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**HOW TO BECOME A MONASTIC SUPERIOR?
LEGAL AND MUNDANE SINE QUA NONS***

INTRODUCTION

THE LITERARY PORTRAYAL of the charismatic founders of monastic communities, and of their successors, abounds in descriptions of ascetic practices and devotion. The texts tell a story of monastic ‘elites’, comprised of individuals – often gifted leaders, orators, or holders of ecclesiastical rank – whose long and pious lives were devoted to prayer and discipline. It is this quality that deservedly led them to the highest offices within their community. The *begoumenoi* needed to be individuals of the right standing and competence, as it was only such people who could properly represent the communities in relations with both lay and ecclesiastical authorities, secure the obedience of all the brethren, as well as efficiently manage the community and its assets. The monastic writings postulate a superior to be unanimously chosen by all the brothers, or named by the previous leader of the community, who was supposed to select the successor from among the most pious and righteous of monks.¹

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¹ On the available literary attestations concerning the appointment of an abbot in view of the various types of monastic communities functioning in Egypt, see E. WIPSZYCKA,

The nature and the exact procedure of the appointment became increasingly relevant and began to interest both the church and the secular authorities once the monastic movement reached such a magnitude that it could no longer be left without proper institutional surveillance. In parallel, there was a growing awareness among monks themselves of the need to standardise the existing practices and experience.

In this article I would like to focus on the legal conditions delimiting the transfer of headship over monastic communities and their reflection in mundane reality. My aim is to see how documents of legal practice relate to the imperial legislation dealing with the appointment of the people in charge of the monasteries. The analysis of the superior selection process will allow us to further comment on both the legal framework within which the monastic communities functioned, and the much broader issue of imperial policy towards the emerging holy houses. It should also enable some conclusions on the legal status of monastic communities and how it may have influenced the realities of appointing their administrative and spiritual heads.

1. IDEALISTIC IMPERIAL VISION?

Despite the constant growth of the monastic movement from the fourth century onwards, it took a relatively long time for the issues connected with the organisation of monastic communities (and among these, the procedure of choosing an abbot or abbess) to find their way into imperial constitutions. It is mostly during the reign of Justinian that significant legislation on this matter is introduced, including the imperial perspectives on both the particularities of religious life and the much more secular aspects of monastic economies.² Admittedly, imperial interest in monks

Moines et communautés monastiques en Égypte IV^e–VIII^e siècles [= *The Journal of Juristic Papyrology Supplement* 11], Warsaw 2009, pp. 341–347 (with literature).

² Justinian's legislation covers a wide range of issues regarding monastic life and economic activities, such as, e.g., (i) donations and bequests made to the benefit of monasteries (continuing earlier imperial attempts to regulate this matter); (ii) the issue of monks' poverty; (iii) acquisition, alienation and management of earthly possessions; (iv) certain

and their communities may be observed earlier.³ Various constitutions issued in the span of over two centuries deal mainly with situations potentially endangering the state-interests. In this sense, the introduced legislation seems to be tied to particular historical events and embedded in specific political context.⁴ Yet it is only in the sixth century, when the secular power decides to regulate the matter in a more systematic fashion. The reasons behind this change in the imperial policy, a policy which in earlier periods tended to leave the surveillance of the monastic movement to the church, are – as every so often – not entirely clear. Nevertheless, Justinian's legislation undoubtedly coincides with the rooting of monasteries within the empire's territory (which can also be easily observed in the papyrological sources for Egypt in the late fifth and early sixth centuries). Assessing this phenomenon cannot be properly achieved if we overlook the wide-scope regulatory ambitions of this particular emperor.⁵

aspects of monastic life within the community; and finally – to some extent – (v) organisation and representation of monastic communities.

³ One of the most evident examples of interference into church legislation is the 451 Chalcedon Council and Marcian's recommendations presented to the bishops during the 6th session. The council, following the imperial lead, decided on such issues as the foundation of new monasteries, bishop surveillance over monks and their communities, and the possibility of admitting fugitive slaves to monasteries. The introduced provisions are influenced by the turbulent history of monasticism in Constantinople and the irresistible temptation of both secular and ecclesiastical powers to embroil monks in personal and doctrinal conflicts, starting from the end of the 4th century.

⁴ Earlier laws concern mostly the property rights of monastic communities (and other church bodies), the possibility of making donations and bequests to their benefit, as well as the limitations on entering a community for certain groups of people. See e.g. *CTh* 16.2.4; *CTh* 16.2.20; *CTh* 16.2.27 & 28; as well as *CTh* 5.3.1. Cf. also *CTh* 12.1.63. All of these laws were issued in response or relation to the broader context of specific historical events. On that see: Ch. A. FRAZEE, 'Late Roman and Byzantine legislation on the monastic life from the fourth to the eighth centuries', *Church History* 51.3 (1982), pp. 263–279, esp. 264–271. For more on the imperial legislation regarding pious donations, 'voluntary poverty' as well as the 'flight of the councillors' in the context of monastic strategies for acquisition of material assets, see M. WOJTCZAK, 'Between heaven and earth: family's ownerships, rights of monastic communities. The Theodosian Code and late antique legal practice', *U schyłku starożytności. Studia źródłoznawcze* 18–19 (2018–2019), pp. 117–170 (with reference to earlier literature).

⁵ On Justinian's complex approach to monasticism see, e.g., FRAZEE, 'Late Roman and Byzantine legislation' (cit. n. 4), pp. 271–279.

The first provisions transmitted by the Justinian's compilation that deal with the appointment of monastic superiors can be found in *Cj* 1.3.39 (date and addressee unknown): each monastery should have one abbot, and that the local bishop shall be held accountable for the choice and the abbot's later actions.⁶

The procedure of choosing an abbot or abbess is further outlined in *Cj* 1.3.46 (530; emperor Justinian a. to Julian, prefect of *praetoria*). The management of monasteries and hermitages should not be ceded based only on seniority and length of service, but rather according to the virtues of the candidates and their dedication to asceticism.⁷ 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

⁶ *Cj* 1.3.39: Θεσπίζομεν μηδένα δύο ἡγεῖσθαι μοναστηρίων, ἀλλὰ εἶναι μὲν ταῦτα ὑπὸ τὸν τῆς ἐνορίας, καθ' ἣν διάγουσι, θεοφιλέστατον ἐπίσκοπον, ἕκαστον δὲ ἡγούμενον ἔχειν ἓνα, ἐφ' ᾧ τε τῇ μὲν τοῦ ἡγουμένου καταστάσει καὶ τοῖς παρ' αὐτοῦ γυνομένοις ἐγκινδυνεύειν τὸν ἐπίσκοπον, τῇ δὲ τῶν μοναχῶν τὸν ἡγούμενον· καὶ κατὰ τοῦτον τὸν τρόπον πᾶσαν εὐταξίαν φυλάττεσθαι καὶ μηδένα τοῦ λοιποῦ κατὰ σύγχυσιν ἢ ἐπήρειαν μάλιστα παρὰ τῶν τὸ εὐαγὲς τοῦτο σχῆμα περιβεβλημένων γίνεσθαι· ἄπερ χρὴ νῦν τε καὶ εἰς τὸν μετὰ ταῦτα χρόνον διηλεκῶς παραφυλάττεσθαι, 'We decree that no one shall preside over two monasteries, but that monasteries shall be subject to the most reverend bishop of the territory in which they (the monasteries) reside; and that each shall have one abbot, whereby the bishop shall be accountable for the appointment and acts of the abbot, the abbot for that of the monks. In this manner, all good order will be preserved and no one shall be appointed in confusion and in contempt by those who have assumed this holy (monk's) habit. These provisions must be observed now and forever after' (trans. B. W. FRIER *et alii* [eds.], *The Codex of Justinian. A New Annotated Translation, with Parallel Latin and Greek Text, based on a translation by Justice Fred H. Blume*, Cambridge 2016, vol. 1, p. 105). The constitution underscores the fact that one person should not have authority over more than one monastery. This is probably to make the management of the community and its material assets as efficient and direct as possible and to avoid a situation in which the superior's attention is dispersed over various communities. Furthermore, and somewhat in contrast to what we learn from the papyri, the emperor decides that each monastery should have one abbot, probably in order avoid any potential conflicts and ruptures within the community. Meanwhile, the practice shows that the distribution of various functions between *proestotes*, or a superior and, e.g., an *oikonomos*, as well as a group of monks comprising a 'managerial board' was a popular and readily accepted solution.

⁷ On the choice of the head of monastic community according to literary and documentary evidence, see WIPSZYCKA, *Moines et communautés* (cit. n. 1), pp. 341–353.

the office.⁸ Further, the monks are obliged to inform the local bishop about their decision so that he can judge the choice and give his assent. The monks' choice also needs to be reviewed by the patriarch and other bishops.⁹ 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.¹⁰

⁸ *CJ* 1.3.46 (*Ἀυτοκράτωρ Ἰουστινιανὸς Α. Ἰουλιανῶ ἐπάρχῳ πραιτωρίῳ*): *πρ. Τοῖς ἱεροῖς ἡμῶν νόμοις οἰόμεθα χρῆναι καὶ τοῦτον προσθεῖναι τὸν ἐξ ἀρετῆς, ἀλλ' οὐκ ἐκ χρόνων τὰς εὐαγεῖς ἡγεμονίας παρέχοντα, ὥστε ἐπὶ τῶν εὐαγῶν μοναστηρίων ἢ ἀσκητηρίων μὴ πάντως τελευτῶντος τοῦ ἡγουμένου ἢ τῆς ἡγουμένης τὸν ἐφεξῆς ἢ τὴν δευτέραν γενέσθαι (σύνισμεν γὰρ τῇ φύσει οὔτε πάντας ὁμοίως ἀγαθοὺς οὔτε πάντας ἐν ἴσῳ ποιούση κακοὺς), ἀλλ' ὃν ἂν ὁ τε ἀγαθὸς βίος καὶ σεμνὸς τρόπος καὶ ἡ περὶ τὴν ἀσκησιν συντονία καὶ τὸ κοινὸν τῶν λοιπῶν μοναχῶν πλήρωμα ἢ τὸ πλείστον αὐτῶν ἐπιτήδειον πρὸς τοῦτο νομίσειε καὶ τῶν ἀγίων 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, if 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'*

(trans. FRIER *et alii*, *The Codex of Justinian* [cit. n. 6], vol. 1, p. 127); cf. also *CJ* 1.3.46.1–2.

⁹ On the one hand, a patriarch's obligation to approve every new superior of a monastery seems to have been impossible to execute in practice, given the immense scale of late antique monasticism. On the other hand, it is difficult to believe that there was no communication between the monastic community and the head of the local church. Moreover, the instances of the monks purposely electing an individual of whom the bishop would clearly disapprove must have been infrequent. This could happen in the case of large and influential communities whose existence would not be endangered by a conflict with the bishop and which could always turn to the metropolitan bishop or lodge a complaint with Constantinople. Wipszycka even suggests that it must have usually been crisis situations or a community's internal conflicts that caused the monks to ask the patriarch for help in the election of the superior. Cf. E. WIPSZYCKA, *Monks and the Hierarchical Church in Egypt and the Levant during Late Antiquity* [= *The Journal of Juristic Papyrology Supplement* 40], Leuven 2021, esp. pp. 244–248. In this light, we might need to perceive the constitutional provisions as a desired solution or at least as a sort of guarantee of the bishops' and patriarchs' competences in the case of monastic internal conflicts, or conflicts with the hierarchical church. In addition, it seems that Justinian was not particularly confident in the local bishops' decision-making and for this reason introduced additional control mechanisms. Cf. n. 10 below.

¹⁰ *CJ* 1.3.46.3–4: *Γνώριμα δὲ ταῦτα γίνεσθαι τῷ κατὰ τόπον θεοφιλεστάτῳ ἐπισκόπῳ, ὥστε αὐτὸν μανθάνοντα τὸν ἐπιλεχθέντα καὶ ὀρθῶς ἔχειν τοῦτο δοκιμάζοντα σύμψηφόν τε*

With *Nov.* 5.9 (535; emperor Justinian a. to Epiphanius, most holy and most blessed archbishop of this sovereign city, ecumenical patriarch), we are faced with the prerequisites for the appointment of *begoumenoi*. Once

γίνεσθαι τοῖς ἐπιλεξαμένοις καὶ προάγειν αὐτὸν ἐπὶ τὴν τοῦ ἡγουμένου τάξιν. 4. Δοκιμάζειν δὲ δεῖ τὴν αὐτῶν ἐπιλογὴν τὸν κατὰ καιρὸν πατριάρχην καὶ τοὺς κατὰ τόπον θεοφιλεστάτους ἐπισκόπους, ἔχοντας καὶ αὐτοὺς τὸ κρίμα τοῦ δεσπότητος θεοῦ καὶ τὴν μέλλουσαν κρίσιν εὐλαβουμένους, εἰ μὴ κατ' ἐπιλογὴν, ἀλλὰ πρὸς τι πάθος ἀποβλέψαντες ἀνθρώπινον 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 themselves shall face the condemnation of the Lord God and beware the coming judgement, if they make this promotion not according to election but with regard for some human passion, for they face the punishment of God both in this life and in the next, as their negligence gives many souls causes for sin (trans. FRIER *et alii*, *The Codex of Justinian* [cit. n. 6], vol. 1, pp. 127–129). While the term *δοκιμάζω* is usually translated as 'test', 'put to the test', 'try', and 'examine', also another meaning of the verb – 'prove' or 'approve' – is recognised. It appears on several occasions in the Christian writings (see, e.g., 1 Th 5:21–22; 1 Jn 4:1b; as well as 1 Cor 11:30). In 1 Cor 11:19, Paul uses a cognate of *δοκιμάζειν*, i.e. *οἱ δόκιμοι* ('the approved', 'esteemed', 'trustworthy', 'acceptable'), while advocating for the election of officers that would be more competent. 1 Cor 3:13 mentions the examination of the Corinthians' fitness (*ἐκάστου τὸ ἔργον ὁποῖόν ἐστιν τὸ πῦρ [αὐτὸ] δοκιμάσει*). The choice of words is not accidental and refers to the earlier Greco-Roman tradition and religious discourse (see on that M. K. W. SUH, 'Δοκιμάζω in 1 Corinthians 11:28–29 within the ancient Mediterranean context', *Novum Testamentum* 62 [2020], pp. 157–179; for *δοκιμασία*, see, e.g., Ar. V. 578; Arist. *Ath.* 55.3–4; Lys. 16.9, 24, 24, 26, 31; Isoc. *Areop.* 37; *Panath.* 28. See also G. ADELEYE, 'The purpose of the *dokimasia*', *Greek Roman and Byzantine Studies* 24 [1983], pp. 295–306; Ch. FEYEL, *ΔΟΚΙΜΑΣΙΑ: La place et le rôle de l'examen préliminaire dans les institutions des cités grecques*, Paris 2009, *passim*; C. TODD, 'The Athenian procedure(s) of *dokimasia*', [in:] G. THÜR [ed.], *Symposion 2009: Vorträge zur griechischen und hellenistischen Rechtsgeschichte [Seggau, 25.–30. August 2009]*, Vienna 2012, pp. 73–98). Most relevant, however, for the discussed context is the 'examination' of those seeking a sacred office (see, e.g., Pl. *Lg.* 759c–760a). Here *δοκιμάζειν* involved the scrutiny of one's entire life, including the person's moral integrity. For further sources attesting to the 'examination' of (i) the sacred officers or temple personnel, as well as (ii) the sacrificial victims, see, e.g., (i) *BGU V* 1210, l. 201 (Theadelphia, c. 150); *SB VI* 9016, col. 1, ll. 7–9 (Coptos, c. 160); (ii) *P. Gen.* 32, ll. 1–9 (Fayum, 148). It is also mentioned in *P. Gen.* 32 that after the examination procedure, the animal is marked with the seal confirming its purity. The requirement of the seal is also included in the *Gnomon of the Idios Logos* (*BGU V* 1210, l. 183).

more it is stressed that seniority should not be the governing rule in the decision making. The monks, in other words, are allowed to choose whomever they want for their superior. This time, however, the bishop seems to be granted a more active role in the nomination process. The bishop of the diocese is addressed in the law as the entity responsible for running the procedure and choosing the person best fitted for the post, thus restricting the freedom of decision-making previously enjoyed by the monastic community. He should not base his judgement on the 'priority of ordination' and rank, but rather on the dignity and virtues of the candidate, their holiness and the ability to perform the functions of the *hegoumenos*.¹¹

