the archive of which the document is part.[29]

A Demotic sale is in principle immediate, and the vendor has to guarantee 'clear title' to the buyer. He is responsible for claims that might come from third parties. If there is nevertheless a dispute of ownership which the vendor could not solve, a three year period seems to have been crucial in Egyptian law to challenge or confirm transfer of property. The dispute was to be made public by filing several so-called 'public protests' or *š'r*, official documents which, if they remained unchallenged, effectively put the plaintiff in the right.[30]

To prevent the illegitimate sales, the vendor also handed over older sale documents concerning the same property. This is attested in several archives where consecutive sales concerning the same property have been found.[31]

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[28] Lippert 2008, p. 147-148.

[29] Examples in Pestman 1995, p. 79-87.

[30] Muhs 2002, p. 259-272.

[31] E.g. the archive of Apynchis son of Tesenouphis (www.trismegistos.org/archive/108) or that of Teos and Thabis (www. trismegistos.org/archive/228).

Previous sale documents may even have played a role in the layout and form of later ones.[32] If there was no previous owner, land could also be auctioned off to the highest bidder, e.g. after the Great Theban Revolt in the 2nd cent. BC.[33]

Documenting sales in Demotic

So far I have not said much about institutional arrangements or the way the agreement between the parties was documented. First of all it seems that the Demotic contracts were written evidence of oral agreements. The text explicitly states at the beginning that the first party has declared ('said') something to the second party. The official character of that declaration is confirmed by the elaborate clauses of the contract itself, but also its materiality. Almost all Demotic contracts are written on papyrus (1523 of the 1611), with the few exceptions being 72 pottery sherds and 7 limestone fragments (the so-called ostraca), 4 wooden tablets, 1 complete pottery vessel and finally 4 stelae. Contracts of sale are even more exceptional on writing surfaces other than papyrus. Except for 2 stelae which document ownership to a tomb, and an unclear ostracon, there are currently only 4 pottery sherds from Ayn Manawir in the Kharga oasis, where papyrus was scarce and ostraca formed the standard writing material.[34] As a general rule, papyrus was the only 'proper' material for important sale contracts, and preferably a very large sheet with long lines and ample margins was used, the so-called large format.[35]

The authority of the person in whose name the contract was written, in many cases probably also the actual scribe, will also have added to the impression: this was the temple notary, or perhaps better temple scribe, whose family (or families if there was more than one) belonged to the local nobility.[36]

I have already mentioned the possibility to add a clause inside the contract in which an interested third party, often a spouse, father or son, is mentioned as approving the contract. In some cases, although certainly not as a rule, this person also signs the contract in his own hand, and this handwritten confirma-

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[32] Depauw 1999, p. 70 & 101.

[33] Manning 1999, p. 227-284.

[34] For a survey of the material from Manawir, see e.g. Wuttmann – Bousquet – Chauveau – Dils – Marchand – Schweitzer – Volay 1996, p. 385-451.

[35] I here focus on the large format Demotic contracts, which are customary for most sales. For information on format, see Depauw 2013, p. 155-170.

[36] Arlt 2009, p. 29-49.

tion is also a possibility for the declarant himself or anyone other interested third party.[37]

These signatures of interested third parties should not be confused with those of the witnesses. These 'objective', neutral and trustworthy citizens were called upon to add their signatures (name and father's name), mostly on the back of the contract, exactly on the reverse of where the verb 'to declare', introducing all legal statements, was written on the front. Especially in earlier periods, some of the witnesses even copied the entire text of the contract, a very cumbersome procedure which showed that at least some were good scribes. Their presence and signatures were essential for the validity of the contract, as is indicated by the fact that their names where copied when the contract needed to be duplicated, but also by claims that a contract was invalid 'because it had not yet been filled with witnesses'. Their signatures may themselves not have sufficed, however, in case of discussion, as a legal text in great detail stipulates all the rules of validity of a contract in case the witnesses have died and they can no longer confirm the transaction.[38]

Further confirmation of the validity was provided by subscriptions added underneath the contract by institutions. A first important one was the (most often Greek) tax receipt, which could also be written on a separate sheet of papyrus or an ostracon. The other common subscription is the registration of the contract, almost always in Greek. After the third century BC, the procedure became very common in the middle of the second century BC, when the rules were probably changed and Demotic contracts lost their validity unless they were registered.[39]

After the contract was written, it was not sealed (unlike common practice for some types in Greek), but rolled up and normally handed over to the buyer together with older title deeds concerning the same property, if available. In some cases a so-called 'neutral' trustee seems to have kept the document(s), but his role is not well known.[40]

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[37] For a survey of the formal aspects discussed in this section, with reference to further literature, see DEPAUW 2012, p. 309-320 or LIPPERT 2008, p. 136-140.

[38] LIPPERT 2004, p. 38.

[39] PESTMAN 1985, p. 17-25, but see now DEPAUW 2011, p. 189-199.

[40] LIPPERT 2008, p. 145.

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Defining the Fiscal Role of Hellenistic Monarchy in Shaping Sale

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Introduction

In the classical Greek world, in the context of the polis, the taxation of sale was the kind of banality that could attract the wit of Aristophanes.[1] Yet it is precisely this sort of everyday occurrence about which most of our sources are silent. Indeed, if we can assume that, broadly speaking, the classical polis and its Hellenistic successor raised a tax on certain sales, a tax which they called an *epônion* or a *hekatostê* (1/100), we are ill informed about the details: the incidence of this tax and the mode of imposition.[2] With the subjugation, and further, the integration of many poleis into Hellenistic kingdoms, as well as the kings' foundation of many new cities organized along similar lines, fiscality became a domain in which relations of power were negotiated, and in which, for us, the smaller polity's position in a larger, multiscalar state can be mapped out. Yet when it comes to taxation and sale, we do not yet have a clear account of the impact of royal power (*basileia*) on the polis: which

[1] *Acharnians* 896-97.

[2] On sales tax in the Greek city of the classical and Hellenistic periods, see Francotte 1909, 15-19 and Andreades 1933, 144-46. Independent Delos represents a singular case, for which we have an extraordinary amount of information; see Chankowski 2007, 311-12.

of the traditional tax powers of the polis were transferred to the monarchy? Which were shared? Which transformed in the new environment? Or did the kings introduce new fiscal categories and institutions around sale in order to increase their revenues?

What follows is an attempt to clarify the role of *basileia* in shaping sale. In reviewing the evidence from the major kingdoms outside of Egypt, a surprisingly circumscribed royal role in the taxation of the sale transaction is uncovered.[3] By contrast, a modest royal role comes into focus in the charging of fees for access to the spaces of sale par excellence, the agora and the temporary marketplaces of festivals, and an even larger role in shaping sale through taxation in the domain of customs, in the taxation of mobility, specifically, mobility in the service of sale. These conclusions are the basis for the reconstruction of what Nicholas Purcell has called in his recent *Sather Lectures* a "universe of sale," or a "regime of sale," which Purcell argues is historically variable and contingent.[4] In particular, the aim is to broach the question of the political and economic integration of a Hellenistic kingdom through the lens of the institutional arrangement for sale.

Part I, "Transactions"

In common usage, the term "sales tax" refers to a transaction tax, and in the American system, it is usually incumbent upon the buyer to pay it.[5] In the simplest terms, when we speak of a "sales tax," we are referring to a species of indirect taxation, namely that which is levied on the act of sale.[6] Such a

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[3] The Ptolemaic kingdom is excluded from this study due to considerations of space and because much of the focus will be on a dynamic interaction between cities and kings not found in Egypt.

[4] The lectures were entitled, "Venal Histories: The Character, Limits, and Historical Importance of Buying and Selling in the Ancient World." For now, see Purcell 2012.

[5] From *West's Tax Law Dictionary* (accessed online, 9.24.12), *s.v.*, "sales tax": "State or local tax on the retail sale of goods or services. In general, it is calculated as a percentage of the sales price. Sales tax paid or accrued in carrying on a trade or business or as expenses for the production of income is allowed as a deduction. Sales taxes are generally paid by buyers and collected by sellers as agents for the government." By contrast, in ancient Greece, it seems to have been less clear who should have to pay the *epônion*. See, e.g., the case of the land sales of fourth-century Philippi (Hatzopoulos 1996, 83).

[6] Some historians, however, are willing to apply the label "sales tax" even when it is not clear that the imposition strikes directly upon the transaction as such. A good example is the case of a document describing taxes for the synoikism of Teos and Kyrbissos, the inscription from Olamış. (Robert – Robert 1976, 176-79, esp. lines 8-15), as analyzed by Chankowski 2007, 310-11. Though she applies the label "taxes sur les ventes," she also admits that by its mode of imposition, that tax looks more like a *cheironaxion*, a tax on practicing a particular form of economic activity. Specifically, slaves who sell certain products are not taxable possessions of their owners.

tax is well evidenced in the Hellenistic polis, and it is also attested for cities joined together in a federal league (*koinon*).[7] By contrast, our evidence for a royal sales tax outside of Egypt is sparse and ambiguous. Before examining the situation on the ground, it may be helpful to review what theoretical reflections are available in the second book of the *Oikonomika* of Ps.-Aristotle.[8] Tellingly, the author of that text leaves no place for a sales tax in his diagram of the royal *oikonomia*. However, one has been tempted to identify a sales tax among the enumerated satrapal revenues. The fourth satrapal revenue is termed ἡ ἀπὸ τῶν κατὰ τῆν γῆν τε καὶ ἀγοραίων τελῶν γινομένη (2.1.4 = 1345b). After significant disagreement, most now agree on the meaning of the first part of this clause: these are customs and tolls, specifically, those levied on goods and people travelling over land (*kata tên gên*), as opposed to those arriving in harbors, which belong to the third satrapal revenue, τῶν ἐμπορίων, mentioned just before.[9] The *agoraia telê* are rather more difficult to interpret. They are undoubtedly market taxes of some sort, but the institutional reality behind the phrase is unclear.[10] The most notable attempt to interpret *agoraia telê* as sales taxes is that of Makis Aperghis. He has gone so far as to restore the phrase in the correspondence between the city of Herakleia-under-Latmos and Antiochos III and translate it as such.[11] Not only does this translation lack philological justification, it fails to make sense of the pairing of the *agoraia telê* with those taxes raised *kata tên gên*. The conceptual link seems to relate to the movement of people and goods from ports of entry to markets by way of transportation over land. This would mean that what is being taxed is the conveyance of marketable goods to the market itself. The *agoraia telê* should be understood primarily as charges for access to market space (French "droits de marché"), and possibly also as taxes on movement in the service of sale.

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[7] For examples from the Hellenistic polis, see ANDREADES 1933, 144-46; for sales tax divided up between a federal league and its constituent member poleis, see, e.g., the case of the Akarnanian *koinon*, *IG* IX,12 583.

[8] On the date of this text: against the low dating of Aperghis 2004 (early third century B.C.E.), see now VALENTE 2011, with date of 320-300. The traditional high date gives the text a late Achaemenid background while making sense of the occasional early Hellenistic elements.

[9] CHANKOWKSI 2007, 308.

[10] Cf. VAN GRONIGEN – WARTELLE 1968, in the Budé edition, "[impôts] sur les marchés," to ZOEPFFEL 2006, 22, "Marktsteuern," to VALENTE 2011, *ad loc*., who waffles between a tax on "merci" and on "mercati." See also CHANKOWSKI 2007, 308: "taxes commerciales en dehors des zones portuaires." ROSTOVTZEFF 1941, 444-45, admits the difficulty, but settles on "all kinds of taxes on sales, taxes on the registration of documents, and so forth." Cf. MCEWAN 1988, 417, who suggests that behind the Akkadian "tax of the market" in cuneiform documents we have a Greek *epônion*.

[11] *SEG* 37,859 N II, line 16. APERGHIS 2004, 160-63, esp. 160 for restoration, which does not appear in his edition in the appendix.

a) The Attalids

One of the likeliest candidates for a royal sales tax is the *agoranomia* of Toriaion in the Attalid kingdom. In the years following the enlargement of that kingdom in 188 B.C.E., the village community of Toriaion in eastern Phrygia requested and was granted a number of polis institutions by Eumenes II. Two royal letters to the new polis have been preserved in an inscription, describing these privileges in detail.[12] Of particular importance is Eumenes' grant to Toriaion of an oil fund for the gymnasium, for which the king assigns – for the present – the "revenue from the *agoranomia* (τὴν ἀπὸ τῆς ἀγορανομ[ί]ας πρόσοδον)" (line 43). It is difficult to determine very precisely the character of this revenue, not least because the term *agoranomia* itself is rare.[13] Yet it seems reasonable to assume that what is meant here is revenue collected by the *agoranomoi*. The question is what kind of revenue that might be. According to the document's first editors, Lloyd Jonnes and Marijana Ricl, this is revenue, "the bulk of which came from taxes on sales."[14] More recently, Laurent Capdetrey and Claire Hasenhohr have led a detailed investigation of the office of *agoranomos*, which contains the first full treatment of its finances. Unfortunately, we are better informed of the sources of an *agoranomia* that is cobbled together from extraneous public funds than we are of an *agoranomia* that derives from the activities of the *agoranomoi* themselves. As Capdetrey and Hasenhohr insist, those activities will have varied greatly from place to place, but in their view, these are not only the exaction of fines, but also the collection of taxes on transactions.[15] Yet as it stands, so much more of the documentation relates to fines.[16] Key texts such as the Agoranomic Inscription of the Piraeus or the Delian Law on Charcoal and Wood tend to show the *agoranomoi* acting rather more to monitor prices than to collect taxes on sales.[17]

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[12] *SEG* 47,1745.

[13] E.g., *I.Magnesia* 269; *I.Iznik* 1260; *I.Pergamon* 183.

[14] Jonnes – Ricl 1997, 24.

[15] Capdetrey – Hasenohr 2012, 14.

[16] As emphasized by Dmitriev 2005, 34. Bresson 2008, 22, summarizes the duties of the *agoranomoi* in the following way: "de veiller à la régularité des transactions effectuées sur le marché." Similarly, see Migeotte 2005, esp. p. 288. For classical Athens, see Rhodes 1993, 575-76. Note, P. Stanley 1976, in his unpublished dissertation *Ancient Greek Market Regulations and Controls* (Berkeley), p. 205, suggests that *agoranomoi* collected a sales tax in classical Athens; for Hellenistic Athens, see *IG* II^2 1013. There is a documented fiscal role for *agoranomoi*, which is not tax collection, but rather involves selling contracts for public works (e.g., *I.Erythrai* 503, lines 27-29 [misunderstood by Jones and Ricl]), monitoring holders of tax privileges (*I. Delos* 509), or managing market space (*LSCG* 65, line 101).

[17] For the Piraeus inscription, see Steinhauer 1994, with Bresson 2000, 151-82; the Delian law:

If indeed the *agoranomia* of Toriaion did consist of at least in part a sales tax, it is however significant that what we see in the case of this nascent polis is not a permanent royal sales tax, but a temporary royal appropriation of a civic tax to shore up a local institution. The insistence of Eumenes II that the arrangement is provisional is noteworthy.[18] In the long term, it is clear that royal revenues are envisioned for this earmark.[19] This was because in the major Hellenistic kingdoms outside of Egypt, the office of *agoranomos* remained a civic office.[20] This is nicely illustrated by a text from Ilion, which shows the member poleis of the *koinon* of Athena Ilias each contributing one *agoranomos* apiece to the college that would oversee a festival market.[21] In Toriaion, the Attalids may have for a time laid their hands on a sales tax, but it was by no means one that regularly accrued to the royal fisc.[22]

Strabo famously describes the commerce of a religious festival, the *panêgyris*, in pithy terms: ἥ τε πανήγυρις ἐμπορικόν τι πραγμά ἐστιν, "the *panêgyris* is a commerical affair."[23] So-called big-ticket items, especially slaves and livestock, were bought and sold at these festivals in large quantities.[24] The space and temporal context for sale were strictly demarcated, greatly facilitating surveillance and taxation, whether by religious authorities acting on their own or in concert with states. Thus, the *panêgyris*, particularly where we find royal involvement, is a plausible context in which to look for a royal sales tax. As Christophe Chandezon has pointed out, we have mostly a negative image of the fiscal norms of these fairs, as the documents are so often concerned with blanket grants of tax immunity (*ateleia pantôn*).[25] Seen in this light, a second Attalid document is of great interest. This is the letter of the future Attalos II concerning the *katoikoi* of Apollo Tarsênos.[26] These *katoikoi* were likely a population of temple dependents on or around a sacred estate in the upper

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I.Delos 509.

[18] CAPDETREY – HASENOHR 2012, 23, n. 98, underscore the point.

[19] *SEG* 47,1745, lines 43-47. For interpretations of precisely which royal revenues are meant, see most recently SCHULER 2004, 535, n. 194 and MÜLLER 2005, 356-58.

[20] G. Finkelstein has challenged this axiom. FINKIELSTEJN 2003, 472 suggests that Antiochos IV, perhaps influenced by Ptolemaic practice, instituted a form of joint administration of the civic *agoranomia*.

[21] *I.Ilion* 3, lines 5-11.

[22] *Contra* also APERGHIS 2004, 285, on *SEG* 47,1745, *RC* 3 (clause 11), and 2 Macc. 3, 4-6. Note also that *agoranomia* does not appear in all manuscripts of 2 Macc., for which see ABEL 1949, 317.

[23] Strabo 10.5.4.

[24] See, e.g., sales tax in the aforementioned *IG* IX,12 583 (Anaktorion and the Akarnanian *koinon*).

[25] CHANDEZON 2000.

[26] *RC* 47.

Kaikos Valley, in the hinterland of Pergamon. Through the intercession of their high priest, they secured a tax privilege from the crown termed *ateleia probatôn*, "tax immunity on livestock." At first glance, this would appear to be a direct tax on property in livestock.[27] However, the scholarly consensus has in fact settled on sales tax.[28] This is largely on the basis of two restorations made after a suggestion of Louis Robert, (which he seems, in the end, to have taken back).[29] These are πανηγύρεως in line 4 and πανήγυ̣ρι̣ν in line 12.[30] The standard interpretation, then, is that these were livestock sold at the festival of Apollo Tarsênos. Leaving aside the problem of a definitive restoration of the text, we still face an interpretive problem. Was the tax immunity granted on the import of the livestock across royal customs boundaries to the site of the festival, or rather, was it a true royal sales tax, levied on transactions? The Apollo Tarsênos document is not so much the hard proof of a royal sales tax that it is often said to be, but a hint of how much we do not know.[31] Again, for festivals, we only hear of the kings' releasing from taxation, i.e., the ad hoc grants – the exceptions to the norm. So much of the royal role in sale is obscure.[32] Yet it merits emphasis: the Attalid grant to the *katoikoi* of Apollo Tarsênos remains imperfectly understood from this perspective.

b) The Seleukids

From the Seleukid kingdom, the prime epigraphical evidence for a royal sales tax comes from the dossier of letters of Antiochos III and his governor Zeuxis to the city of Herakleia-under-Latmos, dated c. 196-193.[33] The documents emerged from negotiations over the terms of imperial rule that followed Antiochos III's expansion and consolidation of his power in Asia Minor. In the letter of Zeuxis, the king's representative reproduces the original petition of

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[27] Cf. ROBERT – ROBERT 1976, 176-79, lines 8-9, the synoikism of Teos and Kyrbissos, where a tax *tôn probatôn* is clearly not a sales tax but a head tax.

[28] CHANDEZON 2003, 196, though cf. 315, allowing for the possibility that it is a head tax; PIEJKO 1989, 400; SCHULER 1998, 193: "Verkaufsteuer auf Schafe, von der Festmarkt befreit werden sollte."

[29] See WELLES 1934, 193.

[30] WILHELM 1943, 35-40 and 61, as well as FEYEL 1940, 137-41. Welles also considered and ruled out in line 6: [ἐν ταῖς πανηγύρε]σιν.

[31] Cf. the case of Herakleia-under-Latmos *SEG* 37,859, N4 line 6. What does it mean that the *panêgyris* there is *atelês*? As WÖRRLE 1988, 467, admits, we simply do not know.

[32] One thinks here of a royal judge set over Attalid Aeolis (Athenaios XV 697d), who may have an analogue in the *basilikoi dikastai* of Tyrissa, a Macedonian city under Antigonid rule (*SEG* 47,999, lines 5-7). In Tyrissa, the judges' ruling is followed by an act of sale.

[33] *SEG* 37,859.

Herakleia, which is full of requests for various fiscal privileges. Of relevance here is the request in lines 7-8 of N III that tax immunity be granted on something τοῦ τε εἰσαγομένου εἰς τὴν πόλιν καὶ τοῦ πωλουμένου. Following the commentary of Michael Wörrle, one usually supplies σίτου ("of grain"), from the previous clause. Yet what of τοῦ πωλουμένου? Is this not evidence of a royal sales tax, as some have claimed?[34] And is it not the case here that the tax immunity is requested, first, for the import of grain, and second, for its sale?

This is a very difficult passage to interpret precisely, but it seems to speak not of royal sales tax, but of a customs regime that anticipates sale. This becomes clear if we pay close attention to its context. This entire section, three requests following the verb μνησθησομένους in line 6, concerns the city's provision of grain.[35] Earlier, Herakleia had complained of distress (*stenochôria*; N II lines 12-13).[36] To resolve, the issue, some grain was to be given to Herakleia as a gift (*dôrea*; NII line 7). But for the reconstitution of the rest of its grain supply, Herakleia needed to consider the tax implications, especially if it wanted to import, via private or publically designated importers, grain that might then be sold publically. So Herakleia asked for a package of *ateleia*, several privileges that were not in fact mutually exclusive, but together would ensure the tax-free transfer of grain across a royal customs boundary, irrespective of the method of its eventual distribution. The city requested ἀτελεία{ν} τοῦ τε εἰσαγομένου εἰς τὴν πόλιν καὶ τοῦ πωλουμένου καὶ ἵνα οἱ ἐξάγοντες ἐκ τῆς τοῦ βασιλέως εἰς τὴν πόλιν ἐπὶ τὰς ἰδίας χρείας καὶ εἰς πρᾶσιν ἀτελεῖς ὦσιν, (tax immunity to be granted both on (grain) imported into the city and on grain (to be) sold there, and that those exporting (grain) from the king's land into the city, both for their personal use and for the purpose of sale, do so tax free…" (N III lines 7-9)). Significantly, the question of sale is sandwiched between considerations of customs. This is because it was from the perspective of customs that sale was at issue for the royal fiscal authority. We should understand τοῦ πωλουμένου to mean that

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[34] Notably, MA 1999, 132: tax on "import and sale of grain within the city." Cf. 343, with n.7, where Ma is more circumspect in his epigraphical dossier, reproducing Wörrle's translation, but allowing for the possibility that the phrase refers to "all imports and sales in the city τὸ εἰσαγόμενον καὶ τὸ πωλούμενον." See also Aperghis 2004, 161, which makes of the phrase τοῦ τε εἰσαγομένου εἰς τὴν πόλιν καὶ τοῦ πωλουμένου, in effect, two different kinds of taxable grain: Herakleia requests that "tax exemption (be granted both) on that imported into the city and that sold there." For Aperghis, then, the release granted is from a royal sales tax collected in the city's market.

[35] See the discussion of WÖRRLE 1988, 467-68; and also the opinion of GAUTHIER 1989a, 405: all three demands have the same object, namely, grain.

[36] See GAUTHIER 1989a, 404, for emphasis on "dénouement." Wörrle had translated *stenochôria* as "Landnot."

tax immunity was to be granted on grain that was imported *for the purpose of sale*, the *eis prasin* of the third and final clause, and not on the sale of that grain per se.[37] The whole passage concerns customs collected at boundaries and not the surveillance of transactions conducted in the agora.[38]

Much more resolute indications that the Seleukids taxed sales, especially the so-called big-ticket sales, come from the Near East. Indeed, the farther one moves east in the kingdom, the more evidence there seems to be for royal involvement in the taxation of sale. However, in the case of Jerusalem, there is in fact nothing that concerns sales tax in the letter of Antiochos III to that city preserved by Josephus.[39] The richest sources of information come from Babylonia, in the form of cuneiform tablets and clay sealings.[40] In Seleucia-on-the-Tigris, Nippur, and Uruk, clay sealings have been recovered that bear in Greek the names of certain taxes, *andropodikê* (slave tax), *halikê* (salt tax), and indeed, *epônion*, often in combination, and often alongside the title of a royal official, the *chreophylax*, who registered contracts at least in part for the purpose of taxation.[41] Further, from Uruk, we also possess cuneiform tablets that record sale contracts. These tablets come from temple archives, but they often allude to duplicate registration of the same sales in royal archives. While the relationships of the different archives to one another remains in dispute, especially since they seem to change over time, the interest of the crown in taxing sale through registration of contracts is patent.[42] In Uruk, the Seleucids even took an interest in certain sales that concerned solely temple affairs, namely, the sale of prebend contracts.[43] It may even be that part of the impetus for the organization of certain segments of the populations of these cities into

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[37] We know very well that grain schemes in Greek cities involved public sale of grain stores and royal gifts of grain. See WÖRRLE 1988, 467.

[38] *Pace* CAPDETREY 2007, 421. Cf. CHANKOWSKI 2007: "Sur ces transactions, le pouvoir royal semblait être normalement habilité à prélever, logiquement, une taxe d'importation et de vente (par exemple une *dekatè tou sitou*?) lors des ventes dans la cité, et une taxe d' exportation auprès des marchands qui venaient le chercher dans le domaine royal."

[39] *AJ* 12.138-44. *Contra* APERGHIS 2004, 167; however, for Seleukid Judaea, see also the intriguing mention of the "price of salt (τῆς τιμῆς τοῦ ἁλὸς)" in 1 Macc. 10, 29. The context however is the letter of Demetrios I to Jonathan, which included an extraordinary set of fiscal privileges that were in fact never taken up. I am skeptical about the use of this document for the fiscal history of the Seleukid kingdom.

[40] The sealings from Uruk and Seleucia-on-the-Tigris were first studied by ROSTOVTZEFF 1932; for the cuneiform tablets from Uruk, see DOTY 1977; MCEWAN 1988; DOTY 2012. The final excavation publication for both the sealings and the tablets from Uruk is LINDSTRÖM 2003. See also the important essay of JOANNÈS 2012, incorporating a reassessment of the context of the finds.

[41] On the *chreophylax* in Seleukid royal administration, see CAPDETREY 2007, 319-20.

[42] On the administrative practice operative in Uruk and Seleucia-on-the-Tigris, see MESSINA 2005.

[43] JOANNÈS 2012, 249. Sale is also at issue in Falaika: *Iscrizione dello Estremo Oriente* 422, line 33.

communities based on the model of the polis, like the famous *pulitei/politai* of Babylon, was a desire to evade precisely such exactions.[44]

c) Cassander and Cassandreia

The case of Cassander and the city of Cassandreia is of distinct importance as it throws in high relief the question of whether a king might limit a city's ability to tax sale. This is a complicated case that concerns a royal grant of *ateleia* made by Cassander to a man named Chairephanes, c. 306-298 B.C.E.[45] But the city of Cassandreia plays a major role too: the decree is dated by the name of its eponymous magistrate, and the inscription was likely set up in Cassandreia, probably before one of its major public buildings.[46] In fact, the Chairephanes decree is one of several royal grants, the others being land grants, from the vicinity of the site of Cassandreia, which have spurred a lively debate about the nature of this polis, Cassander's massive synoikism and royal capital in the Chalikidic peninsula, its political status, institutions, and sovereignty.[47] What distinguishes the grant to Chairephanes from those other grants is both that it concerns only *ateleia*, and also that Chairephanes, curiously, seems to be a citizen of Cassandreia, at least this is what his gentilicial implies.

The *ateleia* granted to Chairephanes and his descendants includes import and export, buying and selling, provided that they are not done *ep'emporiai* (καὶ εἰσάγοντι καὶ ἐξάγοντι καὶ πωλοῦντι καὶ ὠνουμένωι πλὴν ὅσα ἐπ' ἐμπορίαι (lines 7-11)). In publishing the inscription, I. Vokotopoulou took ἐπ' ἐμπορίαι, effectively, as a locative. On this understanding, these activities were tax-free provided that they did not take place in one of Cassandreia's two harbors.[48] Yet as has been recognized, πλὴν ὅσα ἐπ' ἐμπορίαι is a different way of saying *epi ktêsei* – i.e., what is not for exchange in commerce is for possession.[49] As it happens, in another grant of Cassander, this one to the Macedonian landholder Perdiccas, dated to the very same year and quite pos-

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[44] On these communities and the potential for their fiscal interests to diverge from their neighbors', see CLANCIER 2007, 56-59.

[45] *SEG* 47,940.

[46] On the question of the location of the *asty* of Cassandreia and the architectural context for the Chairephanes decree, see VOKOTOPOULOU 1997, 48-49.

[47] The other grants are Cassander's to Perdiccas (*SEG* 36,626) and Lysimachus' to Limnaios (*SEG* 38,619). For the debate, see VOKOTOPOULOU 1997; HATZOPOULOS 1998, 621-22; BRESSON 2007, 173.

[48] VOKOTOPOULOU 1997, 47. Yet the activity of *emporia* need not be exclusively "το κάτα θάλασσα εμπόριο." See Aristotle, *Politics* 1258b 22, 3.

[49] See BRESSON 2007, 117.

sibly from the very same architectural context, the right of *ateleia* for import and export is granted by the king ἐπὶ κτήσει.[50] At stake was the purpose of the exchange, not its location.

What then is the anxiety expressed by such a proviso? Though probably a citizen, Chairephanes, like Perdiccas, would have been an outsized figure in Cassandreia. Considerations of social status and of the unusual scale of his economic activity may have trumped the normative claims of citizenship, especially if this Chairephanes is to be identified with the man who undertook a major project of land reclamation in Euboea.[51]

Like Perdiccas, Chairephanes probably owned an estate in the city's territory. The management of such an estate, service to the king, and private interests abroad would have necessitated much coming and going, as well as buying and selling for the maintenance of a large *oikos*. In fact, many comparable grants contain language that is explicit on this score: one is permitted to import and export *eis ton idion oikon*, (for one's own household).[52] It seems that the aim of the grant was the protection of these extraordinary activities – to ensure that Chairephanes was taxed just like any other citizen of Cassandreia. The royal grants to Perdiccas and Chairephanes were directed at local officials, civic ones if they were operating in the agora of Cassandreia, and perhaps royal ones as well, who might have operated near the inland borders of the city's territory and also in its harbors. In terms of sale, the point was to give Chairephanes the opportunity to claim in the agora of Cassandreia that his buying and selling in usual volume was done "for possession." Thus in the grant, Cassander was not affirming, by renouncing it, his right to raise a sales tax in the polis of Cassandreia.[53] He was not so much taking away the city's right to raise a sales tax, but rather insisting, in a heavy-handed way, that Cassandreia tax its extraordinary (new?) citizen in merely the ordinary manner.[54]

In general, when it came to the transaction of sale itself, within these kingdoms, in the absence of a temple community, it was the cities that seem to have exercised the primary tax powers. It might be suggested that if we possessed

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[50] *SEG* 36,626, lines 29-31.

[51] On Chairephanes' possible interests abroad, see BRESSON 2007, 175, discussing *IG* XII, 9 191.

[52] E.g., *I.Priene* 8, line 32; *I.Magnesia* 6, line 21.

[53] Cf. HATZOPOULOS 1991, 440.

[54] For Macedonia, see also the evidence of the acts of sale published by HATZOPOULOS (1996, 83) from Phillipi and Amphipolis (HATZOPOULOS 1991). In the case of Phillipi, the city collects the *epônion*. The dossier from Amphipolis shows no change in the way the city taxed sale after the Macedonian conquest.

remnants of the public archive from Sardis, where we happen to know that a famous royal document relating to a sale of land was stored, the situation in Lydia might look much more like Mesopotamia.[55] Yet in the well-studied corpus of inscriptions that record negotiations between cities and kings over fiscal privileges, the issue of sales tax is conspicuously absent. It does not seem to have been on the table. Moreover, cities that were firmly embedded within a kingdom and subordinated to royal fiscal authority could still bestow the gift of full immunity from sales tax. This is what happened in Ilion at the end of the fourth century, when the city honored three foreigners from Tenedos by decreeing that whoever bought and sold with them did so tax-free.[56] Ilion's decree lacks the sort of provisos that we know from *ateleia* documents from elsewhere, which hint at unforeseen taxes over which the city is not sovereign (*kyrios*) and thus cannot include in a blanket grant.[57] In short, sales tax was a relatively minor category of royal fiscality.[58]

Part II, "Access"

For its part, one of the most important ways in which the polis shaped sale was by charging an entrance fee to sellers who wanted access to those circumscribed and regulated spaces where sale took place. In Magnesia-on-the-Maeander, for example, wool-sellers were charged an obol a day to enter such a space.[59] These fees, however, do not fit neatly into our fiscal vocabulary.[60] But they were a fundamental, perhaps even under-appreciated, aspect of sale in ancient Greece. To take just one famous text, the Delian Law on Charcoal and Wood, the *agoranomoi* on the island were obligated to penalize the tax immune for non-compliance by charging them a standard one drachma per day for space in the agora (*misthos tou topou*).[61] As a source of revenue, this fee was so common that it could even go by the simple name *agorastikon* – or

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55 On the Sardis archive, see Capdetrey 2007, 320, discussing *OGIS* 225.

56 *Syll.*[3] 355.

57 E.g., *I.Iasos* 18, line 9; or *SEG* 35,1085, lines 30-31, from Apollonia Salbake. In both cases, the phrase is: ἀτέλειαν πάντων ὧν ἡ πόλις κυρία, "immunity from all those taxes over which the city has sovereignty."

58 Cf. Chankowski 2007, 323.

59 *I.Magnesia* 121. Different sellers are charged different daily rates. The preserved text does not name the space of sale.

60 Chankowski 2007, 313 arrives at a kind of aporia. She uses the terms "taxes d'usage" and "taxes commerciales," which get closest to the phenomenon.

61 *I.Delos* 509, lines 40-42.

fall under the heading of *agoraia telê*, familiar from the *Oikonomika* of Ps. – Aristotle.[62]

The question is whether the monarchies too sold this access, and here a modest royal role is evident, which we should be careful not to overstate. The key text is the Second Letter of Antiochos III to Sardis of 213 B.C.E., in which the king removed certain burdens imposed as punishment for Sardis' support of Achaios in a Seleukid dynastic war, while also restoring certain privileges. The relevant passage reads: ἀπολύομεν δὲ ὑμᾶς καὶ τοῦ ἐνοικίου οὗ τελεῖτε ἀπὸ τῶν ἐργαστηρίων, εἴπερ καὶ αἱ ἄλλαι πόλεις μὴ πράσσονται. "We release you from the *enoikion* that you pay on the *ergastêria*, since the other cities do not pay it."[63] A rent of some kind was raised "on the *ergastêria*." Following Philippe Gauthier in the ed. pr.[64], many have imagined these *ergastêria* to have belonged to a stoa built and in fact owned by the king, (for which there is no textual or archaeological evidence), going so far as to posit a entire class of royal stoas in the agoras of cities. This theory gives the kings a much larger role in shaping the space of sale than the Sardis letter merits, and in some versions can even imply that the kings built the stoas in order to generate transactions that they then taxed.[65] It is just as likely that these *ergastêria* were impermanent structures, like the kind of space that was sold to vendors at festivals (*skênai*, vel sim.).[66] The Sacred Law of Andania, for example, emphasizes that vendors are not be charged for such space, implying that the norm was indeed to take a fee.[67] In sum, the Sardis text does not show that kings created spaces for sale in order to serve their own fiscality, but rather that under certain conditions, in this case punitive ones, but likely also the special conditions of a festival, the king might claim the right to charge for access to the privileged spaces of sale.

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[62] *IG* II² 1245 lines 8-9 and *I.Rhamnous* 7, lines 10-12, with commentary of Petrakos: φόρος αδείας πωλήτου στην αγορά; for *agoraia telê* as charge for access to space of sale, an excellent illustration can be found in clause 11 of *RC* 3, the letter of Antigonos I to Teos and Lebedos.

[63] *SEG* 39,1287, lines 8-10.

[64] GAUTHIER 1989b, 101-7.

[65] From the standpoint of euergetism, it is also problematic. In other words, when kings and private benefactors built stoas, they dedicated them along with the revenues they produced to the city or to a divinity. They renounced their future property rights.

[66] See the definition of HELLMANN 1992, 139-40.

[67] *LSCG* 65, line 101.

Both the letter of Zeuxis to Herakleia-under-Latmos and the grants of Cassander to Chairephanes, as well as to Perdiccas, raise the specter of sale in the context of customs. These documents reflect customs regimes that registered the intentions of voyagers to sell. In fact, they expose the most salient and novel feature of sale in a Hellenistic kingdom. As composite states made up of a plurality of smaller polities, these kingdoms were crisscrossed by a series of internal customs boundaries, some manned by royal officials, but others by the taxmen of poleis, *ethnê*, and *dêmoi*. A trader might very well enter the customs zone of the *basileia* directly from the outside, but to move about within the kingdom, he was obligated to cross further customs boundaries, not all of which were royal.[68] No single customs regime reigned supreme. For the Seleukid kingdom, this patchwork vision was argued for already by Elias Bikerman, while for the Attalid kingdom, we now have the evidence of the Customs Law of Asia.[69]

The manner in which mobility across these boundaries in the service of sale was taxed was not new. It conformed to the customs habits of the classical city-state. The kingdoms took over from the world of the polis the crucial distinction between, on the one hand, goods for "personal use (*idia chrêsis*, vel sim.)" or "for possession (*epi ktêsei*, vel sim.)," and on the other hand, those "for sale (*ep' emporiai*, vel sim.)," or those "to be manufactured into other marketable goods (*ep' ergasiai*)."[70] This basic distinction was operative both in Herakleia-under-Latmos, (ἐπὶ τὰς ἰδίας χρείας καὶ εἰς πρᾶσιν ἀτελεῖς ὦσιν), and in Cassandreia (πλὴν ὅσα ἐπ' ἐμπορίαι).[71] Further, the Herakleia text demonstrates that this distinction mattered within the political

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[68] For direct entrance to the fiscal territory of the kingdom from the outside, see the privileges granted on goods from the Milesia by Antiochos IV (*SEG* 36,1046).

[69] BICKERMAN 1938, 115-17. Customs Law of Asia: COTTIER et al. 2008, lines 26-27. For the Antigonid kingdom, we simply lack the evidence. HATZOPOULOS 1996, 440-42, summarizes the problem. We know that the Macedonian cities possessed their own revenues, which seem to have been significant. Yet we have only the *epônion* of Phillipi on record as a civic tax (HATZOPOULOS 1996, 83). The admittedly tentative conclusion of Hatzopoulos that the royal treasury controlled the entire customs regime of the kingdom is suspect in light of the comparative evidence.

[70] For the distinction and its ubiquity, see BRESSON 2008, 77-83. The grant to Chairephanes is his locus classicus; for *ep'ergasiai* see W. JUDEICH, *MDAI(A)* 16 (1891), 292-93,17 lines 13-16.

[71] In the case of Perdiccas, I much prefer the standard translation of ἐπὶ κτήσει to that of THONEMANN 2009, 365, "things on his property." Thonemann would make of Perdiccas' estate a kind of customs shelter within the territory of the polis of Cassandreia. The issue, I think, is the usual one: crossing a customs boundary with large amounts of goods raised eyebrows. Perdiccas was given the right to declare such goods "for his own possession," which is indeed another way of saying "for his estate." Cf. the pairing of *ktêsis* and *chrêsis* in a decree of Odessos, *IG.Bulg*. I^2, 42 bis, line 6.

boundaries of the kingdom. It was at issue when the merchant crossed the customs boundary between royal land and polis territory (οἱ ἐξάγοντες ἐκ τῆς τοῦ βασιλέως εἰς τὴν πόλιν).[72]

Thus what was startlingly new was the proliferation of these checks. The map of sale proper to these kingdoms would then have been dotted with checkpoints where the following questions would have been asked of royal subjects and privileged outsiders: "Who are you?" "Are these goods for personal use or for sale?" In a world of city-states alone, this question had been asked of foreign individuals who had proxeny or *isoteleia* rights that entitled them to declare their goods "not for sale." It would have been asked most often of a city's own citizens. To enter, one declared, "I am a citizen, and these are my goods for personal use." The Herakleia text implies that an analogous declaration will have been made both at the initial entry point into the kingdom and in fact at each boundary of *chôra basileôs*: "I am of this *basileia*, and these are my goods for personal use." Normally, for the Herakleot, this declaration would have been made several times over during the course of a journey from the Hellespont or central Anatolia to his home polis. Of course, if the ambassadors of Herakleia had been successful in their petition, (as it is hinted in the fragmentary final lines of the inscription that they were), at least in the case of grain destined for sale in Herakleia, the question of intent to sell ceased to matter for the purposes of taxation. Yet the general pattern of questioning mattered a great deal.

The practice of investigating economic agents in this manner, of habitually forcing them to declare themselves as subjects of the kingdom before royal tax collectors, will have engendered new identities and contributed to the construction of a royal subject. Historiographically, it has been much easier to detect polis and ethnic identities in this period. Close attention to this aspect of sale may serve to encourage a broader search for royal identities. Moreover, it may be that under the rubric "personal use" much more was moving about and moving farther tax-free. This may have led to the integration of regional economies, especially if the smaller polities of the kingdom followed the kings' lead and extended this courtesy to each other. All we know for sure is that we have a new factor that went into the decision-making process for those who would set out from home with a material assemblage or in search of one. Finally, we must ask how this distinction between use-goods and sale-goods was made in practice. Our evidence from the polis is actually rich on this score: by means of quantity limits, e.g., one can bring in 100 medimnoi

[72] *SEG* 37,859 N III, lines 7-9.

of grain per year;[73] by means of oaths, e.g., one vows, "I swear that this is all for my personal use";[74] and, just as importantly, by means of trust. The proliferation of these checks on mobility will have been followed by the proliferation of all of these conventions. This encounter with the royal state will have spread knowledge about administrative practices; and it will have given royal officialdom a profound knowledge of local economic patterns – which kinds of mobility were normal and which raised eyebrows. What appears at first glance to be another layer of fragmentation may have lent these Hellenistic kingdoms a coherence so far unnoticed.

Conclusion

The goal here has been to define as carefully as possible the royal role in shaping sale in the Hellenistic monarchies outside of Egypt. To that end, the purported testimonia for sales tax in particular have been subjected to scrutiny. In the context of the polis, a specifically royal sales tax is difficult to discern; it is certainly more elusive than one has acknowledged. Yet we can look to the cases of Toriaion and its *agoranomia*, along with Cassandreia and the *ateleia* of Chairephanes, in order to appreciate the power of the king to intervene in this domain of fiscality and to curb the city's sovereignty. As Veronique Chankowski has shown, the categories of fiscality in ancient Greece were mutually constituted and shared between city, temple, and crown.[75] However, in practice, the monarchies seem to have ceded to the cities the power to tax the sale transaction. If the interpretation offered here of Herakleia's τοῦ πωλουμένου is correct, sales tax is not documented as a subject of negotiation between city and king. Of course, when monarchs dealt with subjects through the intermediary of strong temple institutions, either in rural Anatolia or in urban Mesopotamia, different possibilities presented themselves. Moving forward from these conclusions, it was suggested that much is to be gained by focusing on different aspects of sale, for which the royal role may have been more significant. Indeed, a focus on the regulation of access to the privileged spaces of sale, as well as movement in and out of those spaces, makes defining the royal role in sale a central task for those who wish ultimately to reach a better definition of the Hellenistic kingdom as a form of state.

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73 *I.Aeg.Thrace* 8.

74 *Syll.*[3] 633, lines 78-79.

75 Chankowski 2007, 323; Chankowski 2008.

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Selling Private Real Estate in a New Monarchical Setting. Sale and Community in Hellenistic Egypt*

KATELIJN VANDORPE

The Ptolemies, the last Pharaohs, took over a country with a high standing civilization and a mighty clergy, receiving at the same time numerous Greek immigrants. They were able to maintain the control over Greeks and Egyptians by balancing between innovation and tradition and by bargaining with the elite groups (Greek and priestly elite).[1] This paper on selling procedures is a test case for this general statement. Evidence of the Egyptian *chora* will be discussed, constituting mainly of Greek and Demotic sale contracts and of sales tax receipts; official correspondence and lawsuit records add crucial additional information.[2]

* I should like to thank U. Yiftach and S. Waebens for their helpful comments.

1 MANNING 2010.

2 Law texts have not been preserved for the *chora*; we do have law texts concerning "sale of land and house and building-sites" (γῆς καὶ οἰκίας καὶ οἰκοπέδων ὠνή) of the Greek polis of Alexandria (P.Hal. I, *ll*. 242-259, after 259 BC), but the procedures are clearly different from those of the countryside. P. Hal. I mentions a sale tax of 5%, except for sales below 50 drachmas; the treasurers (*tamiai*) have to register the sales according to demes; once the seller has paid a kind of boundary money (*amphourion*) to the neighbours of the real estate, he is no longer able to institute legal proceedings against the buyer.

1. Land tenure in a monarchical setting

What kind of property could be sold in a country where a king was the ultimate owner of the land? There is a longstanding scholarly discussion whether the Pharaohs or the Ptolemies claimed all land in Egypt by royal rights. We share the view of J. Manning that the Ptolemies "never claimed absolute control over all the land, but merely asserted the right to assign abandoned or unproductive land and the right to tax [all the land]. Underneath this royal assertion lay a variety of land tenure conditions",[3] strongly influenced by Pharaonic traditions.[4]

Houses, waste land or building-sites, located in the residential areas, were privately held and could be sold.[5] For landed property in the agricultural area, the following categories may be distinguished.

a) Crown land (*Basilike ge*), which was farmed out to royal tenants, could not be sold.[6] A long-term general lease, destined for the whole village, formed the basis for the individual contracts. This category should be distinguished from *Basilike idioktetos ge* or "royal privately owned land" attested mainly in Upper Egypt and discussed below.[7]

b) Cleruchic land (*Clerouchike ge*) was granted by the king to soldiers or cleruchs. The *kleroi* remained at all times the king's property. But while at first these plots were intended for the cleruchs during their lifetime, a limited set of alienable rights was gradually obtained. Such a plot could only be passed on among members of the cleruchic group, usually from father to son and even women could administer the *kleros* if they connected two generations of cleruchs.[8]

c) Sacred land (*Hiera ge*) or temple land *stricto sensu*, held by the temples for the maintenance of the cults and with royal permission, could not be

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[3] Manning 2003, 157-178, esp. 177. For Ptolemaic land categories, see also Huss 2011, 262-286; Monson 2012, 75-86.

[4] Criscuolo 2013.

[5] E.g. BGU XIV 2398 = BGU X 1974 (*psilos topos* or waste land, 213–212 BC, Oxyrhynchite nome); BGU XIV 2399 (courtyard in the village, 212-211 BC, Oxyrhynchite nome); P.Adler Gr. 9 (house, 104 BC, Pathyris); P.Köln I 51 (house and garden, 99 BC, Pathyris).

[6] Préaux 1939, 491-514; Crawford 1971 = 2007, 103-105.

[7] Compare Monson 2012, 76-77.

[8] On the legal status of the *kleros*, see most recently Scheuble 2012, 142-194; see also Crawford 1971 = 2007, 53-58; Manning 2003, 178-181; Monson 2012, 78-79; Fischer – Bovet forthcoming.

sold, but the temple often leased it out to private people.[9] Such temple land *stricto sensu* should be distinguished from privately owned land which was part of the divine endowment and thus of the revenues of the local temple,[10] discussed in the next section.

d) Private or privately owned land (*Idioktetos ge*) is a category which has been ignored for a long time. In Upper Egypt, the Ptolemies took over the ancient property regime which allowed the private transfer of property rights by inheritance, lease and sale,[11] and the use of such real estate as mortgage.[12] Contrary to cleruchic land, the alienation rights were not limited. When people bought such land, they would own it (κυριεύσει) "just as the original owners possessed it" (καθὰ καὶ οἱ ἀρχαῖοι κύριοι ἐκέκτηντο).[13] The new interpretation of Demotic receipts[14] and recently discovered land surveys[15] revealed that the major part of the agricultural area in Upper Egypt was in private hands.[16]

Taxes had to be paid on this private land and these revenues were destined either for the Crown or for the temples. Therefore, private land of which the revenues were to be allocated to the Crown, could be called *Basilike idioktetos ge*, "royal privately-owned land",[17] whereas private land of which the revenues were destined for the temples, is said to be part of the *ḥtp-ntr* (divine endowment) of a deity. Nice examples are provided by a third-century BC archive from Edfu, where the protagonist owns private low (or island) land located within the divine endowment of Horus, as well as private high land "in the fields of Pharaoh".[18]

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[9] E.g., P.Dem. Ackerpachtverträge 34; P. Gebelen Heid. 12 (these examples come from Pathyris in Upper Egypt; for low land owned by the temple of Hathor in Pathyris, see VANDORPE – WAEBENS 2010, 28).

