

# Legal pluralism in the Roman Empire. A case study

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### ABSTRACT

Years ago, John Griffiths introduced the concept of 'legal pluralism' in comparative legal research. He underlined the significance of 'the presence in a social field of more than one legal order' (1986). In the meantime, the phenomenon of legal pluralism and the pluralism of norms is widely discussed in modern societies. Decades later, Dupret seeks to sum up the development of research and ideas about the plurality of legal and social norms in our time (2007). In this paper I look at sources from the ancient world. I raise the question whether the phenomenon of legal pluralism and the plurality of social norms already existed in the Roman Empire. Traditionally, Roman law is considered as a systematized, and sophisticated system of rules. Approaching the topic from the aspect of everyday practice, one gets a different picture. A closer look at concrete legal disputes and at the reaction of leading lawyers of Rome to problems of citizens who lived in the provinces convince us of the co-existence of different legal conceptions in the Empire.

### KEYWORDS

Roman private law, succession, legal practice, the impact of Greek legal ideas

## 1. INTRODUCTION

The Roman Empire was inhabited by various ethnic groups. They spoke different languages, offered sacrifices to different gods, and followed different cultural traditions. However, it was not

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only the religious and cultural heritage, but also their legal habits that shaped individuals. For centuries, the two dominant legal cultures were the Greek-Hellenistic and the Roman-Latin.

The concept of law as a cultural environment gave rise to the personality principle. Every citizen of the Empire had the right to live according to his own law and be judged under his own law in a legal dispute. It was assumed that there was a unity in the law within these boundaries. In a legal system that consists predominantly of ‘unwritten law’ (non-codified rules), exceptions often serve as means of legal development. In the center and on the periphery of the Imperium Romanum, both extrajudicial legal practice and jurisprudence demonstrate a significant diversity that has so far received little attention in scholarly research.<sup>1</sup> In the following, it will be examined how the jurists of Rome dealt with the phenomenon of exception and its relationship to the ‘main rule’.

Diversity and plurality in law were typical features of the ancient world. A certain pluralism was a constant in legal language, notarial practice, and in theoretical legal thinking. It is commonly accepted that a dynamical interaction between ‘plurality and unity’ can be observed in the everyday practice of trade-related legal transactions across the Mediterranean area. However, the law of succession was always considered as a field of unique particularity (*ius proprium*). In classical Roman law, succession was subject to mandatory regulations, governed by strict rules without any possibility of exceptions (*ius cogens*).<sup>2</sup>

However, by comparing the decisions of some classical jurists (Scaevola, Modestinus, Paulus and Ulpian) with documentary texts from the Greek provinces, it becomes obvious that even Roman citizens occasionally formulated their testamentary dispositions according to local customs. There are several requests brought to the lawyers of Rome or directly to the Emperor that refer to foreign legal customs applied among Romans.<sup>3</sup> The most striking cases came from the Eastern provinces of the Empire. The actors grew up in the Greek culture of their closer environment — including its legal culture. When a legal dispute arose before a Roman court, it became necessary to interpret their Hellenistic agreements under the definitions of Roman law. Tense question arose as to whether the exceptions should be dismissed as invalid or recognized as rules.

A remarkable dynamic can be observed between unity and plurality. The exceptions arising from the particularity of provincial legal life were often reconsidered by the classical Roman jurists — seeking to integrate ‘foreign’ legal patterns into Roman law. The diversity of legal practice in the provinces was often a ‘disruptive factor’ for Rome. The boundaries between “right and wrong” — between ‘exception’ and ‘rule’ — were constantly redrawn.

## 2. THE GREEK CONCEPT OF DEPOSIT AND THE JURISTS OF ROME

The following study deals with the legal concept of deposit — in Greek terminology it is called *parakatatheke*. However, the technical term had a much broader meaning in the Greek world:

<sup>1</sup>About contracts in documentary sources cf. [Jakab \(2015\)](#) 213–31; to court proceedings in the provinces cf. [Jakab \(2018\)](#) 476–89.

<sup>2</sup>[Kaser and Knütel \(2021\)](#) 451–54; still relevant [Kreller \(1918\)](#) 328–36.

<sup>3</sup>Most scholars restrict the investigations to the question how Roman law prevailed against local, indigenous legal custom. More interesting seems to look at the other side: How local laws may have influenced legal transactions of Roman citizens who lived in the provinces.



*parakatatheke* agreements are documented in various legal relations. For a modern jurist, understanding the legal concept is not unproblematic due to the diversity of its use.<sup>4</sup> Handing over a *res mobilis* to be taken care of (gratuitously) could serve many purposes.<sup>5</sup> Mainly, the deposit was usually returned upon request to the depositor. However, under Greek law, returning could also be agreed to by a third party.<sup>6</sup> The *parakatatheke* was frequently applied in money transactions.

The third-party effect, which was unproblematic under Greek law, was especially suitable in money transactions carried out through a bank. Surprisingly for Roman lawyers, this contractual structure was also applied in *mortis causa* dispositions in the Greek provinces: the testator sorted out a certain amount of money from his assets before his death (during his lifetime) and he ordered that the money should be given to a beneficiary after his death. Occasionally, the same practice is documented in legal transactions of Roman citizens. It led to serious problems because in many respects it contradicted the rules of the Roman *depositum*.

The present paper deals with the legal construction of deposit (explicitly called *parakatatheke* in Greek) in the context of succession. There are several discussions of the topic which have come down in the scripts of the Roman jurists. Scaevola, for example, records a case in which a Roman testator disposed *mortis causa* in the form of a *parakatatheke* (D. 32,37,5).<sup>7</sup> The jurist had to assess a legal dispute between the beneficiary and the heirs of the testator (who remained anonymous).

Julius Maximus, a Roman citizen entrusted 15,000 denarii to the care of a confidant with the agreement that the money would be handed over to his nephew, Maximus junior, when he reached the age of puberty. The agreement between him and the depositor also included an interest clause: actually, the custodian had to return young Maximus double the amount, i.e. 30,000 denarii. The agreement was based entirely on trust: Julius Maximus did not demand a document of proof from the custodian, he merely made him swear an oath. Certainly, everything would have gone well had it not been for the untimely death of the custodian. The custodian referred in his last will to his duty from the earlier transaction:

'I wish all that is written below to be valid. To my master Maximus I wish to be restored the fifteen thousand denarii which I took as a deposit from his uncle Julius Maximus to give to him on his reaching puberty. These with the interest come to thirty thousand. I made this promise on oath to his uncle.'

However, his heirs did not feel bound by the trust-obligation of their antecessor and were not ready to pay the considerable sum to Maximus, who had come of age in the meantime. It can be assumed that Scaevola was aware of the underlying Greek legal concept of *parakatatheke* and basically did not disapprove of it. However, he saw the problems in enforcing the claim under Roman law. Therefore, he referred to the oath of the custodian, which gave effect to the *scriptura* left behind.<sup>8</sup>

<sup>4</sup>Already Simon (1965) 66 emphasized the great importance of *parakatatheke* in Greek legal culture.

<sup>5</sup>Buckland (1939) 274.

