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Keywords: Ptolemaic, first century BC, grain transport, samples, administration, archives, *naukleros*, *dioiketes*, *sitologos*, *strategos*, *basilikos grammateus*, *apostoloi*, *antapostoloi*, *phylakitai*, ship security guards, shipping, shipowners, corrections.

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Keywords: Greek, Arabic, bilingual documents, early Islamic Egypt, fiscal administration, tax receipt, Herakleopolis Magna, Iḥnās.

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Keywords: Coptic, ostraca, Western Thebes, MMA 1152, exercises, education, piety.

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Keywords: P. Vindob. G 13753, *P. Vindob. Boswinkel 5*, *SB XXVI 16502*, marriage document, account, Aurelia Demetria *alias* Ammonia.

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Keywords: inscriptions, procuratorships, roman government, principate, provincial administration, appointment policy, Roman emperor, imperial freedmen, *equites*.

GRZEGORZ OCHAŁA

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Keywords: Christian Nubia, Qasr Ibrim, Old Nubian, onomastics, ghost names.

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Keywords: magic, Biblical amulets, scriptural amulets, texts of ritual power.

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Keywords: *Tabulae Herculanenses*, Roman citizenship, *Lex Aelia Sentia*, *Fragmentum Riccardi*, *anniculi causae* probation.

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Keywords: *Constitutio Antoniana, consuetudo*, usage, *Reichsrecht, Volksrecht*, Menander Rhetor, Dionysia, provincial law, conflict of laws.

Marzena WOJTCZAK

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Abstract: While focusing on the issues such as spirituality, faith, prayer, and discipline, the late antique literary discourse pays little attention to the engagement of monks in the mundane realities of daily life. The symbolic significance of the total withdrawal from the earthly matters have paved its way into common imagination of the monastic existence. One must, however, remain cautious while attempting to translate monastic writings into the reality of day-to-day life of a monk in Egypt. As shown by numerous papyri, social and economic relations between monks and the surrounding world were not sporadic, but an inevitable element of the monastic movement. The picture of Egyptian monasticism depicts a web of contacts with the 'outside world' and an entanglement of religious landscape in the local economy. In this article, I discuss only one aspect of the much broader issue, that is the existence of 'legal capacity' of monastic communities in late antique Egypt. I address the problem of 'legal representation' of monasteries as outlined in the sources of legal practice. For a lawyer, these observations are all the more stimulating as there has been an ongoing debate whether 'legal persons' as such existed at all in Roman law, and whether we could talk about anything approaching our current understanding of 'legal personality'.

Keywords: monks, monasteries, legal capacity, Late Antiquity, papyri, legal representation, *dikaion, diakonia*, Roman law, legal practice, Justinian, Egypt.

Marzena Wojtczak

**‘LEGAL REPRESENTATION’
OF MONASTIC COMMUNITIES
IN LATE ANTIQUE PAPYRI***

1. INTRODUCTION

EARTHLY CONCERNS OF MONASTIC COMMUNITIES and their contacts with the ‘world’ have become in recent years the subject of growing interest and debate among scholars dealing with late antiquity.¹ The literary sources depicting the Egyptian monastic milieu evoke images of the desert and popularise the narrative of monks renouncing all worldly possessions. The symbolic significance of total withdrawal from secular life and devotion to the ascetic practice in desert cells, anchoritic assemblages or cenobitic communities has made its way into the common

* The article was written as part of the MAESTRO 7 research project, funded by the Polish National Science Centre (UMO-2015/18/A/HS3/00485).

¹ See e.g. E. WIPSZYCKA, *The Second Gift of The Nile. Monks and Monasteries in Late Antique Egypt*, Warszawa 2018, pp. 263–283, and 457–486; J. E. GOEHRING, ‘The world engaged: the social and economic world of early Egyptian monasticism’, [in:] IDEM, *Ascetics, Society, and the Desert. Studies in Early Egyptian Monasticism*, Harrisburg 1999, pp. 39–52; most recently, see J. WEGNER, *Monastic Communities in Context: Social and Economic Interrelations of Monastic Institutions and Laymen in Middle Egypt (6th–8th century)*, PhD dissertation 2017, available at <https://depotuw.ceon.pl/handle/item/2077> (with further literature).

imagination of monastic life. While focusing on the issues such as spirituality, faith, prayer, and discipline, the late-antique literary discourse pays little attention to the engagement of monks in the comings-and-goings of daily life. Even when it does, the references to social and economic interactions with the surrounding world usually appear as a side-note to a larger story that served religious purposes, rather than attempt to give a faithful account of the monastic existence. One must, however, remain cautious when trying to infer the reality of Egyptian monastic life from these writings. Social and economic relations between monks and what was framed, in particular in the literary discourse, as ‘the world outside’ – the secular, non-monastic environment with its economy and power transactions, were not sporadic phenomena, but an inevitable challenge the monastic movement had to face. As has been observed by various scholars, Egyptian monasticism was deeply involved in contacts with the ‘outside world’, including the local economies.² It is thanks to the papyri that we are granted an insight into such practical matters of administrative, organisational, and legal nature, related both to basic sustenance concerns and accumulation of wealth, including the acquisition of land and assuming the related fiscal responsibilities.

In this article I would like to discuss only one aspect of the much broader issue that is the existence of ‘legal capacity’ of monastic communities in late antique Egypt. I would like to address the problem of ‘legal representation’ of monasteries as outlined in the sources of legal practice. The need for a study that would take into account the new material which came to light only after the seminal works by Arthur Steinwenter has already been noted.³ The patterns of representation of monastic communities which we find in these documents allow us to observe such a

² See e.g. E. WIPSYCKA, ‘Resources and economic activities of the Egyptian monastic communities (4th–8th century)’, *Journal of Juristic Papyrology* 41 (2011), pp. 159–263; GOEHRING, ‘The world engaged: the social and economic world of early Egyptian monasticism’ (cit. n. 1), pp. 39–52, esp. p. 41.

³ See A. STEINWENTER, ‘Die Rechtsstellung der Kirchen und Klöster nach den Papyri’, *Zeitschrift der Savigny Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 19 (1930), pp. 1–50, at pp. 30–34, 39–40; IDEM, ‘Aus dem kirchlichen Vermögensrechte der Papyri’, *Zeitschrift der Savigny Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 44 (1958), pp. 1–34, at pp. 26–27.

community as a conscious entity engaged in legal relations and autonomous from the monks. For a lawyer, these observations are all the more stimulating as there has been an ongoing debate whether 'legal persons' as such existed at all in Roman law, and whether we could talk about anything approaching our current understanding of 'legal personality'.⁴

2. MONASTIC ORGANISATIONAL PATTERNS IN LATE ANTIQUE EGYPT AS ATTESTED IN PAPYROLOGICAL SOURCES

Before heading to the heart of the matter, a few notes on the organisational models of the monastic life are in order. These should contribute to a better understanding of the character of legal relations between monks, their communities and the 'outside world', as well as the mosaic of representation patterns as found in the sources.

The monastic presence stretches over nearly all geographical zones of Egypt, and it was not only the idealised deep desert with its sacred silence that provided home to the growing monastic movement in late antiquity. Monastic settlements could be as easily located on the fringes of as within the cultivated land that runs along the Nile Valley and in the Delta.⁵ The choice of a place for practising asceticism was guided by various fac-

⁴ See R. ORESTANO, *Il 'problema delle persone giuridiche' in diritto romano*, Torino 1998; G. BARONE-ADESI, 'Dal dibattito cristiano sulla destinazione dei beni economici alla configurazione in termini di persona delle *venerabiles domus* destinate *piis causis*', [in:] *Atti dell'Accademia Romanistica Costantiniana. IX Convegno Internazionale*, Perugia 1993, pp. 231–326; recently (with reference to further literature): J. M. BLANCH NOUGUÉS, 'La responsabilidad de los administradores de las *piae causae* en el derecho romano justinianeo', *Revue Internationale des Droits de l'Antiquité* 49 (2002), pp. 129–146; IDEM, 'Sobre la personalidad jurídica de las "fundaciones" en Derecho Romano', *Revista jurídica Universidad Autónoma de Madrid* 16 (2007), pp. 9–28.

⁵ See D. L. BROOKS HEDSTROM, *The Monastic Landscape of Late Antique Egypt: An Archaeological Reconstruction*, Cambridge 2017, pp. 76–117; cf. P. BARISON, 'Ricerche sui monasteri dell'Egitto Bizantino ed Arabo', *Aegyptus* 18 (1938), pp. 19–148, at pp. 34–35; for Pachomian communities see esp. J.-L. FOURNET & J. GASCOU, 'Moines pachômiens et batellerie', [in:] C. DÉCOBERT (ed.), *Alexandrie médiévale* 2 [= *Études alexandrines* 8], Cairo 2002, pp. 23–45.

tors.⁶ Yet, for our purposes it is important to note that the landscape itself was not a key determinant for the type of monastic community inhabiting it. Naturally, the settlement patterns developed in response to the topographical features, environmental conditions and existing infrastructure.⁷ Thus, Egypt's landscape with its unique features had primary impact on the physical aspect of monastic dwellings and their spatial configuration.

Those who decided to withdraw from secular society and lead a prayer-oriented life could either do it in total solitude, or in the company of others. The process of clustering of independent hermitages led to the emergence of the *laura*: a semi-anchoritic community whose members to a large extent kept their independence both in terms of individual economic rights, as well as religious discipline. Still, as a community they decided on the choice of their leaders, and had communal assets at their disposal that needed to be administered. From the perspective of the present investigation it is especially the activity in the field of community property management that calls for attention. In this context, the source material presents us with a fundamental challenge of distinguishing the scope of activity of the entire monastic community from that of individual monks.

In turn, members of the cenobitic congregations – of which the most famous were those united in the Pachomian and Shenoutean monasteries, which left us extensive corpora of literary sources – were not allowed to rely on any individual assets and thus depended entirely on their community. The papyri, however, offer ample proof that there was more to it than meets the eye and that in practice a variety of solutions existed. Egypt accommodated also other communities, where monks lived together but enjoyed private property, that they could dispose of.⁸ There

⁶ For an outline of monastic communities and their dwellings, see WIPSYCKA, *The Second Gift* (cit. n. 1), pp. 287–336 (with literature).

⁷ Except for the cases where monastic dwellings were constructed specifically for the needs of the community; in Egypt monks would often establish their settlements by adapting previously existing buildings, caves, tombs, temples, or abandoned homes. More on that in the archeological context: BROOKS HEDSTROM, *The Monastic Landscape* (cit. n. 5), esp. pp. 76–138 (with literature).

⁸ See e.g. the Apa Apollo monastery in Bawit, where in general monks function together

is little doubt that owning property was common among individual monks,⁹ perhaps contrary to the intuitive assumption that a novice entering a monastery was expected to renounce all private possessions.¹⁰ The

within one community and engage in various community-building activities (see T. VIVIAN, ‘Monks, Middle Egypt, and Metanoia: the life of Phib by Papohe the steward (translation and introduction)’, *Journal of Early Christian Studies* 7.4 [1999], pp. 547–571), but also continue to own private property. There are also eremites affiliated to the community. Bawit thus escapes any clear division into hermitages, *laura*, and cenobitic monasteries. The monastery of Saint Phoibammon in Western Thebes, in turn, displays features characteristic for cenobitic communities, yet it seems that property-owning monks can be also traced in the documentation. Moreover, the literary divisions were not as distinctive as one could imagine. The only clear division that we find concerns distinguishing anchorites from monks living in communities; the communities themselves, however, are much more nuanced.

⁹ On monastic property in general see e.g. WIPSZYCKA, ‘Resources and economic activities’ (cit. n. 2), pp. 159–263; EADEM, *Moines et communautés monastiques en Égypte (IV^e–VIII^e siècles)*, Warsaw 2009, pp. 471–565; on property-owning monks, cf. the provisions of *CTh* 5.3.1 (also discussed below). As noted by Bagnall, the fact that the attestations for the monks’ properties and financial transactions are so extensive suggests that we cannot be dealing with an entirely illegal situation, see R. S. BAGNALL, *Egypt in Late Antiquity*, Princeton 1993, pp. 293–303, esp. p. 298. See also IDEM, ‘Monks and property: rhetoric, law, and patronage in the Apophthegmata Patrum and the papyri’, *Greek, Roman, and Byzantine Studies* 42 (2001), pp. 7–24; E. R. O’CONNELL, ‘Transforming Egypt: monastic dwellings in legal documents from Western Thebes’, *Journal of Early Christian Studies* 15.2 (2007), pp. 239–273; E. WIPSZYCKA, ‘Monks and monastic dwellings. *P. Dubl.* 32–34, *P. KRU* 105 and BL Ms. Or 6201–6206 revisited’, [in:] A. BOUD’HORS, J. CLACKSON, et. al. (eds.), *Monastic Estates in Late Antique and Early Islamic Egypt. Ostraca, Papyri and Essays in Memory of Sarah Clackson, Am. Stud. Pap. 46 (P. Clackson)*, Cincinnati 2009, pp. 239–244; on the legal analysis of *P. Dubl.* 32–34 see J. URBANIK, ‘Tapia’s banquet hall and Eulogios’ cell. Transfer of ownership as security for debit in late antiquity’, [in:] P. DU PLESSIS (ed.), *New Frontiers: Law and Society in the Roman World*, Edinburgh 2013, pp. 151–174. On the property rights of monasteries and monks in the light of Justinian’s legislation, see R. ORESTANO, ‘Beni dei monaci e monasteri nella legislazione Giustiniana’, [in:] *Studi in Onore di Pietro Francisci*, vol. 3, Milan 1956, pp. 563–593. Cf. further n. 10.

¹⁰ There appears to be no inconsistency – at least from the perspective of legal practice – between property ownership of the monks (as well as engagement in legal disputes regarding landholding and testamentary bequests) and the idea of renunciation of worldly engagements. Ownership and renunciation, however, seem to have been located on the two opposite ends of the spectrum. See on that: D. CANER, ‘Wealth, stewardship, and charitable ‘blessings’ in early Byzantine monasticism’, [in:] S. R. HOLMAN (ed.), *Wealth and Poverty in Early Church and Society*, Grand Rapids 2008, p. 224. For the intellectual back-

problem of distinguishing between private and communal activities related to property possession and management is therefore relevant for semi-anchoritic laurae endowed with communal assets, cenobitic monasteries and a variety of ‘mixed-type’ communities that do not fit into these two fundamental categories.

The scope of my investigation is naturally limited to the monastic communities for which we have documentary evidence. This, accordingly, influences the geographical and chronological framework of the present study. Admittedly, the documentation regarding monks and monasteries in Egypt starts already in the 4th and 5th centuries.¹¹ Yet, it is only with the 6th century that we observe a real increase in the amount of the sources of legal practice regarding the monastic milieu, indicating its active participation in the socio-economic life of the Byzantine

ground of the ‘holy economy’, cf. also EADEM, ‘Towards a miraculous economy: Christian gifts and material ‘blessings’ in late antiquity’, *Journal of Early Christian Studies* 14 (2006), pp. 329–377. On the ‘économie miraculeuse’ for the first time: V. DÉROCHE, *Études sur Léontios de Néapolis* [= *Studia Byzantina Upsalensia* 3], Uppsala 1995, pp. 238–249. For the situation in the West, see most recently I. WOOD, *The Transformation of the Roman West*, Kalamazoo – Bradford 2017, pp. 91–108. On ‘voluntary poverty’ in the legal context, see A. LANIADO, ‘The early Byzantine state and the Christian ideal of voluntary poverty’, [in:] M. FRENKEL & Y. LEV (eds.), *Charity and Giving in Monotheistic Religions*, Berlin 2009, pp. 15–43. Cf. e.g. A. STEINWENTER, ‘Byzantinische Mönchstestamente’, *Aegyptus* 12 (1932), pp. 55–64; G. BARONE-ADESI, ‘Il sistema giustiniano delle proprietà ecclesiastiche’, [in:] E. CORTESE (ed.), *La proprietà e le proprietà*, Milan 1988, pp. 75–120. For an outline of legislation concerning monks in the reign of Justinian, see A. HASSE-UNGEHEUER, *Das Mönchtum in der Religionspolitik Kaiser Justinians I*, Berlin – Boston 2016. On the monastic perspective towards property ownership see S. RUBENSON, ‘Power and politics of poverty in early monasticisms’, [in:] G. D. DUNN, D. LUCKENSMAYER, L. CROSS (eds.), *Prayer and Spirituality in the Early Church: Poverty and Riches*, Australia 2009, pp. 91–110. For the polemic with Rubenson and Laniado, see E. WIPSZYCKA, ‘The place of work in the life of East Mediterranean monks in late antiquity: ideals and reality’, *Journal of Juristic Papyrology* 50 (2020), forthcoming. Cf. also n. 9.

¹¹ See e.g. E. A. JUDGE, ‘The earliest use of the word ‘monk’ (μοναχός)’, *Jahrbuch für Antike und Christentum* 20 (1977), pp. 72–89; cf. M. CHOAT, ‘Terms for ‘monk’ in late antique Egypt’, *Jahrbuch für Antike und Christentum* 45 (2002), pp. 5–23. On the early monastic dossiers, see WIPSZYCKA, *Moines et communautés* (cit. n. 9), pp. 80–85 (= EADEM, *The Second Gift* [cit. n. 1], pp. 268–273).

province.¹² Since we cannot confront the earlier material with evidence from diverse monastic centres, its analysis is likely to produce a selective and accidental reconstruction. It should be remembered that for the 4th century, Malcolm Choat identified around eighty papyrological references to monasticism, among which only eight attest to property ownership and tax payment.¹³ In the light of the present state of evidence, consisting mostly of private letters, his statement that for the earlier period we are able to trace 'individual monks acquiring and owning property', but not so much monastic institutions, remains pertinent.¹⁴ Thus, it is only with the evidence from the 6th century where monasteries surface as already fully developed establishments that we can observe how they were able to manage their property, pay taxes and be involved in transactions with the 'outside world'. Even though the considered papyrological evidence expands over 200 years, the analysis is synchronic rather than diachronic, as the differences in the representation are not dependent on time, but rather on the type of the community and its needs. In the case of the dossiers that may be linked to particular communities it is much easier to determine the relationship between their internal organisation and representation, as well as the type of possessed material assets and the scope of legal dealings they undertook. Naturally, at times we cannot properly determine the type of community we are dealing with. In cases where the archaeological context is uncertain or the documents provide insufficient data, our ability to qualify the attested patterns of representation is limited.

There are several monastic dossiers which shed light on the internal organisation of monasteries, the management of their assets, and circular-

¹² See WEGNER, *Monastic Communities* (cit. n. 1).

¹³ His observations and suggestions regarding 4th century monasticism are based on the attestations of monastic ownership of land and property, and the payment of taxes (*P. Neph.* 48; *P. Herm. Landl.* G 505, F 722; *P. Oxy.* XLVI 3311; *SB* XXII 15311; *P. Lips.* 28; *PSI* VI 698; *P. Oxy.* XLIV 3203; *P. Genova* II 69), see M. CHOAT, 'Property ownership and tax payment in fourth-century monasticism', [in:] *Monastic Estates in Late Antique and Early Islamic Egypt* (cit. n. 9), pp. 129–140.