[10] Compare MONSON 2012, 77.

[11] As convincingly shown by MANNING 2003, chapter 6, on the private transmission of land; see also MONSON 2012, 78-79.

[12] Private land could be sold temporarily as mortgage for a loan; for Greek contracts testifying to such temporary sales, see PESTMAN 1985b; for procedures to mortgage land through Demotic documents, see the contribution by M. DEPAUW.

[13] BGU III 992, col. 2, ll. 5-6.

[14] VANDORPE 2000.

[15] CHRISTENSEN 2002; MONSON 2012, 79-86.

[16] Private land in the Edfu nome may amount to 72% of the agricultural area, as shown by MONSON 2012, 82.

[17] MONSON 2012, 77, referring to P. Lond. VII 2188 (Hermonthis, 148 BC); further examples of "royal private land" may be found in third-century BC Edfu, see following note.

[18] E.g. P.Hauswaldt 1 (265 BC). For the archive of Pabachtis, son of Paleuis, see MANNING 2003,

The evidence suggests that most private land in Upper Egypt was part of the divine endowment of a deity,[19] a tradition that goes back to the pre-Ptolemaic period.[20] Taxes levied on private land were paid directly to the temple and part of them were destined for the cults or the priestly organisation. In Ptolemaic times, this private land was according to Demotic evidence still part of the temple's *ḥtp-ntr,* but the Ptolemaic kings managed to get hold of the private plots and its taxes at different stages. The king compensated for the probably enormous losses of the temple revenues: a system of subvention (*syntaxis*) was introduced.[21] Thus, the state now cashed the taxes, but returned part of it to the temples through this subvention system. Parallel with the control of the taxes, the state also intervened more and more in the process of purchasing private land, as shown in the following section.

2. Private sales: from temple to state intervention[22]

The distinction between temple and state (king) is mainly applicable to the post-Pharaonic period. Current studies suggest that state and temple in Pharaonic times (e.g., in the Ramesside period) functioned as one and not as two separate institutions: the temple was primarily a branch of the governmental administration.[23]

Early-Hellenistic period (until ca. 200 BC)

Houses and waste land in towns or cities, and private land in the agricultural area, were sold through a system of contracts established independently from the state. But these contracts were, at least from Ptolemy II onwards, supervised by the state.

79-83, and <http://www.trismegistos.org/arch/detail.php?tm=162&i=3>.

[19] In the town of Pathyris, for instance, all private land is, according to the Demotic contracts, still part of the divine endowment of Hathor in the second-early first century BC, see Vandorpe – Waebens 2010, 35.

[20] See e.g., S.P. Vleeming in P.Hou, 21, n. cc, and 25, n. ii.

[21] Vandorpe 2007; Vandorpe – Waebens d2010, 35.

[22] For an overview of the Greek sale contracts, see the database *Synallagma: Greek Contracts in Context* (dir. U. Yiftach-Firanko), <http://hudd.huji.ac.il/ArtlidHomepage.aspx>, also accessible via Pap.info; for the Demotic contracts, see the Trismegistos website <http://www.trismegistos.org/>.

[23] Haring 1997, 17-20.

Greek and Demotic contracts testify to the sale of *houses and building lots*. The Greek contracts[24] came about in the private sphere and were double documents for which the contracting parties had to find six witnesses (whose names were recorded and whose seals closed part of the document) and a 'keeper of the contract' (*sungraphophulax*),[25] while the Demotic contracts[26] were redacted by temple notaries or by official notaries who are to be associated with temples as well rather than with the state administration.[27] Both Greek and Demotic contracts were established in the presence of witnesses.

Mainly Demotic temple contracts[28] bear witness to the sale of *private land in the agricultural area*, partly because this type of land was principally found in Upper Egypt, where the Hellenization process had not yet penetrated into the countryside, and partly because private land was usually part of the divine endowment (*htp-ntr*) of the local temples (see above 1.d.).

These transactions were supervised by the state, probably for tax purposes (see below): from the reign of Ptolemy II onwards, private Greek six-witnesses contracts and Demotic contracts could be/or should be registered in a *grapheion* of the state, also called *agoranomeion*. Some Greek double documents contain an explicit clause according to which the contract should be registered in the *agoranomeion* and the transfer taxes should be paid.[29] A few fragmentary Greek[30]

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[24] For Greek double documents testifying to the sale of houses, courtyards or waste land in the village, see note 6.

[25] BURKHALTER 1996, 294-295.

[26] Demotic sale contracts of houses: e.g., P.Brux. Dem. II 1, 2 and 3 (Thebes West, 327, 313 and 311 BC, respectively); P.Schreib. 1, 2, 4 (Thebes, 330, 314 and 304 BC, respectively).

[27] MUHS 2005b, 93-94.

[28] For a list of early Demotic sales concerning landed property, going back to the seventh century BC, see e.g., VLEEMING 1991, 346; for further Demotic sales of land, see, e.g., P.Schreib. 24 (Thebes, 210 BC); P.Schreib. 80, 81, 82, 84 and 86 (Edfu, period 265-240 BC). For Demotic sale contracts, which usually consist of two documents, a sale and a cession, see DEPAUW 1997, 140-142, and the contribution by M. DEPAUW in this volume.

[29] BGU X 1973 (Oxyrhynchite nome, 221-205 BC, sale of real estate: double document with witnesses, registration in the *agoranomeion* required); BGU XIV 2398 = BGU X 1974 (Tholthis, Oxyrhynchite nome, 213-212 BC, sale of waste land in village: double document and witnesses, registration in the *agoranomeion* required); BGU XIV 2399 (Tholthis, Oxyrhynchite nome, 212-211 BC, sale of a courtyard and an unknown object in the village: double document and witnesses, registration in the *agoranomeion* required); SB XIV 11376 = P.Hib. I 89 (Ankyron, Herakleopolite nome, 239 BC: credit arrangement in view of a sale, which should be registered in the *agoranomeion* of Herakleopolis or Oxyrhynchus); SB XIV 11375 (Oxyrhynchus, 211-210 BC: double document mentioning a sale which has to be handed over in the *agoranomeion* of Oxyrhynchus, where the sale tax has to be paid). See also WOLFF 1978, 195.

[30] Registers of Greek private documents made by Greek officials are known since the third century BC. CPR XVIII (231/206 BC), for instance, is a monthly register of private documents (including double documents) that were probably registered in Theogenis. The editor discusses other Ptolemaic registers containing copies or abstracts of especially private documents. A special case is P.Freib.

and Demotic[31] registers are preserved, registering private Greek or Demotic contracts, among others, in a daybook format or as monthly registers geographically ordered.

Middle and Late Hellenistic period
(from ca. 200 BC onwards, including major changes around 145-140 BC)

Alongside the Greek six-witnesses contracts and Demotic contracts, the government introduced a new type of sale contracts redacted by Greek notaries or *agoranomoi*, employed by the state.[32] The function of *agoranomoi* as notaries in the second and first centuries BC was probably an extension from their task as registering official in the third century BC.[33] In Lower Egypt, which was Hellenized in an early stage, these *agoranomoi* may already have been active as Greek notaries in the third century BC for loans etc., but up to now, no certain examples of third-century BC agoranomic sale contracts are extant.[34] In Upper Egypt, Greek notarial offices were only introduced in the second century BC, after the suppression of a huge revolt.[35] Surely, agoranomic Greek contracts, including sales, became popular everywhere in the country from about the mid second century onwards even in regions where the major part of the inhabitants practiced Egyptian habits.[36] The local availability of the notarial offices and the familiarity with the Greek officials (who were often

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III 12-33, where the original contracts (*sungraphophulax*-contracts rather than notarial deeds) are bundled in a *tomos sunkollesimos*, see B. KRAMER, in CPR XVIII, p. 16-34; MUHS 2005a, 21; YIFTACH-FIRANKO forthcoming.

[31] MUHS 2005a, 19-20; MUHS 2005b, 95-96.

[32] SEIDL 1962, 62-63; MESSERI 1980; PESTMAN 1978b and 1985a; HUSS 2011, 85-88.

[33] Compare HUSS 2011, 86: "Der *agoranómos* der zweiten Hälfte des 2. Jh. war kaum der *agoranómos* der ersten Hälfte des 3. Jh.".

[34] P.Teb. III 814 (Krokodilopolis, Fayum, 240 BC) includes copies of parts of the sale of real estate (including a vineyard) redacted by an *agoranomos*, but the so-called sales deal with forfeited property: a woman had, by judgement of the court of the chrematists-judges, been given the right of execution against the defaulter; thus the procedure in which the *agoranomos* is involved, is not an ordinary sale, but the execution of a judgment after a debt had not been paid off; compare the case found in P.Enteux. 15 ('renouvellement d'une hypothèque sur le bien d'un mineur'). SB XXVI 16799 (?Philadelpheia, 210-109 BC), and P.Strasb. Gr. VI 641 (Phebichis, Herakleopolite nome, 265 BC) may be agoranomic sale contracts, but these are too fragmentary to draw any conclusion from. There are, on the other hand, for the third century BC clear examples of Greek non-agoranomic sale contracts which had to be registered in an *agoranomeion*, see note 30.

[35] The earliest certain example of an agoranomic contract in Upper Egypt, is a loan dating to 174 BC: P.Dryton 11 (P. Dryton 1 dates to 164 BC rather than to 176/175 BC, see P.Dryton, 28). The loan BGU X 1968 of 184 BC may be an earlier example, but it probably originates from a Greek polis (Ptolemais?), not from the *chora* proper.

[36] VANDORPE 2011.

members of a local Egyptian family, trained as Greek scribe) were undoubtedly crucial factors to persuade the locals to make use of this new institution. But people had a choice: they could continue the use of Demotic contracts and in times when government control was weaker, people turned again to the temple notaries.

Greek agoranomic contracts no longer needed witnesses as they were automatically recorded in the notary's register, of which few examples have been preserved.[37] The following extract[38] is part of such a register listing contracts in a chronological order (111-110 BC). Before each contract the day was mentioned; the protocol of the original contract (containing the dating formula, place of redaction and name of the *agoranomos*) was not taken over, but the contract proper was copied entirely.

> Day 29. Has sold Harsiesis son of Hermon, Persian of the epigone, aged about 40 years, tall, of honey-coloured complexion, with straight hair, a long face, a straight nose, a scar on his left - - -,
> the fourth part belonging to him of grain land and of the vineyard in it which is abandoned, (located) in the kato-toparchia of the Latopolite nome. The boundaries of the entire land are, South: land of Taapis, North: land of Harpaesis son of Portis, East: land of Chnum, West: land of - - - , or whatsoever the boundaries are on all sides.
> Has bought A---s son of Orses, Persian of the epigone, aged about 40 years, tall, of honey-coloured complexion, with slightly curly hair, a long face, a straight nose, (for) - - -.
> The warrantor is the vendor Harsiesis.
> (…)
> Day 3. Has sold Horos son of Thotortaios, Persian of the epigone, aged about 40 years, of medium stature, with honey-coloured complexion, straight hair, with a bald forehead, flat-faced, a straight nose,
> the part belonging to him of standard grain land, in the plain surrounding Pathyris, consisting of 4 lots; the first lot called 'of Pebos', of which the boundaries are, South: land of Psennesis, North: of the keepers of the sacred ibises, East: enclosing dyke, West: land of Horos son of Harsiesis; another plot called' of Senamounis and Zminis', of which the boundaries are, South: dry land of Patous son of Phibis, North: land of Nechoutes, East: enclosing dyke, West: desert, or whatsoever the boundaries are on all sides.
> Have bought Nechoutes and Peteharsemtheus sons of Pelaias, Persians of the infantry, for 1 talent 2000 drachmas.
> The previous buyer and warrantor is the vendor Horos, whom Nechouthes and Peteharsemtheus the purchasers accepted.

Agoranomic sale contracts have some characteristics in common with the older types of contracts.

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[37] A clear example is VANDORPE 2004; other examples are uncertain, see ibidem, 166-167.

[38] VANDORPE 2004, doc. 2 and doc. 7.

– They were often written twice (a full version and a short version), like the Greek double documents (including six-witnesses contracts).[39] The part of the papyrus with the short version was closed with the private seal of the Greek notary.[40]

– The sale contracts were written on large pieces of papyrus, containing broad margins, like the Demotic sales contracts redacted by the temple notary. This was in contrast with Greek and Demotic notarial loan contracts, which were written on smaller pieces of papyrus.[41]

– The neighbouring plots of the property sold were described in a similar way as in the Demotic contracts.

Agoranomic contracts also differ from the Demotic temple contracts in some aspects. While in the latter contracts witnesses could identify the parties, the identification of the contracting parties in agoranomic contracts was recorded in more detail, in accordance with legal requirements and including a personal description.[42] In addition, agoranomic contracts mention the sales price,[43] contrary to Demotic temple contracts.[44]

The supervision of the older types of contracts (Greek six-witnesses and Demotic contracts) through registration was continued.[45] An example from a late Ptolemaic, bilingual *grapheion* archive:[46]

> P.Tebt. I 227 descr. = REgypt 24 (1972) 129–136, dated to year 18, Phamenoth 18, ll. 1–4: [Demotic] "A document of sale and quitclaim which the farmer and servant of Souchos, Paesis son of Paesis, his mother is Kolluthes, made it, concerning his half share of his house ..." (translation by Muhs 2010, 583)

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[39] PESTMAN 1985a, 33-34; WOLFF 1978, 80 and 190-194, may be right when he considers the shorter version of the contract as an official declaration by the notary that the transaction had been registered; thus, the so-called *scriptura interior* was an excerpt from his register (that is a *katagraphe*-certificate).

[40] PESTMAN 1985a, 35-37; Vandorpe 1996, 235-237; <http://www.trismegistos.org/seals/overview_2b.html>.

[41] Compare the contribution by M. DEPAUW.

[42] YIFTACH-FIRANKO forthcoming.

[43] On the sale price in Greek sale contracts, see CADELL 1994.

[44] Compare the contribution by M. DEPAUW.

[45] E.g., SB XX 14470-74, 14476-87, 14489-14492a-h (= P.Trophitis 1-20 and fr. a-h), dating to 160-158 BC, constitutes an archive of Greek abstracts of Demotic contracts, containing at least 35 entries concerning an alimentary contract (*sungraphe trophitis*), but also 5 entries concerning a sale (P.Trophitis, 5-6: texts marked by an asterisk). The lists of abstracts of Demotic contracts were either official acts destined for state repositories or the personal records of a notary.

[46] MUHS 2010.

But around 145-140 BC registration procedures became more elaborate[47] and probably involved more costs: for instance, alongside the registration, an abstract of the contract had to be provided. As a consequence, Greek six-witnesses and Demotic contracts became less popular, whereas Greek agoranomic contracts, which were automatically registered by the notary without further requirements, became more successful than ever. Around the same time (between 137 and 127 BC), the transfer tax for sales was definitively doubled to 10% (see below).

Costs involved

Several costs were involved when real estate was sold. People had to pay either the temple or Greek notary,[48] or when they drew up a private double document they probably had to remunerate the *sungraphophulax*, who kept the contract, or the six witnesses.

For the six-witnesses and temple contracts (not for the Greek notarial contracts), an additional registration tax had to be paid at the *grapheion*.[49]

A transfer tax on the sale of real estate was imperative for all types of contracts. The above-mentioned official notarization or registration requirements of sale contracts may even have been imposed in order to control the collection of sales taxes.[50] The system of transfer taxes on sales underwent several changes.[51]

In the pre-Ptolemaic and early Ptolemaic period a first transfer tax of 10%, called "the tenth of the scribes (and) the representatives", was levied to the benefit of the local temple and is frequently attested until 243 BC.[52] Only exceptionally this tax resurfaces in the later Ptolemaic period (in 126-125 BC, see note 57) and may have survived into the Roman period.

A second transfer tax was introduced in the early Ptolemaic period (in 311 BC at the latest) by the state called the *enkuklion*-tax, levied through a tax farming system. This state transfer tax may have gradually replaced the temple transfer tax and is well-attested in numerous Demotic and, later on, Greek receipts throughout the Hellenistic period.[53] The tax was initially a

47 PESTMAN 1985c; MUHS 2005a, 21; YIFTACH-FIRANKO 2008; VANDORPE 2012, 178-179.

48 See the detailed discussion on the 'Schreiberlohn' by B. KRAMER, in CPR XVIII, 31-34.

49 Probably called the *grammatikon*, see MUHS 2010, 584 and 586.

50 Thus MUHS 2005a, 19.

51 For a clear survey, see VLEEMING 1991 and DEPAUW 2000, 56-63.

52 VLEEMING 1991.

53 PESTMAN 1978a; PESTMAN 1985a, 37-39.

fixed amount which was, by the middle of the third century BC, replaced by a rate of 5%, sometimes temporarily raised to 10% in difficult circumstances; between 137 and 127 BC,[54] the rate was definitively raised to 10%.[55]

The current evidence suggests that only in the early Ptolemaic period (between 311 and 243 BC), the two types of transfer tax (temple and state tax) existed alongside each other and that, from the very end of the third century BC, surely the state transfer tax of 5% continued to be levied, being raised to 10% in the later Hellenistic period. If the temple sales tax was also continued for some types of land, then it went unmentioned, except for two cases.[56]

Together with the transfer tax, an additional tax of almost 2% was imposed for the conversion of payments in bronze coins, because prices were still reckoned in silver, although people paid in bronze.[57] In case of land bought at a public auction, some minor taxes were levied in surplus to the transfer tax, like the *kerukeion,* which covered the costs of the *kerux* or herald who announced the auction.[58]

3. Confiscation of private land and public auction

The Ptolemies confiscated private land that had become ownerless or derelict.[59] This was usually the case in the aftermath of a revolt.[60] Thus, the state gradually gained control over the private land and its taxes to the disadvantage of the temples. In some villages, almost all the land was confiscated at some point.[61] But the state did not turn the confiscated land into Crown land to be leased out to royal tenants, but resold the land to private people at public auctions. The tradition of private land was respected, but "the use of the auction

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54 For the dates, see Pestman 1978a, 215.

55 Only when property was sold temporarily (as a mortgage for a loan), the transfer tax was limited to 5%, see Pestman 1985b on such "ventes provisoires".

56 Two Greek receipts from the Fayum of 126 and 125 BC mention both the state and temple sale tax, see Vleeming 1991, 349 and Depauw 2000, 63.

57 For surcharges to be paid on transfer taxes (*enkuklion*), see Pestman 1978a, especially 215, b, and Maresch 1996, 214-216.

58 Préaux 1939, 334; for the extra charges levied on the transfer tax in case of land bought at an auction, see Maresch 1996, 214, n. 6.

59 For reasons why the state confiscated land, see in general Swarney 1970, 23-26.

60 On the revolts in Ptolemaic Egypt, see Veïsse 2004.

61 E.g., in Pathyris, large parts of the land to the north of the village was confiscated, see Vandorpe – Vaebens 2010, 31 and 41.

process was an important shift from a temple-based system to a bureaucratic system in control of Ptolemaic officials".[62]

The public auction was a well-known procedure in the Greek world, newly introduced in Egypt by the Ptolemies ca. 223 BC at the latest as 'the auction of Pharaoh'.[63] A text from the Erbstreit dossier may illustrate the procedure:[64] somewhere before 8 November 187 BC, that is in the last phase of the huge revolt in Upper Egypt, a plot of 35 arouras located in Upper-Egyptian Pathyris, was confiscated for the benefit of the royal treasury. The arouras were put up to auction in Thebes (Diospolis Magna) from 8 until 13 November 187 BC and assigned on the 14th day of the month to a soldier, Proitos son of Sosikrates. The state officials present at the auction are listed: the substitute of the governor (*strategos*) of the Thebaid, the governor (*strategos*) of the Perithebas-nome, the commandant of the garrison, the royal scribe of the Thebaid, the head of the public granary (*sitologos*) and banker of the Thebaid, the *oikonomos*, two district clerks (*topogrammateis*), the village clerk (*komogrammateus*) of Thebes (Diospolis) and several others.

The sales price of 2000 copper drachmas was paid through the bank of Hermonthis into the account of the new state department of the *Idios logos*, which collected irregular revenues.[65] The payment was done in three installments: the first payment was carried out almost two months after the sale, on 11 January 186 BC, the second and third installment in 186/185 and 185/184 BC, respectively.

When real estate was sold by the Crown, the proper official, *in casu* the overseer of the finances of the Thebaid (ὁ ἐπὶ τῶν κατὰ τὴν Θηβαίδα),[66] drew up a *diagraphe*,[67] a document that included the description of the real estate, its value, the bid of the buyer, the allocation, etc. (*ll*. 5-18). The *diagraphe* was completed with one or more subscriptions (ὑπογραφαί) by officials such as the royal secretary of the Thebaid (*ll*. 4-5), ordering the bank to receive the money.

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62 MANNING 2003, 161.

63 MANNING 1999 and 2003, 83-85 and 160-161; VANDORPE 2000, 195; MONSON 2012, 117-119.

64 SB I 4512A, a copy of the original receipt BGU III 992; for the Erbstreit dossier, see note 70. Another nice example of the auction of real estate (a house) is P.Haun. I 11 = SB VI 9424 of 182 BC (Thebes).

65 On the department of the *Idios Logos*, see Swarney 1970; on the earliest attestation of this department (186 BC), see VANDORPE – WAEBENS 2010, 41, n. 143.

66 On this official, see HUSS 2011, 80-81 and note 377.

67 For the *diagraphe*, see U. WILCKEN, in UPZ I 114, *scriptura exterior* comm. *l*. 10 (532-533); SEIDL 1962, 67 and 127.

The new owner of the real estate handed over the *diagraphe* to the banker, paid the amount due and received a bank receipt, in which the text of the *diagraphe* was incorporated. The text below is such a bank receipt, in which the data of the *diagraphe* are introduced by "Harendotes, the royal scribe, reports (διασαφεῖ) that". As shown by the Erbstreit lawsuits, the bank receipt with the data of the *diagraphe* was accepted as evidence to prove ownership. Moreover, the bank receipt is in some Erbstreit-documents referred to as a *diagraphe*.[68]

Year 19, Choiak 5. Has paid into the bank at Hermonthis, of which Teos is in charge, for the King on the private account, in accordance with the diagraphe of Protarchos, overseer of the revenues in the Thebaid, written in year 19, Phaophi 29, and subscribed by Harendotes, the royal scribe of the Thebaid: Proitos, son of Sosikrates, (the) sales price of a piece of highland.	11 Jan. 186 BC 6 Dec. 187
Harendotes, the royal scribe, reports that it is (now) confiscated to the benefit of the royal treasury and that it formerly belonged to Myron, son of Moschos. (It involves a piece of highland) in Pathyris, of 35 arouras (charged) at the rate of 4 2/3 artabas, belonging to (the land) that was advertised for sale and put up to auction in Diospolis Magna in year 19, Phaophi, from day 1 to 6. It was knocked down on the 7th.	8-13 Nov. 187 14 Nov. 187
Were present at the proclamation and ratification: Ptolemaios substitute (of the *strategos* of the Thebaid), *strategos* (of the Perithebas), Megisthenes commandant of the garrison, Harendotes royal scribe of the Thebaid, Lysimachos *sitologos* and banker of the Thebaid, Ptolemaios *oikonomos*, Horos and Psenamunis *topogrammateis*, Imuthes *komogrammateus* of Diospolis and several others.	
(The land was knocked down) through the military herald Archelaos to the highest bid of 2000 drachmas of copper for silver, on condition that he shall own the above-mentioned land just as the original owners possessed it, while he regularly pays to the royal treasury the imposed levy assessed on produce and while he pays to the temples what (?)used to be given until year 16.	207/206 186/185 and 185/184
Of the sales price he shall pay in year 20 and year 21 the remaining 1333 drachmas 1/3 and he has now paid 666 drachmas 2/3 in copper for silver as well as the tax on sales of 5% and the other payments due.	

[68] E.g. P.Schreib. 30, l. 5.

4. Sale contracts and legal protection

Were all types of sale contracts accepted before Greek or Egyptian judges? The Erbstreit trials will guide us.[69] The Erbstreit is a dispute between three groups of cousins concerning an inheritance. Several trials are held before Greek officials and judges, although the evidence is for the greater part Egyptian.[70] All the title deeds, including those of previous owners, and lease contracts (proving ownership) are in the possession of the owner and are taken into account during the trials. This is in line with the following clause found in Demotic sale contracts: "Every writing that has been made concerning it and every writing that has been made for me concerning it, and every writing in the name of which I am justified (in my claim) on it, thine are they with the right conferred by them".[71] Among the title deeds and lease contracts we find a Greek bank receipt (called *diagraphe*, see above), testifying to the purchase of confiscated land from the state by one of the previous owners,[72] and Demotic temple contracts[73]. All the Demotic pieces of evidence are translated into Greek.[74] The quality of the translations is good.

During one of the trials, the winning party (that of Senenupis) "presented as evidence: the above-mentioned *diagraphe* and the (Greek) copies of the (Demotic) conveyances",[75] whereas the loosing party "could in no wise prove that (the land) truly belonged to him (Panas)".[76] As a consequence, the Greek judge, "gave order that the said Senenupis would become master of her mother's inheritance in accordance with the title(-deeds) she had".[77]

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[69] For the Erbstreit dossier and the Erbstreit lawsuits, see Vandorpe – Waebens 2010, 114-122. The Greek and Demotic texts of the Erbstreit dossier will be republished by S.P. Vleeming and K. Vandorpe.

[70] This situation changed in 118 BC: according to the *prostagmata* of that year, agreements written in Greek had to be judged before the Greek judges-*chrematistai* and agreements written in Egyptian before the native judges or *laokritai*, Wolff 1960; Seidl 1962, 74-77; Pestman 1985d; Rupprecht 2011.

[71] P.Adler Dem. 2, l. 8 (with translation); for this clause, see K.-Th. Zauzich, in P.Schreib., 141-146 (Klausel 7: 'Klausel über die Urkunden').

[72] BGU III 992 (original receipt, of which SB I 4512A is a copy), see Vandorpe – Waebens 2010, 120-122.

[73] P.Schreib. 30 and 115; Fs. Lüddeckens 171-172 & 174; P.Mainz Dem. 4β ined.; P.Wiss. Ges. inv. 5, 6, 8 ined.; see Vandorpe – Waebens 2010, 120-122.

[74] P.Giss. I 37 + 36 + 108; P.Giss. I 39; see Vandorpe – Waebens 2010, 120-122.

[75] SB I 4512 B, ll. 67-69: παρέκειτο τὴν δηλουμένην διαγραφὴν καὶ τῶν καταγραφῶν τἀντίγραφα.

[76] SB I 4512 B, ll. 76-77: ὡς δ' ἦν τούτου ἀληθῶς, οὐδαμῶς συνίστων,

[77] SB I 4512 B, ll. 83-86: συνέταξεν κρατεῖν τὴν Σενενοῦπιν τῶν μητρικῶν ἀκολούθως αἷς

But in spite of the convincing pieces of evidence, the losing party does not give in, resulting in a series of trials. The losing party, who has not a single piece of written evidence, claims that the mother of the winning party did not buy the land with her own money, but probably with the money of the grandfather. So, the title-deeds as such are not under discussion, but the winning party is accused of having acted in a fraudulent way in one of the contracts. As a result, a Demotic oath to be sworn by the winning party in an Egyptian temple, has to end the final dispute, stating that their mother bought the land with her own money.[78] Despite the convincing written evidence, a simple, unprovable accusation made it necessary to fall back on the old procedure of a temple oath.[79]

Conclusion

"The support of the temples was part of the early political strategy of the Ptolemaic kings, and the bureaucratization process set in motion by the regime eventually displaced them as economic institutions", thus J. Manning in his book on the Ptolemaic land tenure regime (2003: 239). This paper illustrates the bureaucratization process or the growing governmental involvement in case of sales of private real estate, resulting in a diminishing role of the temples and the clergy. At the same time, the Ptolemies, in their take-over of the control, respected ancient Egyptian traditions of private landownership, taxation and contract habits. In addition, when introducing Greek *agoranomoi* or notaries in regions with a strong tradition of temple scribes, they retrained members of the local priestly elites as Greek notaries, and thus the local elites were involved in the innovation process. When selling real estate, a high percentage (5 to 10%) had to be paid as transfer tax, supervised closely by the government, but people were protected by the government when their ownership was doubted by another party.

ἔχει κτήσεσιν.

78 P.Mainz dem. 5γ ined.

79 For temple oaths, see U. Kaplony-Heckel in O. Tempeleide, esp. 28-29.

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Sales in early Roman Tebtunis: the Case of the *grapheion* Archive of Kronion*

MICAELA LANGELLOTTI

Introduction

In modern societies, sale trends are a clear indicator of market conditions. An increase in sales generally reflects an economically healthy market, which produces a high percentage of buyers; conversely, a decrease in sales might be a sign of economic depression. Three main factors may contribute to a decrease in sales: 1) a drop in population, which results in a reduced number of buyers; 2) economic crisis, whereby people do not have sufficient financial means to buy or make payments; and 3) the unavailability of specific products for sale in the market.

Whether sales were a good indicator of economic and social behaviours in ancient societies is a matter of debate. In this paper I look at the case of a particularly well-documented Egyptian village, Tebtunis in the Fayum, in the first half of the first century AD. The aim is to investigate the role and importance of formally contracted sales and cessions in the socio-economic life of Tebtunis, and to determine to what extent and how reliably fluctuations in

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sales and cessions trends reflected changing market conditions. The best evidence is provided by the *grapheion* (local notarial office) archive of Kronion, a collection of over two hundred documents.

During the early Roman period (AD I-II), Tebtunis (modern Umm el-Breigat) was a large village of around 50 hectares with a guessestimated population of around 3,000-4,000.[1] After the first excavations carried out in 1899/1900 by Grenfell and Hunt, the site was dug up by German (1902) and Italian teams (1929-36), interspersed by the activity of local *sebakhin* (1900s-). Since 1988 excavations have been carried out by a joint expedition of the *Institut français d'archéologie orientale* and the University of Milan.[2] An important element in the socio-economic life of the village was the main temple, dedicated to the crocodile god Soknebtunis (a local form of Sobek). The economy was mainly agricultural, although several contracts leasing private land for livestock grazing (AD I-II) attest to the important role pastoralism played within the local community.[3]

The *grapheion* archive was found in the early 1920s during illegal excavations.[4] The *grapheion* of Tebtunis was a government concession operated through a lease; it also served the nearby village of Kerkesoucha Orous, and some documents show its association with the *grapheion* of Talei and Theogonis.[5] For almost twenty years, from AD 7 to 26, the *grapheion* of Tebtunis was managed by a man called Apion; on his death in AD 26, the office was taken up by his son Kronion, who held it for a further thirty years until AD 56. Contracts constitute 64% of the archive, but there are also a fair number of other types of documents, such as registers of various kinds and accounts of expenses.

For the purpose of this investigation the evidence will be divided into contracts and registers, with a particular focus on three full drafts of registers listing day by day the basic details of more than 1,100 contracts drawn up in AD 42 and 45/6. The contracts allow us to study their format, the distribution by gender and age of the contracting parties, the percentage of shared property,

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1 See RATHBONE 2013.

2 For a summary of the excavations at Tebtunis until 1988 see GALLAZZI 1989.

3 For a general study of pastoralism in Roman Egypt see LANGELLOTTI 2012.

4 The bulk of the papyri is part of two lots purchased by Kelsey in 1921 and 1923 on behalf of the British Museum and a consortium of American universities, whereas 18 papyri were purchased by King Fouad I in 1926. A third lot was purchased in 1926, and it is still unpublished.

5 The designation '*grapheion* of Tebtunis and Kerkesoucha Orous' is found in *SB* VI 9109 (AD 31), *P.Tebt.* II 383 (AD 46), and *P.Mich.* V 322(a) (AD 46). Four contracts are registered at the *grapheion* of Talei and Theogonis: *P.Mich.* V 251 (AD 19), 287 (1st century), 311 (AD 34), and 312 (AD 34). For a general discussion see BURKHALTER 1990, 197-98, COCKLE 1984, 112, and PIERCE 1968.

the transactions between relatives and the objects of sales, while the information in the three registers allows us to calculate and compare the monthly distribution and averages of sales and cessions in the years AD 42 and 45/6, in which shrinkages are recorded, and to calculate the breakdown between real property and movables.

Contracts of sale are the best represented type in the archive (36%). To date 52 contracts of sales dated between AD 18 and 56 have been published, of which seven are coupled with a contract of loan so as to form a mortgage. All sales are written in Greek, with the exception of five demotic contracts with Greek subscriptions.[6] Contracts of cession only constitute a meagre 6% of the total body of material, with eight cessions dated between AD 25 and 46, published so far.

Generally speaking, the difference between sale and cession is in the legal relationship between the seller or ceding party and the object for sale or cession. In a regular contract of sale (*prasis* in the papyri), the seller has full ownership of the object for sale and the buyer makes a full monetary payment. In a cession, on the other hand, the ceding party has only the right of use but not the full ownership of the object ceded, which is always a special type of land or *pastophoria* (dwellings for low grade priests).

Forms of contracts

The legal forms through which sales and cessions were drawn up in the *grapheion* were well attested in the Ptolemaic and early Roman periods. Most of the Greek sales we have are subscriptions, lacking the body of the contract.[7] All but two sales were drawn up in the form of a *homologia*, that is, the standard format for contracts in the Roman period: date, *homologia* clause ('he/she agrees to buy'), followed by details of the contracting parties, object of sale with description, acknowledgement of receipt of the full price agreed, guarantee clause (*bebaiosis*) through which the seller guarantees that the payment of all taxes due on the property for sale has been fulfilled, and optional approval clause by a third party, usually the seller's wife (*eudokesis*). Cessions, like sales, were drawn up in the *homologia* format.

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[6] *P.Mich.* V 249 (AD 18), 250 (AD 18), 253 (AD 30), 308 (1st century), *PSI* VIII 909 + App. 79-83 (AD 44).

[7] Among the *grapheion* papyri, 74 out of 136 contracts are subscriptions. The space left blank above the subscriptions clearly suggests that the contracts were drawn up in at least two stages: first the contracting parties would write their subscriptions, then the *grapheion* scribes would fill in the blank space with the body of the contract.

The five demotic contracts with Greek subscriptions are all in the same format: a demotic body divided into two parts, sale (*prasis*) and cession (*syngraphe apostasiou*), followed by the Greek subscriptions of the contracting parties. That all of the demotic contracts have Greek subscriptions is not surprising; during the first century AD, while the use of demotic gradually decreased, Greek subscriptions became mandatory for the validation of contracts. By the end of the first century demotic was no longer used in official documents.[8] The sale part included the following clauses: date, acknowledgment by the seller that he has received the price agreed for the object for sale using the typical demotic formula 'you have satisfied my heart with silver', description of the object for sale, declaration of relinquishment of any rights over the object and guarantee against any claims made by others, and optional approval clause by a third party. In the cession part the seller formally relinquished any claim over the object; this section must be considered to be confirmation of a statement of fact. The format was as follows: date, transfer of property through the formula 'I am far from you in respect of my [object for sale]', description of the object for sale, receipt of the price, and guarantee clause through which the seller relinquished any claim over the object. In two texts the top preserves the date in Greek, and the word *ekdosimon* (certificate of delivery), showing that those were copies for the contracting parties.[9] Greek subscriptions contained the following clauses: a) agreements of the contracting parties to abide by the Egyptian law of sale; b) acknowledgement of receipt of money (with reference to real payment); c) guarantee clause; d) an optional approval clause by a third party. Two sales exhibit the docket of registration through Kronion, notary of the *grapheion*.[10]

Two sales are drawn up in the form of a *cheirographon*, a private deed, which was valid but not legal. In order to become legal, a *cheirographon* had to undergo formal registration (*demosiosis*).[11] In the first *cheirographon*, dated to AD 38, a certain Lysimachos agreed to convey a vineyard to his sister Hero, wife and sister of Didymos.[12] The document is a *katagraphe*, that is, a legal

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[8] On the disappearance of demotic see DEPAUW 2003, 89-90; see also LEWIS 1993, and MUHS 2005, 96-7.

[9] *P.Mich*. V 249-250.

[10] See *PSI* XX Congr. 6 (AD 41) and *PSI* VIII 909 (AD 44). The registration docket is as follows: ἀναγέγραπται διὰ Κρονίωνος νομογράφου Τεβτύνεως καὶ Κερκεσούχων Ὧρους τῆς Πολέμωνος μερίδος – 'it is registered through Kronion, *nomographos* of Tebtunis and Kerkesoucha Orous in the meris of Polemon.' One sale was recorded through the *grapheion* of the village of Talei – see *P.Mich*. V 251 (AD 19).

[11] See ALONSO 2010, 19-20.

[12] *P.Mich*. V 266.

act of conveyance, drawn up and registered in the presence of a notary.[13] The legalisation of the *cheirographon* was here executed through the *grapheion* of Tebtunis. The second *cheirographon,* dated to AD 47, is a sale of part of a house.[14] Here five brothers sold to a certain Tamaron a one-seventh share of a house that they owned jointly in the nome capital, Ptolemais Euergetis. After acknowledging receipt of the money, they bound themselves to execute a formal sale in the form of a six-witness contract (typical of demotic sales) through the record-office (*mnemoneion*) of the nome capital whenever she asked for it, although no further payment was expected from the buyer.[15] This document reveals some important aspects of contract registration procedures in the early Roman period. First, although the transaction is made valid by the exchange of money, the buyer may obtain further legal protection by asking for the contract to be registered in the *mnemoneion* of Ptolemais Euergetis, although this does not seem to be obligatory. Second, formal registration must occur in the administrative area where the property is located, in this case the nome capital, meaning that the *grapheion* office of a village does not always act as a record-office.

Two legal instruments are adopted for cessions: *parachoresis* and *enchoresis*.[16] In the Ptolemaic period, *parachoresis* was the legal instrument used for transfers of catoecic land. The price paid for this transaction was not called *time*, as in regular sales, but *parachoretikon*. A *parachoresis* was followed by a legal registration of the conveyance (*metepigraphe*) in the record-office for the registration of catoecic land (*katalogismos*). The *enchoresis* was the legal instrument for the cession of several types of land received 'in grant' and *pastophoria*. The entries for cessions in the three *grapheion* registers further clarify the distinction between the two instruments. Whereas *parachoresis* was used for unspecified allotments of land or arouras, *enchoresis* is used for the conveyance of *kleroi phylakitikoi* (allotments originally granted to policemen), *kleroi heptarourikoi* (plots of seven arouras originally assigned to military settlers), and *pastophoria*. This distinction is certainly not new, but what is worth noting is the fact that while *parachoresis* is gradually assimilated to a sale, *enchoresis* still keeps its original meaning of a conveyance of land received 'in grant'. In the *grapheion*, cessions are often coupled with a loan or

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13 See *P.Mich*. V 266, *intr*., 164-65. On conveyances in the Ptolemaic period see WOLFF 1948, with many references to the documents of the *grapheion* of Tebtunis, especially 40-44 and 81-83.

14 *P.Mich*. V 276.

15 See COCKLE 1984, 112-13.

16 For *parachoresis* see FLORE 1926, PRINGSHEIM 1950, 317-21, and TAUBENSCHLAG 1955, 228-30. For *enchoresis* see AMELOTTI 1948.

deposit so as to form a mortgage, whereby the piece of land ceded constituted a pledge.[17]

THE SALES

Seven sales are coupled with a loan.[18] The two contracts together represent a mortgage, where the sale is fictitious and the object of sale constitutes a pledge for the loan. In other words, the seller is in fact the debtor, while the buyer is the lender. This theory is supported by the presence of the word *hypotheke* on the back of two sales.[19] Both documents, written back to back on the same sheet of papyrus, are in the form of the 'subjective' *homologia*, where the contracting party, in the first person, agreed to sell a house, and then acknowledged the receipt of a loan from the buyer mentioned in the sale part. Whereas in sales and cessions the price is always omitted, in loans on security the price is openly stated. The amount of money lent varies from 72 to 448 drachmas, probably depending on the value of the object pledged.

Objects of regular sales can be divided into movables and real property. Movables comprise only a very small percentage (around 9%) of the extant contracts, whereas immovables make up 91%.[20] Among the immovable items, houses, shares of houses and courtyards represent the most frequent objects of sale in the *grapheion* archive (47%), followed by vacant lots (27%). Sales of land, on the other hand, constitute 18% of our documentation.

Most properties for sale were located in Tebtunis, although several were situated in the nearby villages of Talei, Theogonis, and Kerkesoucha Orous, with which the *grapheion* of Tebtunis had an administrative connection. Object of cessions were catoecic land (75%), sacred land (12%), and vine land (12%), and over 130 contracting parties were involved in the sales and cessions. Ages were only given in complete contracts and detailed subscriptions, and sometimes in a note at the top or on the back of the papyrus. Age distribution ranged between 21 and 56, with a peak of people entering contracts between their late 20s and early 40s. It is not at all surprising that the vast majority of the contracting parties was male (84%), while only a small per-

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17 See for example *P.Mich.* II 121 *verso* X 14-15, XII 12-13.

18 *P.Mich.* V 328 (AD 29), 329-30 (AD 40), 332 (AD 48), 335 (AD 56), *PSI* VIII 908 (AD 42/3), 910 (AD 48), 911 (AD 56).

19 *P.Mich.* V 332 and 335.

20 Movables include three sales of slaves – *P.Mich.* V 264-5 (AD 37), 278-9 (1st century), and 281 (1st century) – and one sale of a donkey – *PSI* XX Congr. 6 (AD 41)

centage was female (16%). Hobson has previously argued that women are not represented as primary agents in the economic life of Tebtunis, although they do appear quite often as consenting wives or owners of real estate.[21] Sales of shared properties, usually houses and courtyards, represent a common phenomenon within the archive (19%), and normally the co-owners of shared properties were relatives. A fairly high rate of transactions between relatives is also attested (21%).

Sales and cessions were also recorded in seven registers. Registers can be divided into two categories, both drawn up in chronological order: *eiromena*, abstracts of contracts, and *anagraphai*, titles of contracts entered day by day over a four-month period. Because of their fragmentary state, four of these registers offer only incomplete information.[22] The best evidence is provided by three long *anagraphai*, which record the daily transactions of users of the Tebtunis *grapheion* in AD 42 and 45/6: *P.Mich*. II 121 *verso*, *P.Mich*. II 123 *recto*, and *P.Mich*. V 238. *P.Mich*. II 121 *verso* covers the four-month period from the end of April to the end of August AD 42; *P.Mich*. II 123 *recto* covers a whole year, from September AD 45 to August AD 46; and *P.Mich*. V 238 lists transactions registered from September to December AD 46. These three registers offer material for a comparative study of business volume, chronological distribution of sales, cessions, and loans on security, and types and distribution of objects for sale and cessions. They also give us some information about the gender distribution of contracting parties, and often allow us to identify people or entire families, and discern their economic status, relations, and level of wealth (i.e. land and houses).

P.Mich. II 121 *verso* (end of April-end of August AD 42) records 247 titles of contracts; sales constitute only a relatively small percentage of the business volume (13%), whereas cessions represent a low 2%. Four years later in AD 46, for the same four-month period, a definite shrinkage in the volume of sales is to be noted (7%) in *P.Mich*. II 123 *recto*, while the volume of cessions remains more or less stable (c. 3%). *P.Mich*. II 123 *recto*, which covers the year AD 45/6, shows that the total volume of sales and cessions per year was quite low: 7.4% of contracts were sales, and 1.6% cessions.[23] The breakdown of contracts by four-month periods offers a more detailed picture. By comparing the four-month periods from September to December in AD 45 and 46 in

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[21] See HOBSON 1984, especially 385-86.

[22] For the *eiromenon* see *P.Mich*. V 241 (AD 16); for the *anagraphai* see *P.Mich*. V 237 (AD 43) and 240 (AD 46/7). The entries are also duplicated in *P.Mich*. II 128 (AD 46).

[23] Oral contracts were still very common in the Roman period, and only valuable objects, which required legal protection, were registered at the *grapheion*.

P.Mich. II 123 *recto* and V 238, we notice on the one hand a decrease in sales from 8.2% to 6%, and on the other hand an increase in cessions from 1.3% to 3.3%. The only four-month period for which we do not have comparable data is January-April AD 46. The volume of sales here is 9% and of cessions is 2%. The volume of sales varies between a minimum of 6%, attested in the four-month period September-December AD 46, and a maximum of 13%, attested in the four-month period May-August AD 42. The volume of cessions, on the other hand, seems to be more stable, varying between 1.3% in Sept.-Dec. AD 45 and 3.3% in September-December AD 46. By comparing the data in AD 42, we can conclude that in the year AD 45/6 two concurrent phenomena take place: the volume of sales gradually drops, whereas the volume of cessions progressively goes up.

How can these two phenomena be interpreted? A decrease in sales usually reflects a situation of economic distress. This view seems to be confirmed by the concurrent increase in cessions, which, in theory, indicates that more land was changing hands. However, it is very dangerous to draw general conclusions about the economic situation of Tebtunis in the 40s only on the basis of volume of sales and cessions, for two reasons. First, we lack registers for the years immediately preceding and following AD 45/6, which would offer comparative data to work on. Second, sales and cessions, on the whole, represent only a small percentage of the entire business volume, therefore they cannot be used as exclusive economic indicators. A more exhaustive and reliable picture of the economic life of the village can be drawn by examining the changes in the volume of loans, which are arguably a better indicator of economic trends. In the *grapheion* registers a wide range of loans is attested: regular, service contracts (*paramone*), prodomatic leases, residence contracts (*enoikesis*), loans on security, and deposits. In AD 46 the volume of some of these contracts goes up enormously compared to AD 42: regular loans rise by 77%, residence contracts by 70%, and deposits by 93%.[24] The inhabitants of Tebtunis appear to be undergoing a financial crisis, and urgently need to raise cash. In the light of these data, the change in volume of sales and cessions can be more reliably interpreted as a sign of economic difficulties, where a decrease in sales might reflect a drop in potential buyers due to lack of financial means. As far as cessions are concerned, in order to determine whether there has been an actual increase of land sold and ceded, we need to calculate the amount of land in the periods documented by the aforementioned registers. In May-August AD 42 a total of 8.3 arouras changed hands, to which we have

[24] See TOEPEL 1973, 311-12.

to add four vacant lots, one vineyard, and four cessions of objects not stated.[25] This can be compared to the same four-month period in AD 46, when a total of 20 arouras changed hands, to which a *pastophorion* and one vacant lot are to be added. In this case it is difficult to tell whether there was an increase in AD 46, given that in AD 42 four cessions do not specify the amount of land ceded. Also comparable are the four-month periods from September to December AD 45 and AD 46. In AD 45 a total of 4.35 arouras, plus three *kleroi* and 2½ cubits of vacant lots were sold or ceded, versus nearly 25 arouras in AD 46. Assuming that the three *kleroi* ceded were not particularly big, there seems to have been a noticeable increase of quantity of land sold in the last four months of AD 46. To sum up, I estimate that in September-December AD 45 around 4.35 arouras changed hands, in January-April AD 46 a total of 20.54 arouras was either sold or ceded, in May-August AD 46 again 20 arouras change hands, and in September-December AD 46 almost 25 arouras were sold or ceded. Why should there be an increase in land sold and ceded in a period of economic and financial crisis? The reason can be found in an excessive flood of the Nile, which literary and papyrological evidence attest occurred some time during the reign of Claudius, most probably in the year AD 44 or 45.[26] Hence, it is very likely that, as a consequence of this serious flood, the price of land was gradually driven down, making sales and cessions of land in AD 46 more affordable than in the previous year, when people were more keen to buy houses.

