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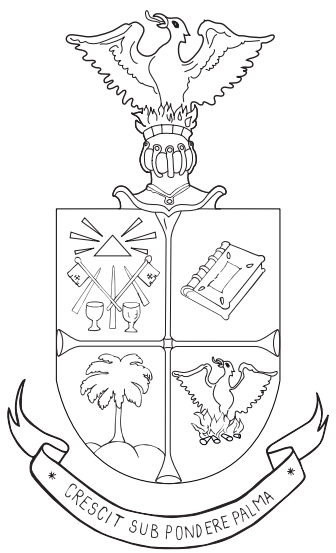

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Roman Law in the Provinces: A Case Study

The Romans were "obsessed with making wills, both of their own and others, to a degree and for reasons which may be hard to grasp today" stated Champlin in his book on the social context of the Roman law of succession.[2] It is told of Cato the Elder that he was anxious lest he was left intestate for a single day of his life.[3]

Testamentary succession was the first choice in legal life.[4] Wealthy Romans made their wills promptly when they reached the age of legal capacity. Pliny the Younger stated that a person's will is the real mirror of his character: "The Romans tell the truth only once in their lives, in their will."[5] However, there can be no doubt that wills mattered more for the "propertied and the educated" of Roman society. Concerning this milieu, an interesting case is delivered with a strong link to Roman Britain[6] – D. 36.1.48(46) Iavolenus 11 epistularum:

Seius Saturninus archigubernus ex classe Britannica testamento fiduciarium reliquit heredem Valerium Maximum trierarchum, a quo petit, ut filio suo Seio Oceano, cum ad annos sedecim pervenisset, hereditatem restitueret. Seius Oceanus antequam impleret annos, defunctus est: nunc Mallius Seneca, qui se avunculum Seii Oceani dicit, proximitatis nomine haec bona petit, Maximus autem trierarchus sibi ea vindicat ideo, quia defunctus est is cui restituere iussus erat. Quaero ergo utrum haec bona ad Valerium Maximum trierarchum heredem fiduciarium pertineant an ad Mallium Senecam, qui se pueri defuncti avunculum esse dicit. Respondi: si Seius Oceanus, cui fideicommissa hereditas ex testamento Seii Saturnini, cum annos sedecim haberet, a Valerio Maximo fiducario herede restitui debeat, priusquam praefinitum tempus aetatis impleret, decessit, fiduciaria hereditas ad eum pertinet, ad quem cetera bona Oceani pertinuerint, quoniam dies fideicommissi vivo Oceano cessit, scilicet si prorogando tempus solutionis tutelam magis heredi fiducario permisisse, quam incertum diem fideicommissi constituisse videatur.[7]

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2 E. Champlin, Final Judgements. Duty and Emotion in Roman Wills (200 BC - AD 250), 1991, 6-8;

3 Plut. Cat.Mai. 9.6.

4 R. P. Saller, Patriarchy, Property and Death in the Roman Family, 1997, 161 ff.

5 Plin. ep. 8,18; Champlin 1991, 82-87.

6 For *Britannia* see A. R. Birley, The Roman Government of Britain, 2005, 65ff.; also L. Wallace, The Early Roman Horizon, in M. Millett, L. Revell, A. Moore (eds.), The Oxford Handbook of Roman Britain, 2016, 115 ff.

7 D. 36.1.48(46): "Seius Saturninus, a chief pilot of the British fleet, by his testament left Valerius Maximus, a captain, his fiduciary heir and demanded of him that he restore the

Seius Saturninus, commander of the British fleet of the Roman army, drew up his will.[8] Saturninus seems a real name, not a pseudonym, because a Saturninus is also attested in the 2nd century AD in an inscription from Colchester (Roman Camulodunum), in a *honesta missio* of a cavalry-man.[9] Anyway, by his will, our Saturninus appointed Valerius Maximus (presumably a comrade or a friend) as a fiduciary heir and demanded of him to restore the entire inheritance to Seius Oceanus, the testator's son, on his attaining the age of sixteen. Thereafter the testator died, and his estate went as trust to Valerius Maximus − as laid down by the will. However, it happened that the young son of the testator died before coming of age. Thereupon, an uncle of his, Mallius Seneca, claimed the estate under intestate succession as the nearest blood relation: he filed an action against Valerius Maximus, who had held the estate since the death of the testator as a fiduciary heir, demanding that he hand over the entire property. The case came before court.