¹⁴ See CHOAT, 'Property ownership and tax payment' (cit. n. 13), p. 135. Cf. BROOKS HEDSTROM, *The Monastic Landscape* (cit. n. 5), pp. 102–103.

tion of goods.¹⁵ The heterogenous nature of the documentation coming from different archives – a possible result of the nature of papyrological findings – does not always offer a sufficient base for comparative analysis of the functioning of various communities. Yet, the material still allows us to trace similar economic activities and representation strategies applied in legal practice.

Of additional help are the documents that were drawn up outside the monastic milieu and belong to family and estate archives.¹⁶ They usually provide an external view of the monasteries and thus serve only to a very limited degree in reconstructing their organisation. Nevertheless, the advantage of these documents is their precision in introducing the parties and representation – at least in respect to the transactions they accompanied.

The major part of the analysed documentation comes from Middle Egypt and Western Thebes. My objective here is not to discuss all monastic communities which left traces in papyrological documentation, but rather to outline the phenomenon of their representation attested in legal practice, which appears to have been as widespread as it is vague.

The key evidence consists of documents regarding the acquisition/alienation of communal assets, their management, and the bearing of the tax obligations. Ownership of land, as well as of buildings and workshops, is well attested for monastic communities. On the other hand, monks are rarely recorded in our documentation as landowners, yet, undeniably,

¹⁵ E.g. the monastic dossiers connected with the Apa Apollo monastery in Bawit (6th–8th cent.), Apa Thomas in Wadi Sarga (7th–8th cent.), Apa Apollo in Deir el-Balaizah (7th–8th cent.), the monastery of Apa Phoibammon in the temple of Hatshepsut in Deir el-Bahari (7th–8th cent.), the monastery of Epiphanius located in the tomb of the Pharaonic official Daga (6th–7th cent.), as well as the earlier dossier of Deir el-Naqlun (5th–7th cent.). Cf. WIPIŃSKA, *The Second Gift* (cit. n. 1), pp. 275–279 (with literature). We are also in possession of an archive of the monk Frange, which gives us an insight into daily activities and correspondence of a hermit. On Frange and his dossier, see e.g. A. BOUD'HORS, CH. HEURTEL, 'Introduction', [in:] *Les ostraca coptes de la TT 29: Autour du moine Frangé (O. Frangé)*, vol. 1, Brussels 2010, pp. 9–32.

¹⁶ E.g. the Oxyrhynchite dossier of the Apions (6th cent.), the archive of Dioskoros of Aphroditos (6th cent.) and the dossier of *comes* Ammonios which is part of the Dioskoros papers.

they were not unacquainted with property and business matters. This is particularly visible in the case of various loan agreements given and received by monks.¹⁷

The documents bearing information on representation or utilising relevant clauses were produced at the intersection of the realm of the monasteries and the 'world'. In this context we may speak about two main spheres of legal contacts: i.e. public (concerning fiscal matters, taxation and contacts with the state) and private (focusing on agreements concluded with lay persons). At times, however, we come across documents which attest to the organisation of the community ('internal administration'), as well as legal affairs between the community and its monks.

The papyri cover a wide range of documentary types, such as: (1.) receipts and orders; (2.) acknowledgements and releases; (3.) agreements (mainly leases and loans, less frequently sales); (4.) donations and testaments; as well as (in at least one case) (5.) settlement of claims. Since my focus here lies on monasteries, and not on private business of individual monks, the documents regarding the latter were excluded from the analysis.

Due to the abundance of pertinent material, I have decided to adopt the case-study method, focusing on representativeness rather than exhaustiveness of the evidence. It requires stressing that occasionally a mere mention of a phenomenon is all we are able to extract from the sources, which tend to be poorly preserved or out of context.

¹⁷ For examples of transactions by individual monks, see the Naqlun dossier from Hermitage 89 (*P. Naqlun* II 21–23); the Bawit corpus of loans given by monks to their fellow monks and laypeople (e.g. *P. Athen. Xyla* 18; *P. Amst.* I 47; *P. Amst.* I 48; *P. Athen. Xyla* 5; *SB XVI* 12267; *P. Athen. Xyla* 10; *P. CtYBR* inv. 1747; *P. Mon. Apollo* 36; *P. Mon. Apollo* 33; *P. Mon. Apollo* 34). On monastic loans, see T. MARKIEWICZ, 'The Church, clerics, monks and credit in papyri', [in:] *Monastic Estates in Late Antique and Early Islamic Egypt* (cit. n. 9), pp. 178–204. For landowning monks, see e.g. *P. KRU* 75 (monastery of Epiphanius), a testament of the monk Jacob, who grants the lands he owns to his fellow monastic Elias, or, in the event the latter dies before the testator to a monk named Stephen. Cf. also private transactions and a resolution of a dispute regarding a monastic cell recorded in *P. Dubl.* 32–34.

3. REPRESENTATION OF MONASTIC COMMUNITIES: WHEN NORMS MEET LEGAL PRACTICE

3.1. Patterns of 'legal representation' in the papyri¹⁸

3.1.1. *Dikaion and diakonia*

Τῶ [δι]καίῳ τοῦ ἁγίου μοναστηρίου Ἄπα Ἀγενίου ὄρους τοῦ Ἀπολλωνοπολίτου μι[κρ]οῦ νομοῦ, ὑπὸ τὴν διοίκησιν τοῦ ἐνδοξ(οτάτου) κόμ(ιτος) Ἀμμωνίου τοῦ θείου κονσιςτωρίου δι[ὰ τ]οῦ σεβασμιωτάτου Ἄπα Ἀπολλῶτος Διοσκόρου Ψιμανωβετ' ἀπὸ Ἀφροδίτης τῆς κώμης τοῦ Ἄνταιοπολίτου νομοῦ. Such is the beginning of *PSI VIII 933* (lines 2–5), an agreement dating to 538, addressed to the monastery of Apa Agenios, and preserved in the archive of the poet and lawyer Dioskoros of Aphrodito.¹⁹ The text does not mention any monk bearing titles clearly connected with administration and representation – such as *proestots* and *oikonomos*. Instead, the monastery is said to be managed by *comes* Ammonios, represented in this legal act by Apollos, i.e. Dioskoros' father and Ammonios' employee. What catches the eye is the appearance of the term *dikaion*

¹⁸ I am deeply indebted to Joanna Wegner for allowing me to use her data on the activities and relations engaging monks and the 'world' in Late Antiquity. The final version of this article owes a great deal to her careful reading and comments.

¹⁹ For a discussion of the archive and its documents, see e.g. H. I. BELL, 'An Egyptian village in the age of Justinian', *Journal of Hellenic Studies* 64 (1944), pp. 21–36; L. S. B. MACCOULL, *Dioscorus of Aphrodito. His Work and His World*, Berkeley 1988, *passim*; T. GAGOS & P. VAN MINNEN, *Settling a Dispute: Toward a Legal Anthropology of Late Antique Egypt*, Ann Arbor 1994, pp. 4–23; P. VAN MINNEN, 'Dioscorus and the law', [in:] A. A. MACDONALD, M. W. TWOMEY, G. J. REINIK (eds.) *Learned Antiquity: Scholarship and Society in the Near-East, the Greco-Roman World, and the Early Medieval West*, Leuven – Paris – Dudley 2003, pp. 115–133; J.-L. FOURNET & C. MAGDELAINE (eds.), *Les archives de Dioscore d'Aphrodité cent ans après leur découverte: histoire et culture dans l'Égypte byzantine: actes du Colloque de Strasbourg, 8–10 décembre 2005*, Paris 2008 *passim*. The studies on the legal aspects of the documents pertaining to the archive of Dioskoros have been carried out by Jakub Urbanik, cf. e.g. IDEM, 'Dioskoros and the law (on succession): lex Falcidia revisited', [in:] *Les archives de Dioscore d'Aphrodité cent ans après leur découverte*, pp. 117–142.

²⁰ On *dikaion* in monastic contexts, see STEINWENTER, 'Die Rechtsstellung' (cit. n. 3), pp. 1–50, at pp. 31–34. In a similar vein on the rights assigned to the Church and the mean-

(also attested in the normative sources) in the representation clause.²⁰ As shown by the textcorpus of monastery-related documentation, this is in no way an isolated instance. Similar examples can be found in various legal documents pertaining to different monasteries. In *P. Lond.* V 1686 – belonging to the same archive and dating to 565 – the monastery's *dikaion* is represented by Ioannes, a monk and *proestos*.²¹ The document is a deed of sale of three *arouras* of waterless land made by Dioskoros to the monastery of Smine in the Panopolite nome. A similar pattern of representation can be found in *P. Mich.* XIII 667 (6th cent.), a lease agreement concluded between the monastery of Apa Sourous and Phoibammon, son of Triadelphos. The monastery's *dikaion* is represented by Kollouchios, a monk and *proestos*, who is in turn represented by Ioannes, son of Samouelios, presbyter and *dioiketes*.²² The parties decide to secure the contract's provisions with a penalty and a *hypotheca generalis* effective for both

ing of *dikaion*, see E. WIPSZYCKA, 'Dikaion', [in:] A. S. ATIYA (ed.), *The Coptic Encyclopedia*, vol. 3, New York 1991, pp. 901–902 (with references to further literature). For attestations in Justinianic laws, see *Nov.* III.1; *Nov.* 123.38 (discussed below).

²¹ *P. Lond.* V 1686, 7–9: τῶ δικαίῳ το(ῦ) εὐαγοῦς μοναστηρίου Ζμίνος τοῦ διακειμένο(ν) περὶ τὴν περαιάν τῆς Πανοσπόλεως διὰ το(ῦ) εὐλαβεστά(του) Ἰωάννο(ν) προεστῶτ(ος) καὶ τοῦ κατὰ καιρὸν ἐσομένο(ν) το(ῦ) αὐτο(ῦ) μον(αστηρίου) χαίρ(ειν). For a similar pattern, see *P. Flor.* III 285 (552), in which *dikaion* of the Monastery of the Oasites is represented by Danielios son of Timotheos, a monk and *proestos* (ll. 4–6: [τῶ] δικαίῳ τῆς ἁγίας διακονίας καλουμένης τοῦ Ὁασιτῶν κекητημένης ἐν τῶ ὄρει [κῶ]μης Ἀφρ[ο]δίτης τοῦ Ἄνταιοπολίτου νομοῦ δι(α) τοῦ εὐλαβεστάτου Δανηλίου [Τι]μοθέου μ[ον]άζοντος καὶ προεστῶτος). The document concerns a lease of an oil-press from the monastery in the village of Aphrodito by Kyriakos son of Hermauos. See also *P. Lond.* II 483 (615/6), an emphyteutic lease in which the *dikaion* of the monastery of abba Patois in the *oros* of the village Tanyathis is represented by Menas son of Paneous, *proestos* and monk of the monastery (ll. 4–12).

²² *P. Mich.* XIII 667, 1–9: ὁμολογῶ ἐγὼ ὁ προγεγραμμένος Φοιβάμμων Τριαδέλφου κτήτωρ διδόναι τὴν συντέλειαν ὑπὲρ τοῦ ὑπ[ο]γ[ρ]αμμένου] κ[τ]ήματος τοῦ αὐτοῦ ἁγίου μοναστηρίου καλουμένου Ψεντουσήτος διακειμένου ἐν τῇ λιβικῇ πεδ[ι]άδι τῆς (αὐτῆς) κώμ(ης) κλήρου Τχιούτος ἐκ λιβὸς τοῦ ἐμοῦ κτήματος λεγομένου τῶν βαφῶν τῶ δικαίῳ τοῦ προειρημένου ἁγίου {τοῦ} μοναστηρίου [το]ῦ ἄβ[α] Σουρ[ο]ῦτος διὰ τοῦ θεοφιλεστοῦ Κολλουχίου μονάζον(τος) καὶ προεστῶ[τος] [διὰ σοῦ τοῦ εὐλ]αβεστάτου Ἰωάννου Σαμουηλίου πρ[ε]σβ[υ]τέρου κ[α]ὶ [δ]ι[ο]ικ[η]τοῦ ἐν σίτῳ καὶ χρυσοῖς καὶ ναύλοις καὶ παντοίοις ἀνανωνιακοῖς τίτλοις. Ioannes son of Samouelios, presbyter and *dioiketes*, is described as acting ἐξ ἐπιτροπῆς τοῦ προκ(ειμένου) προεστῶτος (l. 39), cf. *P. Cairo Masp.* II 67133 coming from the same monastery.

sides.²³ Further, in *P. Köln*. III 153 (5th–6th cent.), Aurelius Pheus, son of Horos and Sofia, acknowledges his indebtedness to the monastery of the northern rock of the city of Antinoe.²⁴ Here, the *dikaion* of the monastery is represented by Kollouthos, ‘the most pious presbyter and *proestos* of this holy rock’.²⁵ A slightly altered representation clause can be found in a lease of an *epaulis* dated to 563 (*P. Cair.* SR 3733 [3]). The *dikaion* of the *diakonia* of the monastery of Apa Apollon is represented by both, Flavius

²³ The monastery’s representative (*dioiketes* with assigned administrative duties) and Phoibammon pledged all of their possessions by asking each other the formal question. In the light of a rescript of Severus and Caracalla from 201, any promissory document drawn up by the parties was an equivalent to a *stipulatio*. Therefore, the actual performance of the act was not necessary in order to create an obligation between the parties. Cf. *CJ* 8.37.1 and *D.* 45.1.134.2. This also brings about the issue of standardisation of clauses applied in legal documents as well as the effectiveness of the *hypotheca generalis* when compared to a particular pledge (it requires noting that for late period the terms *hypotheca*, i.e. conventional pledge, and *pignus*, i.e. corporal pledge, are often used interchangeably). In the papyri we encounter much more frequently a pledge established on the entity’s entire property. The commonness of this security (in various contracts even of lesser economic value) allows one to doubt its efficiency. Having this in mind, one could recall the provisions of *Nov.* 7.6, in which the legislator’s view appears to confirm such a standpoint. We find there provisions on the prohibition of establishing a corporal pledge on the monastery’s property, yet, the *hypotheca generalis* is still admissible. This may indicate that even the Roman legislator associated little risk with this form of a security. On that see J. URBANIK, ‘*P. Oxy.* LXIII 4397: the monastery comes first or pious reasons before earthly securities’, [in:] *Monastic Estates in Late Antique and Early Islamic Egypt* (cit. n. 9), pp. 225–235, at pp. 230–231. Cf. however also *CJ* 1.2.17 & *CJ* 1.2.21 (allowing alienation and establishing securities on the Church’s property in case of necessity, or in order to achieve a greater purpose).

²⁴ *P. Köln* III 153, 1–2: τῶ δικαίῳ τοῦ εὐαγοῦς μοναστηρίου τῆς βορρηνῆς πέτρας ταύτης τῆς Ἀντινοέων πόλεως ποτὲ ἄπ[α Σ]αβίνου κ[α]ὶ [ἄ]πα Ἀθανασίου διὰ σοῦ Κολλούθου εὐλαβεστάτου πρεσβυτέρου καὶ προεστῶτος τῆς αὐτῆς ἁγίας πέτρας.

²⁵ Similarly, the newly published *P. Köln ägypt.* II 38 (8th cent.) mentions the *dikaion* of Apa Apollon being represented by the ‘father of the topos’, Apa Germane (see ll. 1–8). The document is a wine receipt issued by the *koinon* of the people of Senesla acting through ‘David son of Enoch (?), and NN son of Phoibammon, and David son of Tiane, and Apanok son of Athanase, and all other landowners of the people of Senesla’. On the *koinon* of the village see D. BONNEAU, ‘Communauté rurale en Egypte byzantine?’ [in:] *Les communautés rurales. Deuxième partie: antiquité* [= *Recueils de la Société Jean Bodin pour l’histoire comparative des institutions*], Paris 1983, pp. 505–523.

²⁶ See *P. Cairo Masp.* I 67096, 4–9: τῶ δι[καίῳ] τῆς ἁγία[ς δια]κονίας τοῦ νεοκτίστ[ου]

Dioskoros, *kedemon* of the monastery, and by a person bearing an illegible name, son of Ioannes, presbyter and *proestos*. The representatives appear to hold equal positions. In a similar vein, in a draft version of the testament of Flavius Theodoros (*P. Cairo Masp.* III 67312 [567]), which features two monasteries receiving a significant part of the testator’s property, each respective *dikaion* is represented by the head of the monastery: Phoibammon (the monastery of Apa Mousaios) and Petros the archimandrite (the monastery of Shenoute). Further, in *P. Cairo Masp.* I 67096 (573) we are dealing with the same lay manager as in *P. Cair.* SR 3733 (3), this time, however, acting hand in hand with a monk, who bears a title clearly connected with the monastery’s administration. The monastery’s *dikaion* is represented by Enoch – *μονάζων* and *oikonomos* – as well as by Dioskoros, its curator.²⁶ Another example of representation of the *dikaion* (*tou xenodocheiou*) by a steward is provided by *PSI* IV 284 (6th cent.), a rent receipt issued to Phoibammon, son of Triadelphos, by the *oikonomos* Psates.²⁷

In Coptic papyri, analogous representation clauses mentioning the *dikaion* of a monastery occur consistently. This is particularly noticeable for the monastic dossiers of Apa Apollo in Deir el-Balaizah,²⁸ Apa Apollo

ὄρους τῶν ἀγίων καὶ χριστοφ[όρων] ἀπο[στόλ]ων, ὄνομα[σ]μένου δὲ ἅπα Ἀπολλῶτος, [ὄνό(?)]ματ[ος(?)] τοῦ και[νί]σαντος, διὰ Ἐνώχ Ἰωάννου ἐλαβεστάτου [μονά]ζοντος καὶ οἰκο[νό]μου τῆς αὐτῆς, διὰ σ[οῦ] Φ]λαυίου Διοσκόρου [νί]οῦ τοῦ [π]ρωτοτ[ύπου], κ(αὶ) φροντιστ[ο]ῦ κουρ[άτο]ρος τῆς αὐτῆς ἀγίας [δια]κονίας κατὰ κέλλ[ε]υσιν τοῦ αὐτοῦ σου πατρός. The document concerns a donation *inter vivos* of a building not yet constructed, and of a sum of two *nomismata*. This papyrus is particularly interesting due to the fact that it provides us with more detailed information concerning Dioskoros’ position in the monastery, disclosing that Dioskoros was appointed curator of the monastery according to the last wish of his father, the founder Apa Apollon.

²⁷ *PSI* IV 284, 2–3: τὸ δίκαιον τοῦ ἀγίου ξενοδοχίου τόπου Ἄπα Δίου Συνορίας δ(ι) ἔμοῦ Ψάτου οἰκονομό(ου) τῷ ἀδελφῷ Φοιβάμμωνι Τριαδέλφ(ου).