A more complete picture of village society can be drawn by combining distribution and trends of sales and cessions, with an analysis of the objects for sale. Our three registers allow us to compare two different four-month periods – May to August in AD 42 and 46, and September to December in AD 45 and 46 - and to investigate the distribution and percentage of different types of objects for sale in the whole year AD 45/6. First, the differences between the three registers under examination must be clarified. Whereas *P.Mich*. II 121 *verso* records only titles of contracts, *P.Mich*. II 123 *recto* records all sorts of transactions drawn up at the *grapheion*, and shows a wider range of objects, including sheep, bulls, an anvil, and fodder. In this register, as well

[25] The total of 8.3 arouras comes from the addition of 8 arouras and 15 *bikoi*. The *bikos* is an unknown land unit, for which we do not have an equivalence in the papyri, although it has been suggested that it might be 1 ½ *hammata*; see *T.Varie* 71-78, pp. 156-8. In DREXHAGE'S list of sales 1991, 138-40, *bikoi* are only found as measuring unit for vacant lots. In the *grapheion* archive registers *bikoi* are listed separately; they are also mentioned in a contract (*P.Mich*. V 305, 3) as a measuring unit for vacant lots. On this basis, it is reasonable to assume that *bikoi* were only used for vacant lots.

[26] See Pliny, *NH* 5. 58. For discussions of the crisis under Claudius see BELL 1938, HANSON 1988, and MONTEVECCHI 1998.

as in *P.Mich*. 238, all of the entries show the payment (or non-payment) of the *grammatikon*. The *grammatikon* was a fee paid to the *grapheion* by the contracting parties, and is generally interpreted as a scribal fee, the amount of which varied depending on the length of the contract or the number of copies to be made. The meaning of *grammatikon* in the *grapheion* registers remains problematic, and further research needs to be done, but as far as sales are concerned some provisional remarks can be made. A specific range of *grammatikon* prices corresponded to a specific type of object for sale: for example, the payment varied between 4 and 7 obols for sales of donkeys, for houses it went from 4 to 40 drachmas, and for sales of looms the range was 2 to 20 obols.

The results of the comparison between the four-month periods from May to August (AD 42 and 46) and from September to December (AD 45 and 46) are shown below (see Figures 1, 2, and 3). In AD 42 donkeys (40%), houses (25%), and vacant lots (19%) are the main objects for sale. In AD 46, on the other hand, sales of donkeys drop dramatically (8%), leaving houses as the main item for sale (38%), followed by looms (15%). As for the period September to December, in AD 45 the objects most sold are donkeys (25%), looms (20%), and houses (15%), whereas in AD 46 donkeys represent 71% of all items for sales.

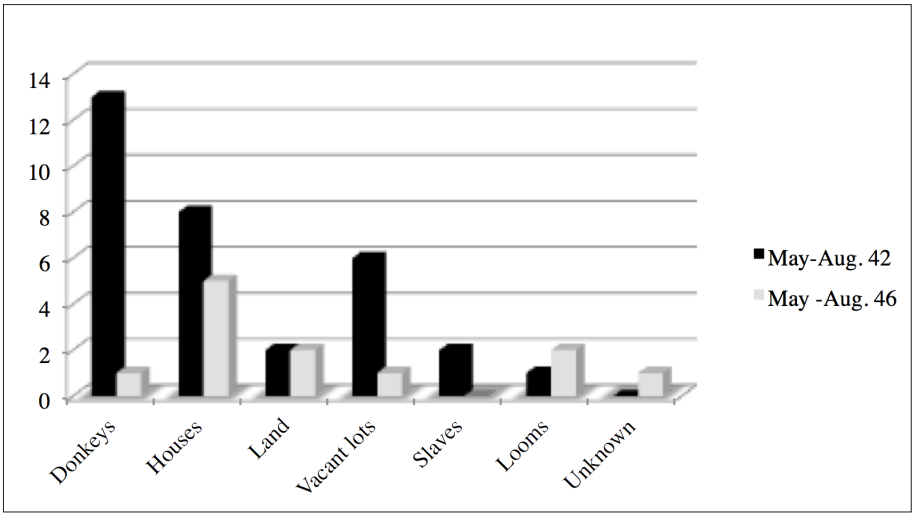

Fig. 1 Distribution of sales (AD 42 and 46)

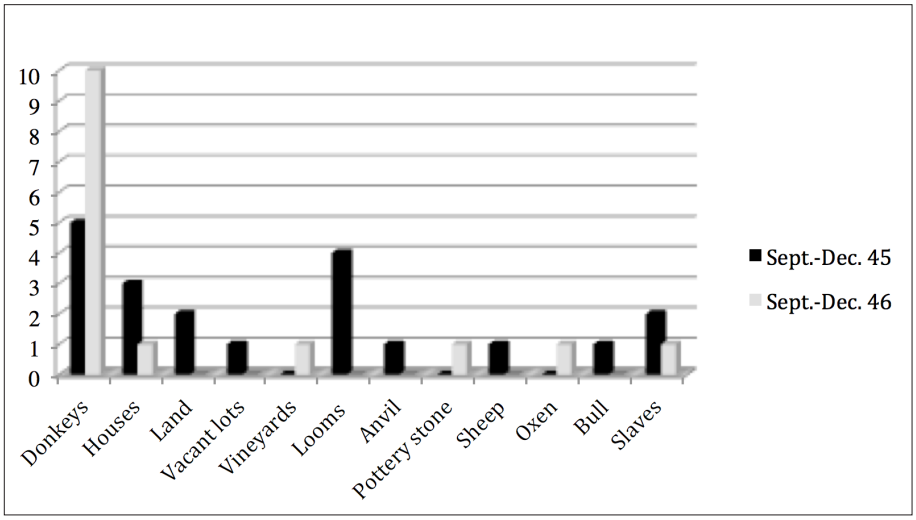

Fig. 2 Distribution of sales (AD 45 and 46)

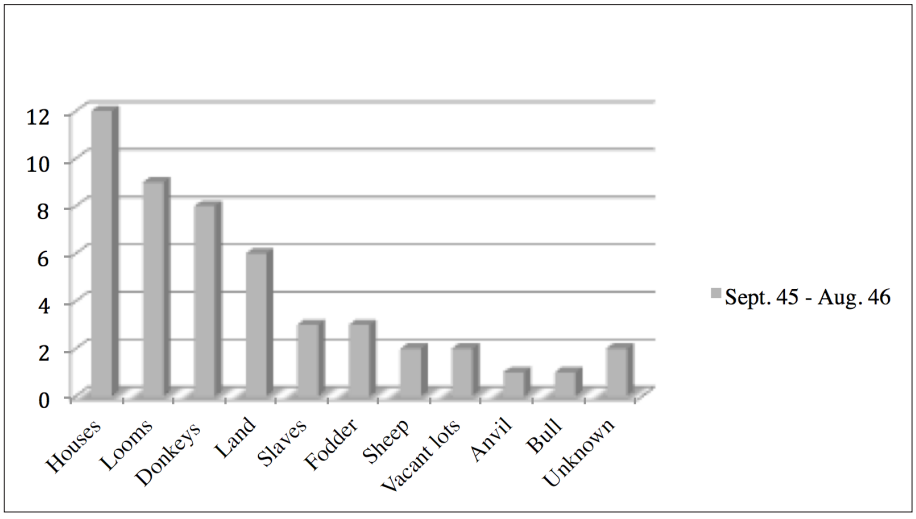

Fig. 3 Distribution of sales (AD 45/6)

These data must be interpreted in the light of the drop in sales, which, as we have seen, occurred in AD 46. Houses and shares of houses constitute the most common object for sale; although with variation in number and distribution, house sales regularly appear in all four-month periods attested in AD 42 and 45/6. The high frequency of house sales, especially shares of houses, is not surprising, and must be connected with the traditional Egyptian system of inheritance and marriage. In Egypt women could inherit real property from their father or mother, and then hand it over to their husband or children, causing a fragmentation of properties on the one hand, and a gradual growth of joint ownership on the other hand. Therefore, many house sales must have been made for 'family' or cohabitation reasons, in accordance with marriage and inheritance agreements, often to gather back together those small portions of houses which were scattered among several owners.[27] Another common reason behind the sale of shares of houses is, of course, financial: to raise quick cash.

Although house sales tell us a good deal about social behaviour, they cannot be seen as a reliable economic indicator in their own right. That is not the case for sales of donkeys. Since donkeys were mostly used as working animals, whether for transport or for farming purposes, the frequency of sales could be indeed regarded as an indicator of economic conditions, depending on who is buying and who is selling.[28] An increase in the number of farmers selling donkeys would suggest an economic depression, conversely, an increase in the number of farmers buying donkeys is a sign of economic vitality. A marked variation in the number of donkey sales was recorded in the *grapheion* registers in AD 42 and 45/6. For the period from the end of April to August, in AD 42 donkeys were the most common object for sale, with transactions concentrating in late April-early May and in July; that is, during the harvest period, when farm work was at its most intense. Conversely, in AD 46, sales of donkeys fell drastically to 8%. Donkey sales were also very low in the previous four-month period from January to mid-April, for which unfortunately we have no comparative data. If we look at the sales trend for AD 45/6, we notice that the overall number of donkey sales was quite low (8) if compared with the number of donkey sales for the sole four-month period

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[27] For a more detailed discussion on sales of houses, see MONTEVECCHI 1941, 103-21; for house prices in Roman Egypt see ALSTON – ALSTON 1997, 208. For a sociological study of houses and family in Roman Egypt, see HOBSON 1985; see also ALSTON 1997.

[28] Connections between donkeys and farming work are at times revealed by the contracts themselves. On 30th July AD 42 a certain Akousilaos bought a half-share of a donkey and on the same day drew up a contract of partnership in farming with his children (*P.Mich.* II 121 *verso* VIII, 21-22). On donkeys as working animals see RATHBONE 1997, 207-10, and ADAMS 2007, 70-73.

attested in AD 42 (13). A significant increase was finally recorded in the four-month period from September to December AD 46 (see Fig. 2). It is worth noting that nine out of ten donkey sales were recorded in October, and six are entered on the same day (4th), suggesting that a donkey fair was probably taking place early in October, just before the fields were prepared for post-inundation works.

Assuming that the majority of buyers and sellers were farmers, the data related to donkey sales, combined with an overall drop in sales in AD 45/6, seem to suggest that the economic conditions of Tebtunis were not particularly good in that year. Two sales of donkeys need a closer investigation. On 2nd July AD 42 Patunis sold a donkey to Herakleios, and on the same day Herakleios sold a donkey to Patunis.[29] This type of transaction finds one other parallel in the *grapheion*: on 6th July AD 42 Eudaimonis sold a young female slave to Kastor, and a week later Kastor sold a young female slave to Eudaimonis.[30] These sales clearly show some complexity. I suggest that they are to be regarded as leases rather than sales. The first sale of each pair of contracts is only fictitious: here the seller is in fact the lessor, in other words the seller receives the money from the buyer, who is the lessee, without actually selling his donkey or slave. The second sale, then, cancels the previous transaction; the object for sale is sold back to the original seller, who will use it for their business. Their profits will then be shared with the buyer/lessee. In other words, the buyer is actually investing his money in the business of the seller, who might have been in financial difficulties. A high level of trust between the contracting parties was necessary.

The analysis of sales reveals that textile production was second to agriculture in its importance to the village economy. The sale of several looms are attested to have been sold in AD 42 and 45/6, concentrated in the periods April-May and September-December; that is, in the months immediately preceding or following the biennial shearing of sheep in March and September. Although flocks of sheep were not frequently sold, sheep rearing can still be identified in the leases of land cultivated with fodder crops for grazing animals, especially sheep.[31] In addition, the extent and degree of specialisation of textile production is attested by the activity of some professional associations documented in the *grapheion*: weavers, wool-sellers, and cloth-beaters.[32]

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[29] *P.Mich*. II 121 *verso* VI 4-5.

[30] *P.Mich*. II 121 *verso* VI 18 and VII 6.

[31] See, for example, *P.Mich*. XII 632 (AD 26) and *P.Yale* I 67 (AD 31). For leases of pasturage in Roman Egypt, see LANGELLOTTI 2012, 59-80.

[32] For a discussion on the economic role of the associations at Tebtunis, see RATHBONE 2013.

Conclusion

The picture emerging from the analysis of the *grapheion* sales and cessions is that of a society where economic transactions were facilitated by family ties and a high level of trust was required. Two main features have indeed been identified: joint ownership, and a high percentage of transactions between relatives. It has been noted that the number of formally contracted sales and cessions is relatively low if compared with the overall number of transactions entered by the villagers throughout the year. However, variations in sales trends can still be reliably used as social and economic indicator when combined with trends and volume of other contract types, such as loans and deposits. The analysis of the fluctuations in sales and cessions has demonstrated that in the year AD 45/6 Tebtunis was suffering an economic depression. The villagers appear to have faced a financial crisis, the parameters of which can be measured by three main phenomena: high increase in loans, drastic drop in sales, and a remarkable increase in the amount of land ceded.

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Metepigraphê: Ptolemaic and Roman Policies on the Alienation of Allotment Land*

URI YIFTACH

In a recent contribution, I argued that in the Ptolemaic period there existed a clear distinction between types of legal acts recorded by different scribes. Leases and labor contracts were generally drawn up in the format of the double document, while hereditary dispositions and documents recording land and slave sales were drafted by the *agoranomos*, who also registered the act of conveyance in his files, thus allowing the state to gain cognizance of the ownership of these assets and ensure that the conveyance tax was collected.[1] In the Roman period, the state continued to take an interest in monitoring land conveyances, but the way in which it achieved this end was different: by the first century CE property rights were recorded in the *bibliothêkê enktēseôn*, and the right to landed property could be undisputedly conveyed only upon verification by the *bibliophylakes* that there were no conflicting

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[1] YIFTACH, Regionalism (forthcoming).

rights to the same object.[2] The act of sale was then recorded in the *bibliothêkê*, thus securing, in theory at least, a complete picture of property rights over the most valuable assets in the province. Yet unlike the *agoranomoi*, the *bibliophylakes* did not themselves compose deeds of sale. They only certified and recorded acts of conveyance drafted by others, including the scribes of the *grapheion*. In the Roman period, therefore, anyone who wanted to convey landed property did not have to turn for that purpose to the *agoranomos*, but could have the necessary documents drawn up at the *grapheion* as well. Although this is by no means a rule without exceptions, the *agoranomoi* were primarily active in the nome capitals,[3] while *grapheia* were located, in the Arsinoitês at least, in all major villages. As a consequence, the office entrusted with the documentation of land sales was more easily accessible than before and the costs (at least the indirect costs of the production of the document) went down. We cannot be sure that this, i.e., increasing access and lowering costs, were the conscious aims of the Roman administration or the incentive for the founding of the *bibliothêkê enktêseôn*, but we may assume that promoting economic activity in general was, in particular because this is stated to be the case in the edict of governor of Egypt M. Mettius Rufus (89 CE), the only contemporary source that discusses the incentives for the maintenance of the "acquisitions archive".[4]

This brings us to the topic of the present discussion. Even if we accept the view that the Romans founded the archive in order to promote economic activity, it remains to be asked whether this was the sole, or even a key incentive, that guided Roman policies on land acquisition in the province of Egypt (or

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[2] As most directly expressed by the formula applied for the temporary registration of the conveyance, if the title of the vendor cannot be established through the archive's files. Cf., e.g., *P.Hamb*. 1 16.18-23 = *Sel.Pap*. II 325 = *Jur.Pap*. 65 (209 CE, Ptolemais Euergetis) [BL XII 82]: διὸ ἐπιδίδωμι εἰς τὸ τὴν παράθεσιν γενέσθαι [19] ἀκολούθως ᾧ παρεθέμεν ἀντιγράφῳ τοῦ χρηματισμοῦ.[20] ὁπόταν γὰρ τὴν ἀπογραφὴν αὐτοῦ ποιῶμαι, ἀποδείξω ὡς ὑπάρ[21]χει καὶ ἔστι καθαρὸν μηδενὶ κρατούμενον εἰ δὲ φανείη ἑτέρῳ [22] προσῆκον ἢ προκατεσχημένον διὰ τοῦ βιβλιοφυλακείου, μὴ [23] ἔσεσθαι ἐμπόδιον ἐκ τῆσδε τῆς παραθέσεως. WOLFF 1978, 240-241; YIFTACH-FIRANKO 2010, 298.

[3] WOLFF 1978, 13, 15. But the *agoranomoi* frequently outsourced some of their traditional tasks to the benefit of other functionaries, located in major villages [*P.Köln* V 219, 209 or 192 BCE, Theadelphia], established branches in other locations, [as was commonly the case with Herakleopolite documentation of *CPR* I. E.g. *CPR* I 61.3-4, 219/20/21], or discharged their tasks through periodical visits in other villages: cf. *P.Harr*. I 138 (92 CE, Oxyrhynchos) [BL VIII 148; IX 101/102]. Cf. MESSERI SAVORELLI 1980, 206-242.

[4] *P.Oxy*. II 237.8.27-36 = *Sel.Pap*. II 219 = *Jur.Pap*. 59 (after 27.6.186 CE, Oxyrhynchos) [BL VIII 233/234; in particular, ἵνα οἱ συναλλάσσοντες μὴ κατ' ἄγνοιαν ἐνεδρεύονται (read ἐνεδρεύωνται).

elsewhere) more generally.[5] After all, literary and documentary sources provide an abundance of data on the land policies of different ancient states, and not always, it seems, is facilitating conveyance a key goal. Sometimes quite the opposite is the case, and it should be asked to what extent Roman Egypt was really different.[6]

Land conveyances from Roman Egypt frequently report the administrative status of the land, e.g., temple land, public land, *polis* land and others. Among the administrative statuses mentioned in these documents, by far most common is that of the catoecic land (κλῆρος κατοικικός or κατοικικὴ γῆ). This is the case in 123 of the 181 documents recording the sale of land in the first three centuries of Roman rule in which the administrative status of the land can be established with certainty.[7] For this reason, we cannot study the Roman policy on land conveyances without taking into account special rules and regulations relating to this particular category of land.

In the Ptolemaic period, a κλῆρος κατοικικός was a plot of land allotted to a κάτοικος, a term conceived in the late third century BCE to designate military settlers.[8] The land allotted to these settlers was meant to secure their livelihood while dispersing them across the kingdom as a strategically located military force, permanently available to the king. In the earliest stage, represented by the documentation of the third and early second centuries BCE, the holders of catoecic land were essentially allowed a usufruct, e.g., they could assign the land to others by lease,[9] and to bequeath it to their sons, whose title to the plot was already registered in their father's lifetime.[10] On the other hand, the right to alienate the land did not evolve before the (late?) second century BCE.[11] It was only in the century of Ptolemaic rule, that catoecic land had become fully conveyable.

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[5] Quite a few papers have been dedicated in recent years to the *bibliothêkê enkteseôn*. Cf., e.g., JÖRDENS 2010; LE ROUXEL (forthcoming), respectively, the private-legal context of the creation of the institution and the economic of its foundation.

[6] Note, in particular, in the case of the Greek and Roman city-state, the restrictions on the purchase of land by non-citizens. Cf., e.g., BUSOLT 1920, 152-153; KASER 1971, 402.

[7] Data according to *Synallagma, Greek Contract in Context*.

[8] COHEN 1991, 42; OERTEL 1921, 16. In the administrative language of the late Ptolemaic period, as borne out by the documentation of the Menches archive, part of the wider category of the holders of κληρουχικὴ γῆ. Cf., e.g., *P.Tebt*. I 60 col. 2 (117 BCE, Kerkeosiris) [BL XI 271]. CRAWFORD 1971, 58-77; REGGIANI (forthcoming); VERHOOGT 1997, 110-111.

[9] Cf. a short but useful account by BINGEN 1978.

[10] Cf., in particular, SCHEUBLE-REITER 2012, 143-158.

[11] KIESSLING 1938; KUNKEL 1928, 292-294, 300; OERTEL 1921, 19-20; RUPPRECHT 1984, 384-385.

Yet even in the late Ptolemaic period, the conveyance of catoecic land was subject to various procedures that do not seem to have been required in the case of other types of land. Initially, at least, catoecic land could be conveyed only if the holder, or his representatives, could show that the holder was unable to discharge his duties, which in the first century BCE were primarily the payment of the state-revenues, the *basilika*. Such declarations of incapacity or insolvency had to be verified by an official called ὁ πρὸς τῇ συντάξει τῶν κατοίκων ἱππέων.[12] In addition, the land had to be conveyed to a person who was himself a *katoikos*,[13] a fact which was verified at the *hippikon logistêrion*, an archive likely overseen by the ἐπιστάτης καὶ γραμματεὺς τῶν κατοίκων ἱππέων.[14] The *agoranomos* was also involved in the legal act, but the document he composed, frequently taking the forma of an oath, was meant to introduce sanctions against the former holder, should he ever challenge the possession of the new one.[15] The agoranomic document thus reports the act of conveyance as a *fait accompli*, giving account of the procedure by which it was accomplished: the change of the name of the holder at the *hippikon logistêrion* on account of an appeal, addressed to "those in charge of the *katalochismos*".[16]

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[12] Cf., in particular, *BGU* VIII 1734.11-14 (80-83 BCE) [BL VIII 47; XII 20]: ὑπὲρ ὧν καὶ τυγχάνει Πτολέμα ἐπι[δεδω]κυία Ἀρχιβίωι τῶι π[ρὸς τῆι συντάξει τῶν κατοίκων ἱππέων ὑπόμνημα], | δι' οὗ προενήνεκται ἕτερά τε καὶ τὸν τοῦ ὀρφανοῦ πατέρα τετελευ[τ]ηκέναι μηδὲ [δεδυνῆσθαι τὴν γῆν εἰ μὴ ἐλασσόνων] | π[αν]τελῶς ἐκφορίων μισθοῦσθαι, ἃ μὴ διαπο‹ι›εῖν εἰς τὰ τοῦ κλήρ[ο]υ β[ασι]λικὰ [- ca.35 -] | [- ca.11 -] μετεπιγραφὴ καὶ παράδειξις γέγονεν τῶι Φιλοξέν[ωι] τ[ῶν] πρ[ογεγραμμένων ἀρουρῶν. On the position of ὁ πρὸς τῇ συντάξει cf., in particular, ARMONI 2012, 199-204; GERACI 1981. Cf. also KIESSLING 1938, 221; KUNKEL 1928, 289, 291; RUPPRECHT 1984, 379. SCHEUBLE-REITER 2012, 213-224.

[13] BINGEN 1983, 9-10; KIESSLING 1938, 223; KUNKEL 1928, 294; SCHEUBLE-REITER 2012, 163.

[14] Cf., in particular, *P.Tebt*. I 32.13-20 = *W.Chr*. 448 (after 26.6-25.7.145 BCE) [BL VIII 489; XI 270], a letter issued by the two elected heads of the *politeuma* of the Cretans, who is in charge of the *syntaxis*, of the admission of the new member into the status group of the *katoikoi*, and his assignment to their *politeuma* by Apollodôros, the *epistatês* and *grammateus* of the catoecic cavalrymen. [Σῶσος] καὶ Α̣[ἴ]γ̣υπτος Παγκρά̣τει χαίρειν. ἐπε[ὶ] προ̣[στέτα]κ̣ται δι' ἡμῶν | [14] [τοὺς] κατοίκους ἱππεῖς ἐφο̣ ̣[̣ ̣ ̣ ̣ ̣]τ̣ω̣ν̣[̣ ̣]α̣φ[- ca.17 -] | [15] [ἐπ]έσταλκέ μοι Ἀπολλόδωρος [τῶ]ν πρώτ[ω]ν φίλων̣ [ὁ ἐ]πι[στ]ά̣της̣ | [16] [καὶ] γραμματεὺς τῶν κατοίκων ἱππέων ἀπὸ τῶν ἐπικεχωρημένω[ν] | [17] τῶι πολιτεύματι τῶν Κρητῶν ἀνδρῶν φ Ἀσκληπιάδην | [18] Πτολεμαίου Μακεδόνα τῶν κατὰ μερίδα ἐφόδων ἐφ' ὧι ἔχει κλῆ[ρον] | [19] περὶ Κερκεοσῖριν [τῆς] Πολέμωνος μερίδος (ἀρουρῶν) κδ. καλῶς οὖν πο‹ι›ήσε[ις] | [20] καταχωρίσας καὶ [λαβὼ]ν αὐτὸν ἐν τῆι πέμπτηι ἱπ(παρχίαι) τῶν (ἑκατονταρούρων) καὶ τῶ[ι] | [21] Ἀπολλοδώρωι προ[σανε]νέ[γ]κας. ὑποτετάχ̣[α]μ̣εν δὲ κα[ὶ] τὴν εἰκόνα αὐ[τοῦ] | [22] καὶ τοῦ υἱοῦ τὸ ὄνομα. That Apollodôros was in charge of admitting the new member into the catoecic class is not explicitly said, but seems probable.

[15] So also KUNKEL 1928, 299: "Im Hintergrund steht dabei die Befürchtung, der durch die Verfügung in seinem Recht Betroffene könne mangels eines ausdrücklichen Verzichts trotz der Verfügung noch Funktionen des berührenden Rechtes geltend machen". Compare also RUPPRECHT 1984, 370 n. 48; SCHEUBLE-REITER 2012, 164-165.

[16] So in the formulary of the Oxyrhynchite *parachôrêseis*. Cf., e.g., *P.Oxy*. XLIX 3482.4-6 (74 BCE,

With the Roman occupation, both the restriction on the person of the assignee and on the causes of the conveyance, were lifted. A short prosopography of vendors and purchasers of catoecic lands shows that at the latest by the end of the first century CE everyone could acquire and possess it,[17] and nowhere do we ever hear again that the vendor had to account for the reasons that induced him to alienate it. Also, the sale document of catoecic land now merged with and became identical to that of regular land sale, with the exception that the act of sale is called παραχώρησις and not πρᾶσις, and the consideration termed παραχωρητικόν.[18] At the same time, even though the mechanisms that called forth intricate control mechanism had ceased to exist under the Romans, the procedure connected with the conveyance of the catoecic land endured. Actually, in a sense the process had become even more complex.[19]

In the Roman period the conveyance of catoecic land *could* be set in motion by the composition of a preliminary document through a *grapheion* or an *agoranomeion*; this document recorded the present or future act of the conveyance (*parachôrêsis*).[20] The second stage, that of the *metepigraphê*, is still

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Oxyrhynchos) [BL VIII 271] :ἀκο[5]λούθως τοῖς δ[ι]ὰ τῶν τὰ ἱππικὰ χειριζόντων ᾠκονομημένοις ἀφ' οὗ ὁ Θέων δέδωκεν ὑπομνήματος Εὐδαίμονι [6] τῶι πρὸς κατ̣α̣λ̣οχισμοῖς. No reference to the *katalochismoi* in the formulary of the *parachôrêseis* from the Herakleopolite nome. Cf., e.g., *BGU* VIII 1733.4-6 (80-30 BCE) [BL XI 28; XII 20 and 21]: [ὁμολογεῖ Φίλων] Λ̣ύκου [Μακεδ]ὼν τῶν κατοίκων ἱππέ[ω]ν Διον[υ]σίῳ Διονυ[σ]ίου Μακεδόνι τῶν [5] [κ]ατο[ίκ]ων ἱππέων ε[ὐδο]κ̣εῖ[ν τ]ῇ γεγονυίᾳ τῷ Διονυσίῳ [δ]ιὰ τοῦ ἱππικοῦ λογιστηρίου μετεπ[ι][6] [γ]ραφῆ, ὧν παρακεχ[ώρηκεν] αὐτῶι ἀπὸ τοῦ κ[λήρου. Kunkel 1928, 286-287, 297-299; Rupprecht 1984 375; Scheuble-Reiter 2012, 169.

[17] Kunkel 1928, 290, 295; Oertel 1921, 20-21; Tomsin 1964, 81-85. Whether all restrictions were immediately lifted at the very beginning of the Roman period, as seems to be argued by Kunkel 1928, 295, requires further investigation, in particular since as late as the mid first century CE, assignors of catoecic land still record their own status as Μακεδόνες τῶν κατοίκων (cf., e.g. *P.Mich*. V 273.1, 46 CE, Tebtynis). But as there is no reference in these documents to the status of the assignee, adding the said title may be socially rather than legally motivated. Another peculiarity of *parachôrêseis* of the Augustan period, the occurrence of women both as co-assignors [cf., e.g., *BGU* IV 1129 = *C.Pap.Jud*. II 145 (13 BCE, Alexandria) [BL VIII 41]] and as assignees [cf. in particular *P.Dubl*. 3 = *P.Oxy*. II 366 descr. (14/5 CE, Oxyrhynchos)], probably goes back to the Ptolemaic period. Cf. Bingen 1983, 5-6, especially Müller 1961, 186-192 and cautiously Scheuble-Reiter 2012, 171-178.

[18] Rowlandson 1996, 43-48; Rupprecht 1984, 370.

[19] Kunkel 1928, 302-303.

[20] This seems to be the case where, in the clause recording the *metepigraphê*, its performance is formulated as a future action [*P.Mich*. II 121.2.9.2-3 = *SB* III 7260 = *C.P.Gr*. I 17 (42 CE, Tebtynis) [BL VIII 211; IX 158; X 122; XII 119]; 259.12-13 (33 CE, Tebtynis); 267/8.7-8 (41/2 CE); 273.5-6 and *PSI* VIII 906 (45-46 CE); *P.Narm*. 2006.6 (107-108?, Theadelphia or Narmouthis); *P.Oxy*. II 273.19-24 = *M.Chr*. 221 (95 CE, Oxyrhynchos). Perhaps also in *BGU* IV 1129.24-26 = *C.Pap.Jud*. II 145 (13 BCE-Alexandria) [BL VIII 41]], and, in particular, if the report of the administrators of the *katalochismoi* to the *agoranomoi* (infra n. 2) mentions the foregoing composition of the document by the *agoranomoi* themselves, as seems to be the case in five of the texts that came down to us [*P.Laur*.

said, in the formulary of Oxyrhynchite documents to be discharged at the *hippikon logistêrion* "on account of an appeal served to the administrators of the *katalochismoi*" (οἱ πρὸς τοῖς καταλοχισμοῖς). We should, however, take the reference to the *logistêrion* in early Roman documents as likely reflecting a now outdated fomula, which went back to the Ptolemaic period. From other material related to such sales, we can see in the early Roman period that the *metepigraphê* was discharged, exclusively it seems, by "the administrators of the *katalochismoi*",[21] who reported their undertaking, in the case of the Oxyrhynchitês, to the *agoranomos*.[22] The *agoranomos* then drew up an additional document upon this notification, finalizing the conveyance of title to the alienated land to the buyer.[23] In the case of the Arsinoitês, the report of the administrators of the *katalochismoi* was forwarded to a previously unrecorded official, termed συντακτικός,[24] who presumably took record of the act and

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IV 153 (138-161 CE) [BL IX 121]; *P.Oxy*. I 45 (95 CE) [BL VIII 230]; II 342 = Benaissa 2009, #5, p. 166 (both ca. 100 CE); 346 = Benaissa 2009, #3, p. 163-165 (100 CE); 347 = Benaissa 2009, #2, p. 161-163 (ca. 95-100 CE); L 3556 = *P.Oxy*. I 175 descr. (ca. 100 CE)]. Pace Rupprecht 1984, 377.

[21] Following KUNKEL 1928, 303, who saw in the καταλοχισμοί, "inhaberfolien, in denen die Katoeken einer jeder Truppe mit ihrem Landbesitz aufgeführt waren", we assume that their activity focused on the change of the holders' names in their files. Cf. also MÜLLER 1961, 190-192; OERTEL 1921, 5; SCHEUBLE-REITER 2012, 213-215.

[22] *P.Laur*. IV 153 (138-161 CE) [BL IX 121]; *P.Oxy*. I 45 (95 CE) [BL VIII 230]; 46 (100 CE) [BL VIII 231]; 47 = *P.Lond*. III 750 descr. (83-88 CE) [BL VIII 231; XI 141f.]; II 341 = Benaissa 2009, #4, p. 164-165; 342 = Benaissa 2009, #5, p. 166 (both ca. 100 CE); 344 = Benaissa 2009, #6, p. 167-168 (Late I CE); 345 = Benaissa 2009, #1, p. 160-161 (ca. 88 CE); 346 = Benaissa 2009, #3, p. 163-165 (100 CE); 347 = Benaissa 2009, #2, p. 161-163 (ca. 95-100 CE); 348 = Benaissa 2009, #7, p. 169-170 (late I CE); L 3556 = *P.Oxy*. I 175 descr. (ca. 100 CE); *P.Oxy*. *Descr*. 3 = *P.Oxy*. I 165 descr. = *SB* XXII 15351 (81 CE); 6 = *P.Oxy*. I 174 descr. = *SB* XXII 15354 (88 CE) [BL XI 237; XII 231]. Cf., in general, Benaissa 2009, 158-160.

[23] *PSI* X 1118.2-4 (25/6 CE) [BL VIII 406]: παρακεχωρη(κέναι) αὐτῶι ἀκολ(ούθως) τοῖς ὠκονομη(μένοι) [διὰ τ]ῶν ἐκ τοῦ ἱππικοῦ ἀφ' οὗ ἐπιδέδωκεν ὁ Ἡρώδη(ς) ὑ[πο]μνήματ[ο]ς Ζήνωνι τῶι πρὸς τοῖς καταλοχισμοῖς. *P.Mich*. XVIII 784 + *PSI* IV 320 (18 CE) [BL IX 313; XI 244]; *P.NYU* II 15 (68 CE); 16 (I^{l} BCE-I^{e} CE); *P.Oxy*. III 504 (II^{e} CE) [BL VIII 236; X 139]; *P.Ryl*. II 159 (31/2 CE) [BL VIII 294; IX 228; XII 168]; *PSI* VIII 897 (1) [BL VIII 403; IX 318; XII 253]; 897 (2) [BL XII 253] (both 93 CE); X 1118 (25/6 CE); *SB* XX 14336 = *P.Oxy*. III 633 descr. (91-2 or 107-8 CE).

[24] *BGU* I 328 col. 1 (after 138/9 CE); *BGU* VII 1565 (169 CE-Philadelphia); *P.Fam.Tebt*. 25 (129 CE); *P.Grenf*. II 42 = *P.Lond*. III 700 *descriptum* (86 CE) [BL VIII 142]; *P.IFAO* I 39 (early II CE); *P.Mich*. VI 364 (179 CE); *SPP* XXII 44 (124 CE) [BL VIII 482]. Perhaps issued by the same board is the γραφὴ καταλοχισμῶν of *BGU* III 866 (II CE). At a later stage, roughly from the last quarter of the second century onward, the report to the *syntaktikos* is replaced by a confirmation by the collector of the conveyance-tax (δημοσιώνης τέλους καταλοχισμῶν) toward the purchaser of the payment of the tax. Cf. *P.Diog*. 37 = *P.Harr*. I 77 = *SB* XVI 12643 (after 3.10.202-203 CE) [BL X 64]; *P.Gen*. III 145 (206 CE); *P.Hamb*. I 84 (182-192 CE) [BL VIII 146]; *P.Tebt*. II 357 = *WChr* 372 (197 CE-Tebtynis); *SB* XVI 12641 (181 CE, Soknopaiou Nêsos) [by inheritance]; XXII 15387 (II CE); 15848 (ca. 212-215 CE-Karanis) [BL XI 241]; *SPP* XXII 50 (204 CE, Soknopaiou Nêsos) [BL VIII 482]. In the third century CE, the same confirmation is issued by a special board within the city council. Cf. *BGU* VII 1588 (222 CE-Philadelphia); *P.Gen*. IV 165 = *SB* XX 14978 (230 CE-Ptolemais Euergetis).

notified the local public scribes of the conveyance of title.[25] In the Arsinoitês too, the procedure was sometimes followed by an additional deed, finalizing the conveyance.[26]

How can we explain, then, this continuity of the special treatment of catoecic land from the Ptolemaic to the Roman periods after its original *raison d'être,* the institution of the *katoikia*, had ceased to exist? The continued existence of the control mechanism revolving around the conveyance of catoecic land could be accounted for by administrative conservatism. Old institutions and mechanisms die hard. Yet I do not think that this is the case with the conveyance of catoecic land. In the Roman period, there were different offices in charge of the *katalochismoi* of different regions.[27] In the case of one of these, the office in charge of the *katalochismoi* of the Arsinoite nome, we are fortunate to possess a text of the tariff (γνώμων) of the office (*P.Iand*. VII 137, Theadelphia (?)), which contains a list of fees and taxes and surcharges to be paid by the purchasers of, or successors to, catoecic land. The text of the papyrus was composed after 118 CE, and is palaeographically dated to the early second century CE.[28] The rates the *gnômôn* reports may thus be taken as representative of the period down to the beginning of the inflation of the late 160s CE. The text is vertically intact, but horizontally a bit less than one third of the original text, i.e. some 10 letters of an average line length of ca. 35 characters, is missing. The text contains some abbreviations, whose resolution

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[25] CF. CANDUCCI, 1990, 221, generally assuming continuity with the Ptolemaic *syntaxis*. See also GERACI 1981, 276.

[26] This is certainly the case when the instruments (οἰκονομίαι) produced through the καταλοχισμοί are stated to be valid: *CPR* I 170.12 (103-117 CE) [BL XII 57]; *P.Fam.Tebt*. 23.11-12 = *P.Hamb*. I 62 (123 CE-Tebtynis); *P.Lond*. II 141.8-9 (88 CE-Ptolemais Euergetis); *SB* XVIII 13764.14-15 (148-161 CE) [BL X 305; X 222]. This is also probably the case where the verb denoting the *metepigraphê* is in the perfect tense: BGU III 906.17-18 (ca. 34-35); IV 1048.8 (100/1 or 110/1 CE); XI 2050.16 (106 CE); *P.Coll.Youtie* I 19.14-15 (44 CE-Ptolemais Euergetis, an agoranomic instrument); *P.Mich*. V 262.8-10 (34/5 or 35/6 CE) [BL XII 121]; *P.Ross.Georg*. II 14.7-8 (81-96 CE); *SPP* XX 50.13-14 (after 168/9 CE) [BL VIII; X 270]. *P.Mich*. V 338 (45 CE) and *P.Mich*. XI 621 (37 CE, both from Tebtynis) record the scribe's immunity from claims on account of a deed of conveyance, since the purchaser has already performed the *metepigraphê*. The formulation does not give an undisputable indication the deed of conveyance was itself composed before or after that act.

[27] The sphere of competence of those in charge of the *katalochismoi* vary: some are in charge of just one nome (*P.Flor*. I 92, 84 CE Hermopolis: [BL XI 79; XII 70]), or even one *meris* within the Arsinoite nome (*PIFAO* I 39, II^{e} CE), while in other cases they are said to be in charge of one specified nome, and additional unspecified ones (*BGU* VII 1565, 169 CE, Philadelphia: Arsinoitês and other nomes; *P.Laur*. IV 153, 138-161 CE, Oxyrhynchitês [BL IX 121]: Oxyrhynchitês and other nomes). Finally, in some cases there is just one board in charge of Egypt, meaning, in all probability the entire Egyptian chôra as opposed to Alexandria (*P.Grenf*. II 42 = *P.Lond*. III 700 descr., 86 CE [BL VIII 142]). As the present papyrus [ll. 26-27] shows, their bureau was located in the city of Alexandria. Cf. OERTEL 1921, 24.

[28] *P.Iand*. VIII, p. 276-277.

as proposed by the editor and following readers seems generally safe, and is followed below.[29]

§1. [ἀντίγραφον] γνώμονος κα[τ]αλοχ[ι]σμῶν Ἀρσι(νοίτου) | [2] [κατοικικῆ]ς καὶ τῆς ὀνομ[έ]νης (read ὠνουμένης) ἐκ δημωσίου (read δημοσίου), | [3] [ἄρρενος κα]τοίκου ὑπὲρ ἑκάστης ἀρούρ(ης) σιτικ(ῆς) (δραχμαὶ) δ, | [4] [δενδρικῆς] (δραχμαὶ) η, θηλείας κατοίκου ὑπὲρ | [5] [ἑκάστης ἀρ]ούρ(ης) σιτικ(ῆς) (δραχμαὶ) η, δενδρικῆς (δραχμαὶ) ις. | §2. [6] [κατοικικ]ῆς πρώτ(ως) κτωμένου μέχρι πενταετ(ίας) | [7] [τῆς δευτέ]ρας ὑπὲρ ἑκάστ(ης) ἀρούρ(ης) σιτικῆς (δραχμαὶ) η, | [8] [δενδρικῆς] (δραχμαὶ) ις, θηλιῶν ὁμοίως σιτικῆς | [9] [ἑκάστ(ης) ἀρούρ(ης)] (δραχμαὶ) ις, δε‹ν›δρικῆς (δραχμαὶ) λβ. | §3.1. [10] [τῶν δὲ τ(?)]έκνων ἀπογεγραμμένων καὶ | [11] [. . . . .]νων[30] τοῖς πατράσι διὰ τῶν βιβλίω(ν) | [12] [τῶν (?) κατα]λοχισμῶν ἀρρένων μὲν | [13] [σιτικῶν ἐ]δαφῶν ἑκάστης ἀρούρης (δραχμαὶ) β, | [14] [δενδρικῆς] (δραχμαὶ) δ, θηλιῶν ὁμοίως τῶν | [15] [. . . . .] νων σιτικῶν ἐδαφῶν | [16] [ἑκάστης ἀ]ρούρης (δραχμαὶ) ς, δενδρικῆς ὁμ[οί(ως)] | [17] [(δραχμαὶ) ιβ. §3.2. ἀ]πογραφῶν τῶν μ‹ὴ›[31] ἐν[γ]εγραμ[μέν(ων)] | [18] [ἀρρένων μ]ὲν σιτικῶν ἐδαφῶν ἑκάστ(ης) ἀρούρ(ης) | [19] [(δραχμαὶ) δ, δενδρικῆ]ς (δραχμαὶ) η, θηλιῶν ὁμοίως τῶν | [20] [μὴ ἐνγεγ]ραμ‹μ›ένων σιτικ(ῶν) ἐδαφῶν ἑκάστ[ης] | [21] [ἀρούρης] (δραχμαὶ) ιβ, δενδρικῆς (δραχμαὶ) κδ. | §4. [22] [ὑποθήκ]ης ὑπὲρ ἑκάστ(ης) ἀρούρ(ης) σιτικ(ῆς) (δραχμὴ) α, | [23] [δενδρικ]ῆς (δραχμαὶ) β, §5. λύσεως ὑποθήκης | [24] [σιτικῆς] (δραχμὴ) α, δενδρικῆς (δραχμαὶ) β. §6.1 ἀπογραφ(ῶν) | [25] [ἑκάστου ὀ]νόματ(ος) ἀρρένων (δραχμαὶ) β, θηλειῶ(ν) (δραχμαὶ) δ. | [26] §6.2 [παραχω(ρήσεων(?)) χ]ρηματισμ(οῦ) τοῦ ἀναπεπωμένου (read ἀναπεμπομένου) | [27] [ἐξ Ἀλεξ]ανδρίας ἑκάστου ὀνόματος | [28] [(δραχμαὶ) β, . . .]ιος θηλε‹ι›ας τῆς παραχορουμένη(ς) (read παραχωρουμένη(ς)) | [29] [ἑκάστου] ὀνόματος (δραχμαὶ) δ. §6.3. χρηματισμ(ῶν) ἑκάστ(ου) | [30] [ὀνόματος] (δραχμαὶ) ιβ, §6.4 ἀγράφου (τετρώβολον), §6.5 σφραγ[ῖ]δος (δραχμὴ) α, | [31] §6.6 [. . . . .]νων τῶν ἀπὸ γῆς ε[ἰ]ς λόγον | [32] [. . . . .] ἑκάστου ὀνόματ(ος) (δραχμαὶ) δ.

§1. A copy of the tariff of the register of grants of catoecic land relating to the Arsinoite nome, regarding catoecic land and that purchased from the state. In the case of a male holder of catoecic land, for each aroura of grain land 4 dr. and for orchard land 8 dr.; in the case of a female holder of catoecic land, for each aroura of grain land 8 drachms, and for orchard land 16 dr.

§2. In the case of catoecic land, if someone purchases (a land of this category) for the first time and up to the second *quinquennium* (i.e., after he made the first purchase), for each aroura of grain land 8 dr., and for orchard land 16 dr., and in the case of females in the case of grain land for each aroura 16 dr. and for orchard land 32 dr.

§3.1. And for the children, after they have been registered and recorded (?) alongside their fathers in the reports of the register of holders of catoecic land, in the case of males and of grain land, for each aroura 2 dr., and for orchard land 4 dr. and in the same manner in the case of females who were recorded (*scil*. alongside their fathers), in the case of grain land for each aroura 6 dr., and for orchard land 12 dr.

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[29] The text was discussed by D. CURSCHMANN in the *editio priceps* as well as by KIESSLING 1937, 98-101; KIESSLING 1938, 225-229.

[30] [παρακειμέ]νων ? *P.Iand*. VII 283.

[31] *BL* 3.88

§3.2. For registration of those who have not been previously recorded, in the case of males and of grain land, for each aroura 4 dr., and for orchard land 8 dr., and for females who have not been registered and for grain land, for each aroura 12 dr., and for orchard land 24 dr.
§4. For (catoecic land placed as) mortgage, for each aroura of grain land 1 dr., and for that of orchard land 2 dr.,
§5 and for the release of the mortgage, in the case of grain land 1 dr., and in that of orchard land 2 dr.
§6.1 And for the registration, per person, in the case of males 2 dr., in that of females 4 dr.
§6.2 For each cession instrument that is sent out of Alexandria, 2 dr. per person, and in the same manner, if the assignee is a female, 4 dr. per person. §6.3. For the instruments 12 dr. per person,
§6.4 and if the cession is not recorded in writing, 4 obols,
§6.5 and for the seal 1 drachm.
§6.6 And for …. who are aboard, on account of [- -] 4 dr. per person.

So much is clear: the text relates to charges on the conveyance of allotment land, and in the first paragraph, if we follow the editors, the transformation of land held by the state into the status of catoecic land by virtue of its purchase by a κάτοικος.[32] The text deals at least down to line 25 with payments that are per aroura, i.e., proportional to the size of the alienated land. Within this part of the text, we identify four sections, differing from each other in the identity of the purchaser and the nature of the title acquired. The first clause deals with the purchase of catoecic land, or land in state possession, by a κάτοικος, both male and a female. The term κάτοικος has various usages in early Roman administrative language: it may denote, in the Arsinoite context, a member of the group of "6475 Greeks (residing) in the Arsinoite nome" (κάτοικος τῶν ἐν τῷ Ἀρσινοείτῃ Ἑλλήνων *vel sim.*),[33] as well as, at least in the terminology of tax reports from the meris, all those who are not δημόσιοι γεωργοί.[34] Here, however, we should follow the editor's plausible supposition that the term simply denotes any owner of catoecic land.[35]

Under this interpretation, the text deals in the first regulation (§1) with a κάτοικος, i.e. present owner of catoecic land, who extends his holdings by purchasing an additional share (see chart 1 below). The second (§2) focuses

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[32] So the editor, *P.Jand.* VII, p. 281; KIESSLING 1938, 225-226, and, ARMONI 2012, 192-195; TOMSIN 1964, 86-87. Cf., e.g., *BGU* VIII 1772 (61/0 or 57/6 BCE, Hêrakleopolitês) [*BL* VIII 48; X 21]. This is, however, not the only possible interpretation, as the text could also relate to the sale of catoecic land that was confiscated by the state, as is the case in *BGU* II 422 (139/40 CE, Arsinoitês) [*BL* VIII 26; IX 20].

[33] Cf., in general, CANDUCCI 1990.

[34] Cf., e.g., *P.Petaus* 60 (185 CE, Syrôn Kômê) and OERTEL 1921, 22. The said usage is studied in YIFTACH-FIRANKO, Status Designations.