Birley assumed that the case might have been tried by a British provincial court, presided by Javolenus Priscus.[10] *Gaius Octavius Tidius Tossianus Lucius Iavolenus Priscus* was an eminent jurist and a successful politician under the reign of Trajan. We are informed of his life and career by inscriptions and literary sources. In AD 83 he served as *legatus pro praetore* and commander of the *Legio Tertia Augusta* in Africa. In AD 86 he was appointed to *iuridicus* (chief judge) of the province of Britain. Later on, he served as *legatus pro praetore* in Germania and Syria as well. According to Pomponius he became

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inheritance to Seius Oceanus, the testator's son, on his attaining the age of sixteen. Seius Oceanus died before he had attained that age. Now Mallius Seneca, who claims to be the maternal uncle of Seius Oceanus, demands these goods by right of relationship, but Maximus, the captain, claims them for himself on the ground that he to whom he was to restore them is dead. I am asking, therefore, whether these goods belong to Valerius Maximus, the fiduciary heir, or to Mallius Seneca, who claims to be the maternal uncle of the dead boy. I replied: 'if Seius Oceanus to whom the fideicommissary inheritance should have been restored under the testament of Seius Saturninus at his age of sixteen by Valerius Maximus, the fiduciary heir, has died before he attained the prescribed age, the fiduciary inheritance belongs to him who was entitled to the other goods of Oceanus; for the fideicommissum vested in the life of Oceanus, that is, if he be deemed by deferring the time of payment to have allowed the fiduciary heir the guardianship of the goods, rather than to have made the fideicommissum payable upon an uncertain day."

8 Just to offer some scholarly literature to the case: Ph. Heck, ZRG RA 10 (1889) 104; B. Kübler, ZRG RA 31 (1910) 188; Ot. Sommer, ZRG RA 34 (1913) 398; B. Kübler, ZRG RA 41 (1920) 32; H. Siber, ZRG RA 48 (1928) 762; M. Kaser, ZRG RA 95 (1978) 47; K. H. Misera, ZRG RA 98 (1981) 458, 462.

9 CIL XVI 130 (= RIB II 2401.12); Birley 2005, 150; E. Birley, JRS 28 (1938) 228; M. Roxan, Britannia 11 (1980) 335-337. See also A. Mócsy, Die Namen der Diplomempfänger, in W. Eck, H. Wolff (eds.), Heer und Integrationspolitik, 1996, 437-466.

10 Birley 2005, 271; following him L. J. Korporowicz, Roman Law in Roman Britain: An Introductory Survey, The Journal of Legal History 33 (2012) 143.

the leader of the *schola Sabiniana*, and the teacher of Salvius Julianus.[11]

By appointing a fiduciary heir, the fleet commander Saturninus chose a rather new, deliberate form for passing over his property. Initially, trusts were treated as requests, only morally but not legally binding. Final disposals through fideicommissa could concern just some items of property or the entire estate of the deceased − as it was the case with Saturninus. Bequeathing a *fideicommissum hereditatis* (trust of inheritance) meant instructing someone's heir with a request to pass the entire estate on a third person later; actually, it meant to be an executor.[12] Indeed, it was popular i cases where the heir (or legacy) named by the testator actually lacked legal capacity; for instance, being a peregrine with no known address, whose identity could not be confirmed, or was under age, as it was in our case. Initially, trusts were free from any limitations and restrictions.[13] Nevertheless, their fulfilment depended entirely on the *fides* (honesty) of the trustee. In our case, the informal request might have sounded like: "It is my earnest hope that you will pass everything to my son when he will be sixteen."[14]

Iavolenus Priscus, the famous jurist and high official in imperial administration, was confronted with the problem of a miscarried testament. Presumably, he also consulted or corresponded (as suggested by Jill Harries[15]) with other jurists in order to come to a fair decision in this prominent trial of high society. Finally, he responded that Saturninus' property should pass under intestacy. Iavolenus Priscus raised the argument that the purpose of the fiduciary bequest was to protect the estate until the testator's child came of age. The *fideicommissum* should not enable the use of someone's property for an indefinite period of time.[16]

Iavolenus Priscus' careful consideration can be explained by its similarities to the famous *causa Curiana*: in both cases, the testator's resolution was to avoid intestacy and

11 W. Eck, Jahres- und Provinzialfasten der senatorischen Statthalter von 69/70 bis 138/139, Chiron 12 (1982) 316-320.

12 For fideicommissa see A. Torrent, Fideicommissum familiae relictum, 1975; Johnston, The Roman law of Trusts 1988; A. Murillo Villar, El fideicomiso de residuo en derecho romano, 1989; V. Giodice-Sabbatelli, La tutela giuridica dei fedecommessi fra Augusto e Vespasiano, 1993; F. Longchamps de Bérier, Il fedecommesso universale nel diritto romano classico, 1997; L. Desanti, Restitutionis post mortem onus. I fedecommessi da restituirsi dopo la morte dell'onerato, 2003.