¹¹ Νου. 5 (Αὐτοκράτωρ Ἰουστινιανὸς Αὐγουστος Ἐπιφανίῳ τῷ ἀγιωτάτῳ καὶ μακαριωτάτῳ ἀρχιεπισκόπῳ τῆς βασιλίδος ταύτης πόλεως καὶ οἰκουμενικῷ πατριάρχῃ): 9. Τὴν δὲ τῶν ἡγουμένων χειροτονίαν, εἴ ποτε συμβαίῃ δεῖσθαι τὸ μοναστήριον ἡγουμένου, μὴ κατὰ τὴν τάξιν τῶν εὐλαβεστάτων γίνεσθαι μοναχῶν, μηδὲ πάντως τὸν μετὰ τὸν πρῶτον εὐθὺς ἡγούμενον γίνεσθαι, μηδὲ τὸν μετ' ἐκείνου δεύτερον μηδὲ τὸν τρίτον ἢ τοὺς ἐφεξῆς (τοῦτο ὅπερ καὶ νόμος ἡμῶν ἕτερος λέγει), ἀλλὰ τὸν θεοφιλέστατον τῶν τόπων ἐπίσκοπον χωρεῖν μὲν ἐφεξῆς διὰ πάντων (οὐδὲ γὰρ ἀτμαστέον πάντως τὸν χρόνον καὶ τὴν ἐξ αὐτοῦ τάξιν), καὶ τὸν ἀναφανόμενον πρῶτον ἄριστον ἐν τοῖς μοναχοῖς καθεστῶτα καὶ ἄξιον τῆς ἡγεμονίας αὐτῶν, τοῦτον αἰρεῖσθαι διότι τὰ τῆς ἀνθρωπίνης φύσεως τοιαυτὰ ἔστιν, ὡς μήτε πάντας ἐφεξῆς ἐν τοῖς ἀκροῖς, μηδ' αὐθις ἅπαντας ἐν τοῖς ἐσχάτοις τετάχθαι. ἀλλὰ πρῶτον μὲν κατὰ τὸν βαθμὸν ἢ τοῦ ἡγησαμένου πάντως ἐποψία, ὁ δὲ πρῶτος εὐθὺς ἐν τοῖς ἀριθμουμένοις ἄριστος ἀναφανείς, οὗτος ἡγεμὼν ἔστω, καὶ τὴν τάξιν ὁμοῦ καὶ τὴν ἀρετὴν συμμαχοῦσαν ἔχων. δεῖ γὰρ διακρίνοντας τὸ κρεῖττον ἐκ τοῦ φαυλοτέρου τὸ μὲν ἡγεμονεῖν εἶναι, θάτερον δὲ ὑποκεκλισθαι συγχωρεῖν, καὶ τῇ κατ' ὀλίγον παιδαγωγία καὶ τοῦτο πρὸς τὸ κρεῖττον ἐμβαίνειν, 'On any occasion when the monastery should be without a hegumen, the ordination of hegumens is not to be made by the rank-order of the most reverend monks. As another law of ours states, it is not at all the next person in order after the first who is immediately to be made hegumen, nor the one next after him, nor the third, and so on. Instead, the most God-beloved bishop of the area is to go through them all in turn (because seniority, with the rank-order it brings, is not to be entirely disregarded), and is to choose the one who is first found to be the best among the monks, and to deserve the position of hegumen over them. This is because it is a characteristic of human nature that not everyone is in continuous rank-order either at the top, or again at the bottom. No; examination of who is to be hegumen must at all events proceed step by step in order of seniority, and the first on the list to prove best is to be hegumen, with his quality to support him, as well as his rank-order. Those trying to discriminate between the superior and the less good must allow the primacy to go to one side, and concede that the other is to be subject to it, but itself to reach superiority by a gradual process of education' (trans. D. J. D. MILLER & P. SARRIS, *The Novels of Justinian. A Complete Annotated English Translation*, Cambridge 2018, vol. 1, p. 95).

In accordance with earlier constitutions, *Nov.* 123.34 (546; emperor Justinian a. to Peter, most illustrious *magister* of the divine *officia*), too, repeats the rules for choosing an abbot or archimandrite. The law stresses the necessity of conducting the choice by the entire community of monks or by a certain body consisting of those of highest repute. The appointed person must be of highest moral credentials and capable of maintaining monastic discipline. The superior-to-be must also receive the bishop's approval for the nomination.¹²

The imperial constitutions, therefore, clearly put monasteries under bishop supervision. A similar approach is well attested by the church's normative sources.¹³ Driven by the desire for unification of law and coherence

¹² *Nov.* 123 (Αὐτοκράτωρ Ἰουστινιανὸς Ἀγούστος Πέτρῳ τῷ ἐνδοξοτάτῳ μαγίστρῳ τῶν θείων ὀφφικίων): 34. Κελεύομεν τοίνυν τὸν ἀββᾶν ἢ τὸν ἀρχιμανδρίτην ἐν ἐκάστῳ μοναστηρίῳ προβάλλεσθαι μὴ πάντως κατὰ τοὺς βαθμοὺς τῶν μοναχῶν, ἀλλ' ὃν πάντες οἱ μοναχοὶ ἢ οἱ καλλιῶνος ὑπολήψεως ὄντες ἐπιλέξονται, προκειμένων τῶν ἁγίων εὐαγγελίων λέγοντες, ὡς οὐδὲ διὰ φιλίαν ἢ δι' ἄλλην οἰανδήποτε χάριν, ἀλλὰ γινώσκοντες αὐτὸν καὶ τῇ πίστει ὀρθὸν καὶ τῷ βίῳ σώφρονα καὶ τῆς διοικήσεως ἄξιον καὶ δυνάμενον τὴν τῶν μοναχῶν ἐπιστήμην καὶ πᾶσαν τὴν τοῦ μοναστηρίου κατάστασιν χρησίμως φυλάξαι αὐτὸν ἐπελέξαντο· τοῦ ὁσιωτάτου ἐπισκόπου ὅφ' ὃν τὸ μοναστήριον τέτακται τὸν οὕτως ἐπιλεγόμενον πᾶσι τρόποις ἡγουμένον προβαλλομένου. ταῦτα δὲ πάντα τὰ παρ' ἡμῶν διατυπωθέντα διὰ τὴν προβολὴν τῶν ἡγουμένων κρατεῖν παρακελεύομεθα καὶ ἐπὶ τοῖς εὐαγέσι τῶν γυναικῶν μοναστηρίοις καὶ ἀσκητήριοις, Accordingly, we command that the appointment of abbot or archimandrite in each monastery is definitely not to be made according to the rank of the monks. Instead, he is to be the one chosen by the whole body of monks, or by those of higher repute. With the holy gospels displayed, they are to state that it is not out of friendship or any other favour that they have chosen him, but in the knowledge that he is both orthodox in faith and moral in life, worthy of the administrative position and capable of maintaining monastic discipline and the whole condition of the monastery, to its benefit. The most holy bishop under whose authority the monastery lies is then, without fail, to put the one so chosen in post as hegumen. We order that all that we have determined for the appointment of hegumens is also to apply for women's holy monasteries and religious institutions' (trans. MILLER & SARRIS, *The Novels of Justinian* [cit. n. 11], vol. 2, p. 822).

¹³ See most of all the provisions introduced during the already-mentioned Council of Chalcedon. It was stated in the 4th canon of Chalcedon that those 'who practise monasticism in each city and territory are to be subject to the bishop': Οἱ ἀληθῶς καὶ εὐλικρινῶς τὸν μονῆρῳ μετιόντες βίον τῆς προσηκούσης 'αξιούσθωσαν τιμῆς'. Ἐπειδὴ δὲ τινες τῷ μοναχικῷ κεχηρμένοι προσχῆματι τὰς τε ἐκκλησίας καὶ τὰ πολιτικά διαταράττουσι πράγματα, περιῶντες ἀδιαφόρως ἐν ταῖς πόλεσιν, οὐ μὴν ἀλλὰ καὶ μοναστήρια ἑαυτοῖς συνιατᾶν

of the legal order, Justinian – as shown by *Nov. 131.1* (545; emperor Justinian a. to Peter, most illustrious prefect of *praetoria*) – recognises not only the relevant provisions adopted during the council of Chalcedon, but also those introduced at three other ecumenical church councils, and grants them binding force equating imperial laws.¹⁴ In this way, the bishop's canons – doubtlessly aimed at integration of what appeared to be rather

ἐπιτηδεύοντες, ἔδοξε μὴδένα 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 ἀσπάξασθαι, καὶ προσέχειν μόνῃ τῇ νηστείᾳ καὶ τῇ προσευχῇ, ἐν οἷς τόποις ἀπετάξαντο προσκαρτεροῦντας. μήτε δὲ ἐκκλησιαστικοῖς μήτε βιωτικοῖς παρενοχλεῖν πράγμασιν, ἢ ἐπικοινωνεῖν, καταλιμπάνοντας τὰ ἴδια μοναστήρια, εἰ μὴ ποτε ἄρα ἐπιτραπεῖεν 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' (trans. R. PRICE & M. GADDIS, *The Acts of the Council of Chalcedon, Translated with an Introduction and Notes*, Liverpool 2005, vol. 3, p. 95). The 8th canon, in turn, mentions the subordination of the clerics (including ordained monks) to the bishop: 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 τοιαύτῳ διατύπωσιν καθ' οἷονδὴποτε τρόπον, καὶ μὴ ὑποταττόμενοι τῷ ἰδίῳ ἐπισκόπῳ, εἰ μὲν εἶεν κληρικοὶ, τοῖς τῶν κανόνων ὑποκείσθωσαν ἐπιτιμίαις, εἰ δὲ μονάζοντες ἢ λαϊκοὶ, ἔστωσαν ἀκουώνητοι, '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 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' (trans. *ibidem*, p. 97). Cf. also n. 3 above. The episcopal surveillance over the monastic movement is restated in later imperial provisions, which might cast doubts on the efficiency of this solution for the entire Empire.

¹⁴ The councils mentioned in the constitution are: (i) Nicea in 325; (ii) Constantinople in 381; (iii) the first council of Ephesus in 431; and (iv) Chalcedon in 451.

'loosely' subordinated and astoundingly diversified monasticism into the general structure of the church – receive the formal legitimisation from the state. Justinian, however, takes a step further in his laws, compared to ecclesiastical canons. The latter, admittedly, recognised the bishops' vital role in establishing a new community and founding a monastery, but never required them to actively participate in the process of appointing a community's head – a right that is clearly set out by imperial constitutions. The emphasis on establishing church supervision over monasteries thus betrays the emperor's limited trust in monastic superiors.

Another striking feature of the above-mentioned constitutions is that they consistently favour the candidate's competence over their position in the monastic hierarchy and church ordination. Justinian interferes with the order established by the monks themselves, recommending that they choose for their priors those who are best qualified and not necessarily the eldest. The emperor's stance not only attests to previous negative experience, but also demonstrates the ruler's practical nature in dealing with the problem.

The question that instantly comes to mind here is whether, and if so, then to what extent, the picture drawn by the normative sources could correspond to the practice of the empire's eastern provinces, especially Egypt, whose papyri tell us about the appointment of monastic superiors?

2. THE SUPERIOR'S APPOINTMENT IN THE DOCUMENTS OF LEGAL PRACTICE

The documents of legal practice dealing with the appointment of priors are unfortunately scarce. Those available, however, clearly demonstrate that the conditions to which imperial constitutions repeatedly refer, i.e. the strict set of rules, the uniform procedure or the requirement to judge the candidates only by their moral virtues, did not in fact govern the choice of superiors. Although these documents of legal practice are rather well-known, for the sake of transparency and coherence I would like to briefly go through and comment on them – this would also allow to put forward a few new ideas.

2.1. *The Hathor monastery
and the superior's temporary substitute*

The earliest available document, *P. Lond.* VI 1913, comes from 334 and, thus, significantly pre-dates the imperial legislation on the matter.¹⁵ In the document, the superior of the Hathor monastery, Aurelius Pagesis, announces that he needs to appoint a substitute manager, Aurelius Gerontios, for the period when he (Pagesis) will be participating in the synod of Caesarea. The choice made by the head of monastery is unanimously accepted by the general assembly of monks, in the presence of a presbyter, two deacons and other esteemed personages. In lines 8–10, we read:

(...) ἀνάγκη μοι γεγένηται διάδοχόν ἑμῶν ἐ[μο]ῦ κ[ατα]σ[τ]ῆσαι ἄχρι τῆς ἐμῆς παρου[σί]ας, <δι' ὃ> σύνηξα τοὺς μονοχοῦς τῆς ἡμετέρας μονῆς ἐπὶ παρόντ[ω]ν Παταβαεῖτ[ο]ς πρεσβυτέρου Ἰππώνων | [κα]ὶ Παπνουτίου διάκονος ἀπὸ Πάμινπέσλα καὶ Πρωοῦτος ἀρχέου' μονοχοῦ καὶ ἐ[τέρων πολλ]ῶν κτλ.

(...) it has become necessary for me to establish a successor in my stead until my return, for which purpose I gathered the monks of our monastery in the presence of Patabaeis presbyter of Hipponon, and Papnoutios deacon from Paminpesla, and Prouos, an elder monk, and many others (...).¹⁶

What particularly draws one's attention with regard to this appointment is the scope of duties assigned to the temporary superior, namely administering and managing the affairs of the monastery.¹⁷ The tasks appear to be purely economic in character, while religious guidance and spiritual

¹⁵ On early monastic attestations, see, e.g., M. CHOAT, 'Monastic letters on papyrus from Late Antique Egypt', [in:] M. CHOAT & M. C. GIORDA (eds.), *Writing and Communication in Early Egyptian Monasticism* [= *Texts and Studies in Eastern Christianity* 9], Leiden 2017, pp. 17–72, at 21, 27–28.

¹⁶ Trans. J. WEGNER, *Monastic Communities in Context. Monasteries, Society, and Economy in Late Antique Egypt*, Leuven 2021 (forthcoming), p. 215.

¹⁷ *P. Lond.* VI 1913, l. 13: [καὶ(?)] π[ά]ντα τὰ τῆ μὲν[η]ς[σ] πράγματα προνοῆσαι καὶ διοικεῖν καὶ οἰκονομεῖν.

aspects of the prior's duties might have been retained by Pagesis¹⁸ (although it should be underscored that Pagesis could not know how long he would be gone exactly, especially considering that this was long-distance travel). Certain questions, however, arise in regard to the basis and the legal form of making Gerontios the manager. The document does not mention any particular legal deed allowing the delegation of functions. Joanna Wegner has recently suggested that Gerontios could actually be a lay person.¹⁹ If that be true, one could explain this move by the need to staff the managerial position with a person equipped with specific competences.²⁰

Here, a small excursus is in order. An idea similar to Wegner's hypothesis has already been put forward by some other papyrologists, although, admittedly, in reference to much later source material. The 'professionalisation' of the managerial offices was usually connected with the increase of tax burdens introduced after the Arab conquest of Egypt. In view of that theory, monasteries were more willing to place their fate in the hands of affluent people in order to guarantee the community's solvency. In this light, according to Martin Krause, the practice of making documents concerning the choice of the superior indicated deterioration of monastic institutions and the necessary 'professionalisation' of their management in order to deal with their poor financial condition.²¹ This hypothesis was persuasively criticised by Ewa Wipszycka, who offered a more nuanced interpretation, showing that the possible decline of monasteries after the Arab conquest must have been a complex issue and, consequently, cannot be viewed as primarily a result of the increasing fiscal responsibilities. Wipszycka points out that monasteries were never stable institutions and

¹⁸ See H. HAUBEN, 'Aurélios Pageus, alias Paiêous, et le monastère mélitien d'Hathor', *Ancient Society* 32 (2002), pp. 337–352, at 350–351.

¹⁹ See WEGNER, *Monastic Communities* (cit. n. 16), p. 216.

²⁰ See M. KRAUSE, 'Zur Verfassung koptischer Klöster: Die Abtwahl/Absternennung in koptischen Klöstern', [in:] M. KRAUSE & S. SCHATTEN (eds.), *Themelia. Spätantike und koptologische Studien Peter Grossmann zum 65. Geburtstag*, Wiesbaden 1998, pp. 225–231, at 228–230 (with reference to earlier literature).