²⁸ See e.g. for the attestations of the *dikaion*: *P. Bal.* 100 (in this particular case, however, the monastery’s *dikaion* is represented by the document’s subscribers because the document concerns the appointment of a superior); *P. Bal.* 102; *P. Bal.* 103; *P. Bal.* 106; *P. Bal.* 108; *P. Bal.* 109; *P. Bal.* 125. The leaders of the community are addressed by the titles of *proestos* (see e.g. *P. Bal.* 102; *P. Bal.* 103; *P. Bal.* 104; *P. Bal.* 107; *P. Bal.* 109 and 110), *begoumenos* (*P. Bal.* 205; *P. Bal.* 235) and/or archimandrite/πρωσ πρωμε (*P. Bal.* 210; *P. Bal.* 291).

in Bawit,²⁹ Apa Thomas in Wadi Sarga³⁰ and Saint Phoibammon in Western Thebes.³¹ As a rule, these documents demonstrate similar models of legal representation as the Greek documents. One difference is the case of the Balaizah community and the involvement of collective entities such as groups of monks called ‘senior brothers’ or ‘senior sons’ of the monastery, who nevertheless usually act together with their administrative heads.³²

Naturally, we also come across examples of references to the *dikaion* belonging to other monasteries.³³ A variant present in our documentation includes a mention of the *diakonia* of the monastery, possibly a body functioning as a management board or a council of the monastery.³⁴

The papyri attest to a wide spectrum of people entitled to represent monasteries in legal transactions concluded on a daily basis. Based only on the sources cited above we may already differentiate several patterns, according to which the monasteries’ *dikaion* or *diakonia* are represented by:

²⁹ See e.g. *P. Mon. Apollo* 38; *P. Mon. Apollo* 25 = *SB Kopt.* I 49; *P. Mon. Apollo* 26 = *P. Hermitage Copt.* 3; *P. Bawit Clackson* 72; *SB Kopt.* I 4; *P. Bawit Clackson* 57 = *P. Mon. Apollo* 59 b; *P. Mon. Apollo* 60; *P. Köln ägypt.* II 38.

³⁰ See e.g. *P. Ryl. Copt.* 124; *P. Ryl. Copt.* 201; *P. Sarga* 164; *P. Sarga* 344.

³¹ See e.g. *P. KRU* 96; *P. KRU* 78; *P. KRU* 104.

³² For ‘senior brothers’, see e.g. *P. Bal.* 102, 4 and 108, 2; for ‘senior sons’, see e.g. *P. Bal.* 103, 3–4.

³³ See e.g. *P. Ryl. Copt.* 125; *P. Ryl. Copt.* 164; *P. Ryl. Copt.* 166; *P. Ryl. Copt.* 174; *P. Ryl. Copt.* 220; *SB Kopt.* I 50; *SB Kopt.* I 51; *CPR* IV 146; *P. Lond. Copt.* 1028; *P. KRU* 106.

³⁴ See e.g. *P. Cairo Masp.* II 67138 (?); *P. Cairo Masp.* II 67139 (?); mentions of *diakonia* in the Balaizah dossier are too scanty to be conclusive, see e.g. *P. Bal.* 164; for the attestations of *diakonia* in the monastery of Apa Apollo in Bawit, see e.g. *P. Mon. Apollo* 1; *P. Mon. Apollo* 3; *P. Mon. Apollo* 22; *P. Bawit Clackson* 60; *P. Bawit Clackson* 79; *P. Köln ägypt.* II 30; *P. Köln ägypt.* II 32; cf. also the documents that have already been discussed above: *P. Cair. SR* 3733 (3); *P. Flor.* III 283. For the *δίκαιον τῆς διακονίας*, see: *P. Cairo Masp.* I 67096; *P. Flor.* III 285. The term *diakonia* has also other meanings. It has been observed that *diakonia* could refer to e.g. all property of a monastery or a church, services connected with an economic activity in religious institution, various goods given as alms, as well as a place in the monastery for storage; cf. E. WIPSZYCKA, ‘Diaconia’, [in:] *The Coptic Encyclopedia* (cit. n. 20), pp. 895–897 (with references to further literature); J. MASPERO, ‘Sur quelques objets coptes du Musée du Caire’, [in:] *Annales du Service des antiquités de l’Égypte* 10 (1910), pp. 173–176, at p. 174; for an outline see BARISON, ‘Ricerche sui monasteri’ (cit. n. 5), pp. 62–63.

(1.) a *proestos*, archimandrite, and/or *oikonomos*; (2.) a single monk with delegated administrative functions; (3.) a group of brothers acting together or accompanying the superior; (4.) a monk or a group of monks with administrative functions accompanied by a lay representative/agent; (5.) a monk endowed with administrative functions and bearing a clerical title, or a cleric (whose affiliation to the community is not clearly stated); and finally (6.) only by a lay representative/agent. These categories are not always clear-cut and occur in different variants. Most frequently, the communities appear to be represented by an individual bearing one of the titles associated with the head of the monastery (*proestos* or archimandrite), who is further assisted by a 'secondary' representative: an *oikonomos*, a monastic delegate without additional titles, or even a lay administrator.³⁵ The outlined sources are a representative sample of a much larger documentation in which similar patterns are preserved.

3.1.2. *Superiors and monks with administrative duties*

In addition, we encounter examples in which no reference to the *dikaion* is made, but the monastery is represented by the superior, at times accompanied by another monk. The representation is often logically inferred from the context, especially when no clear representation formula is given in the texts.³⁶ Further, we occasionally find mentions of the

³⁵ On the terminology regarding superiors of the monastic communities see WIPSZYCKA, *Moines et communautés* (cit. n. 9), pp. 325–335.

³⁶ See e.g. *CPR X 122*, a record of a donation of various items to the monastery of Saint Jeremias in the desert of Memphis, which is represented by Alexides *proestos* and archimandrite with a certain Danielios whose function is not preserved; *P. Rein.* II 107 is a debt acknowledgement in which the monastery Phel[...] is represented by Abba Jacob presbyter and hegumene of the monastery; *SB I 5114*, a sale of one third of a house formerly belonging to the late Tachymia, donated to the monastery as a *prospora* (ll. 13–15), in which the monastery of abba(?) Kyros is represented by Pistoios son of Menas, deacon and *proestos*; *P. Cairo Masp.* II 67242, a fragmentary contract in which the monastery of abba Shenoute is represented by Abba Ioannes, the archimandrite; plausibly also *P. KRU 106*, which records a donation of property to the benefit of the monastery of Saint Paul. The document is addressed to Abba Zacharias, the great superior, Abba Philotheos and Abba

future successors of the superiors and stewards who would also be bound by the provisions of the legal deed.³⁷ Much of the material mentioning the archimandrite, *proestos*, and/or *oikonomos* as internal representatives is connected with the transfer of goods between the monastic communities and 'the world' (especially great landowners) and consists of receipts, offering lists and delivery orders.³⁸ A special example is provided by a delivery receipt, *P. Cairo Masp.* II 67168 (6th cent.), in which Ioannes *μονάζων* and *apokrisiarios* acts as a representative of the Tabennesiote monastery of Pouinkoreus. As far as I am aware, this is the only papyrological attestation of an *apokrisiarios* supervising monastic affairs as outlined in Justinian's *novellae*.³⁹ Some of the papyri refer to the *koinon* of monks or the *koinobion* (i.e. monastery) that are represented by the head of the community (be it a *proestos* or/and an *oikonomos*).⁴⁰

Mena, *synkathedroi*, and to the great monks of the holy place (however, the men are not explicitly said to represent the monastery, there is no representation formula in the document; the property is said to belong to the monastery and to its current and future officeholders); maybe also *P. KRU* 18: a sale of house property by John presbyter and *oikonomos* of the monastery of Saint Phoibammon (it needs to be noted that nowhere in the document is John presented as a representative of the monastery, but the sold property is part of a donation made to Saint Phoibammon by a layman); in *P. Sarga* 161 the archimandrite of the monastery of Apa Thomas is writing to Apa Paulos commissioning him to perform the carpentry work for the monastery in the specified time-frames (although there is no representation formula, it is clear from the context that the archimandrite is acting on behalf of the community).

³⁷ See e.g. *SB* XX 14713; *P. Lond.* V 1686 (however, in this case the *dikaion* is also mentioned, as referred to above). Cf. also *P. Cairo Masp.* II 67151; *P. KRU* 105.

³⁸ See e.g. *P. Oxy.* LI 3640 (the monastery of Abba Hierax represented by Ioannes, deacon and archimandrite); *P. Oxy.* LXIII 4397 (the monastery of Abba Hierax represented by Iosef, presbyter and *proestos*, and Theodoros, *oikonomos*); *P. Oxy.* I 148 (the monastery of Abba Andreas represented by Menas, *proestos*); *P. Oxy.* LXXII 4928 (the monastery of Mousaios represented by Pamouthios, *proestos*) and *P. Oxy.* XVI 1952 (the monastery of Mousaios represented by the same Pamouthios, archimandrite). For more on this sphere of monastic activity, see WEGNER, *Monastic Communities* (cit. n. 1).

³⁹ See *Nov.* 133.5 & *Nov.* 79.1 (both discussed below).

⁴⁰ See e.g. *P. Lond.* V 1690; *P. Cairo Masp.* II 67170; *P. Oxy.* I 148. We come across various other terms indicating the presence of a monastic community, e.g. mountain (*oros*), rock (*petra*), place (*topos*) and laura. On the terminology regarding monastic dwellings see: WIP-SZYCKA, *Moines et communautés* (cit. n. 9), pp. 281–292 (with references to literature). Cf. also BROOKS HEDSTROM, *The Monastic Landscape* (cit. n. 5), pp. 119–125.

It is in fact rare for our documents (even those concerning the sphere of official relations) to offer precise information on the titles of monks involved in the dealings. Those who produced the documents seem to have enjoyed considerable liberty when describing the monastic parties as different legal deeds fail to display any rigid patterns of description. *P. Oxy.* LXIII 4397 (545), can serve as an example from the other side of the spectrum, in which the position of the representatives in the monastic organisational structure is carefully stated.⁴¹ Doubtless, this papyrus constitutes one of the most important pieces of evidence for private dispute resolution in late antiquity, and is exceptional due to its specificity in identifying the parties, depicting the legal aspects of the conflict, as well as the originality of the applied solutions.⁴² This does not, however,

⁴¹ The monastery of Apa Hierax is represented in the drawing of the final settlement by its *proestos* (e.g. ll. 4–15, 128–140, 194–211) and *oikonomos* (e.g. ll. 4–15, 128–140, and 211–226). Cf. URBANIK, 'P. Oxy. LXIII 4397: the monastery comes first' (cit. n. 23), pp. 225–226, 228–229 (also attempting to uncover the administrative function or position held by Theophilos, who gave the loan and received the security for the monastery on Diogenes' land).

⁴² See *ibidem*. The settlement of claims bears features resembling the Roman *transactio* (including clauses on the withdrawal of any future claims between the parties concerning the controversial matter). The applied method of dispute resolution is not stated and the involvement of third parties as any sort of intermediaries is not recorded. The parties might have come to terms on their own. On alternative dispute resolution in late antique papyri, see e.g. A. A. SCHILLER, 'The courts are no more', [in:] *Studi in onore di Edoardo Volterra*, vol. 1, Milano 1971, pp. 469–502. Schiller's theory met with a vehement response, most thoroughly expressed by D. SIMON, 'Zur Zivilgerichtsbarkeit im späthbyzantinischen Ägypten', *Revue Internationale des Droits de l'Antiquité* 18 (1971), pp. 623–657; cf. further J. URBANIK, 'Compromesso o processo? Alternativa risoluzione di conflitti e tutela dei diritti nella prassi della tarda antichità', [in:] *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Salerno, 14.–18. September 2005)*, Wien 2007, pp. 377–400. For a more critical approach towards the representativeness of sources, cf. B. PALME, 'Antwort auf Jakob Urbanik', [in:] *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Salerno, 14.–18. September 2005)*, Wien 2007, pp. 401–410, at pp. 407–410; and C. KREUZSALER, 'Die Beurkundung außergerichtlicher Streitbeilegung in den ägyptischen Papyri', [in:] Ch. GASTGEBER (ed.), *Quellen zur byzantinischen Rechtspraxis. Aspekte der Textüberlieferung, Paläographie und Diplomatik. Akten des internationalen Symposiums, Wien 5.–7.11.2007*, Wien 2010, pp. 17–26. See also: T. GAGOS & P. VAN MINNEN, *Settling a Dispute: Toward a Legal Anthropology of Late Antique Egypt*, Ann Arbor 1994, pp. 30–46. Recently on that (with verification of the applicability of anthropological methods to the papyrological sources) M. WOJTCZAK, *Arbitration*

change the fact that our sources do not allow us to determine whether we are dealing with an unregulated documentary practice where monastic titles are at times simply left out, or a certain degree of liberty in the distribution of administrative duties among various members of the community, depending on particular circumstances.

We find examples of transactions where a reference to the monastic community is made, but the monastery's affairs or duties appear to be handled only by monks and/or clerics (admittedly, at times bearing titles hinting at certain administrative duties of the representatives).⁴³ For instance, in *PSI VII 786* (581) – a receipt for donation of six solidi, made as the *prospora* by the heirs of Gerontions *scholastikos* – the *oros* of Berky is represented only by the monk Kollouthos. In *P. Cairo Masp. I 67003* (567), the monks of the monastery of Pharaous collectively address Flavius Theodoros (*dux et Augustalis* of the Thebaid) with a petition asking him for protection against the claims of a certain Iezekiel regarding an inheritance dispute.⁴⁴ The document belongs to the archive of Dioskoros

and Settlements of Claims in Late Antiquity, PhD dissertation 2016, forthcoming (available at <https://depotuw.ceon.pl/handle/item/1683>).

⁴³ See e.g. *PSI III 176* (?; emphyteutic lease of a *chorema*; a single person acting – the name and titles not preserved – in representative capacity); *P. Flor. III 298* (?; *embole* receipt, mention of *αββα*); *BGU XIX 2780* (*κυβερνήτης*, with certain administrative functions?) *P. Berol. 16383* (*μονάζοντες* and *diakonetai*, with certain administrative functions?); *P. Cairo Masp. III 67286* (*μονάζοντες* and *diakonetai*, with certain administrative functions?); *BKU 78 = P. Pisentius 64* (recognition of a debt; addressed to the 'brothers of topos of apa Phoibammon'), for an analogous collective addressee, see *O. Brit. Mus. Copt. II 14*, *O. Brit. Mus. Copt. II 12*, *O. Brit. Mus. Copt. II 11*; cf. also various documents recording the delivery or receipt of items by monks, e.g.: *P. Oxy. I 146* (?; receipt for the delivery; *μονάζων*); *P. Oxy. I 147* (?; receipt for the delivery; *μονάζων*); *SB XVIII 14062* (?; receipt for the delivery; *μονάζων*); *SB XVIII 14063* (?; receipt for the delivery; *μονάζων*).

⁴⁴ See *P. Cairo Masp. I 67003, 1–5*: Φλαυίω Τριαδίω Μαρνανῶ Μιχαηλίω Γαβρηλίω Κωνσταντίνω Θεοδώρῳ Μαρτυρ[ί]ω Ἰουλιανῶ Ἀθανασίω τῷ εἰδοξοστ(άτῳ) στρατηλάτῃ ἀπ' ὀ' ὑπάτων καὶ ὑπ(ερ)φυεστ(άτῳ) πατρικίῳ πραιφέκτου Ἰουστίνου δουκὶ καὶ αὐγουσταλίῳ τῆς Θηβαίων χώρας τὸ β διὰ τοῦ μ[εγ]αλοπρ(επεστάτου) μ[α]γίστερος Δωροθέου † δέησις καὶ ἰκεσία πα(ρὰ) τῶν ἀθλίων ἐρημιτῶν μοναάω(ν) † τοῦ ὄρους τῶν χριστοφόρων ἀποστόλων καλουμέ(νου) Φαραο(υ)το[ς]; as well as *P. Cairo Masp. I 67003, 15–17*: διδάσκωμεν οὖν τὸ φιλάνθρωπον ὕψος ὑμῶν ὡς δλίγας ἀρούρας, ἕως ἕξ καὶ μόνων, σοριμίης γῆς, συννημμένως τοῖς ἡμετέροις γηδίοις ἤτοι το(ῦ) ἀγίο(υ) τόπο(υ) τῆς διακονίας, ἔδωρήσατο ἡμῶν κατ' ἔγγραφον δωρεὰν μία τις γυνή χήρα.

and was beyond doubt drafted by him at the monks' request. However, nowhere in the papyrus is the lawyer indicated as acting on behalf of the monastery before the office of the *dux*.⁴⁵ An outlier among such examples is *P. Naqlun* 39, which points to a group comprised of a presbyter and three deacons who represent the semi-anchoretic *laura*. These three men do not bear monastic titles (or at least they are not referred to by any). It seems from the context of the document, however, that we are dealing with a sort of 'managerial board' whose members are recognised by the community of villagers as competent in matters of representation and decision-making.⁴⁶

⁴⁵ At the moment when the petition was written, Dioskoros was working in the province capital, Antinoopolis, which was the seat of the *dux*. It is therefore possible that he approached the ducal taxist in person asking for Athanasios' favour.

⁴⁶ See *P. Naqlun* 39, 2-9: τοῖς ἀγαπητοῖς καὶ πατράσιν ἡμῶν Ἀγαθίῳ (οἱ Ἀγαθήτι) πρεσβυτέρῳ καὶ ἅπα Παύλῳ καὶ ἅπα Νειλαμμῶνι καὶ ἅπα Ἀανίῳ διακόνοις καὶ πᾶσι τοῖς μονάζουσι ἁγίου Νεκλονίου; after T. DERDA & J. WEGNER, 'Letter from Tebetny to the monks of Naqlun concerning fieldwork (*P. Naqlun* 39)', [in:] *Mélanges Gascou* [= *Travaux et mémoires* 20], Paris 2016, pp. 133-150, standardised transcription at p. 140. In the 6th-beginning of the 7th c., Naqlun was most likely a *laura* with an emerging central administrative apparatus; see T. DERDA & J. WEGNER, 'Πατέρες τοῦ ἁγίου Νεκλονίου. Functionaries of the Naqlun monastery in the first two centuries of its existence', [in:] I. ZYCH, A. ŁAJTAR, & A. OBLUSKI (eds.), *Aegyptus et Nubia Christiana. The Włodzimierz Godlewski Jubilee Volume on the Occasion of this 70th Birthday*, Warsaw 2016, pp. 73-97. Monks of the Naqlun community enjoyed a large degree of economic independence; see T. DERDA & J. WEGNER, 'The Naqlun fathers and their business affairs', [in:] J. CROMWELL & L. BLANKE (eds.), proceedings of the conference *Monastic Economies in Egypt and Palestine, Fifth-Tenth Centuries CE*, Oxford 2020, forthcoming. The community of Naqlun is not an isolated example. In this context we may also recall the *oros* of Aphrodito, a community that receives donations from *comes* Ammonios through Apa Isakios 'in the *diakonia*' (*P. Cairo Masp.* II 67139.iv r.3), who bears no titles connected with monastic administration. In a similar case regarding the *oros* of Psinabla the donation is received by Apa Pheib, *diakonetes* (*P. Cairo Masp.* II 67139.iii r.2; the term *diakonetes* does not refer here to the functionaries of the monastery of Metanoia discussed extensively by Jean-Luc Fournet and Jean Gascou who connect this term – however not exclusively – with the Pachomian milieu, cf. IDEM, 'Moines pachômiens et batellerie' [cit. n. 5], pp. 23-45). In yet another document (*P. Cairo Masp.* II 67139.iv r.4), the same functionary of the *oros* of Psinabla is described as Apa Pheib 'in the *diakonia*', which may indicate that he occupies a position similar to that of Apa Isakios in the *oros* of Aphrodito. These *oroi* could have been settlements of independent monks in the process of crystallisation of the administrative structures characteristic for the semi-anchoretic *laura*. More on that WEGNER, *Monastic Communities* (cit. n. 1).