13 Gai. 2.285; see D. Johnston, Prohibitions and Perpetuities: Family Settlements in Roman Law, ZRG RA 102 (1985) 220-290; M. Kaser, R. Knütel, S. Lohsse, Römisches Privatrecht, 21ˢ edition, 2017, 386 ff., U. Babusiaux, Wege zur Rechtsgeschichte: Römisches Erbrecht, 2015, 330-345.

14 D. 4.4.1.1; see to it A. Wacke, Der Rechtsschutz Minderjähriger gegen geschäftliche Übervorteilungen, TR 48 (1980) 203 ff.

15 J. Harris, Saturninus the Helmsman, Pliny and Friends: Legal and Literary Letter Collections, in A. König, Ch. Whitton (eds.), Roman Literature under Nerva, Trajan and Hadrian, 2015, 1-34.

16 For a detailed exegesis see E. Jakab, Ein fideicommissum aus der Praxis des Javolenus Priscus: D. 36,1,48(46) (11 epist.), in Th. Finkenauer, B. Sirks (ed.), Interpretationes Iuris Antiqui (FS Nishimura), 2018, 67–84.

to pass over his property according to his will.[17] However, there was also a significant difference, the missing substitution in Saturninus' case. Saturninus omitted to fix a *substitutio pupillaris*; he did not appoint Valerius Maximus as a substitutive heir if his son died intestate. Valerius Maximus remained just a trustee, a *fideicommissarius*. It is evident that our case was tried and judged under Roman law. Furthermore, it is also obvious that the persons involved belonged to Roman legal culture. Roman Britain was a Romanised country, with Roman citizens settling in Britain and provincials keen to adopt Roman culture and Roman law. Stepping forward to other parts of the Empire, where a strong local (Hellenistic) tradition survived, the picture can be more confused.

The law of succession as tool of political power

Tony Honoré pointed out, that the "upholding of codicils and of trusts" were two of Augustus's innovations − which were formed through legal opinions and legislation given by leading jurists.[18] But Augustus invented many more new rules in the law of succession! Looking for an extra source of revenue out of which to pay a professional army, he set up a new tax falling exclusively on *cives Romani*, the *vicesima hereditatium*, or five per cent estate duty. It applied to all but small estates and fell upon all heirs except close relatives; I don't need to say that it was bitterly hated by the Romans. To encourage lawful marriages and offspring in high society (and to defeat their frivolous lifestyle) Augustus imposed sanctions on the unmarried and childless. They could inherit little or nothing, for childless husbands and wives, not even between each other (the *lex Iulia de maritandis ordinibus* and the *lex Papia Poppea*).[19]

Furthermore, especially for the province of Egypt, Augustus established the so called *Idios Logos*, a 'Special Account' of the fiscus.[20] It served the needs of Roman provincial administration for raising more revenues. It administered imperial land, and acquired and sold waste land (*adespota*) and such properties that by law fell to the state, such as those of intestates and criminals. For the present, it is of relevance that it imposed penalties (fines or confiscation) for various offences against the rules of inheritance and marriage law.

17 E. Jakab, Inheritance, in P. du Plessis, C. Ando, K. Tuori (eds.), The Oxford Handbook of Roman Law and Society, 2016, 499-500; U. Manthe, Ein Sieg der Rhetorik über die Jurisprudenz: der Erbschaftsstreit des Manius Curius – eine vertane Chance der Rechtspolitik, in U. Manthe, J. von Ungern-Sternberg (eds.), Große Prozesse der römischen Antike, 1997, 74–84; F. Wieacker, The causa Curiana and contemporary Roman jurisprudence, The Irish Jurist 2 (1967) 151–164; Ph. Thomas, The intention of the testator: from the causa Curiana to modern South African law, in J. Hallebeek (ed.), Inter cives necnon peregrinos: essays in honour of Boudewijn Sirks, 2014, 727–740.

18 T. Honoré, Emperors and Lawyers, 1994, 33 ff.

19 Kaser, Knütel, Lohsse 2017, 415-417.

20 W. Schubart, Der Gnomon des Idios logos. Erster Teil (= Ägyptische Urkunden aus den staatlichen Museen zu Berlin, Griechische Urkunden, V/1), 1919.

Our main concern is the law of succession, especially the way it is mirrored in legal documents. Therefore, I focus on wills− as manifested, drawn up by testators, as individuals all over the Roman Empire. An overview of the documentary evidence can enable new issues on legal identity − as felt by Romans and non-Romans in a multicultural world. Considering both approaches can offer a more sophisticated picture. Before turning to simple statistics, I must introduce some further premises about the law of persons and the law of succession. It concerns strict boundaries set up by public law between people of different provenance, language or culture.