²¹ *Ibidem*, p. 230.

that their success and survival (even in the times of prosperity) depended on multiple interconnected factors, including the gradual Islamisation of Egypt.²² Discarding Krause's proposal was made possible by the publications of new papyri and ostraca as well as the later field research that fundamentally changed our view of late-antique monasticism.

Moreover, it goes without saying that *P. Lond.* VI 1913 considerably predates the alleged 'crisis of monasteries' and still allows us to contemplate the issues of separating various administrative duties, as well as the rules of transferring headship in a monastic community.²³ Passing the management to a person from outside of the community would have required at least a contractual basis. Gerontios was supposed to oversee the property, but the document does not seem to indicate that his function procured any payment; neither is any suggestion made regarding personal liability for failing to fulfil his duties. These issues, however, do not have to be reflected in the *P. Lond.* VI 1913, since it deals with announcing the appointment to the community. From a legal perspective, what we have here might be simple agency, as well as the establishment of a proxy, connected with delegation of specific duties.

In this context, it is also worth noting that in the document, Gerontios is referred to as a 'full brother' of Pagesis. Family bonds between the prior of the community and the 'emergency appointee' may raise concerns as to the legal status of the monastery and the regime of separate property of the community and its head. We do, however, come across other similar instances of a superior's interference into the administrative structure of their community. This is especially visible in the case of private

²² See WIPSZYCKA, 'Resources and economic activities of the Egyptian monastic communities (4th–8th century)', *The Journal of Juristic Papyrology* 41 (2011), pp. 159–263, at 256–259. See also T. MARKIEWICZ, 'The Church, clerics, monks and credit in papyri', [in:] A. BOUD'HORS *et alii* (eds.), *Monastic Estates in Late Antique and Early Islamic Egypt. Ostraca, Papyri and Essays in Memory of Sarah Clackson*, Cincinnati 2009, pp. 178–204, esp. 182–183. Markiewicz argues that the practice of borrowing money to pay taxes (which is well attested in the papyri belonging to the monastic milieu) does not have to necessarily indicate financial distress, but can well be a side-effect of the specificity of the monastic economies that were based on agricultural production and handmade crafts.

²³ See WIPSZYCKA, 'Resources and economic activities' (cit. n. 22), pp. 259–260.

foundations, where the founders and owners decided to assign certain managerial duties to members of their family or appointed external entities.²⁴ This is not to suggest that in the case of Hathor we must be dealing with an example of private foundation. I do, however, wish to point out that the situation where specific functions would be performed by people with (possibly) proper qualifications but not belonging to the community, was not unheard of in the monastic world.²⁵

The nomination procedure presented in our document, as well as the consent given by the community's monks, together with the Hathor

²⁴ See, e.g., the case of the monastery of the holy and Christ-bearing Apostles founded by Apollon, father of Dioskoros of Aphrodito, or the monastery of Apa Agenios administered by *comes* Ammonios.

²⁵ Artur Steinwenter suggests that the monastery in *P. Lond.* VI 1913 was privately founded by PAGESIS, and the right to appoint the next superior could have been hereditary (just as in case of the monastery of Apa Apollon, where Dioskoros was made *phrontistes* by the order of the founder, privately Dioskoros's father): 'Das ist am besten dann verständlich, wenn das Herrschaftsrecht des Stifters, ebenso wie das des PAGESIS, das Kloster nicht zum reinen Eigentumsobjekt machte, sondern nur eine vererbliche Verwaltungsbefugnis über ein sonst selbständiges Rechtssubjekt gewährte' (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 22–23). In this context, Steinwenter indicates that the founder's rights could only concern appointing the community's head, but the monastery itself with its material assets should not be viewed as the founder's private property. To my mind, however, in the case of the monastery mentioned in *P. Lond.* VI 1913, the available source material is too limited to draw such a conclusion. There is also no hint of that in the actual document. In the light of *P. Lond.* VI 1913, we are dealing with a usual appointment and a delegation of duties for a limited time period. It is difficult to determine beyond doubt, however, what the legal basis for this act is (i.e. whether we are dealing with PAGESIS' private property rights towards the monastery, a legally recognised competence to choose administrative heads stemming from the virtue of his office, or mere authority of a superior). Cf. also the provisions of BP inv. 11937 = *SB Kopt.* I 50 (discussed below), in which it is guaranteed that the new *proestos* would not appoint any administrative head without the monks' consent. In the context of Steinwenter's hypothesis, cf. much later solutions provided by *Nov.* 131.10.2 (discussed later in the article). This constitution does not, however, settle the question of property rights with regard to a founded religious institution, but only hints at the duty to appoint heads of the institutions, if it is requested by the testator in the will (not treating this as a positive or transferable right of the founder). See also WEGNER, *Monastic Communities* (cit. n. 16), pp. 215–216 in n. 209, who suggests that the organisation structure in the case of Hathor could be similar to that of Naqlun.

proestotes (who should probably be identified as the heads of smaller units within the community),²⁶ all indicate that there was a requirement, or at least an expectation for such steps to be taken. This, in turn, would suggest that already at the very early stage of monastic existence there was some sort of formalisation of the structures as well as regulation and control over assigning administrative duties. The fact that the choice was confirmed by the general assembly must have also strengthened the legitimacy of the substitute's actions.²⁷ Last but not least, passing the management of the community to an outsider could be thought a countermeasure against the increasing influence of the community's deputy superior (and his supporters), protecting the position of the absent prior.

2.2. *The Apa Mena monastery 'contracting' a new proestos*

There is a gap of more than four centuries between *P Lond.* VI 1913 and the subsequent available document. BP inv. 11937 = *SB Kopt.* I 50, a Coptic papyrus published by Carl Schmidt in 1932 and dated to the eighth century, provides an account of appointing a proestos at the monastery of Apa Mena in the nome of Sbeht.²⁸ The document mentions 'the *dikaion* of the holy *petra* of Apa Mena', represented by Shenoute, who addresses the entire monastic community after being named *proestos*.²⁹ It is agreed

²⁶ See HAUBEN, 'Aurélios Pageus' (cit. n. 18), pp. 347–350.

²⁷ Despite the fact that the papyrus is called a 'certificate of appointment', Steinwenter argues that it should rather be seen as 'mere' confirmation of the appointment, since the representative is not chosen in it, but only announced to the general assembly (STEINWENTER, 'Die Rechtsstellung' [cit. n. 25], pp. 20–21). To my mind, however, even if the community is actively engaged only in the last stage of the nomination procedure (i.e. when the monks accept the candidate chosen by the superior), the fact that this was so diligently recorded proves its relevance to the effectiveness of the entire act.

²⁸ See C. SCHMIDT, 'Das Kloster des Apa Mena', *Zeitschrift für Ägyptische Sprache und Altertumskunde* 68 (1932), pp. 60–68, at 60–61.

²⁹ Translation of the papyrus from Coptic by SCHMIDT, 'Das Kloster' (cit. n. 28), ll. 1–4: 'Das Dikaion des heiligen Felsens des Apa Mena, (vertreten) durch mich, Schenute [den geringsten] Vorsteher, indem ich schreibe an den Konvent des gesamten Volkes (πρωτοῦ)

between the persons featured in our papyrus that if the monks decide to remove the newly chosen *proestos*, the community will be obliged to pay Shenoute twice the sum³⁰ that he brought into the monastery in order ‘to become father over you’. In turn, the superior declares that he will take care of all the monastic affairs (in accordance with what is right and respect to the established customs) and that he will not appoint anyone as administrative head in his stead against the will of the monks. In the case these provisions are violated, an impressive penalty of four *litrai* of gold payable to the monastery will become instantly due (‘without judgement, without any legal provision, and without any word of legal argument’).³¹ Finally, in order to secure the agreement, Shenoute establishes a *hypotheca generalis* on all of his private property to the benefit of the community. The duties assigned to the *proestos* which are outlined in the

μηλαος τηρϥ) desselben Felsens. [Nachdem ihr habt] angefertigt einen Vertrag für mich (αρετης]μη ογο[μο]λογια ναϊ), dass [ihr mich gewählt bat zum Vorsteher im Wunsch] Gottes (...).

³⁰ The amount of the penalty brings to mind the Roman *damnatio* which allowed to claim double damages in the case of the parties’ wrongful conduct resulting in material damage or unsuccessful denial of liability. In the post-classical period the legal sources often find *litis crescentia in duplum* to be based on *Lex Aquilia*. See, e.g., *PS* 1.13.6; 1.19.1; 2.32.24; *Lex Romana Burgundiorum* 14.8; 14.29; see on that M. KASER, *Das Römische Privatrecht*, II. Abschnitt: *Die nachklassischen Entwicklungen* (2nd ed.), Munich 1975, p. 437 with n. 5, as well as E. LEVY, *Weströmisches Vulgarrecht: das Obligationenrecht*, Weimar 1956, pp. 331–339; cf. a mention in J. URBANIK, ‘Dioskoros and the law (on succession): *Lex Falcidia* revisited’, [in:] J.-L. FOURNET (ed.), *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, pp. 117–142, at 135 n. 40. The liability amounting to the multiplied value of the damages is also found in the constitutions pertaining to the church and *venerabiles domus*; cf., e.g., *Nov.* 123.16.1; *Nov.* 123.3 (cited below in n. 36 & 38). Nevertheless, in the case of the discussed papyrus, we cannot be certain whether the penalty in any way echoes the Roman solutions.

³¹ See SCHMIDT, ‘Das Kloster’ (cit. n. 28), line 13: ‘ohne Gericht, ohne Gesetz (νόμος), ohne irgend ein Wort der gerichtlichen Verfolgung (δικαιολογία)’. However, it seems unlikely that in the case of conflict between the parties it was possible to immediately enforce these provisions of the agreement without prior consultation with the public authorities. If the promise was breached and the parties refused to comply and pay the penalty, the private settlement proceedings or state adjudication could be still initiated.

papyrus are of a strictly economic nature and include administration and maintenance of the property belonging to the *petra* (buildings and workshops are explicitly mentioned), as well as taking care of the taxes.

Having overviewed the contents of the document, let us now move on to addressing its problems. First and foremost, the mention of a fair amount of money to be paid by the *proestos* upon assuming his duties has stirred considerable debate among scholars. A frequent association made in the literature is with simony, which, given the late dating of the document, was yet again considered the answer to the challenges likely faced by monasticism in Egypt in the wake of the Arab conquest. Paul Kahle was the first to propose viewing the content of the Balaizah dossier against the context of the financially ‘perilous’ situation of monasteries in the eighth century, which was to contribute to their gradual downfall. It is also in this context that he makes a reference to the case of the neighbouring monastery of Apa Mena and the ‘most interesting document relating to the appointment of a superior’, in order to link the practice of choosing wealthy individuals for high administrative offices with the heavy taxation imposed on monastic communities by the new authorities.³² This reasoning – as already signalled above – is further echoed in the works of Martin Krause.³³

In fact, however, it seems that we rather deal with provisions aimed at securing in the best possible manner – at least in the parties’ eyes – the efficiency of the entire agreement. There appears to have been a more general tendency – which did not necessarily become stronger only after the Arab conquest – to manage monasteries in a manner that would ensure the community’s survival. This would entail filling executive positions both with individuals able to overcome possible financial difficulties of communities and those who could increase the monasteries’ economic solvency. The supervision of the monastery, or at least the economic side of

³² See P. E. KAHLE, *Bala'izab: Coptic Texts from Deir el-Bala'izab in Upper Egypt*, London 1954, vol. 1, pp. 41–45, at 42. See esp. vol. 2 for the documentary texts and legal deeds.

³³ See KRAUSE, ‘Zur Verfassung koptischer Klöster’ (cit. n. 20), p. 230; as well as S. BACOT, ‘Une nouvelle attestation de la “petra d’Apa Mena”’, *Bulletin de l’Institut français d’archéologie orientale* 201 (2002), pp. 1–16, at 12.

things, could thus theoretically be entrusted to a person from within the community, as well as to an outsider. In the papyrus published by Schmidt, however, we find no clear indication that the latter option was indeed what happened in the Apa Mena monastery.³⁴ To the best of my knowledge, there are no examples of such solutions in the remaining source material, which calls for caution. Admittedly, lay people do appear in documents belonging to the monastic milieu, but they hold mainly ‘external’ roles (i.e. act as guardians, curators, patrons, agents or hired contractors).

Another matter which is not entirely clear is the simony itself. Naturally, imperial legislation – which predates both the discussed papyrus and the Arab conquest of Egypt – consistently stresses that the appointments to various administrative functions and religious positions in the church and its *venerabiles domus* must be performed without charge.³⁵ *Nov.* 123.16.1–2 deals in particular with the heads of hospices, almshouses and – perhaps per analogy – other holy houses. It is, however, also stated that not only is the administrator not prevented from transferring any of his property, but he is even encouraged to do so (for the salvation of his soul): ‘either before or after (...) the entrusting to him of his administration or responsibility’.³⁶ We could thus only wonder whether and how it was pos-

³⁴ For the hypothesis that Shenoute might not have been a monk, see KRAUSE, ‘Zur Verfassung koptischer Klöster’ (cit. n. 20), pp. 229–230. There is, however, no evidence to support this idea.

³⁵ For the prohibition of simony in churches and religious institutions, see e.g. *CJ* 1.3.30 (regarding the purchase of priesthood ranks); *CJ* 1.3.41.19 (regarding the appointment of bishops, priests, presbyters or any other clergymen through bribery); *CJ* 1.3.41.20 (regarding the choice by means of a bribe of a ‘steward, defender of the church, superintendent of a hospice, infirmary, poorhouse, orphanage, or founding hospital, or the dispenser of alms’); *CJ* 1.3.41.21–23 (providing sanctions for the breach of earlier provisions). Cf. also on simony in the church: *Nov.* 6.1.9; *Nov.* 56; *Nov.* 123.2.1; *Nov.* 123.3; *Nov.* 137.2.

³⁶ *Nov.* 123.16.1–2: 1. ἀλλὰ μηδὲ ξενοδόχον ἢ πτωχοτρόφον ἢ νοσοκόμον ἢ ἄλλου οἰουδήποτε εὐαγοῦς οἴκου διοικητὴν ἢ οἰονδήποτε ἐκκλησιαστικὸν φρόντισμα χειρίζοντα διδόναι τι ἐκείνῳ, ἢ οὐ προβάλλεται, ἢ ἄλλῳ οἰωδήποτε προσώπῳ ὑπὲρ τῆς ἐμπιστευθείσης αὐτῷ διοικήσεως. ὁ δὲ παρὰ ταῦτα ἄπερ διετυπώσαμεν ἢ διδοῦς ἢ λαμβάνων ἢ μεσίτης γινόμενος τῆς ἱερωσύνης ἢ τοῦ κλήρου ἢ τῆς ἐμπιστευθείσης αὐτῷ οἰασδήποτε διοικήσεως γυμνωθήσεται, τῶν δεδομένων ἐκδικουμένων τῷ εὐαγεί τόπῳ, οὐτινος τὸ τοιοῦτον πρόσωπον τὴν χειροτονίαν ἢ φρόντισμα ἢ διοίκησιν ἔλαβεν. εἰ δὲ κοσμικὸς εἴη ὁ λαμβάνων ἢ

sible to distinguish acts of simony from pious donations. The variety of increments received by church bodies and monastic communities from their members cannot be always easily qualified as simony. Nor should this practice be perceived as indicative of any false pretences on the part of people taking up religious functions.³⁷ Moreover, although this time only with regard to the realm of the church, *Nov.* 123.3 mentions enthronement fees specified by this law, which may be paid upon the bishop's appointment.³⁸

μεσίτης γινόμενος, τὸ δοθὲν διπλοῦν ἀπαιτηθήσεται, καὶ τῷ εὐαγεῖ τόπῳ ἐν ᾧ τὸ τοιοῦτον πρόσωπον τὴν διοίκησιν ἢ τὴν χειροτονίαν ἢ τὴν φροντίδα ἔλαβε παρεχέσθω. 2. *Εἰ δέ τις κληρικὸς οἰουδήποτε βαθμοῦ ἢ διοικητῆς οἰουδήποτε εὐαγοῦς οἴκου ἢ πρὸ τῆς χειροτονίας ἢ τῆς ἐμπιστευθείσης αὐτῷ οἰασθήποτε διοικήσεως ἢ φροντίδος ἢ μετὰ ταῦτα βουλευθῆ τι τῶν ἰδίων πραγμάτων προσαγαγεῖν τῇ ἐκκλησίᾳ, ἐν ἣ χειροτονεῖται, ἢ τῷ τόπῳ, οὕτως τὴν διοίκησιν ἢ τὴν φροντίδα ἀναδέχεται, οὐ μόνον οὐ κωλύομεν τοῦτο γίνεσθαι, ἀλλὰ καὶ μᾶλλον προτρέπομεν αὐτοὺς τὰ τοιαῦτα ὑπὲρ τῆς σωτηρίας τῆς ἰδίας ψυχῆς ποιεῖν. ἡμεῖς γὰρ ἐκεῖνα μόνον διδοσθαι κωλύομεν, ἅτινα ἰδιοῖς προσώποις τισὶ παρέχεται, οὐ μὴν τὰ ταῖς ἀγιωτάταις ἐκκλησίαις καὶ τοῖς ἄλλοις εὐαγέσιν οἴκοις προσφερόμενα, ἴ. Nor is the head of a hospice, almshouse or hospital, or the administrator of any other holy house whatsoever, or the discharger of any ecclesiastical responsibility whatsoever, to make any payment to the one by whom he is being put in post, or to any other person whatsoever, for the administrative position entrusted to him. The payer, payee or intermediary in any act in contravention of what we have determined will be stripped of his priestly office or clericate, or of any administrative post that has been entrusted to him, and the amounts paid will be claimed for the holy place for which such person received the appointment, responsibility or administration. Should the recipient or intermediary be a layman, he will be charged twice the sum paid, and it is to be given to the holy place for which such person received the administration, appointment or responsibility. 2. However, if a cleric of any degree whatsoever, or administrator of any holy house whatsoever, wishes to make over any of his property, either before or after his ordination or the entrusting to him of his administration or responsibility, to the church in which he is being ordained or the place for which he is undertaking the administration or responsibility, we are not merely not preventing that from being done, but rather are encouraging them to take such action, for the salvation of their soul; the payments that we are preventing are only those made to individuals, not, by any means, those offered to most holy churches and other holy houses' (trans. MILLER & SARRIS, *The Novels of Justinian* [cit. n. 11], vol. 2, pp. 812–813). Cf. also the earlier *Nov.* 6 & 56.*

³⁷ See WIPSYZKA, *Moines et communautés* (cit. n. 1), pp. 351–352.