At times the papyri do not provide the representation formula at all. In such cases the capacity to act on behalf of the whole community can only be implied by context.⁴⁷

In regard to the sources outlined above, no apparent correlation between the choice of the method of representation or, at least, the document formulation and the character of the legal dealings undertaken by the monastic communities can be recognised. The scope of representation strategies in the available sources is large and even in the case of a single monastery the examples are diversified and consistency is difficult to trace. Possibly meaningful for the applied representation models could be the character of the given community. However, it needs to be noted that the existence of a centralised administration does not point to any particular type of monastic organisation behind it.⁴⁸ It seems that the specific representation models in the legal practice were not inevitably attached to the particular organisational patterns. With regard to the representation by the head of the monastery, the steward, or an ordinary monk, the matter is not much clearer. We can only indicate certain potential tendencies. For example, in the representation formulas of the documents concerning the permanent or substantial change in monastic holdings we come across representatives of the central monastic administration (*proestos*, archimandrite, *hegoumenos*, *oikonomos*). This could indicate that the decision to acquire assets were made on the main community level. The same could apply when the transactions pertains to estates located in the vicinity of monastic 'headquarters'.⁴⁹ The management of

⁴⁷ See e.g. *O. Bodl.* II 2139; *P. Dubl.* 29; *P. Wash. Univ.* I 46 (?); *SB XX* 14171; *SPP* III 321; *P. KRU* 54; *P. CLT* 1; *P. CLT* 4.

⁴⁸ Cf. e.g. the semi-anchoretic laura in Naqlun with its 'managerial board'. For a particular case of Bawit (displaying the characteristics of a 'mixed-type' community), see J. WEGNER, 'The Bawit monastery of Apa Apollo in the Hermopolite nome and its relations with the 'world outside', *Journal of Juristic Papyrology* 46 (2016), pp. 147–274. On the expanded administrative structures of Pachomian communities, see recently: FOURNET & GASCOU, 'Moines pachômiens et batellerie' (cit. n. 5), pp. 23–45.

⁴⁹ See e.g. *P. Lond.* V 1686, a sale agreement (that involves a permanent change in the landholding); or *P. Cairo Masp.* II 67170, a lease of an orchard in Smine by two men from the same village (that concerns a local matter). Cf. WEGNER, *Monastic Communities* (cit. n. 1).

outlying and distanced properties would rather entail using envoys and establishing local administrators. Since, however, we find exceptions also here, any authoritative conclusions are impossible. Neither can we always state with confidence which prerogatives were given to administrators of lower levels and whether some duties could be delegated.

3.1.3. 'Two-level' representation and administrators with delegated duties

A feature of several of our documents is the presence of more than one level of representation that is often connected with delegation of administrative and fiscal duties. Several of the cited papyri which use the term *dikaion* subscribe to this pattern.⁵⁰ Of note is the care with which the empowering party is indicated in those legal deeds. The documents usually name the leader of the community, who is acting 'through' another entity.⁵¹ This doubtless aims at legitimisation of the acts and decisions of the empowered party and distinguishing the sphere of the representative's private activity from that of the community. Situations in which it is clearly stated that a given action was performed with the consent of the superior or even upon the request of the entire community might reflect a similar arrangement. This practice is particularly visible with regard to the lay individuals who were granted the power of attorney to act as reg-

⁵⁰ Some have been already discussed above, e.g. *P. Mich.* XIII 667; *P. Ross. Georg.* III 48. Cf. also: *CPR* IV 146 (*dikaion* of the monastery of Apa Jeremias is represented by Apa Solomon presbyter and *proestos* [through](?) Apa Petros; the 'double representation' is implied even though the word 'through' is missing).

⁵¹ See e.g. *P. Lond.* V 1704 (the [monastery of Abba Sourous] represented by NN *proestos* through Fl. Artemidoros *singularis*); *P. Lond.* V 1690 (the *koinon* of the monks of the monastery of Smine is represented by Apa Psaios *proestos* through Senouthes, *συμμονάζων διοικητής*); *P. Cairo Masp.* II 67133 (the monastery of Apa Sourous is represented by Ammonios *μονάζων* and sailor ἐξ ἐπιτροπῆς of NN the *proestos* through *kyros* Artemidoros); *P. Cairo Masp.* III 67286 (the monastery of Metanoia represented (1.) by abba Theodosios *proestos* through abba Anastasios and abba Ischyron, *μονάζοντες* and *diakonetai*; and (2.) by abba Anastasios and D[...]asios, *μονάζοντες* and *diakonetai*, however, with no mention of the *proestos*).

ular managers or curators both on central and local planes,⁵² as well as in the case of delegating the competence and certain administrative duties to the monks (cf. e.g. *dioiketes* and *pronoetes*).⁵³ From a strictly legal viewpoint, however, the explicit mention of the appointing party, as well as the form that the assignation of duties took were not indispensable in the documents. Thus, some instances might have gone unrecorded or cannot be distinguished in our documentation.

In certain cases, two-level representation may reflect a reality in which absentee monastic landowners entrusted the outlying pieces of their property to the care of regional managers.⁵⁴ We know also of examples, however, where matters of rather local scope are also dealt with by secondary representatives. In *P. Lond.* V 1690 (527) – a probable sub-lease of *arourae* in Aphrodito held by the monastery of Smine – the party acting on behalf of the monastic community is the administrator Senouthes (συμμονάζων διοικητής).⁵⁵ The representation clause points also to the Apa Psaios *proestos*, who apparently entitled Senouthes to perform all the necessary actions pertaining to the monastery's affairs in the local Antaiopolite. Since the Pachomian monastery of Smine was likely an extensive community that had property in various locations, delegating duties seems only natural.

Depending on the circumstances and context, monastic communities could use both monks and laypeople as local administrators.⁵⁶ The former

⁵² E.g. in the already-mentioned *P. Cairo Masp.* I 67096, the *oikonomos* of the monastery of Apa Apollon is acting through Dioskoros, the monastery's *curator*.

⁵³ See e.g. *P. Cairo Masp.* II 67133; *P. Mich.* XIII 667.

⁵⁴ As observed by WEGNER, *Monastic Communities* (cit. n. 1).

⁵⁵ On the interpretation of this document and identification of the legal position of the monastery, see J. GASCOU, 'Les Pachômiens à Aphrodité', [in:] *Les archives de Dioscore d'Aphrodité cent ans après leur découverte* (cit. n. 19), pp. 275–282, at p. 280, n. 15; cf. also J. KEENAN, 'Village shepherds and social tension in Byzantine Egypt', *Yale Classical Studies* 28 (1985), pp. 245–259, esp. p. 248.

⁵⁶ For an example of contracts with lay administrators see the dossier of the monastery of Dorotheos in the *oros* of Antinoopolis: A. BOUD'HORS & J. GASCOU, 'Le monastère de Dorothee dans la montagne d' Antinoopolis', [in:] *Pap. Congr.* XXVII, pp. 991–1010, at pp. 997–1005, namely documents: P. Sorb. inv. 2764r (that is a Greek lease contract), P. Sorb. inv. 2764v 1 and 2 (that comprise of Coptic declarations as to the scope of duties).

appear especially in the documentation coming from large, rich, and economically active monastic establishments. Frequently, to our disappointment, we are unable to determine if these 'managers' occupied any fixed positions in monastic administrative hierarchies or were only acting as monastic agents endowed with specific tasks and personally liable to the monastery.

In the case of Bawit, we come across monks who supervise the monastic property and are directly responsible for the assigned tasks. These 'managers' were most probably involved in the relations with the locals and played the role of intermediaries in the communication with the monastery. We do not know, however, whether their competence comprised also of entering into legal deeds on behalf of the community, such as e.g. hiring workers from the 'world' and if the scope of administrative duties could have varied depending on the circumstances.⁵⁷ The papyri draw a complex picture of lower level monastic management answering to the supervisory-managers and involving various monastic figures and units communicating between one another and delegating tasks to their subordinates. It is only reasonable to assume that some of these 'managers' had representative competence and contract-making capacity.

A special group of monastic agents were the Bawit *aparche*-collectors.⁵⁸ These functionaries were supposed to collect the rents and the land tax (i.e. *pakton* or *demosion*) as well as other payments from parcels assigned to them for a single indictional year, and possibly had the right to receive remuneration for their service. The parcels belonged most probably to

⁵⁷ Cf e.g. *P. Köln ägypt.* II 41 and 43; *P. Bawit Clackson* 52 = *P. Köln IX* 386; *P. Brux. Bawit* 26; *P. Duk. inv.* 259; *P. Köln ägypt.* II 21; *P. Bawit Clackson* 85; *P. Mon. Apollo* 25. See also *P. Brux. Bawit* 15 (no direct information is provided as to the scope of responsibility of two *dioiketai*, but their title points to administrative duties). Documents coming from other monasteries allow us to observe the activity of people whose managerial responsibilities are also not entirely clear, but who appear to handle the monastic business (for the monastery of Apa Apollo in Balaizah, see e.g. *P. Bal.* 215; *P. Bal.* 223).

⁵⁸ The *aparche* dossier is composed mostly of texts representing two categories, i.e. the 'tithe collection guarantees' (see e.g. *P. Mon. Apollo* 1–7) and the 'tithe collection contracts' (see e.g. *P. Mon. Apollo* 8–14), as distinguished by Sarah J. Clackson. Cf. also *P. Köln ägypt.* II 30; *P. Köln ägypt.* II 32.

the monastery and were leased out to both monks and laypeople.⁵⁹ *Aparche* collectors appear to be personally liable for the sums of money they were to collect for their monastery. In practical terms, this meant that in the case of the tenants' insolvency, the monk responsible for the *aparche* collection would be expected to cover the payment himself. This burden and the risk that came with it were possibly the reason for the numerous transfers of territorial assignments between monks which are recorded in our documentation.⁶⁰ The practice of ceding the duty from one monk to another – at least partially supervised by the monastic *diakonia* – resulted in the renouncement by the former of the financial responsibilities for a given domain. What is important is that the majority of the *aparche*-related documents⁶¹ does not refer to the monastery's *dikaion* or any representative capacity of individual monks, but only shows them undertaking collection of payments. This fact has caused doubts as to the

⁵⁹ See e.g. *P. Mon. Apollo* 26, in which two monks lease land from the monastery, addressing its *dikaion* through the archimandrite Georgios. Cf. G. SCHENKE, 'Monastic control over agriculture and farming: new evidence from the Egyptian monastery of Apa Apollo at Bawit concerning the payment of *aparche*', [in:] A. DELATTRE, M. LEGENDRE & P. SIJPESTEIJN (eds.), *Authority and Control in the Countryside, From Antiquity to Islam in the Mediterranean and Near East (Sixth–Tenth Century)*, Leiden–Boston 2019, pp. 420–431; G. SCHENKE, *Kölner ägyptische Papyri. Band 2: Koptische Urkunden der früh-arabischen Zeit [= P. Köln ägypt. II]*, Cologne 2016, pp. 47–54.

⁶⁰ See e.g. T. S. RICHTER, 'The cultivation of monastic estates in late antique and early Islamic Egypt: some evidence of Coptic land leases and related documents', [in:] *Monastic Estates in Late Antique and Early Islamic Egypt* (cit. n. 9), pp. 205–2015, at pp. 210–212; SCHENKE, 'Monastic control' (cit. n. 59), pp. 420–431. The activity of these functionaries could meet with certain difficulties or opposition, see e.g. *P. Mon. Apollo* 17 (that is a letter of introduction for an *aparche*-collector addressed to a village representative by a representative of the monastery of Apa Apollos).

⁶¹ On various interpretations of the term *aparche*, see e.g. S. J. CLACKSON, 'Archimandrites and *andrimos*: a preliminary survey of taxation at Bawit', [in:] *Pap. Congr. XXIII*, pp. 103–107; WIPSYCYKA, 'Le fonctionnement interne des monastères et des laures en Égypte du point de vue économique. À propos d'une publication récente de textes coptes de Bawit', *Journal of Juristic Papyrology* 31 (2001), pp. 169–186, at pp. 179–186; accordingly EADEM, *Moines et communautés* (cit. n. 9), pp. 556–565 (with literature and sources); and EADEM, 'Resources and economic activities' (cit. n. 2), pp. 204–206. Cf. RICHTER, 'The cultivation of monastic estates' (cit. n. 60), pp. 205–215, esp. pp. 210–212. Most recently on that: SCHENKE, 'Monastic control' (cit. n. 59), pp. 420–431; EADEM, *P. Köln ägypt. II* (cit. n. 59), pp. 47–54.

official nature of the *aparche* collection.⁶² Still, in strictly legal terms, the agency – as presumed from the personal liability of the collectors – could go unmentioned in the documents.⁶³

The monastic administration also surfaces in our documentation as an intermediary in collecting the *andrismos*, as well as other taxes paid by individual monks.⁶⁴ The involvement of a monastic fiscal apparatus in the procedure of passing the fiscal dues to the state officials can perhaps be simply explained by its greater efficiency and convenience. In the case of the monasteries of Bawit and Deir el-Balaizah, tax-collection was handled respectively by the so-called ‘brothers of the poll-tax’ and the *boethoi*.⁶⁵

⁶² However, in some documents we come across references to ‘the fathers of the *diakonia*’ (*P. Mon. Apollo* 1; *P. Köln ägypt.* II 30). The monastery’s *diakonia* is also mentioned in *P. Mon. Apollo* 3. See WEGNER, ‘The Bawit monastery of Apa Apollo’ (cit. n. 48), pp. 193–194.

⁶³ Should the monastic agent fail to collect the payments due from the parcels assigned to him, the monastery’s administrative heads would be entitled to a claim against him. Schenke suggested that the monks, who assumed responsibility for the collection of ‘rent-tax’ acted in a manner analogous to the regular tax-collectors; see SCHENKE, ‘Monastic control’ (cit. n. 59), pp. 420–431; EADEM, *P. Köln ägypt.* II (cit. n. 59), pp. 47–54; on the personal liability of monastic rent-tax collectors, see also RICHTER, ‘The cultivation of monastic estates’ (cit. n. 60), pp. 205–215; For more on the management of monastic community in Bawit (including collection and payment of taxes): G. SCHENKE, ‘Micro- and macro-management. Responsibilities of the head of the monastery of Apa Apollo at Bawit’, [in:] *Copt. Congr.* X, vol. 1, pp. 683–692; WEGNER, ‘The Bawit monastery of Apa Apollo’ (cit. n. 48), pp. 147–274, esp. pp. 188–212. For earlier interpretations see WIP-SZYCKA, ‘Resources and economic activities’ (cit. n. 2), p. 206. Cf. also for the possibility of using agents by monastic communities without specific mention in the documentation: CHOAT, ‘Property ownership and tax payment’ (cit. n. 13), p. 137; for the later evidence, see also G. SCHMELZ, *Kirchliche Amtsträger im spätantiken Ägypten: Nach den Aussagen der griechischen und koptischen Papyri und Ostraka*, München 2002, pp. 162–164.

⁶⁴ See WEGNER, ‘The Bawit monastery of Apa Apollo’ (cit. n. 48), pp. 197–202 (with reference to sources and commentary on the earlier literature). Further on the collection of taxes by monasteries from villages and lands falling under their responsibility: WEGNER, ‘The Bawit monastery of Apa Apollo’, pp. 211–212; P. M. SIJPESTEIJN, *Shaping a Muslim State: the World of a Mid-Eighth-Century Egyptian Official*, Oxford 2013, p. 99.

⁶⁵ In Balaizah, a group of functionaries called the *boethoi*, who were likely members of the monastic community, appear to take part in the taxpaying process: they issued receipts to taxpaying monks (see e.g. *P. Bal.* 133–136, 142–149) and appear in our documentation as intermediaries through whom the taxes were submitted (see *P. Bal.* 290, 291, 293). The *boethoi* could also act as representatives of the community’s superior, as shown by *P. Bal.* 207. For lay functionaries called the *boethoi*, see BAGNALL, *Egypt in Late Antiquity* (cit. n. 9), p. 158; for ear-

There must have been some exceptions, however, since we also come across documents pointing at the individual payments of taxes made by the monks themselves.⁶⁶

3.1.4. *Internal vs. external representatives*

We thus have substantial evidence of the activity of monastic representatives who counted themselves among the community members and were charged with various duties. On the other hand, laypeople acting on behalf of the monasteries as territorial representatives/agents are less well represented in the documentation.⁶⁷ The situation is different with lay administrators functioning on the central level in private/lay foundations.⁶⁸ As it has already been observed, the representation of such communities could have

lier period, see T. KRUSE, 'Zu den Kompetenzen des administrativen Hilfspersonals der enchorischen Beamten in der römischen Kaiserzeit', [in:] *Pap. Congr.* XVII, pp. 1761–1771. In the Bawit dossier we also encounter documents that comprise (1.) receipts for the collected poll-tax or orders for their issuance (e.g. *P. Bawit Clackson* 1, 4, 6, 14); (2.) the superiors' instructions regarding the type of the fiscal contribution and the time of its collection (*P. Bawit Clackson* 11 and 12), and (3.) potential waivers of the tax payment (e.g. *P. Bawit Clackson* 3, 5, 9, 10) addressed to the 'brothers of the poll-tax'. See on that (with further literature and sources): WEGNER, 'The Bawit monastery of Apa Apollo' (cit. n. 48), pp. 198–199.

⁶⁶ See e.g. *P. Bal.* 130, which is addressed directly to a monastic taxpayer; *P. Bal.* 138, *P. Bal.* 137 which show that monks could probably discharge individual tax duties in their villages; cf. also *P. Mon. Apollo* 28; 29; 30 that concern the monks' individual tax responsibilities (on the latter, see WIPSZYCKA, *Moines et communautés* [cit. n. 9], p. 554).