BGU II 388 (dated 158-9 AD) and the Gnomon of the Idios Logos

Court proceedings, a report on hearings presided over by Postumus, the prefect of Egypt (45-48 AD), can demonstrate the difficulties that arose in a mixed society. Sempronius Gemellus, a wealthy soldier, was murdered − and his death led to a panic in his family. We learn that the lady of his house, a certain Ptolemäis, immediately ordered one of the servants to hide the silver they possessed. Another person was asked to drive away the flocks possessed by the deceased. The family members were feverishly occupied with concealing belongings, at least the movables − before the officials arrived. In the present trial, the persons involved are accused of theft; it is a criminal procedure, the hearing took place before the judge of the Idios Logos. It turned out that Gemellus appointed his son as his sole heir in a will. He was represented in court by his guardian. An advocate was questioned too, a certain *Flavius Julius alias Sarapion*, who composed legal documents for the family − years before.

Here, we must have a glance at the special issues of the Idios Logos concerning inheritance and social mobility. The main rules − and previous decisions in delicate cases − of this 'Special Account' were collected in a so called Gnomon ('Handbook' or 'Regulatory Code').[21] It was first issued by Augustus and originally drawn up in Latin but preserved in a Greek translation (BGU V 1210 + P.Oxy. 3014).[22] Of the 114 preserved paragraphs of the Gnomon, 34 relate to inheritance (§§ 3–36, about 30%). This special guide has been collected, copied and sent around the province − to be applied by the Imperial fiscal administration.[23] The restrictions concerned the

21 Schubart 1919; G. Plaumann, Der Idioslogos. Untersuchung zur Finanzverwaltung Ägyptens in hellenistischer und römischer Zeit, Abh. d. Preuß. Ak. d. Wiss. 1918, Phil.-hist. Kl. Nr. 17, 1919; O. Lenel, J. Partsch, Zum sog. Gnomon des Idios Logos, 1920; S. Riccobono, Il Gnomon dell'idios Logos, 1950; J. Mélèze-Modrzejewski, Gnomon de l'idiologue, in V. Giuffrè (ed.), Les lois des Romaines, Milano 1977, 520–57.

22 For dating see Schubart 1919, 3–5 and 8; recently also A. Dolganov, Imperialism and social engineering: Augustan social legislation in the Gnomon of the Idios Logos, in Th. Kruse (ed.), Dienst nach Vorschrift: Vergleichende Studien zum „Gnomon des Idios-Logos", 2020 (forthcoming).

23 P. Swarney, The Ptolemaic and Roman Idios Logos, 1970, 77–81 stressed that the Idios Logos acted as sales agent, administrator, investigator and judge.

strict boundaries between different groups of the population: Roman citizens; *Astoi*, the citizens of Alexandria; and Egyptians, the provincial populace from the *chora*.[24] The significant differences in status (so typical for ancient societies) are particularly evident in the Gnomon. The fiscal rules tried to hold back any intercourse, any type of social mobility (marriages, networking, bequeathing etc.) between them.[25] It is worth quoting some rules from this famous collection: § 4 ordered that the property of those who die intestate and have no other legal heir is to be adjudged to the fiscus. § 18 (BGU V 1210, l. 56–58, § 18) quoted an imperial constitution of Vespasian; according to it, any inheritance left in trust by Greeks for Romans or by Romans for Greeks is to be confiscated. The constitution extended the limits of capacity for fideicommissa, too;[26] any type of last wills that violated the law had to be sanctioned with confiscation. § 52 set out that Romans were not permitted to marry Egyptian women. § 7 (l. 33-34) ordered that any wills not made according to the public ordinances of Roman law were void. § 8 extends these prescriptions also to codicils: if supplements in Greek were added to a regular Roman testament, they were to remain ineffective.[27]

Romans must have strictly observed *ius civile* in their last wills − as developed by archaic legislation, praetorian edicts, lawyers' decisions and Emperors' statutes, focused on the city of Rome. The severe rules of capacity excluded many persons whom a testator might wish to benefit. § 8 (BGU V 1210, l. 35–37) stressed that Romans were not allowed to make Greek wills; furthermore, if the clause 'whatever I shall order in Greek codicils shall be valid' was added to a Roman will, it was not admissible, for a Roman were not permitted to write a Greek will. The authorities took care that Romans wrote their wills exclusively under the formal and internal rules of *ius civile*.[28] The capacity to make wills and to take under a will was strictly linked to *status*: any type of succession was forbidden between Romans and Peregrines by Senatus consulta as quoted above.[29]

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24 Recently U. Babusiaux, Römisches Erbrecht im Gnomon des Idios logos, ZRG RA (Zeitschrift der Savigny-Stiftung, Romanistische Abteilung) 135 (2018) 109–115.

25 As already pointed out by L. Mitteis, Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs, 1891, 102–110.

26 Later on, this rule was strengthened again by the Emperor Hadrianus.

27 Riccobono 1950, 35–6; B. Strobel, Römische Testamentsurkunden aus Ägypten vor und nach der Constitutio Antoniniana, 2014, 30–1; M. Nowak, Wills in the Roman Empire. A documentary Approach, 2015, 194–9.

