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THE MULTIPLICITY OF REAL SECURITIES IN THE PAPYRI: A HYPOTHESIS

Abstract: Egypt's papyri have long shaped our understanding of the broader Greek real security practice in Hellenistic and Roman times. This paper argues that their unique diversity and underlying logic are specifically Egyptian, triggered by early Ptolemaic tax legislation.

Keywords: hypothec, *hypallagma*, *menein*-contracts, *epikatabole*, Babatha, Dura-Europos

1. The Diversification of Real Securities in the Papyri.

One of the most bewildering features of real securities in the papyri is their diversity. Thirty years ago, Hans-Albert Rupprecht sketched an overview of the forms known to us.[1] Alongside possessory pledge (*enechyron*) and ordinary hypothecation (hypothec) he included, as had become canonical, (a) *mesiteia* over catoecic land, (b) *hypallagma*, and (c) up to five distinct forms of title-transfer security, that is, of transfer of ownership as guarantee; some of these were clearly native Egyptian, documented in Demotic, like the so-called *Kaufpfandvertrag* and the bilingual double sale-loan deeds from Tebtynis and Soknopaiou Nesos; others, instead he presented as Greek: the interrupted sales from Pathyris, the so-called *one en pistei*, and the so-called *menein*-contract. All in all, a staggering nine forms of real security.

Over the years, I have tried to make sense of this strange proliferation, which, to my knowledge, has few parallels in legal history.[2] As a result, a slightly less chaotic picture has emerged: *mesiteia*, as long understood, is merely a necessary euphemism for hypothecs on catoecic land, since such land was theoretically inalienable.[3] The interrupted sales from Pathyris and the so-called *one en pistei* are one and the same thing: the latter, as I hope to have shown,[4] never existed as the Greek form of real security

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1 Rupprecht 1995.

2 Cf. in particular Alonso 2008, Alonso 2016.

3 The formal distinction *mesiteia* – *hypotheke* obeys to the same scruple that makes *parachoresis* more appropriate than sale for catoecic land. For the fundamental identity between both, cf. the sources collected by Manigk 1909b: 296-302. Particularly clarifying is the tetrad sale/*parachoresis*, hypothec/*mesiteia* in the models of *P. Mich*. II 122 (42 CE Tebtynis).

4 Alonso 2016.

imagined in earlier scholarship [5] – the term being a phantom,[6] the practice an episode, in late Ptolemaic Pathyris, of the native Egyptian securities through suspended sale.[7] But even after this reordering of the material, the Egyptian papyri retain, alongside the obvious *enechyron* and *hypotheke*, and the native Egyptian forms, rather eccentric possibilities not attested elsewhere – namely, *hypallagma*[8] and the so-called *menein*-contracts.[9] The question thus is: why do we find these additional forms in Egypt?

An easy answer is that also they may have native Egyptian roots. This possibility has occasionally been entertained for both *hypallagma*[10] and *menein*-contracts.[11] It cannot be entirely ruled out, even though no real evidence supports it so far and neither form was tied to a specific population group – certainly not to native Egyptians.[12] My question today, in any case, is a different one. Not so much where the inspiration for these forms may have been found, but whether their existence, and the ensuing

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5 Cf. in particular Rabel 1907: 355-364; Mitteis 1912a: 135-141; Mitteis 1912b: 257-262 (nr. 233-236); Rupprecht 1995: 429-435; Herrmann 1989 = Herrmann 1990: 305-314. Skeptical, albeit with unconvincing arguments, only Manigk 1909: 306-328, cf. Mitteis 1912a: 136-139.

6 A *terminus technicus* was hypothesized by Gerhard and Gradenwitz 1904, upon their discovery of *P. Heid. inv*. 1278 = *MChr*. 233 (111 BCE Pathyris). On this document and its true meaning, extensively, Alonso 2016: 158-166. The term is nowhere else attested, and all attempts to identify further examples behind the frequent expressions ἐν πίστει and κατὰ πίστιν have failed (Alonso 2016: 166–181). Under close scrutiny, the expression vanishes even from *MChr.* 233: it merely describes the execution ἐν πίστει, i.e. „in guarantee", of a sale *syngraphe*, or its keeping ἐν πίστει, i.e. „in custody", at the *archeion*, as was customary in Pathyris following the old Egyptian practice of securing debts through suspended sale.

7 It was the merit of Pieter Pestman to decypher as securities these peculiar Pathyrite interrupted sale deeds: Pestman 1985a: 32, and 1985b, with a list on p. 46. For a detailed analysis of this practice, Alonso 2016: 134-139, with sources and lit. For the identification of *MChr*. 233 as a further example, Alonso 2016: 158-166.

8 On *hypallagma*, Alonso 2008, Alonso 2010: 11-26, *passim*; Alonso 2012, with lit. Still fundamental, Schwarz 1911, and, on its basis, the careful contrast with ordinary hypothecation in Mitteis 1912a: 141-151.

9 On these *menein*-contracts, Alonso 2016: 139-146, with lit. As with *hypallagma*, their discovery as a specific form of security is the merit of A.B. Schwarz: Schwarz 1937.

10 For *hypallagma*: Taubenschlag 1955: 275, cf., ironically, Pestman 1983: 281-282. In the earliest examples (Alonso 2008: 27-32), from the time of Augustus, what is given ἐν ὑπαλλάγματι – „in substitution" – are the title deeds. This could suggest an Egyptian origin, since in the Demotic tradition: (a) receiving a document was seen a condition for acquiring a right (Lippert 2008: 145); (b) creditors received security in that they „bought" the asset – even if only with suspended effect –, while through *hypallagma*, instead – i.e. „as replacement" – they receive just its title deeds. On the question, which must remain open, Alonso 2008: 45-46, *passim*.

11 Their forfeit clause, in fact, makes the creditor acquire not through the *epikatabole* that we expect in a hypothec (on this, *infra sub* 3), but through explicit analogy with a sale, as if he had purchased – ὡς ἂν πράσεώς σοι γενομένης –, as we read in *P. Oxy*. XXXIV 2722 (154 CE), ll. 26-27, *P. Oslo* II 40 A (150 CE), ll. 11-14, *P. Oslo* II 40 B (150 CE), ll. 41-44, all from Oxyrhynchos. Cf. Alonso 2016: 145-146. On this peculiarity, which recalls the native Egyptian suspended sales, in detail, *infra sub* 8 and nn. 112-116.

12 This is particularly clear for the Augustan *synchoreseis* where *hypallagma* is first preserved; in the *menein*-contracts, attested exclusively in late 1st and 2nd cent. CE Oxyrhynchos, the onomastic is occasionally more Egyptian, albeit in a time when this is to be taken with caution: for an eloquent reminder of the reasons for such caution, even for the Ptolemaic period, cf. Clarysse 2019.

plurality, follows any kind of logic: an institutional logic, in the sense that this plurality is no mere accumulation, not a chaos but a *cosmos*, in which each piece may find its *raison d'être*; and a historical logic, that may explain how this plurality came about. It is on these questions, I believe, that we can make radical progress.

When faced with a strange reality, it is often best to focus on its strangest feature – it may well hold the key to understanding it. Among the securities that we find in Egypt, the most peculiar is arguably *hypallagma*. And its most baffling feature is how burdensome its enforcement was for the creditor – so burdensome, in fact, that one is left wondering why anyone ever accepted it, or why it was created in the first place, given how much easier the old *hypothec* was to enforce. Let us begin our inquiry with this perplexing aspect of *hypallagma*.

2. *Hypallagma*

First attested under Augustus, *hypallagma* almost certainly did not originate only then:[13] it would be extraordinary luck to possess papyrological evidence from the exact moment an institution emerged, and the late Ptolemaic period is too sparsely documented to allow conclusions *e silentio*. In any case, there is nothing Roman about it.

The Augustan examples all belong to a batch of *synchoreseis* – deeds formalised in Alexandria as fictitious court agreements – from mummy cartonnage, found by Otto Rubensohn in Abusir el-Meleq in the early 20th century,[14] and published for the most part by Wilhelm Schubart in BGU IV.[15] This early model for *hypallagma* is quite consistent. One example will suffice to illustrate its essence. In *BGU* IV 1147 = *MChr*. 103 (13 BCE Busiris), a certain Eirene, upon borrowing 600 drachmas from Dionysios, secures the loan with a house-born female slave, in the following terms:

> [τῆς πράξ]εως γινομένης τῶι Διονυσίωι |$_{21}$ [ἔκ τε αὐτῆς] Εἰρήνης καὶ ἐκ τῶν ὑπαρχόν|$_{22}$[των αὐτῇ πά]ντων καθάπερ ἐγ (l. ἐκ) δίκη(ς), |$_{23}$ [ἔτι] δὲ καὶ ἐκ τῆς ὑπαρχούσης τῇ Ἰρήνῃ |$_{24}$ δούλης Ἐρωτίου, καθ' ἥσπερ κἀ ἀναδέδωκεν |$_{25}$ αὐτῶι Δ[ιο]νυσίωι ἐν ὑπαλλάγματι ἣν ἔχει |$_{26}$ [κατ› αὐτῆς οἰκογε]νειᾶς ἀπογραφὴν καὶ μέ|$_{27}$χρι τοῦ δι[ευλυ]τῆσαι παρέξεσθαι αὐτὴν |$_{28}$ [ἀνεξαλλο]-τρίωτον καὶ ἀκαταχρημάτιστ(ον) [16]

As this example shows, *hypallagma* is quite a minimalist form of security. It boils down to a promise of non-alienation: until payment, the debtor undertakes to „preserve the slave unalienated and unencumbered" – παρέξεσθαι αὐτὴν | [ἀνεξαλλο]-

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[13] On the question and the unconclusive Ptolemaic evidence, Alonso 2008: 38-46.

[14] An overview in Schubart 1913.

[15] The material has been now collected by Peter van Minnen, with careful translations and bibliography, in https://classics.uc.edu/users/vanminnen/ancient_alexandria/index.html.

[16] "Dionysios having right of execution | upon Eirene herself and upon all her | belongings as if by virtue of a lawsuit, | as well as upon the female slave Erotion | belonging to Irene, regarding which she also has given | to the same Dionysios in *hypallagma* | the declaration of house birth that she had, and | (she concedes) that until cancellation she will preserve her | unalienated and unencumbered".

τρίωτον καὶ ἀκαταχρημάτιστ(ον), ll. 27-28. This secures the asset for the creditor in that, in case of default, it will remain in the debtor's estate, available for distraint.

In the Augustan *synchoreseis*, this inalienability is secured through a rather rudimentary expedient. The title deeds – here the declaration of *oikogeneia* of the slave – are handed over to the creditor. Being deprived of them does not make alienation *de iure* impossible, but in a deed-oriented legal culture it certainly makes it *de facto* difficult to find a buyer.[17] In fact, it is the deeds themselves, not the asset, that are given in *hypallagma* (κ̣αὶ ἀναδέδωκεν | α̣ὐτῶι Δ[ιο]νυσίωι ἐν ὑπαλλάγματι ἣν ἔχει | [κατ› αὐτῆς οἰκογε]ν̣ει̣ᾶς ἀπογραφὴν, ll. 24-26), a formulation that could explain why the term *hypallagma*, lit. „substitution", „replacement", was chosen for this practice, in which, instead of a right over the asset (on this, soon), the creditor merely received the title deeds.[18]

The fact itself that the handover of the title deeds was deeemed necessary, and so central to the institution as to give it its name, strongly suggests that *hypallagma* alone was not enough to make a subsequent alienation invalid or even inopposable to the creditor; in other words, that *hypallagma* did not bestow on the creditor any right that he could assert against a third-party acquirer.

This fits with another striking feature of *hypallagma*. In our text, the creditor's right over the security – the slave Erotion – is part of the same *praxis*, of the same right of execution, that he has on the rest of the debtor's belongings. This must be understood literally. It means that if the creditor chooses to execute upon the slave, he must follow the exact same procedure he would need for any other of the debtor's assets – as if no security whatsoever had been granted over the slave.

That this was the case is confirmed by numerous documents that illustrate the execution procedure in Egypt, and has been well known since Andreas B. Schwarz first identified *hypallagma* as a distinct institution, separate from hypothec.[19] For *hypallagma*, distraint is illustrated by *P. Berl. Leihg*. 10 (120 CE Arsinoites), *P. Fam. Tebt*. 29 = *SB* I 5341 = *Jur. Pap*. 48 (133 CE Arsinoites), *BGU* IV 1038 = *MChr*. 240 (after 144 CE Arsinoites), *BGU* III 888 = *MChr*. 239 (160 CE Karanis), *BGU* III 970 = *MChr.* 242 (177 CE Arsinoites), *SB* XVI 13070 (187 CE Arsinoites), *P. Iand*. VII 145 (224-225 CE unknown provenance), and *P. Flor*. I 56 = *MChr*. 241 = *Jur. Pap*. 49 (234 CE Hermopolis).[20]

What these papyri show is that, although – as for any other documented debt – a

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[17] A more detailed discussion of the function of the conveyance of the title deeds, in Alonso 2008: 32-35.

[18] Alonso 2008: 36-37.

[19] Schwarz 1911: 69-113; Mitteis 1912a: 143-144.

[20] The striking absence of Oxyrhynchite materials and their concentration in the Arsinoites is no coincidence: *hypallagma* is only rarely attested in the Oxyrhynchites and then either for public debts (so, probably, *P. Oxy.* II 370 *descr*. = *P. Lond*. III 806 *descr*., late 1st. cent.) or as security for the dowry (*P. Oxy.* VII 1034 r, 2nd cent. CE, *P. Oxy.* VI 907 = *MChr*. 907 = *FIRA* III 41, 276 CE, and probably *P. Erl*. 76, 4th cent. CE; adde the mention in *P. Bour*. 16, 198 CE, where no further information is given), never for loans. This may be related to the fact that, as we will see (*infra sub* 9), the crucial function of *hypallagma* was covered in Oxyrhynchos by what seems to be an institution local to the nome: the *menein*-contract.

notarised document was sufficient for execution,[21] distraint on the asset under *hypallagma* required the exact same cumbersome procedure as distraint on any of the debtor's unsecured assets:[22] a first procedure of *enechyrasia*, leading to the acquisition through *prosbole* of the asset by the creditor; and a second one of *embadeia*, through which he was put in possession. Both involved, in Alexandria, the prefect and the *archidikastes*, and in the nome, the *strategos* and, as distraint officials, the *praktores*.[23] Both required time and money, and entailed a risk of complications for the creditor, since the debtor could raise *antirrheseis* at each stage.

All this amounts to the following: *hypallagma* consists merely in the assurance that, until payment, the asset shall remain among the debtor's belongings, available for ordinary distraint. Otherwise, it leaves the creditor in the same position as before: distraint proceeds as on unsecured items and, since the non-alienation agreement had to be enforced indirectly, by withholding from the debtor the title deeds, it seemingly conferred no right to claim the asset if alienated. In sum: the creditor acquires no right whatsoever on the items the debtor renounces to alienate. *Hypallagma* seems thus less a right of the creditor than a mere restraint.[24]

This remained so throughout Roman times, until *hypallagma* vanishes at the end of the 4th cent. CE.[25] The only important development came, for *hypallagmata* on immovables, in the second half of the 1st cent. CE, with the introduction of the *bibliothekai enkteseon*,[26] where legal transactions on landed property were recorded.

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[21] Wolff 1978: 174-175.

[22] On this distraint procedure, cf. the foundational studies of Jörs 1915, 1918, 1919; later, Rupprecht 1997b = Rupprecht 2017: 150-161, and Rupprecht, in Keenan 2014: 259–265. For the distraint on *hypallagma* in particular, Mitteis 1912a: 159-161.

[23] How hypallagmatic distraint may have functioned in Ptolemaic times – assuming *hypallagma* is not an early Roman innovation – is less well known. *Enechyrasia* is attested as early as 227 BCE in *P. Tebt.* 814, with the traits familiar from Roman practice – the involvement of a *praktor* and the creditor's *paradeixis* –, though in this case not based on a credit deed but on a verdict of the *chrematistai*. Likewise, the first two fragments of the apparent royal ordinances in *P. Hib.* II 197, also from the 3rd century BCE, seem to regulate procedures of *enechyrasia* and *embadeia*. It is thus clear that these distraint procedures were at least in their outline no Roman innovation. In the same sense speaks the involvement of Ptolemaic officials like the *archidikastes* and the *praktores* – offices that the Roman administration seems to have kept mainly due to their role in this procedure.