<sup>6</sup>Cf. Wolff (1957) 71–72; Simon (1965) 48–51; Scheibelreiter (2020) 47–50. Against all others – not convincingly – Kaiser (2023) 193–99.

<sup>7</sup>See more detailed Jakab (2021) 364–69. For deposit under Roman law cf. Walter (2012) 25–32.

<sup>8</sup>Also in P. Euphr. 12, ll. 20–24 the custodian's duty to return was guaranteed by an oath; see Feissel, Gascou (2000) 163–64; Johanssen (2017) 198–223.



The case is rather complex — it is interwoven with provincial legal customs Greek legal thinking, and entanglements. For the present topic, only the first level has relevance: Julius Maximus intended to leave in case of his death to his nephew a considerable sum of money. However, he did not dispose by will or codicil, but by a deposit during his lifetime. The depositor — the testator itself — was able to arrange through the *parakatatheke* that certain assets were separated from his estate during his lifetime. What was deposited did not end up in the hands of the heirs or guardians; it was kept (hidden) for the beneficiary. This construction was particularly favorable when minors had to be cared for. The legal effect of such transactions was beyond doubt under Greek law. As Scaevola's decision confirms, they were also actionable under Roman law, albeit in a roundabout way.

The problem of depositing money under the condition that it is to be paid to a third party (third-party agreement) will not be pursued here. We are merely interested in the testamentary use of *parakatatheke* for entrusting persons (worthy of special care). Now, the question is why testators decided to use the contractual construction for dispositions *mortis causa*.

### 3. A CASE DECIDED BY CERVIDIUS SCAEVOLA

A total of twelve text passages from the fourth book of the *Responsa* of Cervidius Scaevola have been preserved, all of them deal with legal problems of inheritance.<sup>9</sup> The present case is part of a longer coherent text (D. 40,5,41 pr.-17), which contains eighteen decisions on testamentary releases.<sup>10</sup> A total of four fragments have survived in the *responsa* that contain verbatim quotations from legal documents with Greek text;<sup>11</sup> ours is one of them (D. 40,5,41,4 Scaevola 4 resp.):<sup>12</sup>

*Sorore sua herede instituta de servis ita cavit: βούλομαι καὶ παρακαλῶ, γλυκυτάτη μου ἀδελφή, ἐν παρακαταθήκῃ σε ἔχειν Στίχον καὶ Δάμαν τοὺς πραγματευτάς μου, οὓς ἐγὼ οὐκ ἡλευτέρωσα, ἄχρισ ἂν τὰς ψήφους ἀποκαταστήσωσιν· ἐὰν δὲ καὶ σοὶ ἀρέσωσιν, ἐμήνυσα σοὶ τὴν γνώμην μου.<sup>13</sup> Quaero, si paratis actoribus rationes reddere heres libertatem non praestet, dicendo eos non placere sibi, an audienda esset. Respondit non spectandum, quod heredibus displiceret, sed id quod viro bono posset placere, ut libertatem consequantur.<sup>14</sup>*

<sup>9</sup>Lenel (1889) 306–13 put it under the title *De manumissionibus*. To the *responsa* of Scaevola see Spina (2012) 26–34.

<sup>10</sup>Cf. Finkenauer (2006) 19–57; to manumissions in form of *fideicommissa* see Knütel (2006) 131–51.

<sup>11</sup>As further sources can be quoted D. 17,1,60,4; D. 26,7,47 pr. and D. 31,88,15.

<sup>12</sup>There are some other texts dealing with characteristic legal problems from the Greek provinces; Hellenistic legal ideas play in all of them a central role. Cf. Jakab (2021) 351–53; Jakab (2022) 120–23.

<sup>13</sup>Mommsen and Krüger translated the text as follows: ‘volo et rogo, soror dulcissima, ut commendatos habeas Stichum et Damam actores meos, quos equidem non manumisi, donec rationes reddidissent: quod si tu quoque eos probaveris, voluntatem meam tibi significavi.’

<sup>14</sup>After instituting his sister as heir a man made the following provisions regarding the slaves: “I wish and request you, dearest sister, to treat Stichus and Damas, my stewards, as placed in your trust [deposit]; I did not free them myself until they should have rendered accounts, but if they should also have received your approval, I have indicated to you what I wish.” Suppose the stewards are prepared to render their accounts but the heir should withhold freedom, saying that they do not meet with her approval; should she be heard? He replied that for the purpose of their obtaining freedom it was not what might fail to win the approval of the heirs, but what might win the approval of a good man that was to be examined.’ Translation by Watson (1985).



As a leading jurist of his time, Scaevola was deeply involved in the legal work of the imperial chancellery.<sup>15</sup> The Emperor received many inquiries from the provinces. The cases coming from the eastern part of the Empire mirrored both local notarial custom and Greek legal thinking. Scaevola's considerations on phenomena of that everyday practice may reflect the general attitude of imperial jurisdiction towards strange (not Roman) legal concepts his decisions played a significant role in shaping the *rescripta* under Marcus Aurelius. It is likely that Scaevola's decisions concerned 'really practical cases'.<sup>16</sup> The case in D. 40,5,41,4 can also be seen as a 'real' legal dispute taken from everyday legal life (law in action), not a constructed school case.

*Sorore sua herede instituta* — the *heredis institutio* mentioned in the first sentence suggests that the testator generally regulated the fate of his assets after his death in a formal will (and not just in a *fideicommissum*). According to Gaius, the appointment of an heir is the *caput et fundamentum* of every will, which creates its legal effect.<sup>17</sup> It is not clear from the text in which language the complete will was drawn up. In any case, the clause submitted for examination was set up in Greek. However, this does not necessarily mean that the entire will was notarized throughout in Greek. The context speaks against this, especially the status of the protagonists: the testator and heiress were certainly Roman citizens. It is hardly conceivable that the opinion of a respected lawyer from Rome (in high imperial service) would have been sought in an inheritance dispute between peregrines (without Roman citizenship). If that case had been a matter of a testamentary disposition among local people according to local practice, an interpretation under Roman law would hardly have been requested.

However, Roman citizens were strictly forbidden from writing wills in Greek, using local patterns instead of the Roman-Latin formula. In the 2nd century A.D., there was still a strong separation between the social groups based on their status. Regulations in this regard are best documented in Egypt; the *Gnomon* of the *Idios logos* collected the most important rules. It is stated that Roman citizens were not allowed to notarize their testamentary dispositions except in the Roman way, using archaic Roman patterns and a formulized Latin legal language. Failure to comply with the mandatory provisions led to the invalidity of the will and to the confiscation of the entire estate.<sup>18</sup>

The validity of the underlying deed was apparently not in doubt. It is open to question whether it was a regular Roman will: written in a highly formalized Latin language, on wooden tablets (the traditional writing material) and signed by seven witnesses.<sup>19</sup> If the testator had left a Roman will — roughly following the pattern as it came down in FIRA III 47 — the 'request' to his sister, written in Greek, could have been a supplementing codicil.

<sup>15</sup>Spina (2012) 13–22; Scaevola served as *praefectus vigilum* in 175, and he was a member of the *consilium* of Marcus Aurelius. See Schulz (1975) 126; Liebs (1976) 294–96.

<sup>16</sup>Schulz (1975) 294.