³⁸ *Nov.* 123.3: *Εἰ τις μέντοι ἐκ τῶν ἐπισκόπων εἴτε πρὸ τῆς ἰδίας χειροτονίας εἴτε μετὰ τὴν χειροτονίαν βουλευθῆ τὰ ἴδια πράγματα ἢ μέρος ἐξ αὐτῶν προσαγαγεῖν τῇ ἐκκλησίᾳ ἣς τὴν*

Meanwhile, our document indicates that the *proestos* contributes a certain sum of money to the community when he assumes office, but it is simultaneously guaranteed that the removal of the superior would require the payment of double the initial payment. Shenoute's small fortune should not raise any suspicions. The papyri clearly show that both the newly joined monks and those already well established in the monastic community could, and indeed did, own property. Naturally, individuals of considerable wealth also did turn to a pious way of life, so generous donations to the communities were not at all unusual. What may seem doubtful in this context is the widely discussed issue of the actual enforceability of the contractual penalties in late-antique papyri. The amounts mentioned in the agreement between the community and the newly appointed *proestos* are indeed striking: the monks agree to pay 106 *holokottinoi* (*solidi*), if they dismiss the *proestos*, while he himself promises that if he (i) abandons the community; or (ii) appoints someone not accepted by

ἱερωσύνην λαμβάνει, οὐ μόνον οὐ κωλύομεν καὶ πάσης καταδίκης καὶ ποιῆς τοῦ παρόντος νόμου ἐλεύθερον αὐτὸν εἶναι θεσπίζομεν, ἀλλὰ καὶ παντὸς ἐπαίνου ἄξιον κρίνομεν, ἐπειδὴ τοῦτο οὐκ ἐστὶν ἀγορασία, ἀλλὰ προσφορά. Ὑπὲρ συνηθειῶν δὲ ἐκεῖνα μόνα συγχωροῦμεν παρέχεσθαι ἀπὸ τῶν χειροτονουμένων ἐπισκόπων, ἅτινα ἐφεξῆς τῷ παρόντι νόμῳ ἐμφέρεται. (...) Ταῦτα τοίνυν κελεύομεν πᾶσι τρόποις παραφυλάττεσθαι, ἵνα μὴ ἐκ τῶν τοιούτων προφάσεων καὶ αἱ ἐκκλησίαι χρέεσι βαρύνωνται καὶ αἱ ἱερωσύνας πράσιμοι γίνωνται. εἰ δέ τις ὑπὲρ τὴν παρ' ἡμῶν ὀρισθεῖσαν ποσότητα ὑπὲρ ἐνθρονιαστικῶν ἢ συνηθειῶν καθ' οἰονδήποτε τρόπον τολμήσειε λαβεῖν, κελεύομεν, εἴ τι πλέον λάβοι, τριπλάσιον ἐκ τῶν πραγμάτων αὐτοῦ ἐκδικεῖσθαι τῇ ἐκκλησίᾳ τοῦ δεδωκότος, 'However, should any bishop wish to transfer his property, or part of it, to the church whose high office he is taking, either before his appointment or after the appointment, we are not merely not preventing that, and decreeing that he is free of any condemnation and penalty resulting from the present law, but we in fact adjudge him as deserving high praise: that is not a purchase, but an oblation. As for customary prerequisites, all that we permit to be paid by bishops on their appointment are the sums specified in the present law, as follows. (...) We command that this is to be observed without fail, both so that churches do not become burdened with debts, and so that high priestly offices in them do not become venal. Should anyone dare to take more than the amount defined by us for enthronement fees or customary prerequisites, in any manner, we command that three times any extra amount that has been paid is to be claimed from his property for the church of the one who has paid it' (trans. MILLER & SARRIS, *The Novels of Justinian* [cit. n. 11], vol. 2, pp. 804–805). For the evidence on the mentioned 'entry fees' and the problem of simony, see E. WIPSZYCKA, *Études sur le christianisme dans l'Égypte de l'antiquité tardive* [= *Studia ephemeridis Augustinianum* 52] Rome 1996, pp. 195–212.

the community to the administrative office, he will suffer the penalty of (i) 400 *holokottinoi (solidi)* or (ii) four *litrai* of gold.³⁹

What these considerable sums undoubtedly confirm is that these are not minor players on the monastic scene. Since the stipulated amounts include a contribution of the *proestos* as well as an additional sum, the latter – apart from the crucial aim of preventing his easy dismissal – could be seen as a sort of payment for the management and the likely incurred expenses (especially given the risk, but not the necessity as it was understood by Krause, of shouldering the institution's tax duties).⁴⁰ This, however, would

³⁹ The only payment mentioned in the document which certainly was done, however, is Shenoute's contribution to the monastery, which amounted to 53 *holokottinoi*.

⁴⁰ Note that the responsibility for the payment of taxes does not indicate that superiors are (from the beginning) obligated to cover the taxes from their own pocket. In the event of a monastery's insolvency, the person in charge could either lend the money to the monastery or be held liable for the fiscal dues. Cf. KRAUSE, 'Zur Verfassung koptischer Klöster' (cit. n. 20), pp. 228–230; KAHLE, *Bala'izab* (cit. n. 32), vol. 1, pp. 41–42. Individual liability for the collection of taxes could arise also for the lower-level managers and agents in the monastic administration; see, e.g., S. J. CLACKSON, 'Archimandrites and *andrismos*: a preliminary survey of taxation at Bawit', [in:] *PapCongr.* XXIII, pp. 103–107; WIPSZYCKA, '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', *The Journal of Juristic Papyrology* 31 (2001), pp. 169–186, at 179–186; EADEM, *Moines et communautés* (cit. n. 1), pp. 556–565; and EADEM, 'Resources and economic activities' (cit. n. 22), pp. 204–206. 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. Gesa Schenke suggested that the monks who assumed responsibility for the collection of 'rent-tax' acted in a manner analogous to that of regular tax-collectors: 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 (6th–10th Century)*, Leiden – Boston 2019, pp. 420–431; EADEM, *Kölner ägyptische Papyri II: Koptische Urkunden der frühbarabischen Zeit*, Cologne 2016, pp. 47–54; on the personal liability of monastic rent-tax collectors, see also 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:] BOUD'HORS *et alii* (eds.), *Monastic Estates* (cit. n. 22), pp. 205–215; G. SCHENKE, 'Micro- and macro-management. Responsibilities of the head of the monastery of Apa Apollo at Bawit', [in:] P. BUZI, A. CAMPANI, & F. CONTARDI (eds.), *Coptic Society, Literature and Religion from Late Antiquity to Modern Times. Proceedings of the Tenth Congress of the International Association for Coptic Studies, Rome, September 17th–22nd, 2012* [= *Orientalia Lovaniensia analecta* 264], Leuven 2016, vol. 1, pp. 683–692.

be required only in the case of the monks removing him from the managerial position. Thus, it appears that the main goal of the mentioned property transfers is rather to guarantee the fulfilment of the agreement. As a wealthy individual, Shenoute seems to first and foremost enjoy the opportunity to lead the community and in this respect the concluded legal deed does not hint at any financial gratification or perspective of profit in return for fulfilling this function. In addition, Shenoute becomes personally liable to the community for his actions, and secures their acceptance of the agreement with a *hypotheca* established on his individual property to the benefit of the monastery.⁴¹ The provisions of the agreement, thus, clearly point to a distinction between the property of the community and that of its prior.

What can be seen as surprising (and is absent from both literary and normative sources) is the contractual nature of the relation between the appointed superior and the community. It is, however, plausible that the mechanism of mutual property guarantees established on both sides indicates some hardships experienced by the monks in the past and/or show the community's caution. Internal conflicts might have led a former *proestos* to abandon the community. The new prior's clear promise that he would not appoint any new administrative heads without the consent of other monks could also point to earlier abuses in this regard, and thus explains the caution exhibited by the monastic community.⁴² Undoubtedly, the written agreement was supposed to alleviate this danger – particularly if the role of the monastic manager was to be filled by someone from outside the community.

In this light, our attention is particularly drawn to the duties assumed by Shenoute. Is it possible that the tasks linked with spiritual leadership were shifted to another individual? Could we be dealing with assignation

⁴¹ Translation of the papyrus from Coptic by SCHMIDT, 'Das Kloster' (cit. n. 28), line 14: 'indem ich hafte (κινδυνεύειν) euch mit meinem gesamten Vermögensbestande (ὑπόστασις), dem Beweglichen und Unbeweglichen'. This is a standard security clause guaranteeing the fulfilment of the agreement's provisions by establishing a *hypotheca generalis*. These provisions also attest to the separateness of a community's property and that of its *proestos* in legal practice.

⁴² I owe this suggestion to Ewa Wipszycka.

of solely economic duties? The latter could provide an answer to the matter of growing monastic estates, whose maintenance surely required additional financial and human resources. Such a burden could distract monks from their prayers and religious contemplation and could be seen as dangerous to their moral integrity. At times, it also might have distanced them, at least temporarily, from the experience of shared monastic life. This could be especially felt when the situation required managing estates located far from the monastery, or travelling for business. One should note, however, that caring about the monastery's economic efficiency, concentration of capital, or increasing the profit was not necessarily perilous for the monastic ideal of a pious life. The authenticity of spiritual experience was not diminished by struggle to keep a steady income. As shown by the papyri, the management of monastic estates could go from strict centralisation, often paired with a limited number of representatives, to a diffused and hierarchical network of supervisory and local managers with delegated duties. We know of strongly decentralised models, which enabled control even over estates located far from the monastery, extending beyond the usual reach of its administrative heads.⁴³ Further, there were communities whose actions were closely connected to their superior and it was he who functioned as the main representative of the monastery in regard to legal deeds.⁴⁴ We also encounter external individuals, on both central and regional levels, who aided the communities in various legal

⁴³ A perfect example of a decentralised administration is provided by the Apa Apollo monastery in Bawit. See recently J. WEGNER, 'The Bawit monastery of Apa Apollo in the Hermopolite nome and its relations with the 'world outside', *The Journal of Juristic Papyrology* 46 (2016), pp. 147–274 (with literature). On the expanded administrative structures of Pachomian communities, see e.g. J.-L. FOURNET & J. GASCOU, 'Moines pachômiens et batellerie', [in:] C. DÉCOBERT (ed.), *Alexandrie médiévale* 2 [= *Études alexandrines* 8], Cairo 2002, pp. 23–45.

⁴⁴ The most evident example is the monastery of Saint Phoibammon in Western Thebes, where most of the legal deeds made in the name of the monastery (as it appears from the context) were carried out by its head; see, e.g., *P. KRU* 13, 18, as well as the επιτηρη- documents (that grant the 'permission to farm'): *O. Crum* 138, 140, 206, 303, 307. On the organisational structure of the latter, see most recently (with literature): E. GAREL, *Héritage et transmission dans le monachisme égyptien. Les testaments des supérieurs du topos de Saint-Phoibammôn à Thèbes* [= *Bibliothèque d'études coptes* 27], Cairo 2020, pp. 54–61, 78–80, 87–88.

actions, controversies or exerted direct control over their property.⁴⁵ It thus seems that certain specialisation in strictly economic tasks (especially in the case of more decentralised communities and on lower tiers of management) meant a greater guarantee of accountability and solvency, consequently increasing a community's chances of survival.⁴⁶ Is it possible that this is the case with Schmidt's papyrus? I would rather favour the opinion that the appointment of the *proestos* in question included tasks not relating exclusively to economy, but also covered spiritual leadership.

2.3. *Balaizab community and a matter of urgency?*

Another document originating from the post-conquest monastic milieu and dealing with the issue of appointing a superior is *P. Bal.* 100. To our disappointment, however, the text breaks off after a few opening (and for our considerations indeed very exciting) lines. In lines 1–4, we read:

ΠΑΙΚΑΙΟΝ ΝΗΜΟΝΑΣΤῆς ΕΤ[ΟΥ]ΔΑΒ ΝΑΠΑ ΔΠΟΛΛΩ ΖΝ ΠΙΝΟΜῶ ΝCΒΕΞΤ | ΤΠΟ-
 ΛΙC ΖΙΤΟΟΤΝ ΔΝΟΝ Ν[ΕΤ]ΖΥΠΟΓΡΑΦΕ ΖΑΡΑΤΕ ΝΤΙΖΟΜΟῶΧ | ΕΝCΕΔΑΙ ΝΑΠΑ ΔΜΜΩΝ[Ε
 ΖΝ ΠΕΙ]ΜΟΝΑΣΤῆς ΝΟΥΩΤ ΔΕ ΕΠΕΙΔ[Η] | ΝΤΑΥΤΟΩΚ ΝΕΙΩΤ ΕΠΜΟΝΑΣΤῆς ΤΕΚ-
 ΔΙΟΙΚΕΙ ΜΜΟΥ ΝΖΝΖΟΟΥ ΖΝ ΠΤΡ[.]

The *dikaion* of the holy monastery of Apa Apollo in the nome of the town Sbeht, through us who subscribe below this agreement/declaration; we are writing to Apa Ammone in this same monastery saying: Since you were appointed superior of the monastery, that you should administer it for some days [...].⁴⁷

⁴⁵ On that extensively and with reference to further sources: WEGNER, *Monastic communities* (cit. n. 16), pp. 172–187, 213–249, 266–280. For legal commentary on the usage of various agents and representatives in the management of monastic property see M. WOJTCZAK, 'Legal representation of monastic communities in late antique papyri', *The Journal of Juristic Papyrology* 49 (2019), pp. 347–399.

⁴⁶ For a general overview, see WIPSZYCKA, 'Resources and economic activities' (cit. n. 22), pp. 159–263. Also on that, see B. H. BRENK, 'Monasteries as rural settlements: patron-dependence or self-sufficiency', *Late Antique Archeology* 2/1 (2004), pp. 447–476, at 455.

⁴⁷ Trans. KAHLE, *Bala'izab* (cit. 32), vol. 2, pp. 489–490.

