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**OLIM TRADITA FUERUNT?
ON THE OBSOLETENESS
OF THE *SOLLEMNIA VERBA* IN *INST. 3.15PR.****

1. THE PROBLEM

IN 220 CE, FOLLOWING THE GRANT of Roman citizenship to the peregrine population of the empire, new Romans gave manifestation to their civic status in their legal documents.¹ They recorded in the contract

* A shorter version of the present article was delivered at the 48th annual meeting of the Israel Society for the Promotion of Classical Studies, held at Tel Aviv University on 29–30 May 2019. I thank the organizers and audience for their insights and notes. I thank José Luis Alonso, Claudia Kreuzsaler, and Jakub Urbanik for their stimulating suggestions and notes.

¹ See primarily L. MITTEIS, *Reichsrecht und Volksrecht in den östlichen Provinzen des Römischen Kaiserreichs. Mit Beiträgen zur Kenntniss des griechischen Rechts und der spätrömischen Rechtsentwicklung*, Leipzig 1891, pp. 485–498; V. ARANGIO-RUIZ, ‘L’application du droit romain en Égypte après la constitution Antoninienne’, *Bulletin de l’Institut d’Égypte* 29 (1946–1947), pp. 83–130, at 123–127 = L. BOVE (ed.), *Studi epigraphici e papirologici*, Naples 1974, pp. 258–294, at 287–294; R. TAUBENSCHLAG, *The Law of Greco-Roman Egypt in the Light of the Papyri, 332 B.C. – 640 A.D.*, Warsaw 1955, pp. 396–397; F. DE VISSCHER, ‘La pseudo stipulation ἐπερωτηθεὶς ὡμολόγησα’, [in:] *Symbolae R. Taubenschlag* II/2 [= *Eos* 48], Warsaw 1956, pp. 161–169; IDEM, ‘D’une clause de style gréco-égyptienne à la stipulation écrite’, *Bulletino dell’Istituto di Diritto Romano* 63 (1960), pp. 19–37; F. PRINGSHEIM, ‘Stipulations-Klausel’, [in:] IDEM, *Gesammelte Abhandlungen* II, Heidelberg 1961, pp. 194–256; D. SIMON, *Studien zur Praxis der Stipulationsklausel* [= *Münchener Beiträge zur Papyrusforschung und antiken*

the act of *stipulatio*, a distinctly Roman form of contracting concluded verbally: a question (*interrogatio*) of the prospective obligee, detailing the obligor's future duties, is followed by a confirmation (*responsio*) on the part of the latter that he is going to fulfill those duties. The *stipulatio* was highly flexible and was used for the creation of any unilateral lawful obligation. In particular, the *stipulatio* became serviceable in creating contractual bonds for claims that were not enforceable by means of any other, particular *actio*.²

The conclusion of a contract through a formal act of question and answer, originally reserved to Roman citizens and undertaken in Latin, had already been used in the late republic by non-Romans.³ By the first century CE, the use of other languages besides Latin has been well-established. The only question still debated in that period was if a bilingual *stipulatio*, with one party expressing his text in Greek and the other in Latin, should be acknowledged as valid.⁴ Under these circumstances, the

Rechtsgeschichte 48], Munich 1964; H. J. WOLFF, *Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemaeer und des Prinzipats*, I: *Bedingungen und Triebkräfte der Rechtsentwicklung*, ed. H.-A. RUPPRECHT [= *Handbuch der Altertumswissenschaft* 10/5.1], Munich 2003, pp. 131–133; J. L. ALONSO, 'The *Constitutio Antoniniana* and private legal practice in the Eastern Empire', [in:] K. CZAJKOWSKI, B. ECKHARDT, & M. STROTHMANN (eds.), *Law in the Roman Provinces*, Oxford 2020, pp. 44–64, at 58–59, and IDEM, 'Papyrologische Quellen', [in:] U. BABUSIAUX *et alii* (eds.), *Handbuch des römischen Privatrechts* (forthcoming), §§ 104–105. The earliest document composed for new Romans with the stipulation clause is *P. Mich. XVIII 792*, ll. 27–29 (221 CE, Oxyrhynchos), which exhibits the 'confirmatory' stipulation-clause of the type discussed in this paper.

² M. KASER, *Das römische Privatrecht*, I: *Das altrömische, das vorklassische und klassische Recht* [= *Handbuch der Altertumswissenschaft* 10/3.1], Munich 1971, pp. 168–170, 538–543, and IDEM, *Das römische Privatrecht*, II: *Die nachklassischen Entwicklungen* [= *Handbuch der Altertumswissenschaft* 10/3.2], Munich 1975, pp. 373–382, and further literature discussed in the following footnotes.

³ F. WIEACKER, *Römische Rechtsgeschichte*, I: *Quellenkunde, Rechtsbildung, Jurisprudenz und Rechtsliteratur*, 1. *Einleitung. Quellenkunde, Frühzeit und Republik* [= *Handbuch der Altertumswissenschaft* 10/3.1.1], Munich 1988, p. 441.