<sup>17</sup>Gai. 2,229; cf. Kaser, Knütel, Lohsse (2021) 453.

<sup>18</sup>BGU V 1210 § 8. Cf. Jakab (2021) 340–44; Babusiaux (2018) 139–43. To the restrictions of capacity (*testamenti factio*) see Nowak (2015) 19–20, and 34–41.

<sup>19</sup>Gai. 2,119. Avenarius (2022) 15–9 deals with the impact of archaic legal language. Dispositions set up before the *heredis institutio* were void; see Rüfner (2011) 1–26; Jakab (2016) 498–509.



But it is also conceivable that the testator's will was drawn up originally in both languages (Latin and Greek, bilingual). The documentary sources show that the 'new citizens' of the eastern provinces had little or no knowledge of Latin — nevertheless they made an effort to have 'Roman' wills.<sup>20</sup> Notaries in the provinces were usually well equipped to deal with such requests.<sup>21</sup> They could easily draw up a proper legal document in Latin, adding a correct Greek translation.<sup>22</sup> In that case, the request made to the heiress in Greek could be taken from the Greek translation of the will.

In any event, it is certain that one of the parties sought advice from a respected lawyer. It is likely that a lawsuit was brought before a Roman court. Scaevola was to interpret the testator's disposition — as it was addressed to the heiress in Greek — under the rules of classical Roman law. Confronted with a 'non-Roman testamentary clause',<sup>23</sup> he helped himself by reinterpreting it as *fideicommissum*.<sup>24</sup> *Fideicommissa* (trusts) were generally made actionable by Augustus and were absorbed into the system of Roman inheritance law.<sup>25</sup>

#### 4. THE LEGAL INTERPRETATION

Scaevola reviewed a legal dispute that had arisen over the interpretation of a manumission clause. There is no doubt that the testator appointed his sister as universal heir. He also entrusted the fate of two of his favorite slaves to her — adding a particular recommendation in Greek. Stichus and Damas were his *pragmateutai*,<sup>26</sup> his managers (*actores*), who evidently enjoyed a privileged position in his *familia* (household).<sup>27</sup> They are likely to have managed considerable parts of his assets, as can be inferred from the duty of accounting imposed on them. Manumissions under the strict condition of *rationes reddere* were known in Roman law — either in lifetime of the *dominus* or upon his death.<sup>28</sup> The confidential tone, the Greek language, and the *parakatatheke* construction give the declaration a strange character that makes difficult to interpret it under the strict categories of Roman law. The testator asks his sister 'to have in custody' (ἐν παρακαταθήκῃ ἔχειν) his two favorite slaves.<sup>29</sup> He then refers to the *conditio* of accounting — and adds that even his sister may have certain tasks to perform (connected with

<sup>20</sup>On the legal status of veterans in Egypt cf. Mitthof (2000) 377–405; Sängner (2011) 82–91.

<sup>21</sup>Czajkowski (2017) 60–61, and 66–67. Dolganov (2020) 358–416 examines the work of legal experts in the provinces.

<sup>22</sup>For Greek translation of wills written in Latin are good examples BGU I 326 (194); P.Oxy. XXII 2348 (224.); cf. Strobel (2014) 110–11, and 151–52.

<sup>23</sup>Wolff (1971) 337.

<sup>24</sup>Scholarly literature commonly deals with this classification, see Frezza (1956) 146: 'il testo, che non offre difficoltà di interpretazioni dal punto di vista della dottrina romana della libertà fedecommissaria.' The interpretation sounds rather simple if one explains the case from that single aspect.

<sup>25</sup>On the development of trust cf. Kaser et al. (2021) 489–92. The strict formal rules of testaments were extended under Vespasian and Hadrian to *fideicommissa*, see Johnston (1988) 115.

<sup>26</sup>In the papyri, the word is used in the sense of 'rader, businessman' (Handelsmann, Geschäftsmann), cf. Preisigke (1925) 350.

<sup>27</sup>On the motives of testamentary manumissions cf. Champlin (1991) 136–68; Mouritsen (2016) 410–13.

<sup>28</sup>D. 40,5,41,7; D. 40,5,41,10–13; D. 40,5,41,16–17, in the *responsa* of Scaevola.

<sup>29</sup>Kübler (1907) 192 argued that the *verbum parakatathestai* cannot mean 'hinterlegen' (deposit), but merely a non-binding 'anvertrauen' (entrust). However, he did not offer a convincing evidence for his view.



the transaction). The phrase used by him — ‘if they should meet with your approval, I have indicated my opinion to you’ — is rather vaguely formulated. No wonder that also the persons concerned understood it so differently.

The heiress obviously declared her ‘non-approval’ or ‘displeasure’ (*displicere*) and denied granting the slaves their freedom (*heres libertatem non praestet*). Stichus and Damas again fiercely resisted this. It is clear from the text that they had prepared their *rationes* (final accounts) properly and presented them to the heiress. They insisted that the testator granted them their freedom, setting merely this condition.

Scaevola reduces the legal problem to one basic point: whether the testament set a subjective or an objective standard. His *responsum* is rather laconic: *non spectandum, quod heredibus displiceret, sed id quod viro bono posset placere...* He rejected the personal *displicere* of the heiress as legally irrelevant.<sup>30</sup> He rather insisted that the condition set by the testator is to be judged according to the objective standard of a *vir bonus*;<sup>31</sup> it concerns merely the question of whether the accounts were presented properly. Scaevola thus restricted the relevance of his decision to the concrete lawsuit.

The jurist presents a concise interpretation limited to the criteria relevant to Roman law — and disregards the provincial particularities of the case. He does not concern himself with deciphering and integrating Hellenic models of legal thinking into Roman law. He does not address the question of what the testator may have meant by *parakatatheke* in this context. He also seems to ignore the problem of who actually freed the two slaves — even though it was of serious importance for their future fate. If the heiress sets them free, Stichus and Damas would have counted as her freedmen — and she would have been entitled to patronage rights and — according to Greek law — to *paramone*.<sup>32</sup> As a result, the freedmen would be obliged to perform *operae*, *obsequium* and other services and ‘remain’ with the heiress for the rest of their lives. Stichus and Damas would have enjoyed a far more favorable position if they had obtained their freedom from the testator himself (while still alive or upon his death). In this case, no legally enforceable legal duties would have arisen between them and the heiress; their freedom would have remained unrestricted.

Clues to a solution can be found in the disposition quoted verbatim by Scaevola, especially in the possible motives for applying the *parakatatheke*. Why did the testator want his highly valued slaves to be in the care (*parakatatheke*) of the heiress? What did he mean by the phrase ‘if they should meet with your approval’?

The testator asked his heiress to take care for Stichus and Damas: after his death, the two are to come into her custody, under her protection. He then formulates his intention (and not his wish) to release them conditionally: οὗς ἐγὼ οὐκ ἡλευτέρωσα, ἄχρις ἂν τὰς ψήφους ἀποκαταστήσωσι. There is no indication in the Greek text that the legal act of manumission was to be carried out by his sister (the heiress).<sup>33</sup> It seems more likely that the testator himself

<sup>30</sup>Kübler (1907) 192–93 stated that the text might have been ‘eine Illustration zu der Lehre über die Bedingungen’. Frezza (1956) 146, and 164–65 also explained the term in a subjective sense; followed by Häusler (2016) 438: ‘... die Erbin, wenn sie mit den Sklaven zufrieden sei, diese freilassen könne’.