The papyrus comes from the Balaizah dossier and despite its fragmentary condition, the content suggests that we might be dealing with a legal deed of contractual character, not far – it seems – in its formulation from the already-discussed Schmidt’s papyrus.⁴⁸ The agreement is concluded for a limited period of time – the appointed father is to perform his duties ‘for some days’.⁴⁹ We do not know, however, what those duties are exactly, and what his liability in the case of malperformance is. It is likely that the document – just as in the previous example – determined the legal relation between the administrative head and the monastic community as well as their material assets. It seems that in this instance, the monastery could not delay the appointment of the new superior: perhaps the most eligible candidate was away travelling, and the community needed to quickly make some important economic decisions? In such a case, by formalising the position of the deputy, the monks guaranteed to any potential contractor that the person signing a deal with them had the legal right to do so. The very idea of designating a deputy for just a few days is rather odd, which suggests it was dictated by some sudden need (meaning that it likely could not have been about the payment of regular fiscal dues). The poor condition of the papyrus, however, prevents us from moving beyond mere speculation.

In the context of *P. Bal.* 100, one should recall Wegner’s remark that there appears to be a certain correlation in the Balaizah dossier between people previously tasked with certain fiscal duties and active in the economic sphere of monastic existence on the one hand, and the names of subsequent superiors on the other.⁵⁰ This leads to a reasonable conclusion

⁴⁸ Cf. also *P. Bal.* II 101.

⁴⁹ It has been observed, however, that Ammone appears also in later documents, which may speak to a ‘more permanent’ character of his duties as superior. On the presence of Apa Ammone in monastic documentation, see, e.g., KAHLE, *Bala’izab* (cit. n. 32), vol. I, p. 30; cf. WIPSZYCKA, *Moines et communautés* (cit. n. 1), p. 348 n. 32.

⁵⁰ In this context, one may be tempted to see the role of a certain Theophilus mentioned in *P. Oxy.* LXIII 4397, who acted as an agent of the monastery of Apa Hierax in Constantinople (where he was sent to deal with monastic businesses) as a plausible ‘preparatory stage’, with him only later assuming the position of the community’s steward (see line 96).

that the monks who assumed administrative office were already experienced in fiscal dealings. This seems quite likely given the size of the monastery, the means used to found it and the community's wealth.

One additional particularity of the Balaizah dossier needs to be commented on, namely the high number of *proestotes* (and also *ex-proestotes*) attested in this community, which appears even more striking when one takes into consideration the limited time span covered by the dossier. Admittedly, it was not uncommon for monastic communities to divide various administrative duties between fellow brothers also on a central level.⁵¹ This, however, does not fully justify the high turnover in the superior's seat. Available documentation attests that in Balaizah a significant number of *ex-proestotes* (*apo proestos*) continued to take part in the life of the community.⁵² This seems to indicate a rotation of superiors rather than a high number of functionaries bearing the same title.⁵³ In this light, the observations made by Wegner are consistent with the discussed case of the 'emergency' appointment, where the short duration of the prior's office (even if later extended) appears to be in line with the general trend emerging from the dossier.

On the legal aspects of this papyrus, see most of all J. URBANIK, 'P. Oxy. LXIII 4397: The monastery comes first or pious reasons before earthly securities', [in:] BOUD'HORS *et alii* (eds.), *Monastic Estates* (cit. n. 22), pp. 225–235.

⁵¹ Similar instances of shared leadership appear in other papyri, see e.g. P. CLT 1, in which Daniel, Jacob, and Athanasios are mentioned together as the representatives of the monastery of Apa Paulos; or P. KRU 109, where Sourous and Matthaïos are both referred to as *oikonomoi* of the monastery of Apa Phoibammon. Admittedly, the scope of duties of the *oikonomos* and of the *proestos* could sometimes be closely interlinked and thus both terms describing monastic functionaries could be applied interchangeably in different communities while referring to the same person. For more on that, see WEGNER, *Monastic communities* (cit. n. 16), pp. 213–225, esp. 220–221.

⁵² See, e.g., P. Bal. II 312, l. 28: ΝΑΡΩΝ ΑΠΟ ΠΡΟ(Ε)ΣΤΩΣ. Cf. WIPSYCYKA, *Moines et communautés* (cit. n. 1), p. 348. The *ex-proestotes* are also attested in the Bawit dossier, as in the case of P. Pierpont Morgan Libr. inv. M662 B (23b): A. DELATTRE, P. PILETTE, & N. VANTHIEGHEM, 'Papyrus coptes de la Pierpont Morgan Library I. Cinq documents du monastère de Baouït', *Journal of Coptic Studies* 17 (2015), pp. 45–51.

⁵³ WEGNER, *Monastic communities* (cit. n. 6), p. 221, proposes a persuasive explanation of these phenomena: 'With fiscal and managerial duties in the monasteries linked to personal financial responsibility, it would be natural for the riskier posts to be occupied temporarily, and for the turnover of the people in office to be high.'

2.4. Testaments of Apa Phoibammon superiors

Probably the most interesting examples concerning the appointment of monastic *proestotes* are provided by the series of documents from the community of Apa Phoibammon in Western Thebes. These are testaments of superiors of the *topos*, which appoint individuals to take over the spiritual leadership of the community and also assign the monastery's property to them (with the explicit competence to possess, manage, and dispose thereof).⁵⁴

The first one is the well-known will of Abraham, bishop of Hermonthis, dating to the first two decades of the seventh century (*P. Mon. Phoib. Test. 1*).⁵⁵ The document is composed in Greek and contains a long list of all the possessions of the *topos* that are to be transferred to the new *proestos*, Victor. There can be hardly any doubt as to the proprietary character of the rights assigned to the appointed heir (or at least such is their depiction in the document).⁵⁶ In the light of the testament's wording, it appears clear that the

⁵⁴ For the legal content of the testaments of Apa Phoibammon superiors, see most of all A. STEINWENTER, 'Byzantinische Mönchstestamente', *Aegyptus* 12 (1932), pp. 55–64; IDEM, 'Die Rechtsstellung' [cit. n. 25], p. 41; M. KRAUSE, 'Die Testamente der Äbte des Phoibammon-Klosters in Theben', *Mitteilungen des Deutschen Archäologischen Instituts zu Kairo* 25 (1969), pp. 57–69; E. GAREL & M. NOWAK, 'Monastic wills. The continuation of late Roman legal tradition', [in:] CHOAT & GIORDA (eds.), *Writing and Communication* (cit. n. 15), pp. 108–128. For the relevant provisions regarding the broad scope of rights of the Apa Phoibammon superiors, see, e.g., the testament of Abraham (*P. Mon. Phoib. Test. 1*, ll. 15–40 and 35–45; also partially cited below); the testament of Victor (*P. Mon. Phoib. Test. 2*, ll. 51–92 and 117–129); the testament of Peter (*P. Mon. Phoib. Test. 3*, ll. 1–20 and 62–66); the testament of Jacob (*P. Mon. Phoib. Test. 4*, ll. 31–38 and 50–69). For the monastery, see W. GODLEWSKI, *Le monastère de St. Phoibammon [= Deir el-Bahari 5]*, Warsaw 1986.

⁵⁵ See most of all M. KRAUSE, *Apa Abraham von Hermonthis. Ein oberägyptischer Bischof um 600*, unpublished PhD dissertation, Berlin 1956; L. S. B. MACCOULL, 'Apa Abraham: Testament of Apa Abraham, bishop of Hermonthis, for the Monastery of St. Phoibammon near Thebes, Egypt', [in:] J. THOMAS & A. HERO (eds.), *Byzantine Monastic Foundation Documents: A Complete Translation of the Surviving Founders' Typika and Testaments [= Dumbarton Oaks Studies 35]*, Dumbarton Oaks 2000, vol. 1, pp. 55–58 (with further literature).

⁵⁶ See *P. Mon. Phoib. Test. 1*, ll. 17–41, with French translation; for English translation of the Greek text, see, e.g., M. NOWAK, *Wills in the Roman Empire: A Documentary Approach [= The Journal of Juristic Papyrology Supplement 23]*, Warsaw 2015. Abraham's position as the bishop of

monastery, with all its movable and immovable assets, could in practice be treated like the personal property of the superior.⁵⁷

Artur Steinwenter suggested that the ownership assigned to the *proestos* of the Apa Phoibammon monastery had solely functional character. He argued that even though the monastery's property was transferred through the wills of its superiors, at the same time this practice was subject to limitations – of functional nature – regarding the prior's right of further disposal of monastic material assets. From a legal point of view, this seems questionable. A 'special-purpose' or 'functional' property connected with a separate legal capacity did not exist in the Roman legal thought and was never defined by the Roman legislator. In the light of imperial legislation, the entity authorised to undertake legal actions on behalf of *piae causae* (including monasteries) was their administrative head. Legal practice, on the other hand, seems to reach for the already known and available devices, such as testaments, which could be considered effective both with regard to transferring the leadership, as well as the management of monastic property (including the superior's broad right of its disposal as the owner).⁵⁸

According to Arthur Schiller, this practice of appointing superiors could be compared, in its legal effects, to the appointment of a trustee in a char-

Hermonthis explains him using Greek in the will. On the attestations of bishops being also monks, see M. C. GIORDA, 'Bishops-monks in the monasteries: presence and role', *The Journal of Juristic Papyrology* 39 (2009), pp. 115–149. Recently see R. DEKKER, 'Bishop Abraham of Hermonthis: New observations on his historical context, chronology and social networks', *Journal of Coptic Studies* 18 (2016), pp. 19–43; EADEM, *Episcopal Networks and Authority in Late Antique Egypt. Bishops of the Theban Region at Work* [= *Orientalia Lovaniensia analecta* 264], Leuven 2018, pp. 80–85.

⁵⁷ We also have at our disposal a comparable document that contains analogous provisions regarding the rights to dispose and alienate monastic property that comes from the contemporary Theban monastery of Epiphanius. I am referring here to the testament of Iakob and Elias, featured in *P. KRU* 75, see esp. ll. 80–83. For more on the monastery of Apa Epiphanius, see, e.g., R. DEKKER, 'A relative chronology of the topos of Epiphanius. The identification of its leaders', [in:] BUZI, CAMPLANI, & CONTARDI (eds.), *Coptic Society, Literature and Religion* (cit. n. 40), vol. 1, pp. 755–767; EADEM, 'The topos of Epiphanius in Western Thebes (Egypt): A new chronology based on Coptic documents', *Comparative Oriental Manuscript Studies Newsletter* 5 (2013), pp. 10–12.

⁵⁸ See STEINWENTER, 'Byzantinische Mönchstestamente' (cit. n. 54), pp. 55–64, at 62; IDEM, 'Die Rechtsstellung' (cit. n. 25), p. 41.

itable trust in Anglo-American law. In this view, the superior would be responsible for guarding the monastic property in order for the pious and charitable aims of the monastery to be achieved. Schiller suggested that the solutions appearing in superiors' wills could correspond to the regime of Roman *fiducia*,⁵⁹ since it is specifically recommended to the next monastic superior to will the property to a monk eligible to take over the leadership in the community. For this reason, Schiller indicated that the management of the monastery could be analogous to the structure of an English trust (where a trustee carries the fiduciary responsibility and liability to use the trust assets according to the provisions of the trust for the beneficiary or for a charitable purpose). This interpretation is very problematic, however.

The wording of the testaments of Apa Phoibammon superiors does not allow us to state that we are dealing with anything beyond rights corresponding to (or at least styled as) private ownership, which are assigned to the governing superior. Schiller's comparison undoubtedly aims to assist the contemporary reader by explaining *per analogiam* the special status of monastic property transferred from one superior to another. It needs to be noted, however, that given the wording of monastic wills the limiting the scope of dispositions pertaining to the holy *topos* (i.e. a superior's private property) seems to be more of a postulate than an obligation. Apart from the provisions in the testaments of Apa Phoibammon's *proestotes* disinheriting the closest relatives and preventing them from pursuing any claims towards the monastic property in the future, the limitations of the superior's freedom of disposition could concern the transfer of the property of the *topos* to anyone other than a monk after the death of the head of the community, as explicitly stated in a will coming from the monastery of Apa Epiphanius in Thebes.⁶⁰ One could wonder, however, how effective

⁵⁹ On Roman *fiducia*, see G. NOORDRAVEN, *Die Fiduzia in römischen Recht*, Amsterdam 1999 (with further literature therein).

⁶⁰ P. KRU 75, ll. 26–29: εϕϰΛΑΝΔΩΚ ΔΕ ΕΒΟΛ ΕΝΕϦΩ ΣΜ | ΣΟΜ ΕΡ ΝΕϦΚΑΤΑϦΑΡΖ ΝΧΘΕΙϦ ΕΠΙΤΟ- ΠΟϦ ΑΛΛΑ ΕϦΝΑϦΙΝΕ ΝϦΑ ΟΥΡΕϦ|Ρ ΖΟΤΕ ΜΜΟΝΟΧΟϦ ΝϦΤ ΠΜΑ ΕΤΟΟΤϦ ΕΤΙ ΕϦΟΝΖ ΠΡΟϦ ΘΕ ΕΝΤΑΙ- ΩΟΡΠ | ϦΖΑΙ ΑΥΩ ΚΑΤΑ ΠΟΥΕΖ ϦΑΖΝΕ ΝΗΔΙΔΘΗΚΗ ΝΗΝΟϦ ΝΡΩΜΕ, 's'il meurt, il ne pourra pas faire de ses (parents) par la chair les propriétaires de ce topos, mais il cherchera un moine pieux et il lui remettra le lieu de son vivant, comme je l'ai déjà écrit et conformément aux

such testamentary provisions were in practice. The execution of such provisions might have been difficult if not impossible, unless the superior's actions would at the same time constitute an infringement of the law (e.g. *Nov. 7.II*).⁶¹ Thus, the potential consequences for the superior would rather stem from the breach of imperial law, which strives to protect ecclesiastical property from secularisation, than the imposed testamentary restrictions. Regarding this issue, however, of relevance is the fact that the author of the first Apa Phoibammon will was a Miaphysite bishop, who should not be expected to diligently adhere to the regulations introduced by the authorities in Constantinople, them following the Chalcedonian *credo*. Of course, any actions running counter to the will of the previous *begoumenoi* could also result in the monks objecting and revolting. Thus, in my opinion, the presence of such prohibitory provisions in the mentioned testaments can indicate awareness of the risk that was tied to adopting the mechanism of the appointment, which included the transfer of monastic property to the new superior and the latter's broad rights.

In this light, Schiller's hypothesis does not give full justice to the sources. In the case of a trust, even though the trustee admittedly has the right to dispose of the property held in trust, the equity may bring particular consequences to the act of its alienation (especially if it constitutes a breach of trust).⁶² The trust usually has a beneficiary that has the

ordres donnés par les testaments des grands hommes' (trans. GAREL, *Héritage et transmission* [cit. n. 44], p. 41).

⁶¹ This risk was already noted by STEINWENTER, 'Die Rechtsstellung' (cit. n. 25), pp. 8–16, 37–42, who argued that since the testaments do not provide any sanctions should the superior breach his duty to pass the property of the *topos* to a new spiritual leader of the monastic community, it was not possible to effectively guarantee the superior's adherence to these provisions. To add to that, both the conditional appointment of the heir (particularly under the resolutive condition), as well as limiting the freedom of testing by indicating the catalogue of entities to whom the testator could transfer his property in the case of their death would stand in contradiction to the rules of Roman law.

⁶² The trustee is the legal owner of the property given in a trust, but has a duty to dispose of it according to certain rules. Their ownership is encumbered with obligations (usually in favour of the beneficiary, who is considered an equitable owner of the trust property). The exact extent of the powers and duties of the trustee depends on the provisions of the trust, but as a general rule the trustee has a fiduciary duty to manage the

right to compel the trustee to use the rights assigned to them by virtue of trust in accordance with the imposed obligations.⁶³ In turn, charitable trusts serve a particular purpose, rather than a particular beneficiary. The trustee's duty is to pursue some objective which the law considers useful. Thus, the trustee may also be obliged to manage the property in a certain way despite the lack of correlated powers of the beneficiary. Since charitable trusts operate in the public interest, they are supervised by the relevant authorities, who may go to the courts if they find a breach of duty.