⁶⁷ Identification of laypeople in the documents is usually only conjectural, based for instance on the lack of monastic titles and/or the presence of the patronymic in the description of the party acting on behalf of a monastery, see e.g. Koursios son of Iosephios, the *pronoetes* representing the monastery of Shenoute in *P. Ross. Georg.* III 48. Cf. *P. Strash.* VII 697, a letter from an agent charged with the purchase of animals for a monastery. See also *P. Sorb. inv.* 2764r; *P. Sorb. inv.* 2764v 1 & 2 in BOUD'HORS & GASCOU, 'Le monastère de Dorothée dans la montagne d' Antinoopolis' (cit. n. 56), pp. 997–1005.

⁶⁸ Cf. e.g. the monastery of Apa Apollon in Aphrodito with its lay representative Dioskoros, son of Apollon (e.g. *P. Cairo SR* 3733 [3]; *P. Cairo Masp.* I 67096; *SB XX* 14626); the monastery of Apa Sourous of Aphrodito represented by Flavius Artemidoros (*P. Cairo Masp.* II 67133; *P. Lond.* V 1704). For an interesting case of *comes* Ammonios administering the monastery of Apa Agenios, see the already-cited *PSI VIII* 933 (above, p. 356).

been vested in their owners, founders, guardians and/or curators.⁶⁹ Importantly, these lay representatives often appear to be acting alongside monks bearing titles connected with monastic leadership and/or administration. One peculiar example is provided by the already-cited *PSI VIII* 933 in which a lay representative of the monastery of Apa Agenios is acting alone.⁷⁰

The activity of monastic as well as lay administrators could assume different legal forms such as (1.) various types of agency or hire; (2.) curatorship or procuratorship; (3.) delegation of administrative duties by the superiors and/or the managing heads of the community to subordinate monks. Unfortunately, it is not always possible to state which of the above could be the case in a given example.

3.1.5. *Private vs. communal*

In some cases it is virtually impossible to discern whether a monk or a nun acted independently rather than on behalf of their monastic community.⁷¹ It is clear that individual monks continued to possess private

⁶⁹ This has been already observed by URBANIK in 'P. Oxy. LXIII 4397: the monastery comes first' (cit. n. 23), p. 228. See e.g. the monastery of Apa Apollos founded by Dioskoros' father Apollos, for which Dioskoros played the role of a curator and *phrontistes* 'by the order of his father', as outlined in *P. Cairo Masp.* I 67096, 7–9 (573/4). Dioskoros co-represents the monastery alongside its *oikonomos* Enoch. For this establishment, see STEINWENTER, 'Die Rechtsstellung' (cit. n. 3), pp. 21–23; IDEM, 'Aus dem kirchlichen' (cit. n. 3), pp. 28–29. For Dioskoros' activity in favour of other monasteries see e.g. *P. Cairo Masp.* I 67021; *P. Cairo Masp.* I 67007. Cf. *Cf* 1.3.45.3–3a.

⁷⁰ John P. Thomas interpreted the monastery of Apa Agenios, administered by *comes* Ammonios and Apollos, as a private establishment of the former; see J. P. THOMAS, *Private Religious Foundations in the Byzantine Empire*, Dumbarton Oaks 1987, p. 89. It is possible that only at some point of its existence the monastery started to be administered by Ammoniosa, cf. *P. Grenf.* II 90 (510 or 525) that mentions the monastery and predates the papers of Ammonios and Apollos.

⁷¹ See e.g. *P. Mon. Apollo* 50 = *SB Kopt.* I 52, that is a guarantee in which three monks declare that they will protect a layperson who leased beehives against the beekeeper; *P. Amst.* I 47 and 48, which concern loans given by the archimandrite of the monastery, cf. however *P. Mon. Apollo* 38, in which the *dikaion* of the monastery is mentioned; *P. Mon. Apollo* 24 = *P. Hermitage Copt.* 7 which is a purchase of three arourae of fodder-land and

properties and conduct their own business after becoming members of the monastic community.⁷² Legal practice provides us with numerous examples of monks acting independently from their monasteries. This significantly hinders our understanding of the nature of the contracts concluded by regular monks, as well as the relation of the conducted business to the estates belonging to their communities and the applied models of representation.⁷³

3.1.6. *The case of Saint Phoibammon testaments*

One more issue needs to be addressed here. In the material from Jeme that pertains to the monastery of Saint Phoibammon, we observe a practice that at first sight raises serious doubts with regard to the economic separateness of the community from its head and/or individual monks. Namely, the testaments of the superiors of the *topos* appear to assign the monastery's property to the new head of the community (with the explicit competence to possess, manage, and dispose thereof).⁷⁴ One should note, however, that

twenty-five arourae of pasturage by a *proestos* of the monastery of Apa Apollo, with no indication, however, that the purchase is made on behalf of the monastery. On the latter papyrus: T. S. RICHTER, 'Coptic sale of an estate', [in:] J. G. KEENAN, J. G. MANNING & U. YIFTACH-FIRANKO, *Law and Legal Practice in Egypt from Alexander to the Arab Conquest*, Cambridge 2014, pp. 332–333.

⁷² Cf. e.g. the provisions of *CTb* 5.3.1 from which it becomes apparent that even after joining the community monks and nuns continued, undisturbed, to own private property; see BAGNALL, *Egypt in Late Antiquity* (cit. n. 9), pp. 293–303, esp. p. 298.

⁷³ See RICHTER, 'The cultivation of monastic estates' (cit. n. 60), pp. 208–209. The boundary between the property of the religious houses or the Church and the property of its administrative heads also preoccupied the legislator. This is outlined further in this article with particular focus on: (1.) provisions allowing future monks/nuns to dispose freely of private property until the moment of entering the monastic community, (2.) provisions regarding the superiors' dispositions of monastic property and respectively their personal liability for undertaken actions, as well as (3.) provisions on the donations and bequests made to the monastic community and its administrative heads. Cf. n. 89.

⁷⁴ See e.g. the testament of Abraham, *P. Lond.* I 77, 25–40 and 35–45; Cf. also very similar provisions in the testament of Iakob and Elias of the monastery of Epiphanius, *P. KRU* 75, 80–83. For a thorough discussion of these documents and other superiors' testaments

these wills limit – indeed in accordance with the law⁷⁵ – the possibility to dispose of the property of the *topos* in favour of anyone else than a monk in the event of death of the head of the community. Arthur Schiller suggested that these wills constitute an example similar to ‘the exercise of the power of appointment of a trustee of a charitable trust in Anglo-American law’.⁷⁶ Esther Garel built on that by pointing out certain passages of Saint Phoibammon testaments in which the monks chosen as successors in fact play the role of lifetime guarantors of monastic property.⁷⁷ In that sense the superior acts as the manager of the property belonging to the community rather than as its owner. On top of it, there are also documents from this dossier (especially concerning donations of children),⁷⁸ where we do find mentions of the monastery’s *dikaion* to the benefit of which the proprietary rights are acquired.

from the monastery of Saint Phoibammon, see E. GAREL, *Héritage et transmission dans le monachisme égyptien. Les testaments des supérieurs du topos de Saint-Phoibammôn à Thèbes*, PhD dissertation 2015, forthcoming; cf. STEINWENTER, ‘Die Rechtsstellung’ (cit. n. 3), pp. 8–19; IDEM, ‘Byzantinische Mönchstestamente’ (cit. n. 10), pp. 55–64.

⁷⁵ See. e.g. *Nov.* 7.11 (535) which repeats the provisions of *Can.* 24 from Chalcedon regarding the prohibition on the acquisition of monasteries by laypeople; cf. also provisions on the prohibition of secularisation aimed at the administrative heads and stewards of churches and religious houses: *Cj* 1.2.14. For testamentary clauses prohibiting bequests or dispositions to the benefit of the people from outside the community: *P. KRU* 75, 26–29, 85–89, and 105–108. It requires noting that in the wake of laws concerning monastic poverty, a number of provisions was introduced that limited the possibility of making testamentary dispositions by the members of monastic communities, see e.g. *Nov.* 5.5.; *Nov.* 76; *Nov.* 128.38. The aim was to assure that the property not alienated by the monks before joining the monastery would belong to the latter; see also *Cj* 1.3.41 §5–17 (regarding the prohibition on the alienation by will of the property acquired by bishops and superiors of religious houses during their service), as well as *Nov.* 131.13. Cf., however, the earlier *CTh* 5.3.1 (= *Cj* 1.3.20).

⁷⁶ See A. A. SCHILLER, *Coptic wills. Translation and commentary. The Egyptian law of wills in the eighth century A.D.*, Diss. UC Berkeley, 1926.

⁷⁷ See GAREL, *Héritage et transmission dans le monachisme égyptien* (cit. n. 74).

⁷⁸ See A. PAPAConstantinOU, ‘Θεία οἰκονομία. Les actes thébains de donation d’enfants ou la gestion monastique de la pénurie’, [in:] *Travaux et mémoires* 14 (2002), pp. 511–526; EADEM, ‘Notes sur les actes de donation d’enfant au monastère thébain de Saint-Phoibammon’, *Journal of Juristic Papyrology* 32 (2002), pp. 83–105; T. S. RICHTER, ‘What’s in a story? Cultural narratology and Coptic child donation documents’, *Journal of Juristic Papyrology* 35 (2005), pp. 237–264.

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The above survey provides sufficient evidence to identify certain phenomena and try to recover their meaning. The documentary sources reveal a broad scope of economic activities which monastic communities were engaged in. The patterns of representation and delegation of duties were clearly linked to economic goals the communities wanted to achieve and were adopted according to specific challenges faced by monks and their communities. It even seems that the development of various solutions shaped the organisational structure of monasteries and was reflected in the models of representation.⁷⁹

In all of the documents cited above, the identifiable context of usage of the term *dikaion* is predominantly economic.⁸⁰ How, then, should this term be interpreted? Does it refer to the rights of a monastic community, or does it point to some sort of administrative body? What seems clear is that the appearance of this term indicates a transaction made on behalf of a whole community and not by an individual monk. This does not have to mean, however, that we are dealing with monks' private interests whenever the term *dikaion* is missing. As demonstrated above, we encounter situations where a monastic community is represented directly by its administrative head. We also note that monasteries do not shy away from using either regular monks or lay persons to carry out their business. This is particularly visible in the case of administration of landed property, especially parcels located far from the monastic centres which were difficult to directly control, as well as in the collection of taxes. To add to that, the discrepancies in the legal representation and the ways in which monks administer their property could depend on the character of the community that we are dealing with. One should keep in mind, however, that the legal practice shows that an advanced management system of the communal assets could be used for cenobitic monasteries as well as mixed-type

⁷⁹ Joanna Wegner shows that in certain communities managerial tasks could be shared by a number of people, see WEGNER, 'The Bawit monastery of Apa Apollo' (cit. n. 48), pp. 147–274.

⁸⁰ Most frequently we come across such legal acts as leases and emphyteutic contracts, donations (both *inter vivos* and *mortis causa*), rent and delivery receipts, and at times sales.

and loosely-organised communities. What is then the place and function of the term *dikaion* in this mosaic of monastic legal representation?

The discussed documents raise a number of questions regarding both the legal status of monasteries as well as their representatives while entering into private transactions, and the ensuing fiscal and managerial duties. Exploring these issues requires considering the legal framework in which monastic communities functioned, and checking how responsive the law was to the phenomena of legal practice.

3.2. The Roman law perspective and the term *dikaion* revisited

To date, the most persuasive attempt to uncover the true meaning of the term *dikaion* has been offered by Artur Steinwenter in 1930.⁸¹ Based on his analysis of Greek and Latin versions of Valerius Maximus' *Restitution Edict* from 312 and Constantine's *Edict of Milan* from 313, Steinwenter argued that the *dikaion* corresponds to the *ius corporis*, and its appearance in the papyri should be interpreted as denoting a 'legal person'. The Greek translation of the *Restitution Edict* is provided by Eusebius of Caesarea in his *Historia Ecclesiastica* (9.10.11). The passus of the *Edict of Milan* found in Lactantius (*De mort. pers.* 48.9) that interests us the most is also provided in Greek translation by Eusebius (*Eccl. hist.* 10.5.11). In both cases, where the term *dikaion* is used, it seems that the reference is made to the rights assigned or pertaining to a 'body', 'entity', 'group' or 'assembly'. Although – in my opinion – this does not legitimise immediately stating that we are dealing with a construct correspondent to the modern notion of a 'legal person', it nevertheless allows us to inquire after some sort of 'legal subjectivity'/legal capacity of these entities, since certain rights were assigned to them and recognised independently. Doubtlessly, this was the first traceable moment in which – in the eyes of the law – the capacity of Christians and all of their 'bodies' ('id est corpori et conventiculis eorum' in Lactantius's words) was recognised, allowing them to possess and acquire – also through inheritance – property.

⁸¹ See STEINWENTER, 'Die Rechtsstellung' (cit. n. 3), pp. 1–50, at pp. 31–34.

That brings us to the next issue, namely the rules governing the legal representation of monasteries. Legal provisions on the matter come mainly from the reign of Justinian and address the problem in rather vague terms. Earlier laws acknowledge the existing structures of monastic communities, but do not address directly the issues of monastic representation or management. The latter can only be inferred from the context of the constitutions.⁸² Nevertheless, based on some scattered laws we are able to establish a catalogue of people in charge of monastic legal and economic activities.

First, *Cj* 1.3.46 (530) points to the leadership of an abbot/abbess over the congregation. The law regulates the choice of an abbot or abbess stating that the decision should depend above all on the virtues of the candidate. The management of monasteries and hermitages should not be ceded based only on the seniority and the length of service, but rather according to the virtues of the candidates and their dedication to asceticism.⁸³ The constitution is clear that even a regular monk, regardless of his rank, can be elected abbot as long as he leads an honourable life. The election should be carried out at the general assembly of the community and the majority – with the holy gospels open before them – should decide who is fit for the office.⁸⁴ Further, the monks are obliged to inform the local bishop about

⁸² See e.g. *Cj* 1.3.29, which mentions monastic stewards (*responsales*), who are granted the permission to enter the cities to conduct necessary business on behalf of their communities; *Cj* 1.3.39 states that each monastery should have an abbot, for whose appointment and actions the local bishop will be held accountable. Cf. also: *CTb* 5.3.1 (= *Cj* 1.3.20): the constitution ends by stating that any lawsuits arising from petitions for the property after the intestate clerics (of any rank) or monks should be voided and that no claimant would be allowed to initiate court-proceedings and annoy the church stewards, the monks or the procurators, pointing indirectly at the potential representatives: '(...) ita ut, si qua litigia ex huiusmodi competitionibus in iudiciis pendent, penitus sopiantur, nec liceat petitori post huius legis publicationem iudicium ingredi vel oeconomis aut monachis aut procuratoribus inferre molestiam, ipsa petitione antiquata, et bonis, quae relicta sunt, religiosissimis ecclesiis vel monasteriis, quibus dedicati fuerant, consecratis'.

⁸³ It appears that a basic 'cursus honorum' was nevertheless required for attaining the highest position in the monastery. On the procedure of the choice of a monastic community superior in the light of literary and documentary evidence, see WIPSZYCKA, *Moines et communautés* (cit. n. 9), pp. 341–353.

⁸⁴ *Cj* 1.3.46pr: 'Ὁ αὐτὸς βασιλεὺς Ἰουλιανῶ ἐπάρχῳ πραιτωρίων. πρ. Τοῖς ἱεροῖς ἡμῶν νόμοις οἰόμεθα χρῆναι καὶ τοῦτον προσθεῖναι τὸν ἐξ ἀρετῆς, ἀλλ' οὐκ ἐκ χρόνων τὰς εὐαγεῖς

their decision so that he judges the choice and gives his assent. The choice made by monks needs also to be reviewed by the patriarch and other bishops. It is stressed, however, that the latter should not be guided in their evaluation by 'some human passion', but rely on the will of the community.⁸⁵ Worthy of note is the bishops' involvement in choosing the head

ἡγεμονίας παρέχοντα, ὥστε ἐπὶ τῶν εὐαγῶν μοναστηρίων ἢ ἀσκητηρίων μὴ πάντως, τελευτώντος τοῦ ἡγουμένου ἢ τῆς ἡγουμένης, τὸν ἐφεξῆς ἢ τὴν δευτέραν γενέσθαι (συνίσμεν γὰρ τῇ φύσει οὔτε πάντας ὁμοίως αγαθοὺς, οὔτε πάντας ἐν ἴσῳ ποιούσης κακοὺς), ἀλλ' ὄν ἂν ὁ τε ἀγαθὸς βίος καὶ σεμνὸς τρόπος, καὶ ἡ περὶ τὴν ἄσκησιν συντονία, καὶ τὸ κοινὸν τῶν λοιπῶν μοναχῶν πλήρωμα, ἢ τὸ πλεῖστον αὐτῶν ἐπιτήδειον πρὸς τοῦτο νομίσαι, καὶ τῶν ἁγίων εὐαγγελίων προκειμένων ἔλοιτο, ἐπὶ τὴν ἡγεμονίαν καλεῖσθαι. 'We believe that it is necessary to add to Our sacred laws this law, which bestows the holy positions of abbot or abbess according to virtue, not time served. Thus, in an abbot or abbess should die, the next man or the second woman shall not necessarily assume leadership of holy monasteries or hermitages – for We are aware that nature makes neither all similarly good nor evil in equal measure – but that person shall be called to lead whom an honest life and worthy character and dedication to asceticism (distinguishes), and whom the general assembly of the other monks or the majority of them deems fit for the office and, with the holy gospels open before them, elects' (translation after B. W. FRIER *et al.* [eds.], *The Codex of Justinian. A New Annotated Translation, with Parallel Latin and Greek Text, based on a translation by Justice Fred H. Blume*, vol. 1–3, Cambridge 2016, p. 123); cf. also *CJ* 1.3.46.1–2. For an example of the appointment of the superior in legal practice, see e.g. C. SCHMIDT, 'Das Kloster des Apa Mena', *Zeitschrift für Ägyptische Sprache und Altertumskunde* 68 (1932), pp. 60–68 that discusses a Coptic papyrus from the monastery of Apa Mena in the nome of Sbeht. The document has caused much debate among scholars, since it explicitly states that the new *proestos* has paid a considerable amount of money upon assuming his office. For the outline of controversy and proposed interpretations see WEGNER, *Monastic Communities* (cit. n. 1). Cf. also *P. Bal.* 100, 3–4 (the document unfortunately breaks off shortly after the promising opening mentioning the appointment of a superior).