<sup>31</sup>On the liability cf. Fiori (2011) 108–17, with reference to the social-ethical roots of *bonus – malus – bonus vir*.

<sup>32</sup>Waldstein (1986) 106–9.

<sup>33</sup>Although this explanation is stressed by several scholars, see Kübler (1907) 192: ‘... die Erbin muss Eigentümerin der Sklaven sein, um sie freizulassen’. Häusler (2016) 438 also means that the slaves were to be freed by the heiress. However, I do not see their thesis confirmed by the text.



wanted to release Stichus and Damas — but not at the moment of making his will. It seems that at the time the will was drawn up the administrators were not able to fulfill the requirement of accounting. Such a situation is likely if the testator is dying or fears his imminent death. In case the *rationes* could only be presented after his death, he transferred the power to review and accept them to his heiress.

Therefore in Scaevola's case a direct acquisition of freedom can be supposed: the testator did not ask someone else (not even the heiress) to free the slaves (*cum non ab alio servum manumitti rogat*) but declared that the slaves were entitled to freedom by his own will (*ex suo testamento*).<sup>34</sup> In the inquiry put to Scaevola the claim is summed up with the phrase: *si ... heres libertatem non praestet*. Were the heiress charged to free them, one would rather expect *libertatem dare* or *manumittere*. *Praestare* generally means 'to grant, perform, give',<sup>35</sup> but the phrase *libertatem praestare* especially refers to *confirmare* a manumission set out in a fideicommissum.<sup>36</sup> Scaevola's decision suggests that the freedom itself was granted by the testator, although it was not possible to fulfill the condition before his death. This is especially emphasized by the clause 'if they should meet with your approval' and the later (arbitrary) *displicere* of the heiress.

There is no answer to the question why the testator used the construction of *parakatatheke* to strengthen his wish (βούλομαι καὶ παρακαλῶ). The first impression is that the *parakatatheke* with which the testator had burdened the heiress may have increased her liability: she should have dealt with the beneficiaries honestly, she should not have contested or diminished their free status. The testator's last wish, his testamentary 'entrustment' seems to have been transmuted into a contractual obligation by the *parakatatheke*.<sup>37</sup> Before going into a more detailed exegesis, two further texts should be reviewed. Both deal with *parakatatheke* of certain persons.

## 5. PARAKATATHEKE OF FREEDMEN – THE PRACTICE

A well-preserved inscription from the port of Gytheion (IG V 1, 1208, Gytheion, 42 A.D.) records a similar case. It concerns the endowment of a rich Roman woman, Phainia Aromation. She bears the *nomen gentilicium* of the Phaenii, who were wealthy merchants with origins in Italy.<sup>38</sup> Phainia Aromation was probably her freedwoman, who was married to a member of the *gens* of the Ophellii (rich merchants from Delos). The inscription names a certain P. Ophellius Crispus, presumably her son, as her *phrontistes* and *kyrios*.<sup>39</sup>

The last will of a citizen was usually carved in stone if the testator also set up a 'foundation'.<sup>40</sup> The founder determined that the income of a certain part of his assets (money or land) should be used to realize a purpose prescribed by him. In 'public foundations' a certain city, its

<sup>34</sup>Inst. 2,24,2; cf. Knütel (2006) 132–35.

<sup>35</sup>Heumann and Seckel (1958) 452–53.

<sup>36</sup>Scaevola D. 40,5,19 pr.; Ulpian D. 40,5,24,7–8.

<sup>37</sup>On the liability of depositaries cf. Scheibelreiter (2020) 100–102.

<sup>38</sup>Harter-Uibopuu (2004) 2.

<sup>39</sup>Harter-Uibopuu (2004) 3.

<sup>40</sup>On the controversial terminology cf. Walser (2021) 403–404, who draws attention to the danger of an anachronistic interpretation.



municipal authorities or a deity was designated as recipient, while in ‘private foundations’ a certain group of people was designated.<sup>41</sup>

The recipients had to manage the donation — to invest the capital, to cultivate the agricultural land, etc. — and to spend the yearly proceeds on the object earmarked by the ‘founder’.<sup>42</sup> Commonly, the main aim of such ‘foundations’ was to take care of *memoria*, organizing yearly festivals for the deceased, and to tend his grave. It can be observed that the *polis* and its administration was already involved in setting up the foundation in so called ‘public foundations’. The founder bargained the details with the city council in a careful, point-by-point negotiation. Finally, the jointly agreed terms of the ‘foundation management’ were put into effect by a decision of the *council-boule*.<sup>43</sup>

Phainia Aromation donated eight thousand denarii to her home city and specified that the considerable sum should be invested and of the income, oil should be purchased for the local *gymnasion*.<sup>44</sup> The *archontes* were commissioned to buy the oil in the form of a public tender. The document declares that the body care purchased in this way was available to the every citizens of Gytheion as well to strangers — and even to slaves for six days each year.<sup>45</sup> The inscription is extremely important because of the detailed regulation of the management and of the sanctions for breaking the terms.<sup>46</sup> For the present topic, only the following lines are relevant (IG V 1, 1208, ll. 48–56):

παρακατάτιθεμαι δὲ τῇ [πό]λει καὶ τοῖς συνέδροις καὶ τοὺς θρεπτοὺς μου καὶ ἀπ[ε]λευθέρους] πάντας τε καὶ πάσας. ἐνεύχομαί τε ὑμῖν θε[οὺς] | πάντα] καὶ τὴν τῶν Σεβαστῶν Τύχην, καὶ ζώσης ἐμοῦ [καὶ ἐὰν | ἀνθρώπιν]όν τι πάθω, καὶ κατὰ ἀνδρα καὶ κοινῇ τὴν ἀρίστην [τῆς | βουλήσεω]ς μου καὶ ὧν ἐγὼ τειμῶ καὶ τετείμηκα θρε[πτῶν] | καὶ ἀπελε]υθέρων διὰ παντὸς ὑμᾶς ποιήσασθαι πρόνο[ιαν] | ὅπως αἰεὶ ἀν[ε]πέλῃ<π>τοι διὰ τὴν ἀπάντων ὑμῶν εἰς ἐμὲ ε[ύ]νοϊαν καὶ ἀνεύχλ[η]τοι φυλαχθῶσιν.

I entrust to the polis and the *synedroi* my *threptoi* as well as all my freedmen and freedwomen. I adjure you by all the gods and the Tyche of the Augusti that, both while I am alive and when I die, you pay most heed, both individually and collectively for all time to my wish and to those *threptoi* and freedmen whom I cherish and have always cherished so that they will always be protected from seizure and harassment because of the benevolence of all of you towards me.<sup>47</sup>

Phainia Aromation entrusted (*parakatatithemai*) her *threptoi* and *apeleutheroi* to her *polis* and its *synedroi*. The verbum confirms that the founder had the broad meaning of the Greek

<sup>41</sup>Walser (2021) 403–404. The problematic of a trifling classification cannot be treated in this paper; it should be left open whether the definition *donatio sub modo*, introduced by Aneziri (2020) 15–33, and followed by Harter-Uibopuu (2021) 369–71, is the most fitting one.