28 Th. Rüfner, Testamentary formalities in Roman law, in K. G. C. Reid, M. J.de Waal, R. Zimmermann (ed.), Comparative succession law, I: Testamentary formalities, 2011, 1–26; see already H. Kreller, Erbrechtliche Untersuchungen aufgrund der Graeco-aegyptischen Papyrusurkunden, 1919, 328–337; Riccobono 1950, 119–123.

29 There were exceptions and privileges for some social groups; see for it recently E. Jakab, Testamente, Soldaten und der Idios logos, in Th. Kruse (ed.), Dienst nach Vorschrift: Vergleichende Studien zum „Gnomon des Idios-Logos", 2020 (forthcoming), at Fn 19; A.

Otherwise, until the time of Septimius Severus, ordinary soldiers could not marry during their service, and even children of marriages contracted before entry, if born during service, did not count as born of a lawful marriage.[30] In the course of their service, which lasted over 25 years, soldiers were damned to live in unlawful relations (concubinage). Marriage-like relationships established during service and continued in a non-legalised state could not be cured by marriage until the *honesta missio*.[31] Also offspring procreated in such unions could only be legalised after the *honesta missio*.

Returning to the criminal case tried by Postumus, it is very likely that the female, Ptolemäis, who was keen to hide the movables, was the concubine of the deceased; probably she was also the mother of his son. Concerning the unlawful marriage and the probable status difference between the parties, she had a very limited chance of succession. Moreover, under the will, she could inherit not more than 500 drachmas from her deceased partner – as ruled by § 14 of the Idios Logos; all the rest fell under confiscation.

Of legal documents

Our main task is provincial legal practice; cases tried by provincial courts served as an introduction to the topic. In the following I focus on legal culture, as mirrored in documentary texts, especially in wills – as the subject of the present case study. How did such testaments look?[32] How many have been preserved? What is their message about legal culture and 'law in action'? Did the 'principle of personality' apply? Did the legal status of individuals (whether Romans, citizens of Alexandria or Egyptians) have a significant impact on their everyday legal practice? A wide range of documents should be scrutinised to give a proper answer; it still requires future detailed studies.

Fortunately, there is a fragmentary text preserved on a tiny wooden tablet, documenting the last will of a citizen (who remained anonymous) of Roman Britain.[33] It was excavated long ago in North Wales, in Trawsfynydd; its transcription and edition were published by R. Tomlin: "The book when first found was of the form and size of a thick octavo. It consisted of some 10 or 12 leaves. These were joined together with

Lovato, Testamentum militis. Sull consodilamento giuridico di un privilegio, in M. Chelotti et al. (ed.), Scritti di storia per Mario Pani, 2011, 162–163; J. Stagl, Das „Testamentum militare" in seiner Eigenschaft als „ius singulare", Revista de Estudios Histórico-Jurídicos 36 (2014) 130–131.

30 S. E. Phang, The Marriage of Roman Soldiers 13 B.C.-A.D. 235: Law and Family in the Imperial Army, 2001, 197 ff.; J. Evans Grubbs, Women and the Law in the Roman Empire: A Sourcebook on Marriage and Widowhood, 2002, 158–159; Nowak 2014, 11 ff.

31 M. Mirkovic, Die römischen Militärdiplome als historische Quellen, in W. Eck, H. Wolff, H. (eds.), Heer und Integrationspolitik, 1986, 249–57.

32 H. Hurst, The Textual and Archaeological Evidence, in M. Millett, L. Revell, A. Moore (eds.), The Oxford Handbook of Roman Britain, 2016, 96 ff.

33 R. S. O. Tomlin, A Roman Will from North Wales, Archaeologia Cambrensis 150 (2001) 143-156.

a wire which was entirely corroded when it was first found. All the leaves except the covers had a narrow raised margin on both sides."[34] Of the original text, just some fragmentary lines are preserved:

...[ante]quam moriar ex asse herede[m iubeo] [---] ceteri alii omnes exheredes sunt[o---] leg[e] non alia [quam] quanta quibusqu[e ---] --- ded[ero] donavi donari[q] u[e] iusser[o ---] ... Tuque MA[---]SENE adito ce[r]nito hereditatem meam --- centum p[ro]ximis morti<s> mea(e) quibus DIE [sci]es [po]t[e]risque sci[r]e te mihi esse heredem le legitumam testibus pr(a)esentibus heredes sunto qui [sci]ant se eius rei ADVO CA[--- e]sse quod si ita n[on] creveris hereditatem [meam s]i aditum noluer[is exher]es esto [---] C[---]AM quam [ex asse mihi] heredem instutui

"[*The name and status of the testator*] ... before I die, I order that [*name*] be my sole heir...