In the case of Apa Phoibammon, however, it appears that the only measures envisaged to protect the monastic property could be narrowed down to: (i) the superior's liability for the infringement of the fiduciary obligation that could be imposed on him by the provisions of his predecessor's testament – but not in the form provided by the monastic wills,⁶⁴

trust to the benefit of the equitable owners. However, the trustee can also transfer the ownership of the thing or right subject to the trust (as long as the provisions of the trust do not explicitly exclude such a possibility). If a transfer is made in accordance with the provisions of the trust then such a disposition to the benefit of a third party is effective. However, if the trustee breaches the trust (by transferring the title, or in any other way, e.g. by failing to exercise due diligence in the management of the property), then they are held personally liable. Furthermore, if the thing or right is transferred – in breach of trust – then the third party acquires the legal title together with the obligations under the trust. Such an acquisition is still legally effective, but is encumbered with the trust. However, where the property under trust comes into the hands of a *bona fide* purchaser for value, the legal act is considered effective and the title acquired is free from the encumbrances of the trust. For a general overview, see, e.g., P. S. DAVIES & G. VIRGO, *Equity and Trusts. Text, Cases, Materials*, Cambridge 2019, pp. 23–62, 173–280, 494–530; more specifically, see: J. W. HARRIS, 'Trust, power and duty', *Law Quarterly Review* 87 (1971), pp. 31–65; R. NOLAN, 'Equitable property', *Law Quarterly Review* 122/2 (2006), pp. 232–265; P. JAFFEY, 'Explaining the trust', *Law Quarterly Review* 131 (2015), pp. 377–401. I am grateful to Jakub Biegański for fruitful discussions and inspiring suggestions regarding trust law.

⁶³ However, it needs to be stressed that the Roman *fiducia* neither entails anything comparable to the doctrine of a 'divided title' known to the modern trust law, nor gives rise to such a broad scope of protection as is granted to the beneficiary of the trust (which allows them to be referred to as equitable owner).

⁶⁴ Such as, e.g., *fideicommissum*, in which the new superior is specifically asked to transfer to an indicated person a part or the entirety of the property that was originally assigned to him by virtue of the testament – such provisions are missing in the discussed evidence,

(ii) the sanctions for the violation of imperial constitutions against secularisation provided by the superior's dispositions⁶⁵ – that, however, was not related in any way to the duties stemming from *fiducia*.

Thus, the comparison of the scope of powers and duties guaranteed by Anglo-American trusts to those guaranteed by monastic wills does not stand up to scrutiny. The analogy put forward by Schiller is inaccurate and seeks to fit the solutions adopted by late antique practice into legal categories which were only developed much later.⁶⁶ Schiller's interpretation has been accepted, with certain reservations, by Esther Garel. She has additionally emphasised the fiduciary nature of establishing three heirs in Victor's testament, who were to act as managers and guarantors of the monastic property until the end of their lives.⁶⁷ These arguments seem insufficient, however, for determining the legal status of the said monastery and its assets.

The private belongings listed in the will of Abraham appear right next to the Apa Phoibammon property. The two can be viewed as 'separate' only indirectly, with Abraham distinguishing his personal belongings (referring to the items he inherited from his ancestors, as well as to those he acquired himself) and the assets which are part of the monastery (the broad rights to these are assigned to the new prior, together with the duty of covering administrative and charity costs in the future). All the items listed in Abraham's testament, however, are passed on to only one successor – Victor, the

however. On Roman fiduciary obligations and trust-like devices, see R. HELMHOLZ & R. ZIMMERMAN (eds.), *Itinera fiduciae. Trust and Treuband in historical perspective*, Berlin 1998, *passim*, especially the contributions by D. JOHNSTON, 'Trust and trust-like devices in Roman law', pp. 45–56; H. SIEMS, 'Von den *piae causae* zu den Xenodochie', pp. 57–84; and S. HERMAN, 'The canonical conception of the trust', pp. 85–110 (discussing the later legal developments in the Middle Ages regarding the distinction between the Church's interest in its patrimony and the interest of its 'lieutenants').

⁶⁵ See. *Nov.* 7. Cf. A. A. SCHILLER, *Coptic Wills: Translation and Commentary. The Egyptian Law of Wills in the Eighth Century A.D.*, unpublished PhD dissertation, Berkeley 1926, p. 76.

⁶⁶ For more on Roman law and Anglo-American trusts, see C. H. VAN RHEE, 'Trusts, trust-like concepts and *ius commune*', *European Review of Private Law* 8/3 (2000), pp. 453–462; as well as HERMAN, 'The canonical conception' (cit. n. 64), pp. 85–110.

⁶⁷ See GAREL, *Héritage et transmission* (cit. n. 44), pp. 40–44.

new *proestos* – and added to the property of the *topos*. The testament contains also a long disinheritance clause, which mentions Abraham’s family from both his father’s and his mother’s side, and which prohibits them from challenging the will in the future.⁶⁸

The remaining testaments of Apa Phoibammon superiors are mostly written in Coptic. In *P. Mon. Phoib. Test.* 2, dating to 634, Victor, entitled to the property of the *topos* by the will of his master and father Apa Abraham (ll. 43–51), decides and orders that upon his own death, his successors as well as proprietors and possessors of everything that belongs to the *topos* will be Jacob and Peter (‘brothers one to other’), as well as David (ll. 51–92, 115–129).⁶⁹ Further, from the testament of Peter (*P. Mon. Phoib. Test.* 3) most probably composed between 660 and 675, we learn about a conflict within the community (ll. 20–62). The controversy between Victor’s heirs most likely began during the lifetime of the previous superior, but it gained in force after his death. Peter – the clear winner in our story – mentions that Victor’s nephew Jacob left the community of Apa Phoibammon even before Victor made his will.⁷⁰ After Victor’s death, his nephew came back, but according to Peter’s testimony he left the monastery twice more, the last time taking the third heir, David, with him. It is not my aim here to recount in detail the entire conflict between the monks – this has already been done repeatedly.⁷¹ I would only like to emphasise the issues which

⁶⁸ *P. Mon. Phoib. Test.* 1, ll. 41–50, with French translation; for English translation, see NOWAK, *Wills* (cit. n. 56), p. 446. Cf. also *O. Crum* 132, esp. ll. 9–14. On the latter text, see further GAREL, *Héritage et transmission*, p. 46. The respective clauses on the disinheritance of the members of the family as well as provisions confirming the validity, legality and inviolability of the superior’s last will are consistently repeated in all the Apa Phoibammon testaments.

⁶⁹ For earlier editions, see V. LORET, ‘Sur un fragment de papyrus gréco-copte’, *Recueil de travaux relatifs à la philologie et à l’archéologie égyptiennes et assyriennes* 16 (1894), p. 103; as well as *P. KRU* 77; and *SB I* 4319.

⁷⁰ This seemingly passing remark could be of importance for the heir’s rights. According to Victor’s subsequent arguments, this comment gives him the possibility to contest the effectiveness of designating as heirs people who do not belong to the monastery at the moment of making of the will, cf. *P. Mon. Phoib. Test.* 3, ll. 59–62 (cited below in n. 74). Cf. also n. 76.

⁷¹ See GAREL, *Héritage et transmission* (cit. n. 44), pp. 46–48, 70–72 (with literature). Most recently on that matter: E. WIPSYCKA, ‘Sur les testaments des supérieurs du monastère

seem significant for our analysis. First of all, of interest is the legal position of both Jacob and David with regard to the monastic property at the time of leaving the community. Peter assures us that the monks could not act on behalf of the community. It seems, however, that as the winner of the conflict he has no interest in reporting any facts that may be detrimental to his position. He also wants to discard all doubts that would put in question the legality of his actions or the effectiveness of his own will. This is not immediately obvious, however, just as the claims of Jacob and David do not seem immediately unwarranted – as plausibly indicated by *P. Mon. Epiph. 257*, an ostrakon providing proof of the dispute proceedings regarding Victor's inheritance, in which secular authorities, *lashanes*, were in some way engaged. *P. Mon. Epiph. 257* comes from the *laura* of Apa Epiphanius, located in the vicinity of the monastery of Apa Phoibammon, and is addressed to a monk (possibly a figure of authority at the neighbouring monastery). The recipient of the letter is to ask a *lashane* to assemble a certain number of people (the witnesses) and to have Victor's will produced by a man named Jacob (the document does not provide any details allowing further identification of that man). The senders of the letter are unknown, since the respective part of the papyrus has been destroyed. However, as duly noted by Esther Garel, it is very tempting to think that the document was sent by the two heirs who had left the monastery. If indeed so, at the time *P. Mon. Epiph. 257* was produced, the process of exclusion from succession and the dispute between the heirs had already taken place. In consequence, Jacob and David could have decided to turn to the religious authorities of another monastic community that must have been aware of their legal standing and could support them in the proceedings before state officials. Alternatively, these authorities could have carried out private settlement proceedings aimed at the recognition of the monks' rights. Turning to state officials through another entity of high social standing could have been a tactic used in dispute resolution to strengthen one's position and substantiate one's claim. At this point, we

de Phoibammon à Deir el-Bahari. Point de vue d'historien d'Église', *Journal of Coptic Studies* (forthcoming); M. NOWAK, 'Monastic wills from the Monastery of St. Phoibammon in Western Thebes – legal and social analysis', *Journal of Coptic Studies* (forthcoming).

also cannot exclude the possibility that it was an attempt to apply private mechanisms of dispute resolution (which are increasingly attested in late antiquity), albeit with the option to also involve the civil authority in Jeme. Thus, I fully agree here with Garel's conclusion that *P. Mon. Epiph.* 257 provides proof that the wills of Apa Phoibammon superiors had legal value and could serve as important evidence in a dispute.⁷²

Coming back to Peter's statement made in his testament – when Peter fell ill, David appeared at the monastery and asked to be accepted back into the community. Peter agreed on the condition that David renounces any right to the monastery's property – the ban included explicitly 'sale and purchase of anything to and from monks and laypersons' (*P. Mon. Phoib. Test.* 3, ll. 45–50). This promise was made in the presence of 'many laypersons and monks', but since David infringed the agreement and abandoned the community again, Peter eventually excluded him from the community in his will and established Jacob (a different one than the above-mentioned) as his heir.⁷³ That such a statement by David was necessary is a clear indication that his actions were perceived as legally valid and effective by 'the outside world'. As Victor's heir, he was entitled in the eyes of his business partners to enter legal transactions involving the material assets of the monastery. In his will, however, Peter tries to convince us otherwise, underlining that 'the *topos* is not left as an inheritance' and that the person in charge of the *topos* ensures its spiritual side as well as its proper economic and administrative management. He further states: 'as for those who will leave their holy *topos*, they will be excluded, in accordance with the monastic canons'.⁷⁴ What may seem surprising is

⁷² GAREL, *Héritage et transmission* (cit. n. 44), pp. 46–47, provides an edition and translation of this document. For more on various dispute resolution strategies in late antiquity, see M. WOJTCZAK, *Arbitration and Settlement of Claims in Late Antiquity*, forthcoming.

⁷³ For the exclusion of Jacob and David from the community, see *P. Mon. Phoib. Test.* 3, ll. 49–62, for the appointment of another Jacob as heir, see ll. 66–68.

⁷⁴ *P. Mon. Phoib. Test.* 3, ll. 59–62. See the French translation by GAREL, *Héritage et transmission* (cit. n. 44), p. 232: '(...) le *topos* n'est pas laissé en héritage, mais celui qui se trouvera dans le *topos* assurer à un moment donné sa *leitourgia* et toute sa gestion, à l'intérieur et à l'extérieur, c'est à lui qu'appartient le *topos*. Quant à ceux qui quitteront leur saint *topos*, ils en seront exclus, conformément aux canons monastiques'.

the sudden change in how the monastic property is referred to. In the light of Peter's argumentation, the material assets of Apa Phoibammon should be considered separate from the superior's (whose proprietary rights, however, were underlined earlier).⁷⁵ It is clear that the reasoning presented in Petros' will was in part rhetorical. This change likely originated from the dispute between the heirs of Victor, which must have also incentivised the supporters of Jacob and David within the community to take a stand in the conflict. The statement that the monastery is nobody's inheritance and stripping those who left the community of any rights to it should, in my opinion, be viewed as aiming to keep the monastic property intact in the face of the possible effectiveness of the remaining heirs' claims. This must have been what caused Petros to invoke the 'canons' which excluded those who left the community.⁷⁶ However, what we find

⁷⁵ Garel finds Peter's statement persuasive and treats it as the crowning argument in favour of the idea – in accordance with what Schiller has already said earlier – that in the case of Apa Phoibammon's superiors we are not dealing with proprietors, but guarantors of the monastic property: GAREL, *Héritage et transmission* (cit. n. 44), pp. 43, 92–93, 226, 272.

⁷⁶ For the meaning of the word 'canon' in Coptic, see most of all T. C. YOUNG, "Praecept": a study in Coptic terminology', *Orientalia* 38 (1969), pp. 505–519; A. A. SCHILLER, 'ΚΑΝΩΝ and ΚΑΝΩΝΙΖΕ in the Coptic texts', [in:] *Coptic Studies in Honor of Walter Ewing Crum*, Boston 1950, pp. 175–184. See also: A. BOUD'HORS, 'À la recherche de normes monastiques. Rapport des sources coptes documentaires', [in:] O. DELOUIS & M. MOSSAKOWSKA-GAUBERT (eds.), *La vie quotidienne des moines en Orient et en Occident (IV^e–X^e s.)*, II: *Questions transversales* [= *Bibliothèque d'étude* 170], Cairo 2019, pp. 415–432, at 416–417, who notes that this term may refer to ecclesiastical canons, monastic rules as well as – although less often – imperial legislation. Garel suggests that in the testaments of Apa Phoibammon's superiors the references to the monastic canons could be understood as the rules established by the founder and the later *proestotes* (GAREL, *Héritage et transmission* [cit. n. 44], p. 88 [with further literature]). See also WIPSZYCKA, *Moines et communautés* (cit. n. 1), p. 57. If, in his will, Petros really referred to the rules established by Abraham or his successors, then the way the superior fulfilled his duties and exercised his proprietary rights towards the *topos* would be limited by the canons (and then we could be dealing with a solution resembling 'functional' ownership, as Steinwenter would have it). Such monastic rules, however, would be binding only for the members of the community, and thus their legal effectiveness would be limited with regard to agreements concluded by the superior with the 'outside world' (unless in a given case we would be dealing with simultaneous violation of imperial constitutions). When it comes to the true value of Petros' argumentation provided by his testament, we cannot therefore go beyond speculation. It is nevertheless

later in Petros' testament, namely the way the heir is chosen as well as the scope of his competence concerning the material assets of the *topos*, is not really different from the earlier wills (*P. Mon. Phoib. Test.* 3, ll. 62–66). There seems not to be any contradiction between the solutions shaping property relations between the *proestos* and the holy *topos*. What we see is a clear, even if not yet complete, separation of the monastery from the rest of the superior's private property, a trace of which we have already seen in the earlier testaments. The legal form adopted for the appointment of the community's superior, however, remains unchanged: the rights towards the *topos* and the control over its material assets are transferred together with the religious leadership from the current *proestos* to his successor. Therefore, even if the superior's rights towards the monastery were in reality not considered 'standard' ownership – as argued by Arthur Schiller and Esther Garel – it is beyond doubt that in legal documents they were styled in a manner corresponding to private property rights. The practice is employing available legal tools in order to achieve the desired effect. In that sense, the testaments are treated as a convenient legal device which is widely recognisable in its form and structure and at the same time aims at guaranteeing the legal effectiveness of the included provisions (how effective they were in practice is a different matter). This solution may not be ideally tailored to monastic needs, as it involves numerous complications and risks, of which the superiors of Apa Phoibammon's monastery were surely fully aware. It is, however, an intuitive solution and one which can be adjusted, should the property need to be transferred to a specific person. Moreover, it is well established in documentary legal practice.⁷⁷ In that sense, even if Apa Phoibammon's monks were cognisant

worth noting that somewhat similar solutions are found in the church and imperial legislation forbidding monks to leave or change their monastery under the penalty of losing their property brought by them into the community (naturally, these regulations do not offer any solution in the cases where the monastery itself belongs to the monk).

⁷⁷ Apart from that we know of churches whose property was transferred by means of a testament: see, e.g., STEINWENTER, 'Die Rechtsstellung' (cit. n. 25), pp. 16–19 (citing the relevant sources). Cf. also the funeral inscriptions from Lycaonia that show presbyters buried by their kin holding the same office; those cases, however, reflect a social tendency of assuming clerical functions among the members of the same family, and does not indicate

of the factual separateness of the monastic property and that of the superior (who acted more as its manager than owner), the applied legal solutions did not reflect that division. On the contrary, it bound the property of the *topos* to the head of the community.