[35] *P.Jand.* VIII, p. 282 : "Wer aber Katökenland kauft, wird damit selbst Katöke; denn am Boden haften die Privilegien dieses Standes"; CANDUCCI 1990, 221. Pace OERTEL 1921, 24-25.

on the acquisition of allotment land by someone who has not owned catoecic land in the past. The third (§3) with the acquisition of catoecic land by inheritance, limiting itself, so it seems, to succession to a person's allotment land by his children.[36] It seems that children who were to succeed to their parent's allotment land had to be reported in advance, as the second sub-section (§3.2) deals with the payments due for this report (ἀπογραφή), if they have not been previously registered.[37] The first subsection (§3.1) deals with charges levied from the children, presumably when they acquired the land, but after they have already been reported (ἀπογεγραμμένων) and recorded in their father's file. The fourth section (§4 and §5) sets out the charges in the case that catoecic land is mortgaged (ὑποθήκη), and in the case that it is released from mortgage. The following section (§6.1) deals with a fixed price to be paid with the submission of a report (ἀπογραφή). Is this the same report as mentioned in lines §3.2? We do not know, but see below. Finally, lines 26-30 set out the fees to be paid for the paperwork of the office: lines 29-30 (§6.3) set out fees for the composition of the conveyance certificate (χρηματισμός) and the seal; lines 26-29 (§6.2) probably deal with the costs of sending the relevant paperwork from Alexandria, while two further regulations, §6.4 and §6.5 set out the costs of the office's activity if no certificate is produced and that relating to the sealing of the certificate.

All in all, the text records as many as 27 rates: the lowest is one drachm, the highest is 32. To study the impact of these charges on the motivation of a potential purchaser or conveyee to acquire an allotment land, we first need to have some idea of their proportion to the value of the land. We can gain some preliminary view by taking into consideration acts of conveyance of catoecic land which report both the consideration and the size of the land and the payment for that piece of land, where one is able to distinguish the precise cost of the land (i.e, apart from that of other objects sometimes recorded in the same sale document). The databank *synallagma* yields such documents, and the picture they convey is that – and this is not very surprising – there was no fixed rate for catoecic land: even in the same context, prices vary considerably.[38]

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[36] Whether the purchase relates to intestate or testamentary succession or both, is difficult to say.

[37] For a possible early Ptolemais precedent, cf. SCHEUBLE-REITER 2012, 148-158.

[38] *BGU* II 543 (27 BCE, Aueris): 10 arourae : 800 drachms; *CPR* I 188 (106/7 CE, Arsinoitês) [*BL* VIII 99]: 3 : 1,000 dr.; *P.Amh*. II 95 (109 CE. Hermopolis): 10 : 2,500 dr.; *P.Amh*. II 96 (213 CE, Hermopolis): 4 : 4,000 dr.; *P.Fam.Tebt*. 23 = *P.Hamb*. I 62 (123 CE, Tebtynis): 10.8125 : 1,000 dr.; *P.Flor*. III 380 = *SB* I 4298 (203/4 CE, Hermopolis) [*BL* VIII 131]: 13.833 : 1,500 dr.; *P.Mil.Vogl*. I 26 (128 CE, Tebtynis) [BL VIII 220]: 38.75 ar. : 5 tal.; *P.Narm*. 2006 6 (107/8? CE, Theadelphia ? or Narmouthis); P.Oxy. III 504 (II^{c}, Oxyrhynchos) [BL VIII 236; X 139]: 6.666 : 1,000 dr.; *P.Oxy*. IV 794 descr. = L.Capponi, ZPE 155 (2006) 235-238 (85 CE, Oxyrhynchitês) [*BL* VIII 238]: 10 1/48 : 500; *P.Ross.Georg*. II 38 (II CE, unknown provenance): 1.25 ar. : 500 dr.; *P.Ryl*. II 163 (140 CE,

This is borne out, for example, by *PSI* VIII 897 pag. 1 [BL VIII 403; IX 318; XII 253] and 2 [BL XII 253], both dating to 93 CE Oxyrhynchos. The first document records the sale of five arouras of catoecic land for 1,200 drachms (i.e. a rate of 240 drachms per aroura), while the second records just three arourae, purchased for as many as 2,400 drachms (that is 800 drachms per aroura). Surely the price of the land was influenced by multiple factors, which are now beyond our reach. The best we may do for now, then, is to make the following observation: the value of an aroura of catoecic land rarely drops in the first three centuries CE below 200 drachms, which may be taken as a baseline for our purposes.[39] What was the proportion between fees exacted by those in charge of the *katalochismos* and this notional minimum, and what effect would this rate have on potential buyers of catoecic land? That is to say, is there any way to determine if these rates were high enough to act as a break on the conveyance of catoecic land?

The fees requested by the office in charge of the conveyance consisted of several elements (cf. below, chart 1): there were some fixed rates that were presumably paid by everyone, e.g., 12 drachms for the conveyance certificate (χρηματισμός), 1 drachm for the seal. In addition, if a person wished to have the certificate sent out from Alexandria by the office (which must have been, in the case of land in the Arsinoite nome, commonly the case), he would be asked to pay 2 drachms in the case of a male, and 4 in the case of a female assignee. The total surcharge would amount, then, to 15 drachms for men and 17 drachms for women, regardless of the value of the land. On top of this, a complex rate system was set out, taking into consideration, in each of the sections above, the gender of the purchaser and the class of land. In all cases the author of the tariff applies two sets of dichotomies, men vs. women, grain land vs. orchard land.[40] This results, in each provision, in four different rates. In all cases women would pay considerable more than men: twice or three times as much; the rate for orchard land would be twice as high as that for grain land.

With the resulting system, a male purchaser who already owns a catoecic land will pay a per-aroura amount of 4 drachms for grain land, and 8 drachms for orchard land. If we take into account the surcharges for the office's pa-

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Hermopolitês) [BL VIII 294; XII 168]: 1.625 : 480 dr.; *PSI* VIII 897 pag. 1 (93 CE, Oxyrhynchos) [*BL* VIII 403; IX 318; XII 253]: 5 : 1,200 dr.; *PSI* VIII 897 pag. 2 (93 CE, Oxyrhynchos) [*BL* XII 253]: 3: 2,400 dr. ; SB VI 9618 (192 CE, Ptolemais Euergetis) [*BL* VIII 352]: 5.5 : 3,100 dr.; *SB* XII 11229 (161-168 or 177-179 CE, Oxyrhynchos): 5 : 1,500 dr.; *SPP* XX 1 = *CPR* I 1 (83/4 CE, Ptolemais Euergetis) [*BL* VIII 460/461; XII 274]: 3 : 900 dr.; SPP XX 50 (after 168/9 CE, Aphroditê Berenikê) [*BL* VIII 463; X 270]: 3.375 : 300 dr. Cf. also DREXHAGE 1991, 131.

[39] Cf. *P.Yale* III 137, 25.

[40] For the latter dichotomy see in particular *P.Yale* III 137 with introduction, p. 4, 20-30.

perwork (15 drachms), the amount he pays for one aroura would be 19 and 23 drachms respectively, which would put his expenses roughly at around 10 per cent of the notional minimum (cf. below, chart 2). A woman of the same status would pay 8 dr. per aroura for grain land, and 16 for orchard land. With surcharges (17 dr. in her case), the total would be 25 and 33 drachms, which amounts to 10-15 % of the notional minimum.

In the case of man who has not previously owned catoecic land the per aroura rate would stand at 8 drachms for grain land and 16 for orchard land. With the 15 drachms surcharges his expenses will amount to 23 and 31 drachms, respectively. For a woman of the same status the per-aroura costs would amount to 16 dr. for grain land and 32 for orchard land: with the 17 drachms surcharge we would now stand at 33 and 49 drachms, respectively. In the last case, that of a female new owner who buys orchard land, the conveyance costs would make more than a quarter of the value of the land. This case, of course, is hardly representative: most purchasers of catoecic land buy more than just one aroura, and rarely is the per-aroura cost just 200 drachms.[41]

For instance, in the case of *PSI* VIII 987 pag. 1, where five arouras are purchased for 1,200 drachms, a male purchaser who never owned allotment land in the past would pay a total of 55 drachms, or less than 5% of the value of the land if it were grain land, and 95 drachms, or less than 8 % if it were orchard land. A woman of the same status would pay 97 drachms for grain land (roughly 8%), and 177 for orchard land (less than 15%) (compare below, chart 3). In the case of *PSI* VIII 987 pag. 2, where three arouras of catoecic land are purchased for 2,400 drachms, a man of the same status would pay 39 drachms for grain land, and 63 for orchard; this would make just 1.6% and 2.6% respectively of the value of the land. A woman would pay in the same case 65 drachms (5.3%) and 113 (9.4%), respectively. The price structure in the tariff thus makes the purchase of larger pieces of land marginally more attractive; since the fee is not connected with the price, it decreases proportionally as the price of the total sale (or the value of the land) increases.

Let us now move to the children. The text of *P.Iand*. VII 137 mentions two *apographai*. One, relating specifically to the children, specifies a fee per aroura and draws the now familiar distinction first between males and females, and then between grain and orchard land (§3.2**,** ll. 17-21). For a male child, the payment is 4 and 8 drachms, for grain and orchard land respectively, and

[41] According to the *synallagma* data, among the 32 of the 64 conveyances of catoecic land from the first three centuries CE, for which the size of the land is certain, in just 5 it is one aroura or less and in 18 two or less. Conveyances of three or more arourae make 35 cases, while those five or more as many as 26. The data listed in n. 39 is representative. Cf. further DREXHAGE 1991, 128-129, without reference to the land categories.

12 or 24 drachms, respectively, for a female child. According to our earlier hypothesis, the purpose of this *apographê* was to register a child's right to a piece of allotment land, as a necessary prerequisite for its bequest after the parent's death, as recorded in lines 10-17 (§3.1).[42] If this hypothesis is correct, the above regulation imposes a heavy burden for the succession of daughters to land held by their fathers, 24 drachms making more than 10% of the above-mentioned notional minimum value of 200 drachms. On top of this we have to take into consideration the fee recorded in lines 24-25, a fixed fee of 2 drachms for men and for women, for their *apographê*, regardless of the amount of land registered. If the two *apographai* were performed simultaneously, for each person (which is by no means certain), the amount necessary for the *apographê* of a daughter's right to 1 aroura of grain land would rise to as much as 16, and of orchard land to 28 drachms. If we assume that the surcharges connected with the office's operation were applied in this case as well – 12 drachms for the certificate, 1 for the seal and 4 drachms in the case of women for sending the report out of Alexandria –, the fee for registering the daughter's rights in her father's lifetime would amount to as much as 33 drachms for grain land, and 45 drachms in the case of orchard land. To this reckoning we should add the charges the children are made subject to upon entering the property, i.e., 2 drachms per aroura for men for grain land, and 4 drachms for orchard land; 6 drachms for grain land and 12 for orchard land in the case of women. With the above-mentioned surcharges for the office's activity (15 for men and 17 for women), the total payment for a women succeeding to an aroura of orchard land would stand at 29 drachms. Adding to this amount the 45 drachms charged for the *apographê*, we would get to the fantastic amount of 74 drachms, making 37 % of the notional minimal value of 200 drachms.

Of course, we are not certain of the tenability of the above assumptions. We are especially not sure that the *apographai* recorded in lines 17-21 (§3.1) and in lines 24-25 (§5) were both necessary and not alternative, i.e., one had to get one or the other. In fact, we could assume that the *apographê* in lines 17-21 (§3.1) took place *only* if the children wished to enter upon the estate were not registered by their father following the procedure anticipated in lines 24-25 (§5). The qualifying participle μὴ ἐγγεγραμμένων (ll. 17 and 20) certainly may be taken to suggest this alternative hypothesis. This, in turn, would mean a considerably lower rate, but still a surprisingly heavy tax on conveyance. Let us assume the registration of children in their parent's lifetime

[42] This supposition is supported by the participle ἀπογεγραμμένων in line 11, especially if it takes a conditional rendering. Pace KIESSLING 1938, 227-228.

would entail no surcharges besides the costs of the *apographê* of lines 24-25 (§5) itself: i.e., 2 drachms for men and 4 drachms for women regardless of the size of the parcel and the class of the land. In this case, a daughter who wishes to inherit 1 aroura of orchard land from her father would have to pay 4 drachms for the *apographê*, and then, upon succession, 12 drachms per aroura and 17 for the surcharges, relating to the compsition of the certificate by those in charge of the *katalochismos*, its sealing and sending out of Alexandria. This would make a considerably smaller amount than that reached in following the foregoing hypothesis: just 35 drachms, or 17% of the notional minimum.

The point I wish to make in this discussion is the following: catoecic land was the most significant type of private land in early Roman Egypt, but the mechanism relating to its conveyance, and in particular the implications of costs its conveyance has never, as far as I know, been taken into consideration by the students of the land tenure and policy in the early Roman period. As we just saw, under certain circumstances the charges on its conveyance were potentially quite heavy. It can be assumed that a charge of, say, 20% or more would have played a crucial role in the decision of a potential purchaser to buy the land, and in some cases, as that of women purchasing catoecic land used for planting orchards, the fee likely exceeded that rate (cf. below, chart 2). To this we should add the fees collected for the composition of the document at the local scribal office (roughly, in the case of land conveyances, 10 dr.) and the fees relating to registration of the new right at the *bibliothêkê enktēseôn*.[43] The resulting figure, even on the lowest estimate, would reach the 50 drachm mark: 25% of the notional minimum value of one aroura.

The regulations of *P.Jand.* VII 137 also illuminate certain policies: higher fees were always collected for the conveyance of orchard land, that is orchards of every kind, as opposed to grain land: this was a clear disincentive against alienating the former. On top of this, men always paid less than women, and current owners of catoecic land less than those who have not held this type of land in the past. The aim was, in other words, to keep the allotment land in the hands of a limited circle of persons, preferably men, who have already held such land, and to create disincentives for those who are not members of this group, i.e. women, who have not been holders of catoecic land to purchase that type of land. At the same time, there was no attempt to create a caste. Once a person purchased catoecic land, he would be considered, within five or ten years,[44]

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[43] WOLFF 1978, 229 N. 30; YIFTACH-FIRANKO, Grammatikon (forthcoming).

[44] The latter seems more likely, E. MAYSER, Grammatik der griechischen Papyri aus der Ptolemäerzeit, II.2 (Berlin-Leipzig 1934) 526.5ff, but pace CURSCHMANN, P.Iand. VII 138, 282.

as a legal κάτοικος him or herself, and could purchase further pieces of land as any other "κάτοικος."

The question remains, to what extent was the said policy effective, and it is the good fortune of us papyrologists to be able to put the matter to the test by looking at figures provided by the very documents recording the acts of conveyance: i.e., deeds of land sale recording the sale of catoecic land. By studying the identity of the purchaser we may examine to what extent the group that was encouraged to buy catoecic land also did so in practice. We are not able to study all the distinctions made in the tariff: land sales do not mention if the purchaser held in the past another piece of catoecic land, nor do they commonly indicate if the object of the deed is grain or orchard land. But these deeds do naturally report the gender of the purchaser, and should the provisions be effective, we would expect the number of male purchasers to exceed by far that of women. The data is also large enough to make such a quantification possible.

The results are a bit surprising. Among ninety-nine deeds of sale of catoecic land from the first three centuries CE, in 57 cases the vendor is a man, and in 38 it is a woman. Among the purchasers the relation is 46:38. Women are in the minority, but their number certainly does not fall beneath what would be expected in view of the social position of women in general.[45] Moreover, in some time-frames the relation tilts in the women's favor: in nineteen second-century deeds of sale the purchaser is a woman and in only seventeen it is a man. Among the vendors, the relation is 21 women to 17 men. It seems, then, that in the case of the only testable factor, the regulations of *P.Iand*. VII 137 did not manage to influence the practice, either because the said tariff was never enforced,[46] or because the disincentive was not strong enough to influence the market.

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[45] I study the data in a paper called "Greek Law in Roman Times and Entrepreneurial Women in Egypt" held at the 40th Conference of the Israel Society for the Promotion of Classical Studies, Bar-Ilan, 15-16 June 2011.

[46] Some indication of this is provided by receipts, issued by the farmers of the τέλος καταλοχισμῶν, all dating to the late second and early third century CE. Cf. list supra n. 25. In both *P.Diog*. 37 and *P.Gen*. III 145 the rate of the τέλος μετεπιγραφῆς seems to be 10 drachms per aroura, which is not surprising due to the late date of the document, but the fact that in the former document the purchaser is a man, and in the latter a women, seem to be conflicting with the regulations of *P.Iand*. VII 137.

Chart 1, a Synopsis of the Charges by the Office of the Katalochismoi

Status of purchaser	Gender	Grain land	Orchard land
§1 Current *katoikos* [ll. 2-5].	Male	4 dr. per ar.	8 dr. per ar.
	Female	8 dr. per ar.	16 dr. per ar.
§2 New purchaser, or someone who made his first purchase within the last ten (?) years [ll. 5-9].	Male	8 dr. per ar.	16 dr. per ar.
	Female	16 dr. per ar.	32 dr. per ar.
§3.1 Bequeathal: registered children [ll. 10-17]	Male	2 dr. per ar.	4 dr. per ar.
	Female	6 dr. per ar.	12 dr. per ar.
§3.2 Bequeathal: *apographê* of non-registered children [ll. 17-21]	Male	4 dr. per ar.	8 dr. per ar.
	Female	12 dr. per ar.	24 dr. per ar.
§4 *Hypothêkê* [ll. 22-23].	Both genders	1 dr. per ar.	2 dr. per ar.
§5 Discharge of *hypothêkê* [ll. 23-24]	Both genders	1 dr. per ar.	2 dr. per ar.
Additional charges	**Gender**	**Fixed amount**	
§6.1 *Apographê* per person [ll. 24-25]	Male	2 dr.	
	Female	4 dr.	
§6.2 Sending the certificate out of Alexandria, per person [ll. 26-30]	Male	2 dr.	
	Female	4. dr.	
§6.3 Composing the certificate [l. 30]	Both genders	12 dr.	
§6.4 Approval with no certificate (?) [l. 30]	Both genders	4 obols	
§6.5 For the seal [l. 30]	Both genders	1 dr.	
§6.6 Not clear [ll. 31-32].	Both genders	4 dr.	

Chart 2. Charges per 1 aroura (1 aroura = 200 dr.)

Status of purchaser	Gender	Grain land	Orchard land
Current *katoikos* §1 + §6.2,3,5	Male	19 dr. (9.5%)	23 dr. (11.5%)
	Female	25 dr. (12.5%)	33 dr. (16.5%)
New purchaser, or someone who made his first purchase within the last ten (?) years. §2 + §6.2,3,5	Male	23 dr. (11.5%)	31 dr. (15.5%)
	Female	33 dr. (16.5%)	49 dr. (24.5%)

Bequeathal: option 1 (both *apographai*, twice surcharged) §3.1,2 + §6.1,2bis,3bis,5bis	Male	38 dr. (19%)	44 dr. (22%)
	Female	56 dr. (28%)	74 dr. (37%)
Bequeathal: option 2 (second *apographê*, one surcharge) §3,1.2 + §6.2,3,5	Male	21 dr. (10.5%)	27 dr. (13.5%)
	Female	35 dr. (17.5%)	53 dr. (26.5%)
Bequeathal: option 3 (first *apographê*, twice surcharged) §3.1 + §6.1,2bis,3bis,5bis	Male	34 dr. (17%)	36 dr. (18%)
	Female	44 dr. (22%)	50 dr. (25%)
Hypothêkê §4 + §6.2,3,5	Male	16 dr. (8%)	17 dr. (8.5%)
	Female	18. dr. (9%)	19 dr. (9.5%)
Discharge of *hypothêkê* §4 + §6.2,3,5	Male	16 dr. (8%)	17 dr. (8.5%)
	Female	18. dr. (9%)	19 dr. (9.5%)

Chart 3. Charges per five arouras (1 aroura = 200 dr.)

STATUS OF PURCHASER	GENDER	GRAIN LAND	ORCHARD LAND
Current *katoikos* §1*5 + §6,2,3,5	Male	35 dr. (3.5%)	55 dr. (5.5%)
	Female	47 dr. (4.7%)	97 dr. (9.7%)
New purchaser, or someone who made his first purchase within the last ten (?) years. §2* 5+ §6.2,3,5	Male	45 dr. (4.5%)	95 dr. (9.5%)
	Female	97 dr. (9.7%)	177 dr. (17.7%)
Bequeathal: option 1 (both *apographai*, twice surcharged) §3.1,2 *5 + §6.1,2bis,3bis,5bis	Male	62 dr. (6.2%)	92 dr. (9.2%)
	Female	124 dr. (12.4%)	218 dr. (21.8%)
Bequeathal: option 2 (second *apographê*, one surcharge) §3.1,2*5 +§6.2,3,5	Male	45 dr. (4.5%)	75 dr. (7.5 %)
	Female	107 dr. (10.7%)	(197 dr. 19.7%)
Bequeathal: option 3 (first *apographê*, twice surcharged) §3.1*5 + §6.1,2bis,3bis,5bis	Male	42 dr. (4.2%)	52 dr. (5.2 %)
	Female	68 dr. (6.8 %)	98 dr. (9.8%)
Hypothêkê §4*5 + §6.2,3,5	Male	20 dr. (2%)	25 dr. (2.5%)
	Female	22. dr. (2.2. %)	27 dr. (2.7%)
Discharge of *hypothêkê* §4*5 + §6.2,3,5	Male	20 dr. (2%)	25 dr. (2.5%)
	Female	22. dr. (2.2. %)	27 dr. (2.7%)

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Die Fiskalverkäufe von Land im kaiserzeitlichen Ägypten und ihre Dokumentation*

THOMAS KRUSE

Die römische Administration Ägyptens förderte aktiv den Erwerb von Land und sonstigem Immobilienbesitz in der Verfügungsgewalt des Fiskus durch Privatpersonen und ermunterte diese mitunter durch besonders günstige Konditionen zu dessen Erwerb. Sie tat dies schon mehr oder weniger unmittelbar nach Beginn der Eingliederung Ägyptens in das Imperium Romanum wie etwa zwei Anträge auf den Erwerb von konfiszierten Land aus den letzten Regierungsjahren des Augustus zeigen, die an den Prokurator des Idios Logos als das zuständige Finanzressort in Alexandria adressiert sind.[1]

Daß durch derlei Privatisierung von Staatsbesitz ebenfalls bereits seit der Frühzeit der römischen Herrschaft in Ägypten offenbar der Übergang der

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* Die Siglen der Papyruseditionen folgen der „Checklist of Editions of Greek, Latin, Demotic and Coptic Papyri, Ostraca and Tablets" (zugänglich unter: papyri.info/docs/checklist).

[1] P.Oxy. IV 721 (= W.Chr. 369; cf. BL I 327; II 2 96; III 132; VIII 237) (13/14 n.Chr.) u. 835 *descr*. (um 13 n.Chr.). P.Oxy. IV 721 ist ein Kaufgesuch für Minderertragsland (ὑπόλογος; s. dazu sogleich im Folgenden), gerichtet an C. Seppius Rufus, von dem bekannt ist, daß er das Amt des Idios Logos bekleidet hat (s. auch SWARNEY 1970, 127). Bei P.Oxy. IV 835 *descr*. soll es sich laut den Herausgebern um ein Kaufangebot für konfisziertertes Land handeln; s. zu diesen beiden Texten auch ROBERTS – SKEAT 1933, 463 u. KRUSE 2002, 496 f. m. Anm. 1378; ALESSANDRÌ 2005, 49-55.

betreffenden Immobilie in das volle und unbeschränkte Privateigentum der Erwerber intendiert war, beweist, wenn auch *ex negativo*, etwa ein Passus im berühmten Edikt des *praefectus Aegypti* Ti. Iulius Alexander aus dem Jahr 68 n.Chr. Mit dieser Vorschrift seines Ediktes reagiert der Statthalter auf Beschwerden, daß von den Erwerbern von Land in der Verfügung des Fiskus (ἐκ τοῦ Καίσαρος λόγου) Pachtzinsen (ἐκφόρια) eingefordert worden waren. Diese Praxis war bereits in der Amtszeit des Präfekten L. Iulius Vestinus (59-62 n.Chr.) durch ein statthalterliches Edikt untersagt worden, welches von den Lokalbehörden aber anscheinend in beträchtlichem Umfang mißachtet worden war. Ti. Iulius Alexander schärft nun nochmals ein, daß für solches Land nur die üblichen Steuern (die καθήκοντα) zu zahlen sind: „… denn es ist nicht recht", so stellt er umißverständlich fest, „denjenigen welche Grundbesitz erworben und dafür einen Preis bezahlt haben, wie Staatsbauern Pachtzinsen abzufordern für ihre eigenen Ländereien."[2] Mit dieser Formulierung unterstreicht der Präfekt also, daß im Moment des Verkaufs der Fiskus keine Besitzansprüche auf die betreffenden Ländereien mehr erhebt. Solches ehemaliges Staats- und nunmehriges Privatland figurierte ab dem Zeitpunkt seines Verkaufs in den Verwaltungsakten unter der Bezeichnung γῆ ἐωνημένη, also als das „verkaufte Land".[3]

Davor wird das meiste derartige Land, wenn nicht gar sein Löwenanteil, in den Landregistern der Lokalverwaltungen mit dem *terminus technicus* ὑπόλογος klassifiziert. Dabei handelt es sich um Land das aus verschiedenen Gründen wenig oder gar keinen Ertrag erbrachte. Der Begriff ὑπόλογος mit dem solches Minderertragsland bezeichnet wurde, bedeutet wörtlich übersetzt

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[2] IProse 57,29-32: ὑπὲρ <δ>ὲ [30] τῶν ἐκ τοῦ Καίσαρος λόγου πρα{χ}θέντων ἐν τῶι μέσωι χρόνωι, περὶ ὧν ἐκφόρια κατεκρίθηι, ὡς Οὐηστεῖνος ἐκέλευσεν [τ]ὰ καθήκοντα τελεῖσθαι καὶ αὐ|τὸς ἴστημι, ἀπολελυκὼς τὰ μηδέπωι εἰσπραχθέντα καὶ πρὸς τὸ μέλλον μένειν αὐτὰ ἐπὶ τοῖς καθήκουσι· ἄδικον γάρ [ἐ]στιν τοὺς ὠνησαμένους κτή|ματα καὶ τιμὰς αὐτῶν ἀποδόντας ὡς δημοσίους γ<ε>ωργοὺς ἐκφόρια ἀπαιτεῖσθαι τῶν ἰδίων ἐδαφῶν; siehe hierzu insbes. CHALON 1964, 153 ff. GENDY 1994, 317 wirft diese Bestimmung m.E. fälschlicherweise mit der vorhergehenden in Z. 26-29 zusammen, die aber eine andere Klasse von Land betrifft, nämlich vom Staat zunächst verpachtete, dann an Privatleute verkaufte Ländereien, die der γενηματογραφία unterlegen hatten. Diese προσοδικὰ ἐδάφη waren entgegen einer von Kaiser Claudius verfügten Befreiung steuerlich zu hoch veranlagt worden, was der Präfekt nunmehr erneut untersagt, siehe hierzu CHALON 1964, 144-152. Zur Wendung ἐκφόρια κατεκρίθηι siehe auch KRUSE 1999.

[3] Der Begriff begegnet etwa in P.Amh. II 68 (= W.Chr. 374) Rekto Z. 35 (Akte über Verkauf von ὑπόλογος, Hermopolis, 89-92 n.Chr.; siehe hierzu auch KRUSE 2002, 481-491; Alessandrì 2005, 74-91); P.Flor. III 131 (= W.Chr. 341) (Landregister, Naboo [Apollonopolites Heptakomias], ca. 113-120 n.Chr.); P.Brem. 42 Kol. II Z. 3 u. 20 (Landregister, Hermopolis?, 117-118 n.Chr.?); BGU IX 1899,10 (Landregister, Theadelphia, nach 172 n.Chr.); P.Petaus 17 (Akte über Verkauf von ὑπόλογος, Ptolemais Hormu [Arsinoites], 184 n.Chr., siehe zu diesem Text auch im Folgenden); ebenso in den aus demselben Ort stammenden Akten über Verkauf von ὑπόλογος P.Petaus 21,2 u. 22,2 (185 n.Chr.) (siehe auch im Folgenden).

„Abzug“ und er wird für derartiges Land gebraucht, weil es bei der Berechnung des Steueraufkommens gewissermaßen von der Masse des produktiven Landes abgesondert, d.h. in Abzug gebracht wird. In dieser Weise wird das ὑπόλογος-Land etwa in einem Glossar administrativer Fachausdrücke definiert, welches vermutlich aus dem 3. Jh. datiert. Wir lesen dort: „Hypologos: Für das gesamte nicht ertragfähige Staatsland wird alle drei Jahre eine Inspektion durchgeführt; und es wird „hypologos“ genannt, weil es von der Menge des Landes in jeder Flur abgezogen wird, so daß der produktive Teil übrigbleibt.“[4] Neben dieser fiskalbuchhalterischen Definition des ὑπόλογος-Landes erfahren wir hier also auch, daß solches Land regelmäßig einer Inspektion unterzogen wurde, die sicherlich den Zweck hatte, zu überprüfen, ob sich an der Ertragslage des betreffenden Landes zwischenzeitlich etwas geändert hatte.

Das Hypologos-Land erscheint regelmäßig in den uns erhaltenen Landregistern[5], wobei die Gründe für seine geminderte Ertragsfähigkeit verschiedenster Natur sein konnten. Zunächst einmal ist es unter den geomorphologischen und klimatischen Bedingungen Ägyptens in der Antike nicht verwunderlich, dass auch einst fruchtbares Staatsland unproduktiv werden konnte, weil es wie etwa in der Fayum-Depression am Rande der Wüste lag. Ein weiterer Grund für die Unproduktivität von Ackerland – der *terminus technicus* in unseren Quellen hierfür ist χέρσος[6] – war ferner der Mangel an Leuten, die das Land bebauen konnten. Dieser Fall konnte etwa bei konfisziertem Landbesitz eintreten, wenn die vormaligen Besitzer und Fiskalschuldner für dessen Bestellung nicht mehr zur Verfügung standen und auch sonst kein Pächter dazu bereit war. In einem großen Register über rückständige Steuern, welches im Jahr 170/71 n.Chr. vom Königlichen Schreiber des Mendesischen Gaus im östlichen Nildelta zusammengestellt worden ist,[7] finden sich insgesamt 26 Einträge über Landparzellen, die zumeist auf dem Wege der Konfiskation wegen Fiskalschulden oder weil die Besitzer erbenlos verstorben waren, in staatlichen Besitz gelangt und in der zurückliegenden Zeit unproduktiv geworden

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[4] P.Oxy. XXXVIII 2847 Rekto Z. 12-15: [ὑπόλο]γος. ἁπάσης τῆς ἀφόρ[ο]υ̣ <οὔ>σης κ[υρι]ακῆ̣[ς] δι̣ὰ τριε̣ι̣τίας ἐπίσκεψις γείνεται, καλεῖτα[ι δὲ] ὑπόλογος ἐπειδὴ ὑπολογεῖται ἐκ τοῦ μέτρου τ[ῆς γ]ῆς τοῦ κατὰ πε̣ι̣[15] δίον ὡς ὑπολειφθῆναι τὸ λοιπὸ̣ν ἔμφορον; siehe auch KRUSE 2002, 478 Anm. 1323; 606-609; ALESSANDRÌ 2012, 231-239.

[5] Siehe nur z.B. P.Berl. Leihg. I 13,2 (Theadelphia, 117-138 n.Chr.); II 35 A Z. 8 (Theadelphia, 141 n.Chr.).

[6] Zur Bedeutung des *terminus technicus* χέρσος als unproduktives Land (und nicht etwa „trockenes Land“, wie man früher geglaubt hat) siehe insbesondere S. KAMBITSIS – P.THMOUIS I Einl. p. 17-22; K. MARESCH – D. HAGEDORN, P.Bub. II 5 Kol. II Z. 6 Anm.; siehe auch KRUSE 2002, 479 Anm. 1327.

[7] P.Thmouis I Kol. 68-160.

waren, weshalb die auf dem betreffenden Land lastenden Steuern nicht eingetrieben werden konnten.[8]

Solches Land, das wenig oder gar keinen Ertrag erbrachte, versuchte der Fiskus, wie schon eingangs festgestellt, zu günstigen Konditionen an Privatleute zu veräußern, indem es für gewöhnlich zu einem niedrigen Preis in Verbindung mit der Garantie einer mehrjährigen Befreiung von den Boden- und Ertragssteuern ab dem Zeitpunkt des Erwerbs angeboten wurde. Auf diese Weise sollten die Kaufinteressenten dazu gebracht werden, eigenes Kapital einzusetzen, um das Land wieder auf ein höheres Ertragsniveau zu bringen. Der Staat tat dies nicht nur, um sich die Kosten und den Verwaltungsaufwand für diese Bodenkategorie zu ersparen und sich künftige Steuerquellen zu erschließen. Diese Entwicklung ist vielmehr sicherlich auch vor dem Hintergrund einer von den Römern in ihren Provinzen generell präferierten Sozialordnung zu betrachten, die auf einer möglichst großen Schicht privater Landbesitzer basierte, die für lokale Verwaltungsaufgaben herangezogen werden konnte. In Ägypten ist dies vor allem von Bedeutung vor dem Hintergrund des sich hier in der Kaiserzeit vielfach ausdifferenzierenden Liturgiesystems, welches in dieser Form keinen ptolemäischen Vorläufer hat und die einzelnen Gruppen der Bevölkerung je nach Größe ihres Vermögens und in stetig zunehmenden Umfang zu den unterschiedlichsten administrativen Diensten heranzuziehen trachtete.

Man darf also wohl davon ausgehen, daß die Kategorie der γῆ ἐωνημένη im Lauf der Zeit stetig gewachsen ist und die erhaltenen Landregister liefern hierfür auch entsprechende Indizien.[9] Natürlich wurde, zumindest was das zum Verkauf gestellte konfiszierte Land betrifft, der Zufluß zu dieser Landkategorie auch dadurch genährt, daß das Liturgiesystem sowie die mit Vermögensstrafen einhergehenden Verstöße gegen die von den Römern eingeführten neuen personenstandsrechtlichen Vorschriften (wie etwa das Heiratsverbot zwischen diversen Bevölkerungsgruppen) auch neue Konfiskationstatbestände schufen.[10]

Dennoch stellte diese in großem Umfang stattfindende Generierung von Privateigentum zweifellos eine bedeutsame Änderung gegenüber der ptolemäischen Epoche dar, wo man bis in die Spätzeit hinein am königlichen Obereigentum am Land oder zumindest an der diesbezüglichen Rechtsfiktion festgehalten hat, indem man etwa beim Übergang solchen Landes in private

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[8] Siehe z.B. P.Thmouis 1 Kol. 74,7-76,9; siehe zu P.Thmouis I Kol. 68-168 ausführlich auch KRUSE 2002, 661-703.

[9] Siehe etwa ROWLANDSON 1996, 48 ff.

[10] Siehe etwa die einschlägigen Bestimmungen im sog. „Gnomon des Idios Logos“ (BGU V 1210).

Hände das Rechtsinstrument der Erbpacht wählte. Die sozio-ökonomischen Implikationen dieser Entwicklung im Ägypten der römischen Kaiserzeit sind daher wohl nicht gering zu schätzen.

Land von guter Qualität wurde zumeist auf dem Wege des seit der Ptolemäerzeit etablierten öffentlichen Versteigerungskaufes veräußert, wo nach öffentlicher Ankündigung ein Bieterverfahren mit mehreren Ausbietungen (προκηρύξεις) stattfand und dem in der Vergangenheit insbesondere von Fritz Pringsheim[11] und Mario Talamanca[12] umfassende Untersuchungen gewidmet wurden. Für den Verkauf von Hypologos-Land, aber auch für den Verkauf von solchen konfiszierten Gütern, die wenig oder gar keinen Ertrag erbrachten, etablierten die Römer hingegen als Neuerung ein Verkaufsverfahren auf dem Verwaltungsweg, dergestalt, daß die Kaufwilligen, die damit wohl auf eine öffentliche Bekanntmachung der zum Verkauf stehenden Objekte reagierten (oder weil die entsprechenden Akten über diese öffentlich zugänglich waren), eine Kaufofferte an die zuständige Behörde richteten.

Ein Beispiel für einen auf diesem Wege abgewickelten Verkauf von konfiszierten Immobilien ist etwa P.Petaus 14. Es handelt sich hier um einen Bericht des Dorfschreibers Petaus von Ptolemais Hormu (sowie noch anderer Dörfer) im Arsinoites (Fayum) an seinen vorgesetzten Gaustrategen Apollonios aus dem Jahr 184/85 n.Chr.[13] Diesem war seitens einer Frau namens Tasokmetis ein Angebot für zum Verkauf stehende Güter (Häuser und Land) in der Verfügung des Finanzressorts der Dioikesis (ἐκ τῶν εἰς πρᾶσιν ὑπερκειμένων τῆς διοικήσεως) eingereicht worden, die früher einem gewissen Pathynis gehört hatten und in der Vergangenheit konfisziert worden waren.[14] Dieses Angebot hatte der Stratege dem Dorfschreiber, in dessen Amtsbezirk die betreffenden Objekte lagen, zur Klärung des Status derselben weitergeleitet. Dessen Überprüfung ergab nun, daß die Objekte zu den herrenlosen und unverkauften Gütern gehören und keine Aussicht besteht, für sie in einer öffentlichen Versteigerung den von der Interessentin gebotenen Preis von 400 Drachmen zu erzielen. Außerdem erbrachte das Land in der laufenden fünfjährigen Rechnungsperiode keinen Ertrag.[15]

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[11] PRINGSHEIM 1961.

[12] TALAMANCA 1954.

[13] Siehe zu diesem Text auch ALESSANDRÌ 2012, 198-201

[14] P.Petaus 14,4-9: πρὸς ὑ[π]όσχεσιν δοθεῖσάν σοι ὑπὸ[5] Τασοκμήτιος Παθύνεως μετὰ κυρίου | τοῦ ἀνδ(ρὸς) Φολῆμις Σοκμήτιος ἀπὸ κώ(μης) | Σύρων βουλ(ομένης) ὠνήσασθαι ἐκ τῶν εἰς πρᾶσιν | ὑπερκει(μένων) τῆς διοικ(ήσεως) (πρότερον) Παθύνεως νεωτ(έρου) | Σοκμᾶ τοῦ Μαρρείους.

[15] P.Petaus 14,29-31: δηλῶ δι' ἐπισκέψεως ὁρισμοῦ θεωρού(μενα) | δι(όλου) ἀδε(σπότων) ἀπράτων μὴ ἄξια προκ(ηρυχθῆναι) τῶν (δραχμῶν) υ, |[30] ἐξ ὧν μη ⟦δὲν⟧ περιγείνεσθαι τῇ

Es ist offensichtlich, daß die Behörden diese Form des Verkaufs für konfiszierte Güter anstatt des Versteigerungskaufes wählten, weil die Objekte herrenlos waren und keinen Ertrag abwarfen, so daß ein öffentliches Bieterverfahren weder genügend Interessenten anzulocken versprach, noch bei diesem ein guter Preis erzielt werden konnte.

Auch beim Verfahren zum Verkauf von Hypologos-Land stand am Anfang ein Antrag eines Interessenten an die Behörden. Das dann folgende administrative Prozedere war jedoch deutlich komplizierter als im soeben geschilderten Fall des erleichterten Verkaufs von konfiszierten Gütern. Im 1. Jh. n.Chr. war der Kaufantrag für Hypologos noch direkt dem zentralen jeweils zuständigen Finanzressort in Alexandria (also dem Dioiketen oder dem Idios Logos einzureichen), der es dann der Lokalverwaltung in demjenigen Gau übermittelte, in welchem das Kaufobjekt lag.[16] Später wurde das Verfahren dann von der Gauverwaltung in eigener Regie durchgeführt, indem die Interessenten ihre Kaufangebote an den Gaustrategen richteten, woraufhin dieses dann zum Zweck der Überprüfung seiner Berechtigung in Abschrift an die nachgeordneten Behörden übermittelt wurde, bis es schließlich beim Komogrammateus des betreffenden Dorfes, zu dessen Gebiet das Kaufobjekt gehörte, angelangt war. Dieser hatte durch persönliche Inaugenscheinnahme eine Überprüfung der Parzelle vorzunehmen und darüber wiederum seinen Vorgesetzten Bericht zu erstatten. Auf diese Weise entstand eine Akte über das Verkaufsverfahren, welche die einzelnenen Verfahrensabschnitte, angefangen vom Kaufantrag des Interessenten an den Gaustrategen, seine Übermittlung an den Königlichen Schreiber des Gaus und von diesem wiederum an den Dorfschreiber, bis zu dessen Bericht dokumentierte. Besonders anschaulich sind hierfür etwa die Aktenstücke über den Verkauf von Hypologos aus dem Archiv des Petaus, Komogrammateus von Ptolemais Hormu im Arsinoites, die um die Mitte der 180er Jahre entstanden sind.[17]

Betrachten wir zunächst ein Beispiel für eine Kaufofferte, und zwar P.Petaus 22,26-40.[18] In diesem an den Gaustrategen andressierten Schreiben

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ἀνὰ | χεῖρα (πενταετίᾳ) διὰ τὸ εἶναι ἄφορα. – Wie GENDY 1994, 314 zur der Behauptung gelangt, der Dorfschreiber habe außerdem berichtet, „daß sich nur ein Interessent gemeldet habe, der das ursprüngliche Angebot nicht überboten habe“, ist mir ein Rätsel, denn darüber findet sich in dem Text kein Wort.

[16] Siehe insbes. P.Amh. II 68 (= W.Chr. 374) Rekto (Hermopolis, 89-92 n.Chr., siehe auch oben Anm. 3) u. SB V 7599 (Tebtynis [Arsinoites], 95 n.Chr.; siehe zu diesem Text auch KRUSE 2002, 485-491; ALESSANDRÌ 2005, 176-186).

[17] P.Petaus 17-23.

[18] Siehe zu diesem Text auch ALESSANDRÌ 2012, 236-240.

erklärt Dideis, eine Bewohnerin der Gaumetropole Ptolemais Euergetis, daß sie eine kleine Parzelle unrentables und unbestelltes Weinland auf dem Gebiet des Dorfes Syron zu einem Preis von 56 Drachmen je Arure erwerben will, auf dem sie Schnittgemüse anbauen will. Die Lage der Parzelle wird detailliert beschrieben. Für den Fall, daß ihrem Antrag stattgegeben wird, wird Dideis den Kaufpreis zusammen mit den Nebengebühren an die Staatsbank überweisen. Der Antrag schließt mit der Klausel über den Übergang der Parzelle in das unbeschränkte Eigentum der Erwerberin und ihrer Nachkommen und der Bestimmung, daß sie zum Zwecke der Bearbeitung und Wiederbewirtschaftung des brachliegenden Landes eine Steuerfreiheit für die Dauer von drei Jahren eingeräumt bekommen wird.[19]

Wir überspringen die Verfahrensschritte der Übermittlung des Kaufgesuches der Dideis vom Strategen an den Königlichen Schreiber[20] und von diesem wiederum an den Dorfschreiber[21] und richten unseren Blick sogleich auf den abschließenden Teil der Akte, in welchem der Komogrammateus Petaus, in dessen Verwaltungsbezirk das Dorf Syron lag, seinen Prüfbericht dem βασιλικὸς γραμματεύς Kollanthos übermittelt (P.Petaus 22,1-10). Petaus erklärt zu dem ihm in Abschrift übermittelten Kaufantrag, daß, als er zusammen mit den übrigen Mitgliedern der Inspektions-Kommission die fragliche Parzelle aufgesucht hat, festgestellt hat, daß diese zu der Kategorie des Hypologos-Landes gehört und nicht etwa zu einer anderen, aus der ein Kauf untersagt ist. Ferner ist festgestellt worden, daß die Kaufinteressentin nicht zu dem Kreis derjenigen Personen gehört, denen der Verkauf untersagt ist und auch nicht als Strohmann für eine solche Person agiert. Schließlich werden die

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[19] Ἀπολλωνίῳ στρα(τηγῷ) Ἀρσι(νοίτου) Ἡρακλ(είδου) μερίδος παρὰ Διδεῖτος | ἀπάτορ[ο]ς μητρὸς Θασῶτος διὰ φροντιστοῦ τοῦ ἀδελφοῦ Θέωνο(ς) | ἀμφοτέρων ἀπὸ τῆς μητροπόλεως ἀν[α]γρα(φομένων) ἐπ᾽ ἀμφόδου Πλατεία[ς]. | βού[λομαι] ὠνήσασθαι ἀπὸ χέρσου ἀμπέ[λου] ὑπολόγου κατὰ παράδιξι[ν] |[30] περ[ὶ] κόμ[η]ν (l. κώμην) Σύρων εἰς λαχανίαν καρ[τ]ὴ[ν] (ἄρουραν) α δ´ ις´, ἐν αἷς (l. ᾗ) ἐλαεινα (l. ἐλαίνα) | καὶ ἕτερα φυτὰ κ<ε>καρκινομένα (l. κεκαρκινώμενα) καὶ φ[ρ]έατα καταπεπτοκώτα (l. καταπεπτωκότα), | ἧς γί[το]νος (l. γείτονες) ν[ό]του Ἰσ[χ]υρίων(ος) ἀφήλικος λ[α]χ[α]νίαν καρτήν (l. λαχανεία καρτή), βορᾶ (l. βορρᾶ) καὶ ἀπηλιότου (l. ἀπηλιώτου) [σ]ιτικὰ α[ἰδ]άφη (l. ἐδάφη), λιβὸς ποτίστρ(α) ξ(υλίνη), ἐφ᾽ ἁπλῆ τειμῇ ὡς τῆς | (ἀρούρης) ἐκ δραχμῶν π[ε]ντήκοντα ἕξ , ἐφ᾽ ᾗ παραδιχθεις διαγρά(ψω) τὴν |[35] τιμὴν σὺ[ν] τοῖς ἑπομένοις ἐπὶ τὴν δημο[σί]αν τράπεζαν. μενεῖ δέ μ[ο]ι | καὶ ἐγγόνο[ι]ς καὶ τοῖς παρ᾽ ἐμοῦ μεταλημψομένοις τὴν ταύτης | κράτησιν (l. ἡ ταύτης κράτησις) καὶ κυρίαν ἀναφερητον (l. κυρία ἀναφαίρετος) ἐπὶ τὸν ἀεὶ χρονου (l. χρόνον) καὶ βαιβεοθ[η]ἰσεταί (l. βεβαιωθήσεται) μοι ἀπὸ δημοσίων πάντων καὶ παντὸς ἴδους (l. εἴδους) μέχρει τοῦ | τῆς πραξεως (l. παραδείξεως) χρόνου, ἔξω δὲ εἰς τὴν τούτων κατεργασίαν καὶ |[40] ἀνάκτησιν <ἀτέλειαν> εἰς ἔτη τρία, μεθ᾽ ἃ τελ(έσω) ὡς ἐπὶ τῶν ὁμοίων τελ(έσματα).

[20] P.Petaus 22,18-26.

[21] P.Petaus 22,11-17.