Let all others for me be disinherited [...] on no other terms than that as much as I shall give, have given, shall have ordered to be given [...] and you [enter upon, accept my estate [... *within*] the next hundred [*days*] after my death in which you know or can know that you are my legitimate heir, in the presence of witnesses [...] let the heirs be those who know that they are [...] of this property.

But if you do not thus accept my estate, if you refuse to enter upon it, be thou disinherited [...], whom I have instituted as my sole heir."[35]

The thin rectangular slab of wood was covered with wax, which preserved the writing in cursive Latin. It formed the first page of a Roman will, bequeathing the property with solemn words: "... before I die, I order that [*name*] be my sole heir... Let all others for me be disinherited …" According to Tomlin, it is a veteran auxiliary soldier who designates a woman as sole heir to his estate, possibly his daughter (or wife?), and charges her to accept it within a hundred days.[36] The rest followed on tablets, which have now been lost.

According to the sources, Roman wills were written on waxed tablets − but, surprisingly, a very few have survived: FIRA III 47 (will of Antonius Silvanus); R. Tomlin, Archeologia Cambrensis 150, 2001, 143-156; P.Mich. VII 437; BGU VII 1695; BGU VII 1696. There are four wills known from Egypt; then this British example from Wales, and the four testaments from North Africa (of unclear provenance) put up recently for auction. Roger Tomlin speculated that the number of Roman citizens in the second century in Britain might have grown up to 100,000; the number of last wills must have exceeded half a million or more in Britain alone − but all that survived is one single tablet.

By the way, solemn Roman wills followed an archaic pattern;[37] the strict wording is

34 Tomlin 2001, 145.

35 Translation of Roger Tomlin.

36 Tomlin 2001, 152.

37 Rüfner 2011, 4-6; A. Watson, The Law of Succession in the Later Roman Republic, 1971, 8-21.

presented by Gaius in his *Institutiones* but also delivered in formula books from Roman Egypt, for instance in the template of P.Hamb. I 72.[38] Therefore, the main clauses of a broken text can easily be completed using better preserved samples. The best example is that of Antonius Silvanus, drawn up on wooden tablets, in a military camp close to Alexandria, in AD 142 (FIRA III 47). The testator was a soldier, a cavalryman, who served in Egypt and chose the old formula to compose his last will. The comparison with the British tablet demonstrates the strong formalities, repeating the same clauses − notwithstanding the very different provenance. The legal language is obviously congruent: *ex asse, exgeredes sunto, cernito* … Antonius Silvanus appointed his son as his sole heir – and ordered all others to be disinherited. He set a deadline of a hundred days to accept the inheritance − and appointed Antonius R…, his brother, as a substitute. The ordinary soldier, not even a Roman citizen yet, met all social expectations with his will: appointing his nearest blood relatives, letting legacies to the mother of his son, to his brother, and comrades in his squadron and manumitting his old slave.

Tabulae hereditatis used the archaic formula of *mancipatio*, a transaction through 'copper and scale'.[39] In line 5 we read: 'Purchaser of the estate for the purpose of testation: Nemonius, corporal of the troop of Valerius …' It is not clear if the formalities of the old *mancipatio* − as known in the Twelve Tablets from the 5th century BC − were carried out precisely, even by this soldier in the military camp of Roman Egypt, in the 2nd century AD. It seems more likely that the *mancipatio* lost its original significance, but the solemn wording was carefully retained in notary practice as a special kind of deed, a unique formula for drafting respectable wills. Looking at the sources, there are altogether fifteen wills that came down depicting the archaic formula with 'copper and scale'. Most of these documents were drawn up in the 1st or 2nd century AD, in Roman Egypt. The first is ChLA IX 399, dated at 91 AD; the last P.NY II 39, dated 335-345. It means that the formula was used over almost four hundred years. It is remarkable that, of all these mancipatory wills, only four were composed in Latin; all others are in Greek (although these were precise translations of the Latin formula). Of the fifteen deeds applying the very Roman formula, there are only four wills of soldiers or veterans (27 %). The low representation of the Roman army can serve as a strong argument that the traditional Roman formula cannot be explained simply by military connections. Furthermore, the four wills composed in Latin are not necessarily congruent with those of soldiers.[40]

But let's scan the entire set of documentary evidence! I restrict the simple statistical analysis to the wills drafted before 212 AD, before the *Constitutio Antoniniana*.

38 E. A. Meyer, Legitimacy and Law in the Roman World: tabulae in Roman Belief and Practice, 2004, 44-63.

39 Meyer 2004, 265-76.

40 Latin ChLA IX 399, ChLA X 412, FIRA III 47 and the template P.Hamb. I 72. Wills of soldiers or veterans are represented in P.Select 14, FIRA III 47, ChLA X 412, BGU I 326 (50% congruent).