[24] Our documents seem in fact to avoid the term *dikaion* to describe the position of the hypallagmatic creditor. The only exception is *P. Lips*. I 8 = *MChr*. 210 (220 CE Hermopolis): ἀπογρά(φομαι) (…) δίκαιον ὧν ὑπήλλαξέν μοι κατὰ διαγρα(φὴν) (…) κλήρων κατο[ι]κικῶν [(ἀρουρῶν) τριῶ]ν (ll. 3-9). In *P. Tebt*. II 318 = *MChr*. 218 (166 CE Tebtynis), a non-alienation agreement not explicitly labelled as *hypallagma*, the term *dikaion* does not refer to the immediate effect of *hypallagma*, but to the future right of distraint: [φο]|[βου]μένη δ[ὲ] μὴ λάθω [κατὰ] τὸ εἴς με δίκαι[ον] οἰκονομεί|[ας κα]τὰ τῷ[ν πρ]οκειμέν[ων] ἀρουρῶν (ll. 18-20).

[25] The last clear attestations come from 4th cent. Hermopolis: *CPR* XVII A 5 a-b (316 CE), *P. Charite* 33 (331-332 or 346-347 CE), and *P. Charite* 34 = *CPR* I p.59 = *SB* I 5344 (318 or 348 CE). Other than this, a mention in *P. Erl*. 76 (4th cent. unknown provenance). On the datation of the very fragmentary *SB* XXVI 16729, Alonso 2008: 47-48.

[26] The *terminus ante quem* has long been 72 CE, through *BGU* I 184 = *MChr*. 202 (72 CE Arsinoites), cf. Wolff 1978: 48-49; Maresch 2002: 234-235; Lerrouxel 2016: 164-171; now,

In striking confirmation of what we have just concluded about the nature of our institution, *hypallagmata* seem – unlike ordinary hypothecations – not to have been recorded as rights in the creditor's *folium*, but only as burdens in the debtor's.[27] From the registration, a *katoche* – a „hold" or „lien" – resulted.[28] Until its cancellation upon payment, the debtor would not obtain from the record office the *epistalma* required for notarised alienation or encumbrance of the land.[29]

A good illustration of this mechanism is *P. Kron*. 18 = *SB* VIII 9880 = *Pestman* 37 (144 CE Tebtynis), where the daughter of Kronion, Tephorsais, secures a loan grant-

arguing convincingly for an introduction through Tiberius Iulius Alexander between 67 and 68 CE, Claytor 2020: 35-42. It has long been known that their "introduction" was in fact a decoupling from the *bibliothekai demosion logon*. Far less attention has been paid to how many of their functions on private landed property were already covered by the latter. *P. Mich*. V 353 (48 CE) and 354 (52 CE) suggest indeed that the core mechanism of the later *bibliothekai enkteseon*, the so-called *epistalma*-system requiring authorisation of the *bibliophylakes* for the execution of notarial deeds on private land, was already in place in the mid-first century through the catoecic registers and, for non-catoecic land, through *demosia* that can hardly be anything else than the *bibliothekai demosion logon*.

27 That hypothecs had to be registered as rights by their holders is explicitly ordered in the 89 CE Edict of Mettius Rufus, preserved in *P. Oxy*. II 237 (178 CE Oxyrhynchos), col. VIII, ll. 31-32: κελεύω οὖν πάντας τοὺς κτήτορας ἐντὸς μηνῶν ἓξ ἀπογρά|ψασθαι τὴν ἰδίαν κτῆσιν εἰς τὴν τῶν ἐνκτήσεων βιβλιοθήκην καὶ τοὺς δανειστὰς ἃς ἐὰν ἔχωσι ὑποθήκας. Examples of such registration as a right abound; particularly illustrative is the *diastroma* in *P. Oxy*. II 274 = *MChr*. 193 = *FIRA* III 104 (97 CE Oxyrhynchos), following the hypothec in the different stages of its execution. *Hypallagma*, instead, is conspicuously absent from Rufus' list of rights to be registered; and, in fact, in the extant material it is never registered as a right in the creditor's *folium*, but as a lien in the debtor's. This is particularly clear in *BGU* IV 1072 r I = *MChr*. 195 (after 138 CE unknown provenance), a *diastroma* of a husband, recording a *hypallagma* on his entire estate securing the dowry, and in *P. Oxy. Hels*. I 36 (167 CE Oxyrhynchos), ll. 14-19, authorising a creditor to put through the record office a universal lien – equal to a universal *hypallagma*, even if the term is not used – upon the name of the borrower. The emphasis on the debtor's consent to the creditor's registration request in *P. Lips*. I 8 = *MChr*. 210 (220 CE Hermopolis) and *P. Lips*. I 9 = *MChr*. 211 (233 CE Hermopolis) echoes such clause authorising the creditor to register the *hypallagma* (cf. also *P. Princ*. III 144, 219-220 or 239-240 CE Ptolemais Evergetis) and makes sense only for a registration in the debtor's *folium*. The registration of a *hypallagma* securing a fiscal credit in *P. Turner* 23 (144-145 CE unknown provenance), l. 19, must also refer to the *folium* of the debtor, not only because its aim is securing inalienability, but also all because a fiscal *folium* in the property record office is highly unlikely – indeed, that fiscal liens are to be registered to the name of the debtors is explicitly stated in the Edict of Tiberius Iulius Alexander, *OGIS* II 669 (68 CE), ll. 21-24. In *P. Tebt*. II 318 = *MChr*. 218 (166 CE Tebtynis), two non-alienation agreements, equivalent to *hypallagmata* but not labelled as such, are presented for registration, seemingly in a τάξις κατοχίμων (l. 21), attested also in *P. Gen*. II 101 (2nd cent. CE, Soknopaiou Nesos, Arsinoites): this seems to have been a list of persons or properties burdened by *katoche*; in any case, certainly not a list of *katoche*-holders. Too fragmentary for a secure interpretation is *P. Strasb*. I 56 (2nd-3rd. cent., unknown provenance).

28 That the *katoche* arises from the registration – not from the hypallagmatic deed itself – is explicitly stated in *P. Turner* 23 (144-145 CE Arsinoites), κ̣α̣ὶ | κατασχεῖν διὰ τῶν παρ' ὑμεῖν γραμματοφυλακίω(ν) (ll. 18-19), and *P. Wisc*. I 16 (140 CE unknown provenance), καὶ ἡ γενομένη ὑπὸ τοῦ Ὡρίωνος δ̣ι̣ὰ̣ τοῦ | αὐτοῦ βιβλιοφυλακίου κατοχὴ τῆς οἰκίας | πρὸς τὸ αὐτὸ δ̣ά̣νειον (ll. 8-10). Also the universal lien authorised by the debtor in *P. Oxy. Hels*. I 36 (167 CE Oxyrhynchos), ll. 14-19, is to be established through the record keepers.

29 On this *epistalma*-system, Mitteis 1912a: 97–103; von Woess 1924: 175–201; Wolff 1978: 247–253.

ed to her and her sister[30] with two arouras of catoecic land by presenting a request to the keepers of the record office of the Arsinoites, that no notarial assistance be given to her until she pays the debt:

> καθ' ὧν καὶ μὴ συνχρη|$_{20}$ματίζεσθαί μοι μηδὲν ἁπλῶς οἰκονο|$_{21}$μούσῃ, ἐπ' ἐξαλλοτριώσι ἢ ἐπὶ κα̣τ̣α̣χρη|$_{22}$ματισμῶι, ἄχρι οὗ ἀποδῶ τὰ ὀφειλό|$_{23}$μενα καὶ ἀπενέ\γ/κω τὴν [κ]αθήκουσαν |$_{24}$ ἀποχήν.[31]

Through the property record office, the enforcement of the non-alienation agreement became more refined, if perhaps not more effective: it is uncertain whether documents notarised without *epistalma* would have been deemed void,[32] and, in any case, non-notarised transactions, through *cheirographon*, were possible without *epistalma* and perfectly valid in court – even if notarisation was required for sales to be registered at the record office and for hypothecs to be brought to execution without declarative trial.[33] Whether assets thus alienated could be claimed by a registered *katoche* holder remains an open question.

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[30] The document was glued to the right of *P. Kron*. 17 = *SB* VIII 9879, executed in Tebtynis more than three years earlier, in Sept. 25th, 140 CE. This was the *grapheion* loan deed through which Tephorsais and her sister received from Didyme, for one year, the 362 drachmas that the present *hypallagma*, well beyond the due date, secures.

[31] „so that no notarial assistance | is given to me for any act of administration | whatsoever, through alienation or deed of | disposition, until I do not return the indebted | sum and receive the appropriate | receipt." Unlike the registration requests in *P. Lips*. 8 = *MChr*. 210 (220 CE Hermopolis) and *P. Lips*. 9 = *MChr*. 211 (233 CE Hermopolis), *P. Kron*. 18 is not styled as *apographe*, but directly as *hypallage*: it is in fact not the mere registration of a previously contracted *hypallagma*, but the *hypallagma* itself, formalised through the record office. Parallel examples, where the *hypallagma* is contracted directly through its registration are *P. Wisc*. II 54 (116 CE Arsinoites) and *P. Vars*. 10 (156 CE Arsinoites), col. III. On the phenomenon, Carrara and Flore 1965: 124-127. The expression „contracted through the record office", so frequent in 2nd cent. Arsinoites, is thus to be taken literally: *P. Fam. Tebt*. 29 = *SB* I 5341 = *Jur. Pap*. 48 (133 CE Arsinoites), ll. 42-43; *SB* XII 10786 = *P. Tebt*. II 531 *descr*. (133 CE Tebtynis), ll. 16-17; *P. Tebt.* II 389 = *MChr*. 173 (141 CE Tebtynis), l. 18; *BGU* IV 1038 = *MChr*. 240 (after 144 CE Arsinoites), l. 24; *P. Tebt. Wall*. 7 = *P. Tebt*. II 440 *descr*. = *SB* XVIII 13788 (mid 2nd cent. Tebtynis), l. 13; *SB* XVI 13070 (187 CE Arsinoites), l. 3. The expression is to be integrated also in *P. Berl. Leihg*. 10 (120 CE Arsinoites), l. 18. Cf. also *SPP* XX 13 (254 CE Arsinoites), l. 11, and *P. Erl*. 76 (4th. cent. CE Oxyrhynchos), ll. 9-10.

[32] The Gnomon of the Idios Logos foresees only a 50 dr. fine, cf. *BGU* V 1210 (2nd cent. CE Theadelphia), ll. 227–228. Invalidity was postulated by Grenfell and Hunt on the basis of the Edict of Mettius Rufus, but the relevant part is their own integration, cf. *P. Oxy.* II 237 (186 CE Oxyrhynchos), col. VIII, ll. 36–38: παραγγέλ`λ´ω δὲ καὶ τοῖς συναλλα|γματογράφοις καὶ τοῖς μνήμοσι μηδὲν δίχα ἐπιστάλματος τοῦ βιβλιοφυλακί[ου τελειῶσαι, γνοῦσιν ὡς οὐκ ὄφελος τὸ] τ̣ο̣ιοῦτο ἀλλὰ καὶ |αὐτοὶ ὡς παρὰ τὰ προστεταγμένα ποιήσοντες δίκην ὑ̣πομενοῦσι τὴν προσ̣ήκ̣ουσαν. On the question, von Woess 1924: 220–222.

[33] On these and other flaws of the *epistalma* system, cf. in detail Alonso 2010: 18-20. Perhaps due to these shortcomings, the practice of depriving the debtor of the title deeds did not disappear completely: cf., decades after the introduction of the *bibliothekai enkteseon*, *BGU* I 301 (157 CE Arsinoites). An intriguing parallel can be found in a question posed to the late 2nd cent. Roman jurist Cervidius Scaevola, whose attention to provincial cases and to Greek documentary practice is well known (cf. Kübler 1907 and 1908; Taubenschlag 1919-1920a = Taubenschlag 1959 I: 505-517; Talamanca 2000-2001; Häusler 2016): Scaev. 5 *dig*. D. 13.7.43pr.: *Locum purum pignori creditori obligavit eique instrumentum emptionis tradidit* (…): (Someone) pledged a vacant plot to his creditor as security and handed over to him the purchase deed (…).

3. Hypothec

Hypothecations on real property, since they usually contained, like *hypallagmata*, a non-alienation agreement,[34] could also be registered as *katoche* in the debtor's *folium* at the property record office;[35] but it was compulsory for their holders, in any case, to register them to their name as part of their own *ktesis*[36] – unlike *hypallagmata*, in fact, they were always treated as rights.[37]

The reason for this difference lies in the way in which hypothec was realized upon default. Upon default, in fact, the hypothecary creditor needed assistance only to enter into possession, through the same *embadeia* procedure required as second step for *hypallagma* and indeed for any creditor enforcing distraint.[38] In order to acquire

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[34] In detail, Rupprecht 1997b = Rupprecht 2017: 162-172; *adde* Alonso 2012: 14-17, with further lit.

[35] This conjecture of Schwarz 1911: 62, has been confirmed by later documents. *P. Col*. X 252 = *SB* XX 14278 (late 1st cent. CE Alexandria), ll. 9-14, clearly implies that hypothecations show up in the record of the owner. Direct evidence is provided by: the *diastroma* extract in *P. Gen*. II 100 (128 CE Soknopaiou Nesos), ll. 9-11; *P. Oxy*. XVII 2134 (after 170 CE Oxyrhynchos), ll. 24-26, a loan authorising the hypothecary creditor to burden the asset with *katoche* in the debtor's record; *PSI* XII 1238 (244 CE Tamais), ll. 14-16, a receipt explicitly invalidating the *katoche* together with the hypothec; *P. Lond*. II 348 (p. 214) = *MChr*. 197 (202-203 CE Ptolemais Evergetis), a receipt where the creditor undertakes to cancel the *katoche* at the record office; *BGU* III 907 (180-192 CE Arsinoites), l. 10, a creditor's request to the *bibliophylakes* to that purpose. Possibly to a hypothec – the term used in the document is *asphaleia*, l. 11 – refers the registration as *katoche* in *SB* VI 9190 (131 CE Talao), ll. 18-20. Unclear is whether in *P. Hamb*. I 14 (209-210 CE Arsinoites), ll. 9-10, ἐν ὑποθήκῃ [δι' ὑ]|μῶν refers to the registration as *katoche* to the name of the petitioning debtor or just as right to the name of the creditor. Whether the debt registered in *P. Oxy*. XXIV 2411 (after 170 CE Oxyrhynchos), ll. 43-52, was secured by hypothec is uncertain, despite Purpura 1978.

[36] *Supra* n. 27.

[37] The fact that the rights to be recorded in the *bibliotheke enkteseon* were not characterised as such, that recorded ownership was labelled *ktesis* rather than *kyreia*, and the record office itself was labelled *enkteseon* by the Roman administration that established it, simply reflects the fact that on provincial land the eminent ownership of the Roman people or the Emperor reduced private ownership to *possessio vel ususfructus*, as we read in Gaius' Institutions (Gai. 2.7).

[38] Much of the *embadeia* material concerns *hypallagma* (*supra* ad n. 20) and unsecured debts. For hypothecated assets, the best example is the *embadeia* request in *P. Flor*. I 86 = *MChr.* 247 (after 86 CE Hermopolites), ll. 18–24, where the *epikatabole* is strikingly absent. Likely examples of *embadeia* initiated through *diastolikon* request seem the very fragmentary *BGU* XV 2473 (after 102 CE Arsinoites) and *P. Graux* II 27 (212–217 CE Ammoniake). *BGU* VII 1574 (176 CE Philadelphia) is the *antirrhesis* of a Roman debtor against the distraint of a hypothec. *P. Oxy*. XX 2280 (late 3rd cent. CE Oxyrhynchos) very fragmentarily records a trial before the *archidikastes* regarding the execution of a hypothec. The fact that the evidence is richer for *hypallagma* is simply a consequence of its success (*infra sub* 9). Ptolemaic evidence is even scantier: beyond the *epikatabole* (*infra* n. 44), it reveals almost nothing about the actual distraint. Even in *P. Polit. Iud*. 8 (133 BCE Herakleopolis), a petition to the *archontes* of the Jewish *politeuma* by a creditor who had effected *epikatabole* but was persuaded by the community to settle, there is no mention of *embadeia*, nor do we know whether he ever took possession of the vineland. That the *embadeia* procedure was already in place by the 3rd century BCE is clear from the sources (*supra* n. 23), but direct

the asset, instead, he did not need to go through any executive procedure at all. All he needed was to perform the so-called *epikatabole*.[39]

Whatever this act exactly entailed,[40] we know that it was sufficient for the asset to forfeit to the creditor, to become his;[41] and we know that it was an act of the creditor, one that depended exclusively on his will, even if it may have been performed before an official and involved the payment of the *telos epikataboles* – always kept at the exact rate of the general acquisition tax, the *enkyklion*, to which it belonged as a specific case–[42] not just as a consequence but as a requirement. As the documents themselves emphasise, the creditor is entitled to perform the *epikatabole*.