<sup>42</sup>A comprehensive overview is provided by Aneziri (2020) 15–33.

<sup>43</sup>To foundations in the Greek world see Wörrle (1988) 22–31; Harter-Uibopuu (2021) 370; Arnaoutoglou (2011–2012) 59–85.

<sup>44</sup>To the special status of cities in the law of succession cf. Johnston (1975) 106–10.

<sup>45</sup>Favoring slaves is seldom, can be another indication for the freed status of the founder.

<sup>46</sup>Scholars deal primarily with the sanctions for non-compliance. See Herrmann (1980) 147–71; Horster (2019) 228. However, the Digest text does not prove that the sanctions would have been encouraged by the recipients of the foundation, and not by the founders, as assumed by Horster.

<sup>47</sup>Translated by Harter-Uibopuu (2004) 3.



*parakatatheke* in mind. The term *apeleutheroi* refers to those persons to whom the founder ‘pays or has already paid tribute’.<sup>48</sup> It is obvious that she wanted to mark those members of her household who stayed particularly close to her — those who had already been freed by her or were to be freed in the future. The meaning of the word *threptoi* is more complex; it mostly refers to slaves born in the household, but also to foundlings raised in the family (possibly also adopted).<sup>49</sup> It is likely that both technical words (*apeleutheroi* and *threptoi*) concerned servants of different statuses who were members of the founder’s household and who would lose their personal protection after her death.<sup>50</sup>

It should have been clear to the city administration which persons exactly belonged to the privileged groups. In any case, a list of names was not enclosed. The founder entrusted her *threptoi* and *apeleutheroi* to the city for safekeeping (*parakatatithemi*). The polis and the *syndroi* were to protect them and guarantee the integrity of their legal status. As the trust fund came into force with the decision of the boule, it can be assumed that the dispositions of the *parakatatheke* also came into force during Phainia’s lifetime. Therefore, here the *parakatatheke* should be classified as a legal transaction *inter vivos*: between the founder and the polis (no transaction *mortis causa*).

It is controversial whether here the *parakatatheke* had a real legal effect or it merely was a means of manumission. Some scholars have argued that the inscription records a combination of manumission and entrustment to the city; Laum also followed this view.<sup>51</sup> Wilhelm, on the other hand, underlined that the inscription did not speak of a manumission: Phainia Aromation had merely entrusted a group of persons (already freed and to be freed) to the care of her polis. Harter-Uibopuu recently emphasized that the founder merely announced her intention to free some members of her household but neither her intent nor the *parakatatheke* would have created any legal bond.<sup>52</sup>

Certainly, IG V 1, 1208 is not a manumission-inscription.<sup>53</sup> However, a closer look at the text indicates that the *parakatatheke* was not an insignificant phrase. Some of the entrusted persons appear to have already gained their freedom earlier, while others were to be freed later, maybe in the will of the founder. The contractual construction of the *parakatatheke* may have had the effect that the persons concerned were removed from the founder’s assets before her death, already during her lifetime.

<sup>48</sup>In Laum’s translation (1914) 11–14, no. 9: ‘Ich vertraue der Stadt und den Ratsherrn auch meine Sklaven an und lasse sie frei alle, Sklaven wie Sklavinnen.’ Already Wilhelm (1951) 94 criticized the missing distinction between *threptoi* and *apeleutheroi*.

<sup>49</sup>Harter-Uibopuu (2004) 14 with further sources.

<sup>50</sup>With another view Harter-Uibopuu (2004) 14; she argues that those affected should be freed in the future.

<sup>51</sup>Laum (1914) 14.

<sup>52</sup>Harter-Uibopuu (2004) 14: ‘Therefore I think that in this inscription Phainia expresses her intent – legally not binding – to free her favorite slaves, her *threptoi*, probably when she dies.’

<sup>53</sup>To the typical problems of manumission inscriptions in the Greek world see R  fner (1997) 371–77.



In this way, Phainia Aromation was able to prevent her people from passing over to the heirs. Her freedmen were not obliged to provide services to anyone.<sup>54</sup> The concern of the polis meant a special protection of their unrestricted freedom and of their social status.

An inscription from Stiris (Phocis) confirms that *parakatatheke* agreements were also applied in other regions of the Greek world to guarantee the unrestricted freedom of freedmen.<sup>55</sup> Moreover, Scaevola might have been familiar with the Hellenistic concept of ‘safekeeping’. The special Hellenistic understanding of contracts can be assumed in the background, classified by H. J. Wolff as ‘Zweckverfügung’.<sup>56</sup> Although all Greek contracts had a real character, their nature was rather different from the Roman concept of a real contract. Their special feature was that ‘the fact giving rise to liability did not lie in the simple receipt of the object, but in the non-execution of the conditions set at the time of the disposition and assumed by the opposite party’.<sup>57</sup>

## 6. THE *PARAKATATHEKE* OF A HUSBAND

Modestin discussed a remarkable testamentary disposition. It was written by a testatrix (called Titia<sup>58</sup>) in Greek and attached to her will as a codicil (D. 31,34,7 Mod. 10 resp.):

Titia cum nuberet Gaio Seio, dedit in dotem praedia et quasdam alias res, postea decedens codicillis ita cavit: Γαίον Σείον τὸν ἄνδρα μου παρακατατίθεμαί σοι, ὦ θύγατερ. ᾧ βούλομαι δοθῆναι εἰς βίου χρήσιν καὶ ἐπικαρπίαν μετοχὴν κώμης Νακλήνων, ἣν ἔφθασα δεδωκυῖα εἰς προῖκα, σὺν σώμασι τοῖς ἐμφερομένοις τῇ προικί, καὶ κατὰ μηδὲν ἐνοχληθῆναι αὐτὸν περὶ τῆς προικός. ἔσται γὰρ μετὰ τὴν τελευτὴν αὐτοῦ σὰ καὶ τῶν τέκνων σου.<sup>59</sup> ... Quaero, an propter haec, quae codicillis ei extra dotem relicta sunt, possit post mortem Gaii Seii ex causa fideicommissi petitio filiae et heredi Titiae competere et earum rerum nomine, quas in dotem Gaius Seius accepit. Modestinus respondit: licet non ea verba proponuntur, ex quibus filia testaricis fideicommissum a Gaio Seio, postquam

<sup>54</sup>Nevertheless, Harter-Uibopuu (2004) 14 points out that the *parakatatheke* had no legal consequence here. See also Wilhelm (1951) 93–97.

<sup>55</sup>IG IX 1,34; cf. Wilhelm (1951) 94; Harter-Uibopuu (2004) 13.

<sup>56</sup>Wolff (1957) 63–64.

<sup>57</sup>Wolff (1957) 65; Scheibelreiter (2020) 36–41: ‘der haftungserzeugende Tatbestand nicht in dem einfachen Empfang des Gegenstandes, sondern in der Nichtausführung der bei der Verfügung gesetzten und vom Verfügungsgegner angenommenen Bedingungen ... lag’.