⁸⁵ *CJ* 1.3.46.3–4: 3. Γνώριμα δὲ ταῦτα γίνεσθαι τῷ κατὰ τὸπον θεοφιλεστάτῳ ἐπισκόπῳ, ὥστε αὐτὸν μανθάνοντα τὸν ἐπιλεχθέντα καὶ ὀρθῶς ἔχειν τοῦτο δοκιμάζοντα, σύμφηρόν τε γίνεσθαι τοῖς ἐπιλεξαμένοις, καὶ προάγειν αὐτὸν ἐπὶ τὴν τοῦ ἡγοθμένου τάξιν. 4. Δοκιμάζειν δὲ δεῖ τὴν αὐτῶν ἐπιλογὴν τὸν κατὰ καιρὸν πατριάρχην, καὶ τοὺς κατὰ τὸπον θεοφιλεστάτους ἐπισκόπους, ἔχοντας καὶ αὐτοὺς τὸ κρίμα τοῦ δεσπότης Θεοῦ, καὶ τὴν μέλλουσαν κρίσιν εὐλαβουμένους, εἰ μὴ κατ' ἐπιλογὴν, ἀλλὰ πρὸς τι πάθος ἀποβλέψαντες ἀνθρώπων τὴν προβολὴν ποιήσονται. ἐχόντων αὐτῶν καὶ ἐν τούτῳ τῷ βίῳ καὶ ἐν τῷ μέλλοντι τὴν ἐκ τοῦ Θεοῦ ποιήν, οἷα τῆς αὐτῶν ἀμελείας πολλαῖς ψυχαῖς ἀμαρτημάτων αἰτίας παρεχομένης. 3. These proceedings shall be communicated to the most reverend local bishop, who, upon learning of the person selected and deeming that the choice is right, shall give his assent to their choice and promote him to the rank of abbot. 4. Their choice must also be reviewed by the current patriarch and the most reverend local bishops, who

of a monastery. This solution is constantly repeated also in later provisions, which might cast doubts on its efficiency for the entire Empire.

Information on individuals eligible for managerial functions in monasteries is found also in various provisions regarding monastic property. For example, in *CJ* 1.3.55 (534) which deals with the issue of annuity (*annalia*) and the necessity of retaining the property that was permanently assigned to religious houses, including monasteries, we find the prohibition of alienation of ecclesiastical property applying to ‘stewards of the churches, superintendents of hospices, infirmaries, poorhouses, monasteries of men and convents of women’.⁸⁶ The lawgiver acknowledges these persons as

themselves shall face the condemnation of the Lord God and beware the coming judgement, if they shall make this promotion not according to election but with regard for some human passion, for they face punishment of God both in this life and in the next, as their negligence gives many souls causes for sin’ (translation after FRIER *et al.*, *The Codex of Justinian* [cit. n. 84], p. 123).

⁸⁶ See esp. *CJ* 1.3.55.1–2: 1. Ἴσμεν τοίνυν γράψαντες νόμον, λέγοντα, μηδεμίαν εἶναι παρρησιάν τοῖς τῶν ἀγιωτάτων ἐκκλησιῶν οἰκονόμοις, ἢ τοῖς προεστώσι ξενῶνων, ἢ νοσοκομείων, ἢ πρωχείων, ἢ μοναστηρίων, εἴτε ἀνδρῶν εἴτε γυναικῶν, ἢ τῶν ἄλλων τῶν τοιούτων συστημάτων, ὧν ἡ προλαβοῦσα διάταξις μέμνηται, τὰ διηλεκῶς αὐτοῖς καταλειμμένα, ἅπερ ἀνάγια καλοῦσιν οἱ νόμοι, κατὰ τι σύμφωνον ἢ χρυσοῦ διαπιπράσκειν ῥητοῦ, ἢ ἐκποεῖν ἄλλως καθ’ οἰονδήποτε τρόπον, καὶ τοῖς ἐφεξῆς ἀναιρεῖν τὴν ἐντεῦθεν παραψυχὴν. (...) 2. Τοῦτον αὖθις μετὰ τινος προσθήκης ἀναεούμενοι τὸν νόμον θεσπίζομεν, εἴ τις ἢ τῶν εὐλαβεστάτων οἰκονόμων, ἢ ξενοδόχων, ἢ νοσοκόμων, ἢ πτωχοτρόφων, ἢ γεροντοκόμων, ἢ βρεφοτρόφων, ἢ ὄρφανοτρόφων, ἢ ἀρχιμανδριτῶν ἢ τῶν ἄλλων τῶν περιεχομένων τῇ προτέρᾳ ἡμῶν θεῖᾳ διατάξει προσώπων τὸ διηλεκῶς καταλειφθέν τοῖς εὐαγέσι οἴκοις, ὧν προϊστάνται, εἴτε ἐν χρυσοῦ, εἴτε ἐν ἄλλοις πράγμασι, πειραθείη μεθιστᾶν εἰς τὸ μὴ δοκεῖν εἶναι διηλεκές, ἀλλ’ ἐπὶ διαλύσεσιν, ἢ πράσεσιν, ἢ τισὶν ἄλλαις μηχαναῖς τοῦ διηλεκές αὐτὸ μένειν παῦσαι πειραθείη παρὰ τὴν δύναμιν τοῦ παρ’ ἡμῶν ἤδη φοιτήσαντος ἐπὶ τοῖς τοιούτοις θείου νόμου, μηδεμίαν ἔχειν παντελῶς ἄδειαν τοῦτο ποιεῖν, ἀλλά, κἂν εἰ πράξειε, ἄκυρον εἶναι τὸ γενόμενον, καὶ ἄδειαν εἶναι τῷ μετ’ αὐτὸν τῆς αὐτῆς ἀντιληψομένῳ φροντίδος, ἢ καὶ τούτου ῥαθυμίσαντος, ὡς εἰκόσ, τοὺς ἐφεξῆς ἅπαντας εὐθὺς ἀνακαλεῖσθαι τὸ γενόμενον, καὶ οὕτως ἄκυρον ἀποφαίνειν, ὡς ἂν εἰ μηδὲ τὴν ἀρχὴν ἔτυχε προσελθόν, ὥστε καὶ τοὺς ἐν μέσῳ καρποὺς, καὶ τόκοις, καὶ πᾶσαν ὠφέλειαν ἐπὶ τὸν εὐαγῆ φέρεσθαι πάντως οἶκον, τῶν ἐν μέσῳ τολμηθέντων κατὰ πάντα τρόπον ἀργούντων. ‘1. For We know that We wrote a law stating that the stewards of the most holy churches or the superintendents of hospices, infirmaries, poorhouses, monasteries of men or convents of women, or any of the other such institutions, of which the previous decree makes mention, may not sell, by contract or for a sum of money, or alienate in any other way – thereby depriving their successors of the solace derived therefrom – property permanently left behind to them, which the laws call an annuity (*annalia*). (...) 2. Renewing, therefore, this law with an amendment, We decree

subjects entitled to perform legal actions on behalf of their institutions.⁸⁷ Note that the arguments in favour of the existence of an independent 'economic capacity' in the case of ecclesiastical institutions are provided by a number of imperial laws concerning donations *piae causae* and the functioning of *venerabiles domus*.⁸⁸ The majority of these constitutions has been gathered in Book 1 titles 2 and 3 of the Codex regarding property rights and privileges granted to the Church.⁸⁹

that if any of the most reverend stewards or superintendents of hospices, infirmaries, poor-houses, hospitals for the elderly, founding-hospitals, orphanages, or abbeys, or any other persons included in Our previous decree, should attempt to change what has been permanently left behind to the religious houses over which they preside, whether for gold or for other things, so that the bequest no longer appears to be permanent; and if he should attempt by means of contract or sales, or some other devices to stop it from being permanent, in violation of the divine law that has been issued by Us concerning these things, he shall have no freedom whatsoever to do this; and if he should do it, the transaction shall be void; and he who assumes his position after him, or, if he too is negligent, as happens, all successors shall have the power to revoke the transaction and thus render it void, as if it never occurred in the first place. Thus, the fruits and interest and all benefit derived from the property in the meanwhile shall be made over in full to the holy house, and the brazen acts of the intervening time shall be utterly void' (translation after FRIER *et al.*, *The Codex of Justinian* [cit. n. 84], p. 147).

⁸⁷ Cf. e.g. *Cj* 1.2.24 which concerns the prohibition on alienation of Church property and indicates persons that would be held liable for the violation of these provisions.

⁸⁸ See especially BARONE-ADESI, 'Dal dibattito cristiano' (cit. n. 4), pp. 230–265; as well as ORESTANO, *Il problema delle persone giuridiche*' (cit. n. 4), pp. 77–90. According to Giorgio Barone-Adesi, traces of a separate 'legal subjectivity' taking shape can be spotted in the normative sources when Christian communities and their corporations were allotted ever broader privileges in the field of property and inheritance rights. On that recently (also *contra* some of the views of Barone-Adesi): M. WOJTCZAK, 'Between heaven and earth: Family ownership vs. rights of monastic communities. Theodosian Code and Late Antique legal practice', [in:] *U schyłku starożytności* 18–19 (2018–2019), pp. 117–170. On property rights of monasteries and monks in the light of Justinian's legislation, cf. ORESTANO, 'Beni dei monaci' (cit. n. 9), pp. 563–593.

⁸⁹ E.g. *Cj* 1.2.1 recognises the Church's economical rights and bequests made to its benefit; *Cj* 1.2.12 guarantees keeping the privileges granted by former emperors; *Cj* 1.2.13 concerns the validity of bequests made by widows and deaconesses to a church or religious house (cf. *Nov. Marc.* 5); *Cj* 1.2.14 prohibits secularisation of Church property by superintendents and stewards of churches and religious houses (cf. *Can.* 24 of Chalcedon); *Cj* 1.2.15 confirms the validity of donations to religious *personae incertae* and sets the interpretation rules; *Cj* 1.2.17 grants the possibility to dispose of Church property if it is indispensable or

In *Nov. 5* (535), we find extensive provisions on the monastic life and the construction of monasteries.⁹⁰ With the content of chapter 9, we return to the election procedure for the abbot. Again, it is stressed that seniority should not be the governing rule in the decision process. This time, however, the bishop seems to be granted a more active role in the nomination procedure. The bishop of the diocese is addressed in the law

useful, as well as in order to achieve greater purpose (in the same vein see *Cj* 1.2.21); *Cj* 1.2.19 eases the formal requirements for the donations *piae causae*; *Cj* 1.2.22, regarding the validity of donations made by *curiales* (cf., however, numerous laws against the so-called ‘flight of the councillors’ in order to avoid the performance of *munera*); *Cj* 1.2.23 lifts the time-limits for the pursuance with a claim regarding a donation to the benefit of the Church or religious house; *Cj* 1.2.24 concerns the prohibition of alienation of ecclesiastical property and the personal liability of its administrators; *Cj* 1.2.25, answering the controversies regarding the validity of bequests made to religious *personae incertae*; *Cj* 1.3.20, granting the church or monastery the right to inherit after members of its community; *Cj* 1.3.24 and *Cj* 1.3.28 again concern the validity of bequests made to religious *personae incertae*; *Cj* 1.3.33, concerning the private property belonging to clergymen; *Cj* 1.3.34, confirming the earlier privileges granted to religious houses; *Cj* 1.3.38 concerns the forfeiture of property belonging to monks who decided to leave their monasteries; *Cj* 1.3.41.5–8, limiting the rights of bishops to leave by will the property that they have acquired after becoming bishops; *Cj* 1.3.41.9–10 clearly shows the division between the bishop’s private and ecclesiastical property as well as the functions of stewards; *Cj* 1.3.41.11–18 introduces analogous limitations of testamentary dispositions in regard to administrative heads of religious houses and stresses the separateness of the property belonging to these institutions from that of its superintendents; *Cj* 1.3.45.9–11 concerns the annuity (*annalia*) given to the religious houses and limitations of dispositions by those who are found in office at that time; *Cj* 1.3.48, excluding the interference on the basis of the *lex Falcidia* against inheritance or legacy assigned for the ransoming of captives, the poor, or religious houses (cf. also *Nov.* 131.12); *Cj* 1.3.53.3–4, stating that the property of the ravisher should be assigned to the convent, hermitage or church to which the violated nun or deaconess belonged; *Cj* 1.3.54.7, ordering that all the property belonging to a cleric or a monk who decided to return to society should be placed under the control of his church or monastery; *Cj* 1.3.55 once again limits the freedom of disposal by stewards or superintendents of the property permanently left to the religious houses.

⁹⁰ In this extensive *novella*, one can clearly see the regulative ambitions of Justinian, whose aim is to put in order – even if only seemingly – both the secular as well as religious aspects of life. The capital’s perspective entails a certain notion on the cenobitic communities, while the anchoritic communities appear to remain beyond the scope of these provisions. This is discussed further in the article (see below, pp. 395–396). See also Ch. A. FRAZEE, ‘Late Roman and Byzantine legislation on the monastic life from the fourth to the eighth century’, *Church History* 51.3 (1982), pp. 263–279.

as the entity responsible for running the examination and choosing the abbot best fitted for the post. He should not base his judgement on the 'priority of ordination' and rank, but rather on the dignity and virtues of the candidate.⁹¹

More information on the people vested with the competence to enter into legal deeds on behalf of monasteries can be gathered from the provisions of *Nov.* 7 (535). We note again that monastic communities were to be represented by the abbot/prior and/or steward/*oikonomos*. For instance, chapter 3 of this law appears to grant the power of concluding an emphyteutic contract and conducting the required inspection on behalf of the monastery to its steward.⁹² In turn, chapter 1 addresses (among other

⁹¹ *Nov.* 5.9: 'Ordinationem vero abbatum, si quando contigerit egere monasterium abbate, non per ordinem reverentissimorum fieri monachorum, nec omnino eum, qui post primum est, mox abbatem fieri, nec qui post illum secundus est, neque tertium aut reliquos (hoc quod etiam lex nostra alia dicit), sed deo amabilem locorum episcopum percurrere quidem consequenter per omnes (non enim exonorandum est omnino tempus et ex eo ordo), et eum, qui apparuerit prius optimus inter monachos constitutus et dignus praesulatu eorum, hunc eligere.' 'At any time when a monastery happens to be without an abbot the ordination of abbots is not to be made in accordance with the seniority/rank-order of the most reverend monks, and the one who comes after the first in rank should not be immediately made an abbot; nor the second after him, nor the third, and so on (as another law of Ours also states), but the God-beloved bishop of the area is to go through all of them in turn (because seniority, with the rank-order it brings should not be entirely disregarded) and he must choose the one who is first found to be the best among the monks and who is worth of the position of superior over them' (translated after Scott with amendments, consulted with the original Greek version of the Novels and the English translation by D. J. D. MILLER & P. SARRIS, *The Novels of Justinian. A Complete Annotated English Translation*, vol. 1 & 2, Cambridge 2018, p. 95).

⁹² *Nov.* 7.3: 'Emphyteosin autem sive in sanctissima maiore ecclesia, sive in omnibus reliquis adorandis domibus fieri sinimus et in accipientis persona et in duobus eiusdem personae heredibus deinceps, filiis tamen solis masculis aut feminis, aut nepotibus utriusque naturae, aut uxore aut viro, si hoc videlicet de uxore aut viro expressim nominetur. (...) 2. (...) Et ut neque ulla circumscriptio neque in talibus fiat, duobus per tempora primatibus mechanicis aut architectis, sive in hac regia et maxima civitate una cum deo amabilibus oeconomis et quinque reverentissimis presbyteris et duobus diaconis, praesente quoque deo amabili episcopo, sive etiam in provincia duobus insignibus mechanicis aut architectis, aut etiam uno, si unum solum civitas habeat (...)': 'We grant the permission to the most holy great Church, and all other religious foundations, to give their property in emphyteusis, to the recipient and to the same person's two successive heirs, that is the person's children, both male and female, and grandchildren of either sex, a wife, or a hus-

heads of venerable houses) abbots and abbesses by prohibiting them to alienate monastic property.⁹³ Even in chapter 2 of *Nov. 54* (537), which introduces a general ban on the ‘ecclesiastical alienations’, the heads of the religious houses are authorised to exchange the belongings on their behalf, as long as it takes place between two religious establishments.⁹⁴ In

band, if the wife or husband are expressly named (in the contract). (...) 2. (...) In order to avoid any fraud under such circumstances, two of the leading mechanics or architects at the time (are to be present at the site), if it is in this great sovereign city, it is to be together with the most God-beloved stewards, five most reverend priests and two deacons, and in the presence of the most God-beloved bishop; but if it is in a province, two distinguished mechanics or architects, or just one, if the city has only one (...)’ (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], pp. 117–119).

⁹³ *Nov. 7.1*: ‘Nos igitur (...) sancimus, neque sanctissimam huius felicissimae civitatis maiorem ecclesiam neque sub ea constitutas ecclesias, (...), neque alias omnes ecclesias in hac felicissima existentes civitate aut circa eius confinia neque sub patriarchica sede huius felicissimae civitatis constitutas, quarum metropolitas ipse ordinat, neque alium ullum undique neque patriarcham neque episcopum (...), neque quem xenodochum aut ptochotrophum aut nosocomum aut orphanotrophum aut gerontocomum aut brephotrophum aut monasterii virorum vel mulierum abbam seu abbatissam, aut quemlibet omnino praesidentem venerabilibus collegiis licentiam habere alienare rem immobilem (...), nec per specialis pignoris occasionem tradere creditoribus (...)’ ‘Hence We decree (...) that neither the most holy great church of this most fortunate city, nor the subordinate churches, (...), nor any other churches at all, whether in this most fortunate city, or near to its confines, nor those which are subject to the patriarchal office of this most fortunate city, whose metropolitans he himself appoints, nor any other patriarch or bishop (...), nor any superintendents of hospice, almshouse, hospital, orphanage, old people’s home or children’s home, nor any abbots and abbesses of a monastery for men or women, or any presidents of venerable colleges, should have the licence/competence to alienate any immovable property (...), or to surrender it under a special contract of pledge to creditors’ (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], pp. 115–116). Cf., however, the provisions of *Nov. 46* which lifts the prohibition if the alienation is made in order to pay the debts of a church.

⁹⁴ *Nov. 54.2*: ‘(...) etiam illud adicimus, et per quamdam inevitabilem occasionem et utilem et danti et accipienti venerandae domui, hoc est aut ecclesiae ad ecclesiam aut ptochio ad ptochium aut xenodochio ad xenodochium, aut simpliciter venerabili domui ad aliam venerabilem domum, hoc est aut ecclesiam aut ptochium aut monasterium aut venerandam domum aut xenodochium aut nosocomium, (...), licentiam damus praesidibus horum per hanc legem commutationem facere, et hoc valere (...)’ ‘(...) and We add that, where the situation is inevitable, and it is advantageous to religious houses, both the one that gives and the one that receives, that is church may exchange with church, or

the same vein are the provisions of *Nov. 7*, chapters 5–6 and 12. In chapter 5, we find regulations on the personal liability of the persons in charge if an illegal transaction is concluded on behalf of a religious institution. The agreements concerning the sale of ecclesiastical property are to be considered void (and thus the object of the purchase should be demanded back by the religious house). However, as a means of penalty, the emptor will forfeit the price, but there is no obstacle to sue the abbot/abbess, the steward, or the head of the religious house for the damages based on the contract.⁹⁵ Chapter 6, too, introduces personal liability of the person in

almshouse with almshouse, or hospice with hospice, and, in short, a venerable house with any other venerable house, such as a church with almshouse, monastery with another religious house, hospice or hospital, (...), by the terms of the present law We grant licence/competence to the heads of these (houses) to make exchanges of this kind, and We hereby establish the validity of such exchanges (...) (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], pp. 438–439). Cf. also the provisions of *Nov. 120*, which further mitigates the general prohibition on the alienation of ecclesiastical property.