Since forfeiture upon default depended thus solely on the hypothecary creditor, it is unsurprising that – unlike his hypallagmatic counterpart – he was regarded as having acquired a right through the hypothecation itself: the right to effect *epikatabole* upon default and thereby become owner. That is why, unlike hypallagmatic creditors, he was called to register the hypothec as part of his *ktesis*. In fact, such a right to forfeiture makes it natural to view hypothecation as suspended ownership, the creditor akin to a conditional buyer.[43]

For the Ptolemaic period, the best preserved hypothecary deed – and thus our best illustration – is *P. Tebt*. III 1 817 = *C. Pap. Jud*. I 23 = *SB* I 4232 (182 BCE Tebtynis), a secured loan between two Jews of the epigone. The deed's overall structure and the

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evidence of its application to hypothecated assets is lacking.

39 One notable exception, where a hypothec (ἐπὶ ὑποθήκῃ, l. 9), not only goes through *embadeia* but also through *enechyrasia* (ἔτι δὲ καὶ ἣν ἐπόρισα ἐνεχυρασίαν καὶ τὴν ταύ[της] | [δημοσ]ίῳσιν καὶ τὰ ἐξῆς ἐπηκολουθηκότα νόμιμα μέχρις ἐμβαδίας, ll. 16-17) is *PSI* XII 1238 (244 CE unknown provenance); cf. Rupprecht 1995: 297 = Rupprecht 2017: 156. This could be explained if *epikatabole* were no longer in force in the mid-third century: *infra* nn. 45, 47.

40 On *epikatabole*, see in this same volume the contributions of Thomas Kruse and Victor Walser. From the older literature, Schwarz 1911: 119-125; Mitteis 1912a: 163-165; Rupprecht 1997b: 294-298 = 152-157.

41 Two main arguments lead inevitably to this result: (a) before requesting *embadeia* – that is, possession –, unsecured and hypallagmatic creditors acquire ownership through the nominal *prosbole* that takes place upon *enechyrasia*, which enables the transcription of the asset to their name at the property record office (cf. *P. Flor*. I 56 = *MChr*. 241 = *Jur. Pap*. 49, 234 CE Hermopolis, ll. 10-19); if hypothecary creditors, after *epikatabole*, only need *embadeia*, it must be because *epikatabole* sufficed to make them owners; (b) for catoecic land, *epikatabole* is replaced by *metepigraphe*, the transfer of the land in the catoecic register from the debtor to the creditor, through which the title itself is transferred: *BGU* XVI 2643 (8 BCE Herakleopolites); *P. Mich*. V 232 = *SB* V 7568 (36 CE Tebtynis); *P. Brem*. 68 (99 CE Hermopolis); *P. Strasb*. I 52 (151 CE Hermopolis).

42 For the integration of the *telos epikataboles* within the *enkyklion*, cf. explicitly, *P. Flor*. I 1 = *MChr*. 243 = *Jur. Pap*. 68 (153 CE Hermopolis), l. 6: ταξαμένοις τὰ εἰς τὸ ἐνκύκλιον καθήκοντα τέλη ἐπικαταβολὴν ποιήσα[σθ]αι. On the *telos epikataboles*, Alonso 2016: 130 n. 41, and 136-137 with n. 137.

43 Cf. Mitteis 1912a: 146: „Die so verstandene Hypothek ist also nicht eigentliches Pfandrecht, sondern aufschiebend bedingtes Eigentum". In the same sense already Rabel 1907: 358 n. 1, with an overview of the different legal traditions in which hypothecation arises as suspended sale in 364-370. On ownership, sale and hypothec, and the various possible configurations of their interplay, Alonso 2016: 121-126.

signalements annotated at its end correspond to a notarial document, either executed at the *agoranomeion* – in this case of Krokodilopolis in the Arsinoites – or at least deposited with the *agoranomos*. Sostratos borrows from Apollonios two talents and three thousand copper drachmas, nominally with interest only for the overtime, upon hypothec of the house belonging to him in the village of Apias, also in the Arsinoites. The loan is to be repaid within a year. The consequence of default is tersely formulated in ll. 19–20:

> [ἐ]ὰν δὲ μὴ ἀποδῶι καθὰ γέγραπται, ἐξέστω Ἀπολλωνίωι ἐπικα|$_{20}$[τ]αβολὴν ποιήσασθαι τῆς ὑποθήκης ἀκολούθως τῶι διαγράμματι.

That is: „if he does not repay as written, Apollonios shall have the right to effect the *epikatabole* of the hypothec in accordance with the royal ordinance". Crucial for us is that the *epikatabole* appears clearly as depending on the sole will of the creditor, indeed as something he is entitled to. Also, that it was regulated – and most likely introduced – by a Ptolemaic *diagramma*, earlier than 236 BCE, when the *epikatabole* is first attested: either the *Justizdiagramma* postulated by Wolff as omnicomprehensive regulation of the judicial system or a different one, perhaps a specific hypothec-*diagramma*, of Philadelphos – to whom Wolff attributes the *Justizdiagramma* – or, at the latest, given the *terminus ante quem*, Evergetes.[44]

In any case, the institution remained in place well after the Roman conquest, at least until the mid-second century[45] – when it was presented as effected „in accord-

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[44] The Ptolemaic material for *epikatabole* is not scarce. Together with our document: *SB* XVI 12344 = *P. Carlsberg* 48 (236 BCE Krokodilopolis); *P. Enteux*. 14 (222 BCE Magdola); *P. Enteux* 15 = *P. Lille* II 31 (218 BCE Magdola); *P. Tebt*. III 2 970 *descr*. = *C. Ptol. Sklav*. I 26 (early 2nd cent. BCE Krokodilopolis); *P. Polit. Iud*. 8 (133 BCE Herakleopolis). To this list, *P. Heid. Inv*. G 5017, dated by Armoni 2008 to 156 BCE Herakleopolis, has been added by Thomas Kruse in this same volume. The land recorded as ἐπικαταβεβλῆσθαι in *P. Haun*. IV 70 (119-118 BCE Apollonopolis), l. 396, is perhaps best understood, with the editors, as seized by the royal treasury; this is also the likely meaning of the expression in the late 2nd cent. BCE land registers from Herakleopolites published in *BGU* XIV: 2441, ll. 30, 48, 65, 73; 2444, l. 24; 2448, l. 2; 2449, l. 36; and 2450, l. 42.

[45] The occurrences in Roman times are not extraordinarily many, but enough to leave no doubts as to the survival of the *epikatabole*: *P. Oxy*. II 274 = *MChr*. 193 = *FIRA* III 104 = *Jur. Pap*. 60 (97 CE Oxyrhynchos); *P. Flor*. I 81 (103 CE Hermopolis); *P. Bas*. 7 = *MChr*. 245 = *SB* I 4434 (117-138 CE Arsinoites), plausibly reconstructed in l. 19; *P. Horak* 23 (148-149 CE Arsinoites); *P. Flor*. I 1 = *MChr*. 243 = *Jur. Pap*. 68 (153 CE Hermopolis); *BGU* VII 1651 (2nd cent. CE Philadelphia). Dubious is the meaning of γῆ ἐπικαταβεβλημένη ἀπὸ δεκαρουρίας κωμογραμματέως, in *SB* XIV 11533 = *SB* VI 9086 (104 CE Arsinoites). That the *epikatabole* is mentioned less often in Roman than in Ptolemaic times, despite the far greater number of surviving Roman papyri, can come as no surprise. It is the inevitable result of the diversification of security forms in Roman Egypt, which this paper seeks to elucidate: *epikatabole* remained confined to ordinary hypothecation, while other forms were favoured precisely because they avoided it and its tax, and may indeed have been introduced for that very purpose (see *infra sub* 8-9).

ance with the laws of the hypothecs"[46] –, perhaps even into the third.[47] At the latest, the prohibition of forfeit by Constantine in 320 CE would have effectively precluded the survival of the *epikatabole*.[48]

Particularly thorough among the documentary models for hypothecation in Roman times was the one followed for agoranomic deeds in Hermopolis, attested in several well-preserved payri. One of them is *P. Flor*. I 1 = *MChr*. 243 = *Jur. Pap*. 68 (153 CE Hermopolis).[49] A certain Ptolema borrows, through the bank of the *epiteretai*, two hundred drachmas from Hermione at a yearly interest of 12%, under hypothecation of part of a no longer operating oil mill. The loan is to be returned in two years. The consequence of default is articulated in much more detail than in its Ptolemaic counterpart, yet remains strikingly identical in substance:

> ἐὰν δὲ μὴ ἀποδοῖ τῆς προθεσμίας ἐνστάσης εὐθέως ἐξέστω τῇ δεδανικυίῃ (l. δεδανεικυίῃ) ἢ τοῖς παρ' αὐτῆς μὴ προσδεομένοις ἀνανεώσεως ἢ διαστολικοῦ ἢ ἑτέρου τινὸς ἁπλῶς, ταξαμένοις τὰ εἰς τὸ ἐνκύκλιον καθήκοντα τέλη ἐπικαταβολὴν ποιήσα[σθ]αι |$_{7}$ τοῦ ὑποτεθειμένου ὡς προκείται βείκου (l. βίκου) ἑνὸς τετάρτου καὶ κτᾶσθαι αὐτὴν καὶ τοὺς παρ' αὐτῆς τουτο (l. τοῦτον) κυρίως ἀντὶ τῶν [ὀ]φει[λομ]έ[ν]ων καὶ ἐμβαδεύειν (l. ἐμβατεύειν) εἰς αὐτὸν καὶ εἰσοικίζειν καὶ ἐνοικολογεῖν καὶ διαμισθοῦν καὶ ἀποφέρεσθαι τὰ ἐξ αὐτοῦ περιεσόμενα πάντα εἰς τὸ ἴδιον ἔτι δὲ καὶ χρᾶσθαι καὶ οἰκονομεῖν περὶ αὐτοῦ καθ' ὃν |$_{8}$ ἐὰν αἱρῶνται τρόπον ἐπὶ τὸν ἅπαντα χρόνον μηδενὸς τῇ δεδανισμένῃ (l. δεδανεισμένῃ) μηδ' ἄλλῳ ὑπὲρ αὐτῆς ἐξ ὑστέρου ἁπλῶς πε[ρ]ὶ τούτου καταλειπομένου λόγου ἢ παρευρέσεως.[50]

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[46] *P. Bas*. 7 = *MChr*. 245 = *SB* I 4434 (117-138 CE Arsinoites) l. 18-19: [ἐξεῖναι τῷ Πακύσι ἢ τοῖς παρ' αὐτοῦ χω]ρὶς διαστολῆς καὶ ἐπανγελείας τὴν τῆς ὑποθήκης | [ἐπικαταβολὴν ποιήσασθαι ταξαμένοις τὰ τέλη ἀκολούθως τ]οῖ[ς] νόμοις τῶν ὑποθηκῶν. The reconstruction is kept in the new edition as *P. Bas*. II 29. The more generic ἐπι[τ]ελεῖν τὰ κατὰ τῆς ὑ|ποθήκης νόμιμα in *BGU* III 741 = *MChr*. 244 = *FIRA* III 119 (143 CE Arsinoites), l. 28-29, and ἐχρή|σα\το/ ἐπὶ περιόντος αὐτοῦ τοῖς νομίμοις in *MChr*. 88 = *P. Cattaoui verso* (142 CE Arsinoites), ll. 10-11, may be so formulated as to include *ius distrahendi*, cf. Mitteis 1912a: 130.

[47] The question depends on the datation of *SB* XX 14628 and on the interpretation of the expression ἐπικα[τα]||βολῆς χειρόγραφον, as the document is labelled (ll. 6-7). The original datation to the 2nd cent. in El-Mosallamy 1988, unlikely in the presence of καὶ ἐπερωτ[η]θεὶς ὑπὸ [σο]ῦ | [ὡ]μο[λόγησ]α (ll. 11-12), is plausibly corrected in *BL* XI: 231 to the 23rd year (l. 12) of Caracalla, that is, to 214-215 CE, cf. already Gonis: 329.

[48] The imperial constitution is preserved in CTh. 3.2.1 and C. 8.34.3. On forfeit (*lex commissoria*) in Roman law and its Constantinian abolition, Burdese 1949; Peters 1973; Schanbacher 2002: 649-657; Verhagen 2013: 122-124. The absence of *epikatabole* in *P. Panop*. 21 = *SB* XII 11214 *dupl*. (315 CE Panopolis) suggests that it had lapsed already before the Constantinian constitution. Indeed, it may have disappeared a century earlier, if the *enechyrasia* of a hypothec in *PSI* XII 1238 (244 CE unknown provenance), l. 16, is any indication (*supra* n. 39).

[49] Cf. also *P. Flor*. I 81 (103 CE Hermopolis) and *P. Strasb*. I 52 (151 CE Hermopolis).

[50] „If she does not return in the established term at once, it shall be lawful for the lender or those acting for her, without having to accept a postponement and without injunction or anything else, by paying the taxes due to the *enkyklion*, to effect the *epikatabole* | of the hypothecated, as aforementioned, one and a fourth biko (of a no longer operating oil mill), and for her and those acting for her to acquire it as owner in lieu of the indebted sum and

More than three centuries later, the core of the creditor's right upon default remains in place: he is entitled to effect the *epikatabole*. The formulation is, however, much more explicit regarding certain aspects of this right: (a) it arises immediately upon default: the creditor is entitled to it without postponement, injunction or any other prerequisite;[51] (b) it requires payment of the taxes due to the *enkyklion*, as the Ptolemaic evidence also illustrates;[52] (c) no further step is necessary for the creditor to acquire ownership on the hypothecated asset, with the full faculties of any owner to enter in possession, use, enjoy and freely dispose.

Needless to say, the fact that the creditor, after the *epikatabole*, is as owner entitled to possession does not allow him to seize it by his own means: thus, if possession is not freely surrendered by the debtor, *embadeia* will be necessary, as the sources make clear,[53] despite our document's silence in this respect.[54]

Even with this caveat, the advantage of hypothec over *hypallagma* remains evident. So evident, in fact, that it begs the question: if hypothec is so much easier to enforce, why would any creditor prefer *hypallagma*? Why accept a form of security that must be executed as if no security had been given at all? Indeed, why was *hypallagma* introduced in the first place, if it was so much more cumbersome than the already existing alternative?

4. The Debtor's Liability

One plausible answer becomes apparent if we compare how the debtor's liability is articulated in *hypallagma* and hypothec. In *hypallagma*, as we have seen, the creditor's right to distrain the secured asset is part of the same *praxis* clause that also entitles him to distrain, alternatively, any other property of the debtor. So, for instance, the already examined *praxis* clause in *BGU* IV 1147 = *MChr*. 103 = *Jur.Pap*. 45 (13 BCE Busiris):

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to enter in possession of it and dwell in it and receive rent for it and lease it out and take as her own all the produce, as also to use and administer regarding it according to | her own will and desire for all time, and there will not be for the borrower nor for those acting for her concerning this any claim or objection of any sort."

51 Postponement beyond the contracted term (*ananeosis*) is well attested in the sources, as it required payment of a 2% *telos ananoseos*, cf. Rupprecht 1981 = Rupprecht 2017: 119-126. Its exclusion is more rhetorical than effective: a debtor can never demand *ananeosis*, and a creditor may always grant it, even if he had expressly excluded it, as here. More problematic is the exclusion of the injunction (*diastolikon*), since the procedure for entering possession (*embadeia*) began with it. The clause may be intended in the sense that the debtor agrees not to force *embadeia* but to surrender possession voluntarily after *epikatabole*. Yet, it is difficult to imagine any form of enforcing such clause other than initiating *embadeia* with the request that *diastolikon* be served to the debtor.

52 *Supra* n. 42.

53 *Supra* n. 38.