<sup>58</sup>The jurist used a blanket name; perhaps the actors were well-known whose identity was to protect.

<sup>59</sup>In the translation of Mommsen und Krüger: ‘Gaium Seium virum meum commendo tibi, filia, cui volo dari in usum per vitam eius et fructum partem vici Nacolenorum, quam antea ei in dotem dedi, una cum hominibus in dotem illatis, neque ullo modo eum de dote inquietari: nam post eius obitum ea erunt tua liberorumque tuorum.’



praestiterit quae testamento legata sunt, petere possit, tamen nihil prohibet propter voluntatem testatrices post mortem Gaii Seii fideicommissum peti.<sup>60</sup>

On her marriage to a certain Gaius Seius, Titia transferred to him certain landed estates with slaves and other valuables as dowry (*dedit*).<sup>61</sup> As her death approached, she drew up a will in which she appointed her daughter as universal successor (*filiae et heredi Titiae*). Additionally (probably later), she disposed in a codicil that her husband was to have a lifelong usufruct of the items of her dowry. She also bequeathed (*legavit*) other valuables to him. It seems that the legal document with the *heredis institutio* was not produced to Modestin (*licet non ea verba proponuntur...*).<sup>62</sup> The lawyer's opinion was obtained merely about the dowry and the other valuables left for Gaius Seius.<sup>63</sup>

The legal dispute broke out after the death of the surviving husband (*post mortem Gaii Seii*).<sup>64</sup> Apparently, the heirs of Gaius Seius did not want to return the assets bequeathed to him by his deceased wife for a lifetime use. Titia's daughter and heiress wanted to know whether she could reclaim them by legal action.

The wording of the codicil is particularly significant for the present topic: Titia 'entrusted' (*parakatatithemai*) her husband to her daughter, who was her appointed heiress.<sup>65</sup> This is followed by the testatrix's detailed disposition of Gaius Seius' lifelong use (*usufructus*) and the termination of the rights after his death.<sup>66</sup> Modestin tries to save the atypical disposition which was written in Greek: he classifies it as *fideicommissum* — it might have been the only possibility making it enforceable under Roman law.<sup>67</sup>

Actually, Titia's disposition makes no sense if one tries to solve the case under Roman law. If it were a *dos adventitia*, the associated items would belong to the husband anyway after the

<sup>60</sup>Titia on her marriage to Gaius Seius gave lands for her dowry and certain other things and afterward at death provided in a codicil as follows: 'I entrust Gaius Seius my husband to you, my daughter. I wish him to be given for life the usufruct of my share in the village of Naklenoi, which I have already given him for dowry, together with the slaves which were given with the dowry. He should in no way be troubled about the dowry; for after his death, it will belong to you and your children.' ... I ask whether apart from what was left him by codicil other than the dowry, could an action on the *fideicommissum* lie in favor of the daughter and heiress for those things which Gaius Seius received as dowry? Modestin replied: Though the words cited give no grounds for the daughter of the testatrix to claim a *fideicommissum* from Gaius Seius, after he has discharged what had been bequeathed in the will, nothing, however, forbids a claim for a *fideicommissum* after the death of Gaius Seius on account of the intention of the testatrix.' Translation after Watson (1985).

<sup>61</sup>In the Roman world, one would speak of a *fundus cum instrumento*. Land and slaves were the typical items of a special type of dowry among Greeks, called *prospora*; cf. Yiftach-Firanko (2003) 164–75. It is a further hint that Titia initially might have had a marriage contract under Greek law.

<sup>62</sup>On his legal career cf. Maffi et al. (2021) 6–14.

<sup>63</sup>Gaius Seius was granted a life-long usufruct ('Nießbrauch') in two separate dispositions: a *fideicommissum* regarding the dowry by a codicil, and a legacy (*legavit* – whether or not technically used) of the use of further valuables.

<sup>64</sup>Frezza (1956) 147 points out that Modestin denies Titia's suing in the first part of the text (so long Gaius Seius lived) — and only the second part refers to a possible lawsuit after his death.

<sup>65</sup>I don't deal with the question whether the daughter was born in a previous marriage. See to it Kübler (1907) 189; Spina (2013) 565–66.

<sup>66</sup>It is a typical case of usufruct in favor of the surviving spouse set up voluntarily. Much later it became a legal standard all over the Empire.

<sup>67</sup>Frezza (1956) 146–48.



wife's death — unless otherwise agreed in a marriage contract.<sup>68</sup> Consequently, it would have been pointless to bequeath the usufruct by her will.<sup>69</sup>

The case only makes sense under the Greek law of inheritance. The Hellenistic context is given: the *vicus Naclenorum* where the bequeathed properties were located can be identified as a village in the province of Syria.<sup>70</sup> It is likely that Modestin dealt here with the closest family relationships of Roman citizens who lived in this eastern province of the Empire. The fact that the legal dispute reached a famous lawyer suggests that the protagonists belonged to the provincial elite. However, the fact that the document was drafted in Greek confirms their deep roots in the local Greek culture. Under Greek family law, the husband had to return the dowry within a short period (of thirty or sixty days) after the dissolution of the marriage — if the couple remained childless.<sup>71</sup> The facts of the case — as recorded by Modestin — suggest that Titia's daughter and heiress came from a previous marriage; it seems that no children were born in her marriage to Gaius Seius. In such cases, an immediate obligation to return the entire dowry would have driven the husband into financial ruin. Therefore the testatrix felt necessary to guarantee for her husband the lifelong usufruct on the items.

The verbum *parakatatithemai* show a remarkable similarity with Scaevola's case in D. 40,5,41,4. Certain persons who belonged to the *familia* were 'entrusted, given to care' in both cases: in Scaevola's *responsum* the testator's stewards, Stichus and Damas while in Modestin's decision the husband of the testatrix. In both cases, the heiresses had to take certain person(s) into protection in order to guarantee their well-being. Whether it was the unrestricted freedom of the entrusted servants or the lifelong usufruct of the surviving husband — the *parakatatheke* imposed a strict duty of loyalty on the heirs, also increased their moral and legal responsibility to fulfill the last will of the testator.

## 7. SUMMING UP...

In the eastern provinces of the Roman Empire the legal structure of *parakatatheke* served not only for safekeeping money and other valuables, but also in a wide sense for entrusting people for special protection. The broad concept of contract under Greek law included any transaction which has born the hallmark of a fiduciary entrustment — therefore, it was subsumed under *parakatatheke*.<sup>72</sup>

The sources which were quoted above confirm that the *parakatatheke* generated legally enforceable obligations also in the cases when persons were recommended to the care of somebody. The created obligations went beyond a 'moral commandment'.<sup>73</sup> In Scaevola's case (D. 40, 5,41,4), the freedmen who were given into *parakatatheke* were evidently able to enforce

<sup>68</sup>In that sense Kübler (1907) 188–89; with a similar view Frezza (1956) 146–47 and Spina (2013) 565.

<sup>69</sup>Already Kübler (1907) 189–90; followed by Häusler (2016) 442–43; Spina (2013) 565. Frezza (1956) 147.

<sup>70</sup>RE XVI,2 Sp. 2000 s.v. *Nakle*.