⁹⁵ *Nov. 7.5*: '(...) propterea necessarium aestimavimus in unoquoque contractu etiam certam statuere poenam, his quippe poenis, quae positae sunt adversus oeconomos ex constitutione praedicta piae memoriae Leonis, similiter etiam nunc imminentibus oeconomis vel xenodocho aut nosocomo aut brephotropho aut abbae aut abbatissae monasterii aut ascerterii, secundum quod prius dispositum est. Si quis igitur emere praesumpserit rem ecclesiasticam aut ptoticam, cadet quidem mox pretio, exigatur autem res, quam accepit, cum omni medii temporis incremento; et contra sanctissimam quidem ecclesiam aut venerabilem domum nullam omnino habeat actionem, contra venerabiles autem oeconomos, aut qui omnino vendiderunt, in propriis eorum substantiis ex contractu habeat actionem (...)'. '(...) hence We have deemed it necessary to assign a certain penalty to every contract; these are the penalties provided against stewards by the aforesaid constitution of Leo, of pious memory, and now applied similarly to a steward, to the head of a hospice, hospital, or children's home, or to the abbot or abbess of a monastery or hermitage/monastic foundation, as previously established. Therefore, if anyone should dare to purchase any property belonging to either a church or an almshouse, he shall lose the price, and be deprived of the property he has received, together with all its income in the meantime; and he shall have no claim against the most holy church or religious house, but against the most reverend stewards, or against the sellers generally, in regard to their personal property, he shall have a claim arising from the contract (...)'. (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], pp. 120–121). On different penalties for the alienation of Church property, see e.g. *Nov. 7.5.1* and *Nov. 7.5.2* (which, however, do not directly concern the heads of religious houses).

charge of a religious institution who illegally pledges its property.⁹⁶ Similarly, chapter 12 of the same *novella* states that when a contract is made, in the effect of which a property – whether ‘unproductive or deleterious’ – is transferred to a church, a monastery, a hospice, a hospital, or any other religious house, the contract will be void, whereas the donor will take back what was ‘fraudulently and deceitfully’ alienated.⁹⁷ Further, ‘the

⁹⁶ *Nov. 7.6*: ‘Si autem creditor in pignore corporali elegerit accipere rem immobilem ecclesiasticam aut ptochicam, (...) et dederit aurum ob hoc, cadat credito, et habeat lucrum, quae mutuam accepit, sanctissima ecclesia aut venerabilis domus quod mutuatum est aurum; etiam hic contra celebrantem mutuam oecenomum aut xenodochum aut ptochotrophum aut praesulem monasterii aut asceterii aut aliorum venerabilium collegiorum creditori actione manente. His omnibus etiam in abbatissis muliebrum asceteriorum aut monasteriorum valentibus. (...)’ ‘If a creditor should choose to accept, as real security, immovable property belonging to a church or an almshouse, (...) and to give money for it, he is to forfeit the loan, and the most holy church or religious house that borrowed the money is to keep what was accepted as a loan, as a gain; the lender then has a claim against the steward, head of the hospice, almshouse or the superior of the monastery or hermitage/monastic house or other venerable institution, who took the loan. All these provisions are valid in regard to the abbesses of female hermitages/monastic foundations or monasteries (...)’ (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], p. 121). In case of a monastery, the statute speaks of its *praesulis*, i.e. ἡγούμενος. In the context of the introduced ban, see, however, the provisions of *Nov. 7.6.1*, which determine exceptional circumstances for such situations.

⁹⁷ *Nov. 7.12*: ‘Sicut autem damnosas alienationes prohibemus, sic etiam damnosas possessiones interdicimus. (...) Interdicimus igitur rectoribus venerabilium domuum tale aliquid agere, aut certe cognoscere quia, si non cum omni subtilitate fecerint contractus, sed faenea quaedam possessio aut damnosa detur ecclesiis aut monasteriis aut xenodochiis aut nosocomiis aut aliis venerabilibus collegiis, contractus quidem pro non facto erit, et recipiet omnino qui dat, quod per circumventionem et fallaciam datum est. (...)’ ‘As We forbid damaging alienations, so We also prohibit the damaging acquisitions. (...) Hence We forbid those in charge of religious establishments to do anything of this kind; and We require them to be aware that, should they fail to take fully meticulous care over concluding/making their contracts, and property that is sterile/unproductive or deleterious is acquired by churches, monasteries, hospices, hospitals or other religious institutions, the contract shall be void, and he who alienated the property shall take back everything that has been fraudulently and deceitfully given (...)’ (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], p. 124). The law understands the term ‘sterile/unproductive or ‘deleterious’ land as land which is unfit to be cultivated and which causes economic losses. Given the Egyptian reality (as well as the various activities undertaken by monks) it seems unlikely that the purchase of

steward, hegumen, or head of the hospice, hospital, almshouse, orphanage, or old people's home' who entered such a contract will be personally liable for the loss resulting from the transaction.⁹⁸ What is important for the proper understanding of the type of management in the case of religious establishments is that the competence to act as a representative is juxtaposed with the personal liability of the people in charge.⁹⁹ From the legal standpoint, there is a clear division between the private activity of the person in charge and their property on one hand, and their activity on behalf of the venerable house and its property on the other. In that sense, the superior's activity breaching the laws banning secularisation

'waterless' land indeed fulfilled these conditions and triggered the liability of the managers. See e.g. *P. Mon. Apollo* 26, an indirect attestation of a sale of land concluded between villagers and a monastic institution. In the document, two monks lease a parcel of land from the monastery, addressing its *dikaion* (acting through the archimandrite Georgios). The agreement concerns 'eight waterless arourae' (ll. 5–6); we find a similar subject of transaction in *CPR IV* 117 which is concluded between a monastery's *dikaion* and a monk, or in *P. Lond.* V 1686 (7 Nov. 565), in which Dioskoros sells three arourae of waterless land to the monastery of Smine. Such land was not necessarily a burden that brought economic losses. If the community was ready to undertake certain agricultural investments, then 'waterless' land could be turned into vineyards or orchards, as suggested by T. M. HICKEY, 'Aristocratic landholding and the economy of Byzantine Egypt', [in:] R. S. BAGNALL (ed.), *Egypt in the Byzantine World 300–700*, Cambridge 2010, pp. 288–308, at p. 292.

⁹⁸ *Nov.* 7.12: '(...) oeconomus autem, qui tale aliquid egerit, aut abbas aut xenodochus aut nosocomus aut ptochotrophus aut orphanotrophus aut gerontocomus de suo ei, qui dedit, salvabit ex hoc damnum (...)' '(...) and the steward, abbot, or person in charge of the hospice, hospital, almshouse, orphanage or old people's home who entered into such a contract will, at his own expense, make amends to the donor for the loss incurred (...)' (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], p. 124). In what concerns the applied sanctions, this law treats equally both monks and nuns, thus recognising the capacity of the latter to enter into legal transactions, a fact already observed by URBANIK, '*P. Oxy.* LXIII 4397: the monastery comes first' (cit. n. 23), pp. 227–228. It is, however, worth noting that at the same time – in the light of *Nov.* 79 and *Nov.* 123.27 – the nuns are expected to be represented during the court proceedings by entities specifically indicated for this purpose.

⁹⁹ It seems that what we have here is a particular solution rather than a standard responsibility. The provisions of the constitution may be interpreted to indicate that the actions of the administrative head on behalf of the community result in the community's liability. If, however, these actions violate the law or are evidently detrimental to the community, then the administrative head is solely liable towards the contracting party.

(i.e. alienation and giving as security, see chapter 5 and 6) of the ecclesiastical property is not only void due to the provided sanctions,¹⁰⁰ but also – as not aiming at the community’s best interest (damaging alienation) – it does not seem to be regarded as undertaken on behalf of the venerable house at all.¹⁰¹ As a consequence, this triggers personal liability of the one who performs the legal action and enters the obligation. Perhaps this is how one should also understand the provisions of chapter 12, according to which acquiring ‘sterile’/unproductive or ‘deleterious’ land (damaging acquisition) results in the abbot/hegumen, steward or head of the religious house covering at his own expense the loss incurred as a result of such a transaction.¹⁰² In this case, if any benefits befall the holy house, it

¹⁰⁰ In this case, the sanctions clearly take the form of the forfeit of the price or the sum lent to the benefit of the community/religious institution (see respectively *Nov.* 7.5 and 7.6). Cf., however, the provisions of *Nov.* 7.6.1, where it is stated under which circumstances such transactions would be considered valid. In *Nov.* 7.5.1 the case of a donation made out of the Church’s or the religious house’s property is outlined. In the latter case, compensation for the loss of the Church or the religious house is required by law. In *Nov.* 7.5.2 an exchange variant is regulated, in which case the penalty is double, as the recipient is obliged to return the property belonging to the Church and loses any rights to the property transferred to the Church. Cf. also *Nov.* 7.11 which tackles with the sale of monasteries that have been converted into private dwellings. The latter law declares such transactions invalid and introduces sanctions for the recipient (who will suffer the forfeit of the value) and the seller (who will suffer the forfeit of the property and loss of the price to the benefit of the local church or monasteries). Accordingly, a security established on such a monastery should be invalidated.

¹⁰¹ It seems that what is created here is a certain protective mechanism for the venerable house: the legal act is void, but the head of the religious institution becomes personally liable. In principle, the sale that (1.) has been made by a person without the legal title to the property which is the object of transaction is valid, but makes the vendor liable in the case of eviction; (2.) has as its object a property excluded from legal transactions or one that has been covered by a prohibition of alienation leads to the recognition of the actions as void, yet the liability of the defaulting vendor is nevertheless launched to cover the paid sum and any potential damages on the part of the buyer as a result of the deed. In the light of the discussed provisions, the religious house is not made liable, with the sole liability arising on the part of the administrative head (as if the activity had not been carried out on behalf of the community, but by the administrative head himself; at the same time the head faces sanctions for his actions, as the paid sum is forfeited in favour of the holy house).

¹⁰² The administrative head becomes liable to the donor for the loss resulting from the

has the right to keep them, whereas the liability towards the contracting party falls onto the person in charge.¹⁰³

To the best of my knowledge, the only law issued by the secular power that directly touches upon the organisation of monastic communities, their hierarchy, and representation competence assigned to their leaders is chapter 5 of *Nov. 133* (539). According to the constitution each monastery should be placed under the care of an abbot and should have its *apocrisarii*, who, being experienced monks in their advanced years, should be put in charge of managing the monastery and preserving discipline in the community.¹⁰⁴ The latter provisions apply also to the convents of nuns, in which the *apocrisarii* are authorised to conduct litigation for the monastery and administer the Holy Communion to the sisters.¹⁰⁵ These men – described as elderly

transaction. The law imposes an obligation on the administrative head to keep due diligence while acting on behalf of the community. The administrative head's arising liability would be for the suffered *damnum* (*ex hoc damnum*).

¹⁰³ *Nov. 7.12*: '(...) Si vero sic causa figuretur, ut etiam aliquod aurum pro hoc detur, et hoc lucrabitur quidem venerabilis domus, quae faeneum aliquod acceperit; qui vero dedit aurum, habebit contra eum, qui contractum celebravit, ex hoc actionem, sicut praediximus.' 'If, however, the agreement was of such a nature that money was given along with the property, the money will accrue to the religious house that received the unproductive gift; and the person who paid it will have a claim against the person who made the contract, as We have previously stated' (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], p. 124). In a manner analogous to the earlier cases of forfeiting a price to the benefit of the religious house as a means of penalty, see *Nov. 7.5* (above).

¹⁰⁴ *Nov. 133.5*: 'Oportet autem unumquodque monasterium sub abbate constitutum, sicut praediximus, habere eos qui vocantur responsarii, viros series et iam monachicum certamen superantes et non facile corporales violentias passuros, qui eorum rebus et eorum occupentur utilitatibus (...).' 'Each monastery placed under the government of an abbot, as we have said before, must have what are called *apocrisarii*, the men of advanced age and who have already fought the monkish fight and are hardly likely to be subject to the corporal violations, and who must also be experienced with the affairs and interests of the monasteries' (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], p. 885). For *apocrisarii* in the Church see *Nov. 123.25*.

¹⁰⁵ *Nov. 133.5*: '(...) Et non solum si virorum monasterium, sed si etiam mulierum contingat, esse duos aliquos aut tres viros aut eunuchos, si possibile est aut series et castitatis testimonium habentes, qui causas agant et ineffabilem eis praebeant communionem, cum huius

or eunuchs – would be also expected to act as intermediaries between the abbesses and their business agents.¹⁰⁶ The *apocrisarii* would be competent to reprimand and impose penalties and penance onto monks who commit offences or infringe discipline (including the capacity to expel a monk from the monastery in the event of a crime).

The law further provides a possibility for the monasteries – as for any other entity – to act through a proxy, an option that is well attested in the papyri.¹⁰⁷ Of interest in this context are also the provisions of chapter 1 of *Nov.* 79 (539), regulating the summons of a monk, nun or cleric. They are required to appear at the proceedings or to be represented by the abbot, *apocrisarii* or someone else.¹⁰⁸ We are dealing here, however, with a repre-

tempus fuerit (...)' 'And this is not only (valid) for the men's monastery, but for the women's one, equally, there are also to be two or three men, either eunuchs, if possible, or of advanced age and attested morals, to conduct business for them and to administer the inef-fable communion to the nuns at the proper time (...)' (translated after Scott with amend-ments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], p. 885). Particularly eye-catching in this case is the merging of the two spheres: spir-itual and pragmatic one. This provision is very non-technical in its formulation, which, from the legal perspective, begs the question about its origins: cf. URBANIK, 'P. *Oxy.* LXIII 4397: the monastery comes first' (cit. n. 23), p. 227. In the context of court representation one should also recall the provisions of *Nov.* 79.1 and *Nov.* 123.27 (discussed below).

¹⁰⁶ The emperor attempts to safeguard the modesty of nuns with several laws, (see e.g. *Nov.* 79; *CJ* 1.48.1). In *Nov.* 133.5 we come across very detailed guidelines that guarantee minimal contact of the *apocrisarii* with nuns other than the mothers superior. At the same time, against the tendency to exclude women from actions that could expose them, we find provisions clearly allowing women to participate in legal acts (*Nov.* 134.9). Also, these reg-ulations did not limit in any way the personal liability of the abess for the transactions made on behalf of the monastery (*Nov.* 7.12). It is clear that pious women did not avoid managing their economic affairs or acting without intermediaries. In this light Justinian again seems to paint an idealistic picture that departs from the daily legal practice.

¹⁰⁷ The legal status of such an entity as well as the scope of granted power of attorney could vary depending on the specific needs of the community and the circumstances. No doubt, however, available for the monastery and its head were also standard types of rep-resentation and delegation of competence known to Roman law and found in the papyri, as discussed above (such as e.g. acting on behalf of monastic communities as its *curatores*, *procuratores* and/or various agents).

¹⁰⁸ *Nov.* 79.1: 'Propterea igitur sancimus, si quis quamcumque habuerit causam cum ali-quis venerabilibus sanctimonialibus aut sacratis virginibus aut mulieribus omnino in monasteriis consistentibus, deo amabilem civitatis illius episcopum interpellat, ille vero

sentation of an individual, not a community. Accordingly, *Nov. 123* (546) in chapter 27 explicitly states that if a monk, a nun, or a monastery should be summoned to court in a case regarding private or communal interest, they should be represented by an attorney (i.e. either the general *procurator* of the monastery, or a person chosen by the individual monk/nun).¹⁰⁹

All of the aforementioned laws pertaining to the organisation of monastic communities and their representation were introduced surprisingly late, given the presence and constant growth of the monastic movement from the 4th century onwards. It is, however, only with the reign of Justinian that the secular power introduces numerous and detailed provisions regarding monasticism. The reasons for this are unclear but one notes a certain parallel with the monastic ideal of 'voluntary poverty',

mittat et cum omni honestate quae sunt de personarum praesentia disponat, sive oportet per abbates sive per responsales sive per alios quoslibet hoc fieri (...). 'Therefore, We decree that anyone who may have a cause/suit of whatever kind against any most reverend male ascetics, or holy virgins, or women residing in monasteries, he must address the most God-beloved bishop of each city, who will send and make arrangements, with all the dignity, for the appearance of the persons concerned, whether this is to be done through the abbots, *responsales*, or others' (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], pp. 547–548). In the Greek version the last passage *sive oportet per abbates sive per responsales sive per alios quoslibet hoc fieri* reads as follows: εἴτε δέοι διὰ τῶν ἡγουμένων εἴτε διὰ τῶν ἀποκρισιῶν εἴτε δι' ἑτέρων τινῶν παραγίνεσθαι.

¹⁰⁹ *Nov. 123.27*: 'Si quando autem causa emerit, ut admonitio et executio inferatur pro qualibet pecuniaria causa sive publica sive privata clerico aut monacho aut monastriae aut cuicumque monasterio maxime feminarum, iubemus sine iniuria et cum competenti honore admonitionem fieri, non tamen monastriam aut ascetiam monasterio abstrahi, sed procuratorem ab his ordinari qui pro causa respondeat. Monachis autem liceat sive per se sive per procuratorem monasterii causas agere (...). 'If ever a cause arises for summons or execution to be served over any financial matter whatsoever, either public or private, against a cleric, monk, nun, or a monastery whatsoever, especially against those of women, We order that notice of it shall be given without the commission of any injury, and with all due respect, and that the nun or the canoness who is sued shall not be taken from her monastery, but a representative/*procurator* shall be appointed to answer in the case. Monks shall be permitted to conduct cases, whether on their own behalf, or their monastery's, either in person or through a representative/*procurator* (...)' (translated after Scott with amendments, consulted with translation from Greek: MILLER & SARRIS, *The Novels of Justinian* [cit. n. 91], pp. 818–819).

which – while well established in the literary discourse – permeates the imperial legislation only during the reign of Justinian.¹¹⁰ At this time a general attempt to systematise the law and to establish a better legislative control over religious life can be seen. In terms of laws regarding monasticism, Justinian on several occasions clearly follows the solutions introduced by the Council of Chalcedon in 451, which was claimed to be the first instance of such profound interference with the situation of the monks and monastic communities. The monastic canons of Chalcedon are – as their content shows – the result of the bad experiences of the Constantinopolitan patriarchs. The fact that the capital influenced the bishops' decisions is indicated by Marcian's recommendations during the 6th session of the Council.¹¹¹ What is particularly visible in the Justinianic constitutions and *novellae* is that they put the monasteries under the bishops' supervision. As already mentioned, this tendency is well attested both in Church and secular normative sources, and seems to find its origin in the historical context.¹¹² Already the 4th canon of Chalcedon stated

¹¹⁰ See LANIADO, 'The early Byzantine state' (cit. n. 10), pp. 15–43.