Maße der Parzelle als übereinstimmend mit den Angaben des Kaufantrages bestätigt.[22]

Die Prüfung erstreckt sich also nicht nur auf die Feststellung, ob die fragliche Parzelle zu der zum Verkauf stehenden Landkategorie gehört, sondern auch auf die Person des Erwerbers, da bestimmte Personengruppen vom Erwerb von Staatsbesitz ausgeschlossen waren. So erfahren wir etwa aus § 70 des „Gnomon" genannten Handbuches über die Verwaltungstätigkeit des Idios Logos, welches auf einem Berliner Papyrus überliefert ist, daß den Inhabern öffentlicher Ämter und deren Angehörigen, in demjenigen Gau, in welchem sie ihr Amt ausüben, der Erwerb von Gütern nicht gestattet ist, und zwar, wie es heißt, „weder auf dem Wege der Versteigerung, noch aus dem Minderertragsland" in derselben Weise werden diejenigen zur Rechenschaft gezogen, die sich als Strohmänner für derartige Geschäfte vorschieben lassen.[23] Diese Bestimmung zielt wohl vornehmlich darauf zu verhindern, daß solche Personen die Wahrnehmung ihrer Amtspflichten durch private Geschäftsinteressen beeinträchtigen, aber wohl auch darauf, zu verhindern, daß die durch ihre Amtstätigkeit bzw. Liturgie dem Fiskus ohnehin bereits mit ihrem Vermögen haftenden Amtsträger sich dem Staat gegenüber noch mehr verschulden.[24]

Das Verfahren des Fiskalverkaufs, wie es hier anhand von P.Petaus 22 skizziert wurde, trug die offizielle Bezeichnung κατὰ παράδειξιν, denn diew se Wendung erscheint sowohl in der Kaufofferte der Interessentin (βούλομαι ὠνήσασθαι κατὰ παράδειξιν), als auch im amtlichen Inspektionsbericht des Dorfschreibers (βουλομένης ὠνήσασθαι κατὰ παράδειξιν). Παράδειξις heißt u.a. „Nachweis" und hebt damit sicherlich auch auf das amtliche Verfahren der Überprüfung der Zugehörigkeit der Parzelle zu der Bodenkategorie des

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[22] Κολλάνθῳ βασ[ιλ]ι(κῷ) γρα(μματεῖ) Ἀρσι(νοίτου) Ἡρακλ(είδου) μερίδος παρὰ Πετ[α]ῦτος κωμογρα(μματέως) [κώμ(ης) Σύ]ρ[ω(ν)]. | τοῦ ἐπενεχθέντ[ο]ς μοι ἀπὸ σ[οῦ χ]ρη(ματισμοῦ) ἐωνη(μένης) ἐξ ὀνό(ματος) Διδεῖτος ἀπάτορος μη(τρὸς) Θασῶτ[ο]ς βουλομένης ὠνήσασθαι ἀπ[ὸ] χέρσ(ου) ἀμπ(έλου) ὑπολ(όγου) κατὰ παράδιξιν ἐφ' ἁπλῆ τιμῆ | ὡ[ς τῆ]ς (ἀρούρης(?)) [ἐκδραχμ(ῶν)ν]ς εἰς λαχα(νείαν) κ[αρ]τὴν (ἄρουραν) α δ´ ις´, ἐν ᾗ [ἐλάινα καὶ ἔ]τ[ε]ρα φυτ(ά), ἀντίγρα(φον) ὑπόκ[ειται]. |[5] ἐπε[λθ]ὼν [ο]ὖν ἐ[πὶ τ]ὸ δηλ(ούμενον) ἔδαφος μ[εθ'] ὧν δέον ἐστίν, ε[ὗρον] αὐτὸ κατ' ἀγρὸν ἀπὸ τῆς προκειμ(ένης) [ἰ]ιδέας κ[αὶ οὐκ ἀπ' ἄ]λλης τῆς μὴ ἐφ[ι]εμένης ὠνεῖσ[θα]ι, τόν τε ὠνού(μενον) μὴ εἶναι τῶν κεκωλυμένων ὠ[νεῖσ]θαι μηδὲ τῶν το[ιούτ]ων ὑπόβλητον, μηδὲν δὲ ἕτερον ἐναντίον εἶναι, τάς | τε κατ' ἀγρ[ὸν γιτ](νίας) συμφ(ώνους) εἶναι ταῖς διὰ τοῦ χρη(ματισμοῦ) δηλ(ουμέναις), ἧς μέτρα γ \ δ´ η´ ις´ / (ὁμοίως) (ὁμοίως), (γίνεται) ἡ προκ(ειμένη) (ἄρουρα) α δ´ ις´ χέ<ρ>(ου) | ἐν (ᾗ) τὰ προ[κ(είμενα) φυτ]ά. |[10] (ἔτους) κε Μάρκ[ο]υ Αὐρηλίου Κομμόδου Ἀντωνείνου Καίσαρος τοῦ κυρίου Μεσορή.

[23] BGU V 1210,174-176 (§ 70): ο τοῖς [ἐν] δημοσίαις χρείαις οὖσι οὐκ ἐξὸν ὠνεῖσθαι ἢ δ[ανεί]ζειν ἐν οἷς π[ρ]αγ[μ]α|[175] τεύο[ντ]αι τόποις οὐδὲ ἰδίοις αὐτῶν ο[ὐ]δὲ ἐξ ὑπολόγου· [οὐδὲ ἐ]κ προκηρύξεως | ὅλου νομοῦ, οἱ δὲ ὑπόβλητοι τῶν τοιούτων γεινόμε[νοι] εὐ[θύ]νονται τῷ ἴσῳ.

[24] Siehe hierzu auch UXKULL – GYLLENBAND 1934, 69-77.

Hypologos ab. Allerdings zeigt die Tatsache, daß die Kaufinteressentin Dideis in ihrer Offerte die Zahlung des Kaufpreises davon abhängig macht, „daß das Land mir nachgewiesen wird" (ἐφ᾽ ᾧ παραδειχθείς), daß es sich hier nicht nur um eine von der Person des Käufers unabhängige amtliche Nachprüfung handelt, sondern, daß die παράδειξις zugleich unmitttelbar ausschlaggebend für den Übergang der betreffenden Landes in das volle Privateigentum des Erwerbers ist. Ganz offensichtlich ist diese Form des Fiskalverkaufs κατὰ παράδειξιν komplementär zum Verfahren des Versteigerungskaufes (κατὰ προκήρυξιν) zu sehen.

Die Bedeutung der παράδειξις als wesentlicher Bestandteil der Form des Fiskalverkaufs, welcher durch sie bezeichnet wird, erhellt aus P.Thomas 12 Rekto.[25] Dieser um 166/67 n.Chr. entstandene Text enthält die Abschrift eines Schreibens des Dorfschreibers von Ision Panga im Oxyrhynchites, welches seinerseits die Abschrift eines amtlichen Dokuments zitiert, das als ἐπίσταλμα περὶ παραδείξεως bezeichnet wird, also: „Anweisung über die Paradeixis". Diese Anweisung stammt vom Königlichen Schreiber des Oxyrhynchites, der dem ihm untergebenen Dorfschreiber die Eingabe der Zenarion übermittelt, die darum ersucht, daß eine Parzelle Hypologos, die sie im 7. Jahr der Kaiser Marcus und Verus (= 166/67 n.Chr.) gekauft und für die sie den Zuschlag erhalten hat (ἣ ἐώνηται καὶ ἐκυρώθη) ihr „nachgewiesen" werde (παραδειχθῆναι).[26] Der Auftrag (also das eigentliche Epistalma) des

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[25] Siehe zu diesem Text auch KRUSE 2002, 509-514; ALESSANDRÌ 2012, 113-129.

[26] Auch in der Ptolemäerzeit scheint in Zusammenhang mit dem Besitzübergang von in staatlicher Verfügung befindlichen Lande der *terminus technicus* παράδειξις interessanterweise im Sinne von „behördlicher Nachweis" bzw. des diesbezüglichen amtlichen Schrifststückes gebraucht worden zu sein, welches dann zur „Zuweisung" von Land führt. So begegnet er in dieser Zeit etwa in Zusammenhang mit der Umbuchung (μετεπιγραφή) von Katökenland bei einem Besitzerwechsel z.B. in BGU VIII 1734,14 (= SB IV 7421 = BGU VI 1261) (Herakleopolis, 80-30 v.Chr.): μετεπιγραφὴ καὶ παράδειξις γέγονεν τῶι Φιλοξέν[ωι] τ[ῶν] πρ[ογεγραμμένων ἀρουρῶν. In einer Eingabe auf Zuweisung eines Katökenkleros (SB XVI 12720; Arsinoites, 142 v.Chr.) ersucht der Petent darum, ποιήσασθαι τὴν παράδειξιν τοῦ διασεσαφημένου κ̣[λ]ήρου τῶν μ (ἀρουρῶν) (Z. 15-16), und zwar auf der Grundlage einer vorher amtlich festgestellten Lagebeschreibung (σχηματογραφία) der Parzelle, die in Abschrift mitgeteilt wird. Eine μετεπιγραφή von Katökenland scheint auch der Erwähnung einer παράδειξις in dem noch unedierten P.Haun. inv. 407 (Z. 40) zugrundezuliegen, einem Landsurvey des Gaus von Edfu aus dem Jahr 119/118 v.Chr., auf den mich K. Vandorpe dankenswerterweise aufmerksam gemacht hat. Der Text (den T. Christensen in seiner unpublizierten Cambridger Dissertation: The Edfu Nome surveyed: P.Haun. inv. 407 (119-118 BC untersucht hat) wird in dem Aufsatz von D. THOMPSON – K. VANDORPE, Prostima-fines and crop-control under Ptolomy VIII. BGU VI 1420 reconsidered in light of the new Schubart-column to P.Haun.inv. 407 (ZPE 190, 2014, 188-198) diskutiert. Dieser Gebrauch von παράδειξις in der Ptolemäerzeit, aber auch darüberhinaus der zugrundeliegende Vorgang, scheint mir nun durchaus große Ähnlichkeiten mit der Verwendung desselben *terminus technicus* in Zusammenhang mit den Fiskalverkäufen von ὑπόλογος γῆ in der römischen Kaiserzeit zu besitzen. In beiden Fällen geht es um die behördlichen Kontrolle bei einem Besitzerwechsel von in staatlicher Verfügung befindlichen Landes. Beim Katökenland der Ptolemäerzeit ist dies die „Umschreibung" eines Katökenkleros an einen anderen

Königlichen Schreibers an den Komogrammateus weist diesen an, die fragliche Parzelle persönlich aufzusuchen und zu überprüfen, ob die von der Käuferin gemachten Angaben den Tatsachen entsprechen und dem auch nicht von Seiten Dritter wiedersprochen bzw. ein entgegenstehender Anspruch erhoben worden ist. Für den Fall, daß alles seine Ordnung hat, soll der Dorfschreiber die Paradeixis vornehmen (παράδειξον ὡς καθήκει) und seinem Vorgesetzten darüber Bericht erstatten.[27]

Läßt man die bisher diskutierten Texte Revue passieren, dann hat man mit dem Verfahren des Verkaufs von Minderertragsland κατὰ παράδειξιν ein offensichtlich komplexes Verfahren vor sich, daß bis zu seinem erfolgreichen Abschluß augenscheinlich sogar zwei Inspektionen der Parzelle erforderte, da ja offenkundig selbst nachdem einem Kaufantrag seitens der Behörden entsprochen worden war – was ja bereits aufgrund einer von den Verwaltungsinstanzen durchgeführten Überprüfung der Berechtigung des Kaufantrags und der Kategorie des betreffenden Landes sowie dessen Inspektion durch den Dorfschreiber und weitere Personen erfolgt war; – daß also selbst nach diesem bereits aufwendigen Prozedere der Erwerber noch einmal gesondert bei den Behörden um die Paradeixis ersuchen mußte, für die dann der Dorfschreiber eine weitere Flurbegehung durchzuführen hatte, bevor das fragliche Land endgültig in das Eigentum des Käufers übergehen konnte.

Angesichts der Komplexität des Verfahrens des Fiskalverkaufs κατὰ παράδειξιν ist es m.E. fraglich, ob man dieses Verfahren etwa mit G. Plaumann tatsächlich als „erleichterten Verkauf“[28] oder mit F. Pringsheim als „vereinfachten Verkauf“[29] charakterisieren kann. Es mag vom Standpunkt

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Katöken. Im Falle des Hypologos-Landes der Römerzeit der Übergang vom Staat auf einen privaten Besitzer. Zur Autorisierung des betreffenden Aktes war in beiden Fällen ein amtlicher „Nachweis“ bzw. eine amtliche „Feststellung“ (παράδειξις) darüber erforderlich, daß es sich bei dem fraglichen Land tatsächlich um dasjenige handelte, dessen Besitzwechsel angestrebt wurde. War das Ergebnis dieses Nachweises positiv, dann war die παράδειξις zugleich die „Zuweisung“ der betreffenden Parzelle an den neuen Besitzer.

[27] P.Thomas 12 Rekto: ἀ(ντίγραφον) | παρὰ Διοσκόρου κωμογρ(αμματέως) Ἰσί[ο]υ Π(αγγᾶ) καὶ ἄλ(λων) κωμ(ῶν) τῆς ἄνω τοπ(αρχίας)·| τοῦ ἐπισταλέντος ἐπιστάλματος περὶ παρα[δ]ε̣ίξε[ως] | (ἀρούρης) α ∠ τὸ ἀντίγρ(αφον) ὑπόκειται ἐστὶ δέ·|[5] Ἡρακλείδης βασιλ(ικὸς) γρ(αμματεὺς) | Ὀξ(υρυγχείτου) κωμογρ(αμματεῖ) Ἰσίου Π(αγγᾶ) [καὶ ἄλ(λων) κωμ(ῶν) χαίρειν·] | τῶν δοθέντων μοι βιβλειδ[ίων παρὰ] Ζ[ηναρίου Ἱέρακος ἀξιούσης] | παραδειχθῆναι ἣν ἐώνηται καὶ ἐκυρώθη τῷ` [ζ (ἔτει)] ἀπὸ ὑπολό|[γο]υ τὸ ἴσον ἐπιστέλλεται σοι ὅπως γενόμενος ἐπὶ τὸ δηλούμ(ενον) | ἔδαφος καὶ ἐξετάσας εἰ αἱ γιτνίαι σύμφωνοί εἰ[σι] ν τῇ κατ᾽ ἀ |[10]γρὸν διαθέσει καὶ οὐ προαντεποιήθη οὐδὲν δ᾽ ἐναντίον ἔχῃι | παράδειξον ὡς καθήκει καὶ προσφώνησον ὡς πρὸς σὲ τοῦ λόγου | [ἐσομένου ἐ]άν τι μὴ δεόντως γένηται. σεσημ(είωμαι).

[28] PLAUMANN 1919, 60 ff.

[29] PRINGSHEIM 1961, 262-329, *ibid*. 284.

der Erwerber aus gesehen vielleicht tatsächlich eine gewisse Erleichterung darin bestanden haben, sich nicht einem öffentlichen Bieterverfahren wie in den Verkäufen κατὰ προκήρυξιν unterziehen zu müssen. Aber dennoch erscheinen die einzelnen Verfahrensschritte bis zum endgültigen Eigentumsübergang doch recht zahlreich und zeitaufwendig. Dies wird auch aus einigen Texten ersichtlich, die uns über behördliche Überprüfungen in Zusammenhang mit Unregelmäßigkeiten bei derlei Fiskalverkäufen berichten. In einem Dokument aus der Regierungszeit des Claudius sagt ein unbekannter höherer Beamter, daß er seiner Gewohnheit gemäß darauf achten wolle, damit nicht, „weil die Paradeixis schwierig" sei, der Verkauf von Hypologos behindert werde.[30] Offenbar wurde also das in der Tat ja kompliziert anmutende Verfahren der Hypologos-Verkäufe κατὰ παράδειξιν auch schon von den Zeitk genossen als umständlich betrachtet.

Aus einem Text aus der Zeit um 92 n.Chr. erfahren wir ferner, wie mehrere aufeinanderfolgende Präfekten noch dreißig Jahre nach dem Verkauf einer Parzelle Hypologos, bei deren παράδειξις in ihren Augen nicht alles mit rechten Dingen zugegangen war, versuchten Informationen über den Vorgang zu bekommen; hartnäckig und offenbar unbeeindruckt von der fortdauernden Erfolglosigkeit ihrer Bemühungen.[31]

Daß das Verfahren mit der Behandlung des Kaufantrags in den administrativen Instanzen und seinen Flurbegehungen so komplex und kompliziert war, hängt vermutlich damit zusammen, daß die Behörden bestrebt waren, bei dem Verkauf von Hypologos Unregelmäßigkeiten zu Lasten des Fiskus nach Möglichkeit zu minimieren. Diese konnten natürlich vorkommen, wenn Land fälschlicherweise in der Kategorie des Hypologos-Landes rangierte, es sich aber in Wirklichkeit um guten Ertrag abwerfenden Boden handelte. In solchen Fällen machte der Erwerber natürlich nicht nur ein gutes Geschäft (weil er gutes Land zu einem günstigen Preis erwarb), sondern erfreute sich nach diesem auch noch einer mehrjährigen Abgabenfreiheit. Aber auch in der Vergangenheit ordnungsgemäß als Hypologos klassifiziertes und in den entsprechenden amtlichen Verzeichnissen (so der γραφὴ ὑπολόγου) eingetragenes Land konnte unter Umständen ein besser als zu erwartendes Geschäft sein, wenn

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[30] BGU III 915,10-11 (Herkunft unbekannt, 49-54 n.Chr.; zur Datierung vgl. F. MITTHOF, Tyche 17, 2002, 242-243 [Korr. Tyche 403]): τὴν δὲ συνήθ(ειαν) τὴ(ν) ἐμὴ(ν) | [τ]ηρῶι, ἵνα μὴ δυσχερὴς οὖσα ἡ παράδειξεις (l. παράδειξις) αὐτῆς τὴν πρᾶσειν (l. πρᾶσιν) ἐνποδείζηι (l. ἐμποδίζηι); siehe zu diesem Text auch Kruse 2002, 519-524; ALESSANDRÌ 2005, 59-68.

[31] P.Amh. II 68 Verso; siehe hierzu auch KRUSE 2002, 515-519; ALESSANDRÌ 2005, 189-200, der hier im Übrigen ebensowenig wie bereits bei der Besprechung der Rektoseite des Papyrus *op. cit.* 74-91 (siehe auch o. Anm. 3) auf meine a.a.O. vorgetragenen Überlegungen eingeht, sondern meine Arbeit lediglich im Literaturverzeichnis erwähnt.

sich nämlich seine Ertragslage mittlerweile gebessert hatte, so daß es sich gar nicht mehr um Minderertragsland handelte, es aber vielleicht dennoch immer noch unter diesem Titel in den Akten klassifiziert war. In Anbetracht der beträchtlichen Menge von Hypologos-Land und der vor allem durch die Nilflut beeinflußten und deshalb mitunter wechselnden Ertragslage des Ackerlandes in Ägypten ist dies eine durchaus plausible Möglichkeit. Um sie auszuschließen mußte das Hypologos-Land ja alle drei Jahre einer ἐπίσκεψις genannten Inspektion unterzogen werden, und daß eine solche Inspektion auch eine verbesserte Ertragslage des Hypologos zum Ergebnis haben konnte zeigt etwa ein Passus in einem ἐπίσκεψις-Bericht, wo es heißt, daß die Inspektion des Hypologos-Landes ergeben habe, daß das Land Staatspächtern zur Bewirtschaftung zugewiesen werden könne, sich seine Ertragslage mithin wieder verbessert hatte.[32]

Ungeklärt sind im Rahmen des Verfahrens der Hypologos-Verkäufe nach wie vor die Art und Weise der Preisfindung bzw. die Modalitäten der behördlichen Preisfestsetzung für das vom Fiskus zum Verkauf gestellte Minderertragsland. Die in den relevanten Dokumenten bezeugten von den jeweiligen Kaufinteressenten gebotenen Preis je Arure (= 1/4 ha) differieren nicht nur von Gau zu Gau, sondern schwanken auch innerhalb ein und desselben Verwaltungsbezirks und in einer sehr kurzen Zeitspanne sehr stark. So erscheinen etwa in den Verkaufsakten von Hypologos im Archiv des arsinoitischen Dorfschreibers Petaus die folgenden Preise: 56 Drachmen im Jahr 184/85 n.Chr.[33], 52 Drachmen im Jahr 185 n.Chr.[34] und 28 Drachmen, ebenfalls im Jahr 185 n.Chr.[35] Vermutlich derselbe Preis ist etwa 40 Jahre zuvor in Karanis bezeugt.[36] In augusteischer Zeit ist im Oxyrhynchites ein Preis von 12 Drachmen bezeugt;[37] im Hermopolites während der Regierung Kaiser Neros sowie sehr viel später, im Jahr 249 n.Chr. ein Preis von 20 Drachmen je Arure.[38] Daß der Preis behördlich festgesetzt worden ist, ist daran erkennbar, daß die Kaufinteressenten diesen zwar nicht regelmäßig, aber doch mitunter als

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[32] P.Berl. Leihg. I 14 Kol. II 45-46: καὶ ἐξ ἐπ(ισκέψεως) ὑπολ(όγου) φανεῖσαι δύνασθαι ⟦δυν⟧ διὰ γεω[ργῶν] | διατ̣αγῆ(ναι) καὶ μισθ(ωθῆναι).

[33] P.Petaus 17,28; 22,33-34.

[34] P.Petaus 18,26.

[35] P.Petaus 20,17.

[36] BGU II 422,15 (139-140 n.Chr.).

[37] P.Oxy. IV 721 (13/14 n.Chr.).

[38] P.Amh. II 68,13-14 (60 n.Chr.); P.Lond. III 1157v [p. 110-111] (= W.Chr. 375) Z. 13-14 (246 n.Chr.).

κεκελευσμένη[39] bzw. κελευσθεῖσα τιμή[40] bezeichnen. Die bezeugten Preise sind zweifellos sehr niedrig, vergleicht man sie mit den für fruchtbares Land gebotenen Preisen. So werden beispielsweise in einem Kaufangebot für konfisziertes Katökenland aus dem Oxyrhynchites aus der Zeit zwischen 148 und 154 n.Chr. 200 Drachmen je Arure geboten.[41]

In Anbetracht der starken Schwankungen der Preise, selbst innerhalb kürzester Zeitspannen, verbietet sich die von der früheren Forschung vertretene Annahme eines behördlich festgesetzten Einheitspreises, von dem man sogar annahm, er habe zwischen der Mitte des 1. und der Mitte des 3. Jh. unverändert bei 20 Drachmen je Arure gelegen.[42] Ganz abgesehen davon, daß man sich fragt, weshalb sich die Behörden über einen so langen Zeitraum überhaupt nicht an den ja sicherlich schwankenden Marktpreisen orientiert haben sollten.

Man muß den früheren Gelehrten indes zugute halten, daß die damals bekannte Dokumentation nicht nur die Annahme eines Einheitspreises für Hypologos in Höhe von 20 Drachmen je Arure nahezulegen schien, sondern daß sie sich hierfür auch auf die Tatsache stützen zu können vermeinten, daß in den Quellen über die Fiskalverkäufe von Minderertragsland mitunter von einer ἁπλῆ τιμή und einer διπλῆ τιμή die Rede ist; also einem „einfachen" und einem „doppelten Preis". So stellt der Dorfschreiber Petaus in der Verkaufsakte P.Petaus 17 folgendes fest: „Als ich zu der genannten Parzelle kam, fand ich im Gelände, daß sie im unbestellten Land liegt, daß zu einfachem Preis angewiesen werden muß."[43] Als ἁπλῆ τιμή wird der Verkaufspreis des Hypologos-Landes auch in einer weiteren Akte aus dem Petaus Archiv bezeichnet[44] sowie in einem auf einem Londoner Papyrus überlieferten Kaufantrag für Minderertragsland im Hermopolites aus dem Jahr 249 n.Chr.[45] Zwar nicht die Petaus-Papyri, jedoch das letztgenannte Dokument kannte auch bereits die ältere Forschung und betrachtete deshalb (wie etwa G. Plaumann) diese ἁπλῆ τιμή als den behördlich festgesetzten Einheitspreis, der indes gegebenenfalls (sei es von den Behörden oder den Käufern) habe verdoppelt werden können. Denn in einem Auszug aus einem Register über das Hypologos-Land im

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[39] P.Oxy. IV 721.

[40] P.Amh. II 68.

[41] P.Turner 24.

[42] PLAUMANN 1919, § 90-91; siehe auch P.Petaus 17,5 Komm.

[43] P.Petaus 17,4-6: ἐπελθ(ὼν) | ἐπ[ὶ] τὸ δηλούμενον ἔδαφος εὗρον <αὐτὸ> κατ᾽ ἀγρὸν ἐν χέρσῳ τῶν ἐφ᾽ ἁπλῇ τειμῇ ὀφειλ(ομένων) | πα[ρα]δίκνυσθαι.

[44] P.Petaus 22,3.29-34.

[45] P.Lond. III 1157 Verso; siehe auch ALESSANDRÌ 2012, 222.

Oxyrhynchites vom 18. Jahr des Commodus (= 177/78 n.Chr.), der kurz nach 224 n.Chr. angefertigt wurde, ist von einer Parzelle Hypologos-Land die Rede, welche in die Kategorie „der zu nicht weniger als dem doppelten Preis zum Verkauf gestellten Güter“ fiel.[46] Plaumann nahm deshalb an, daß der Erwerb ἐφ᾽ ἁπλῆ τιμῇ dem Käufer keine Rechtssicherheit verschafft habe, sondern jeder beliebige andere habe den Erstkäufer durch ein Gebot des doppelten Preises wieder aus dem Besitz verdrängen können.[47] M. Talamanca vermutete hingegen einen über längere Zeit geltenden fixen Einheitspreis (die ἁπλῆ τιμή), der jedoch bei sehr wertvollem Land von den Lokalbeamten verdoppelt werden konnte.[48]

Die Akten über den Verkauf von Hypologos aus dem Petaus-Archiv beweisen nun aber, daß die Fixpreistheorie nicht zu halten ist, da der Preis selbst in kürzesten Perioden schwankt. So beläuft sich laut P.Petaus 22 aus dem 25. Jahr des Commodus (= 184/85 n.Chr.), der dort explizit als ἁπλῆ τιμή bezeichnete Preis auf 56 Drachmen je Arure, wohingegen er laut P.Petaus 20 aus demselben Jahr nur 28 Drachmen beträgt. Auch die von Talamanca angenommene Erhöhung des Einheitspreises ist hier also eindeutig auszuschließen.[49]

Man könnte nun überlegen, von der Plaumannschen These eines fixen Einheitspreises den Teil über den prekären Erwerb des Erstkäufers zu halten, der jederzeit durch das Angebot eines doppelten Preises habe verdrängt werden können, was aber in Anbetracht der Eigentumsklausel in den Kaufanträgen, die besagt, daß dem Erwerber und seinen Nachkommen, daß betreffende Land unbeschränkt und für alle Zeiten gehören soll, nicht gerade leicht fällt. Plaumann erkennt zwar an, daß die Kaufanträge eine Eigentumsklausel enthalten, stellt dazu jedoch nur lapidar fest: „Deren (*sc*. der Eigentumsklausel) juristische Bedeutung ist zu untersuchen.“[50] Plaumann selbst hat darauf verzichtet. Aber soll man wirklich annehmen, daß die Antragsteller sich einer Eigentumsklausel bedient haben im vollen Wissen darum, daß diese ohne jede Rechtswirksamkeit war? Und warum haben sie, wenn sie dies schon wußten,

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[46] P.Oxy. 988 verso *descr*. (Iseion Panga, Oxyrhynchites; nach 224 n.Chr.; cf. BL I 330): Ἔγλημ(ψις) ἐκ γραφῆς ὑπολόγου ιη (ἔτους) Κομόδου Ἰσείου Παγγᾶ, Ἀρχεπόλιδος κλήρου. Μεθ᾽ (ἕτερα) · Καὶ τῶν συνχωρουμένων εἰς πρᾶσιν οὐκ ἔλασσον διπλῆς τιμῆς· μεθ᾽ (ἕτερα)· ἄμμου κατεξ(υσμένου) (ἀρουρῶν) δ, γείτ(ονες) νότ(ου) βα(σιλικὴ) διὰ Ἀριστάνδ(ρου) Ζήνωνος καὶ ἄλλων κακοφυής, βορρᾶ Σαραπιάδος Ἡρώδου νυνὶ Ἡρώδου Διονυσίου, ἀπηλιώτ[ου] ἡ μεγ[ά]λη διῶρυξ, λιβ(ὸς) ἡ ἑτέρα διῶρυξ, χερσάμμου (ἀρουρῶν) ζ, γείτ(ονες) πάντοθ(εν) [Σα]ραπιάδ(ος) Ἡρώδου νυνὶ Ἡρώδ[ου] Διονυσίου; siehe auch Alessandrì 2012, 222.

[47] Plaumann 1919, § 91.

[48] Talamanca 1954, 179 ff; siehe auch P.Petaus 17,5 Komm.

[49] Siehe auch P.Petaus 17,5 Komm.

[50] BGU V 1210, Idioslogos § 91.

die Eigentumsklausel nicht wenigstens dahingehend eingeschränkt, daß ihnen das Eigentum an dem ἐφ᾽ ἁπλῆ τιμῇ erworbenen Land nur dann garantiert sein soll, wenn kein anderer den doppelten Preis bezahlt? Außerdem besteht das Wesen der Fiskalverkäufe κατὰ παράδειξιν ja gerade darin, daß im Gegensatz zum Versteigerungskauf (κατὰ προκήρυξιν) eben gerade kein Bieterverfahren mit der Möglichkeit der Überbietung vorgesehen ist.[51]

F. Preisigke hat in seinem Wörterbuch der griechischen Papyrusurkunden für ἁπλοῦς die Übersetzung: „unter Ausschluß von Beikosten oder Beizahlungen“ vorgeschlagen.[52] Er hat dies zwar nirgendwo näher begründet, aber offenbar angenommen, es handele sich bei der ἁπλῆ τιμή um eine Art „Nettopreis“. Allerdings wurde auch diese These vor dem Bekanntwerden der Hypologosverkäufe in den Petaus-Papyri formuliert, die nun aber zeigen, daß dort regelmäßig Beikosten und Nebengebühren (hier ἐπόμενα genannt) gezahlt werden, und zwar auch dann, wenn der Preis für das Minderertragsland ausdrücklich als ἁπλῆ τιμή bezeichnet wird.[53] Außerdem haben die Herausgeber der Petaus-Papyri zu Recht darauf hingewiesen, daß man auch unter der Prämisse eines als ἁπλῆ τιμή bezeichneten „Nettopreises“ immer noch nicht verstehen würde, was denn dann die διπλῆ τιμή sein soll.[54] Ein Bruttopreis könnte es kaum sein, denn ein Preis unter Einschluß der Nebengebühren, führt nicht zu dessen Verdoppelung.

Jüngst hat S. Alessandrì, der die oben besprochenen Zeugnisse zur ἁπλῆ bzw. διπλῆ τιμή ebenfalls diskutiert hat[55], vorgeschlagen, diese Formulierung als Hinweis auf die erlaubte Möglichkeit einer einmaligen (ἐφ᾽ ἁπλῆ τιμῇ)

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[51] Daß in dem singulären Fall von SB I 5673 (Hermopolites, 147 n.Chr.) tatsächlich ein erster Kaufinteressent um das doppelte überboten wird, dürfte damit zusammenhängen, daß dieser den Kaufpreis noch nicht voll bezahlt hatte, die παράδειξις deshalb noch nicht erfolgt war und aus diesem Grunde solche höheren Gebote zugelassen waren (siehe Z. 11 und die diesbezüglichen Ausführungen von TALAMANCA 1954, 199 f.).

[52] WB I (1924) Sp. 165 s.v. ἁπλοῦς; siehe auch P.Petaus 17,5 Komm.

[53] Siehe etwa P.Petaus 17,5.29 u. 22,3.33-35.

[54] Siehe P.Petaus 17,5 Komm. – Die dort von den Hg. angedeutete Möglichkeit, die ἁπλῆ bzw. διπλῆ τιμή in den Verkaufsakten über ὑπόλογος γῆ in Anlehnung an das ἁπλῷ bzw. διπλῷ χρήματι bei Sklavenverkäufen zu deuten, also als Verweis auf die römische *simplaria venditio* bzw. (bei διπλῆ τιμῆ) den Kauf *bonis condicionibus*, womit im ersteren Fall eine Garantie ausgeschlossen, im zweiten dagegen gewährt wird, d.h. also lediglich auf eine bestimmte Modalität des Kaufs (siehe hierzu etwa PRINGSHEIM 1950, 483-487), trägt m.E. nicht; denn von dem Hypologos-Land in P.Oxy. 988v *descr*. (siehe auch o. Anm. 46) heißt es ja τῶν συνχωρουμένων εἰς πρᾶσιν οὐκ ἔλασσον διπλῆς τιμῆς, womit m.E. *expressis verbis* von einem Verkaufspreis die Rede ist, nicht lediglich von einer bestimmten Modalität des Kaufs. Zumal im Falle der ὑπόλογος γῆ auch nicht recht zu sehen ist, welche Garantieleistungen der römische Fiskus hier hätte erbringen können und warum er das überhaupt hätte tun sollen.

[55] ALESSANDRÌ 2012, 216-224.

bzw. zweimaligen (ἐπὶ διπλῇ τιμῇ) Überbietung des ursprünglichen Preises zu verstehen.[56] M.E. ist diese These jedoch anhand der uns zur Verfügung stehenden Quellen nicht zu belegen. Sie stößt außerdem auf das große Problem, daß der *terminus technicus* für ein Gebot bzw. Übergebot im Zuge eines Bieterverfahrens schwerlich mit dem Begriff für „Preis" (τιμή) ausgedrückt werden kann, sondern in unseren Quellen gewöhnlicherweise etwa mit ὑπόσχεσις („Gebot") bzw. ἐπίθεμα („Übergebot") bezeichnet wird. Ferner ist der Fiskalverkauf κατὰ παράδειξιν eben gerade kein Versteigerungskauf, sondern, wie oben dargelegt wurde, ein behördlich angeordneter Verkauf zu einem per Befehl festgesetzten Preis (κεκελευσμένη bzw. κελευσθεῖσα τιμή). Die von Alessandrì zur Stützung seiner These angeführten Zeugnisse für eine mehrfache Ausbietung von Kaufobjekten im Zuge von Versteigerungskäufen (auch solchen die von Amts wegen erfolgen),[57] mit dem Ziel, höhere Gebote zu provozieren, vermögen daher diesen Beweis nicht zu erbringen.

Auch ich kann indes leider keine Lösung dieses Problems anbieten. Sicher ist auf jeden Fall, daß die Klassifizierung des Werts des Hypologos-Landes als ἐφ᾽ ἁπλῇ oder ἐπὶ διπλῇ τιμῇ ein Vorgang in Zusammenhang mit der amtlichen Festsetzung des Verkaufpreises sein muß, und daß hierfür in der gesamten Provinz geltende Richtlinien existiert haben müssen, denn diese Qualifizierungen des Kaufpreises sind in mehr als nur einem Gau bezeugt. Es scheint mir ferner einigermaßen wahrscheinlich, daß sie mit dem Wert des Hypologos-Landes in Zusammenhang stehen müssen, der ja, auch wenn dieses in seinem Ertrag gemindert war, nicht einheitlich gewesen sein kann, sondern einer Fülle von Faktoren unterlag: Etwa die ehemalige Anbaufrucht (z.B. Getreide oder Wein), der Bewässerungszustand oder die Dauer der Unfruchtbarkeit bzw. der Ertragsminderung. Es ist dabei *notabene* auch nicht zu vergessen, daß der *terminus technicus* ὑπόλογος ja lediglich darüber Auskunft gibt, daß das betreffende Land in seinem Ertrag gemindert ist. Auf den Grad dieser Etragsminderung (gänzlich oder nur größtenteils?) läßt dieser Begriff allein hingegen nicht so ohne Weiteres Rückschlüsse zu.[58] Informationen

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[56] ALESSANDRÌ 2012, 224: „con (la possibilità) di una sola successiva offerta in aumento", „con (la possibilità di) due offerte successive".

[57] ALESSANDRÌ 2012, 224-228.

[58] In der sog. „Schubart-Kolumne", einem Teil des o. Anm. 26 erwähnten Landsurveys im Gau von Edfu (Apollonopolis Magna) aus dem Jahr 119/118 v.Chr., der einst von W. Schubart transkribiert wurde und heute verloren ist und auf welchen mich K. Vandorpe dankenswerterweise aufmerksam gemacht hat, ist von Hypologos-Land die Rede, welches illegalerweise von Privatleuten okkupiert worden ist, wofür diese mit einem πρόστιμον belegt werden. Interessanterweise ist die Höhe des πρόστιμον danach differenziert, ob das Land noch produktiv (ἔμφορος) ist oder gänzlich unproduktiv (χέρσος). Im letzgenannten Fall beträgt es 1,5 Talente, im ersteren 3 Talente, also genau das Doppelte (Z. 19-20). Es führt von hier aus vielleicht nicht so ohne weiteres eine direkte Linie zu

darüber ließen sich wohl den amtlichen Unterlagen über das Hypologos-Land entnehmen, über deren Charakter wir bislang leider nur sehr bruchstückhafte Informationen haben. Diese Faktoren mögen dann zur Festsetzung ἐφ᾽ ἁπλῆ oder ἐπὶ διπλῆ τιμῆ geführt haben. Diese geschah vielleicht in Abhängigkeit von dem im Jahr des Verkaufs geltenden durchschnittlichen Marktpreis für Land einer bestimmten Güte bzw. Produktivität.

Daß die für die Preisfestsetzung für Hypologos relevanten Informationen mitunter anscheinend recht kurzfristig eingeholt wurden, illustriert die Tatsache, daß in einem amtlichen Schreiben über den Verkauf von Mindererertragsland seitens des Rechnungsprüfers (ἐκλογιστής) des Bubastites an den Strategen dieses Gaus aus dem Jahr 205/06 n.Chr. die Worte ἐπὶ διπλῆ τιμῆ von anderer Hand in einem eigens dafür freigelassenen Spatium nachgetragen wurden.[59] Leider ist der Text so fragmentarisch, daß sein Inhalt und Kontext völlig unklar bleibt.

So muß es also, was den rätselhafen „einfachen“ oder „doppelten Preis“ des Hypologos-Landes betrifft, einstweilen bei einem *non liquet* bleiben und sind nähere Aufschlüsse darüber wohl erst von einer etwaigen Vermehrung unseres Quellenmaterials zu erhoffen. Es läßt sich den oben zusammengetragenen bruchstückhaften Informationen aber doch immerhin entnehmen, daß die Kategorie des Hypologos-Landes offenbar keine einheitliche, von der Administration immer gleich zu behandelnde gewesen sein kann, sondern in sich wiederum differenziert gewesen sein muß. Auch wenn die Kriterien für die Differenzierung der ὑπόλογος γῆ uns einstweilen noch verschlossen bleiben, so scheint mir zumindest ein Indiz für sie in der unterschiedlichen behördlichen Preisfestsetzung für den Fiskalverkauf von Parzellen solchen Landes ἐφ᾽ ἁπλῆ bzw. ἐπὶ διπλῆ τιμῆ zu erkennen sein.

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der ἁπλῆ bzw. διπλῆ τιμή in den kaiserzeitlichen Hypologos-Verkäufen, jedoch weist dieses Zeugnis doch immerhin auf eine bereits in der Ptolemäerzeit existente Differenzierung von Hypologos-Land nach seiner Etragskapazität hin, die wiederum eine unterschiedliche fiskalische Behandlung nach sich zog. Zu diesem Text s. auch Anm. 26.

[59] P.Bub. II 5 XXXV 6-7 u. *ibid*. Taf. 17.

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Return to the Wood in Roman Kent

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The remains of an incomplete Roman wax tablet dating from the reign of the Emperor Hadrian, which was discovered during an excavation in 1986 in London, have attracted scholarly attention for at least three reasons. First, it is according to Tomlin, who has discussed this text on more than one occasion '… the longest stilus tablet text to survive from Britain.'[1] In second place, the text, which seems to have been composed by a scribe, records some aspects of a legal transaction.[2] Finally, it mentions the names of three otherwise unknown Roman citizens from Kent who were somehow involved in the legal transaction.[3] Although informative, the context in which this text was produced remains unclear. The aim of this brief contribution is to survey the current range of scholarly interpretations of this text and to provide a possible alternative interpretation for this enigmatic document. For the purposes of this

[1] TOMLIN 1996, 209. The text of this chapter may be found online at http://www.trans-lex.org/108950. (last accessed 21 October 2013). For a photo of the tablet, see http://www.trans-lex.org/262120 (last accessed 21 October 2013). It currently resides in the Museum of London.

[2] For a discussion of the script and the likely composition of this text by a scribe, see TOMLIN 1996, 209-210.

[3] For a discussion of the names that are mentioned in this tablet, see KAKOSCHKE 2011, 269, 652. See also TOMLIN 1996, 214.

contribution, the reconstruction of the text in the Database Clauss-Slaby and Tomlin's translation of the text will be relied on:

> Imp(eratore) Traiano [Had]ri[ano] Caesare Aug(usto) II Gn(aeo) / Fusco Salinatore co(n) s(ulibus) pr(idie) Idus Martias / cum ventum esset in rem praesentem / silvam Verlucionium arepennia de/cem quinque plus minus quod est in ci/vitate Cantiacorum pago DIBVSSV[---] / [---]RABI[---]A(-) S adfinibus heredibus / et heredibus Caesenni Vitalis et via / vicinale quod se emisse diceret L(ucius) / Iulius Bellicus de T(ito) Valerio Silvino / l(denariis) quadraginta sicut emptione continetur / Lucius Bellicus testatus est se / [------[4]

> In the consulship of the Emperor Trajan Hadrian Caesar Augustus for the second time, and Gnaeus Fuscus Salinator, on the day before the Ides of March [14 March 118].[5] Whereas, on arriving at the property in question, the wood Verlucionium, fifteen arepennia more or less, which is in the canton of the Cantiaci in Dibussu[ ] parish[6], [ ], neighboured by the heirs [of... | and the heirs of Caesennius Vitalis and the vicinal road[7], Lucius Julius Bellicus said that he had bought it from Titus Valerius Silvinus for forty denarii, as is contained in the deed of purchase. Lucius Julius Bellicus attested that he [ ][8]

Before embarking on a discussion of the text, a few remarks about its physical make-up are required. The tablet, most likely of silver fir wood, is rectangular with an indentation for wax.[9] The wax has not survived, but the scribal indentations in the wood have. It measures 14.5 by 11 cm and the holes made in the frame suggest that it was the first (inside) page of a longer document of which the rest has not survived.[10] It was found in a Roman-era refuse heap situated

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[4] TOMLIN 1996, 211 for an account of his reconstruction of the text as well as 213 for a discussion of his reading of the text. According to the Epigraphic database Clauss-Slaby (http://www.manfredclauss.de/gb/index.html: last accessed 21 October 2013), the text may also be found in the following places: RIB-02-08, 02504, 29 Translex AE 1994, 01093 (where RIB refers to The Roman Inscriptions of Britain and AE to L'Année Épigraphique). Tomlin's reading of the text has been compared to the reconstruction in AE as well as in the Heidelberg Epigraphic Database. A reconstruction of the text together with Tomlin's drawing of it as well as photograph of it may be found in Burnham 1994, 302-304 as well as Plate XX (20) of this article. The photo been used as an additional comparator to corroborate the reading of the text.

[5] A new governor, Q. Pompeius Falco, was appointed to the Roman province of Britain in the year 118. See BIRLEY 1953, 50. In 122 Falco was replaced by A. Platorius Nepos. On the governorship of Q. Pompeius Falco, see BIRLEY 2005, 114-118. It is assumed that the Emperor Hadrian visited the province of Britain in 122, see DE LA BÉDOYÈRE 2010, (pbk), 51, 87; BIRLEY 2005, 308.

[6] On the legal classification of cities and towns in Roman Britain, see HOBBS-JACKSON 2010, 102-103.

[7] This mode of describing the extent of a property with reference to neighbouring owners and geographical features is well known from Roman legal sources, see TOMLIN 1996, 214.

[8] TOMLIN 1996, 211. The tablet is also mentioned in passing by HOBBS-JACKSON 2010, 71-72.

[9] TOMLIN 1996, 209 for a discussion of the discovery and conservation of the tablet. And on the written culture of Roman Britain, see TOMLIN 2011, 133-152.

[10] Idem.

near the Walbrook, a stream that ran through Roman London and emptied out into the Thames.

The tablet contains the following information a) a date; b) an attestation that someone had arrived at a woodland; c) a description of the size and location of the woodland; d) references to the neighbouring owners and a specific geographic feature (the vicinal road); e) a reference to the sale of the woodland and finally, a partial reference to a formal attestation by the purchaser (a certain Lucius Julius Bellicus) in the sale. Owing to the legalistic language used in this tablet, scholars have generally assumed that this text must have been produced in a legal context, but what exactly this context was remains unclear. The interpretation of Tomlin[11], who has studied this tablet in some detail, remains widely cited. This interpretation will be set out more fully below. More recently De La Bédoyère has suggested that '[the] document … was probably a [record of a] case heard by the judicial legate'[12] while Korporowicz has ventured '… that originally it was a court protocol or similar judicial document'[13] which, in his view, was linked to Roman litigation over the ownership of the woodland pursuant to a sale. Since the text breaks off in the middle of the attestation of the purchaser of the woodland, it cannot be established with absolute certainty what this document was, but an assessment of the range of possibilities in light of our knowledge of Roman law may cast new light on this text.

Tomlin's reconstruction of and commentary on the text has led him to speculate that it likely refers to a record of a judicial inspection *in loco* of the woodland that is connected in some way to its prior sale. Such an interpretation is based on the passage *cum ventum esset* … a legalistic phrase found in other Roman legal documents where it is used to indicate that an inspection of some sort had occurred.[14] The legal dispute arising from the prior sale of the woodland, which gave rise to the judicial inspection, may have occurred, according to Tomlin, in the context of one of the following two scenarios. It is possible (given the Celtic name of the woodland and the unit of measurement used to describe its dimensions) that it was a pre-existing 'sacred Celtic grove' which, after the creation of the province, had become *res publica*.[15] This property may have illegally come into the possession of individuals on account of a (void) sale, thus necessitating a judicial inspection to ascertain the status of

[11] Tomlin 1996, 213-214.

[12] De La Bédoyère 2010, 91.

[13] Korporowicz 2012, 145.

[14] Tomlin 1996, 213.

[15] Tomlin 1996, 213.

the land. Alternatively, the woodland may have been private property, which at one time had been seized from a capitulated tribe, thereafter assigned to a certain Roman city and subsequently sold off to Romans.[16] Thus, the legal dispute may have arisen out of the sale (eg. over the measurements of the land sold or some such).

While this interpretation of the text cannot be ruled out, it does run on slender legs. The use of the phrase *cum ventum esset …* is not conclusive proof that a judicial inspection had occurred and, as Tomlin has admitted, it cannot be gleaned from the text who had visited the woodland.[17] Furthermore, even though it is known that the court of the provincial governor (in the case of Britain an Imperial Legate) moved around in the province, too little is known about the court system in Britain to establish if and how frequently a court of this kind made judicial inspections *in loco*.[18] Furthermore, little can be inferred from the references to the prior sale and the inference that the name of the woodland referred to a 'sacred Celtic grove' seems rather romantic. A similar objection may be raised against the interpretation assigned to this text by De La Bédoyère. A judicial legate was only appointed from time to time when the Imperial legate did not have spare capacity to deal with courts and jurisdiction. Nothing is known about the appointment of a judicial legate in or around 118.[19] This then leaves Korporowicz's interpretation that the text is somehow related to a 'court protocol' or something similar.

It is perhaps best to start the analysis of this tablet with that part of the text over which there is more clarity. The tablet records that a woodland of a certain size and location had been sold by Titus Valerius Silvinus to Lucius Julius Bellicus for the price of 40 *denarii*. We are also informed that the sale was recorded in a deed of purchase as was the custom with most sales of land in the Roman Empire. Investigations into the names of the parties to the sale have not yielded any results. Kakoschke's exhaustive study of the personal names in Roman Britain has not revealed anything more in relation to these two individuals other than the suggestion that L. Julius Bellicus was most

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[16] Idem.

[17] TOMLIN 1996, 213.

[18] On the status of Britain as an Imperial (as opposed to senatorial) province and its governor (an Imperial Legate), see DE LA BÉDOYÈRE 2010, 83. It has been suggested that by the time when this tablet was written, London had become the capital of the province where the Governor resided (DE LA BÉDOYÈRE 2010, 84; HOBBS-JACKSON 2010, 105, 106). BIRLEY 2005, 11-12, on the other hand argues for greater caution. While it can be said with some certainty that the Imperial Procurator in charge of the collection of taxes resided in London by this date, it cannot be assumed that it was necessarily the provincial capital or that the governor resided there.

[19] DE LA BÉDOYÈRE 2010, 88; KORPOROWICZ 2012, 137-138.

likely of Romano-Celtic origin.[20] We assume, given the (triple) names of the individuals, that they were Roman citizens. Given the absence of any reference to a *stipulatio* and the dating of the text in light of modern knowledge about the Roman law of contracts, it seems reasonable to assume that the sale of a woodland contracted between two Roman citizens would have been done using the consensual contract of sale, *emptio venditio*. With that said and when compared to other written examples, it seems unlikely that the tablet in question is the actual record of the sale. Rather, the text is question seems to mention the sale as the *causa* for whatever reason it was drafted.