<sup>71</sup>On the documentary practice cf. Yiftach-Firanko (2003) 158; Kübler (1907) 190.

<sup>72</sup>Simon (1965) 65.

<sup>73</sup>To the strong bond of *pistis* in *parakatatheke*-agreements since the archaic period see Ehrhardt (1958) 38–44, Scheibelreiter (2020) 42–44.



their claim for freedom against the heiress — at least, this was Scaevola's point. It can be assumed that the *threptoi* and *apeleutheroi* of Phainia Aromation were also able to defend their unrestricted freedom (without any patronage rights and *paramone*) by a legal action if the heirs of the mistress wanted to deny it.

Before a Roman court, thus requests based on trust (*fides*, *pistis*) were often classified as *fideicommissum*.<sup>74</sup>

What is the common element in the three cases introduced above? The inscription of Phainia Aromation testifies that a Roman woman living in a Greek province fully trusted the notarial practice of her Greek surroundings. Her will, her most significant legal transaction was styled according to Greek legal custom. The welfare of her freedmen, the protection of their unrestricted free status, was close to her heart, which is why she applied the legal figure of *parakatatheke*. In Scaevola's case, the testator also wished to have a stronger protection against any possible attack on the freedom of his stewards when he entrusted Stichus and Damas to his heiress. In Modestinus's case, Titia was moved by similar motives when she bestowed her husband on her deathbed — and set up a *parakatatheke* to make sure that her heiress would follow her wish.

It is remarkable that the quoted testamentary dispositions with *parakatatheke* handed down in Greek were formulated by Roman citizens. The Greek structure of this unique legal transaction was used to protect beloved persons — to protect them because their welfare was at danger after the death of the testator.

Scheibelreiter stressed that the duty of loyalty was one of the basic elements of a *parakatatheke*.<sup>75</sup> Under Greek law, a breach of contract triggered an action arising from a tort (*dike blabes*): It was particularly suitable for exploring the boundaries between liability arising from tort and contract.<sup>76</sup> Breach of contract on the part of the depositor (such as misappropriation of the property or other frustration of the disposition) was regarded as a particularly serious shame and disgrace.<sup>77</sup> Aristotle, Herodotus and Democritus considered it a shameful injustice if the custodian was unfaithful. The *parakatatheke* was based on friendship and trust, *philia* and *pistis*.<sup>78</sup> It is likely that the testamentary entrustment of certain persons to the heirs have had the effect that especially those whose inheritance was diminished by the disposition (by the rights and freedoms guaranteed to the entrusted persons) should be obliged to protect and guard them under the strict responsibility of a depositary.

The Greek concept of *parakatatheke* represented a foreign body in classical Roman law. In his decision, Scaevola does not address the possible liability of the heirs from the (Greek) form of deposit — this means that an exclusionary effect of the system occurs here. On the other hand, one can observe that the lawyers searched for possible ways of the 'inclusion' of foreign legal ideas into Roman law.<sup>79</sup> In the sources cited above, Scaevola and Modestinus tried to explain the Greek type of disposition under Roman law — and they made a real effort to help the claims come into fruition.

<sup>74</sup>With a different view Harter-Uibopuu (2021) 392.

<sup>75</sup>Scheibelreiter (2020) 43.

<sup>76</sup>Scheibelreiter (2020) 45: The *dike blabes* 'eignet sich besonderem Maße dazu, die Grenzen zwischen deliktischer und vertraglicher Verantwortlichkeit auszuloten'.

<sup>77</sup>See Scheibelreiter (2020) 44–51.

<sup>78</sup>Nörr (1993) 26–37.

<sup>79</sup>See Griffiths (1986) and Dupret (2007) for the modern concept of plurality.



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## BIBLIOGRAPHY

- Aneziri, S., ‘Associations and Endowments sub modo in the Hellenistic and Roman Period’ in Dimipoulou, A. and others (eds), *Studies in Ancient Greek and Roman Law* (Greek Epigraphic Society Athen 2020) 15–33.
- Arnaoutoglou, I., ‘Donations, Endowments and Foundations in Graeco-Roman Antiquity’ (2011–2012) 44 EHHD 59–85.
- Avenarius, M., ‘Gesetzessprache und Erbeinsetzung. Der Ausdruck der Gesetzeswirkung als Schlüssel zum Wortformalismus der heredis institutio’ in Isola, L. (ed), *Klauselgestaltungen in Römischen Testamenten* (Peter Lang 2022) 13–44.
- Babusiaux, U., ‘Römisches Erbrecht im Gnomon des Idios logos’ (2018) 135 ZRG RA 108–77.
- Buckland, W.W., *A Manual a Roman Private Law* (CUP 1939).
- Champlin, E., *Final Judgements. Duty and Emotion in Roman Wills, 200 BC-AD 250* (UCP Berkeley 1991).
- Czajkowski, K., *Localized Law. The Babatha and Salome Komaise Archives* (OUP 2017).
- Dolganov, A., ‘Nutricula causidicorum. Legal Practitioners in Roman North Africa’ in Czajkowski, K. and others (eds), *Law in the Roman Provinces* (OUP 2020) 358–416.
- Dupret, B., ‘What is legal pluralism, plurality of laws, and legal practices: theories, critiques, and praxiological re-specification’ (2007) 1 European Journal of Legal Studies 296–318.
- Ehrhardt, A., ‘Parakatatheke’ (1958) 75 ZRG RA 32–90.
- Feissel, D. and Gascou, J., ‘Documents d’archives romaines inédits du moyen Euphrate (III<sup>e</sup> s. après J.-C.)’ (2000) 2 Journal de savants 163–74.
- Finkenauer, Th., ‘Freilassung durch Nachlaßübernahme – zur additio bonorum libertatis causa’ in Finkenauer, Th. (ed), *Sklaverei und Freilassung im römischen Recht. Festschrift für H.J. Wieling* (Springer 2006) 19–57.
- Fiori, R., *Bonus vir. Politica filosofia retorica e diritto nel de officiis di Cicerone* (Jovene 2011).
- Frezza, P., ‘Parakatatheke’ in *Symbolae Taubenschlag I* (1956) 48 EOS 140–72.
- Griffiths, J., ‘What is legal pluralism?’ (1986) 24 Journal of legal Pluralism 1–55.
- Harter-Uibopuu, K., ‘The Trust Fund of Phaenia Aromation (IG V.1, 1208) and Imperial Gytheion’ (2004) 5.A.4 Studia Humaniora Tartuensia 1–17.
- Harter-Uibopuu, K., ‘Die diatheke des Epikrates aus Nakrason. Ein Beitrag zur Verwaltung privater donationes sub modo’ in Harter-Uibopuu, K. and Riess, W. (eds), *Symposion 2019. Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (ÖAW Wien 2021) 367–402.