¹¹¹ See E. WIPSZYCKA, 'The canons of the Council of Chalcedon concerning monks', *Augustinianum* 58 (2018), pp. 155–180. Based on these provisions, Dagron states that 'le monachisme devient décidément une institution, une institution de l'Église'; see G. DAGRON, 'Les moines et la ville. Le monachisme de Constantinople jusqu'au concile de Chalcédoine (451)', *Travaux et Mémoires* 4 (1970), pp. 229–276, at p. 274. As noted by Wipszycka, however, this opinion is as popular in the literature as it is astounding. The aim of the Canons of Chalcedon was rather to discipline the monks; they did not address the internal organisation of the communities or their religious life. In addition, they create a false impression that monks formed a cohesive group, without any internal differentiation. In what concerns the fact that Chalcedon was the first to address monasticism as an 'institution', Ueding assumed that these provisions played a prominent role for the movement (cf. L. UEDING, 'Die Kanones von Chalkedon in ihrer Bedeutung für Mönchtum und Klerus', [in:] A. GRILLMEIER, H. BACHT [eds.], *Das Konzil von Chalkedon. Geschichte und Gegenwart*, vol. 2: *Entscheidung um Chalkedon*, Würzburg 1953, pp. 569–676, at p. 617). The available papyri do not confirm this assumption.

¹¹² Marcian's aim was to place monasticism under episcopal control. The emperor's concerns have been hinted at during the Council of Chalcedon. The council, following the imperial lead, decided on such issues as foundation of new monasteries, bishop surveillance, admission of fugitive slaves and *adscripticii* to the monasteries. The introduced provisions are influenced by the turbulent history of monasticism in Constantinople, begin-

that those 'who practise monasticism in each city and territory are to be subject to the bishop'.¹¹³ The 8th canon, in turn, mentions the subordination of the clerics (including ordained monks) to the bishop.¹¹⁴ As a rule,

ning from the end of the 4th cent. For instance, *Can. 4* (cited below) states that 'some people use a cloak of monasticism to disrupt both the churches and public affairs' (trans. after R. PRICE & M. GADDIS, *The Acts of the Council of Chalcedon, Translated with an Introduction and Notes*, Liverpool 2005, vol. 3, p. 95). On the monastic presence in Constantinople, see (with reference to extensive literature on the matter): DAGRON, 'Les moines et la ville', pp. 229–276; FRAZEE, 'Late Roman and Byzantine legislation' (cit. n. 90), pp. 263–279. Cf. also P. HATLIE, *The Monks and Monasteries of Constantinople ca. 350–850*, Cambridge 2007, *passim*. Many provisions introduced by the Council of Chalcedon are transferred to the secular legislation during Justinian's reign, cf. e.g. *Nov. 67*, which orders that a bishop must take an active role in the procedure of founding a monastery.

¹¹³ *Can. 4*: Οἱ ἀληθῶς καὶ εἰλικρινῶς τὸν μονήρην μετιόντες βίον τῆς προσηκούσης ἀξιούσθωσαν τιμῆς. Ἐπειδὴ δέ τινες τῷ μοναχικῷ κεχρημένοι προσχήματι τὰς τε ἐκκλησίας καὶ τὰ πολιτικά διαταράττουσι πράγματα, περιιόντες ἀδιαφόρως ἐν ταῖς πόλεωσι, οὐ μὴν ἀλλὰ καὶ μοναστήρια ἑαυτοῖς συνιατῶν ἐπιτηδεύοντες, ἔδοξε μηδένα μὲν μηδαμοῦ οἰκοδομεῖν μηδὲ συνιστᾶν μοναστήριον, ἢ εὐκτήριον οἶκον, παρὰ γνώμην τοῦ τῆς πόλεως ἐπισκόπου. Τοὺς δὲ καθ' ἑκάστην πόλιν καὶ χώραν μονάζοντας ὑποτετάχθαι τῷ ἐπισκόπῳ, καὶ τὴν ἡσυχίαν ἀσπάζεσθαι, καὶ προσέχειν μόνῃ τῇ νηστείᾳ καὶ τῇ προσευχῇ, ἐν οἷς τόποις ἀπετάξαντο προσκαρτεροῦντας. μήτε δὲ ἐκκλησιαστικοῖς μήτε βιωτικοῖς παρενοχλεῖν πράγμασι, ἢ ἐπικουωνεῖν, καταλιμπάνοντας τὰ ἴδια μοναστήρια, εἰ μὴ ποτε ἄρα ἐπιτραπέειν διὰ χρεῖαν ἀναγκαίαν ὑπὸ τοῦ τῆς πόλεως ἐπισκόπου. 'Those who truly and sincerely enter on the solitary life are to be accorded due honour. But since some people use a cloak of monasticism to disrupt both the churches and public affairs, while they move around the cities indiscriminately and even try to set up monasteries for themselves, it is decreed that no one is to build or found a monastery or oratory anywhere contrary to the will of the bishop of the city. Those who practise monasticism in each city and territory are to be subject to the bishop, and are to embrace silence and devote themselves to fasting and prayer alone, persevering in the places where they renounced the world; they are not to cause annoyance in either ecclesiastical or secular affairs, or take part in them, leaving their own monasteries, unless indeed for some compelling need they be permitted to do so by the bishop of the city' (translated after PRICE & GADDIS, *The Acts of the Council of Chalcedon* [cit. n. 112], p. 97).

¹¹⁴ *Can. 8*: Οἱ κληρικοὶ τῶν πτωχείων καὶ μοναστηρίων καὶ μαρτυρίων ὑπὸ τὴν ἐξουσίαν τῶν ἐν ἑκάστη πόλει ἐπισκόπων, κατὰ τὴν τῶν ἁγίων πατέρων παράδοσιν, διαμενέτωσαν, καὶ μὴ κατὰ αὐθάδειαν ἀφηνιάτωσαν τοῦ ἰδίου ἐπισκόπου. Οἱ δὲ τολμῶντες ἀνατρέπειν τὴν τοιαύτην διατύπωσιν καθ' οἰονδήποτε τρόπον, καὶ μὴ ὑποταττόμενοι τῷ ἰδίῳ ἐπισκόπῳ, εἰ μὲν εἴεν κληρικοὶ, τοῖς τῶν κανόνων ὑποκείσθωσαν ἐπιτιμίαις, εἰ δὲ μονάζοντες ἢ λαϊκοὶ, ἔστωσαν ἀκουῶντοι. 'The clergy of almshouses, monasteries and martyria are to remain under the authority of the bishops in each city, according to the tradition of the holy fathers; they are not out of self-will to rebel against their own bishop. Those who dare to

the canons do not interfere with matters such as internal organisation of the monasteries.¹¹⁵ It seems, therefore, that some of Justinian's *novellae* take a step further with regard to this particular matter. Justinian's legislation appears to be the first to provide a legal description of monasticism as an 'institution'. However, contrary to any assumptions of a strictly positivistic legal approach, the monasteries had existed and functioned as legal 'entities' already long before the first constitutions which set out to regulate them. Further, the legislator frequently displays a sort of 'wishful thinking' by presenting a utopian view of the monastic life. Conditions and forms of monastic existence in Egypt could diverge significantly from what is prescribed in the respective constitutions.¹¹⁶ One particular feature of the monasticism of the eastern Empire should be underlined: its astounding diversity, reaching far beyond the neat divisions of modern scholarship which readily distinguish hermitages, *laura* and monasteries. Justinian had no opportunity to put his ideals into effect, as he strived to make everything uniform. Nevertheless, some of his ideas are worthy of our attention not only when we find their application in practice. They also demonstrate interesting ways out of to the difficulties which inevitably formed in the monastic economical activities.¹¹⁷ Doubtless, the legislator in his regulatory ambitions focused on the cenobitic model

infringe this rule in any way whatsoever and do not obey their bishop, if they are clerics, are to be subjected to the penalties of the canons, and if they are monks or laymen, are to be excommunicated' (translated after PRICE & GADDIS, *The Acts of the Council of Chalcedon* [cit. n. 112], p. 95).

¹¹⁵ Of note, however, are those provisions concerning the Church that could also apply to religious houses; cf. e.g. *Can.* 26, which ordered the appointment of a steward/administrator. The probable goal of this solution was to create a functionary separate from the bishop/superior who would have a say in the decisions regarding the management of ecclesiastical property and, in turn, safeguard the division between the private wealth of the bishops/monastic superiors and the property of the Church, or *per analogiam*, the religious houses.

¹¹⁶ For the capital's perspective cf. e.g. HATLIE, *The Monks and Monasteries* (cit. n. 112), *passim*. For Justinian's most excessive and innovative regulatory attempts regarding monastic life, see e.g. provisions on the communal dormitories and monastic isolation from the 'world' in *Nov.* 5.3, *Nov.* 133.1.

¹¹⁷ I owe these last observations to Ewa Wipszycka.

(with some minor exclusions, as in case of *Nov.* 5.3), possibly resting his idea of monasticism on his experience from Constantinople and other urban centres of the Christian world.¹¹⁸ This perspective, however, does not automatically mean that he was entirely unaware of the situation in Egypt.¹¹⁹ Interestingly enough, provisions regarding the management of the monasteries and their representation are – at least to a certain degree – in agreement with the models known from legal practice. In this context, the Roman legislator saw the leaders of monastic communities, as well as other church bodies, as endowed with powers to administrate and dispose of property.

Most curiously, however, the laws cited above make no reference to the terms *dikaion/diakonia*, which appear in the papyri. Still, as already noted by Steinwenter, the term *dikaion* can be found in Justinian's *novellae*, although in a somewhat different setting. In *Nov.* 111 (541) chapter 1, the term *dikaion* should very likely be understood as the *ius*, i.e. the right that refers to a specific entity (τοῖς σεβασμίαις τόποις καὶ τῷ δικαίῳ αὐτῶν καὶ τοῖς συναλλάγμασι).¹²⁰ One more example of the use of the term *dikaion* is found in chapter 38 of *Nov.* 123 (546). Also in this case *dikaion* seems to mean *ius*, but here it is understood in a more specific manner as a right or capacity of a monastery to inherit (ὀφείλον τῷ δικαίῳ τοῦ μοναστηρίου διαφέρειν).¹²¹ Thus the word itself does not indicate any 'legal capacity', it is only its application in a specific context, with another term such as e.g. *monasterion* that points to rights being given to a certain entity or corporation. On this basis Steinwenter further suggests that the term *dikaion*, due to its formal meaning, belongs to technical legal termino-

¹¹⁸ Possibly it was the realities of Constantinople and its nearest environs that lay at the base of Justinian's further attempts for creating a system of episcopal supervision over monasteries. In case of extensive dioceses, where the monasteries were located far from the episcopal seat one surely had to deal with certain deviations and complications when enforcing those provisions.

¹¹⁹ Cf. the provisions of *Nov.* 7.11 which particularly concerns Egypt with regard to the prohibition of secularisation.

¹²⁰ See *Nov.* 111.1: '(...) religiosis locis eorumque iuri vel contractibus indulgemus, (...)'

¹²¹ See *Nov.* 123.38: '(...) quae debeat iuri monasterii competere. (...)'

logy.¹²² This hypothesis seems far-reaching. Steinwenter carries out a standard, yet in this case erroneous legal reasoning, since it relies on the existence of dogmatic constructs identified only by the 19th-century Pandectists. His perception thus seems to be tainted by modern legal concepts. Steinwenter's conviction that what emerges from the sources reflects a 'legal person' surely resulted from the attribution of rights to an entity. However, as argued by Riccardo Orestano, any attempt to find in the Roman legal dogmatics the construct of a 'legal person' or a 'legal personality', is doomed to fail.¹²³ This is due to the simple fact that we have no sources whatsoever that would confirm a conscious distinction and use of such abstract legal terms in Roman law.¹²⁴ In all fairness, however, Orestano may be too strict in his judgment. It appears that even without distinguishing a separate concept of a 'legal personality', specific and particular solutions were still put forth, when certain entities in possession of a separate, independent property undertook legal actions through their representatives. It is not so much a question of forcing the evidence into any modern categories, and even less of excluding any material on the grounds that it defies the modern definition, but rather of observing a certain antique practice in the light of existing legal constructs and conducting a comparative analysis.

In this context, the Constantinopolitan perspective does not come as a surprise: in the formulation of a legal regime of various ecclesiastical *corpora*, the emperor begins to apply the already tested solutions known to Roman law. For instance, in *Cj* 1.2.22 (529) churches, hospitals, monasteries, orphan asylums, old men's homes, foundling hospitals and insane asylums are being referred to as *consortia*. Therefore, by analogy to the clerics

¹²² Cf. STEINWENTER, 'Die Rechtsstellung' (cit. n. 3), pp. 31–34.

¹²³ See ORESTANO, *Il problema delle persone giuridiche* (cit. n. 4), p. 77.

¹²⁴ This did not deter numerous scholars of Roman law from trying to find traces of a factual 'legal personality' in the ancient world. See most recently (with reference to earlier literature): BLANCH NOUGUÉS, 'Sobre la personalidad jurídica' (cit. n. 4), pp. 9–28; IDEM, 'La responsabilidad' (cit. n. 4), pp. 129–146. The author is perhaps too liberal in using such terms as 'legal person' or 'legal personality' with regard to the sources. This could be misleading and suggest that one should view these institutions dogmatically.

– as outlined in *Cj* 1.3.27 (466), *consortium clericorum* – the legislator defines as *consortium* also ‘all’ that pertains to various ecclesiastical entities.¹²⁵

Coming back to our attempt to uncover the meaning of the *dikaion* in the papyri, we need to observe that its use seems to be inconsistent and not entirely necessary. This prevents us from making any authoritative statement that we are dealing with the representation of the monastic community only in cases which explicitly mention the *dikaion* or the *diakonia*. For instance, with regard to *P. Oxy.* LXIII 4397 (see above, p. 363), there is no doubt that a loan was made on behalf of the monastery, the mortgage was instituted to its benefit (lines 27–45), and finally the settlement agreement was concluded on its behalf (lines 8–9). Given what has already been said about the rules of representation, and considering the formulation of the given document, it is certain that through a joint action, the prior and the *oikonomos* validly represented the community of Apa Hierax in concluding the settlement of claims. However, no reference to the *dikaion* is made. Thus, this term can be treated only as referring to the ‘body of rights’ and hence pointing to the separate ‘legal capacity’ of the monastic community only in a given context. The presence of this term in the document is not a necessary prerequisite for stating that we are dealing with transactions undertaken on behalf of the monastery. Yet, each time we come across the term we can be sure that the interest of the whole monastic community is represented. The *dikaion* should, therefore, be interpreted in accordance with one of its known meanings as the *ius* ‘right’ of economic character that can be assigned to a certain ‘body’, ‘entity’, or ‘community’.

4. CONCLUSION: TOWARD THE ‘LEGAL CAPACITY’ OF MONASTIC COMMUNITIES IN LATE ANTIQUITY

The analysis of different patterns of legal representation of monastic communities brings to mind the long-standing question of ‘legal personality’ of ecclesiastical bodies. After all, representation is one of the crite-

¹²⁵ Cf. also e.g. *diaconissarum consortium* in *CTb* 16.2.27 (390).

ria for distinguishing the 'legal capacity' of an entity. The shaping of the provisions of representation and the introduction of the liability of the representatives help us see the separateness of the corporate body from its individual members.

To be sure, the image emerging from the papyri is anything but consistent. The differences in the administrative structure of various communities and in the patterns applied when dealing with specific management problems could very well translate into the diversity of our documentation. Yet, as noted by Orestano, even the solutions proposed by the legislator are of casuistic nature and do not refer to any abstract legal constructs. What seems certain is that there exists a visible division between the proprietary rights assigned to the monasteries and the rights of their members and/or superiors.¹²⁶ Even if the dogmatic basis for this phenomenon has not yet been formed and what we are witnessing are only answers to the specific needs, there is no doubt that a separate legal capacity of the communities is recognised.

At the same time legal practice readily utilises different solutions with regard to monastic representation depending on the situation and the nature of the community. The most intuitive and widespread in our documentation is the activity on behalf of the monastery conducted by its superiors and administrative managers within the sphere of assigned duties. Not uncommon is the use of subordinate monks or even laypersons when concluding legal deeds and running community affairs on a daily basis. The Roman legislator was quite able in using the already available terms and formulas in order to describe the new phenomena emerging in the legal reality. The law seems to be secondary to legal practice not only with regard to the internal organisation and the religious life of the monasteries, but also to the recognition of property rights and representation strategies. The introduced provisions constitute a response to the growth of the monastic movement and the rising power of the Church with its economically active religious houses. We note a clear bestowment

¹²⁶ The standpoint of the legislator that community property and the property of its head should be separated seems certain. However, the repeated and detailed nature of the adopted solutions found in subsequent constitution may indicate that doubts were still present in the legal practice.

of certain rights onto the Christian community and its assemblies in late antiquity. It seems only natural that these entities were treated by the legislator similarly to other corporate bodies and associations functioning under Roman law.¹²⁷

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¹²⁷ Cf. e.g. the provisions of *CTh* 5.3.1 where Theodosius II followed the solutions already applied to, e.g. municipal councils and military units, allowing them to inherit after their intestate members. See E. HERMAN, 'Die Regelung der Armut in den byzantinischen Klöstern', *Orientalia Christiana Periodica* 7 (1941), pp. 406-460, at p. 409; R. DELMAIRE, *Largesses sacrées et Res privata. Laerarium impérial et son administration du IV^e au VI^e siècle*, Paris 1989, pp. 615-616. It is also mentioned by LANIADO in 'The early Byzantine state' (cit. n. 10), pp. 27-28 and BARONE-ADESI in 'Dal dibattito cristiano' (cit. n. 4), pp. 254-257. One should also note that the legislator refers to the Christian community and its institutions as *consortia* and/or *corpora* based on analogies to earlier collective entities known to Roman law. Admittedly, the existence of any kind of 'corporate personality' in classical Roman law has been found doubtful, nevertheless see e.g. D. 3.4.1 pr. and the legal regime regarding the *societas publicanorum*. The latter had a complex organisational structure, unknown in case of *societates privatae*, and in their economic activity they used representatives, whose actions brought legal effects for the *socii*. The Justinian Compilation counts them among the *collegia*, *municipia* and *decuria*, which were entitled to *corpus habere*, i.e. the legal capacity to hold common property, to be represented by an agent and to sue and be sued as a collective entity; see esp. M. R. CIMMA, *Ricerche sulle società di publicani*, Milano 1981, *passim* and pp. 193-194 in reference to *corpus habere*. Cf. P. W. DUFF, *Personality in Roman Private Law*, Cambridge 1938, pp. 1-2, who states that the terms such as, e.g. *persona*, *caput*, *corpus*, *universitas* can not be understood as reflecting the contemporary notion of 'legal person' or 'legal personality'. This need not mean, however, that the Roman jurisprudence did not recognise certain specific features of bodies such as *municipia* or *collegia* which are today associated with legal persons (so ORESTANO, *Il 'problema delle persone giuridiche'* [cit. n. 4], pp. 170-171).