There is nothing in the tablet to suggest that the status of the parties was a factor in the dispute arising from the sale so this may be safely discounted. Furthermore, an issue over the status of one of the contracting parties would not have necessitated an inspection *in loco*. More problematic, however, is the object of sale. As Tomlin has shown, two variations are possible. Either the parties had (deliberately or mistakenly) bought and sold property that was public land and therefore could not be sold or the woodland was in fact private property, but some other aspect of the sale had given rise to the legal controversy.[21] If the former, then the sale was void. Buckland expresses it as follows:

> A sale of what was not *in commercio*, a freeman or a *res sacra* or *religiosa*, was void, … . [I]n classical law there seems to have been only an *actio in factum* for the innocent buyer of *res religiosa* [D.11.7.8.1], while another text, perhaps altered by Justinian, tells us that an innocent purchaser of *res sacra religiosa* or *publica* has an *actio ex empto* for his *interesse*, though "*emptio non teneat*."[D.18.1.62.1, Cp. Inst.3.23.5][22]

Given this context, it may well be that the tablet was drawn up in the context of a judicial inspection into the status of the land to determine whether the *actio ex empto* could be brought by L. Julius Bellicus for his *id quod interest* on account of the void sale. But even this does not necessitate an inspection *in loco*. Although there is considerable debate over the extent to which land-surveying took place in Roman Britain, since the archaeological evidence is slight, it must be assumed that it did occur (albeit not comprehensively) and where it took place, records of public property were kept both in the provincial capital and in Rome and could therefore have been consulted.[23] The only

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[20] KAKOSCHKE 2011, 269.

[21] For an account of the legal status of land in Britain after the Roman conquest, see MATTINGLY 2007, 353-355, 359.

[22] BUCKLAND 1963, 483. Textual references in footnotes to Buckland given in square brackets. On this topic see most recently GENOVESE 2007, 87-147.

[23] MATTINGLY 2007, 361.

possible scenario under which this could have given rise to some sort of investigation *in loco* would have been to ascertain whether the public property as recorded in the provincial records matched the location and dimensions of the woodland in question. But even this does not necessarily presuppose an inspection *in loco* in the presence of the judge and the parties.

Following the second scenario proposed by Tomlin, namely that the woodland was private property, it may be assumed that some aspect of the sale gave rise to the legal controversy. Korporowicz speculates:

> The use of the word *testatus* indicates that Bellicus was attesting the concluded contract. It can be assumed that Bellicus was a plaintiff and summoned Silvinus upon *rei vindicatio* or *actio negatoria* – the two petitory actions that where available to the owner. It is likely also that Bellicus used the *actio empti* which applied when the object of sale was not rendered to the buyer. In all those possibilities Bellicus's testimony was demanded according to the well-known Roman rule *ei incumbit probatio qui dicit, non qui negat*.[24]

According to this interpretation, the nature of the legal dispute based on the sale could have been one of two things, namely either that the woodland had not been delivered legally to the purchaser following the sale or that the parties were disputing the existence of a servitude over the woodland which the purchaser sought to deny the existence of using the *actio negatoria*. Much like Tomlin's suggestion regarding the 'sacred Celtic grove', Korporowicz's interpretation is based on slender evidence. All that can really be said with any degree of certainty is that the tablet mentions a sale and an incomplete attestation by the purchaser. How exactly the sale relates to the rest of the tablet cannot be ascertained. Two further problems with Korporowicz's analysis emerge. First, there is the issue of the type of land. Britain was an Imperial province governed by an Imperial Legate as representative of the Roman Emperor. As such, it was not legally possible for Roman citizens to obtain full Roman ownership (*dominium*) of provincial land (unless a special dispensation of 'italic soil' had been granted). According to classical Roman law, such property could only be held under a form of possession that was protected in law. Thus, a *rei vindicatio* would not strictly have been available to L. Julius Bellicus since it was available only to the Quiritary owner, i.e. someone who had full Roman ownership. Buckland again:

> The *dominium* of this was in Caesar or the *populus* according as it was in an imperial or a senatorial province. The exploitation was largely in private hands under arrangements with the authority concerned, of which the most important is the system of *agri tributarii*, in imperial provinces, and *stipendiarii*, in others, both permanent holdings at a fixed rent. The

[24] KORPOROWICZ 2012, 145.

> holders were practically owners, but as they were not *domini* formal methods of transfer were not applicable. The holdings were, however, transferable informally. A holder who lost possession could not recover by the action appropriate to the recovery of Italic land, *vindicatio*, since this involved an assertion of *dominium*. We are not fully informed as to the nature of his remedy. We know that he had a modified *vindicatio* as early as Trajan, but we can only guess at its form. Probably his action instead of *dominium* asserted a right "*habere frui possidere licere*," which is found as the technical description of his right.[25]

Thus even if Korporowicz's assertion about the grounds for the legal dispute are correct, the action brought by L. Julius Bellicus could not have been the standard *rei vindicatio*, but had to be its provincial variant. Servitudes could be created over provincial land, provided it was not *res sacra* or *religiosa*, thus litigation in terms of the *actio negatoria* remains a possibility, as does litigation in terms of the *actio empti*, but since the text breaks off at this point it is impossible to reach any conclusion on the matter.

The analyses of this tablet by both Tomlin and Korporowicz presuppose, on account of the legalistic language used, that the context in which this text was drafted is somehow related to an existing lawsuit. This requires greater nuance. The relationship between legalistic language as visible in the text and the legal process is not necessarily a direct one. There are at least two other possibilities which may account for its drafting. Both relate to the activities of Roman land-surveyors. The first possibility, raised by Mattingly, is that it relates to the payment of taxes on land.[26] Provincial land was subject to various taxes.[27] Some of these taxes were based on landholding and thus could only be collected once the land in the province had been properly surveyed and recorded. Land-surveyors were involved in creating provincial records of different types of land (and the different classifications of land determined whether they were subjected to taxation).[28] Provincial records, usually engraved in bronze, were kept where the Imperial Procurator in charge of collecting taxes resided (in this case London).[29] This may also account for the location where this tablet was found. If it was merely 'field notes' by a land-surveyor that were incorporated into the official provincial records engraved in bronze, it could be discarded once the tablet was no longer useful.[30]

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[25] BUCKLAND 1963, 190.

[26] MATTINGLY 2007, 361.

[27] For an account of the various forms of tax levied in Roman Britain, see DE LA BÉDOYÈRE 2010, 91, 94-97.

[28] DILKE 1971, 112-113; MATTINGLY 2007, 360, 495.

[29] MATTINGLY 2007, 360.

[30] The extent of land-surveying in Roman Britain remains problematic, see DILKE 1971, 188-192.

Alternatively, it may well be that this tablet was created in the context of a Roman lawsuit, but in an indirect way. It is well known that land-surveyors fulfilled an important function in the context of Roman litigation concerning boundaries and, more generally, disputes over ownership of land.[31] They could either be instructed by the court to produce a report on the dimensions of the land or by one or both of the parties to the dispute in order to prove their assertion.[32] Since no example of a surveyor's report used in the context of a Roman lawsuit has, to my knowledge, survived, it cannot be proven with complete certainty. Some decrees by Roman Provincial Officials endorsing rulings made in relation to boundary disputes between communities have been preserved in various inscriptions, most notably from around the time of Hadrian, but these do not yield any results when compared to the tablet in question.[33] This is not altogether surprising since these are records of official decrees assigning land to one or the other community as a result of the settlement of a boundary dispute, rather than a surveyor's report used in a court case between individuals as evidence.

Two further pieces of evidence support my contention that this tablet is connected to the activities of a land-surveyor. The first piece of evidence is archaeological. Among the instruments discovered in the workshop of the land-surveyor Verus in Pompeii, there are wooden tablets with wax surfaces which were used to make 'field notes' before being transferred onto other materials for official purposes.[34] Of course these tablets were used for many different purposes in the Roman world, but their use can therefore be brought in connection with land-surveyors. Furthermore, the robust nature of these tablets would have made them much more useful for the making of 'field notes' than other forms of writing material. The location where this tablet was discovered, in a Roman-era refuse dump, also provides circumstantial evidence that this document was perhaps a set of notes that were later discarded either when the information had been transferred onto other material and/or the wax had become unusable. The second piece of evidence relates to the content of the tablet. While the two issues mentioned (the arrival at the woodland and its prior sale) are linked, they do have a slightly disjointed feel and would lend credence to these being 'field notes' to be organised later into a more comprehensive document.

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31 DILKE 1971, 105.

32 Idem.

33 For a discussion of these inscriptions, see CUOMO 2007, 103-130.

34 DILKE 1971, 73.

So what does all this amount to? Until more of this tablet is discovered or others are found that are sufficiently similar to admit comparison, speculation as to its nature and context will continue. All of the scholarly interpretations outlined above are plausible, though some seem more likely than others. While records of *negotia* are frustrating to work with owing to their inevitable incompleteness and lack of context, sources such as these are vitally important for our understanding of Roman law in the Roman province of Britain. For what they reveal, even in fragmented form, is the considerable pace with which Roman Britain became a Roman province. In our never-ending quest to uncover the relationships between law and society in the Roman world, texts such as these are vital. But insights into law and society cannot be achieved by one group of scholars alone. Texts such as these make clear that greater collaboration between lawyers and historians are necessary.

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Der Kreditkauf im griechischen Recht. Grundlagen und Dokumentation des „fiktiven Darlehens“ *

PHILIPP SCHEIBELREITER

Einleitung

Nach klassisch-römischem Rechtsverständnis[1] ist der Kaufvertrag (*emptio venditio*) ein synallagmatisches, also beide Parteien verpflichtendes Rechtsverhältnis, das durch Willenseinigung zustande kommt: Die Parteien, der Verkäufer und der Käufer, werden einander durch den bloßen Konsens über den Vertragsinhalt verpflichtet.[2] Das Zustandekommen des Vertrages ist dabei von der Erfüllung, der Leistungserbringung, unabhängig. So zählt auch der klassische Jurist *Gaius*[3] den Kaufvertrag zu den Konsensualverträgen, anders als etwa das Darlehen, den Verwahrungsvertrag oder die Leihe, die als

* Mein Dank gilt der Veranstalterin der Tagung in Budapest, Frau Prof. Éva Jakab (Szeged). Wertvolle Hinweise habe ich von den Herrn Prof. Michele Faraguna (Triest), PD Thomas Kruse (Wien), Prof. Guido Pfeifer (Frankfurt a. M.), Prof. Johannes Platschek (Wien), Prof. Gerhard Thür (Wien), PD Jakob Fortunat Stagl (Bonn) und Assessor Andreas Bartholomä M.A. (Cantab.) erhalten.

[1] Auch im römischen Recht ist ursprünglich von dem Modell des Barkaufs auszugehen, vgl. Kaser - Knütel 2014, 241 und die dort zitierte Literatur.

[2] Gaius, Inst. 3,139 (= I. 3.23pr); vgl. dazu Kaser – Knütel 2014, 241.

[3] Gaius, Inst. 3,135. 139-140.

Realverträge zu ihrem Zustandekommen neben der Willenseinigung auch der Übergabe einer Sache bedürfen.[4]

Das klassisch-römische Modell des Kaufvertrages lässt sich nicht auf den Kauf nach griechischem Recht umlegen. Zu dessen Konzeption grundlegend ist Pringsheims' „The Greek Law of Sale",[5] wo nachgezeichnet wird, dass das griechische Recht nie einen Konsensualvertrag ausgebildet hat.[6] Auch wenn in der Folge – aus Gründen der Praktikabilität – vom griechischen „Kauf-Vertrag" die Rede sein sollte, so ist vorab festzuhalten, dass die Griechen kein *vinculum iuris* im Sinne einer vertraglichen *obligatio* ausgeformt haben. Wie noch auszuführen sein wird,[7] beruhte das griechische Kaufrecht vielmehr auf dem Barkauf: Der Erhalt einer Gegenleistung erfolgte Zug-um-Zug mit der Erbringung der eigenen Leistung. Dieses Modell könnte schon in der Antike als typisch griechische Praxis angesehen worden sein.[8]

Das Prinzip des Bargeschäftes stieß dort an seine Grenzen, wo eine Partei ihre Leistung erst später erbringen wollte oder gar konnte: Beim Lieferungskauf (der Verkäufer erbringt seine Leistung verspätet) und beim Kreditkauf (der Käufer zahlt den Kaufpreis später).

Im Fokus der vorliegenden Untersuchung soll nun nicht der in gräko-ägyptischen und gräko-römischen Urkunden weitaus besser dokumentierte Lieferungs- oder Pränumerationskauf[9] stehen, sondern der Kreditkauf. Die Literatur bedient sich zur Bezeichnung des „Kaufvertrags unter Vorleistung des Verkäufers bzw. Stundung des Kaufpreises" des Begriffes „fiktives Darlehen". Nach einer Definition und Abgrenzung des fiktiven Darlehens (1.) sollen die Ursachen für diese Konstruktion (2.) aus theoretisch-philosophischer (3.) und rechtspraktischer (4.) Sichtweise näher dargestellt werden, ehe auf die Dokumentation des fiktiven Darlehens in den Papyri eingegangen wird (5.). Auf die Praxis fiktiver Darlehen im römischen Recht, wo man sich dazu der abstrakten *stipulatio* bedienen konnte,[10] während das *mutuum* als Realver-

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4 Gaius, Inst. 3,90; D. 44.7.1.4-6 (Gaius 2 aur.).

5 PRINGSHEIM 1950.

6 Diese Frage kann hier nicht weiter vertieft werden vgl. bezüglich der einzelnen Theorien ist auf die Übersicht bei JAKAB 2006, 85-91 zu verweisen; zum Kauf siehe insbesondere JAKAB 2009, 73-78.

7 Ausführlich dazu unten unter 4.

8 So wird auf das fiktive Darlehen als *mos Graecorum* / *institutum Graecorum* bei Pseudo-Asconius, in Cic. Verr. 2.1.36.91 (244 s. Stangl), *syngraphas fecerat* angespielt; vgl. dazu PLATSCHEK 2013b, 256-259.

9 Vgl. dazu auch unten unter 1.; ausführlich JAKAB 2009, 123-155; PFEIFER 2013, 96-100.

10 PRINGSHEIM 1950, 245. PRINGSHEIM 1956, 387 führt aus: „*Dieses elastische Mittel befreite sie von dem Zwange, dem andere Rechte unterlagen, zum fiktiven Darlehen zu greifen*." Mit PFEIFER

trag prinzipiell nicht ohne tatsächliche Übergabe zustande kam,[11] kann hier nicht näher eingegangen werden.[12] Allerdings ist darauf zu verweisen, dass im frühen römischen Recht wohl auch das Barkaufprinzip[13] gegolten hat und sich Spuren einer fingierten Kaufpreiszahlung in Verbindung mit dem Eigentumserwerb auch noch im klassischen römischen Recht finden lassen.[14]

1. Das fiktive Darlehen

Als fiktives Darlehen wird im Zusammenhang mit dem Kauf jenes Phänomen bezeichnet, wonach der Käufer den Kaufpreis vom Gläubiger kreditiert bekam, was in einer eigenen Urkunde festgehalten wurde:[15] „*In sales on credit, however, the goods are delivered at once; the contract of sale contains a receipt for the price, and only the additional contract of loan reveals the true character of the transaction*."

Der Kauf wurde nach dem üblichen Formular geschlossen und (unrichtig) der Empfang des Kaufpreises quittiert, ohne dass der Preis tatsächlich entrichtet worden war. Hernach quittierte der Käufer dem Gläubiger den Erhalt einer Darlehenssumme, die wertmäßig dem Kaufpreis entsprach[16]. Es liegen also eigentlich zwei voneinander getrennten Rechtsgeschäfte vor.[17] Kühnert hat die

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2010, 153 ist aber zu betonen, dass eine Kombination von *stipulatio* und Kaufvertrag zwar den gleichen Zweck erfüllen konnte wie die griechischen fiktiven Darlehen, dass beide Rechtsgeschäfte im Unterschied zum griechischen Recht jedoch unabhängig voneinander bestehen und als solche auch erkennbar blieben.

11 Afrikan/Julian lehnen das so genannte „Vereinbarungsdarlehen" strikt ab (D. 17.1.34 pr., Afr. 8 quaest.), während Ulpian es in Analogie zum Anweisungsdarlehen zulässt (D. 12.1.15, Ulp. 31 ed.); vgl. dazu zuletzt mit Literaturangaben Krampe 2011, 347-359.

12 Vgl. dazu etwa Thür 2009, 1278-1280.

13 Vgl. dazu Kränzlein 2010, 64.

14 Dass dies auch einmal dem römischen Recht entsprochen haben könnte, wird in einem Text des Hochklassikers Pomponius angedeutet (D. 18.1.19, Pomp. 31 ad Quint. Muc.); vgl. dazu Kaser 1971, 418: „*In der klassischen Zeit scheint man dieses Erfordernis dann zwar nicht wirklich preisgegeben, aber dadurch entwertet zu haben, dass man sich statt der wirklichen Bezahlung des Preises mit seiner Kreditierung begnügt hat*". vgl. dazu auch IJ 2,1,41; zur Diskussion vgl. weiters Kossarz 2005, 211-215 und die dort zitierte Literatur.

15 Pringsheim 1950, 267.

16 Pringsheim 1950, 245; Rupprecht 1994, 119; Jördens 1998, 277; Pfeifer 2010, 147.

17 Vgl. Jördens 1998, 277: „*Ein fiktives Darlehen, aber auch ein fiktiver – da erst bei Zahlung des Kaufpreises vollziehbarer – Kauf liegen dagegen im Kreditkauf vor, der in der hellenistischen und frühkaiserzeitlichen Rechtspraxis noch durch zwei getrennte Rechtsgeschäfte, Kauf und Darlehen, zustandekam*."

Bezeichnung „fiktives Darlehen“ kritisiert:[18] Die Zahlung eines Kaufpreises passe nicht in den Kontext eines Geschäftes, das als Darlehen benannt wird.[19] Die typenmäßige Aufspaltung in (1) Kauf und (2) Darlehen lasse vielmehr ein verfehltes, römischrechtliches Denkmuster erkennen, weshalb Kühnert dafür plädiert, Kreditkäufe als „gemischte Kreditgeschäfte“ zu bezeichnen.[20]

Nach Rupprecht sei die Sammelbezeichnung „Darlehen“ für die beiden Geschäfte „Kauf“ und „Darlehen“ jedoch dadurch gerechtfertigt, dass „… *die nach unserer Auffassung materiell zu scheidenden Geschäfte in der Praxis der griechischen Kautelarjurisprudenz einheitlich durch das Darlehensformular erfasst wurden*“.[21] Vor allem komme die Absicht der Parteien zum Ausdruck, ein Rechtsgeschäft wie den Kauf[22] den Darlehensregeln zu unterstellen.[23] Erst in der Zeit nach Kaiser Diocletian habe sich – so die These von Jördens – ein eigenes Formular für den Kreditkauf entwickelt.[24]

Die Anwendung des Darlehensrechtes ergibt sich aus der Verwendung des Darlehensformulars. Die „Fiktion“ wiederum beruht darin, dass zwei Leistungen quittiert werden, die jedoch *realiter* nie vollzogen worden sind.[25] Einmal die Zahlung des Kaufpreises, dann die Übergabe der Darlehensvaluta. Damit bediente man sich der Fiktion, „*um etwas vorzutäuschen, was in Wirklichkeit nicht geschah*.“[26] Nach Pringsheim ist das Fingieren der Kaufpreiszahlung und der Auszahlung des Darlehens eine „verdeckende Rechtsfiktion“[27], die von der offenen Fiktion, der bewussten Annahme einer tatsächlich nicht gege-

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[18] Kühnert 1965, 152.

[19] Kühnert 1965, 171.

[20] Kühnert 1965, 170.

[21] Rupprecht 1967, 118.

[22] Mittels fiktiver Darlehen wurde auch anderen Rechtsgeschäften Durchsetzbarkeit verliehen, vgl. dazu die Liste bei Rupprecht 1967, 120-126.

[23] Rupprecht 1967, 131: „*Die in der Vereinbarung eines fiktiven Darlehens zum Ausdruck gekommene Absicht der Parteien, das zwischen ihnen bestehende wirtschaftliche oder rechtliche Verhältnis für die Zukunft Darlehensregeln zu unterstellen, und die damit verbundene Vereinbarung der bei den real gegebenen Darlehen üblichen Bestimmungen (…) gestatten uns die Übernahme der dort für die Natur des Darlehens als Schaffung einer prozessualen Haftungslage aufgestellten Hypothese*.“

[24] Jördens 1998.

[25] Pfeifer 2010, 147.

[26] Pringsheim 1956, 385.

[27] Pringsheim 1956, 385 führt das fiktive Darlehen auch als Beispiel seiner Definition der verdeckten Rechtsfiktion an: „*Von Rechtsfiktion wird in ganz verschiedener Weise gesprochen. Einmal meint man damit die Fälle, unter denen die griechische Fiktion der Preiszahlung und des Darlehns ein Beispiel sind: dass nämlich zu dem Mittel der Fiktion gegriffen wird, um etwas vorzutäuschen, was in Wirklichkeit nicht geschah*.“

benen Tatsache aufgrund rechtlicher Anordnung[28] (zu denken ist etwa an die Fiktionen, derer sich der römische *praetor* im Formularprozess bedient) zu unterscheiden ist. Trotz der Fiktion und der Schaffung einer neuen, der Darlehens- *causa*, wird die *causa* des überdeckten Geschäftes nicht unwirksam.[29] Der Verkäufer hat nun die Möglichkeit, seinen Anspruch aus dem Darlehen durchzusetzen.[30] Vor allem aber wird nach außen hin gar nicht erkennbar, dass dem in einer eigenen Urkunde dokumentierten Darlehen ein Kaufvertrag zugrunde liegt.[31]

Diese Fiktion in Zusammenhang mit dem Kreditkauf kann jedoch nicht auch analog[32] auf den Lieferungskauf bezogen werden[33] – „… *beim Lieferungskauf dagegen wurde die tatsächlich erfolgte Zahlung des Kaufpreises bestätigt, und Gegenstand der Rückgabepflicht war nicht der Preis, sondern der Kaufgegenstand. Von einem fiktiven Darlehen kann nicht gesprochen werden*."[34] Auch die Verwendung des Terminus ἀποδιδόναι (wörtl. „zurückgeben", „rückerstatten") in den Urkunden lässt keine gegenteilige Annahme zu. Eine Möglichkeit wäre es, diesen Begriff des „Zurückgebens" auf das „Surrogationsprinzip" zurückzuführen und die Kaufsache als Surrogat für den Preis anzusehen. So wurde etwas „zurückgegeben", das zuvor nie empfangen worden war.[35]

Für den Lieferungskauf wurde nach anfänglicher Anlehnung an das Darlehensformular bald ein eigenständiger Urkundentyp entwickelt,[36] während das Darlehen für die Bedürfnisse des Kreditkaufes ausreichend erschien.[37] Erst

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[28] PRINGSHEIM 1956, 385.

[29] RUPPRECHT 1967, 143.

[30] THÜR 2009, 1271-1275; KRÄNZLEIN 2010, 66.

[31] PFEIFER 2010, 146 A. 9.

[32] So PRINGSHEIM 1958, 227.

[33] RUPPRECHT 1967, 127: „*Bei Lieferungskäufen griff man dagegen weder zu einer fiktiven Quittung noch zu einer Darlehensurkunde mit Fiktion der Leistung oder der Causa*."

[34] RUPPRECHT 1967, 128.

[35] So KÜHNERT 1965, 170, der auch auf die Verwendung des Begriffs reddere in lateinischen Urkunden (z.B. P.Fouad 45, 153 n.Chr.) verweist. Ähnlich begegnet der Ausdruck *reddere* auch bei Plautus, zB. in Zusammenhang mit der Leistung eines Werklohnes (Plaut. Asinaria 441-443), welcher naturgegebener Maßen nicht „zurückgegeben", sondern „erstmals geleistet" wird: Dieses *reddere* könnte jedoch ebenso auf der Übersetzung des griechischen ἀποδιδόναι beruhen. Die Quellen des klassischen römischen Rechts gebrauchen *reddere* sowohl iSv „zurückgeben" als auch iSv „leisten"; vgl. dazu D. 50.16.94 (Cels. 20 dig.): *Verbum reddendi quamquam significatum habet retro dandi, recipit tamen et per se dandi significationem*.

[36] SEIDL 1961, 495; RUPPRECHT 1967, 128; RUPPRECHT 1994, 119. Zum Aufbau des Formulars vgl. JAKAB 2009, 123-125.

[37] RUPPRECHT 1967, 128 A. 4.

in der nachdiocletianischen Epoche wird ein eigenes Formular auch für den Kreditkauf entwickelt.[38]

2. Ursachen für die Konstruktion des fiktiven Darlehens

Die Ursachen für die Ausbildung der Konstruktion des fiktiven Darlehens sind theoretischer und praktischer Natur. So beruht sie, wie bereits angedeutet wurde und noch zu vertiefen sein wird, auf dem Konzept des Barkaufes, das einem Kreditkauf in der Form eines Kaufvertrages die Einklagbarkeit versagen musste. Dieses Modell ist auch bei den griechischen Philosophen Platon und Aristoteles zu finden, die den Kauf auf Kredit explizit ablehnen.[39] Nach Theophrast ist diese Kreditfeindlichkeit bereits für die Gesetze des Nomotheten Charondas von Katane bezeugt.[40]

3. Theoretische Grundlage: Kreditfeindlichkeit im griechischen Recht

3.1. Platon

In den *Nomoi*, jenem von Platon konstruierten Gesetzeswerk für eine fiktive Kolonie Athens,[41] sind dezidierte Vorschriften zum Kaufrecht erhalten.[42] Bezüglich der Abwicklung von Käufen heißt es etwa (Plat. leg. 849e).[43]

> Τῶν δὲ ἄλλων χρημάτων πάντων καὶ σκευῶν ὁπόσων ἑκάστοισι χρεία, πωλεῖν εἰς τὴν κοινὴν ἀγορὰν φέροντας εἰς τὸν τόπον ἕκαστον, ἐν οἷς ἂν νομοφύλακές τε καὶ ἀγορανόμοι, μετ' ἀστυνόμων τεκμηράμενοι ἕδρας πρεπούσας, ὅρους θῶνται τῶν ὠνίων, ἐν τούτοις ἀλλάττεσθαι νόμισμά τε χρημάτων καὶ χρήματα νομίσματος, μὴ προιέμενον ἄλλον ἑτέρῳ τὴν ἀλλάγην. ὁ δὲ προέμενος ὡς πιστεύων, ἐάντε κομίσηται καὶ ἂν μή, στεργέτω ὡς οὐκέτι δίκης οὔσης τῶν τοιούτων περὶ συναλλάξεων.

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[38] Jördens 1998, 281.

[39] Dazu sogleich unter 3.1. und 3.2.

[40] Vgl. dazu unter 3.3.

[41] Eine Auswahl der Gesetze hat Ruschenbusch 2001 vorgelegt, Freilich ohne auf die hier behandelten Gesetze näher einzugehen.

[42] Allgemein dazu Mühl 1933, 62-75; Herrmann 1982; Jakab 1994, 193-195; Jakab 1997, 59-70.

[43] Text und Übersetzung nach Platon, Die Gesetze, bearbeitet von Klaus Schöpsdau, Darmstadt 2001 (^{2}1990), Plat. leg. 849e ad locum.

Alle übrigen Waren und Geräte, die ein jeder braucht, soll man so verkaufen, dass man sie auf den allgemeinen Markt an den jeweils vorgesehenen Platz bringt. An den Plätzen also, wo die Gesetzeswächter und die Marktaufseher zusammen mit den Stadtaufsehern geeignete Standflächen markiert und die Felder für die einzelnen Verkaufswaren abgegrenzt haben, dort soll man Geld gegen Waren und Waren gegen Geld tauschen, wobei keiner dem anderen im voraus ohne Gegenleistung überlassen soll. Wer es aber auf Treu und Glauben dennoch tut, der muss sich auch, mag er das Seine bekommen oder nicht, damit zufrieden geben, da es bei solchen Tauschgeschäften keinen Rechtsanspruch gibt.

Platon bekräftigt das Barkaufprinzip noch einmal (Plat. leg. 915d-e):[44]

ὅσα δὲ διά τινος ὠνῆς ἢ καὶ πράσεως ἀλλάττηταί τις ἕτερος ἄλλῳ, διδόντα ἐν χώρᾳ τῇ τεταγμένῃ ἑκάστοις κατ' ἀγορὰν καὶ δεχόμενον ἐν τῷ παραχρῆμα τιμήν, οὕτως ἀλλάττεσθαι, ἄλλοθι δὲ μηδαμοῦ, μηδ' ἐπὶ ἀναβολῇ πρᾶσιν μηδὲ ὠνὴν ποιεῖσθαι μηδενός. ἐὰν δὲ ἄλλως ἢ ἐν ἄλλοις τόποις ὁτιοῦν ἀνθ' ὁτιοῦν διαμείβηται ἕτερος ἄλλῳ, πιστεύων πρὸς ὃν ἄν ἀλλάττηται, ποιείτω ταῦτα ὡς οὐκ οὐσῶν δικῶν κατὰ νόμον περὶ τῶν μὴ πραθέντων κατὰ τὰ νῦν λεγόμενα.

Alles, was einer durch Kauf oder Verkauf mit einem anderen tauscht, soll er so tauschen, dass er an der jeweils dafür bestimmten Stelle auf dem Markt seine Ware aushändigt und sofort den Preis dafür empfängt, sonst aber nirgends; und kein Verkauf oder Kauf irgendeines Gegenstandes darf unter Aufschub der Zahlung abgeschlossen werden. Wenn aber jemand auf andere Weise und an anderen Plätzen irgend etwas gegen irgend etwas mit einem anderen tauscht und dabei demjenigen Vertrauen schenkt, mit dem er den Handel vornimmt, so soll er das tun mit dem Wissen, dass es nach dem Gesetz keine Rechtsansprüche gibt bei Verkäufen, die nicht unter den angegebenen Bedingungen getätigt werden.

Hinter diesen Regelungen schimmert nicht nur das Problem durch, das Bestehen einer Forderung oder eines Anspruches beweisen zu müssen und – bei Stundung oder Kreditierung der Zahlung – nicht beweisen zu können. Der Kauf wird als eine Form des Tausches definiert, wobei die eine der beiden Leistungen in Geld besteht (ἀλλάττεσθαι νόμισμά τε χρημάτων καὶ χρήματα νομίσματος).[45] Wer gegen diese Gebote verstößt und entweder außerhalb des genau determinierten Marktplatzes (ὅροι) Kaufverträge abschließt, oder aber die Gegenleistung kreditiert erhält, der genießt zur Durchsetzung seines Anspruches keinen Rechtsschutz (στεργέτω ὡς οὐκέτι δίκης οὔσης).[46] Die Gültigkeit der Verträge wird somit nicht in Frage gestellt bzw. zum Thema gemacht, sondern wird ihnen die prozessuale Durchsetzbarkeit verwehrt.[47]

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[44] KLAUS SCHÖPSDAU (o. Anm. 43) Plat. leg. 915d-e ad locum.

[45] Nach HERRMANN 1982, 89 A. 15 entspreche diese Regel „*anschaulich dem von Seidl vertretenen Prinzip der notwendigen Entgeltlichkeit*"; vgl. dazu unten unter 4.

[46] Vgl. dazu auch HERRMANN 1982, 85.

[47] HERRMANN 1982, 89.

„*Das Vertrauen des Verkäufers beim Kreditkauf darauf, dass der Käufer die getroffenen Vereinbarungen einhalten werde, wird demnach durch die von Platon empfohlene Rechtsordnung nicht geschützt*."

In einem nur scheinbaren Widerspruch dazu steht die Regelung aus den *Nomoi*, dass man bei Verzug der Lohnzahlung an einen Handwerker diesem das Duplum entrichten müsse (Plat. leg. 921c):[48] Ὃς γὰρ ἄν προαμειψάμεπ νος ἔργον μισθοὺς μὴ ἀποδιδῷ ἐν χρόνοις τοῖς ὁμολογηθεῖσιν, διπλοῦν πραττέσθω. (*Wer nämlich eine fertige Arbeit entgegennimmt und dann den Lohn nicht innerhalb der vereinbarten Zeit entrichtet, von dem soll der doppelte Lohn gefordert werden*).

Bereits Mühl hat daraus auf die Fiktion eines Barkaufes schließen wollen:[49] „*Es handelt sich hier wohl um eine Art Rückstandsdarlehen, bei dem der ausständige Preis zum Gegenstand eines selbständigen Darlehensvertrages zwischen Käufer und Verkäufer gemacht wird*."

Anders vermutet Schöpsdau eine unterschiedliche Regelung von „Gewerberecht" und „Handelsrecht":[50] „*Das Verbot von Kreditgeschäften gilt also nur für das Handelsrecht, nicht für das Gewerberecht, da zwischen Käufer und Handwerker eine persönliche Beziehung besteht*." Der Handwerker, dessen Entlohnung nicht umgehend erfolgt, ist aber kein Verkäufer, sondern ein „Werkunternehmer": Platon spricht in leg. 921d von ἔργον und μίσθος.[51] Dennoch mutet die Erklärung Schöpsdaus logisch an, die Ungleichbehandlung des Verkäufer in 915d und des 921d an dem Unterschied festzumachen, dass im letzten Fall eine persönliche Beziehung zwischen den Parteien bestanden habe.

Thür[52] jedoch hat nachgewiesen, dass das von Plato gewählte Beispiel für einen Werkvertrag weder eine Ausnahme vom Barkaufprinzip darstellt noch in einem Widerspruch dazu steht: Der hier beschriebene Werkvertrag ist kein Alltagsgeschäft, sondern wohl als spezieller Typ des Werkvertrages, als „Bauvertrag" zu interpretieren, den Platon bewusst als Beispiel für einen Werkvertrag mit Vorleistungspflicht des Werkunternehmers gewählt hat.[53]

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[48] Text und Übersetzung nach Platon, Die Gesetze, bearbeitet von KLAUS SCHÖPSDAU, Darmstadt 2001 ([2]1990), Plat. leg. 921c ad locum.

[49] MÜHL 1933, 71-72.

[50] SCHÖPSDAU 1990, 561 A. 27.

[51] Es ist somit auch nicht mit KNOCH 1960, 98 von einem „Kreditwerklieferungsvertrag" auszugehen; vgl. dazu THÜR 1984, 489 A. 54.

[52] THÜR 1984, 489-492.

[53] THÜR 1984, 489-491.

3.2. Aristoteles

Ein ähnliches Konzept wie bei Platon führt Aristoteles in der Nikomachischen Ethik aus (Aristot. NE 9,1 1164b12-15):[54]

> Καὶ γὰρ ἐν τοῖς ὠνίοις οὕτω φαίνεται γινόμενον, ἐνιαχοῦ τ' εἰσὶ νόμοι τῶν ἑκουσίων συμβολαίων δίκας μὴ εἶναι, ὡς δέον, ᾧ ἐπίστευσε, διαλυθῆναι πρὸς τοῦτον καθάπερ ἐκοινώνησεν.
>
> Denn auch in den Geschäften scheint es so zu sein; gelegentlich gibt es sogar Gesetze, dass über freiwillige Beziehungen keine Prozesse geführt werden dürfen, weil es notwendig ist, mit dem, dem man vertraut hat, die Beziehung zu beenden, wie man sie eingegangen ist.

Der Stageirite erörtert, dass es in manchen Rechtsgemeinschaften zwar gesetzliche Regelungen (νόμοι) über Verträge gebe, jedoch keine Möglichkeit, eine freiwillig geschlossene Vereinbarung (ἑκούσιον συμβόλαιον),[55] die allein auf das Vertrauen (πίστις)[56] gegründet ist, prozessual durchzusetzen (δίκας μὴ εἶναι). Wenn Aristoteles hervorhebt, dass es diese Gesetze nur gelegentlich (ἐνιαχοῦ) gäbe, dann stellt er dies als Ausnahme von der Regel dar. Dies muss jedoch nicht so verstanden werden, dass es andernorts Gesetze gegenteiligen Inhalts gegeben habe.[57] Vielmehr könnte mithilfe des ἐνιαχοῦ zum Ausdruck gebracht werden, dass es sonst überhaupt keiner diesbezüglichen gesetzlichen Regelungen bedurft habe.

Die Ablehnung des Kreditkaufes gründet sich nicht nur darauf, dass die bereist erfolgte Erbringung einer Leistung nur schwer zu beweisen war. Wenn die Beziehung alleine auf dem Vertrauen in die zukünftige Erbringung der Leistung beruht, so mangelt es auch an einem den säumigen Vertragspartner bindenden Haftungsgrund.

Noch deutlicher wird das in einer früheren Passage derselben Schrift (Aristot. NE 8,15 1162b28-31):[58]

> δῆλον δ' ἐν ταύτῃ τὸ ὀφείλημα κοὐκ ἀμφίλογον, φιλικὸν δὲ τὴν ἀναβολὴν ἔχει. διόπερ ἐνίοις οὐκ εἰσὶ τούτων δίκαι, ἀλλ' οἴονται δεῖν στέργειν τοὺς κατὰ πίστιν συναλλάξαντας.

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[54] Übersetzung nach GIGON – NICKEL 2007, Aristot. NE 9,1 p.1164b12-15 ad locum.

[55] Zu der Klassifizierung der „freiwilligen Beziehungen" siehe Aristot. NE 5,5 p.1131a3-5; dazu vgl. statt aller MANTHE 1996, 4-7 und die dort zitierte Literatur.

[56] Allgemein zur Pistis im Kontext des Kreditrechts vgl. FARAGUNA 2012.

[57] So interpretiert es zuletzt FARAGUNA 2012, 370.

[58] Übersetzung nach GIGON – NICKEL 2007, Aristot. NE 8,15 p.1162b28-31 ad locum.

Da ist dann die Verpflichtung klar und unbestreitbar, und nur der Aufschub enthält ein Element der Freundschaft; darum gibt es bei einigen kein Rechtsverfahren in solchen Dingen, sondern man meint, dass jene sich als Freunde benehmen müssen, die etwas auf Treu und Glauben hin ausgemacht haben.

Velissaropoulos-Karakostas wollte darin Ansätze für das Vorliegen einer Vertrauenshaftung im griechischen Recht erschließen.[59] In bestimmten Ausnahmefällen, die Aristoteles nicht näher ausführt, begründe bereits das Verhalten einer Person deren Haftung aufgrund des in ihrem Gegenüber geweckten, gerechtfertigten Vertrauens.[60] Somit wäre bei bestimmten Vorleistungsgeschäften wie dem Kreditkauf der Käufer aufgrund des Vertrauens, der πίστιν des Vertragspartners, haftbar geworden.[61]

Doch Aristoteles sagt hier etwas anderes: Er schließt in Fällen, die auf bloßer Vereinbarung beruhen (κατὰ πίστιν συναλλάγματα), die Durchsetzbarkeit eines Anspruches mittels einer δίκη aus. Jakab[62] entnimmt dies bereits dem Kontext der Stelle. Wie Platon lehnt auch Aristoteles Kreditgeschäfte ab. Die Problematik einer auf πίστις gegründeten geschäftlichen Beziehung besteht darin, dass deren Erfüllung allein von dem persönlichen Verhältnis der Parteien zueinander abhänge. Ein Haftungsgrund, basierend auf dem Vertrauen (πίστις) der Parteien zueinander, ist deshalb aber nicht gegeben, weil es keine gesetzliche Regelung darüber gibt und die Erfüllung einzig davon abhängt, dass die Parteien sich aufeinander verlassen können und einander nicht übervorteilen werden. So unterscheidet Aristoteles für freiwillige Beziehungen, Interessengemeinschaften (αἱ κατὰ τὸ χρήσιμον φιλίαι) teils ethische, teils rechtserhebliche Elemente (Aristot. 8,15 p.1162b21-28):[63]

ἔοικε δέ, καθάπερ τὸ δίκαιόν ἐστι διττόν, τὸ μὲν ἄγραφον τὸ δὲ κατὰ νόμον, καὶ τῆς κατὰ τὸ χρήσιμον φιλίας ἡ μὲν ἠθικὴ ἡ δὲ νομικὴ εἶναι. γίνεται οὖν τὰ ἐγκλήματα μάλισθ' ὅταν μὴ κατὰ τὴν αὐτὴν συναλλάξωσι καὶ διαλύωνται. ἔστι δ' ἡ νομικὴ μὲν ἡ ἐπὶ ῥητοῖς, ἡ μὲν πάμπαν ἀγοραία ἐκ χειρὸς εἰς χρεῖα, ἡ δὲ ἐλευθεριωτέρα εἰς χρόνον, καθ' ὁμολογίαν δὲ τὶ ἀντὶ τινός.

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[59] VELISSAROPOULOS-KARAKOSTAS 1993, 187.

[60] Vgl. die Definition der Vertrauenshaftung bei VELISSAROPOULOS-KARAKOSTAS 1993, 185: „*Wenn das äußere Verhalten einer der Parteien ein gerechtfertigtes Vertrauen bei der anderen auslöst, begründet es die Haftung für das konkrete Verhalten*"; vgl. dazu auch Aristot. EE 7 p. 1243a8-11.

[61] VELISSAROPOULOS-KARAKOSTAS 1993, stellt die Frage nach der Vertrauenshaftung im griechischen Recht in einen breiteren Kontext und versucht diese anhand weiterer Belege (Dein. 3,4; IC IV 72 9, 24-25) nachzuweisen; vgl. dazu die Antwort von JAKAB 1994, die das Modell der Vertrauenshaftung zumindest für die gebrachten Belege mit guten Gründen ablehnt.

[62] JAKAB 1994, 193-194.

[63] Übersetzung nach GIGON – NICKEL 2007, Aristot. NE 8,15 1162b21-28 ad locum.

> Es scheint nun, wie es ein doppeltes Recht gibt, das ungeschriebene und das gesetzliche Recht, so auch bei der Freundschaft aus Nutzen die eine auf dem Charakter, die andere auf dem Gesetz zu beruhen. Die Vorwürfe entstehen dann am meisten, wenn sie sich nicht in demselben Sinne auseinandersetzen. Die gesetzliche Freundschaft beruht auf Abmachungen, die ganz ordinäre aus der Hand in die Hand, die etwas großzügigere auf Sicht und mit einem Vertrag über Leistung und Gegenleistung.

Aufgrund der Freundschaft wird der Aufschub einer Leistung gewährt.[64] Wie Platon gebraucht Aristoteles hier das Verb στέργειν, um dieses zusätzliche Element zum Ausdruck zu bringen: Jakab übersetzt das Verb mit „*zufrieden sein / sich zufrieden geben*".[65] Der *terminus technicus* für dieses „Vertrauen" ist das Verb πιστεύειν, das nach Pringsheim vor allem auf die Kreditierung des Preises zu beziehen sei.[66] Darin ist aber kein rechtserheblicher Haftungsgrund, sondern eine moralischen Verpflichtung zu ersehen.[67]

3.3. Charondas von Katane

Dass diese topisch anmutende Kreditfeindlichkeit[68] eines Platon[69] oder Aristoteles auch tatsächlich positivierten Normen entsprochen habe könnte,[70] legt der Bericht des Theophrast nahe, wonach der Nomothet Charondas von Katane aus dem 7/6. Jh. v. Chr.[71] ein gesetzliches Verbot des Kreditkaufs erlassen habe (Stob. 4,2,20 = Theophr. fr.650F / fr. 21,7 Sz-M):

> οὕτω γὰρ οἱ πολλοὶ νομοθετοῦσιν. ἢ ὥσπερ Χαρώνδας καὶ Πλάτων; οὗτοι γὰρ παραχρῆμα κελεύουσι διδόναι καὶ λαμβάνειν. ἐὰν δέ τις πιστεύσῃ, μὴ εἶναι δίκην. αὐτὸν γὰρ αἴτιον εἶναι τῆς ἀδικίας.

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64 Nach FARAGUNA 2012, 368-370 seien jedoch zwei Typen der νομικὴ φιλία als Rechtsbeziehungen zu unterscheiden: Während nach der einen ein Bargeschäft notwendig sei, lasse die zweite auch ein Kreditgeschäft zu.

65 Vgl. dazu JAKAB 1994, 195.

66 PRINGSHEIM 1950, 247.

67 So auch JAKAB 1994, 193-194.

68 Vgl. dazu auch JAKAB 2009, 77-78.

69 Vgl. neben den direkten Belegen in Plat. leg. 849e auch 915d-e und Theophr. Fr.650F = fr. 21 Sz-M (Stob. 4,2,20).

70 JAKAB 1997, 62 vermutet, dass hinter den platonischen *Nomoi* athenische Gesetze stehen könnten, die vom Philosophen „*überbetont und ideologisch überhöht*" worden seien. PFEIFER 2010, 150 nimmt auch für die Notiz bei Theophrast einen zeitgenössischen Bezug an.

71 Zu Charondas vgl. MÜHL 1929, und MÜHL 1933; HÖLKESKAMP 1997, und HÖLKESKAMP 1999, 130-144; LINK 1994; SCHEIBELREITER 2012, 33-34.

So regeln viele dies (i.e. den Kauf) gesetzlich. Und wie regeln ihn Charondas und Platon? Diese ordnen an, dass Zug um Zug geleistet werden müsse. Wenn aber jemand kreditiert, dann gebe es keine Klage(möglichkeit). Und dies sei ja auch ursächlich für das Unrecht.

Der Aristoteles-Schüler Theophrast vergleicht in seinen *Nomoi* die gesetzlichen Regelungen einzelner Poleis zu den unterschiedlichsten Materien miteinander.[72] Das längste erhaltene Fragment (Theophr. fr.650F / fr. 21 Sz-M), dem die eben zitierte Norm entstammt, widmet sich dem Kaufrecht. Nach Darstellung von Kaufvorschriften aus Mytilene, Athen, Kyzikos, Thurioi[73] und Ainos wird abschließend danach gefragt, wie Charondas und Platon, also ein „legendenhafter"[74] und ein fiktiver Gesetzgeber den Kauf regeln. Theophrast hält fest, dass beide den Kreditkauf abgelehnt hätten.

Hölkeskamp nimmt an, dass dieses Gesetz bei Charondas im Unterschied zu anderen des Nomotheten auch tatsächlich historisch sei[75] – allerdings fehlt diesbezüglich das Vergleichsmaterial. Die Aussage des Gesetzes von Charondas deckt sich mit den oben behandelten Belegen bei Platon und bei Aristoteles:[76] „… *wenn einer der Beteiligten, also Verkäufer oder Käufer, dem anderen traue und ihm Kredit oder sonst wie einen Aufschub gewähre, habe er im Streitfall kein Recht zur Klage, da er selbst das erlittene Unrecht zu verantworten habe*."

Die Ursachen für diese strikte Ablehnung des Kreditkaufes wurden einerseits darin gesucht, dass Charondas für die Kolonie Katane ein gefährliches Ausufern der Wirtschaft verhindern und damit eine Stärkung von Zusammengehörigkeitsgefühl der Kolonisten bezweckt habe.[77] Eine Stütze fände diese These einerseits darin, dass sich auch andere Gesetze, die Charondas zugeschrieben werden, durch archaische Strenge auszeichnen wie etwa das – für das griechische Recht – nur bei Charondas (und bei Zaleukos von Lokroi) legislativ umgesetzte Talionsprinzip.[78] Diese Erklärung könnte auch auf die

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[72] Zu den *Nomoi* Theophrasts vgl. SCHEIBELREITER 2008, 116-122 und die dort zitierte Literatur.

[73] Auch für Thourioi spricht Theophrast (Theophr. Fr. 650 F) von der Höchstfrist von einem Tag, innerhalb dessen der Kaufpreis zu entrichten sei: δεῖ γὰρ ὡρίσθαι, καθάπερ ἐν τοῖς Θουρίων τὸν μὲν ἀρραβῶνα παραχρῆμα τὴν δὲ τιμὴν αὐθημερόν, οἱ δὲ καὶ πλείους ἡμέρας τίθενται τῆς τιμῆς, οἱ δ'ἁπλῶς ὅσας ἂν ὁμολογήσωσι.– Es muss aber – wie bei den Thuriern – festgesetzt werden, dass die Arrha sofort, der Preis am gleichen Tag noch (bezahlt werden muss); andere setzen mehrere Tage für die Zahlung des Preises fest, wieder andere einfach für so viele Tage, wie sie vereinbaren.