Checking the wills delivered from the Roman period, we get a total of 68 texts; 26 Roman wills and 42 local wills. The obvious disproportion of the local wills can be cleared if we consider the geographical provenance. It is remarkable that, of the total of 68 documents, altogether 31 came down from Oxyrhynchos; 4 Roman wills and 27 local wills. Subtracting them from the opening data, we come to the following result: notwithstanding Oxyrhynchos, there are 22 Roman wills and 15 local wills preserved by the sand in Egypt. Did local custom play a less significant role than commonly supposed (except in Oxyrhynchos)?

There is a total of 26 Roman wills known from the Roman Empire. Of these, four documents were preserved from North Africa (?), one in Britannia, and twenty-one in Egypt. Considering the language issue, 16 were composed in Latin, 10 in Greek. It is interesting to compare them with the status issue. It should be scrutinized whether the Latin language was used only by soldiers or veterans. Can it be assumed that using the Roman formula (written in a formal, archaic Latin legal language) was merely an impact of the Roman army? Anyway, of the total of 26 Roman wills, only 8 can be linked – with some certainty – to the Roman army. They are only 50 % of the wills drawn up in Latin.

Looking at the names of the parties (the personal names of testators, heirs, recipients of legacies, witnesses), it can be found that, in the wills drafted in Greek, 6 preserve Roman or Roman-styled names; it means that Roman citizens also preferred to use the Greek language; nevertheless they applied the very Roman formula, translated into Greek. This result is in no way surprising: it is widely known that veterans of the Roman army belonged to local ethnic groups and also kept their local identity after receiving Roman citizenship. Furthermore, it is very likely that freedmen or even Romans living in the countryside were strongly assimilated into the local provincial social classes. These people often understood only Greek, as also demonstrated in their wills: at the end of a testament written nicely in formal archaic Latin, there is often a personal *hypographe* (subscription, signature) appended by the testator in Greek.

The "horror of intestacy"

The last case I wish to introduce concerns the legendary 'horror of intestacy', as already quoted by Cato.[41] A papyrus from Roman Egypt, P.Mich. III 159, preserved an official document that concerns a Roman military milieu, too. The deed is dated AD 37-43, but its exact provenance is unknown because it came from antiquity traders. Likely, it was drawn up in the Arsinoite *nomos*, in the Fayum. The text is in good, official Latin, written by a skilled hand – recording a decision in an inheritance case. It was tried in a military camp because almost all those involved were soldiers. The *praefectus castrorum* appointed a *centurio*, a certain Publius Matius, as *iudex datus* (judge) to settle the dispute; this Publius Matius was obviously a Roman citizen, serving in the third Cyrenaic legion.[42]

41 Plut. Cat.mai. 9.6.

42 B. Palme, Römische Militärgerichtsbarkeit in den Papyri, in H.-A. Rupprecht (Hg), Sympo-

The lines 1-5 summarise the essential elements of the trial: the names of the parties, agency, calling the soldiers by their military rank and unit. Thereupon follows the legal problem to decide: *ageretur de proximitate*, consanguinity, or the nearness of the blood relationship. In line 6, the centurion is appointed to judge in high technical language: *iudicem dedisset iudicareque iussisset*. The high officer, the prefect of the camp, who was in charge of jurisdiction, empowered a centurion of his troop to decide in the present case.[43]

At first glance, the many names and military ranks are confusing. Several people were involved in the litigation: Dionysius, the son of Manlius, represented by his son, M. Trebatius Heraclides, on one side; and M. Apronius and M. Manlius on the other side. It is not easy to say who was plaintiff and who was defendant. The phrase *absentis causam defendit* seems to indicate that the elder Dionysius (the brother of the deceased) must have been the defendant. Nevertheless, the verb *defendere* has different meanings: in several legal sources, it just stands for 'to represent'. We do not know if the elder brother, the veteran Dionysius, who lived on his estate in the countryside, got his hands on the estate of the deceased − or the subject of the present trial is just to decide who can apply for the *bonorum possessio intestati* (for the civil and military property of the deceased) as well.[44]

Previous documents can be assumed − but were not copied into the present court proceedings, such as the petition (*actio*) of the plaintiff, or some preparatory procedural acts carried out by the parties and laid down in formal legal documents, such as *vadimonia* etc.[45] In this trial, both parties seem to have produced evidence about their family connections to the deceased.

Educated on modern Roman law textbooks, the object of the trial seems a rather simple case, a mere school-exercise. However, the *centurio* Publius Matius does not seem to have felt like that. He gives the impression that he was rather scared, and therefore employed three advisors to consult about the facts and the legal background. Based on their names, it can be assumed that at least two of them were not Roman citizens, but provincials with knowledge of local customs, probably also local laws. Why?