- Häusler, A., 'Letztwillige Verfügungen in griechischer Sprache bei Q. C. Scaevola, Paulus und Modestinus' (2016) 133 ZRG RA 420–58.
- Herrmann, P., 'Kaiserliche Garantien für private Stiftungen' in Eck, W. (ed), *Studien zur antiken Sozialgeschichte. Festschrift für S F. Vittinghof* (Böhlau 1980) 147–71.
- Heumann, H., Seckel, E., *Handlexikon zu den Quellen des römischen Rechts* (Akademische Druck- und Verlagsanstalt Graz 1958).
- Horster, M., 'Stiftungssicherung im römischen Osten: Römische Sanktionen und ökonomische Interessen' in Harter-Uibopuu, K. (ed), *Epigraphische Notizen. Zur Erinnerung an Peter Herrmann* (Franz Steiner 2019) 215–34.
- Jakab, É., 'Sale and Community from the Roman world' in Jakab, É. (ed), *Sale and Community. Documents from the Ancient World* (EUT Edizioni di Università de Trieste 2015) 213–31.
- Jakab, É., 'Inheritance' in Du Plessis, P. and others (eds), *The Oxford Handbook of Roman Law and Society* (OUP 2016) 498–509.
- Jakab, É., 'Prozess um eine entlaufene Sklavin (P.Cair.Preis.2 1). Vertrag in der provinziellen Rechtskultur' (2018) 135 ZRG RA 474–526.
- Jakab, É., 'Parakatatheke und letztwillige Verfügungen: Zum Hintergrund von D. 32,37,5' (2021) 138 ZRG RA 338–78.
- Jakab, É., 'Kaiserliche Rechtspflege und provinzielle Praxis. Überlegungen zu C. 3.42.8 pr.-1' in Isola, L. (ed), *Testamentsgestaltungen in Römischen Testamenten* (Peter Lang 2022) 95–128.
- Johanssen, T., *Das Privatrecht der griechischen Urkunden vom Mittleren Euphrat. P.Euph. 6 – P.Euphr. 15* (CH Beck 2017).
- Johnston, D., 'Munificence and municipia: Bequests to towns in classical Roman law' (1975) 85 JRS 105–25.
- Johnston, D., *The Roman Law of Trusts* (OUP 1988).
- Kaiser, W., 'Berechtigte Verträge zugunsten Dritter im griechischen Recht?' (2023) 140 ZRG RA 193–228.
- Kaser, M., Knütel, R. and Lohsse, S., *Römisches Privatrecht* (CH Beck 2021).
- Knütel, R., 'Rechtsfragen zu den Freilassungsfideikommissen' in Finkenauer, Th. (ed), *Sklaverei und Freilassung im römischen Recht, Festschrift für H.J. Wieling* (Springer 2006) 131–51.
- Kreller, H., *Erbrechtliche Untersuchungen aufgrund der Graeco-ägyptischen Papyrusurkunden* (Teubner 1918).
- Kübler, B., 'Griechische Tatbestände in den Werken der klassischen Literatur' (1907) 28 ZRG RA 174–210.
- Laum, B., *Stiftungen in der griechischen und römischen Antike. Ein Beitrag zur antiken Kulturgeschichte II* (Teubner 1914).
- Lenel, O., *Palingenesia Iuris Civilis I-II* (Bernhard Tauchnitz Leipzig 1889).
- Liebs, D., 'Nachrichten aus Banasa über Tarittienus Paternus und Cervidius Scaevola' (1976) 93 ZRG RA 291–97.
- Maffi, A., Stolte, B. and Viarengo, G., *Herennius Modestinus Excusationum libri VI* (L'Erma Breitschneider Roma 2021).
- Mitthof, F., 'Soldaten und Veteranen in der Gesellschaft des römischen Ägypten' in Alföldy, G. and others (eds), *Kaiser, Herr und Gesellschaft in der Römischen Kaiserzeit* (Franz Steiner 2000) 377–405.
- Mouritsen, H., 'Manumission' in Du Plessis, P. and others (eds), *The Oxford Handbook of Roman Law and Society* (OUP 2016) 402–15.
- Nowak, M., *Wills in the Roman Empire. A Documentary Approach* (University of Warsaw 2015).
- Nörr, D., 'Mandatum, fides, amicitia' in Nörr D. and Nishimura, Sh. (eds), *Mandatum und Verwandtes* (Springer 1993) 13–37.



- Preisigke, F., *Wörterbuch der griechischen Papyrusurkunden* (Selbstverlag Berlin 1925).
- Rüfner, Th., 'Eine nicht alltägliche Freilassung. Bemerkung zur Inschrift FD III 2, 243' (1997) 114 ZRG RA 369-77.
- Rüfner, Th., 'Testamentary Formalities in Roman Law' in Reid, K.G.C. and others (eds), *Comparative Succession Law I. Testamentary Formalities* (OUP 2011) 1-26.
- Sänger, P., *Veteranen unter den Severern und frühen Soldatenkaisern* (Franz Steiner 2011).
- Scheibelreiter, Ph., *Der „ungetreue“ Verwahrer. Eine Studie zur Haftungsbegründung im griechischen und frühen römischen Depositenrecht* (CH Beck 2020).
- Schulz, F., *Geschichte der römischen Rechtswissenschaft* (Böhlau 1975).
- Simon, D., 'Quasi-parakatatheke. Zugleich ein Beitrag zur Morphologie griechisch-hellenistischer Schuldrechtstatbestände' (1965) 82 ZRG RA 39-66.
- Spina, A., *Ricerche sulla successione testamentaria nei Responsa di Cervidio Scevola* (Giuffré 2012).
- Spina, A., 'Römisches Recht und lokale Rechtssysteme. Der Schutz der hellenistischen parakatatheke in drei Textstellen der Digesten' (2013) 3 BRGÖ (Beiträge zur Rechtsgeschichte Österreichs) 561-69.
- Strobel, B., *Römische Testamentsurkunden aus Ägypten vor und nach der Constitutio Antoniniana* (CH Beck 2014).
- Waldstein, W., *Operae libertorum. Untersuchungen zur Dienstpflicht freigelassener Sklaven* (Franz Steiner 1986).
- Walser, V., 'Menschen und Götter — zu den Rechtsgrundlagen griechischer Stiftungen. Antwort auf Kaja Harter-Uibopuu' in: Harter-Uibopuu, K. and Riess, W. (eds), *Symposion 2019. Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (ÖAW Wien 2021) 403-16.
- Walter, T., *Die Funktionen der actio depositi* (Duncker Humblot 2012).
- Watson, A., *The Digest of Justinian. Latin text edited by Th. Mommsen and P. Krüger, English translation by Alan Watson* (University of Pennsylvania Press 1985).
- Wilhelm, A., 'Griechische Inschriften rechtlichen Inhalts' (1951) 17 Akadima Athenon 1-107 = A. Wilhelm, *Akademische Inschriftenkunde III 1939-1951* (Leipzig 1974) 391-501.
- Wörle, M., *Stadt und Fest im kaiserzeitlichen Kleinasien. Studien zu einer agonistischen Inschrift aus Oinoanda* (CH Beck 1988).
- Wolff, H.J., 'Die Grundlagen des griechischen Vertragsrechts' (1957) 74 ZRG RA 26-72.
- Wolff, H.J., 'Neue juristische Urkunden' (1971) 88 ZRG RA 329-39.
- Yiftach-Firanko, U., *Marriage and Marital Arrangements. A History of the Greek Marriage Document in Egypt. 4th century BCE – 4th century CE* (CH Beck 2003).

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