54 *Embadeia* is usually omitted from hypothecary deeds—unsurprisingly, as it was required *ex lege* and credit deeds rarely spell out legal constraints on creditors. Its absence here is notable only due to the exceptionally detailed forfeit clause. It would be easy to understand if the clause excluding the *diastolikon* were meant as an agreement by the debtor to surrender possession voluntarily (*supra* n. 51).

> [τῆς πράξ]εως γινομένης τῶι Διονυσίωι |$_{21}$ [ἔκ τε αὐτῆς] Εἰρήνης καὶ ἐκ τῶν ὑπαρχόν|$_{22}$[των αὐτῇ πά]ντων καθάπερ ἐγ (l. ἐκ) δίκη(ς), |$_{23}$ [ἔτι] δὲ καὶ ἐκ τῆς ὑπαρχούσης τῇ Ἰρήνῃ |$_{24}$ δούλης Ἑρωτίου, καθ' ἥσπερ κ̣αὶ ἀναδέδωκεν |$_{25}$ α̣ὐτῶι Δ[ιο]νυσίωι ἐν ὑπαλλάγματι ἣν ἔχει |$_{26}$ [κατ› αὐτῆς οἰκογε]νε̣ιᾶ̣ς ἀπογραφὴν καὶ μέ|$_{27}$χρι τοῦ δ̣ι[ευλυ]τῆσαι παρέξεσθαι αὐτὴν |$_{28}$ [ἀνεξαλλο]τρίωτον καὶ ἀκαταχρημάτιστ(ον) [55]

The *praxis* clause in *hypallagma* is always formulated along these lines: the creditor is entitled to proceed in execution against the debtor and all her belongings, including the asset under *hypallagma*. He is thus free to choose between the pledged asset and anything else she may own – in fact, he does not even need to choose: he may distrain upon both further assets and security, if the latter were or became insufficient.[56]

This perfectly corresponds to the evidence available for the distraint: in their petitions to the Alexandrian *archidikastes*, through which execution was initiated, the creditors emphasise that their *praxis* comprises, with the assets under *hypallagma*, the entire estate of their debtors.

A well preserved example is *BGU* III 888 = *MChr*. 239 (160 CE Karanis), from the archive of the auxiliary soldier C. Iulius Apollinaris,[57] regarding a loan of 200 drachmas with interest that, before entering the military, he had granted, along with his brother Sabinus, to a certain Thenapynchis. The loan had been given under *hypallagma* of some catoecic land, a share of a palm grove and a house with courtyard. Now, thirty years later, both his brother and the debtor deceased, Apollinaris initiates distraint against the latter's heirs, requesting to the *archidikastes* that his petition be served on them through the *strategos* as notice of default (*diastolikon*) „in order that they pay me the aforementioned capital and the corresponding interest or else be aware that I shall have the right of execution as is proper, by virtue of the document of *enechyrasia* that I shall have executed, from the aforementioned belongings and from everything else of hers that I may find, as is proper":

> ὅπως [ἀ]π[οδ]ῶσί μοι τὸ π[ροκείμενον] κεφάλαιον κα[ὶ τόκ]ους ἴσους ἢ εἰδ[ῶσι] |$_{23}$ ἐ[σο]μένην [μοι] τὴν [π]ρᾶξ[ι]ν ὡς καθήκει ἀφ' ὧ[ν ἐὰν τελ]ειώσω ἐνεχυρ[α]σίας γραμμάτῳ[ν] |$_{24}$ ἔ[κ τε] τῶ̣ν π̣[ροκ]ειμέν[ων ὑπ]αρχόντων καὶ ἐ̣[ξ ὧν ἄ]ν ἄλλων εὑρίσκ[ω] αὐτῆς |$_{25}$ ὡς καθ[ή]κει. [58]

The choice of the specific assets to be seized was made by the creditor through the so-called *paradeixis eis enechyrasian*,[59] with the cooperation of the *praktores* and

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[55] Translation *supra* in n. 16.

[56] A well known example of a creditor who goes beyond the assets under *hypallagma* is Aurelia Aretous proceeding in execution against the minor son and heir of her debtor Aurelius Castor in *P. Flor*. I 56 = *MChr*. 241 = *Jur. Pap*. 49 (234 CE Hermopolis), ll. 10-16.

[57] On the archive of Apollinaris –not to be confused with the the C. Iulius Apollinaris who served as legionary half a century earlier, in the time of Trajan– see Mitthof 2000: 397-399.

[58] Cf. also *P. Fam. Tebt*. 29 = *SB* I 5341 = *Jur. Pap*. 48 (133 CE Arsinoites), ll. 42-48.

[59] Our best examples of *paradeixis eis enechyrasian* of a hypallagmatic creditor are *P. Iand*.

the *strategos* of the nome, who presumably also saw to it that their value remained proportional to the debt.

Hypallagma, in sum, ensured that certain assets remained inalienable in the estate, but by no means confined to them the creditor's right of distraint.

Things look very different in hypothecations. Let us examine once more, in full detail this time, how the consequences of default are laid out in our Ptolemaic example, *P. Tebt*. III 1 817 = *C. Pap. Jud*. I 23 = *SB* I 4232 (182 BCE Tebtynis):

> [ἐ]ὰν δὲ μὴ ἀποδῶι καθὰ γέγραπται, ἐξέστω Ἀπολλωνίωι ἐπικα|$_{20}$[τ]αβολὴν ποιήσασθαι τῆς ὑποθήκης ἀκολούθως τῶι διαγράμματι. |$_{21}$ βεβαιούτω δὲ Σώστρατος Ἀπολλωνίωι τὴν ὑποθήκην ταύτη[ν] |$_{22}$ καὶ παρεχέσθω αὐτὴν ἀνέπαφον καὶ ἀνενεχύραστον καὶ ἀνεπι|$_{23}$δάνειστον ἄλλου δανείου καὶ καθαρὰν ἀπὸ βασιλικῶν. ἐὰν δὲ μὴ |$_{24}$ βεβαιοῖ ἢ μὴ παρέχηται καθὰ γέγραπται ἢ κίνδυνός τις γένη|$_{25}$ται περὶ τὴν ὑποθήκην ταύτην ᾗτῳι περὶ πᾶσαν ἢ μέρος |$_{26}$ αὐτῆς τρόπωι ὠιποτοῦν (l. ᾧποτοῦν), ἀποδότω Σώστρατος Ἀπολλωνίωι |$_{27}$ τὸ δάνειον τοῦτο ἐντὸς τοῦ ἐνιαυτοῦ παραχρῆμα. ἐὰν δὲ μὴ ἀπο|$_{28}$δῶι καθὰ γέγραπται, ἀποτεισάτω Σώστρατος Ἀπολλωνίωι |$_{29}$ παραχρῆμα τὸ δάνειον ἡμιόλιον καὶ τοῦ ὑπερπεσόντος |$_{30}$ χρόνου τόκον ὡς ἐγ (l. ἐκ) δύο δραχμῶν τῆι μνᾶι τὸν μῆνα ἕκαστ[ον]. [60]

What is immediately striking is the following: If the debtor defaults, the creditor has the right to autonomously acquire the security through *epikatabole* – nothing else. His right is confined to the hypothec: he has no further claim against the debtor or the rest of his property. Only if the hypothec failed (l. 23 ss.), due to third-party rights (*bebaiosis*) or because it perishes in whole or in part (*kindynos*), would the debtor become liable. Only in such case would he be obliged to repay the capital, increased by half as penalty, and with interest on arrears.

The structure of this default clause is so peculiar that it deserves a careful reading. The repayment of the loan is mentioned twice. First, simply as a condition for *epikatabole* (ll. 19–20): if the loan is not repaid, the creditor may enforce it and acquire the hypothecated asset – secured from third-party claims (*bebaiosis*), as in a sale, and free from private and public encumbrances. That is the end of the story. Only if there

VII 145 (224-225 CE unknown provenance), and *P. Flor*. I 56 = *MChr*. 241 = *Jur. Pap*. 49 (234 CE Hermopolis), l. 14; see also *SB* XVI 13070 (187 CE Arsinoites), l. 3, and *P. Ryl*. II 176 (200-210 CE Hermopolis), l. 5. The procedure was identical to that for unsecured debts, for which cf. *P. Lips*. I 120 = *MChr*. 230 (89 CE Oxyrhynchos); *P. Lond*. III 908 (p. 132) = *MChr*. 229 (139 CE Hermopolis), l. 23-24; *P. Oxy.* IV 712 = *MChr*. 231 (146-161 CE Athribites), l. 2. On the *paradeixis*, Jörs 1915: 317-327; Schwarz 1911: 97-98.

[60] „If he does not repay as written, Apollonios shall have the right to effect | *epikatabole* of the hypothec in accordance with the royal ordinance (*diagramma*); | Sostratos shall guarantee this hypothec to Apollonios | and shall produce it unencumbered, not liable to distraint and not subject | to another loan, as well as free from royal claims. If he does not | guarantee it or produce it as written or if any risk | occurs with regard to this hypothec, for the whole or for a part | of it, in any way whatsoever, Sostratos | shall repay this debt to Apollonios forthwith within the year. And if he does not | repay as written, Sostratos shall forfeit to Apollonios | forthwith the loan increased by one half and for the overtime | interest at the rate of two drachmas per mina per month (= 2%)"

is no security to be acquired – because it has perished or because a third party holds a better claim – does repayment become an actual obligation, something that the debtor „shall do", to the point that only for that case interest on arrears and the penalty of the *hemiolion* are foreseen. The debtor's liability is so thoroughly eclipsed by the hypothec that the model's drafters do not even remember to include a *praxis* clause against the debtor and the rest of his belongings, should the hypothec fail.

Roman hypothecations remain stubbornly consistent in this respect. Also in our Roman example, *P. Flor*. I 1 = *MChr*. 243 = *Jur. Pap*. 68 (153 CE Hermopolis), the creditor is initially led solely to *epikatabole*, in the elaborate formulation already discussed (*supra sub* 3 and n. 50):

> ἐὰν δὲ μὴ ἀποδοῖ τῆς προθεσμίας ἐνστάσης εὐθέως ἐξέστω τῇ δεδανικυίῃ (l. δεδανεικυίῃ) ἢ τοῖς παρ' αὐτῆς μὴ προσδεομένοις ἀνανεώσεως ἢ διαστολικοῦ ἢ ἑτέρου τινὸς ἁπλῶς, ταξαμένοις τὰ εἰς τὸ ἐνκύκλιον καθήκοντα τέλη ἐπικαταβολὴν ποιήσα[σθ]αι |$_{7}$ τοῦ ὑποτεθειμένου ὡς προκείται βείκου (l. βίκου) ἑνὸς τετάρτου καὶ κτᾶσθαι αὐτὴν καὶ τοὺς παρ' αὐτῆς τουτο (l. τοῦτον) κυρίως ἀντὶ τῶν [ὀ]φει[λομ]έ[ν]ων καὶ ἐμβαδεύειν (l. ἐμβατεύειν) εἰς αὐτὸν καὶ εἰσοικίζειν καὶ ἐνοικολογεῖν καὶ διαμισθοῦν καὶ ἀποφέρεσθαι τὰ ἐξ αὐτοῦ περιεσόμενα πάντα εἰς τὸ ἴδιον ἔτι δὲ καὶ χρᾶσθαι καὶ οἰκονομεῖν περὶ αὐτοῦ καθ' ὃν |$_{8}$ ἐὰν αἱρῶνται τρόπον ἐπὶ τὸν ἅπαντα χρόνον μηδενὸς τῇ δεδανισμένῃ (l. δεδανεισμένῃ) μηδ' ἄλλῳ ὑπὲρ αὐτῆς ἐξ ὑστέρου ἁπλῶς πε[ρ]ὶ τούτου καταλειπομένου λόγου ἢ παρευρέσεως

As in the Ptolemaic model, next comes the *bebaiosis*, formulated as in a sale contract, since through *epikatabole* the creditor acquires the hypothec as a buyer would. It is followed by a prohibition to alienate, intended to have real effect, rendering subsequent alienations unenforceable against the creditor.[61]

Only after all this, as in the Ptolemaic model, does the repayment of the loan appear as an actual obligation – and only for the case that something happens to the security. Only then is the borrower deemed truly bound to return the sum, and only in that case does the creditor gain execution rights, *praxis*, against the debtor and the rest of her belongings:

> ἐὰν δὲ τις κίνδυνος [γ]ένηται περὶ τήνδε τὴν ὑποθήκην πᾶσαν ἢ μέρος τρόπῳ ᾧτινοῦν ἀποδότω ἡ δεδανισμένη (l. δεδανεισμένητῇ) δεδανικυίῃ (l. δεδανεικυίῃ) ἢ τοῖς παρ' αὐτῆς τὰ ὀφειλομένα πάντα καὶ τοῦ ὑπε[ρ]-πε|$_{10}$σόντος μετὰ τὴν προσθεσμίαν χρόνου τόκον δραχμιαῖον ἑκάστης μνᾶς κατὰ μῆνα ἕκαστον καὶ ἃ ἐὰν ἀπαιτηθῇ ἡ δεδανικυία (l. δεδανεικυῖα) ὑπὲρ τῆσδε τῆς υποθήκης τέλη καὶ ἃς ἐὰν ποιήσηται δαπάνας ὁμοίως σὺν τόκοις

[61] ll. 8-9: βεβαιούτω δὲ ἡ δεδανισμένη (l. δεδανεισμένη) τήνδε τὴν ὑποθήκην πάσῃ βεβαίωσει ἀπό τε δημοσίων καὶ ἰδιωτικῶν καὶ ἀπὸ πάντων ἁπλῶς ἣν καὶ μὴ ἐξέστω [α]ὐτῇ | πωλεῖν μηδ' ἑτέροις ὑποτίθεσ[θ]αι μηδ' ἄλλο τι περὶ αὐτῆς κακοτεχνεῖν ὑπεναντίον τούτοις τρόπῳ μηδενὶ, ἢ τὰ παρὰ ταῦτα ἄκυρα εἶναι: „The borrower shall guarantee this hypothec with every guarantee from any public or private or any other claim, and it shall not be lawful for her | to sell nor hypothecate to others nor to in any other way act regarding it fraudulently against these provisions, or else whatever (be done) against these will be ineffective".

> ἕκαστα παρ\α/χρῆμα γεινομένης αὐτῇ ἢ τοῖς παρ᾽ αὐτῆς τῆς πράξεως παρά τε τῆς δεδανισμένης (l. δεδανεισμένης) καὶ ἐκ [τ]ῆσ|$_{11}$δε τῆς ὑποθήκης καὶ ἐκ τῶν ἄλλων ὑπαρχόντων αὐτῇ πάντων καθάπερ ἐκ δίκης. [62]

In terms of legal structure, one may describe this system by saying that the debtor's liability is concentrated in the pledge. But it would not be inaccurate to go a step further and say that it is absorbed by it: that the pledge is liable in place of the debtor, whose liability only reemerges, subsidiarily, if the hypothec fails. In practice, this means that the creditor has no freedom of choice: if the hypothec has neither perished nor been claimed by others, he must be content with it. The rest of the debtor's property lies beyond his reach.[63] This stunned the founders of juristic papyrology, accostumed to a hypothec – the Roman and that of our own time – which adds to the debtor's liability, as an accessory right (collateral), letting the creditor choose whether to pursue the pledge or rather enforce the debtor's ordinary liability. In the German scholarship, our phenomenon was labelled *reine Sachhaftung*, „purely real liability".[64]

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[62] „But if any risk arises concerning this hypothec as a whole or in part in any way, the borrower shall return to the lender or those acting for her the entire indebted sum and for the time | exceeding the agreed date an interest rate of a drachma for each mina for month, and the tax that the lender may have to pay because of this hypothec as well as the expenses that she may still bear, with interests, with no delay, and she or those acting for her shall have right of execution upon the borrower and upon this | hypothec and upon the whole rest of her belongings as if by virtue of a lawsuit".