The judges stated that no valid last will was produced by the litigants: either the deceased never made one, or he did but it turned out to be void (*intestatus decessisse diceretur*). After the examination of the evidence, Publius Matius pronounced (*sententiam dixit*) that Dionysius son of Manlius, the brother of the deceased should be considered the nearest blood relation.

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sion 2003, 2006, 358-394.

43 B. Palme, The judicial system in theory and practice, in J.G. Keenan, J.G. Manning, U. Yiftach-Firanko (eds.), Law and Legal Practice in Egypt from Alexander to the Arab Conquest, 2014, 482-502.

44 Kaser, Knütel, Lohsse 2017, 393-395.

45 Kaser, Knütel, Lohsse 2017, 452-453; A. Roger, Vadimonium to Rome, ZRG RA 114 (1997) 160; J. Platschek, Vadimonium factum Numerio Negidio, ZPE 137 (2001) 281.

What documents might the two young soldiers who lost the trial have produced? It seems to me that they argued they were not only the sons of the sister, but of the deceased as well. Looking between the lines and considering that the case was tried in Egypt – and also soldiers of local provenance were employed for legal advice – one can assume a "local marriage", an Egyptian sister-marriage in the background. Although it counted as incest (a crime) under Roman law it can be taken that such marriages were also tolerated among provincials in the Roman period of Egypt. The sister's sons might be the offspring of such a marital conjunction.

The existence of such marital unions can also be assumed based on the relevant legislation and precedents quoted in later proceedings. Among others, the Emperors granted several privileges to their legions. For instance, § 35 of the Gnomon of the Idios Logos attested that 'Children and kinsmen are permitted to inherit from soldiers who die intestate if the claimants are of the same genos, status.' It means that children procreated in unlawful marriages could succeed their (soldier) father under intestacy.

However, the very Roman context was obviously a disadvantage for the deceased's sons in the case delivered in P.Mich. III 159. Probably the judging *centurio* was young, rather unskilled and did not feel free to adjudicate just upon equity – as delivered later in other similar cases adjudicated by a prefect of Egypt or by an Emperor.

To conclude

This short introduction to the world of documentary texts already shows, that the survival of sources tends to occur by chance. There are plenty of wooden tablets excavated in Italy in the Vesuvian area or in the provinces, also in Britain; however, the main body of sources was overwhelmingly preserved by the sands of Egypt. In looking at papyri from Roman Egypt, scholars are not only interested in administration or jurisdiction, but also in everyday legal practice in this very province. The significance of this rich evidence should not only be restricted to Egypt. Reports of court proceedings, citation of previous decisions of high judges, statutes of administration or private legal documents – the essential issues can be extended by analogy also to other cases, from other provinces, and even to the legal life of Rome.

A further issue concerns the different types of sources. Legal opinions of jurists offer a short summary of facts and a compromised legal opinion. For centuries, our access to Roman law was exclusively seen through the prism of this special legal approach. Documentary texts enable a different approach, that of every day legal life.[46]

We may ask whether there was a direct link between citizenship and documentary practice—in spite of documentary evidence. Did the principle of personality always apply? For proper answers, further investigations are wanted.

46 E. Jakab, Prozess um eine entlaufene Sklavin (P.Cair.Preis.^{2} 1). Vertrag in der provinzialen Rechtskultur, ZRG RA 135 (2018) 520-526.

Legal historians dealing with this topic offered very different explanations for this phenomenon. In 1891, Ludwig Mitteis published his pioneering book 'Reichsrecht und Volksrecht in den östlichen Provinzen des Römischen Reiches'. According to him, the papyri from Egypt demonstrate that the 'new citizens' were consequently obliged to live according to Roman law.[47] Roman law conquered the provinces, and there was an eternal 'antagonism', a fight between Roman law and indigenous laws—which ended up finally with the overwhelming victory of Roman law. Some decades later, even Fritz Pringsheim believed in a 'Hellenistic resistance to Roman influence', lasting for centuries. All these concepts are to be revised.[48]

Law, custom and imperial jurisdiction − the legal order is a social action in general and a communicative action in particular. Like Jürgen Habermas, we can emphasise that "orders based on subjective recognition of their legitimacy rely upon their consensual validity. That is to say, individuals undertake and shape their social actions in order to respond to norms of action, both because they themselves recognize those norms as binding and because they know that other participants in their society feel an equal obligation to recognize those norms."[49]

47 Mitteis 1891, 148-156.

48 F. Pringsheim, The Greek Law of Sale, 1950, 481-482.

49 J. Habermas, Theorie des kommunikativen Handelns, Band I. Handlungsrationalität und gesellschaftliche Rationalisierung, 2. Aufl., Frankfurt a.M. 1982, 190.