The last of the surviving Apa Phoibammon testaments is dated to 695 (*P. Mon. Phoib. Test.* 4). In this document, Jacob emphasises his rights to dispose of the monastic property – drawing them from all the prior superiors – and he decides to pass everything that belongs to the holy *topos* to his successor, Victor (ll. 35–40).⁷⁸

The example of Apa Phoibammon further shows that the original procedure of appointing the head of the monastery was not necessarily rigid and could change with time. Jacob's will – the last surviving one – concludes for us the history of passing the leadership and all the movable and immovable assets of the monastery through unilateral acts of the superiors. The community survived into the eighth century, but the original election procedure (based on the candidate's personal merits and ties with the predecessor) for some reasons became untenable.⁷⁹ Perhaps in this later period it was necessary to possess some sort of specialisation, or higher qualification in the sphere of administrative duties. Both in order to secure the financial fluidity of the community, and as a form of reaction to the changes, a certain financial capacity on the part of the candidate could have been required. Finally, the community itself could have

in any way the legal context of these happenings: *ICG* 23; 145; 253; 508; 511; 515 (for more on the epigraphic evidence, see C. BREYTENBACH & Ch. ZIMMERMANN, *Early Christianity in Lycaonia and Adjacent Areas*, Leiden 2018, pp. 239–302). Both the provisions of the wills and other attempts to transfer the authority over the church and its property could face objection from the church hierarchy and lead to an intervention of the bishop. From the point of view of the Roman legislator, however, such a practice appears entirely acceptable, as long as the testamentary dispositions do not infringe the provisions regarding ecclesiastical property and secularisation.

⁷⁸ See the French translation by GAREL, *Héritage et transmission* (cit. n. 44), p. 257: 'nos pères bienheureux *apa* Abraham, l'évêque, et *apa* Victor, le prêtre et saint supérieur, qui a dressé son testament pour le saint *topos* selon sa force légale, et notre frère très aimé de Dieu *apa* Pierre, le prêtre, eux qui se sont tous éteints selon le commandement de Dieu'.

⁷⁹ Cf. KRAUSE, 'Zur Verfassung koptischer Klöster (cit. n. 20), pp. 228–229.

undergone structural changes and, with time, the monastery's material assets could have become somewhat separate from the *proestos*. In such a case, also the previously-applied legal devices allowing to transfer the management of the community might have undergone some modifications and begun to take the form of a legal agreement, similar in form and content to the ones discussed above. In the case of Apa Phoibammon, we cannot exclude other reasons, however, that were not indicated in the papyri.

2.5. *What are then the realities of the superior's appointment?*

To briefly recapitulate, the documents of legal practice clearly demonstrate that moral virtues were not the only aspect taken into consideration. Material stability was a *sine qua non* condition of the survival of monastic communities and it is only rational to assume that in some cases there was a need for specialist knowledge or external aid. The monks were not managers, and did not have all the right skills to guarantee the survival of the community. In situations where help was needed, they sought it in various ways – through professional support of lay people, through concluded deeds, protection or intercession (not infrequently applying 'soft' methods such as social tension); sometimes they even sought to receive relevant qualification themselves, subsequently assuming key administrative functions. This does not mean, however, that this pragmatic approach and mundane realities overshadowed the religious side of the functioning of communities. Nevertheless, the present analysis of the solutions adopted when choosing administrative heads suggests that earthly needs and conditions played at least as vital a part in the process as religious considerations.

And yet the documents informing us about the appointment of monastic superiors are significantly limited in quantity, and the available texts are often fragmentary. Nonetheless, the cases presented above seem to indicate that legal practice utilised various, though not necessarily new devices which allowed the monastic communities to transfer leadership and manage their material assets. Contrary to what is stated in imperial constitutions, it was

not enough for a community to indicate the person best suited to serve as the head of monastery. The present case study demonstrates that in practice there were legal deeds that could be adapted to impose specific duties on the superior, as well as to regulate his rights towards the community's property, and to define the scope of his personal liability. As we could observe, the papyri also provide examples of testaments, which transfer both the spiritual leadership over the community and the monastery's property, in a way analogous to the superior's private property. The adopted solutions undoubtedly aim at ensuring – as best as they could – the fulfilment of the superior's and the community's will.

When juxtaposing the papyrological material with the legal provisions discussed in the first part of the paper, one more remark comes to mind. Namely, the participation of the bishop is not recorded in almost any of our documents.⁸⁰ This should raise our concerns, especially given the oft-emphasised importance (both by church and imperial normative sources) of episcopal control over the process of founding a new monastery as well as the appointment of an abbot. Wipszycka suggests that the choice of the monastic superior had to be at least consulted with the local bishop, as monastic communities surely did not wish to fall into conflict with the ecclesiastical hierarchy. Such consultation could have been informal and would go unmentioned in the written evidence.⁸¹ This seems to be entirely plausible in the case of the documents made in order to declare the

⁸⁰ With the flagrant, yet very specific, exception of Abraham, bishop of Hermonthis, who appoints his successor in the community of Apa Phoibammon. However, the subsequent superiors that are of lower clerical ranks (if any at all) continue with the same pattern of testamentary appointment without any visible interference of the local bishop.

⁸¹ Similarly, the literary sources say nothing about the bishop engaging in any way with the appointment of the abbot, a fact that was duly noted by WIPSZYCKA, *Moines et communautés* (cit. n. 1), pp. 341–353. However, I fully agree with Wipszycka's view that there are discrepancies between the image painted by imperial constitutions and the actual manner (without referring to any special official functions) in which bishops intervened in dispute resolution procedures, as well as extended their authority over monastic communities (which did not necessarily translate into any form of strict control), in EADEM, *The Alexandrian Church. People and Institutions* [= *The Journal of Juristic Papyrology Supplement* 25], Warsaw 2015, pp. 117–118.

choice before the members of the community. With regard to documents clearly prepared for the eyes of the outer world, however, this practice should at least raise an eyebrow, especially when such texts explicitly and repeatedly confirm the legality and validity of the conducted choice.

Of course, in the case of Egypt any attempt to create an effective system of episcopal supervision over monasteries, especially those located far from the episcopal seat, must have been difficult, if not impossible. Perhaps this is the reason why the papyri remain silent on the subject. With so many communities, effective episcopal control could have been especially vital in case of bigger, richer and more influential monasteries. Then again, these could more easily resist the bishop's authority.⁸² Most likely, the situation varied depending on local circumstances, bishops' and priors' personalities, the attitude of lay persons and their readiness to support any of the sides.

3. HOW DOES A COMMUNITY'S STATUS TRANSLATE INTO ITS STRUCTURE AND CHOICE OF AN ABBOT?

When contemplating the issue of choosing a monastic superior as it is described in the papyrological sources, one of course needs to keep in mind the practice of the private founding of churches and *venerabiles domus* (including monasteries). The papyrological evidence attests to the activity of lay founders and benefactors of monasteries, whose interference in the life of the community went beyond providing the money or the land for the monks to settle. The owners and the founders (as well as later their heirs), but also patrons or protectors of monasteries could be more fundamentally involved in the functioning of the monastic community throughout its existence. This might result from their legal status with respect to the

⁸² This could, for instance, be observed with regard to the federation of monasteries founded by Shenoute in Upper Egypt. More on the nature of diversified relations between the hierarchical church and monastic communities (often dependent on local particularities and the personalities of individual bishops and abbots): WIPSZYCKA, *Monks and the Hierarchical Church* (cit. n. 9), *passim*.

monastery, but was often the consequence of their authority and general socio-economic position, from which the monastic community would also likely benefit. The legal basis for the involvement of the founders or patrons is not always clear. Some individuals of the former category strengthened their position by entering the community and personally running monastic affairs, while others interfered with the organisational structure of the monastery and appointed entities in charge as well as guardians or curators. Monastic patrons and protectors, in turn, usually held only honorary positions and did not direct the monastery's religious life.⁸³

In this context, the wills that transfer leadership over a monastic community and its property to a new superior seem – at least at first sight – to result from the legal status of the monastery being a privately founded institution. On the one hand, these documents had a very particular function,

⁸³ The best-known examples of privately founded monastic communities are: (i) the monastery of the holy and Christ-bearing Apostles, which was named Apa Apollos, after its founders. Approaching his late days, Apollos decided to become a monk himself. Moreover, according to his last will, Apollos appointed his son, Dioskoros, as a *phrontistes* and *kourator* of the monastery (*P. Cairo Masp.* I 67096, ll. 7–9). Apollos's involvement with the community's internal organisation was not limited to guaranteeing the position of an overseer to his son, however. The founder must have also made arrangements – whether in writing or orally – regarding the structure of the community, as following his death, the administrators invoke the rule of not expanding the monastery as per the wishes of the founder (*P. Cairo Masp.* I 67069, ll. 32–34); (ii) the monastery of Apa Agenios, which according to our documentation was administered by Flavius Ammonios, the *comes* of the sacred consistory, and was plausibly privately founded by the latter. An example of a lay patron and beneficiary of a monastic community is likely count Kaisarios, who was depicted as *ktistes* in the inscription in the White Monastery of Shenoute (see G. LEFEBVRE, 'Deir-el-Abaid', [in:] *Dictionnaire d'archéologie chrétienne et de liturgie* IV/1, Paris 1920, pp. 459–502, at 471–472). J. P. THOMAS, *Private Religious Foundations in the Byzantine Empire*, Washington 1987, pp. 63–64, suggested that Kaisarios held an honorary position of the head of the monastery due to the fact that in the inscription he is referred to as the 'founder' of the community. However, in the light of what we know about Shenoute's community, this is impossible to accept. Kaisarios's role in the monastery was unlikely to extend beyond patronage and financial support. Regarding aristocratic support of monasteries, we also have the activities of Flavii Apiones from Oxyrhynchos. On the aristocratic patronage of monastic institutions, see, e.g., A. PAPAConstantinou, 'Donation and negotiation: formal gifts to religious institutions in late antiquity', [in:] J.-M. Speiser & É. Yota (eds.), *Donations et donateurs dans la société et l'art byzantins*, Paris 2012, pp. 76–93.

that is determining a successor in charge of the community and transferring to him all the material assets belonging to the monastery.⁸⁴ On the other hand, the wills preserve also a peculiarly personal notion of ownership over a monastery which at the same time may display characteristics of an ‘independent entity’ (even if privately founded and administered). We come across examples of private monasteries which seem to have indeed functioned as independent bodies, their assets separate from those of their administrative heads.⁸⁵ Even in the case of the dossier of Apa Phoibammon, the legal deeds regarding the donations made to the *topos* – which are admittedly dated to the eighth century, i.e. later than the discussed testaments – mention the *dikaion* of the monastery, the term usually indicating an abstract emanation of a community encumbered with proprietary rights.⁸⁶

Consequently, at least some sort of conceptual ‘independence’ of the monastery from its head can be deduced from the contractual nature of the new superior’s appointment and the establishment of legal frames for his office, as attested by the papyri. It should be underscored, however, that the internal diversity of the monastic movement in the eastern provinces of the Empire must have influenced the number of adopted solutions regarding the community’s structure and the transfer of headship which did not necessarily depend only on the legal status of the community.

⁸⁴ Of course, the superior’s prerogative to appoint his successor does not mean he would not consult the monks on the choice. See, e.g., provisions of Jacob’s testament that seem to hint at reaching such consensus in the community in *P. Mon. Phoib. Test.* 4, l. 51: ἐμπρεπει ἴπποϋτε μὴ πρῶμε. See Garel, *Héritage et transmission* (cit. n. 44), pp. 254, 258.

⁸⁵ Such as, e.g., the already mentioned monastery of Apa Apollon in Aphrodito.

⁸⁶ See, e.g., *P. KRU* 96, 78, and 104. See also A. PAPAConstantinou, ‘Θεία οἰκονομία. Les actes thébains de donation d’enfants ou la gestion monastique de la pénurie’, [in:] *Mélanges Gilbert Dagron* [= *Travaux et mémoires* 14], Paris 2002, pp. 511–526; EADEM, ‘Notes sur les actes de donation d’enfant au monastère thébain de Saint-Phoibammon’, *The Journal of Juristic Papyrology* 32 (2002), pp. 83–105; T. S. Richter, ‘What’s in a story? Cultural narratology and Coptic child donation documents’, *The Journal of Juristic Papyrology* 35 (2005), pp. 237–264; On these peculiar donations, recently in a persuasive manner M. Nowak, ‘A slave or a generous benefactor? Legal analysis of 8th century donations of boys from the Monastery of St. Phoibammon in the Western Thebes’, *Zeitschrift der Savigny Stiftung für Rechtsgeschichte. Romanistische Abteilung* (forthcoming). On the term *dikaion* and the legal representation of monastic communities, see Wojtczak, ‘Legal representation’ (cit. n. 45), pp. 347–399.

What is especially perplexing, however, is that imperial legislation hardly reflects on the matter. With regard to the appointment of the abbot, hegumen or archimandrite, the lawgiver does not differentiate between imperial, ecclesiastical and private founding of monasteries, providing only standardised solutions outlined at the beginning of this paper.⁸⁷

Still, Justinian must have perceived the role of the founders and donors of holy houses as ‘external’, focussing on the legal definition of their duties rather than on the confirmation of their rights.⁸⁸ One should note, however – particularly in the context of our analysis concerning the election of monastic superiors – that for the owners and private benefactors, as well as their heirs, imperial legislation provides the possibility to select administrative officials for the funded *venerabiles domus*.⁸⁹ In all fairness, in *Nov.* 131.10 we are hardly dealing with an acknowledgement of some positive founders’ rights, but rather with an obligation to execute the will

⁸⁷ Instead, the emperor seems to focus on the issue of alienation of the property belonging to churches and *venerabiles domus* as well as the separation of the material assets assigned to the community from that of its head. The arguments in favour of the existence of an independent ‘economic capacity’ in the case of Church ‘bodies’ (including monasteries) are provided by a number of imperial laws gathered in *Cj* 1.2 and 1.3 and the later *Novellae*. I am currently preparing an article discussing the legal framework and the economic reality of the monasteries in late antique Egypt.

⁸⁸ See THOMAS, *Private Religious Foundations* (cit. n. 83), pp. 53–55. The emperor appears to be equally concerned with heirs who procrastinate with the execution of the testament’s provisions which require them to found churches or religious houses. *Nov.* 131.10 (545) sets the time limit within which the heir should fulfil his/her obligation and appoints a local bishop to oversee that. Also the appointment of the administrative head of a newly established holy house by the founder is further submitted to the supervision of the bishop, who even has the right to relieve these managers of their duties in the case of maladministration. Cf. also the earlier *Cj* 1.3.45.1 (530).

⁸⁹ For the right of the founder to participate in the administration of charitable institutions, see e.g. *Cj* 1.2.15.3; 1.3.45.3; *Nov.* 131.10.2, whereas for the right to make proposals for the staffing of clerical offices, see *Nov.* 123.18. On that STEINWENTER, ‘Die Rechtsstellung’ (cit. n. 25), p. 37. Similar provisions are provided in the case of church foundations. However, in the case of clerical positions in the founded churches, a control mechanism is imposed by the bishop, which enables him to change the candidate nominated by the founder. At the same time, the papyri make no mention of seeking the bishop’s opinion when it comes to founding monasteries as well as churches by private founders (cf., e.g., *Nov.* 67.2 and 131.7).

imposed on the heirs. Neither does the constitution state that the competence of appointing administrative heads could be passed further, nor does it clearly settle the question of the ownership rights towards a foundation. These provisions only indicate that private benefactors could – even if with limitations – appoint heads of the *venerabiles domus*, among which, however, the monasteries are not explicitly mentioned.⁹⁰ Despite the fact that monasteries were counted among the *venerabiles domus* and *piae causae* and that in many places they are treated collectively by the lawgiver, a different procedure is outlined for choosing monastic priors, as outlined in the previously discussed constitutions. In that sense, the solutions proposed by the emperor appear blatantly out of touch with the actual practice.