[63] The only true exception, where *epikatabole*-forfeit appears to coexist with unrestricted liability, is a document that – for this very reason – drew great attention when first published by Ernst Rabel: *P. Bas*. 7 = *MChr*. 245 = *SB* I 4434 (117–138 CE Arsinoites), now republished as *P. Bas*. II 29. Despite the discovery of a fragment in Michigan (*P. Mich. inv*. 3958f), which has helped adjust the length of the lines, the substantive part of the document still lacks nearly half of each line on the left. Despite the gaps, it is indisputable that it concluded with an unrestricted *praxis* that was not stipulated merely for the case that the hypothec failed: μενούσης κυρίας | [τῆς ὑποθήκης, γινομένης τῷ Πακύσι τῆς πράξεως ἔκ τε τ]ῆς ὁμολογούσης καὶ ἐκ τῶν ὑπαρχόντων [α]ὐτῇ πάντων καθά|[περ ἐκ δίκης]. This is not its only oddity: unique and baffling is the duplication, in two different formulations, of the non-alienation clause (ll. 15-17, μὴ ἐξεῖναι αὐτῇ πωλεῖν μηδὲ | [ὑποτίθεσθαι ἑτέροις μηδ᾽ ἄλλως καταχρηματίζειν], and, again, ll. 21-23, παρέξασθαι αὐτὴν τὴν ὑποθήκην ἀνέπαφον καὶ ἀνενε]χύραστον καὶ ἀνεπιδάνιστον); also unparalleled is the fact that the *praxis* comes at the very end of the document, after the *kyria* clause that would typically close it, almost as an afterthought. Extremely unusual is also *SB* I 4370 (229 CE Herakleopolites): the verb παρακατατίθεμαι is used for the hypothecation (ll. 20–21); before the hypothec is even presented (ll. 16–19), we find a *praxis* clause that includes it, as if subject to the rules of distraint on unsecured assets; and, once the hypothec has been contracted, a forfeit clause without *epikatabole*. It could well be that *epikatabole* was no longer in force (*supra* nn. 45 and 47), but the document seems in any case haphazardly constructed, as does *P. Bas*. 7. It may be best to treat them as aberrations, as long as no parallels surface. For a harmonising interpretation, Schwarz 1937: 270 n. 2, with lit. On *BGU* III 741 = *MChr*. 244 = *FIRA* III 119 (143 CE Alexandria), cf. *infra* n. 65.

[64] The expression is somewhat misleading: in practice, as we have seen, liability is often not „purely real", since creditors routinely protect themselves through clauses that reinstate the debtor's liability for cases such as defects in title or the destruction of the asset. Yet (a) such

Against the backdrop of this kind of hypothec, the meaning of *hypallagma* becomes clear. In comparison, *hypallagma* offered a key advantage and a significant downside. The advantage: the debtor remained fully liable, his entire estate available for distraint. The drawback: the creditor had no privileged path to the pledge, no special right over it, other than the assurance – through additional mechanisms, like withholding the title deeds or registration – that it would remain available for distraint (*supra sub* 2). If he wished to foreclose on the pledge, he had to follow the same procedural steps as if no security had been given: applying not only for possession through *embadeia*, but first for ownership, through *enechyrasia* and the ensuing *prosbole*. This initial step, crucially, he could have spared himself had he chosen hypothec instead – which, through *epikatabole*, would have allowed him to become owner at his own discretion.

Whoever conceived this new form of security seems to have deemed it necessary to sacrifice the creditor's right to autonomous acquisition in order to grant him freedom of choice between the pledge and the rest of the debtor's estate. More technically expressed: to preserve the debtor's liability, autonomous forfeit had apparently to be sacrificed. The sacrifice came at a heavy cost for the creditor, as we have seen — a complex and risky procedure, executable only in Alexandria. No documentary model could have succeeded imposing such a burden without a reason. The sacrifice must have been seen as somehow inevitable. That, in my view, is what the very existence of *hypallagma* proves. For those who created it, as well as for the population at large that accepted it, it was „either/or": either autonomous forfeit or full liability – as if the two were mutually exclusive.[65] The question is: why were they seen as incompatible?

Mitteis and many after him believed that this incompatibility was intrinsic to hypothec in the Greek tradition. For them, *reine Sachhaftung*, „purely real liability" is not just a feature of the Ptolemaic and Roman practice but the very essence of the Greek hypothec.[66]

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debtor's liability remains as subsidiary to the pledge; and (b) the structure of the document seems to imply that it would not exist if such clauses were not added, and with them the *praxis* against the debtor. It is in this more nuanced sense that the expression ‚reine Sachhaftung' must be understood.

[65] Further confirmation that the incompatibility lies in *epikatabole*-forfeit could be found in *BGU* III 741 = *MChr*. 244 = *FIRA* III 119 (143 CE Arsinoites), a loan between Roman soldiers, where the creditor reserves for himself the *praxis* not just in case of *kindynos*, but also if the hypothec does not cover the debt: τοῦ ἐνλείψοντος γείνεσ[θ]αι αὐτῷ τὴν πρᾶξιν | ἐκ τῶν ἄλλων τοῦ ὑ[πο]χρέου ὑπαρχό[ν]των (ll. 30-31); this may imply a hypothec with *ius vendendi* instead of forfeit (cf. [ἐ]ξῖναι τῷ Λουκίῳ Οὐαλε|ρίῳ Ἀμμωνιανῷ ἐπι[τ]ελεῖν τὰ κατὰ τῆς ὑ|ποθήκης νόμιμα πρ[ὸ]ς οὗ τι ἂν βαστάζ[ῃ], ll. 27-29), and thus explain, through the lack of *epikatabole*-forfeit, the unrestricted liability. Cf. Mitteis 1912b: 276, with lit. In this sense, the document adds to the arguments for the thesis we will present *infra sub* 7 and 8.

[66] Mitteis 1912a:146-147; Rabel 1907: 364-368; Meyer 1920: 225, 235; Taubenschlag 1919-1920b: 249-251 = Taubenschlag 1959 I: 137-140; Sethe-Partsch 1920: 644. The consensus in the German scholarship that Greek real securities were instances of *reine Sachhaftung* was fostered by the evidence for early German law, and led also to the widespread as-

The logic that links forfeit to this „purely real liability" can be reconstructed as follows. The forfeit clause seems to be understood as binding both parties, not just the debtor: the creditor is also bound by it; by accepting the hypothec, he accepts the hypothecated asset in lieu of the debt, as we read in some documents.[67] This is what Mitteis means when he describes hypothec as anticipated *datio in solutum* – a substitutory payment accepted in advance by the creditor through the very act of hypothecation.[68] In this sense, Mitteis would say that hypothec is substitutive.[69]

Such would be the logic underlying hypothecation in the Greek tradition. And here beings also the *pars destruens* of this paper: for when we turn to the Greek hypothecations extant outside Egypt, things look very different. No *reine Sachhaftung*, no incompatibility between hypothecation and the debtor's liability, but a hypothec that leaves untouched the right to pursue the rest of the debtor's property. Outside Egypt, it seems, one could have the cake and eat it too. I will limit myself to strictly private law – thus only to the papyrological material – and to two examples: a parchment from Dura Europos and a a papyrus from the Babatha archive.

5. Outside of Egypt: Dura Europos

Our first example belongs to a series of hypothecations from Dura Europos that follow a very consistent Greek model, attested from 87 CE to 180 CE – seven instances spanning almost a century.[70] Our example will be *P. Dura* 20,[71] dated to 121 CE,

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sumption that the same had been true in archaic Roman law, cf. Kaser 1971: 144-145, 146. Paradigmatic in this sense is the characterisation of the Greek hypothec in Kaser 1971: 463, when discussing its influence on Roman law: „Von einem Einfluß der griechischen ὑποθήκη, die zwar auch in der Regel besitzlos ist, aber stets ‚reine Sachhaftung' bleibt, fehlt es an greifbaren Spuren".

67 *P. Flor*. I 1 = *MChr*. 243 = *Jur. Pap*. 68 (153 CE Hermopolis), l. 7: κτᾶσθαι αὐτὴν καὶ τοὺς παρ' αὐτῆς τουτο (l. τοῦτον) κυρίως ἀντὶ τῶν [ὀ]φει[λομ]έ[ν]ων. The same clause, in *P. Strasb*. I 52 (151 CE Hermopolis), ll. 7-8: καὶ κτᾶσθαι αὐτὴν καὶ τοὺς παρ' αὐτῆς ταύτας κυρίως ἀντὶ τῶν ὀφει|[λομένων. A different formulation of the same idea in *P. Oxy*. XVII 2134 (after 170 CE Oxyrhynchos), l. 21: ἐὰν δὲ μὴ [ἀπο]δῶ καθ' ἃ γέ[γρ]απται, κυριεύσεις ἀντὶ τούτων τῶν προκειμένων ἀρουρῶν.

68 Mitteis 1912a: 145.

69 Mitteis 1912a: 146: „Alles was wir über die Hypothek hören, führt zu der Vorstellung, dass sie im damaligen Rechtsleben als eine eventuelle Ersatzleistung empfunden worden ist". Hypothec is, in this sense, „substitutive", because accepted in lieu of payment; not „collateral", because it is not added to the debt but rather replaces it. Of course, when today's historians, following Finley, discuss whether Greek hypothec is substitutive, they are concerned with something completely different: not the effect of the hypothec on the debt, but the possible discrepancy in value between security and debt, and whether in case of discrepancy a claim arises or not. The question, so understood, lies beyond the purpose of this paper.

70 *P. Dura* 17 C and D (ca. 180 CE), *P. Dura* 21 (early 2nd cent. CE), *P. Dura* 22 (133-134 CE), *P. Dura* 23 (134 CE). Cf. also the gift of the hypothecated property back to the hypothecary debtor in *P. Dura* 18 (87 CE). Whether the acknowledgement of debt in *P. Dura* 24 (159-160 CE), since it refers to a renewal (*ananeosis*, ll. 16-18, 41-44, cf. *supra* n. 49 and *infra* n. 72), included hypothec, cannot be ascertained.

71 On the text, together with Rostovtzeff 1930 and Welles' commentary in the edition, cf. Millar 1998; Hackl 2010; Thommen 2010, with further lit. Among the rich juristic literature,

when the city was still under Parthian rule, after the short-lived Trajanic conquest.

Many of Dura's loans are antichretic; so is this one – though what the lender receives in lieu of interest is not habitation or usufruct, but the servile work of the borrower.[72] The loan thus functions as an antichretic *paramone*. The lender, Phraates, a eunuch, was an *arkapates*—either a minor feudal lord of a city or fortress, or a chief tax collector.[73] The borrower, Barlaas, a simple villager, receives from him 400 drachmas and, in place of interest, undertakes to remain with him as *kyrios* and furnish him servile assistance (δουλικὰς χρείας). Any unconsented absence, even sickness beyond seven days, triggers a penalty of one drachma per day.[74] Both such penalties and the capital, stipulated as free from risk,[75] are to be paid in one year.

With the year's completion, both parties are thus theoretically free to revert to the underlying loan arrangement. Of course, for Barlaas to do so and leave, he must repay the sum in full. Until Phraates receives it, he may keep Barlaas indefinitely in his service – but he may also, if he prefers, at any time, claim the sum back. As security, a hypothec is contracted, which, like all preserved Dura hypothecations, is universal,[76] extending to the debtor's entire estate, cf. ll. 6–7:

Koschaker 1931a; Koschaker 1931b; San Nicolò 1931; San Nicolò 1932: 461-464; Schönbauer 1932: 201-210; Taubenschlag 1949: 57-58.

[72] The same happens in the very fragmentary *P. Dura*. 17 D (ca. 180 CE) and in *P. Dura* 21 (early 2nd cent. CE), quite similar to ours. On the Greek or Oriental roots of this *paramone*, cf. the discussion in the edition, p. 113 and nn. 24-26, with lit.

[73] A detailed discussion of the term *arpakates,* in Gnoli 2007: 95-113, with lit. Phraates identifies himself as one of the men of Manesos, a quite prominent figure, collector of customs and *strategos* of Mesopotamia and Parapotamia, as well as arabarch, that is, chief of an Arab tribe (ll. 4-5).

[74] The conditions of the *paramone* are laid out in ll. 7-11: ἀντὶ δὲ τῶν τόκων τοῦ αὐτοῦ ἀργυρίου συνπαρ[α|μένων] ὁ Βαρλάας τῶ[ι Φραάτει μέχρι τοῦ τῆς ἀποδόσεως] χρόνου παρέξεται αὐτῶι δουλικὰς χρείας, ποιῶν τὰ προστασσόμεν[α | αὐτῶι πά]ντα, οὐ γ[ιγνόμενος ἀφήμερος οὔτε ἀπόκοιτος ἄνευ τ]ῆς τοῦ Φραάτου γνώμης· ἐὰν δὲ ἀφημερεύσῃ ἢ ἀποκοιτήσ[ῃ ἀπὸ τοῦ Φραάτου,| ἐκ]τε̣ίσ̣ει ἐκ[άστης ἡμέρας δραχμὴν μίαν - ca.10 - ἐὰ]ν δὲ ἀσθενήσῃ πλεῖον ἡμερῶν ἑπτ[ά , ἐκ]τείσει ὁ Βαρ[λάας ἑκάστης ἡμέρας ἧς | ἂν ἀ]ργήσῃ δραχ[μὴν] μί̣α̣[ν]· ἐὰν δὲ [εἰς ἱερόν τι κατα]φύ̣[γ]ῃ, βληθήσεται ἐκ τοῦ ἱεροῦ καὶ χρήσεται αὐ[τῶι] ὁ Φρα[άτη]ς [- ca.14 - | .]. . . οις, χορη[γή]σει μέντοι γε αὐτῶι ὁ Φρ[αάτης τὴν] κ̣α̣θ' ἡμέραν τροφὴν καὶ ἀμφιεσμόν: "in place of the interests of this silver, staying | with [Phraates until the] time [of repayment], Barlaas shall furnish him servile assistance, doing all that is ordered | [to him, absenting himself neither by day nor by night without the] consent of Phraates. If he does so absent himself by day or night [from Phraates], | he shall pay [one drachma for each day ? …] and if he be sick more than seven days, Barlaas shall pay [for each day] | he is idle one drachma. If he take refuge [in a temple,] he shall be expelled from the temple and Phraates shall use him [… | …] but Phraates shall nevertheless furnish him his daily subsistence and clothing".

[75] The lender's right to claim those sums remains thus unaffected by flight, death, injury or any other risk: δρασμοῦ δὲ κ̣αὶ θαν̣ά̣[το]υ κ̣αὶ βλ[άβους καὶ] | ἑτέρων κιν[δ]ύνων οὐ μετέ̣σ̣ται τῶι δα[νειστῆι (ll. 12-13).

[76] This was probably also the case in *P. Dura* 18 (87 CE), where the property is returned as a donation to the debtor, mother-in-law of the creditor.

(…) ἐπὶ ὑποθήκηι τοῖς | [ὑπάρχο]υσιν αὐτῶι π[ᾶσιν - ca.14 -]ε̣υ̣ . [ἃ καὶ(?)] ἔσται παρὰ τῶι κυρίωι (…) [77]

A universal hypothec covering all present and future property overlaps entirely with the debtor's ordinary liability. It thus serves no purpose beyond ordinary *praxis* unless endowed with simplified enforcement or paired with a mechanism that blocks alienations or renders them inopposable to the creditor. About the former, we lack information for Dura. The latter is not stipulated in the document: unlike what was common in Egypt, Dura hypothecations lack a non-alienation clause, even though the debtor, as we have seen, retains possession of all his assets. Whether such clause was deemed unnecessary because alienations would be *ex lege* inopposable to the creditor, we do not know.

In our document, however, there is no such overlapping of hypothec and liability. In fact, as in all other preserved examples from Dura, the *praxis* clause understands the hypothec as confined to the debtor's property at the time of the agreement. The creditor's right, instead, is not limited to those assets, as we would expect in a system of *reine Sachhaftung*; rather, he is granted full *praxis*, both on the hypothecated property and on anything else which Barlaas may subsequently have acquired, as we read in ll. 17-19:

ἡ [πρ]ᾶξ[ι]ς ἔστα[ι] τῶι Φραάτει καὶ παν[τὶ] τῶι τὴν ϙυν[γρα]φὴν ταύτην ἐπιφέροντι παρά τε |$_{18}$ [τοῦ Βα]ρλάρ[υ καὶ τ]ῶν ὑποκειμένων ὑπαρχόντων αὐτῶι καὶ ὧν ἂν ἐπικτή[σ]η[τ]αι [ἄ]λ[λ]ω[ν, ἐκπ]ρ[άσ]σοντι κυρίως τὸ πᾶν πλὴν |$_{19}$ [. . . σὺ]ν τῶ[ι . . . . .]ωι. [78]

Thus, the absorption of the debtor's liability by the hypothec – the incompatibility between hypothec and full debtor liability, between hypothec and unrestricted *praxis* – appears to be entirely ignored here. Indeed, since this is just one example among

[77] „(…) upon hypothec of | all his belongings [? which] shall remain with its owner (…)". Since the loan, and thus the hypothec, is initially contracted for only one year, any extension of services and secured loan beyond that term requires a renewal (*ananeosis*) of the *syngraphe* – as it would in Egypt: *supra* n. 51 – executed through the *chrematisterion*, perhaps involving a tax. The creditor can demand such renewal from the debtor, under severe penalty: double the original loan amount, and the same for the crown (ll. 19-21). Cf. Welles' commentary in the edition, p. 110-111, with lit. in n. 11. The same clause is stipulated in *P. Dura* 21 (early 2nd cent. CE), *P. Dura* 22 (133-134 CE) and *P. Dura* 24 (159-160 CE). The renewal is described as actually effected in *P. Dura* 18 (87 CE), l. 4, although, quite suspiciously, on the very same day in which the hypothec was realized, through cession of the hypothecated assets to the creditor.