[74] Die historische Figur des Charondas gilt als gesichert, vgl. HÖLKESKAMP 1999, 132.

[75] HÖLKESKAMP 1999, 136.

[76] HÖLKESKAMP 1999, 136.

[77] So SZEGEDY-MASZAK 1978, 202; LINK 1994, 174.

[78] Vgl. dazu SCHEIBELREITER 2012, 36-40.

Nomoi Platons, die ja als hypothetisches Gesetzbuch für eine Kolonie Athens konzipiert sind, herangezogen werden. Dennoch muss nicht einzig mit der politischen Ausnahmesituation argumentiert werden, in der sich eine Apoikie befand,[79] um die Kreditfeindlichkeit zu erklären.

Alternativ schlägt Hölkeskamp generell vor, die Ablehnung des Kreditkaufs als eine mehrerer konservativer Maßnahmen zu verstehen, die dem Typus archaischer Nomothesie entspreche. Dies ist ein Topos.[80]

Die Interpretation der Stelle sollte jedoch eher in Zusammenschau mit den Belegen bei Platon und Aristoteles erfolgen: Charondas und auch Platon ordnen den Barkauf an (κελεύουσι). Den Kreditkauf verbieten sie zwar nicht, sprechen aber seiner Durchsetzbarkeit den gesetzlichen Schutz ab (μὴ εἶναι δίκην). Dahinter ließe sich generell die Absicht vermuten, „*unkontrollierte Verbreitung allzu riskanter und damit konfliktträchtiger Transaktionen dieser Art zu verhindern*".[81] Die Texte Platons, des Platon-Schülers Aristoteles und dessen Schülers Theophrast stimmen hierin überein und könnten durchaus eine thematische Einheit bilden.[82]

4. Praktische Grundlage: Konstruktion des griechischen Kaufes

Die Abneigung der Philosophen gegen den Kreditkauf korreliert mit den Bedürfnissen der Rechtspraxis und dem Konzept des griechischen Vertrages: Ohne die Lehre von Hans Julius Wolff[83] hier vertiefen zu können, ist festzuhalten, dass mit einer bloßen Absprache oder Willenseinigung nach griechischrechtlichen Vorstellungen die Haftung einer Partei nicht begründet werden konnte.[84] Vielmehr bedurfte es dazu eines realen Elements. Bezüglich einseitig verbindlicher Rechtsgeschäfte wie des Darlehens oder der Verwahrung ist der Ausgangspunkt für die Haftung die von einer Seite getroffene Verfügung zu einem bestimmten Zweck: Der Darlehensnehmer und der Verwahrer müssen diesem Zweck, nämlich der Rückgabe der Darlehensvaluten oder des Verwahrgutes entsprechen, da sie widrigenfalls das Vermögen des

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79 So Link 1994, 174; weitere Literatur bei Scheibelreiter 2012, 40.

80 Hölkeskamp 1999, 136.

81 Hölkeskamp 1999, 136, der auch diesen Ansatz als zu spekulativ wertet; ebenso schon Szegedy-Maszak 1978, 72.

82 So auch der Kommentar Dirlmeier 1969, 533; Szegedy-Maszak 1978, 72; Jakab 1994, 195; Pfeifer 2013, 103.

83 Wolff 1957.

84 Vgl. dazu auch Kühnert 1965, 151.

Darlehensgebers/Hinterlegers schädigten (βλάβη) und ihm deliktisch haftbar werden, weil sie fremdes Geld haben vorenthalten (ἔχειν).[85] Neben dieser haftungsrechtlichen Sichtweise, die Hans Julius Wolff (Schlagwort: Zweckverfügung) ausformuliert hat[86] und die von Behrend,[87] Herrmann[88] oder Kränzlein[89] weiterentwickelt wurde, ist auch die sachenrechtliche Komponente des Kaufvertrags zu bedenken: So hat Seidl das „Prinzip der notwendigen Entgeltlichkeit" formuliert. Demnach werde „*… ein Recht nur dann richtig erworben, wenn eine Gegenleistung dafür gegeben wird*".[90] Dies führe etwa dazu, dass beim Darlehen der Rechtserwerb des Darlehensnehmers ausbleibe, er also kein Eigentum an den Valuten erlangt habe und selbst das Eigentum an dem mit Darlehensmitteln Erworbenen sicherungshalber an den Darlehensgeber falle (Surrogationsprinzip).[91]

Zur Erklärung des griechischen Kaufvertrags können beide Theorien[92] herangezogen werden: Gemäß der Zweckverfügung erfolgte keine Vermögensschädigung, wenn eine Seite leistet, das Gegenüber die Gegenleistung jedoch nicht erbringt. Die einzige Möglichkeit, den Vertragspartner unter Druck zu setzen, bestand im Arrhalkauf. Dieses Modell ist für den Lieferungskauf belegt:[93] Das Angeld des Käufers verfiel, wenn er den Kaufpreis nicht fristgerecht in voller Höhe erbringen konnte.[94] Die Durchsetzung einer Erfüllung seiner Leistung war jedoch nach diesem Modell nicht möglich.

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85 Vgl. dazu auch THÜR 2009, 1269.

86 WOLFF 1957, 36; vgl. dazu auch WOLFF 1965, 725-726; WOLFF 1983, 15; RUPPRECHT 1994, 147-148; weitere Literatur bei GRÖSCHLER 2009, 71 Anm. 68.

87 BEHREND 1970, spricht von der „bedingten Verfügung".

88 HERRMANN 1975, spricht von der „Verfügungsermächtigung unter Auflage".

89 KRÄNZLEIN 1975, spricht von der „Übernahme zu einem anerkannten Zweck".

90 SEIDL 1962, 114 zitiert nach KASER 1974, 147.

91 Vgl. für die Papyri dazu etwa auch RUPPRECHT 1994, 115.

92 Die beiden Theorien (Zweckverfügung und Surogationsprinzip) stehen – anders als ihre Hauptvertreter Wolff und Seidl es verfochten hatten – nicht in direktem Gegensatz zu einander, sondern wählen unterschiedliche Ausgangspunkte. Diesbezüglich ist auf die Versuche von KASER 1974, 160 Anm. 59 zu verweisen, die Thesen zu harmonisieren: „*Überhaupt sollte man im Pr.d. n. E. und in der Theorie der Zweckverfügung nicht Alternativen sehen, wonach, wer die eine gelten lässt, die andere verwerfen müsste. Die Strecke, auf der sich die beiden Theorien nicht zu vertragen scheinen, ist, wie sich eben gezeigt hat, sehr schmal; und selbst insoweit bleibt eine Versöhnung denkbar*."

93 JAKAB 2009, 178.

94 Wie JAKAB 2009, 89-93. 98-99 nachgewiesen hat, ist jedoch nicht – wie noch von Pringsheim angenommen – von einer zweiseitigen Wirkung der *arrha* auszugehen: Eine duplierte Rückzahlung des Angeldes im Verzugsfall des Verkäufers musste extra bedungen werden.

Der Eigentumserwerb des Käufers ist jedoch mit der vollständigen Bezahlung des Kaufpreises bedingt.[95] Gemäß dem Surrogationsprinzip gewährt dem Verkäufer, der den Kaufpreis nicht gleich erhält, nur der Eigentumsvorbehalt an der Ware Rechtsschutz:[96] „*Ownership was transferred only by the payment of the instalment. The vendor remained the owner, but he could not claim the price*." All dieser Probleme sind die Parteien nur dann enthoben, wenn sie den Kauf Zug um Zug erfüllen. Der griechische Kauf ist daher seiner Natur nach ein Bargeschäft.[97]

Um dennoch eine Möglichkeit zu finden, den Kaufpreis zu kreditieren, musste ein Umweg genommen und der Erhalt des Kaufpreises als Darlehen fingiert werden.[98] Der Schuldner erhält die Ware und unterwirft sich gegebenenfalls der Praxis des Verkäufers.[99] Dies hat seinen Grund auch im Prozess:[100] So konnte der Verkäufer dank der Kyria-Klausel mit der Darlehensurkunde auf „Rückzahlung" des Geldes klagen, was ihm mittels Kaufurkunde verwehrt geblieben wäre.[101] Wie Partsch – auch in Abgrenzung zum römischen Litteralvertrag – betont, hat die Darlehensurkunde dabei Beweisfunktion und wirkt nicht konstitutiv:[102] „*Die Anerkennungserklärung wirkt kraft Urkundenrechts auch da, wo kein realer Empfang stattgefunden hatte; die Haftung wurde gleichwohl aus Handgeschäft und nicht aus Urkundenerrichtung verstanden*." Somit schuf die Darlehensurkunde nur das „*Programm der Durchsetzung und Sicherung eines Anspruches*."[103]

Der Eigentumsvorbehalt des Verkäufers an den Waren habe nach Pringsheim jedoch solange bestanden, bis der Verkäufer den Kaufpreis (die Darlehesvaluten) tatsächlich erhalten hatte. Die fingierte Kaufpreisquittung allein ließ Pringsheim nicht als ausreichendes Momentum dafür genügen, um dem Käufer Eigentum zu verschaffen:[104] "*We have now added that even the promise*

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95 Theophrast, *Nomoi* 650 F / fr. 21,7 SZEGEDY-MASZAK; vgl. dazu weiters HERRMANN 1975, 329; THÜR 2009, 1274.

96 PRINGSHEIM 1950, 260.

97 Vgl. dazu oben (Einleitung); weiters HERRMANN 1982, 89; RUPPRECHT 1994, 115-116.119; JAKAB 2009, 77-78.

98 So auch JAKAB 2009, 77-78.

99 Vgl. KÜHNERT 1965, 151.

100 So auch PFEIFER 2010, 155.

101 RUPPRECHT 1967, 138.

102 PARTSCH 1924, 273; ebenso THÜR 2009, 1269.

103 THÜR 2009, 1278.

104 PRINGSHEIM 1950, 266; vgl. auch 262 in Bezug auf P.Oxy II 318 (= SB 10,10249).

of the price as a deed of loan did not replace the payment in cash, although in such a case the vendor could claim the price by action."

Dem ist die jüngere Forschung entgegen getreten:[105] Jördens sieht den Kreditkauf mit Empfang der Darlehensurkunde als erfüllt und damit das Eigentum als auf den Käufer übergegangen an.[106] Thür hält fest:[107] „*Der Käufer erhielt die Ware samt der ihn als Eigentümer legitimierenden Kaufurkunde, welche den Kauf, die Übergabe und auch die Preiszahlung bestätigte*."

Rupprecht differenziert: Zwar sei das Eigentum auch mit der fiktiven Darlehensquittung an den Käufer übergegangen. Da das Grundgeschäft in Urkunden über fiktive Darlehen zuweilen erwähnt wurde, blieb immer noch die theoretische Möglichkeit, den Käufer alternativ auch aus dem Kaufvertrag zu klagen. Nach dem bereits Ausgeführten ist es jedoch müßig hinzuzufügen, dass dies beim Kauf nicht sinnvoll gewesen wäre, da aus einem Kaufvertrag nicht auf Erfüllung und Erbringung der gestundeten Leistung geklagt werden konnte.[108]

5. Die papyrologische Evidenz

Damit ist das wesentliche Problem für die Nachweisbarkeit fiktiver Darlehen in Verbindung mit Kaufverträgen bereits angesprochen: Es ist nur schwer möglich, eine Darlehensurkunde als fiktives Darlehen zu qualifizieren, da der Kauf in der Urkunde meist nicht extra vermerkt wurde. Daher könnte auch das – scheinbar – große Ungleichverhältnis der Überlieferungslage zwischen Lieferungskäufen und Kreditkäufen[109] rühren. Allerdings hat Jördens angemerkt, dass sich dieses Missverhältnis Kreditkauf: Lieferungskauf von 1:10 auch in der nachdiokletianischen Epoche, als der Kreditkauf bereits ein eigenes Formular entwickelt hatte, nicht wesentlich anders darstellt.[110] Ungeachtet dessen ist davon auszugehen, dass sich hinter manchen Darlehensurkunden auch Kreditkäufe verbargen, die als solche heute nicht mehr identifizierbar sind.

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105 Rupprecht 1967, 129 A. 56 verweist auf einen parallel gelagerten Sachverhalt in delphischen Freilassungsurkunden: Auch hier löse die fingierte Zahlung des Kaufpreises bereits die Rechtsfolge der Freilassung des Sklaven aus.

106 Jördens 1998, 278.

107 Thür 2009, 1274.

108 Rupprecht 1967, 144; so werde zB. in SB VI 9420 auf den Kauf zwar verwiesen, was aber nur erklärend und nicht rechtserheblich interpretiert werden darf (146).

109 Rupprecht 1967, 127; Jördens 1998, 262; Thür 2009, 1275.

110 Jördens 1998, 278.

Pringsheim hat nach Indizien für Kreditkäufe gesucht und diese vor allem in dem In-Beziehung-Setzen eines Darlehensbetrages zu einem Kaufpreis (τιμή) erkannt. Dies erfolgt zumeist mittels der Formulierung τοῦτο δ' ἐστίν – „dies ist":[111] „*In der einfachen, der in den Darlehensurkunden ptolemäischer Zeit üblichen Form bringt sie eine Gleichsetzung zweier Beträge zum Ausdruck: des in der Darlehensurkunde als Darlehensgegenstand genannten Betrags mit einer anderen Summe*." Das darf jedoch nicht zu dem Umkehrschluss verleiten, dass dort, wo dieser Vermerk fehlt, kein fiktives Darlehen vorgelegen sein konnte.[112]

Die τοῦτο δ' ἐστίν-Klausel räumt dem Verkäufer die Möglichkeit ein, bezüglich einer Kaufpreisschuld unter Vorlage der συγγραφὴ δανείου mittels der Klage aus dem Darlehen vorzugehen.[113] Andererseits dient diese Klausel – nach Rupprecht – dem Käufer als Schutz davor, vom Verkäufer missbräuchlich aus beiden Urkunden belangt zu werden und doppelt leisten zu müssen.[114]

In der Folge soll ein Überblick über die Dokumentation von Kreditkäufen gegeben werden. Bezüglich älterer, nicht-papyrologische Zeugnisse kann hier auf die Ergebnisse von Pringsheim verwiesen werden:[115] Dieser hat etwa herausgearbeitet, dass in der Rede des Lykurg gegen Leokrates[116] der Kaufpreis von 35 Minen, den Timochares von Amyntas schuldet, dem Käufer vom Verkäufer teilweise kreditiert worden ist (Lyk. in Leocr. 23):[117]

> διοικήσας δὲ ταῦτα πάντα ὁ Ἀμύντας, αὐτὸς πάλιν ἀποδίδοται τἀνδράποδα πέντε καὶ τριάκοντα μνῶν Τιμοχάρει Ἀχαρνεῖ τῷ τὴν νεωτέραν ἔχοντι τούτου ἀδελφήν. ἀργύριον δὲ οὐκ ἔχων δοῦναι ὁ Τιμοχάρης, συνθήκας ποιησάμενος καὶ θέμενος παρὰ Λυσικλεῖ, μίαν μνᾶν τόκον ἔφερον τῷ Ἀμύντᾳ.

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111 RUPPRECHT 1967, 119.

112 RUPPRECHT 1967, 119.

113 RUPPRECHT 1967, 145: „*Wir können also wohl festhalten, dass die τοῦτο δὲ ἐστίν-Klausel, ohne weitere Bestimmungen, in den Darlehensurkunden auf der dem Gläubiger eingeräumten Möglichkeit beruhte, trotz Errichtung einer zweiten Urkunde aufgrund der ersten Urkunde gegen den Schuldner vorzugehen*."

114 RUPPRECHT 1967, 145. Diese Funktion der Klausel hat THÜR 2009, zuletzt angezweifelt und einen zusätzlichen Vergleich der Parteien darüber für notwendig erachtet. THÜR 2009, 1276-1278 bezieht sich dazu auf UPZ II 190 und CPJ 24.

115 PRINGSHEIM 1950, 246-250.

116 PRINGSHEIM 1950, 246.

117 Übersetzung nach J. ENGELS, Lykurg, Rede gegen Leokrates, Darmstadt 2008, Lyk., in Leocr. 23 ad locum.

Amyntas erledigte alle diese geschäftlichen Aufträge und verkaufte die Sklaven für 35 Minen an Timochares aus Acharnai, der mit der jüngeren Schwester des Leokrates verheiratet war. Weil Timochares aber gerade kein Geld flüssig hatte, um es ihm zu geben, ließ er einen Vertrag aufsetzen, deponierte ihn bei Lysikles und zahlte eine Mine Zinsen.

Weiters verweist Pringsheim auf das alexandrinische Kaufrecht[118] (P.Hal. I 256-259) und das Schuldentilgungsgesetz von Ephesos (Syll.^{3} 742).[119] Hierin wird generell angeordnet, dass Gläubiger ihren Schuldnern Kreditrückzahlungen erlassen sollen. In der Liste unterschiedlicher Darlehens-Typen finden sich auch jene, die κατὰ ὠνάς aufgenommen worden waren (Z 51). Pringsheim bezieht die Formulierung δεδανείκοτες κατὰ ὠνάς auf fingierte Darlehen.[120] Anders denkt Walser diesbezüglich eher an ein dingliches Sicherungsgeschäft wie die πρᾶσις ἐπὶ λύσει.[121]

Das berühmteste Beispiel für inschriftliche Belege von fiktiven Darlehen stellt die schon von Mitteis bearbeitete Nikareta-Inschrift[122] aus Orchomenos, datiert in das Jahr 223 v. Chr., dar.[123]

Was nun die papyrologische Evidenz betrifft, so ist dazu folgendes vorauszuschicken: Während Pringsheim eine möglichst große Zahl von Papyri als fingierte Darlehen in Verbindung mit Kaufverträgen identifizieren wollte,[124] ist Rupprecht diesbezüglich eher vorsichtig und wertet nur Cair. Zen. 59001, BGU I 189, P.Rein. I 7 und P.Paris 8 als Kreditkäufe. In der Folge soll ein Mittelweg eingeschlagen werden: Neben den wenigen als gesichert geltenden Belegen (5.1.) sollen die zusätzlich von Pringsheim als fiktive Kaufpreisdarlehen qualifizierten Texte angeführt werden (5.2); ein weiterer möglicher Beleg rundet die Darstellung ab (5.3).

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118 Pringsheim 1950, 246; Pfeifer 2010, 150.

119 Pringsheim 1950, 247-249.

120 Pringsheim 1950, 250, insbes. A. 1.

121 Walser 2008, 118.

122 IG VII 3172, vgl. dazu Mitteis 1891, 469-475.

123 Pringsheim 1950, 247; Thür 2009, 1269-1274; Thür 2010, 757-760.

124 P.Cair. Zen. 59001 (= Sel. Pap. 66 = PSI 321) (273 v. Chr.); P.Cair. Zen. 59149 (256 v. Chr.); P.Cair. Zen 59269 (252-1 v. Chr.); P.Col. IV 72 (277-50 v. Chr.); P. Mich. Zen 68 (256 v. Chr.); P.Rein. I 7 (=MChr.16) (141 v. Chr.); P.Par. 8; BGU I 189 (= M.Chr. 226); P.Oxy X 1281 (= CPJ II 414) (21. n. Chr.); P.Hamb 32 (120 n. Chr.); BGU II 465 (137 n. Chr.); P.Oxy. II 306 (=P.Cair. Preis. 43) und P.Oxy II 318 (=SB X 10249).

5.1. Gesicherte Belege

5.1.1. P.Cair. Zen. II 59001 (= Sel. Pap. 66 = PSI 321) (273 v. Chr.)

In der objektiv stilisierte Darlehensurkunde wird festgehalten, dass Dionysios dem Isidoros 34 Drachmen darleiht (Z 4-9 bzw. 29-33):

(...) ἐδάνεισεν Διονύσιος Ἀπο-
λλωνίου Γαζαῖος τῶν περὶ Δείνωνα Ἰσιδώ-
ρωι Θράικι τεσσερακονταρούρωι τῶν Λυκό-
φρονος ἀργυρίου δραχμὰς τριακοντατέσ-
σαρας, τοῦτο δ' ἐστὶν ἡ τιμὴ τοῦ βασιλικοῦ
σίτου, τόκου ὡς δύο δραχμῶν τῆι μνᾶι ἑκάστηι τὸν τομ μῆνα ἕκαστον.

Es hat Dionysios, Sohn des Apollonios, aus Gaza, einer von denen um Deinon, als Darlehen gegeben, dem Thraker Isidoros, einem derer von Lykophron, dem Inhaber eines Kleros von 40 Aruren, 34 Drachmen, das ist der Preis des königlichen Getreides, bei einem Zinssatz von 2 Drachmen für jedes Monat.

Mittels dem Vermerk τοῦτο δ'ἐστὶν wird eine Wertäquivalenz ausgedrückt: Der Betrag der Darlehensvaluten entspricht dem Preis für den βασιλικὸς σίτος, den königlichen Weizen, welchen Dionysios an Isidoros verkauft.[125] Die Urkunde enthält ansonsten keine auffälligen Abweichungen von einem ptolemäischen Darlehensformular, so auch die Strafklausel mit 1 ἐμιὼλιον (Z 13) und die Praxisklausel (Z 13-14).

Damit liegt der älteste greifbare – und nach Rupprecht einzige[126] – ptolemäische Beleg für ein fiktives Darlehen vor. Kühnert zieht jedoch auch dies in Zweifel, indem er generell eine alternative Deutungsmöglichkeit für die τοῦτο δ'ἐστὶν - Klausel vorschlägt:[127] „*Es ist aber auch möglich, dass die Klausel τοῦτο δ'ἐστὶν ἡ τιμὴ τοῦ βασιλικοῦ σίτου den Zweck des Darlehens, vom Schuldner aus gesehen, nennt*." Damit wäre in der Urkunde angegeben, wozu das Darlehen aufgenommen wird – nämlich zum Kauf von Weizen bei einem Dritten. Die Annahme, dass in der Urkunde auf den Verwendungszweck des Geldes Bezug genommen werde, ist aber nicht sonderlich überzeugend: Da in dem Darlehensvertrag eine Wertangabe ohne weiteren Zusatz gemacht wird, liegt es näher, dass auch das Kaufgeschäft die am Darlehen beteiligten

[125] Zu der Diskussion über den historischen Hintergrund ist viel diskutiert worden. PRINGSHEIM 1950, 250-253 nimmt an, dass der βασιλικὸς … σίτος in Isidoros von Dionysios, einem Mitarbeiter des Zenon, der königliches Land bewirtschaftete, verkauft worden sei. Dieser Interpretation stimmen SEIDL 1962, 122 und RUPPRECHT 1967, 127 zu.

[126] Vgl. auch RUPPRECHT 1967, 127.

[127] KÜHNERT 1965, 21 A. 2.

Parteien betraf. Kühnerts Deutung gründet in seiner Ablehnung des fiktiven Darlehens und ist programmatisch: So unternimmt er auch an anderer Stelle[128] den Versuch, ein zweipersonale Verhältnis zu dekonstruieren und damit den Kreditkauf insgesamt zu hinterfragen.

5.1.2. BGU I 189 (= M.Chr. 226) (17.Aug. 7 n. Chr.)

Das Vorliegen eines Kreditkaufes kann jedenfalls dort nicht verleugnet werden, wo Kauf und Darlehen beide ausdrücklich in einer Urkunde erwähnt werden: So enthält der Papyrus BGU I 189, eine Darlehensurkunde vom 17. August 7. n. Chr. aus dem Arsinoites über 72 Drachmen, am *Verso* den Vermerk: [Δάνειο]ν ἀργυρίου (δραχμῶν) ξβ καὶ πρᾶσις ὄνου παρὰ Μαρῆ[ο]ς Μεσουῆρις. In der Urkunde selbst nur die Rede von dem Darlehen: Der anfangs subjektiv stilisierte Text wechselt bei der Unterschrift des (für den schreibunkundigen Darlehensnehmer) unterzeichnenden Panephrymis in eine objektive Stilisierung. Kühnert hält fest, dass es den Parteien auf die Übergabe des Esels gar nicht mehr ankomme, sondern einzig darauf, die Vorteile zu nutzen, die das Darlehensformular hinsichtlich Praxis- und Strafklausel bietet.[129] Hier ergibt sich der Kreditkauf des Esels nur aus dem Kontext.[130] Schon Mitteis hat die Frage, warum hier der Darlehensnehmer gleichzeitig einen Esel kaufen sollte, wie folgt beantwortet:[131] „*Ich vermute, dass das δάνειον nichts weiter ist als der nicht bezahlte Kaufpreis, der in dieser Form verschrieben wird*."

5.1.3. P.München III 1,52 (= P.Phrour. Diosk. 8) (2. Jh. v. Chr.)

Διοσκουρίδει ἡ[γ]εμόνι καὶ
φρουράρχωι παρὰ Πετεχῶντος
ἐνπόρου τῶν ἀπὸ τοῦ ὅρμου.
ἀδικοῦμαι ὑπὸ Στοτοήτιος
οἰνοκαπήλου τῶν ἐξ Ἡρα-
κλέους πόλεως. ὀφείλων
γάρ μοι πρὸς τιμὴν οὗ ἠγο-
ράκη παρ' ἐμοῦ οἴν[ο]υ
χαλκοῦ (τάλαντα) μ Δυο, ὧν καὶ

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128 P.Hamb. I 32; siehe dazu unten unter 5.1.7.

129 Kühnert 1965, 26-27; allerdings sind eben diese Klauseln nicht erhalten.

130 Pringsheim 1950, 257; Kühnert 1965, 26-27; Rupprecht 1967, 119.127; Pfeifer 2010, 152; Pfeifer 2013, 107.

131 Mitteis – Wilcken 1912, 247.

10 χ.. χειρόγραφον αὐτοῦ ἔχω,
ταύτας ἀπα[ι]τούμενος
πλεονάκις ο[ὐ]χ ὑπομένει
ἀποδιδόναι, ἀλλὰ διαπλανᾷ με.
διὸ ἀξιῶ, ἐὰν φαίνηται,
συντάξαι [ἀ]σφαλίσασθαι
αὐτὸν μέχρι τοῦ τὴν ἀπο-
δοσίν [μ]οι αὐτὸν ποιήσασθαι.

An den Kommandanten und Phrourarchen Dioskurides von dem Kaufmann Petechon, ansässig im Hafen. Ich erleide Unrecht von dem Weinverkäufer Stotoetis aus Herakleopolis; er schuldet mir nämlich für die Bezahlung von Wein, den er von mir gekauft hatte, 40 Talente und 4470 Drachmen in Kupfer, worüber ich auch einen Schuldschein von ihm besitze, und obwohl ich diese mehrfach eingefordert habe, lässt er sich nicht dazu herbei, sie zu bezahlen, sondern nasführt mich. Daher bitte ich, falls es dir recht scheint, zu befehlen, ihn in Gewahrsam zu nehmen, bis er mir bezahlt …[132]

Die vom Herausgeber mit „An Dioskorides wegen Schulden" betitelte Eingabe an den Phrourarchen Dioskurides lässt folgenden Sachverhalt[133] erkennen: Der Kaufmann Petechon bittet um Hilfe, da ihm der der Weinhändler Stotoetis aus Herakleopolis seine Schulden aus dem Weinkauf (40 Talente und 4470 Kupferdrachmen) trotz wiederholter Aufforderung nicht gezahlt hat. Petechon betont, dass er das Bestehen der Schuld durch ein χειρόγραφον beweisen könne (Z 9-10): (...) ὧν καὶ | χ.. χειρόγραφον αὐτοῦ ἔχω.[134] Jördens hat auch diesen Text zu den Kreditkäufen gezählt.[135] Dies setzt allerdings voraus, dass das χειρόγραφον der Darlehensurkunde entspricht.

5.1.4. P.Rein. I 7 (= P.Dion 9 = M.Chr.16) (141 v. Chr.)

Auch der Text von P.Rein I 7, einer Petition (ἐντεύξις) an das Königshaus, enthält einen Hinweis auf die Kreditierung der Kaufpreiszahlung:[136] Kephalos hat von Lysikrates Wein gekauft und den Kaufpreis von 24 Talenten gestundet erhalten.[137]

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132 Übersetzung D. HAGEDORN, P.Münch. III 1,52 ad locum.

133 Vgl. dazu die gute Zusammenfassung von KRAMER 2004, 243.

134 D.HAGEDORN in P. Münch III 1,52,10 ad locum gibt an, dass die ersten Buchstaben der Zeile 10 mit χαρ, χαι, χαλ, χου oder χον ergänzt werden könnten, was aber aufgrund des durchwegs sinnvollen erhaltenen Textes nicht notwendig ist.

135 JÖRDENS 1998, 263 A. 2.

136 Der Herausgeber verweist P. Münch. III 1,52,10 ad locum auch auf P.Ryl. IV 585,45, wo bezüglich einer Darlehensschuld von δραχμὰς δυο εἰς τοὺς τ[όκους] τῶν ὀφειλ[ομένων] κατὰ τὸ χειρόγρα[φον] zu lesen ist.

137 PRINGSHEIM 1950, 256.

Dazu verweist er auf ein χειρόγραφον (Z 7-13).[138]

τοῦ γὰρ κη (ἔτους) ὠνησαμένου μου παρὰ τοῦ ἐγ[καλο]υμένου οἴνου χο(υς)
τ, τῆς δὲ τού-
των συναγομένων τιμῆς χα(λκοῦ) (ταλάντων) κδ προεμένου μου αὐτῶι
χειρό[γρ]αφον, ὃ διασαφ[ε]ῖ
τὴν καταβολὴν αὐτῶι π[οι]ήσασθαι ἐπὶ τὴν ἐπὶ τῶν τόπων Σωτ[ί]ωνος
τράπεζαν
ἐν τῶι σημανθέντι χρόνωι, διὸ καὶ ἐν τῶι Πα[χ]ὼν μηνὶ τοῦ αὐτοῦ ἔτους
διαγράψαντός
[μο]υ ἐπὶ τὴν προειρημένην τοῦ Σωτίωνος τράπεζαν ἀπὸ τοῦ
προδιεσταμένου
[κεφαλαίου χα(λκοῦ)] (τάλαντα) ιγ ἀκολούθως καὶ ο<ἷ>ς ος συνηλάκχειν,
παρ' οὗ καὶ λαβόντος μου
[ἀποχῆς σύ]μβολον

Im 28. Jahr habe ich gekauft von dem Kläger 300 chous Wein um einen Preis von insgesamt 24 Kupfertalenten und ich habe als Leistung diesem ein Chirographum überlassen, das genau anzeigt, dass ich ihm die Zahlung erbringen werde bei der örtlichen Bank des Sotion zu der angegebenen Zeit; deshalb habe ich im Monat Pachon desselben Jahres angewiesen bei der vorher genannten Bank des Sotion, anzurechnen auf die getrennten Gesamtsumme, eine Anzahlung von 13 Kupfertalenten, vereinbarungsgemäß, wofür ich auch die Urkunde einer Quittung übernahm.

Die Kreditierung des Kaufpreises folgt aus dem Relativsatz, der das χειρόγραφον näher erläutert und angibt, dass die Transaktion über das Bankhaus des Sotion durchzuführen war: χειρόγραφον, ὃ διασαφεῖ τὴν καταβολὴν αὐτῶι ποιήσασθαι. Da die Buchung im Zeitpunkt der Erstellung der Urkunde erst erfolgen soll, ist mit dem Herausgeber ein Fehler anzunehmen, da der Schreiber den Infinitiv Aorist ποιήσασθαι anstelle des Infinitiv Futur ποιήσεσθαι gesetzt hat.[139]

Das Verb προιέναι bezeichnet hier die Leistung, die anstelle der oder als die Zahlung erfolgt.[140] Kephalos überlässt dem Lysikrates die Urkunde über den gesamten Preis, die angibt, dass ein Teil der Summe über Sotion geleistet werden soll.[141]

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[138] Dieses ist wie in P.Paris 8 (dazu sogleich unter 5.1.5) in demotischer Sprache verfasst, vgl. dazu RUPPRECHT 1967, 129.

[139] Vgl. auch Papyrus Th. Reinach, Papyrs Grecs et Demotques. Recueilles e Egypte et publies par Theodore Reinach, Paris 1905, 57 (P.Rein I 7,9 ad locum).

[140] Vgl. LSJ s.v. προίημι unter Verweis auf P.Hib. I 76,2, wo damit die Leistung des Pachtzinses ausgedrückt wird.

[141] Auch Platon leg. 849e bezeichnet den, der eine der Leistungen beim Barkauf kreditiert, als ὁ δὲ προέμενος ὡς πιστεύων; vgl. dazu oben unter 3.1. Dort freilich bezieht sich das Verb auf den Kreditgeber und nicht auf den Kreditnehmer wie in P.Rein I 7 Z 8.

Wie der Petent angibt, erfolgte die erste Teilzahlung von 13 Talenten schließlich auch wie vereinbart über die Bank des Sotion (Z 10-13), eine zweite Teilzahlung (11 Talente) habe Kephalos in bar entrichtet (Z 13-15). Lysikrates behauptete jedoch, dass diese nicht erfolgt sei, und droht dem Kephalos mit Exekution.[142] Vor dem Strategen habe Lysikrates deshalb die Stellung von Bürgen verlangt, welche die Zahlung der 11 Talente innerhalb der nächsten drei Jahre besichern sollten.[143] Pringsheim hat aus der Tatsache, dass von dem Weinkauf in der Folge überhaupt keine Rede mehr ist, geschlossen, dass das χειρόγραφον mit einer συγγραφὴ δανείου[144] gleichzusetzen sei.[145] Dies lasse auf ein fingiertes Darlehen schließen.[146]

5.1.5. P.Par.8 (= SB VI 9420) (129 v. Chr.[147])

Gegenstand der Beschwerdeschrift einer Getreidehändlerin, vielleicht an den Agoranomen,[148] ist das Ausbleiben einer Zahlung für die Getreidelieferung an das Heer, wobei der Kaufpreis gestundet worden war. Ausdrücklich wird dabei auf die Ausstellung einer Darlehensurkunde in ägyptischer Sprache verwiesen (Z 4-12):

(...), συγγραψαμένων μοι αὐτῶν
κατὰ συγγραφὴν Αἰ[γυπτί]αν δανείου
[χαλ]κοῦ τάλ(αντα)ς (δραχμὰς) Δ τιμὴν πυροῦ ϱ
ὧν ἤμεν δι' αὐτῶν [π]αραμε[μετ]ρηκ[υῖα]
τοῖς ἐν τῷ σημείῳ αὐ[τ]ῶν στρατιώ[ταις],
ἐφ' ᾧ διαγράφουσί μοι αὐτὰ ἐν τῷ
Φαρμοῦθι μηνὶ τοῦ αὐτοῦ (ἔτους) ἢ ὅτι ἐ[ν]
[τ]ῷ Παχῶνι μηνὶ τὰ αὐτὰ ταῦτα τε καὶ τὸ
ἡμ[ιό]λιον. (...)

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142 Kephalos spricht einleitend davon, dass er mit Sklaverei bedroht sei – dazu vgl. JÖRS 1919, 21-22 A. 1.

143 Zum Sachverhalt vgl. JÖRS 1913, 145-146.

144 Zur objektiv stilisierten συγγραφὴ δανείου als dem in ptolemäischer Zeit vorherrschenden Urkundentyp vgl. zuletzt PLATSCHEK 2013a, 246-247.

145 So spricht auch RABEL 1907, 326 von einem „*Schuldschein, den ein angeblicher Gläubiger von den Verwandten des Schuldners erpresste*".

146 PRINGSHEIM 1950, 256: "*Probably Kephalos aknowledged his debt in a new deed, when the sureties were given. This deed at least, if not the note, was a συγγραφὴ δανείου.*"

147 So datiert von den Herausgebern von P.Paris 8; anders PRINGSHEIM 1950, 256, der 138 v. Chr. angenommen hatte.

148 Vgl. dazu die Herausgeber P.Paris 8, S. 174: "*Ce papyrus, dont le commencement a disparu, était probablement adressé à l'agoranome qui surveillait les transactions commerciales.*"

(…) und sie stellten mir eine syngraphe aus in ägyptischer Sprache über ein Darlehen von 6 Kupfertalenten und 4000 Drachmen, den Preis von 100 (Artaben?) Weizen, wovon ich zugemessen habe den Soldaten in ihrer Einheit, unter der Bedingung, dass sie es mir anweisen im Pharmouthi desselben Jahres oder, wenn erst im Monat Pachon, dass sie diese Summe zahlen und noch ein Hemiolion.

Andere Kornlieferanten seien in bar ausbezahlt worden (Z 12-14). Die Beschwerdeführerin aber hat den Zahlungstermin um ein weiteres Jahr hinausgeschoben und auch jetzt von ihren Käufern noch immer kein Geld gesehen (Z 14-16):

(...) καίπερ ἄλλων τῶν ὁμοίων μ[οι]
παραχρῆμα εἰληφότων τὴν τιμὴν
τοῦ αὐτῶν πυροῦ, συμπεριενενηγμέν[ης]
δέ μ[ου] τοῖς ἐνκαλουμένοις ἄλλον ἐνιαυτὸ[ν]
ἕνα, νυνὶ πλεονάκις [ἀπ]αιτούμενοι
οὐκ ἀ[π]οδίδωσι.

(…) und obwohl andere, mir vergleichbare sofort den Kaufpreis für ihren Weizen erhielten, und ich den nun Beklagten ein weiteres Jahr (zur Zahlung) gewährte, zahlen sie nicht, obwohl ich es nun schon mehrfach verlangt habe.

Der Text führt eindringlich die Probleme vor Augen die sich dann ergeben, wenn ein Kauf nicht als Bargeschäft abgewickelt wird wie mit anderen Getreidelieferanten. Somit beruft sich die Antragsstellerin auf die συγγραφὴ δανείου, aus der sie auch klagen kann.[149]

5.1.6. P.Oxy. X 1281 (= CPJ II 414) (31. Dez. 21 n. Chr.)

Der Text ist die subjektiv stilisierte Kopie (ἀντίγραφον) der Darlehensurs kunde (Z 4-15), von der selbst am Papyrus nur noch die Praxisklausel erhalten ist (Z 1-3). In der für die vertragliche Einigung relevanten Passage der Kopie bestätigt der Leinenweber Harpaesis den Empfang eines Darlehens von Joseph in der Höhe von 300 Silberdrachmen.[150] Dies entspricht dem Wert von 100 Leinengewändern (Z 5-7): ἀντίγρα(φον). Ἁρπαῆσις Πανρύμιος λίνυφος | δεδάνισμαι τὴν τειμὴν τῶν ἑκατὸν | λίνων Σινυραιτικῶν σαμκαμυκῶ[ν], | τὰς τοῦ ἀργ(υρίου) (δραχμὰς) τ κεφαλαίου (...). – *Kopie: Ich, Harpesis,*

149 PRINGSHEIM 1950, 256; KÜHNERT 1965, 24.

150 Die Zahlung dieser 300 Drachmen wiederum soll unter der Bedingung erfolgen, dass vom Gläubiger eine Rechnung gelegt wird, wovon weitere 50 Drachmen abhängen, vgl. dazu die Ausführungen des Kommentars der Herausgeber (P.Oxy X 1281 Z 9-10 ad locum): Es ist unklar, wem die Rechnung gelegt werden soll und inwiefern die weiteren 50 Drachmen davon abhängen.

Sohn des Panrymis, Leinenweber, habe als Darlehen aufgenommen den Preis von 100 …[151] *Leinengewändern aus Sinaru, insgesamt 300 Silberdrachmen* (…).

Kühnert hat diesen Text dazu genutzt, um aufzuzeigen, wie schwierig es ist, bei der Interpretation griechischer Urkunden mit römischrechtlichen Kategorien von Kaufvertrag und Darlehen zu operieren.[152]

5.1.7. P.Hamb. I 32 (17. Jänner 120 n. Chr.)

In einem weiteren Text wird die Wertangabe für Waren herangezogen, um einen Darlehensbetrag näher zu spezifizieren. So spricht in P.Hamb. I 32 der Darlehensnehmer, ein Isis-Priester, davon, dass er von einer Erbengemeinschaft (vertreten durch deren φροντιστής Eudaimon) 18 Drachmen ἀπὸ τιμῆς πυροῦ erhalten habe.[153] Die im gegebenen Zusammenhang wesentliche Vertragsklausel lautet (Z 6-16): ὁμο[λ]ογῶ ἔχειν παρὰ σοῦ ἀπὸ τι|μῆς π[υ]ροῦ ἀργυρίου Σεβαστοῦ νομίσ|ματος δραχμὰς δεκαοκτώ ιη, | ἃς καὶ ἀποδώσω σοι ἄνευ πάσης | ὑπερθέσεως ἕως Παῦνι μηνὸς τοῦ | ἐνεστῶ(τος) τετάρτ[ο]υ (ἔτους) Ἀδριανοῦ Καίσαρος ... – *Ich bestätige von dir zu haben zum Preis von Weizen 18 Silberdrachmen, die ich dir ohne Umschweife zurückzahlen werde bis zum Monat Pauni des vierten Jahres der Regierung Kaiser Hadrians (…).*

Der Herausgeber des Hamburger Papyrus vermutet, dass hier eine Novation vorliege und ein Getreide- in ein Gelddarlehen umgewandelt werde:[154] „*Die 18 Silberdrachmen vertreten den adärierten Teil eines ursprünglichen Getreidedarlehens, das noch zu Lebzeiten des Apollonios erfolgt ist. Jetzt, Mitte Januar, verpflichtet sich der Darlehensnehmer nach dem Tod des Apollonios dem φροντιστής seiner Rechtsnachfolger gegenüber, einen Teil in Geld zurückzuzahlen*." Aufgrund der näheren Bestimmung der Silberdrachmen durch die Zusatzinformation, dass dies dem Preis für Weizen entspreche, ist jedoch auch hier eher von einem Getreidekauf des Isis-Priesters auszu-

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[151] Die Bedeutung des gut lesbaren Wortes σαμκαμυκῶν ist unbekannt. Die Herausgeber von P.Oxy. X 1281, B. P. Grenfell and A. S. Hunt, sprechen von „*linen cloth of special quality*".

[152] KÜHNERT 1965, 27: „*In der Einstellung des Schreibers ist also eine gedankliche Vermischung von Kauf und Kredit zu beobachten, die die scharfe römischrechtliche Trennung von Kauf und Darlehens als ungriechische entlarvt …*".

[153] Vgl. WILCKEN 1970, I 290 § 109; II 1535 (2. Jh. v. Chr.).

[154] P.Hamb. I 32, S 141; vgl. weiters WEBER 1932, 13 A.4, der andeutet: „*Hier scheint mir (…) auch die Auffassung möglich zu sein, dass es sich um einen Getreidekauf handelt, wobei der Kaufpreis kreditiert wurde*."

gehen, der den Kaufpreis kreditiert erhält.[155] Wieder hat Kühnert eine alternative Interpretation angeboten: So könnte seiner Meinung nach die Angabe ἀπὸ τιμῆς πυροῦ auch dazu dienen, um damit die Herkunft des Geldes näher zu bestimmen: Das Geld stamme aus einem Getreideverkauf, den der Darlehensgeber Eudaimon zuvor getätigt habe:[156] Der Vermerk ἀπὸ τιμῆς πυροῦ („*aus einem Kaufpreis für Weizen*“) lässt ein solches Verständnis des Textes zwar auch zu. Wie bei der Interpretation von P.Cair. Zen. 59001 erscheint es jedoch weder schlüssig noch notwendig, hier zu vermuten, dass in der Urkunde auf eine mit dem Darlehen nicht unmittelbar in Konnex stehende Transaktion Bezug genommen wird, zumal auch keine dritte Partei genannt wird, die dem Darlehensgeber das Getreide abgekauft haben könnte.

5.2. Weitere Belege nach Pringsheim

Noch weitere Texte hat Pringsheim in die Liste der fiktiven Kaufpreisdarlehen aufgenommen. Der Sachverhalt des lückenhaft tradierten P.Cair. Zen. II 59149 (27. August 256 v. Chr.) könnte folgenden Inhalt aufweisen: Ein gewisser Artemidoros beschwert sich bei Zenon, dass Agathinos den Preis für gekauften Wein nicht bezahlen möchte. Dies ließe sich allenfalls aus Z 3: τοῦ οἴνου ἀλλ’ οὐδὲ δραχμὴν μίαν erschließen. Der Gebrauch des Verbs πιστεύειν in der ersten Person (Z 6: εἰ καὶ πεπιστεύκαμεν) und somit bezogen auf den Beschwerdeführer könnte andeuten, dass der Preis kreditiert worden war.[157] Zenon soll Agathinos zur Zahlung (Z 4: [συ]ναναγκάσας αὐτὸν τό [τε] ἀργύριον ἡμῖν ἀποδοῦναι), aber auch dazu zwingen, im Serapeion unter Eid Rechnung legen bzw. gestehen solle, dass er den Kauf getätigt habe (Z 5: λόγον ὀμόσαντα ἐν τῶι Σαραπιείωι ὡς πέπραται). Dass sich Artemidoros hier an Zenon wendet, und ihn – so die Interpretation Pringsheims – darum bittet, Druck auf das Gegenüber auszuüben, könnte darauf beruhen, dass Artemidoros „nichts in der Hand hat“, also auf keine Darlehensurkunde verweisen kann. Somit sei die Durchsetzung der Kaufpreisforderung gerichtlich gar nicht möglich.[158]

In P.Cair. Zen. II 59269 (1. Juni 252 v. Chr.) vermutet Pringsheim hinter der Formulierung κατὰ συγγραφὴν (...) πράσων ὧν (Z 25-26), dass der

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155 PRINGSHEIM 1950, 257; KÜHNERT 1965, 151.

156 KÜHNERT 1965, 151 Anm. 3.

157 PRINGSHEIM 1950, 254.

158 PRINGSHEIM 1950, 254.

Preis für verkauftes Gemüse in Form eines fiktiven Darlehens gestundet worden ist.[159]

In P.Col. IV 72 (255-50 v. Chr.) werde die Klage auf Zahlung eines Kaufpreises nicht auf den Kaufvertrag gestützt, sondern auf einen zusätzlichen Vertrag (eine συγγραφὴ δανείου).[160] Schließlich rekonstruiert Pringsheim das Vorliegen eines Kreditkaufes auch für die Texte P.Mich. Zen. 68 (256 v. Chr.),[161] BGU II 465 (137 n. Chr.)[162] und die Kreditierung des Kaufpreises für ein Haus in P.Oxy. II 306 (= P.Cair. Preis. 43) sowie die Quittung für die erfolgte Zahlung des Kaufpreises in P.Oxy II 318 (= SB 10,10249), beide aus 58-59 n. Chr.[163]

5.3. Ein möglicher weiterer Beleg: P.Louvre I 18 und P.Louvre I 12 (141/140 n. Chr.)?

Ein weiterer Papyrus soll hier angeführt werden, um zu zeigen, wie schwierig es ist, ein Darlehen als fingierte Kaufpreiszahlung zu „enttarnen“:

P.Louvre I 18 enthält ein verzinsliches Darlehen von vier Personen über 524 Drachmen vom 10. September 141 v. Chr. Drei der Männer stammen aus der *Soknopaiou nesos*: Apynchis, Sohn des Panephremmis, Enkel des Apynchis; Satabous, Sohn des Stotoetis, Enkel des Pannomieus; Pekysis, Sohn des Panephremmis, Enkel des Horos. Der vierte Darlehensnehmer, Pemmenes, Sohn des Mythes, ist aus einem Dorf, dessen Name nicht lesbar ist. Für die Zahlung des Darlehens ist mit 17 Tagen eine äußerst kurze Frist vereinbart. Da der Vertrag durchgestrichen worden ist, ist anzunehmen, dass das Darle-

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159 PRINGSHEIM 1950, 254-255.