The conflict between the practice and imperial laws on monks has already been pointed out by other scholars.⁹¹ With regard to the procedure of choosing superiors, Steinwenter went so far as to suggest that what the examples found in the papyri in fact represent is a hereditary and transferable administrative right of the founder towards not only pious foundations, but also the monasteries.⁹² This hypothesis is a direct consequence of Steinwenter's three possible 'models' of the monasteries' legal status encountered in the Egyptian monastic milieu: (i) a monastic community functioning as a separate legal entity; (ii) a private monastery

⁹⁰ We do not find in the papyri any attestations of superiors or managers being appointed by further heirs of the founder. The monasteries of Apa Phoibammon and Epiphanius are exceptions, where the right to nominate another superior by means of a testament is the consequence of the community's internal organisation, its character as well as the position of the *proestos* (who is encumbered with proprietary rights towards the monastery). There is nothing to indicate that matters were similar in the case of Apa Apollos. We only know that in this monastery Dioskoros was appointed as a curator according to his father's last wish. But whether this had anything to do with Apollos' legally recognised competence as the community's founder, or was only the result of the founder's authority, is difficult to determine. Cf. THOMAS, *Private Religious Foundations* (cit. n. 83), pp. 60–63, 71–75, who suggested that the competence to appoint administrative heads could belong with the founder, and would only later be taken over by the community itself or its priors.

⁹¹ See A. HASSE-UNGEHEUER, *Das Monchtum in der Religionspolitik Kaiser Justinians I.: Die Engel des Himmels und der Stellvertreter Gottes auf Erden*, Berlin – Boston 2016, pp. 110–142, esp. 112–113, 128–129 (on Justinian's legislation), and 157–192 (on the monastic practice).

⁹² STEINWENTER, 'Die Rechtsstellung' (cit. n. 25), p. 37.

in which, however, the active presence of the founder's rights does not 'abolish' the 'legal personality' of the community; (iii) a private monastery functioning only through its founder/owner, that is deprived of a 'legal personality'.⁹³ Undoubtedly, Steinwenter saw in the papyrological material the possibility for the founder to influence the internal organisational structures of the community, although at the same time the community could be depicted in other documents as an independent entity. This explanation is far from satisfactory, however, and is tainted with modern legal concepts which are impossible to prove for late antique legal thought – the latter being actually something that Steinwenter himself duly notes.

In my opinion, there appears to be a better solution, although it escapes rigid theoretical categories. There are several overlapping phenomena in question which, through interaction and friction, lead to the use of specific legal devices while appointing new monastic superiors. Namely, it seems that we are dealing with the co-existence of a gradually emerging separate legal capacity of the monasteries on the one hand, and the active presence of the founder or private benefactor, which could still be visible in his influence on the internal structure of the monastery and the management of its property, on the other – especially, if such a private entity retained the property rights towards a monastery or its material assets that were provided for the community. One should note the possibility, however, that the founder's or donator's interference with the monastery's activity could be based on his mere authority. From this point of view, the provisions of the *corpus iuris* seem to have been aimed at regulating the already existing practice in a much more restrictive manner.

In this sense, the imperial laws should rather be viewed as corresponding to a certain vision of monastic existence. It still remains an open question to what extent the monastic communities in Egypt knew these provisions and to what extent they could (or would) observe them.⁹⁴ To the best of my knowledge, there is no evidence that either the Chalcedonian canons, or Justinian's legislation were in any way adherent to the pre-established reali-

⁹³ See STEINWENTER, 'Die Rechtsstellung' (cit. n. 25), pp. 35–42.

⁹⁴ On that, see (with reservation) WIPSZYCKA, 'Sur les testaments' (cit. n. 71).

ties of monastic life in Egypt.⁹⁵ One should also not forget that the range of existing communities was quite broad, with some (characterised by loose structure and hierarchy) being impossible to grasp by imperial legislation.⁹⁶ To paraphrase the words of Justinian from the otherwise unrelated preamble to *Nov. III*: *Ὅπερ τὰ φάρμακα ταῖς νόσοις, τοῦτο παρέχουσι τὰ νόμιμα τοῖς πράγμασιν*, ‘Legal rulings provide for cases what medicine provides for illnesses’.⁹⁷ However, in the case of Egypt’s legal practice, this medicine seems at times to have been either ineffective, or unavailable.

4. WHAT IS THE USE OF IT ALL?

The evidence regarding the appointment of new monastic superiors coming from late antique Egypt is scant but suggestive. We note the diversity in the applied solutions, although we cannot always determine how (if at all) they interfere with different types of the communities, their origin and method of foundation; nor can we tell to what extent these solutions were influenced by the human factor – the founder, owner or the person in charge of the community. We should bear in mind that even if in a given moment in a

⁹⁵ These matters cannot be discussed without taking into account the dogmatic and personal conflicts within the church itself, which naturally involved monastic communities. In this context, it is hardly surprising that the provisions readily introduced by the secular power in Constantinople could later be simply ignored by those who opposed the provisions of the Council of Chalcedon and the emperor.

⁹⁶ In the eastern provinces, the rigid distinction into two clear-cut models of monastic organisation (i.e. cenobitic and anchoritic) promoted by modern scholars never corresponded to the historical reality. For one thing, there was a considerable number of those who decided to lead an ascetic life away from monasteries and opted for more loosely organised communities (i.e. *laurae*). These were usually governed by a charismatic leader or some sort of a collective body whose authority, sphere of competence and duties, as well as legal standing could significantly vary. Secondly, modern archeological research has clearly shown that the two – allegedly distant – forms of ascetic life would often co-exist within one monastic dwelling. Thus, the rich variety of monastic communities in Egypt calls for reassessment of earlier views as well as the factual scope of imperial constitutions and the execution thereof in practice.

⁹⁷ Trans. MILLER & SARRIS, *The Novels of Justinian* (cit. n. 11), vol. 2, p. 717.

given monastery or *laura* the administrative head was chosen by, say, the entire community of the monks, this does not necessarily mean that with time, different investiture procedures could not be adopted.⁹⁸ One needs to take into account not only the pragmatic aspect, namely the community's profile and its problems with property management. What should also be remembered are the traditions of a given congregation as well as the impact of beliefs, values, and individual preferences of the founders and superiors of the monasteries. All these factors influence the internal structure of monastic communities, as well as the appointment of their priors.

I disagree with Steinwenter, who already for that period saw the foundation act as a defining moment for the community's legal status, determined on this basis whether an Egyptian monastery could be a legal 'object' or 'subject', and from this fact drew conclusions as to how the community operated and chose its superior.⁹⁹ It seems more likely to me that we are dealing with a stage on which the legal actors largely improvised, rather than played their parts, clearly defined for them by the legislator. Just as the representation of the community was a phenomenon only partly corresponding to imperial legislation (which grasps only part of the reality), and just as the term *dikaion* in the documents cannot be used to argue about the non-representation of the entire community, in the same way solutions adopted by legal practice concerning the management of monasteries and their property cannot be forced into any rigid legally pre-defined frames. The factual and legal distinction between a monastery and its founders, superiors and members was only *in statu nascendi*, both when it comes to the legal solutions proposed by the secular power, as well as the provincial practice, as seen in the papyri. The documents seem to apply the already known legal devices to reach goals parallel to those for which these devices were originally designed. With regard to appointing the head of monastic community, the fact that the notaries used the familiar patterns of testaments and legal agreements seems like a natural step (especially in the case of private foundations).

⁹⁸ As, e.g., in the already-mentioned case of the monastery of Apa Phoibammon in Western Thebes. See also WIPSYCKA, *Moines et communautés* (cit. n. 1), p. 341.

⁹⁹ Cf. STEINWENTER, 'Die Rechtsstellung' (cit. n. 25), pp. 37-41.

Given that there is no dogmatic concept of a ‘legal person’ or ‘organ’ to act on a monastery’s behalf, the practice adopts solutions which are already available (even if it entails their unwanted or risky consequences). Meanwhile imperial legislation, while acknowledging the separateness and independence of various church bodies, draws mostly from the familiar solutions used earlier for collective entities disposing of property rights, even though this does always correspond to the complexity of the phenomenon dealt with in practice. In this way, the legislator appears to marginalise the situation of private foundations which does not seem to fit the – not yet fully fledged, but already sufficiently coherent – solutions adopted for the *piae causae* and *venerabiles domus*.¹⁰⁰

In this light one should also view entirely differently the so-called ‘professionalisation’ of the administrative heads in monastic communities of late antique Egypt. Neither imperial laws nor legal deeds prove that we could be dealing with the figure of a ‘professional’ superior. Instead, the testamentary or contractual nature of the appointment should be seen as an efficient solution aimed at the empowerment of a new prior.

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¹⁰⁰ On the later canons regarding the foundation and the consecration of monasteries, as well as the provisions aiming against the practice that recognises private rights of rule over churches and monasteries and the plausible deviations from these rules still present in the 10th century practice, see STEINWENTER, ‘Die Rechtsstellung’ (cit. n. 25), pp. 42–50.

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Joshua ALLBRIGHT

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Abstract: This article discusses the rhetorical usage of the verb *αἰκίζεσθαι* ('abuse', 'thrash', 'brutalize') and its derivatives in petitions from Roman Egypt. Curiously, this description of violence only appears in petitions from the Roman period. Using theories of conflict resolution and social control, it is argued that the writers of these petitions, the majority of whom lived in villages in the Arsinoite nome, used the concept of *aikia* in an attempt to overcome the inefficiency of the Roman Egyptian legal system by augmenting the severity of the crimes they suffered. The usage of the verb *αἰκίζεσθαι* (often paired with the noun *πληγαῖς*) emphasized the brutality and socially transgressive nature of the attack and presented it as something that needed to be addressed by the authorities immediately, as it affected the entire social order. Over time the phrase *πληγαῖς αἰκίζεσθαι* became formulaic in its expression, suggesting that it was not just contained to a handful of petitions. Rather it was a linguistic phenomenon in itself that reveals the effects of the social and legal environment of Roman Egypt on the language of petitions.

Keywords: Roman Egypt, violence, *aikia*, petitions, social control, rhetoric, Greek law, Roman law.

Grażyna BĄKOWSKA & Adam ŁAJTAR

ΜΕΓΑ ΤΟ ΟΝΟΜΑ ΤΟΥ ΣΑΡΑΠΙΣ:

An inscribed bronze ring from Marina el-Alamein

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Abstract: The article offers the publication of a bronze ring discovered during the archaeological work on the site of Marina el-Alamein, located on the

shore of the Mediterranean Sea, c. 100 kilometres west of Alexandria. The ring, dated to the second century CE on contextual and formal grounds, carries the acclamation 'Great is the name of Sarapis' in Greek inscribed on its bezel. The acclamation stems from the religious atmosphere of the times, which, in the quest for the divine, ascribed a sort of superiority to some gods of the polytheistic system. The ring contributes to the picture of religious beliefs and practices of the ancient inhabitants of an anonymous settlement hidden under the site of Marina el-Alamein.

Keywords: Marina el-Alamein, Roman jewelry, Sarapis, religious acclamations, 'megatheism', Greek inscriptions.

Lucia C. COLELLA

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conservato in P. Berol. inv. 7124 = ChLA X 412

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Abstract: This paper proposes a re-edition of the opening protocol of M. Sempronius Priscus' will from AD 131 (P. Berol. inv. 7124 = ChLA X 412 = CPL 220). The testament is written in Latin, with the testator's signature in Greek, but in the Latin text itself some interference phenomena from Greek are noteworthy. New readings shed light on the objects of legacies, in particular concerning the bequeathing of land parcels. In the fideicommissary section the phrase *volo et iubeo*, rare in this period, is to be noted, together with a disposition concerning the *pupillae* Herais and Tamystha and another one ordering the testators' daughters not to litigate in court against each other. The place in which the will was opened was most probably Arsinoe, since this toponym seems not to have been crossed out, as was previously believed. All the names of the witnesses are now known.

Keywords: Roman will, M. Sempronius Priscus, P. Berol. inv. 7124, ChLA X 412, CPL 220.

Federica NICOLARDI

Vocabulary and practices of manumission

in a fragment of the Life of Philonides (P. Herc. 1044)

67

Abstract: The biographical work on Philonides of Laodikeia on the Sea in Syria (P. Herc. 1044+1715+1746) is not merely a source of information about the life of the philosopher, it also bears witness to both well-known and lesser-known aspects of Hellenistic history and civilization, not to mention the fact that it is an extremely rare and precious example of Hellenistic biography. This paper presents a new edition of a passage of the text in which references to vocabulary and procedures of Greek manumission can be detected, which suggest a parallel with papyrological and epigraphic documentary sources. This

parallelism allows, in turn, to understand better the text of the papyrus and to supplement a technical term referring to relatives' consent to the manumission of slaves.

Keywords: Philonides of Laodikeia on the Sea, Herculaneum papyri, Greek manumission, ἀπελευθερώω, εὐδοκεῖν.

Joanna WEGNER

Monks and monasteries in Egypt between household and estate.

A case study from Bawit 83

Abstract: The article attempts to explore the applicability of the household model to the monastery of Bawit in Middle Egypt as seen through the papyrological documentation. By focusing on features and functions of household underscored in definitions used by sociology and economy, it defines the monastery as a unit where material and symbolic value was produced and transmitted, and brings to light connections between people, materialities, and labour.

Keywords: Bawit, Egyptian monasticism, monastic economy, household.

Ewa WIPSZYCKA

What can the lives of saints tell us about history?

The case of the Coptic Life of Aaron 105

Abstract: The excellent work done by Jitse Dijkstra and Jacques van der Vliet, who edited an important hagiographic text with a huge introduction and a huge commentary, prompted the author of the present paper to walk in their footsteps and to propose some corrections or supplements concerning the date of the composition of the text, the procedure of the election and ordination of bishops, the beginnings of monasticism in the region of the First Cataract. The *Life of Aaron* is a reliable source for the history of the Church of the sixth century (or rather the last part of it), not of the fourth century, as the anonymous author would suggest. On the other hand, its picture of monasticism is made up of stereotypes derived from literary works concerning monks. From it we cannot learn anything about monks living near Syene.

Keywords: Athanasius, bishops of Philae, ceremonies of episcopal ordinations, end of paganism, Nubians.

Marzena WOJTCZAK

How to become a monastic superior? Legal and mundane sine qua nonis 119

Abstract: The literary portrayal of the charismatic founders of monastic communities, and of their successors, abounds in descriptions of ascetic

practices and devotion. However, the *begoumenoi* also needed to be individuals of the right standing and competence, as it was only such people who could properly represent the communities in relations with both lay and ecclesiastical authorities, secure the obedience of all the brethren, as well as efficiently manage the community and its assets. The nature and the exact procedure of superior's appointment became increasingly relevant and began to interest both the church and the secular authorities once the monastic movement reached such a magnitude that it could no longer be left without proper institutional surveillance. In parallel, there was a growing awareness among monks themselves of the need to standardise the existing practices and experience.

In this article I focus on the legal conditions delimiting the transfer of headship over monastic communities and their reflection in mundane reality. My aim is to see how documents of legal practice relate to the imperial legislation dealing with the appointment of the people in charge of the monasteries. The analysis of the superior selection process will allow for commenting on both the legal framework within which the monastic communities functioned, and the much broader issue of imperial policy towards the emerging holy houses. It should also enable some conclusions on the legal status of monastic communities and how it may have influenced the realities of appointing their administrative and spiritual heads.

Keywords: monks, monasteries, Late Antiquity, papyri, legal practice, *proestos*, abbot, *begoumenos*, monastic legal capacity, Justinian, imperial legislation.

Uri YIFTACH

Olim tradita fuerunt?

On the obsolescence of the sollemnia verba in Inst. 3.15pr.

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Abstract: According to the classical dogma, the act of *stipulatio* was performed through the exchange of *sollemnia verba*, which were, according to my working hypothesis, verbs introducing the duty to perform a future act, a concept lucidly displayed by Pomponian (*Dig.* 45.1.5.1), hence the 'Pomponian tenet'. Documents preserved on papyrus, composed by 'new-Romans' after the *Constitutio Antoniniana*, exhibit a completely different concept: a stipulation-clause confirming a past, contractually significant activity. It is asked (but not conclusively answered) to what extent this alternative formulation has paved the way to the abandonment of the 'Pomponian tenet' by the emperor Leo in 472 CE (*CJ* 8.37.10). As we draw from Justinian's interpretation of *CJ* 8.37.10 in *Inst.* 3.15.1, the *sollemnia verba*, the use of which became outdated after Leo, was not the language of the stipulation-clause as incorporated in the written documentation of the contract, but that of the act of *stipulatio*, which, as before, was meant in the keep verbal.

Keywords: Greco-Roman Egypt, *homologia*, Justinian, Leo, stipulation.