[78] „the right of execution shall correspond to the above Phraates and to anyone (else) who presents this written agrement both upon | Barlaas and upon his hypothecated belongings and from anything else which he has subsequently acquired, exacting rightfully except | […]". The clause is identical in *P. Dura* 21 (early 2nd cent. CE), ll. 6-8, and *P. Dura* 22 (133-134 CE), ll. 9-12. On the unfortunately mutilated limitation to the creditor's right at the end of this clause, also present in *P. Dura* 22, and clearly referred to assets exempt (*ex lege*?) from distraint, see Welles in the edition, p. 116.

many, it seems to be ignored in all preserved Dura hypothecations.

In truth, not only the debtor's unrestricted liability, but the general hypothecation itself stands in stark contrast to Egyptian practice. General hypothecations do exist in Egypt, but only as *hypallagma* – and for good reason: as hypothecs proper they would be intolerable for the debtor. Hypothecs in Egypt carry a forfeit clause, allowing the creditor, as we have seen (*supra sub* 3), to acquire ownership autonomously through *epikatabole*. A general hypothec would thus give the creditor unchecked power to strip the debtor of his entire estate. *Hypallagma*, by contrast, requires an official procedure of *enechyrasia* for execution, ensuring objective control over the extent of distraint (*supra sub* 2).[79]

Why was the forfeit clause not a problem in Dura? Because, in yet another striking contrast with Egyptian practice, Dura hypothecations contain none. They limit themselves to a *praxis* clause upon the hypothec and the rest of the property, as quoted above. Thus, the deed allows no autonomous forfeit at the will of the creditor but, like the Egyptian *hypallagma*, only ordinary execution – whatever form that may have taken in Parthian Dura,[80] perhaps simplified for hypothecary creditors. In short: these are not hypothecs in the Egyptian sense. The term remains, but the institution it designates is entirely different.

At this point, two main lessons can be drawn. (a) The sudden compatibility between unrestricted *praxis* and hypothec—so sharply at odds with Egyptian practice—can be easily explained away: unlike the Egyptian *epikatabole*, the Dura hypothecations do not grant the creditor autonomous forfeit. Yet (b) precisely this absence of autonomous forfeit and its consequences deepen the gulf between Egyptian practice and what we find in late 1st and 2nd century Dura, in no fewer than seven instances of a consistent model, kept over nearly a century. Without autonomous forfeit, without *reine Sachhaftung*, covering the entire property of the debtor: the entire logic of the institution is a different one.

Whether Parthian or broader Near Eastern influences are at play cannot be ascertained. What is certain, however, is that in Dura we find a Greek hypothecary model, expressed in clauses fully recognisable across the Greek-speaking world, yet radically different in its core logic from what we find in Ptolemaic and Roman Egypt. The question, then, is whether the idiosyncrasy lies solely with Dura, or also with Egypt. This question will be addressed shortly.

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[79] Cf. already Schwarz 1911: 48-54. No later evidence of general hypothec has come to light for the first three centuries of our Era. Only in Late Antiquity, when forfeit is abandoned after the Constantinian prohibition and universal hypothec *ex lege* proliferates across an increasing range of cases, does universal hypothecation take hold in Egypt, becoming as endemic there as in the rest of the Empire.

[80] In *P. Dura* 18 (87 CE), some decades earlier than our document, the hypothecated property was transferred to the creditor by the debtor through a deed of cession concluded through the local royal court: ἐκστῆναι εἰς αὐτ[ὸ]ν κατὰ χρημαṭι[σ]μὸν γε[ν]όμενον διὰ τοῦ αὐτόθι βασιλικ[οῦ | δικαστηρίου] (ll. 2-3, same formulation in the *scriptura exterior*).

6. Outside of Egypt: Babatha

Our second non-Egyptian example is a very well-known document from a very well-known *corpus*: Babatha's archive,[81] found in the early 1960s by Yigael Yadin in Nahal Hever, in the so-called Cave of Letters. The documents had been hidden there, in a carefully wrapped leather purse, by a Jewish woman, Babatha, daughter of Simeon, during the Bar Kokhba revolt of 132 CE, in which she likely met her end.

Our document, a Greek loan with hypothec, is *P. Yadin* 11,[82] executed in Ein Gedi, near the David Falls, in 124 CE. Less than two decades earlier, the region had been turned into a Roman province, *Arabia Petraea*. Like many other documents in the Babatha archive, the text is written twice, as a double deed with *scriptura interior* and *exterior*, with some interesting peculiarities in the *exterior* that do not alter what matters for our purpose.

The loan, 60 denarii of Tyrian silver at an annual rate of 12%, was taken by Judah, Babatha's deceased second husband,[83] from a Roman centurion, Magonius Valens of the *Cohors I Miliaria Thracum*. The security was a courtyard belonging to Judah's father, Elazar Kthousion, who, according to the document, had authorized the hypothecation, as we read in ll. 3-4:

> ἐπὶ ὑποθήκῃ τῇ ὑπαρχούσῃ ⟦Ελα⟧ αὐλῇ |[4] Ἐλαζάρῳ Χθουσιωνος (l. Χθουσίωνι) πατρί μου ἧς ἔχω ἐπιτροπὴν ὑποτιθέναι κα[ὶ ἐγ]μισθο[ῦν πα]ρὰ τοῦ αὐτοῦ Ἐλαζά[ρο]υ [84]

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[81] For a general overview of the archive, cf. Goodman 1991; Isaac 1992 = Isaac 1998: 159–181; Cotton 1999a; Cotton 1999b; Hamidovic 2008; Esler 2017; Katzoff 2019: 3–17. For a general survey of its rich legal aspects —leaving aside specific studies on central aspects, like procedure, guardianship and inheritance—, cf. Wolff 1980; Cotton 2002; Katzoff–Schaps 2005; Oudshoorn 2007; Czajkowski 2017. See now the studies collected in Cotton 2022.

[82] Extensively on several aspects of the document, together with Lewis in the edition, Esler 2014, and Oudshoorn 2007: 156-168, if occasionally less secure in their legal analysis.

[83] The fact that Judah's subscription appears in the papyrus as ἑρμηνεία, that is, translated into Greek from Aramaic, does not necessarily mean, as sometimes asserted, that he did not know Greek.

[84] „upon hypothec of the courtyard belonging | to Elazar Khthousion, my father, regarding which I have received procuratorship to hypothecate and lease out from the same Eleazar". The *scriptura exterior* diverges only in that it adds the location of the courtyard to Ein Gedi: ἐπὶ ὑπο|θήκῃ τῇ ὑπαρχούσῃ αὐλῇ ἐν Ἐνγαδοῖς Ἐλαζάρῳ Χθουσιῳνος (l. Χθουσίωνι) πατρί μου ἧς ἔχω ἐπιτρο|πὴν ὑποτιθέ[ν]αι καὶ ἐγμισθοιν (l. ἐγμισθοῦν) παρὰ τοῦ αὐτοῦ Ἐλα[ζάρο]υ (ll. 15-17). The paternal authorisation is presented not as mere consent but as procuratorship, ἐπιτροπή, suggesting that Judah did not simply receive approval for a prearranged transaction, but a broad mandate to choose the lender and determine the terms of the loan and hypothec himself. The procuratorship to lease seems related to a clause preserved in the *scriptura exterior*, confirming a lease already concluded with the same Valens: [κυρ]ίας τῆς μισ|θώσεως ἧς ϙο[ι] . . . [. . .]υ ἐμίσθωϙα (ll. 27-28). Such confirmation would make more sense in our document if it refers to the asset now hypothecated: in that case, Judah would have leased to Valens the very courtyard – directly adjacent to σκηναὶ and the πραισίδιον, quite likely the Roman military encampment – that he also hypothecated as security for the loan. It is tempting to imagine that the lease may have been paid through the loan itself, although, in that case, a fair agreement would have compensated it antichretically against the interest or part of it – and yet our loan deed stipulates the maximum legal rate, 12% per

Then, after the neighbours of the courtyard are listed and the borrower undertakes to repay capital and interest within a year, we read:

> καὶ ἐάν σοι [μ]ὴ ἀποδώσω τῇ ὡρισμένῃ |$_{8}$ προ[θ]εσμίᾳ καθὼς προγέγραπται τ[ὸ δίκα]ιον ἔσ[ται] σοι κτᾶσθ[αι χ]ρᾶσθ̣αι π[ωλ]ε̣ῖν δι̣ο̣[ικεῖν τὴ]ν αὐτὴν ὑποθήκην χ̣ω̣ρ̣[ὶς] |$_{9}$.[.]. . . . κ̣[αὶ ἡ] πρᾶξ[ις ἔσται σο]ι κ̣α̣[ὶ τ]ῷ̣ [π]αρά σ̣ο̣υ̣ καὶ [ἄλλῳ παντί τῷ δι]ά σου ἢ ὑπέρ σο̣υ̣ κ̣[υρίως] |$_{10}$ τοῦτο τ[ὸ] γράμμα προφέροντι, ἔκ τε ἐμοῦ καὶ ἐκ τῶν ὑπαρχόντων [μου πάντῃ] πάν[των], ὧν κέκτημαι κ̣α̣ὶ ὧ̣ν ἐ̣ὰ̣ν |$_{11}$ ἐπικ̣τήσ̣ωμαι, πράσσοντι κυρίως, τρόπῳ ᾧ̣ ἂν αἱρῆ̣ται ὁ π̣ράσσ̣ω̣[ν. - ca.12 -] [85]

Default entitles the lender twofold: (a) he has the right to acquire, use, sell and administer the hypothecated asset; (b) execution (*praxis*) is granted to him (and those acting for him) from the borrower and from his entire property, both present and future, in whatever manner he chooses to enforce it.[86]

Again, strikingly when compared with the Egyptian practice, forfeit of the hypothecated asset is here perfectly compatible with unrestricted *praxis* on the rest of the estate: no ‚*reine Sachhaftung*', no absorption of the debtor's liability by the hypothec. Even if we wished to assume that the creditor is supposed to choose –an unwarranted assumption, given how the clause is fashioned– the right to choose itself would collide with everything we have learned about hypothec in Egypt.

Open remains, in the light of the document, how exactly the creditor is supposed

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year. Misguided are the speculations on the lease in Lewis and Oudshoorn 2007: 166–167. On Lewis' suggestion (p. 41 of the edition) that the correction of the borrowed sum from 40 to 60 denarii in l. 3 may have hidden further, thus illegal, interest, cf. Esler 2014: 3. On the courtyard, cf. Cotton 1996. On the presence of the military in Ein Gedi, Davies–Magness 2013.

[85] „and if I do not repay you on the appointed | date as aforewritten, you shall have the right to acquire, use, sell and administer the said hypothec without | [any opposition? any further formality?], and the right of execution shall correspond to you and to whoever acts for you and to [anyone else through] you or for you [rightfully] | presenting this document, both upon me and upon all [my] belongings [everywhere], those which I have acquired and those which I may | additionally acquire, executing rightfully in whatever manner the one executing chooses [...]". After χωρὶς – cf. Oudshoorn 2007: 166 – we would expect something like ὑπερθέσεως.

[86] It is here that the less well preserved *scriptura exterior* diverges most singularly from the *interior*. In it, the *praxis* is granted [ἔκ τε ἐ]μοῦ καὶ ἐκ τῶν Ἐλαζάρου | πατρός μου ὑ̣παρχ[ό]ν̣τ̣ω̣ν [πάντῃ] π̣ά[ν]τ̣ω̣[ν], ᾧ̣[ν κεκτήμεθα] κ̣α̣[ὶ ὧ̣ν ἐ]ὰ̣ν ἐπικτησώ|μ̣ε̣θ̣α̣, [π]ρά[σ]σ̣ο̣υ̣τι κ̣υ̣ρ[ί]ως, τ̣ρόπ̣ῳ ὧ̣ν ἂν [αἱ]ρ̣ῆ̣[ται ὁ πράσσων (ll. 28-30): „upon me and upon all the belongings of Elazar, | my father, everywhere, those which we have acquired and those which we may additionally | acquire, executing rightfully in whatever manner the one executing chooses". Despite Oudshoorn 2006: 161-162, the discrepancy can hardly be related to the change of the sum from 40 to 60, most likely (cf. Esler 2014: 3, and Czajkowski 2017: 32) a simple *lapsus calami* of the scribe; misguided is also the idea that because the hypothecated courtyard belongs to the father, it is more logical to make him respond with his entire property (!); finally, Judah's authorisation to hypothecate and lease is limited to the courtyard (αὐλῇ | Ἐλαζάρῳ … ᾗς ἔχω ἐπιτροπὴν ὑποτιθέναι κα[ὶ ἐγ]μισθο[ῦν], ll. 3-4) and therefore does not give him, *pace* Oudshoorn, the faculty to put the rest of the paternal state at risk.

to acquire –κτᾶσθαι– the asset. But whatever form this acquisition was meant to take, it is nevertheless clear that it is understood as a right – δίκαιον ἔσται σοι κτᾶσθαι: as in Egypt, the hypothecary creditor is entitled to acquire the asset at will.[87]

One could wonder if this departure from the Greek tradition may not be due to the fact that the debtor is Jewish and the creditor is a Roman soldier. A Jewish influence is here quite unlikely – among other reasons because it would be astonishing if the Roman creditor had allowed the background of his debtor to determine the way he secures his own rights.[88]

Quite different is the question of a possible Roman influence – which would go a long way to explain our text, since under Roman law, securities are mere accessories to the debt: they add to it, they do not absorb it. Here, the lender is Roman, as also the first of the seven signatories, Gaius Julius Procles. Much has been made, in general, of the Roman elements in the Babatha archive: the famous triple Greek translation of the Roman formula for the *iudicium tutelae*, and the ubiquity of the stipulatory clause, a century before it becomes common elsewhere. In Egypt, Roman influence in documentary practice becomes more likely the closer we get to a military milieu.[89] The same, I suspect, is true for Babatha, if the *librarii* behind many of her documents were,[90] as Lewis suspected, military scribes.[91] Our document was executed

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87 The assumption in Oudshoorn 2006: 164 that upon default ownership passes automatically, as if it had been transferred under condition to the creditor, is unwarranted: not impossible, but by far not the only possibility nor the most likely in the light of the papyrological parallels and of the very formulation of the document: having a right to acquire – [δίκα]ιον ἔσ[ται] σοι κτᾶσθ[αι] – is the exact opposite of acquiring automatically whether one wants it or not.

88 On the possible *interpretatio iudaica* of the transaction from the point of view of the borrowers, Oudshoorn 2007: 165-166, 168.

89 Alonso 2023a: 266 (§ 7.91), with sources and lit.

90 Most of the documents were drawn up by Theenas, son of Simon, and Germanus, son of Judah, who identify themselves as *librarii*: Θεενας Σίμωνος λιβλάριος (*sic*) ἔγραψα, in *P. Yadin* I 17 (128 CE Ein Gedi), l. 43 and *P. Yadin* I 18 (128 CE Ein Gedi), l. 73; ἐγράφη διὰ Γερμανοῦ λιβλαρίου, in *P. Yadin* I 20 (130 CE Ein Gedi), l. 45, *P. Yadin* I 21 (130 CE Ein Gedi), l. 34, *P. Yadin* I 22 (130 CE Ein Gedi), l. 39.