160 PRINGSHEIM 1950, 255.

161 Vgl. PRINGSHEIM 1950, 255. 400 Drachmen einer Kaufpreisschuld von 688 Drachmen werden in bar bezahlt, der Restbetrag wird gestundet, ihm mittels eines Briefes (ἐπιστολὴ ἐγδοχῆς) Einklagbarkeit verliehen: „*In this written guarantee the purchaser promises to pay the credited part of the price*.“

162 PRINGSHEIM 1950, 258 vermutet, dass hier, da ein Teil des Kaufpreises von 300 für Korn in bar bezahlt wurde (152), der Rest kreditiert wird.

163 PRINGSHEIM 1950, 260-261 vermutet, dass die beiden Texte zusammengehören: Beide nehmen Bezug auf den Kaufvertrag zwischen dem Antiphanes (der die Geschäfte für seinen minderjährigen Sohn führt) und dem Käufer Tryphon über ein Haus. Die Urkunde des Kaufvertrags ist nicht erhalten. Die Zahlung des Kaufpreises wird gestundet, der Schuldschein darüber ist P.Oxy II 318. Dabei komme zu dem üblichen Darlehensformular die vereinbarte Bedingung, dass mit der Zahlung die Eintragung vorgenommen werden müsse, was einem Eigentumstransfer gleichzusetzen sei (261 A.1). Tryphon leistet schließlich und erhält dafür eine Quittung (P.Oxy. II 306). Die Zeitgleichheit der Dokumente Kauf und Darlehen werde in P.Oxy II 318, 14-15 aufgrund der beiden Perfektformen ἀφ’ ὧν | πέπρακεν ὁ δεδανεικώς sogar angesprochen (262 A. 2).

hen fristgerecht zurückgezahlt wurde; dafür spricht auch, dass die Urkunde am Leistungsort (*Soknopaiou nesos*) gefunden worden ist.

Auffällig ist nun, dass auf dem *Verso* der Urkunde ein Kamelkauf vermerkt ist (P.Louvre I 12). Ein Zusammenhang zwischen den beiden Urkunden besteht immerhin aufgrund der Tatsache, dass der Kamelhändlers Panephremmis aus P.Louvre I 12 der Vater eines der Darlehensnehmer (Pekysis) aus P.Louvre I 18 ist.

Es wäre daher reizvoll, eine Parallele zu dem Eselkauf in BGU I 189 zu konstruieren, zumal der genaue Zweck des Darlehens nicht aus dem Text der Urkunde hervorgeht.[164] Dies scheitert aber aus mehreren Gründen: (1) Die Parteien des Darlehens und des Kamelkaufes sind nur teilweise identisch. (2) Zwischen den beiden Rechtsgeschäften besteht kein erkennbarer inhaltlicher Konnex: darüber hinaus divergieren die Summen - das Darlehen wird über den Betrag von 524 Drachmen abgeschlossen, während der Kamelpreis bei 600 Drachmen liegt.[165] (3) Der Kamelkauf fand vier Monate nach dem Darlehen statt: Eine Qualifizierung als fiktives Darlehen erforderte es aber, dass der Kaufvertrag vor Abschluss des Darlehens quittiert würde. Es könnte daher eher vermutet werden, dass der Papyrus in der Familie eines der Darlehensnehmer später einer weiteren Verwendung zugeführt wurde.

6. Epilog

Die hier gebrachte Liste von Urkunden erhebt keinen Anspruch auf Vollständigkeit. Die zuletzt angeführten Texte (P.Louvre I 18 und P.Louvre I 12) machen deutlich, wie schwierig es ist, ein fiktives Kaufpreis-Darlehen allein aufgrund des tradierten Wortlauts als solches zu erkennen. Dafür sind in anderen Urkunden immerhin Indizien gegeben:

(1) BGU I 189 stellt den seltenen Glücksfall dar, dass beide Funktionen der Urkunde, nämlich Dokumentation des Kaufvertrages und Beweismittel für das Erfolgen der Darlehensauszahlung direkt belegt sind.

(2) In einigen Darlehensurkunden wird der kreditierte Nominalbetrag mit einer Wertangabe versehen, die sich auf bestimmte Güter bezieht: τιμὴ πυροῦ (P.Paris 8; P.Hamb. I 32) oder τιμὴ τῶν ἑκατὸν λίνων (P.Oxy.

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[164] Vgl. dazu auch Kramer 1999, 248.

[165] Zu diesen Beträgen vgl. Bagnall 1985, 5 A. 11, wo als durchschnittlichen Preis für eine Kamelstute im 2. Jh. n. Chr. 634 Drachmen angesetzt werden.

X 1281). Der jeweilige Preis wird mit dem Darlehensformular unmittelbar verknüpft: P.Paris 8 nennt wörtlich die συγγραφὴ δανείου über die τιμὴ πυροῦ; P.Oxy. X 1281 ist subjektiv stilisiert: δεδάνισμαι τὴν τειμὴν τῶν ἑκατὸν λίνων; P.Hamb. I 32 gibt mit ἔχειν παρὰ σοῦ ἀπὸ τιμῆς πυν ροῦ den die Haftung des Darlehensnehmers (und Käufers) begründenden Tatbestand des „Habens" an.

(3) Noch deutlicher zeigt sich dieser Zusammenhang, wenn die Gleichsetzung zwischen den Darlehensvaluten und dem Kaufpreis mittels der Phrase τοῦτο δ' ἐστίν erfolgt wie in P.Cair. Zen II 59001.

(4) Andere Dokumente verweisen auf die Darlehensurkunde,[166] die die Einklagbarkeit des Kaufes, freilich aus dem anderen Titel des Darlehens, ermöglichen: χειρόγραφον (P. Münch. III 1,52; P.Rein. I 7) und συγγραφὴ δανείου (P.Paris 8; eventuell P.Cair. Zen II 59269 und P.Col. IV 72).

(5) Bei wieder anderen Texten (zB. P.Cair. Zen II 59149) kann einzig aus dem Zusammenhang auf Indizien für die Praxis des Kreditkaufs geschlossen werden.

Darstellungen des griechischen Kaufrechts verweisen einleitend oft auf die griechische Philosophen und deren „Kreditfeindlichkeit". Der Brückenschlag zu den Dokumenten der Rechtspraxis, die mindestens 100 Jahre jünger sind als Platon und Aristoteles, ist aber nur scheinbar ein gewagter: Wie ersichtlich wurde, stehen etwa hinter den *Nomoi* eines Theophrast konkrete gesetzliche Regelungen, die nicht nur die ideologische Verankerung des Barkaufs, sondern auch die praktische Problematik des Kreditkaufes aufzeigen. Damit stellen sie eine wichtige Komponente für die Erfassung der Haftungsbegründung im griechischen Kaufrecht dar.

[166] Zu den *syngraphai* vgl. PLATSCHEK 2013a, 246-247 und PLATSCHEK 2013b, 256-259.

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Sale and Community from the Roman World

ÉVA JAKAB

Exchange of goods with transferring property rights is an essential part of every organised human society and economy. All over the ancient world, traders and consumers negotiated a great deal of sales on local market places. The legal framework of sale is an indispensable institutional environment of a functioning economy. Considering the economic approach, sale seems the most important contract of every private law. Nevertheless the famous Roman jurist Gaius gave in his *Institutiones* (a manual of elements of Roman private law) only a brief summary about sale (Gai. Inst. 3.139-41):

> Emptio et uenditio contrahitur, cum de pretio conuenerit, quamuis nondum pretium numeratum sit ac ne arra quidem data fuerit. nam quod arrae nomine datur, argumentum est emptionis et uenditionis contractae. (140) Pretium autem certum esse debet. nam alioquin si ita inter nos conuenerit, ut quanti Titius rem aestimauerit, tanti sit empta, Labeo negauit ullam uim hoc negotium habere; cuius opinionem Cassius probat. Ofilius et eam emptionem et uenditionem esse putauit; cuius opinionem Proculus secutus est. (141) Item pretium in numerata pecunia consistere debet. nam in ceteris rebus an pretium esse possit, ueluti homo aut toga aut fundus alterius rei pretium esse possit, ualde quaeritur...[1]

[1] Gai. 3.139-41: "Purchase and sale are contracted as soon as the price is agreed upon, although the price may not have been paid,[1] or any earnest money given; for what is given by way of earnest money is only a proof of the conclusion of a contract of purchase and a sale. (140) Moreover, the

Gaius underlines merely the main requirements of a legally enforceable obligation arising from a sale business. He maintains the relevant points of a valid obligation, suitable for the Roman authorities – the turning point if a claim can be raised before a Roman court (*actio nata est)*. In classical Roman law it was sufficient to produce proof about a mutual agreement (*consensus*) between the parties. The consensus should include the basic elements of the agreement: the thing sold and the price to be paid for it. Here, Gaius is anxious to emphasize that widely spread phenomena in local legal cultures like paying an earnest money do not have any impact on the exact theoretical definition of having a valid sale obligation. Overhanding an earnest money should be considered as a strong argument for the existence of a mutual agreement. Any further theoretical setting is merely stressed for the price: What are the main requirements for a valid price setting? Where are the limits of its specification? His plausible examples might have been chosen from every day market practice. In the following, Gaius gives also a short introduction to the history of sale transactions. His main aim is to indicate the every now and then narrow borders between the legal conception of exchange (*permutatio*) and sale (*emptio venditio*).

For first sight it is rather astonishing that a really important contract like sale is treated with such leisure in an elementary survey. Centuries later, in the Digest of Justinian (*Corpus Iuris Civilis*) sale transactions are dealt with in a more detailed manner. In the 6th century, the *compilatores* collected and grouped the rich material of decisions and opinions of former Roman jurists in eight chapters. Of these, three chapters are designed from a rather theoretical point of view (D. 18.1, 18.2 and D. 19.1[2)] while six mirror decidedly contractual practice (see D. 18.2-7[3]). It indicates that the Roman law of sale was a matter of routine and experience. The rules of concluding a contract, specifying the liability of the parties and allocating special risks seem deeply rooted in every day legal practice (law in action). Regarding these characteristics, it

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price must be certain; for, otherwise, if we agree that property shall be purchased for the amount at which Titius may estimate its value, Labeo denies that a transaction of this kind has any force or effect; and Cassius agrees with him. Ofilius holds that it is a purchase and sale, and Proculus adopts his opinion. (141) Moreover, the price must consist of money, for it is seriously questioned whether it can consist of any other property, as for instance, a slave, a robe, or a tract of land." (Translation by Francis de Zulueta.)

[2] D. 18.1 *De contrahenda emptione et de pactis inter emptorem et venditorem compositis et quae res venire non possun*t; and D. 19.1 *De actionibus empti et venditi*.

[3] D. 18.2 *De in diem addiction*, D. 18.3 *De lege commissoria*, D. 18.4 *De hereditate vel actione vendita*, D. 18.5 *De rescindenda venditione et quando licet ab emptione discedere*, 18.6 *De periculo et commodo rei venditae*, 18.7 *De servis exportandis: vel si ita mancipium venierit ut manumittatur vel contra*.

is of utmost interest to investigate sale documents, also for better understanding the legal thinking of Roman jurists.

1. The documents

Documents written in Latin are preserved from several regions all over the Roman Empire.[4] The Romans used mostly small wooden tablets as writing material for depicting contracts and wills. Such *tabulae* seem to have been a special Roman kind for preserving evidence. Insisting upon this special (and not very practical) writing material might have had some sacral roots, too.[5]

The usual measure of *tabulae* excavated in Italy or in the provinces is approximately 10 x 15 cm. Commonly two or three thin wooden tablets were used for documenting a legal transaction. One side of each piece was slightly deepened and covered with wax and the scribe wrote on this surface with a metallic switch called *stylus*.[6] It is obvious that the technology was rather imperfect and could not be trusted to offer infallible proof before court: the wax might have been warmed up and the letters could easily have been erased or "corrected" by unauthorised hand. To avoid forgery tricks, the notary practice developed two main types of documents: *diptych* and *triptych*. As the names show the *diptych* consists of two tablets, a *triptych* of three. In both, the legally relevant text was written on the inside faces (*scriptura interior*), then closed by a string and sealed by witnesses. The seals must not have been broken or cut unless before court.

Wood and wax are an extremely sensible material. It is really astonishing that such tablets should survive to be read today. Indeed, the originals are mostly broken and it is a great challenge for modern scholars to read them; recent editions are basically improved by sophisticated digitalised techniques.

My present contribution is restricted to such wooden *tabulae* including sale contracts. In ancient times, the choice of a certain writing material and language meant mostly also a choice of legal culture. Waxed t*abulae* are written almost entirely in Latin and the text follows the rules of Roman law as practiced in every day business.

All together there are only a few sale documents that survived: we possess three documents in the archive of the Sulpicii (TPSulp. 42, 43 and 44) and fur-

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[4] Documents in other languages should be excluded from the present overview. Choosing a language and a writing material meant often choosing a certain legal culture.

[5] See Meyer 2004, 44-63; Gröschler 1997, 18-9 and Wolf 2010, 17-8.

[6] Cf. Wolf 2010, 19-20; Crook – Wolf 1989, 10-4 and Jakab 2011, 283-4.

ther four documents from Herculaneum (TH 59, 60, 61 and 62). It means all together seven sales from Roman Italy, all of them excavated in the Vesuvius area. However, there are some further *tabulae* explored in far provinces: hollows saved a surprisingly rich collection in the gold mines of Dacia (known as FIRA III 87, 88, 89, 90[7]) and single finds came down – unfortunately without the context of an archive – from other provinces. There are also further documents composed on papyrus but with a strong influence of Roman law.[8] A unique example is FIRA III 137, a receipt of price with guarantee for eviction (however missing all other usual clauses of a sale). Recently some tablets were found in Britannia, using slightly different terms but recording obviously a sale context.[9] This mixed group of Latin documents with provincial provenance counts further seven to eight documents.

Checking the contents it can be stated that the majority of sale documents reports of the sale of slaves. Therefore I focus my present contribution on this topic. For first sight it is astonishing that the sale of movables gives the majority of written documents in the material excavated yet. In our modern world, contracts are drawn up in a written form mostly if they concern an immovable (real estate). Although ancient societies were based on agriculture selling and buying land among individuals was not really common in every day business. In the Roman Empire the acquisition of land was mostly connected with state interference. A piece of land was measured and signed to a private individual by state authorities.[10] Nevertheless, fruitful cultivation required "moving instruments" like slaves and animals and these articles became the most important ones on ancient markets.[11]

Indeed, rules of acquiring slaves were the most elaborated part of the law of sale in ancient Rome. The sale of slaves and that of livestock, the two movable items that really mattered, may have occurred the most sensible economic interests in ancient rural societies. The sale of slaves indicated a serious market regulation all over the ancient world, a decided state interference in exchange of goods.[12] Considering such a central role of contract models for

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[7] These tablets are called *mancipationes* by Vincenzo Arangio-Ruiz while other sale contracts has the title *emptiones venditiones*; for a critical view see KUNKEL 1972, 218 ff.

[8] For instance FIRA III 132 and 136 are written in Latin and designed according to Roman patterns. On the other hand FIRA III 133, 134, 135 used papyrus and Greek therefore I do not treat these documents closer. FIRA III 138 is in Greek as well. To papyri with slave sales see STRAUS 2004, 1-8.

[9] PAUL DU PLESSIS delivers a detailed treatment about it in this volume.

[10] JAKAB 2015, 115-9 (forthcoming).

[11] D. 21.1.1pr. Ulp. 1 ed. aed. cur.

[12] Cf. for example TEMIN 2001, 173-9; JAKAB 1997, 61-3 and 73-80.

selling slaves, the contract terms established for this topic can be considered as a pattern really fit for generalization.

2. Case studies

In the following I shortly present three sale contracts about slaves coming from the main archaeological sites mentioned above (Puteoli, Herculaneum and Roman Dacia). The main aim is to shape the characteristic features of these documents, their typical formula and legal terms.

2.1 Campanian tablets

The earliest documents, dated in the first century AD, were excavated in the Vesuvius are.[13] Unfortunately there are only a few *tabulae* with sale contracts in these collections and almost all of them in a rather poor condition. All together three *tabulae* record sales in the archive of the Sulpicii, concerning business conducted in Puteoli. In the 1st century, Puteoli (today Pozzuoli) was a major port for Rome and Italy, located in the Bay of Naples. TPSulp. 43 seems to be the best illustration for local sale practice on this busy market (TPSulp. 43, dated August 21, in 38 AD):[14]

> Tab. II. pag. 3 (*graphio, scriptura interior*)
> … [solutum e]sse fugit[i]vom, | [err]onem [non] esse [et] cetera | in edicto aed(ilium) cur(ulium), [q]uae huiusque | an[n]i scripta conprehensaque | [5]sun[t], recte praestar[i et d] uplam | [p]ecuniam ex form[ula], ita | [u]ti [ad]solet, recte [dar]i stipul(atus) | [e]st T(itus) Vestorius Arpocra mi[n]or | [spo]pondit T(itus) Vestorius Phoenix.|[10] Actum Puteol(is) XII k(alendas) Se[p]t(embres), | Se[r(vio) A]sinio Sex(to) Nonio co(n)s(ulibus).[15]
>
> Tab. II, pag. 4 *pars dextra* (*atramento, signatores*)
> C(aii) Iulii C(aii) f(ilii) Fal(erna) Senecionis | C(aii) Munni C(aii) f(ilii) Rufi | A(uli) Fufici Donati | L(ucii) Ponti Philadelphi |[5] T(iti) Vestori Pho[enicis?] | C(aii) Pacci Felicis | C(aii) Claudii +++I | C(aii) Matei Primogeni | C(aii) Suetti Damae

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[13] The tablets TH 59, 60, 61 follow the same pattern, see Jakab 1997, 165-6.

[14] Cf. Camodeca 1999, 117-9.

[15] TPSulp. 43: „...to be fulfilled ... not to be a fugitive or a loiterer and so on as written and included in the edict of the curule aediles for this year, Titus Vestorius Arpocra minor stipulated that the terms be duly met and and that he be duly paid double the sum in keeping with the formula, as is customary, Titus Vestorius Phoenix solemnly promised. Transacted at Puteoli on the 12th day before the Kalends of September under the consuls Servius Asinius and Sextus Nonius. Gaius Iulius Senecion, son of Gaius, of the tribe Falerna, Gaius Munnius Rufus, son of Gaius, Aulus Fuficus Donatus, Lucius Pontus Philadelphus, Titus Vestorius Phoenix, Gaius Paccus Felix, Gaius Claudius ..., Gaius Mateius Primogenus, Gaius Suettius Dama.“ (Translation after Rowe.)

The first lines of the document are lost: the names of vendor, purchaser and the slave sold are missing. From the Syntax it is very likely that a male slave of unknown age was the object of the business.[16] The text as preserved begins with a guarantee for latent defects, physical and mental as well. The vendor promised that the slave is of good quality[17] – he is not a runaway (fugitive), not a loiterer on errands or still subject to noxal liability (it means he is free from liability for unlawful damages).[18] In addition, the scribe used a special term generalizing the liability for latent defects with a hint to the edict of the *aediles curules*, the magistrates in charge of market regulations (line 3-5). From line 5 the main body of stipulation follows: the vendor promised to take responsibility (*praestari*) for all possible defects ordered by the *aediles* and to pay the double sum in a case of a condemnation.[19] From this very *stipulatio* we do learn the names of the parties involved: Titus Vestorius Phoenix the vendor and Titus Vestorius Arpocra the purchaser. As usual in Roman documents the dating is placed at the end, the years recorded with the consuls. The agreement was set up in Puteoli and signed by nine seals: the vendor (Tab. II pag. 4 line 5) and eight further persons witnessed the business. The high number of *signatores* is a clear link that the acquisition of ownership (carried out upon the sale) may have been recorded as a formal *mancipatio*.[20]

Closely related is the formula of a sale document from a neighbour city, Herculaneum, as represented in TH 61 (Triptychon, May 8, 63 AD):

> Tab. II, pag. 4 pars laeva – Tab. I, pag. 1 (*atramento, tertia scriptura*)
> | [- - -] quem | [- - -] L. Comini
> [Primi - - - vendit]oris P. Corneli Pop[p]aei | [Erasti - - -] Ofilli Eleupori emisse |5 [m]an[cipioque accepisse se dixit L.] Cominius Primus HS ∞ CCCC | [hominem - - - de] P. Cornelio Poppaeo Erasto | [libri]pende L. M[ario] Chrys[e]rote
>
> pag. 1
> [hunc hominem sa]num furtis noxisque solutum esse | [praestari et, si qui]s eum hominem partemve quam eius evicerit, quo | [minus L. Comi]nium Primum heredemve eius habere | [uti frui] possidere recte liceat, simplam pecuniam r[ect]e |5 [dari, haec,] ita uti adsolet, recte praestari stipu[latus] | [est L. Comin]ius Primus, spopondit P. Cornelius Popp[a]eu[s] | [Erastus] | (Vac.) | A[ct]um in Pompeiano in figlinis Arrianis Poppaeae Aug(ustae) | VIII idus Maias |10 C. Memmio Regulo L. Verginio Rufo cos.

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16 However, scribes may have ignored grammar and sex by drafting a document, see e.g. CROOK – WOLF 1989, 1-4.

17 Although GAMAUF 2014, 268 ff. argues for a mental defect I consider it an objective fact – if the slave already committed a *fuga*, see for it JAKAB 1997, 127-9.

18 It is likely that line 1 can be completed with *noxam solutum esse*; see more to it soon.

19 D. 21.1.1.1 Ulp. – the double of the price paid or the double of the market value. The liability for eviction investigated ANKUM 1981, 739-92 and HONSELL 1969, 25-6.

20 See for it JAKAB 2014, 221-4 and CROOK 1967, 141.

Tab. II, pag. 4 *pars dextra* (*atramento, signatores*)
[- - - - - -] | [- - - - - -] | L. Comini? Primi | Q. Grani Abascanti |[5] Q. Iuni Peregrini | M. Cerrini Aucti | P. Corneli Abascanti | C. Vibi Fabati | P. Corneli Erasti

The small sized (11,8 x 14,8 cm) wooden tablet is heavily damaged,[21] the first lines almost entirely missing. Nevertheless we do learn the names of the contracting parties: L. Cominius Primus (line 5) acquired from P. Cornelius Poppaeus Erastus (line 6) an adult male slave of undefined age. According to the wording, the parties styled the delivery legally as a traditional *mancipatio* – line 7 calls the name of the *libripens*, L. Marius Chryserotus who is supposed to hold the scale.[22] Further research is required to clear if the archaic formal act has been really effected even at that period of Roman law. The phrase *mancipioque accepisse se dixit,* especially the use of the verb *dicere* (maintain) seems to be a hint that the formal act of *mancipatio* was not really carried out. The document may record the mere declaration of the purchaser regarding the *mancipatio* formula. In this case the role of the *libripens* may have been restricted to that of a witness. In legal life, the *mancipatio* clause may have functioned as an alternative to a mere *traditio* – it could be applied if both parties were present and the vendor was actually the owner of the thing sold (and not a mediatory, an agent).

The document was depicted in an objective style, recording the business in third person singular. It is remarkable that the performance already took place before the deed was drawn up: the slave was given away and the full price was paid (or at least the vendor acknowledged that he has received full payment). The only future obligation stated in the document is the warranty of the vendor for latent defects and for the case of eviction.[23] As to the possible physical or mental defects, the vendor promised in form of a *stipulatio* (formal contract by verbal promise, the purchaser questioning and the vendor promising) that the slave was handed over in a healthy condition, there is no disease in the slave, and he is not under noxal liability because of a theft or any other *delictum*…

A comparison with TPSulp. 43 shows that the wordings differ: the Puteoli tablet declares that the slave is not under noxal liability and not a runaway or loiterer (*erro*) – closing with a general link to be free of all possible defects listed in the edict of the *aediles curules*. In the Herculaneum tablet this link is

[21] Here I follow the *cura secunda* of CAMODECA 2000, 66-7.

[22] The Sales in the archive of the Sulpicii are very fragmented; the first lines couldn't be reconstructed – therefore it can't be stated if the parties used a *mancipatio* or not.

[23] L. Cominius Primus, the vendor and his successors are liable if the slave should be evicted from the purchaser (page I, lines 2-5). Nevertheless, the eviction is not subject to this contribution.

missing and the liability of the vendor is restricted to two major defects: *noxa* and disease. In my view, the obvious difference is a strong argument for an individual designing of such contractual terms. It shows that the warranty clause was commonly negotiated among the parties. Furthermore we can assume that giving or denying a warranty had a strong impact on the price.[24] Drawing up a sale document was an interactive action between purchaser, vendor and scribe, shaped strongly by local custom.[25]

2.2 Tablets from the provinces

Traders and purchasers were aware of the proper legal framework of sales not only in Campania but even in small humbles in far provinces. Negotiating on a slave market, they shaped their legal act according to local trading experiences and basic expectations of Roman law. There are a few examples of wooden *tabulae* set up and preserved in Dacia with the main impact that the actors were astonishingly well informed of the main rules of Roman law as practiced in Italy. A document from a small humble called *Kartum* preserved a slave sale in a rather good condition[26] (FIRA III Nr. 87, Triptychon, 139 AD, *scriptura interior*):

> Maximus Batonis puellam nomine | Passiam, sive ea quo alio nomine est, anlnorum circiter p(lus) m(inus) sex, empta sportellaria, emit mancipioque accepit |[5] de Dasio Verzonis Pirusta ex Kavieretio, | (denariis) ducentis quinque. | Eam puellam sanam esse <<a>> furtis noxisque | solutam, fugitivam erronem non esse | praestari: quot si quis eam puellam | partemve quam ex eo quis evicerit |[10] quo minus Maximum Batonis, quove ea res pertinebit, habere possildereque recte liceat, tum quanti | ea puella empta est, <tan>tam pecuniam |[15] et alterum tantum dari fide rogavit | Maximus Batonis, fide promisit Dasius | Verzonis Pirusta ex Kavieretio. Proque ea puella, quae s(upra) s(cripta) est, (denarios) ducenltos quinque accepisse et habere | se dixit Dasius Verzonis a Maximo Batonis...[27]

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[24] See for it JAKAB 1997, 195-6.

[25] Here I disagree with GARDNER 2011, 416.

[26] Kartum may have been a small village in the neighbourhood of *Alburnus maior*, a gold mine in the Dacian mountains.

[27] FIRA III 87: "Maximus son of Bato has bought and accepted as a *mancipium* a girl by name Passia, or if she is (known) by any other name, m(ore or) l(ess) around six years old, having been bought as a foundling, for 205 (denarii), from Dasius son of Verzo, a Pirustian from Kavieretium. It is vouched for that she is a physically sound girl, not charged with theft and damage, is not a runaway (fugitive) or loiterer to errand; but if anyone shall have claimed back this girl or any portion of her, as a result of which it is not legal for Maximus son of Bato or him to whom the affair will be relevant to hold and possess her rightfully, in that case Maximus son of Bato demanded in faith that the exact sum and an equivalent amount be paid. Maximus the son of Bato asked to be given in faith, Dasius son of Verzo a Pirustian from Kavieretium promised in faith. Dasius son of Verzo said that he received and has for this girl, w(ho) i(s) w(ritten) a(bove), 250 denarii from Maximus son of Bato." (Translation by Meyer.)

The document was designed in an objective style, in third person narrative. The first part of the text summarizes the facts, the most important terms of the agreement: the name of the parties and the thing sold. A certain Maximus, son of Bato purchased a slave girl called Passia, who was approximately six years old.[28] The phrase *empta sportellaria* seems to be a hint that the girl may have been turn out as a baby then found by someone and brought up, probably with the intention for selling her later with a considerable profit. The vendor is Dasius, son of Verzo, from the tribe of the Pirustanians originating from the village of Kavieretium. The price, agreed and already paid before setting up the present document, counted 205 drachmas.[29] The contracting parties, Maximus Batonis and Dasius Verzonis, are obviously peregrines living in Dacia.[30] There is no trace of any of them possessing a Roman citizenship.[31]

The second part includes the guarantee of the vendor, a *stricti iuris stipulatio* for undisturbed enjoyment and quality of the slave girl – with a closely related wording as we have seen it in Puteoli.[32] Nevertheless, here we can observe a more extended warranty: the vendor promises that Passia is healthy (free from diseases), she is not under noxal liability and not a runaway or loiterer (*erro*). In lines 8-17 follows an elaborated guarantee for the case of eviction designed as a *stricti iuris stipulatio duplae* – as usual in Latin sale documents. Afterwards Dasius states that he has already received the full price, the 205 denarii for the slave girl.

The similarity of the wording of all three sale documents treated above is really striking although their geographical, legal and cultural environment rather differ.[33] The first comes from the rich harbour of Puteoli, from the very heart of Campanian business life and was set up at the beginning of the first century AD while the last was drawn up almost hundred years later in a far province, Dacia, in a just established Roman economy and population, in rather poor circumstances. Depicting their business, obviously the parties and the scribes convulsively hold on classical Roman patterns but cared not even of basic legal capacities like citizenship. The documents follow almost in every

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[28] Commonly slaves acquired by sale were re-named by their new proprietor; therefore the uncertainty; cf. Varro ling. 8.21.

[29] KUNKEL 1972, 218 ff.

[30] Bato may have an Illyric affiliation and Dasius Verzonis belonged to a tribe that was settled by the emperor Traian to Dacia, see PÓLAY 1972, 128.

[31] PÓLAY 1972, 130.

[32] To the problem of using a Roman formula by *peregrini* see JAKAB 1997, 168 with further literature.

[33] TH 60 represents a slightly different formula, see JAKAB 1997, 281-5.

detail truly the main expectations of classical Roman law. The texts focus merely on the main legal consequences derived from the business. They record the transfer of ownership, the mutual past fulfilment of contractual duties and the only future obligation, the guarantee of the vendor for latent defects and eviction.

On a market place controlled by Roman authorities a seller was expected to disclose any disease or defect in the slave and to protect the vendor against eviction. The proper contract terms as expected by Roman authorities were commonly summarized in manuals (*leges venditionum*[34]) and copied all over the Roman Empire. Local custom may have shaped the general patterns that were carefully applied for the concrete negotiation: the vendor took over the liability for some defects but he may have let out others.

Selling and buying, participating in a flourishing exchange of goods required talent and experience. *Circumscribere*, cheating was allowed up to a certain level notwithstanding the rules of the market. Negotiating the price and the concrete terms of the sale (*lex contractus*) belonged mainly to private autonomy and it meant also a considerable amount of personal risk. Cunning fellows like slave traders knew the ropes. Especially ancient literary texts give a plausible hint at usual trading habitude and vendor's tricks in every day business. A rather convincing example is a sophisticated *epistula* of Horace quoting phrases commonly cried out by slave merchants on the market (Hor. epist. 2.2.4):

> My Florus, loyal friend of great and good Nero, suppose someone by chance should wish to sell you a slave, born at Tibur or Gabii, and should deal with you thus: "Here's a handsome boy, comely from top to toe; you may take him, to have and to hold, for eight thousand sesterces; home-bred he is, apt for service at his owner's beck, knows a bit of Greek learning, and can master any art; the clay is soft – you will mould it to what you will; moreover, he will sing for you over your cups in a sweet of artless fashion. Too many promises lessen confidence, when a seller who wants to shove off his wares praises them unduly. I am under no constraint; I have slender means, but am not in debt. None of the slave-dealers would give you such a bargain; not everyone would easily get the like from me. Once he played truant, and hid himself, as boys will do, under the stairs, fearing the hanging strap. Give me the sum asked, if his running off, duly noted, does not trouble you": the seller, I take it, would get his price without fear of penalty. You bought him with your eyes open – fault and all; the condition was told you; do you still pursue the seller and annoy him with an unjust suit?[35]

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[34] See for it JAKAB 1997, 157-61.

[35] Hor. epist. 2.2.4: *Flore, bono claroque fidelis amice Neroni,| siquis forte velit puerum tibi venere natum | Tibure vel Gabiis et tecum sic agat: 'hic et | candidus et talos a vertice pulcher ad imos | fiet eritque tuus nummorum milibus octo, | verna ministeriis ad nutus aptus erilis, | litterulis Graecis imbutus, idoneus arti | cuilibet: argilla quidvis imitaberis uda; | quin etiam canet indoctum sed dulce bibenti. | multa fidem promissa levant, ubi plenius aequo | laudat venalis qui volt extrudere merces:*

In his elegant letter addressed to his friend Florus, Horace developed a delicate description of the typical trading convention on the market laces of Rome. He quotes truly the common wording of sale offers as announced by sellers or by auctioneers. The poet creates an impressing set of fictitious *leges venditionis* copying real trading practice: a slave merchant just recommends his goods praising a young male slave rather cunningly: telling long tales about his benefits he tries to hide a basic failure, that of his being an *erro* (or perhaps *fugitivus*), a loiterer on errands or a runaway slave.[36] Here, Horace sought just for excuse for his laziness in writing. He argues that he can't be blamed because he warned Florus of his being a bad correspondent. A previous warning is a real exculpation as it is commonly accepted in trading with slaves. Horace built the metaphor with uncommonly great artfulness and accuracy borrowing phrases as cried out by merchants.

Facing hidden tricks of professionals as depicted by Horace the consumers of Rome seem to have been rather defenceless. Roman authorities recognized soon the high risks connected with the acquisition of slaves and sought to introduce some types of sate control. A certain level of state interference seemed indispensable for the protection of private individuals participating in the exchange of goods.

3. Investments and state interference on slave markets

Sale contracts represent the legal framework for exchanging goods; they can be considered as the most important obligation in every economy. Notwithstanding, the famous jurists of ancient Rome did not care too much of theoretical rules regarding sale. As we have seen above, the law of sale was ruled mostly through trading conventions and contract formulas.[37] Despite of seemingly negligent legal theory, Roman communities showed a serious interest in slave markets – whereas slavery was an integrative and important part of ancient cultures. It really mattered where and how the many slaves were traded.[38]

| res urget me nulla; meo sum pauper in aere. | nemo hoc mangonum faceret tibi; non temere a me | quivis ferret idem. semel hic cessavit et, ut fit, | in scalis altuit metuens pendentis habenae'- | des nummos, excepta nihil te si fuga laedat | ille ferat pretium poenae securus, opinor. | prudens emisti vitiosum, dicta tibi est lex: | insequeris tamen hunc et lite moraris iniqua? (Translation by H. Rushton Fairclough.)

[36] Cf. Kudlien 1986, 250 ff.; Jakab 1997, 162-164. On the contrary, Arzt-Grabner 2010, 24 stressed his being a *fugitivus* – in my view both meanings are possible.

[37] Cf. Crook 1967, 214-221.

[38] To the sources of ancient slavery cf. Schumacher 2001, 25-33.

There can be observed strong community contributions and state interferences in slave markets all over the Roman Empire: market halls were built as architectural environment and market regulations were issued as part of a state control. From archaeological evidence it is obvious that there was a serious effort of investments – public or private – for creating better architectural conditions for slave markets. Trading with slaves was of utmost interest for maintaining a reasonable supply on working power in the whole Roman economy.

Retail and wholesale trade took place mostly on market places or in market halls in frequented ports or big cities. It can be assumed that not only private investors but also public authorities mobilized some capital for creating a proper infrastructure.[39] Buildings with a great amount of small closed rooms (in its architectural structure similar to a jail), with closed entrance, separated ways for slaves and buyers, with water supply and latrines, including probably also a selling platform are commonly identified as slave markets in archaeological studies.[40] Buildings of this type were found for instance in the excavations of Delos, Pompeji, Rome, Ostia, Herculaneum, Leptis Magna, Magnesia on Maeander and Ephesos. Especially good examples are the Agora of the Italiens in Delos, the Basilica in Herculaneum or the House of Eumachia in Pompeii.[41]

There is also a great amount of written evidence of Roman slave markets since Plautus' age including inscriptions and literary texts.[42] Selling halls are often named *chalcidicum* and the special selling platform, used especially at auctions, called *catasta* in the sources.[43] There are also epigraphic sources providing us with further information. In the archive of the Sulpicii (*Tabulae Pompeianae Sulpiciorum*) three buildings are mentioned in a market context: the *chalcidicum Caesonianum*, *chalcidicum Octavianum* and the *chalcidicum Hordionianum*. In three of the tablets the auctions of slaves took place *in foro ante chalcidicum*, it means on the forum in front of a certain *chalcidicum*.[44] A *chalcidium* seems to have been a special building for public use that served (among others) also for selling slaves.

The Basilica of Herculaneum was discovered in underground excavations in in the 18th century and fully excavated in the 1960s. It is a *porticus*-building

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[39] See for it COARELLI 1982, 120-2 and COARELLI 2005, 210 ff.

[40] With some critics see TRÜMPER 2009, 31-3.

[41] To the slave markets see SCHUMACHER 2001, 44-64, especially 51-5.

[42] Cf. JAKAB 1997, 35-7.

[43] Vgl. etwa Suet. Tib. 2.3.60; Liv. 28.21.2; Plaut. Pers. 6.77; Plin. nat. 35.200 etc.

[44] Vgl. etwa TPSulp. 85, 87, 90, 92.

with colonnades and an open, paved court including two large platforms.[45] Archaeologist identified it as a *chalcidicum* although it is quite richly decorated for a slave market.[46] Nevertheless it is likely that auctions of slaves might have arranged in this luxury vestibule. It is unknown who financed the building but the public interest (that of the community of Herculaneum) is obvious.[47]

The Agora of the Italiens in Delos is located in the vicinity of the main port, close to the sanctuary of Apollo. It is a big complex of double-stored porticoes, courtyards and of an open unpaved place of 3.440 m^2 dimension, gathered with bath, latrines and shops. The combination of two narrow side entrances with a nice Doric *propylon* entrance seems to offer an ideal infrastructure for slave trade.[48] The Agora was built and financed by the Italiens community, from donations of private individuals (presumably by Roman *negotiatores*).[49]

Archaeological evidence underlines that slaves up for sale were commonly stored in great public buildings designed for this particular purpose. Nevertheless, one can find also texts testifying private storage of slaves as merchandise: Ulpian reports of a slave dealer who preferred to store his human ware in his own house: *Nam quos quis ideo comparavit, ut ilico distraheret, mercis magis loco quam suorum habuisse credendua est*.[50] The case is about a legacy: the testator, a *venaliciarius* left his own slaves (*sui servi*) and the merchandise slaves (*mercis loco*) to different persons.

Summing up it is to underline that slave trade – especially large-scale trade – needed a reasonable infrastructure. In flourishing ancient trading centres this infrastructure was provided mostly by a local community.[51] The cities and their population were interested in the maintenance of a vivid local and long distance trade.

Recently, Walter Scheidel underlined the importance of slave supply in the Roman world: "Considering the huge scale of the Roman slave trade, substantial amounts of capital must have been committed to the procurement and distribution of slaves, and large numbers of middlemen had to be involved in this business".[52] The significance of trading slaves and the special risks of the

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45 TRÜMPER 2009, 59-62.

46 Ibid.

47 TRÜMPER 2009, 82.

48 TRÜMPER 2009, 34-5; COARELLI 2005, 210-2.

49 TRÜMPER 2009, 82.

50 Ulpian D. 32.73.4.

51 TRÜMPER 2009, 81-2.

52 SCHEIDEL 2011, 300.

business required some sort of state interference. In fact, there are two sides involved in the business: a colourful group of merchants, mostly of peregrine origin, and wealthy Roman citizens equipping their household or estate.[53] Wholesale dealers were experts of their profession, with extended knowledge about possible defects and wily tricks to hide them. On the opposite, individual purchasers may have been naive and clumsy in bargaining. Basically, Roman legal culture cultivated a "universe in which individuals control their own destinies consistent with the principle of individual autonomy and self-determination".[54] Commonly, the willingness of the law to establish liabilities in contractual relations was rather weak. However, a substantial approach was needed, an approach of an "impartial observer"[55] to re-design the rules of the game and to find an optimal balance between state control and free market. In some sense, the commonly accepted legal framework of sale – as statutes of authorities, trading customs and legal interpretations are part of an imaginary "social contract", of a "real honest-to-goodness consent contract".[56]

Here the question rose whether it is better to condemn one side (the merchants) as "mischievous grabbers" and to grant some type of privilege to the other side (the purchasers) through implied terms and protective market regulations. Wisely, the Roman state authorities interfered rather carefully and issued a limited set of special rules for "consumer protection". In such cases it is necessary to look at the overall situation and to think over how the rule plays out in a wider context.

In Republican Rome, the *aediles curules* were in charge of the control over public places and among them also of that of public markets. The aediles issued edicts for inflicting duties and liabilities upon merchants, "The edict of the aedile, rescission, and the action for diminution" (D. 21.1.1.1 Ulp. 1 ed. aed. cur.):

> The aediles say: 'Those who sell slaves are to apprise purchasers of any diseases or defects in their wares and whether a given slave is a run away, a loiterer on errands, or still subject to noxal liability. All of these matters they must proclaim in due manner publicly when the slaves are sold. If a slave be sold without compliance with this regulation or contrary to what has been said of or promised in respect of him at the time of his sale, it is for us to declare what is due in respect of him; we will grant to the purchaser and to all other interested parties an action for rescission in respect of the slave […].[57]

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53 To the role of Status in contractual relations see MASI DORIA 2012, 102-30.

54 EPSTEIN 1997, 261.

55 EPSTEIN 1997, 248.

56 EPSTEIN 1997, 249.

57 D. 21.1.1.1 Ulp. 1 ed. aed. cur.: *Aiunt aediles: „qui mancipia vendunt certiores faciant emptores,*

On market places under public control, merchants were obliged to provide a minimum standard of fair business. The *aediles curules* ordered that certain basic information should be announced about every slave to be sold.[58] It happened to disclose any disease, defect and some dangerous facts in the past that may have prevent the slave from a reasonable service. It mattered especially whether the slave has some incurable disease or physical defect, whether he is a runaway or a loiterer or under noxal liability.[59] Roman jurists dwelt on the interpretation of the basic defects and of their relevance as delivered in long theoretical discussions in the Digest.[60]

Just to give an example Ulpian dwells on the correct definition of disease and defect and how to distinguish between them if it may have legal relevance: "It is to be noted that a definition of disease as an unnatural physical condition whereby the usefulness of the body is impaired for the purpose for which nature endowed us with health of body appears in Sabinus. Such condition may effect the whole body or only part thereof. (Tuberculosis and fever exemplify the former; blindness, even from birth, the latter.) Defect, he says, is very different from disease; stammering, for instance, is a defect rather than a disease."[61] For the jurists it seemed of utmost interest how to explain every word of the edict, how to argue and how to understand and apply the issues. *Morbus* (disease) and *vitium* (defect) are technical words in the edict of the aediles, each a *causa*, a legal basis for a peculiar claim (*actio redhibitoria* or *actio quanti minoris*).[62] A concrete complaint was only enforceable in court if the claimant chose the correct legal phrases.

For an effective protection of consumers' interests the edict declared an objective (*stricti iuris*) liability: "It must, though, be recognized that the vendor is still liable, even though he be unaware of the defects which the aediles require to be declared. There is nothing inequitable about this; the vendor could have made himself conversant with these matters; and in any case, it is no concern of the purchaser whether his deception derives from ignorance or

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quid morbi vitiive cuique sit, quis fugitivus errove sit noxave solutus non sit: eademque erti, cum ea mancipia venibunt, palam recte pronuntianto. Quodsi mancipium adversus ea venisset, sive adversus quod dictum promissumve fuerit cum ertin, fuisset, quod eius praestari oportere dicetur: emptori omnibusque ad quos ea res ertinent iudicium dabimus, ut id mancipium redhibeatur. (Translation by A. Watson.)

[58] For Greek patterns see JAKAB 1997, 70-84.

[59] Cf. WATSON 1987, 49-52; KASER 1951, 21 ff.; DONADIO 2004, 83-6; KUPISCH 2002, 21-5 and BELLEN 1999, 30-1.

[60] Cf. also GARDNER 2011, 416-7.

[61] D. 21.1.1.7 Ulp. 1 ed. aed. cur. Cf. GAMAUF 2014, 272-5.

[62] Cf. GAROFALO 2000, 77-9 and MANNA 1994, 44-7 and 67.

the sharp practice of his vendor."[63] Although the aediles declared that "this edict was promulgated to check the wiles of vendors and to give relief to purchasers circumvented by their vendors"[64] Roman law did not condemn slave dealers as "mischievous grabbers". In fact the rather summary aedilician procedure took aim at a balanced risk allocation between the participants of exchange. Vendors were burdened with a strict objective liability for failing to provide the basic information about possible defects but it was a liability also within strict limits. It came about merely in the explicit cases issued in the edict (*morbus, vitium, fugitivus, erro, noxa*); the catalogue of the relevant defects was a enclosed one. Besides the condemnation never exceed the price paid (restitution or reduction, *redhibitio* or *quanti minoris*).

Furthermore, Roman authorities were careful with consumer protection: too much protection can obstruct free negotiation and private autonomy. Therefore the strict liability of the vendor was conditionally: "If a defect in or disease of the slave be perceptible (and defects reveal themselves generally through symptoms), it may be said that the edict has no place; its concern is simply to ensure that a purchaser is not deceived."[65] Carefulness and negligence of purchasers should not be protected by the edict.

Completing the picture it should be mentioned that the aedilician liability was not absolutely cogent: it was free for the contracting parties to exclude it:[66] "*Pacisci contra edictum aedilium omnimodo licet, sive in ipso negotio venditionis gerendo convenisset sive postea*."[67] Later on Pomponius stressed simply that "*Simplariarum venditionum causa ne sit redhibitio, in usu est*."[68] With mutual agreement the enforcement of market regulations issued by the *aediles* could be excluded any time. The opposite of a *simplaria venditio* or *pure vendere* is a sale *sub conditione*; the technical word condition (*conditio*, special contract term agreed upon by the parties) was mostly understood as *lex contractus* in Roman jurisprudence.[69]

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[63] D. 21.1.1.2 Ulp. 1 ed. aed. cur.

[64] D. 21.1.1.2 Ulp. 1 ed. aed. cur.

[65] D. 21.1.1.6 Ulp. 1 ed. aed. cur.

[66] JAKAB 1997, 186-7.

[67] D. 2.14.31 *Ulpianus libro primo ad edictum aedilium curulium*: "It is quite lawful to make a pact contrary to the edict of the aediles, whether the agreement is made in the course of arranging the sale or afterward." (Translation by Watson.)

[68] D. 21.1.48.8 *Pomponius libro vicesimo tertio ad Sabinum*: "It is not our practice to allow rescission in the case of sales where undertakings have been specifically excluded." (Translation by Watson.) Cf. CHORUS 1976, 157.

[69] Cato agr. 146-9.

Summing up it can be stated that the legal framework of the exchange of goods on public markets was a sophisticated one in ancient Rome. Roman authorities started rather early sate investments for creating a motivating infrastructure for trading, especially for the trade with slaves. Assisting market economy in a permanent and sufficient supply on slaves meant building market halls, ports and establishing a market control. The market control of the aediles tried to channel honest and faith-based contracting and introduced some kind of a limited consumer protection. Besides, every day legal practice elaborated detailed contract formulas according to dominating trade usage. Both set of norms formed together the legal framework of selling and buying: legal norms (of what kind ever) and market customs, the law of sale in notary practice (*leges venditionis*) and the edicts of the urban praetors and *aedilies curules*. The *aediles* ordered *praedicere*, to give certain information in advance – vendors of slaves were obliged to disclose every relevant disease or defect, if orally or in a written form.[70] The notary practice offered useful patterns how to style a fair sale contract.

[70] Cf. Jakab 1997: 40-43, 127-9.

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Index locorum

Cuneiform Texts

Greek and Latin Literary Texts

Greek an Latin Inscriptions

Papyri and Tablets

Roman Legal Sources

LEGAL DOCUMENTS IN ANCIENT SOCIETIES

1. THE LETTER
Rome, 28-30.9.2008

2. TRANSACTION COSTS IN THE ANCIENT WORLD
Washington DC, 27-28.7.2009

3. IDENTIFIERS AND IDENTIFICATION METHODS
Leuven–Brussels, 23-25.9.2010

4. ARCHIVES AND ARCHIVAL DOCUMENTS IN ANCIENT SOCIETIES
Trieste, 30.9-1.10.2011

5. SALE AND COMMUNITY
Budapest, 6-7.10.2012

6. ANCIENT GUARDIANSHIP
Jerusalem, 3-5.11.2013

7. THE LOAN CONTRACT IN ANCIENT SOCIETIES
Paris, 27-29.08.2015

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