91 Cf. p. 64 to l. 38, and p. 88 of the edition. Lewis' parallels are instructive. On the verso of *BGU* II 423 = *WChr*. 480 (2nd cent. CE Arsinoites), the famous letter to his father of a soldier freshly enrolled at Misenum, we read λιβλαρίῳ (sic) ἀπὸ Ἀπίωνος ὥστε Ἐπιμάχῳ πατρὶ αὐτοῦ. Also a *librarius* executed a receipt for the items of a deceased soldier in *P. Col*. VIII 221 = *SB* X 10530 (143 CE Ophieion), ll. 11-12. Most impressive is *P. Mich*. VIII 466, from the archive of C. Iulius Apollinarius, who served among the legions that conquered the Kingdom of the Nabataeans in 106 CE; in this letter, he reports from Bostra to his father on a meeting with his commander, Claudius Severus, the first governor of the new province, where he expected to be taken to his service as *librarius legati*, but came out as *librarius legionis*: ἐρω]τήσαντός μου Κλαύδιον | Σε[ουῆ]ρ[ο]ν τὸν ὑπατικὸν εἶνα (l. ἵνα) με | λιβράριον ἑαυτοῦ ποιήσῃ, εἰπόντος | δὲ [α]ὐτοῦ ὅτι τόπος οὐ σχολάζ[ι] (l. σχολάζει), ἐν | τοσούτῳ δὲ λιβράριόν σε λεγεῶνος | ποιήσω ἐφ' ἐλπίδων (ll. 25-30). To these testimonies, yet three can be added, that Lewis omitted probably because of their later date. *Librarii* are mentioned, again in a military context, in *SB* III 6971 = *O. Bodl*. II 2017 = *Rom. Mil. Rec*. 78, No. 67 (210 CE Pselkis), l. 5, part of a series of ostraka given as receipt for provisions. *P. Oxy.* I 43 r = *P. Lond*. III 748 *descr*. (295 CE Oxyrhynchos), col. V, ll. 16-22 is part of the military

by a scribe who does not sign as *librarius*, but bears a Latin name, *Iustinus*.[92] In any case, in this affair with the *centurio* Magonius Valens, we could hardly be closer to the army. Indeed, the document goes so far in its philoromanism as to label Ein Gedi –uniquely– „village of Lord Caesar".

Less easy is it to pinpoint effective evidence of Roman elements in the actual deed. Most promising in this respect are the external diplomatics. The form of the double document, with sealed *scriptura interior*, dominant in the Babatha archive, was of course favoured by the Romans – albeit in wax tablets, not on papyrus – and had instead fallen in disuse in Hellenistic Egypt by the end of the Ptolemaic era; but the idea originated in Near Eastern practice and, as it has been observed, was current in Nabataean Aramaic documents well before the Roman conquest.[93] It is thus perhaps better understood as a remnant of local tradition than as a sign of Romanisation – even though the practice may well have survived the Roman annexation due to its perceived suitability before a Roman court.[94] The number of witnesses, which in our document seems to be seven,[95] as predominantly in the archive,[96] seems to result from a conscious will to adapt to the form of the Roman *testatio*, in order to ensure the recognition of the deed in court.[97]

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accounts of the watchmen at Oxyrhynchos, were the *librarius* Severus confirms the receipt of a provision of chaff. Only for the *librarius* Metolbesymenos, author of the slave sale in *P. Euphr*. 9 = *SB* XXIV 16170 (252 CE Beth Phuraia), l. 33, does the connection with the army remain unknown. As far as our evidence lets us see, thus, *librarii* are linked to the army, and the army is omnipresent in the Babatha archive, as also our document shows. The fact that the *librarii* in the archive –Theenas, son of Simon, and Germanus, son of Judah– are Jews does not weaken Lewis' hypothesis: bilingual scribes presented obvious advantages in an occupation context, and are well attested in similar situations: most notably, serving the Ptolemaic military garrisons in Pathyris and Krokodilopolis, in Upper Egypt, in the late 2nd and early 1st cent. BCE. On these bilingual notaries, cf. Pestman 1978 and 1985; Clarysse 1993; Vierros 2008; Vandorpe and Waebens 2009; Vandorpe 2011.

92 Cf. l. 30, [ἐγράφη διὰ] Ἰουστείνου. On the authorship and the degree of romanisation of the scribe, Oudshoorn 159 n. 194.

93 See the discussion in the edition, pp. 6-10; in detail, Cotton 2003b; Cotton 2003a: 10-11; Oudshoorn 2007: 22-24. The form of the double document is used, in fact, in Nabataean documents in Aramaic like *P. Starcky* = *P. Yadin* 36 = *P. Hever* 1 (58–67 CE), *P. Yadin* 2 (99 CE), and *P. Yadin* 3 (99 CE), as well in later Aramaic documents like *P. Yadin* 7 (120 CE), all from Maoza.

94 Meyer 2004: 187-202.

95 This depends on whether the first signatory, Gaius Iulius Procles (l. 31), is to be considered a witness, despite the fact that unlike the other six he is not identified as such. Cf. Oudshoorn 2007: 159 n. 194.

96 Cf. Lewis in the edition, p. 12.

97 Cf. already Wolff 1978: 78–79. In the same sense, for Babatha, see Cotton 2003b: 52 = Cotton 2022: 153. Some of the pre-Roman Nabataean documents in Aramaic in the archive – *P. Yadin* 1 (92–93 CE Maoza), ll. 53–66; *P. Yadin* 2 (99 CE Maoza), ll. 43–49, fragmentary; and *P. Yadin* 3 (99 CE, Maoza), ll. 49–55 – also include seven signatories, but the last is the scribe, not a witness. The awareness of the Roman model is explicit in *P. Yadin* 15 (125 CE, Maoza), a written deposition prepared for Babatha's potential court case against her son's guardians, self-described as a μαρτυροποίημα (ll. 3, 8, 12), i.e. a *testatio*, stressing that the seven witnesses who sign on the verso were present (καὶ ἐπεβάλοντο μάρτυρες ἑπτά, l. 36).

If instead we turn to the clauses that articulate the document's content, Roman influence is nowhere to be found. Attention has been drawn to the phrase κτᾶσθ̣[αι χ]ρᾶσθ̣αι π[ωλ]ε̣ῖν διο[ικεῖν] in the forfeit clause in l. 8, an asyndetic tetracolon that recalls the Roman characterisation of peregrine ownership as *uti*, *frui*, *habere*, *possidere*. Yet, if the expression had been taken from the Latin, we would expect a proper translation – as the quite accurate Greek rendering of the *formula tutelae* in *P. Yadin* 28-30 – or at least a close approximation. The terms here, instead, are neither in the same order nor do they truly correspond to the Latin verbs. In fact, Aramaic parallels also exist, to which our formula could just as well be compared.[98]

In truth, differences in phrasing aside, the clauses that articulate the document are the same found across the Hellenised East, and the legal structure they build is, in crucial respects, decidedly un-Roman. Deeply un-Roman is the notion that a loan deed bestows on the lender execution rights (*praxis*) – although we do not know whether direct distraint was available in the new province, and the clause *kathaper ek dikes* is avoided. So un-Roman as to be unenforceable under Roman law is the fact that the interest is not stipulated, but merely documented.[99]

In sum: the document's obliviousness to any ‚*reine Sachhaftung*', the unprejudiced compatibility between forfeiture at the will of the creditor and unrestricted liability of the debtor, and the resulting freedom of choice for the creditor, cannot be convincingly explained away through the comfortable expedient of claiming Roman – or Jewish – influence on its clauses. What the document seems to show, instead, is that its authors – the authors of the model followed here – did not share the basic assumptions that led in Egypt to the creation of *hypallagma*.

7. A Hypothesis

And so we return to our question: why was forfeit, in Egypt – unlike, as far as the evidence shows, anywhere else – incompatible with the creditor's freedom of choice? I believe an answer can be proposed, even if at this point it is just a hypothesis.

If we ask ourselves what is specific to Egypt regarding forfeit, the answer is obvious: the Ptolemaic *epikatabole kata to diagramma*, which remained in force for at least four hundred years – from the mid-third century BCE to at least the mid-second century CE. In Egypt, and only in Egypt, forfeit required—by virtue of this *diagramma—epikatabole*.

One of the main goals of the *diagramma* was to ensure the payment of the tax – the five percent of the *telos epikataboles*. Since introducing *epikatabole* and securing the tax were the primary concerns, the *diagramma* probably mentioned no alternative course of action against defaulting debtors beyond *epikatabole* itself. It may even

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98 Cf. Oudshoorn 2007: 162-164. Entirely anachronistic – and equally dissimilar – is the parallel *ut rem habeat teneat possideat utatur fruatur ipse heredesve eius in perpetuum*, from the late 5th century Albertini Tablets.

99 This omission we find also in the so called soldier's *cheirographa*, cf. Arangio-Ruiz 1948 = Arangio-Ruiz 1974: 315–326; Platschek 2013: 249-252; Bernini 2018.

have explicitly ruled out other possibilities – namely ordinary *praxis* – precisely in order to secure the tax. But even if the King stopped short of this, it made sense for the subsequent notarial practice to act under the assumption that only *epikatabole* was possible, if the *diagramma* referred to nothing else. So tightly was hypothec bound to this taxed *epikatabole*, that in Roman times fiscal debts are never secured by hypothec, but by *hypallagma*: a distraint on the pledge without *telos epikataboles* would have been, it seems, unthinkable even for the treasury.

Thus – so goes my conjecture – a model emerged in which *epikatabole* was the only right acquired by the hypothecary creditor. If hypothecation deeds had added nothing, creditors would have been left in an intolerable position, should the security perish or be compromised by third-party claims. A clause was therefore introduced, granting, in such cases, a subsidiary right to unrestricted *praxis* against the debtor. In this way, a balance was struck: the *diagramma* was respected, and the creditor's interest safeguarded.

On this hypothesis, the peculiarity lies not with Dura Europos or Arabia, but with Egypt: it was the Ptolemaic *epikatabole* that made hypothec and unconditional, unrestricted liability incompatible there. *Reine Sachhaftung* as the guiding principle of real securities in the Greek tradition would be a mirage, an overgeneralisation from Egyptian evidence.

A striking coincidence – which I do not believe to be coincidence at all – has convinced me that this theory may hold, that *epikatabole* and its tax may indeed offer the key to understanding the Egyptian system of real securities. It concerns the so-called *menein*-contracts—the last form of security we will briefly consider.

8. *Menein*-contracts

„*Menein*-contract" is the name that, since Schwarz first identified the type,[100] has been used for a series of quite peculiar secured loans from Oxyrhynchos:[101] peculiar because they represent the only security type in Egypt to breach the *reine Sachhaftung* taboo, combining a forfeit clause that lets the creditor acquire the security at will with full, unconditional debtor liability.

These documents follow a quite consistent model. One of the best preserved is *P. Oxy*. XXXIV 2722 (154 CE Oxyrhynchos), drawn up in the typical Oxyrhynchite form of a *cheirographon kai diagraphe*:[102] styled as an ordinary *cheirographon* in

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[100] Schwarz 1937. On this security model, Rupprecht 1995: 434-435 = Rupprecht 2017: 147-148; Rupprecht 1997b: 299-300 = 2017: 158-159; and, in detail, Alonso 2016: 139-146.

[101] Six such agreements were known until recently: *P. Oxy. Hels*. 31 (86 CE), *P. Oxy*. III 506 = *MChr*. 248 (143 CE), *P. Oslo* II 40 A and B (150 CE), *P. Oxy*. XXXIV 2722 (154 CE), *P. Coll. Youtie* I 50 (2nd cent. CE). To these, *P. Oxy*. II 373 *descr*. = *ZPE* 2022 179 (79-80 CE), has now been added, as the earliest exemplar of *menein*-contract to date. Two further papyri illustrate how such guarantees were executed: *P. Oxy.* III 485 = *MChr*. 246 (178 CE), and *PSI* XIII 1328 (201 CE).

[102] Parallels can be found in the archive of Pausiris – all executed, as ours, at the Serapeum of Oxyrhynchos: cf. Gagos – Koenen – McNellen 1992.

epistolary form and self-labelled as such (κυρία ἡ χεὶρ πανταχῆ ἐπιφερομέν(η), l. 50), yet executed at a bank at the Serapeum,[103] through which the sum was also paid out (ll. 7–9) – six hundred silver drachmas, received by a certain Thonis from his nephew of the same name, at the maximum monthly rate of 1%. The borrower undertakes to pay the interest every month and to return the capital in three years. The hypothecation clause we would expect after the loan terms — that the sum is granted ἐπὶ ὑποθήκῃ, with a full description of the pledged asset — is tellingly absent in this and all other *menein*-contracts.[104] Instead, the security is directly introduced in the default clause:

> ἐὰν δὲ μὴ ἀποδῶ καθὰ γέγραπται συν|$_{17}$χωρῶ μένειν περὶ σὲ τὸν Θῶνιν Ἡφαιστᾶτος καὶ ἐκγόνους |$_{18}$ καὶ τοὺς παρὰ σοῦ μεταλημψομένους ἀνθ' οὗ ἐὰν μὴ ἀποδῶ |$_{19}$ μετὰ τὴν προθεσμίαν τὴν κράτησιν καὶ κυρείαν εἰς τὸν |$_{20}$ ἀεὶ χρόνον τῶν ἐπιβαλλόντων μοι μερῶν πάντων κοινῇ |$_{21}$ πρὸς τοὺς ἀδελφούς μου Τασενπώθην καὶ τὸν πατέρα ϙ[ου] |$_{22}$ Ἡφαιστᾶν ἐπ' ἀμφόδου Δεκάτης ἐν τοῖς ἀπὸ λιβὸς μέρεσι ἐν |$_{23}$ ῥύμῃ τυφλῇ οἰκίας καὶ αἰθρίου καὶ χρηστηρίων καὶ εἰσόδων |$_{24}$ καὶ ἐξόδων [105]

This is the form the forfeit clause takes in all these deeds. Its most memorable trait – what gives them their name – is the formulation that possession and ownership of the security shall remain (μένειν) with the creditor for all time. Contrary to what might be assumed, μένειν does not imply that the creditor held possession and ownership already from the outset; rather, that once these are acquired upon default – μετὰ τὴν προθεσμίαν – they shall remain with him εἰς τὸν ἀεὶ χρόνον.[106]

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[103] Cf. on the verso, ll. 68-70: χ(ει)ρ(όγραφον) σενπώθου Χ ἀδελφοῦ \Θῶνιος/ <καὶ> Ἡφαιστᾶτος | διὰ τραπέζης ἐφ' ὑποθ(ήκῃ) μερῶν | οἰκιῶν. For the peculiar set out of these lines and their inherent difficulty, cf. p. 120 in the edition and Rea's commentary on p. 122.

[104] And yet our document (uniquely among the extant *menein* contracts) is labelled as hypothec on the verso: *supra* n. 103.

[105] „If I do not return as written, I consent | that there shall remain with you, Thonis son of Hephaistas, and with your descendants | and your successors, in lieu of what I shall not return, | after the term, the possession and ownership for | all time of all the shares falling to me in common | with my siblings Tasempothe and your father | Hephaistas, in the western part of the tenth quarter, in | a blind alley, of a house and atrium and furniture and entrances | and exits"

[106] Cf. also, explicitly, *P. Oxy*. III 506 = *MChr*. 248 (143 CE), ll. 19–23: ownership and possession will remain with the creditor "from the time payment falls due, for all time" (μένειν … ἀπὸ τοῦ τῆς ἀποδόσεως χρόνου τὴν κράτησιν καὶ κυρείαν εἰς τ[ὸ]ν | αἰεὶ χρόνον). Equally explicit is the subscription to our document, where κυριεύειν is referred to the future: εἰ δὲ μή, κυριεύσει τῶν αἰπιβαλλώντων | μοι μερῶν πάντων ...|... οἰκίας (ll. 61–65). This is therefore no title-transfer security: cf. already Schwarz 1937: 250–255, *passim*. The arguments against such a hypothesis are overwhelming. That the creditor was not in possession is shown by execution through *embadeia* (*P. Oxy*. III 485 = *MChr*. 246, 178 CE); that he was not yet owner, by the prohibition on the debtor to alienate, always included (*P. Oxy. Hels*. 31, 86 CE, ll. 20–22; *P. Oxy*. III 506, 143 CE, ll. 39–42; *P. Oslo* II 40 A, 150 CE, ll. 15–18; *P. Oslo* II 40 B, 150 CE, ll. 47–49; *P. Oxy*. XXXIV 2722, 154 CE, ll. 34–38), and by the fact that all the creditor can register before forfeit is a lien (*P. Oxy*. III 506, 143 CE, ll. 49–51; *P. Oslo* II 40 B, 150 CE, l. 50; *P. Oxy*. XXXIV 2722, 154 CE, ll. 38–41). Cf. Alonso 2016:

The security falls upon the borrower's shares in a family house co-owned with his siblings, among them the lender's father. After the property is described, as usual, by reference to its neighboring lots, the document continues:

> καὶ τάξασθαί σε |$_{26}$ διὰ σεαυτοῦ ἐὰν αἱρῇ τὰ ὑπὲρ τούτων τέλη καὶ δεσπόζιν |$_{27}$ αὐτῶν ὡς ἂν πράσεώς σοι γενομένης καὶ τὰ περιεσόμενα |$_{28}$ ἀποφέρεσθαι καὶ ἑτέροις πωλεῖν καὶ χρᾶσθαι ὡς ἂν αἱρῇ |$_{29}$ μηδεμιᾶς μοι ἐφόδου καταλειπομένης [107]

As the document emphasises – ἐὰν αἱρῇ – forfeit depends solely on the will of the creditor, who secures it simply by undertaking to pay the taxes for the asset – we will return to this shortly. And yet, despite forfeit at the creditor's will, the debtor's liability remains undiminished. This grants the creditor what no other form of security could: the freedom to choose between immediate forfeit of the security or ordinary distraint (*praxis*) on the rest of the debtor's assets. *Hypallagma* sacrificed the former, granting only ordinary *praxis*, even on the security; hypothec the latter, denying *praxis* unless the hypothec itself failed. Tellingly, the *menein* model is designed to emphasise this freedom of choice: clear evidence that its creators understood just how exceptional it was – a further confirmation of the awareness we have already suspected (*supra sub* 4 i.f.) behind the creation of *hypallagma*:

> αἱρέσεως καὶ ἐγλογῆς οὔσης περὶ σὲ τὸν |$_{42}$ Θῶνιν Ἡφαιστᾶτος ἐὰν βούλῃ μετὰ τὸν χρόνον μὴ δι|$_{43}$καιοπραγμουμένου μου τῷ κεφαλαίῳ καὶ τόκοις κυρι|$_{44}$εύειν ἀντὶ τούτων τῶν αὐτῶν μερῶν τῆς οἰκίας |$_{45}$ ἐπὶ τοῖς προκειμένοις ἢ τὴν πρᾶξιν ποιήσασθαι τοῦ τε |$_{46}$ αὐτοῦ κεφαλαίου καὶ τῶν ὠνομασμένων καὶ τοῦ ὑπερ|$_{47}$πεσόντος χρόνου ἴσων δραχμιαίων τόκων ἑκάστης μνᾶς |$_{48}$ κατὰ μῆνα ἕκαστον ἔκ τε ἐμοῦ καὶ ἐκ τῶν μερῶν τῆς |$_{49}$ οἰκίας καὶ ἐκ τῶν ἄλλων τῶν ὑπαρχόντων μοι πάντων |$_{50}$ καθάπερ ἐγ δίκης. [108]

The model's success in Oxyrhynchos was such that *hypallagma* vanishes entirely from the nome's record. Why this practice remained confined to Oxyrhynchos is unclear – but local notarial habits are a familiar feature of written legal culture, and regional documentary models are not uncommon in Egypt. In Oxyrhynchos, in any case, *hypallagma* is never used to secure loans, only public debts and the devolution of dowries.[109]

140–145 for details.

[107] „and (I consent) that you may untertake to pay | by yourself, if you choose, the taxes for these things, and have dominion | over them as if they had been sold to you, and take the produce | and sell it to others and use it as you please | no right of legal process remaining to me".

[108] „while the choice and decision remains to you, | Thonis son of Hephaistas, whether you wish, after the term, if I do not | act lawfully in the matter of the principal and interest, to | own in lieu of them the said shares of the house | on the aforesaid conditions, or else to proceed in execution, both of the | said capital and of the other mentioned sums and of the | interests for the overtime of a drachma | per mina per month, upon me, and upon the shares of the | house, and upon all the rest of my property | as if by virtue of judicial decision".

[109] *Supra* n. 20.

The question, then, is this: If *hypallagma* had to sacrifice forfeit at will in order to preserve the debtor's liability, how could the creators of the *menein* model retain both? The answer lies in plain sight, in the corollary to the *menein* clause that follows the description of the asset. There the requirements for forfeit are laid out – in our document, ll. 25-29, quoted above. All the creditor must do is "undertake to pay the taxes for these things" – τάξασθαί σε διὰ σεαυτοῦ ἐὰν αἱρῇ τὰ ὑπὲρ τούτων τέλη.[110]

If this were meant as a reference to the *telos epikataboles*, we would expect it to be named; but the clause mentions neither this *telos*, nor the *epikatabole* itself, nor the *enkyklion*. In fact, it does not point to any specific tax, but simply to τὰ ὑπὲρ τούτων τέλη – the taxes on the asset, whatever they may be. And forfeit depends not on the creditor actually paying them – as would be the case if the *telos epikataboles* were meant –, but merely on his undertaking to do so.[111]

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[110] The same formulation, in *P. Oxy. Hels*. 31 (86 CE), ll. 15–18; *P. Oslo* II 40 A (150 CE), ll. 11–14; and *P. Oslo* II 40 B (150 CE), ll. 41–44. In the fragmentary *P. Coll. Youtie* I 50 (2nd CE Oxyrhynchos), it likely followed the mention of Ptollarion in l. 9 and extended to l. 14, as suggested by the correspondence with the model from l. 12 onward. In *P. Oxy.* III 506 = *MChr*. 248 (143 CE), the clause is entirely lost, its expected position coinciding with the lacuna that separates fragments A and B. Only the newly published *P. Oxy.* II 373 *descr*. = *ZPE* 2022 179 (79–80 CE) diverges on this point: since the security is catoecic land, forfeit must necessarily be effected, as in ordinary *mesiteia*, through the catoecic register – that is, via *metepigraphe*: καὶ ἐξῖναι (l. ἐξεῖναι) τ[ῇ] Ṣελήνῃ ἀπὸ τῆσδε τῆς ϛυν[γραφῆς] (l. συγ[γραφῆς]) [μετεπιγράφεθαι] | διὰ τῶν καταλοχισμῶν τὰς δέκα ἀρούρας (ll. 21–22).

[111] What form this τάξασθαι may have taken, if any, remains unclear. The impression is that any manifestation of the creditor's choice of the security would simultaneously trigger forfeit and subject the acquirer, as owner, to any taxes levied on the asset. Which specific taxes is left open, so that the clause remains unvaried whether the object is a house share, as in our document and in *P. Oslo* II 40 B (150 CE), ll. 41-44, or a slave, as in *P. Oslo* II 40 A (150 CE), ll. 11-14. A property-tax on houses is uncertain – cf. Wallace 1938: 76, with *P. Flor.* I 104, 3rd cent. CE Arsinoites, as only possible hint. Still, there is ample evidence that the *laographia* of a house's residents was often levied on the owners, cf. *P. Goodspeed Cairo* 10 (189 CE Memphis), Wallace 1938: 147. The clearest proof (Wallace 1938: 417) is the clause, frequent in house sales, that the property is free from poll-tax until the next census, καθαρὸν ἀπὸ λαογραφιῶν μέχρι ἑτέρας ἀπογραφῆς εἰκονισμοῦ: *P. Ryl*. II 161 (81 CE Soknopaiou Nesos), ll. 14-15; *SB* XXVIII 16905 = *P. Ryl*. II 312 (82-86 CE Soknopaiou Nesos), l. 14; *PSI* XIII 1320 = *SB* V 8950 (82-88 CE Soknopaiou Nesos), ll. 11-12; *SB* XXVIII 16906 = *P. Ryl*. II 313 (82-96 CE Soknopaiou Nesos), ll. 15, 29; *BGU* I 350 (103-115 CE Nilopolis), ll. 9-10; *CPR* I 187 (145 CE Ptolemais Evergetis), l. 11; *P. Hamb*. I 15 (209 CE Ptolemais Evergetis); *BGU* II 667 (222 CE Ptolemais Evergetis), ll. 13-14. In *SB* XVI 12288, col. II (175-178 CE Ptolemais Evergetis), ll. 25-26, a building site is purchased, and the deed glued to the last census declaration, in col. I = *SB* XXII 15313 (173-174 CE Ptolemais Evergetis). The phenomenon may also underlie the "sixty drachmas per house" – ἑξηκοντάδραχμος μερισμὸς εἰς τὸ καθ' οἰκίαν – in *CPR* XXXV 22 = *SPP* V 101 (267 CE Hermopolis), ll. 8–9. Further illustration of the range of taxes levied on house-owners comes from *P. Oxy*. III 502 (164 CE Oxyrhynchos), where the lessor undertakes to pay both the police-tax and the brick-making tax on the property, ll. 43–45: τοῦ φυλάκτρου | καὶ πλινθευομένης ὄντων πρὸς | τὴν μεμισθωκυῖαν. Regarding slaves, the main obligation was again the *laographia* (Wallace 1938: 111, *passim*); taxed were also house births (*SB* III 6995, 127 CE Tenis, ll. 19-22; *SB* III 6966, 127 CE Tenis, ll. 15-18, 32-35) and manumissions (*vicesima libertatis* of the Roman manumission aside, cf. for those granted *iure peregrino*: *P. Oxy*. IV 722 = *MChr*. 358 = *Sel. Pap*. I 12, 91 or 107 CE Oxyrhynchos, l. 19;

How, then, does the asset forfeit to the creditor if not through *epikatabole*? Again, the answer lies in plain sight: he takes dominion over the asset „as if it had been sold" to him — δεσπόζιν αὐτῶν ὡς ἂν πράσεώς σοι γενομένης.[112] He does not acquire as a hypothecary creditor, through *epikatabole*, but as an ordinary buyer — for, in choosing the asset over *praxis*, he forfeits his right to the sum he gave, which the debtor may thus retain as its price.

This brings us to the central point: the only type of security in Egypt where forfeit at will coexists with unrestricted *praxis* happens to avoid *epikatabole* in favour of acquisition by purchase. Is this a coincidence?

Certain hints may point to inspiration from native Egyptian practice. Egyptian securities were granted through sale with suspended effect, a tradition that remained stable through many incarnations, Demotic, Greek and bilingual, from the early Ptolemaic to the early Roman period.[113] Against the backdrop of this consistent Egyptian practice, letting the creditor acquire as a buyer is only natural. Although the background of the parties is only occasionally discernible,[114] the link of our document to the banks at the Serapeum, where other native traditions found Greek documentary expression,[115] could be a further hint in this direction.[116]

And yet, even accepting the possibility of an Egyptian inspiration, the very deliberate formulation of the *menein* model makes it clear that this was no mindless historical inertia. The striking emphasis on the creditor's right to choose between forfeit and *praxis* shows that its devisers were fully aware of what their model achieved in contrast to hypothec and *hypallagma*. They must also have understood what made this achievement possible. In this light, the replacement of *epikatabole* with acquisition through sale seems to me no coincidence, no unreflected traditionalism, but deliberate design: the key that allowed them to square the circle.

If this interpretation holds, it confirms that it was not forfeit per se, but *epikatabole* that was seen as incompatible with unrestricted *praxis* — setting Egyptian hypothec apart from the wider Hellenised world, and fostering the creation of both *hypallagma* and these no less inspired *menein*-contracts.

P. Strass. II 122, 161-169 CE Arsinoites, l. 12; *SB* III 6293 = *P. Freib*. II 10 = *Jur. Pap*. 7, 196 CE Ptolemais Evergetis, l.6; *P. Tebt*. II 407, 199? CE Tebtynis, l. 25).

112 The same construction, in *P. Oslo* II 40 A (150 CE), ll. 11-14, *P. Oslo* II 40 B (150 CE), ll. 41-44.

113 Lippert 107, 150-151. A detailed overview in Alonso 2016: 126-139; Lippert 2019.

114 Borrower and lender are in our *P. Oxy*. XXXIV 2722 (154 CE Oxyrhynchos) both fire-kindlers of Athena Thoeris: on the cult, the sanctuaries and their personnel, Mascia 2023.

115 Alonso 2023b: 421-426.

116 One might also consider whether the sudden replacement of the ususal ὁμολόγω – kept in l. 6 for the loan – by συνχωρέω – in the *menein* clause itself, l. 16-17, formulated here, as in all other extrant examples συνχωρῶ μένειν –, could not related to the Egyptian formulation „my heart is satisfied", usually translated avoiding the traditional Greek ὁμολόγω – v.gr. through συμπείθομαι: cf. *CPR* XV 1 = *SB* I 5246 (3 BCE Arsinoites), l. 18, Biscottini 1966: 201 n. 2, and Gagos-Koenen-McNellen 1992: 190.

9. Epilogue: Taxation

There is yet a final twist to our story. Granting the creditor freedom of choice – as much as the *menein* model emphasises this achievement – may have been only one of its advantages. Another, just as significant, quite possibly concerned taxation. If I acquire the asset „as if it had been sold" to me, I need only pay the 5% sale *enkyklion* — and even that, only if the debtor defaults and I choose the security. At the time of contracting, instead, no tax is due — certainly not the *telos hypothekes*: this was the price paid to acquire the *epikatabole*, a right that *menein* deeds deliberately eschew. As a result, instead of an initial 2% *telos hypothekes*, followed upon forfeit by an additional 5% *telos epikataboles* [117] – with a further 2% *telos ananoseos* added for each renewal of the hypothec[118] – the *menein* creditor pays, in total, only 5%, and, if he does not choose forfeit or the debtor does not default, nothing at all. This goes a long way toward explaining the popularity of this model in Oxyrhynchos.

Outside of Oxyrhynchos — in Alexandria, in Hermopolis, in the Arsinoites — *hypallagma* was *the* means of preserving the debtors' unrestricted liability, the *praxis* over their entire estate. Here, too, a fiscal twist seems likely. It is striking that in a *corpu*s of nearly one hundred papyrological references to *hypallagma*, not a single one mentions taxation — whereas for hypothec taxation is omnipresent under both Ptolemaic and Roman rule. Indeed, if *hypallagma* was not, properly speaking, a right of the creditor over the asset, but merely a restriction on the debtor's faculties (*supra sub* 2) – as the form of its registration confirms (*supra* n. 27) –, why would a tax be due? Saving taxes was demonstrably also one of the chief advantages of yet another form of real security, left out of this paper due to its clear native Egyptian origin: the so-called interrupted sales of Pathyris.[119]

This may be the most astonishing aspect of the historical process we have retraced. The plurality of real securities in the Egyptian papyri seems to have resulted from the Ptolemaic *epikatabole* and its tax. Yet not in any way that the Ptolemies could have anticipated or welcomed. Rather, because the anonymous notaries behind Egypt's legal ingenuity spared no effort to restore to creditors what the Ptolemies had stolen from them: freedom of choice and freedom from taxes.

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[117] Crucially for our argumentation: the *telos epikataboles* demonstrably amounted, despite Mitteis 1912a: 151 n. 3, to the same full 5% of the *enkyklion*, i.e. it was not limited to the mere 3% difference between this and the 2% already paid by the creditor as *telos hypothekes*. For a review of the evidence, cf. Alonso 2016: 136-137 with n. 137.

[118] Evidence of payment of the *telos ananoseos*: *CPR* XXVIII 1 (237 BCE Krokodilopolis); *SB* XVI 12343 (237 BCE Krokodilopolis); *P. Tebt*. III 1 814 (227 BCE Tebtynis), ll. 59-71; *P. Oxy*. VIII 1105 (81-96 CE Oxyrhynchos), ll. 20-23; *P. Oxy*. II 274 = *MChr*. 193 = *Jur. Pap*. 60 = *FIRA* III 104 (89-97 CE Oxyrhynchos), ll. 20-22; *adde*, for *enoikesis*: *P. Oslo* III 118 (111-112 CE Euhemeria); *P. Mich*. XI 625 (121 CE Ptolemais Evergetis); *SB* XXVIII 17056 = *SB* XXII 15850 = P. *Mich. inv*. 138 (124 CE Philadelphia). Unclear is whether the tax was due only for postponement beyond the contracted term or each year, as one reads in *P. Oxy*. VIII 1105, ll. 20-23. On *ananeosis*, Rupprecht 1981 = Rupprecht 2017: 119-126.

[119] Alonso 2016: 134-139, cf. 136-137 for the tax advantage.

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