⁴ *Dig. 45.1.1.6 (Ulp. ad Sab.)*: *Eadem an alia lingua respondeatur, nihil interest. proinde si quis latine interrogaverit, respondeatur ei graece, dummodo congruenter respondeatur; obligatio constituta est: idem per contrarium*. Among the plethora of studies on this text see, e.g., F. BRANDILEONE, *La stipulatio nell'età imperiale romana e durante il medio evo*, Rome 1928, pp. 21–22; A. WACKE, 'Gallisch,

path was paved long before 212 CE for the recording of the *stipulatio* in contracts composed in Greek following well-established Greek formulaic traditions.⁵ In Egypt, the stipulation clause was already inserted into some documents after 170 CE.⁶ After the *Constitutio Antoniniana*, new Romans inserted the formula *ἐπερωτηθεὶς ὠμολόγησα*, ‘having been asked I declared/took pledge’, to virtually all types of contracts.⁷ The motivation was plain: if the case were to be brought before a Roman judge, the actionability would be acknowledged even if the contract per se was not.⁸

The formula *ἐπερωτηθεὶς ὠμολόγησα* gives testimony of the performance of the *stipulatio*, but not its contents. In the vast majority of cases,

Punisch, Syrisch oder Griechisch statt Latein? Zur schrittweisen Gleichberechtigung der Geschäftssprachen im römischen Reich’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 110 (1993), pp. 14–59; IDEM, ‘Gallico aut germanico sermone stipulari? Zur Verwendbarkeit von Fremdsprachen nach römischem ius gentium’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 130 (2013), pp. 234–271, at 236, 256–263; F. PASTORI, *Il negozio verbale in diritto romano*, Bologna 1994, pp. 265–268; A. PLISECKA, ‘Die Zulassung fremder Sprachen bei der Stipulation im klassischen römischen Recht’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 128 (2011), pp. 370–379; J. PLATSCHKE, *Das Edikt de Pecunia Constituta: die römische Erfüllungszusage und ihre Einbettung in den hellenistischen Kreditverkehr*, Munich 2013, pp. 74–75 n. 235; F. LOMBARDO, *Studi di ‘stipulatio’ e azioni stipulatorie nel diritto giustiniano*, Milan 2020, pp. 21–22.

⁵ In the earliest Greek document on papyrus that features the stipulation clause, *P. Yadin* 17 from 128 CE Ma’oza, we get a glimpse in lines 38–39 (*scriptura exterior*) of a somewhat idiosyncratic but nonetheless identifiable version of the same clause: *πίσται ἐπηρωτηθή και ἀνωμολογήθη [ταῦ]τα οὕτω[s] καλῶ[s] γ]έινεσθαι*, ‘In good faith the formal question was asked and it was agreed in reply that this is thus rightly done’ (trans. *P. Yadin*, p. 73). Cf. also, *P. Yadin* 18, ll. 27–28, 66–67 (128 CE, Ma’oza).

⁶ *P. Leid. Inst.* 50, ll. 12–13 (211/2 CE, Oxyrhynchites); *P. Mich.* XV 707, ll. 21–22 (185 CE, Oxyrhynchites?); *P. Oxy.* VI 905, ll. 19–20 (170 CE, Psobthis); *P. Princ.* III 177, l. 3 (202 CE, unknown provenance?) and PRINGSHEIM, ‘Stipulations-Klausel’ (cit. n. 1), pp. 233–235.

⁷ PRINGSHEIM, ‘Stipulations-Klausel’ (cit. n. 1), p. 245; SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), p. 44. The same tenet is perhaps also in *Dig.* 45.1.134.3 (Paul. 15 resp.): *Idem respondit, quotiens pluribus specialiter pactis stipulatio una omnibus subicitur, quamvis una interrogatio et responsum unum subiciatur, tamen proinde haberi, ac si singulae species in stipulationem ductae fuissent*. See, e.g., BRANDILEONE, *La ‘stipulatio’* (cit. n. 4), pp. 15, 23–24.

⁸ PRINGSHEIM, ‘Stipulations-Klausel’ (cit. n. 1), p. 246; SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), pp. 22–25.

we do not know what exactly was asked by the obligee and answered by the obligor.⁹ The contents of the *stipulatio* are discussed by the jurists. Sextus Pomponius, in the twenty-sixth book of his commentary on Masurius Sabinus' treatise on the civil law (*Dig.* 45.1.5.1), proposes the following definition: *stipulatio est verborum conceptio, quibus is qui interrogatur daturum facturumve se quod interrogatus est responderit*,¹⁰ 'A stipulation is a certain form of words by which the party who is questioned answers that he will give or do whatever is the subject of the interrogation.'¹¹ In other words, the obligor is asked if he commits himself to perform a certain act in the future. This definition is in accord with the list of verbs which, according to the *institutiones* of Gaius (3.92), are commonly used in the *stipulatio* in his time. Some verbs in Gaius' list are conjugated in the future tense (*dabis? dabo, facies? faciam*), while others, in the present tense, take a dynamic infinitive, recording a future activity as well (*dari spondes? spondeo, promittis? promitto, fide promittis? fide promitto, fideiubes? fideiubeo*).¹² But what if the parties preferred to use other terminology, raise other questions in their discourse? On the level of imperial law, the use of any terms

⁹ Among the corpus of documents surveyed by me (contract of sale, lease, labour, loan, marriage and wills), the succinct form is recorded in 764 texts. It is routinely applied to contracts of leases and loans for the sale of genus chattels. It is already employed before 212, and is still in use after the Arab occupation. See, e.g., Scholion 24 to *Bas.* 11.1.7 (discussed by DE VISSCHER, 'D'une clause de style' (cit. n. 1), pp. 29–32 with text in n. 23, and SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), pp. 48–49, 94–95. The same point is stressed also by students of the Roman *stipulatio*. See, e.g., BRANDILEONE, *La 'stipulatio'* (cit. n. 4), p. 38.

¹⁰ The same definition also in PS 2.3: *Stipulatio est verborum conceptio, ad quam quis congrue interrogatus respondet: velut spondes? Spondeo: dabis? Dabo: promittis? Promitto: fidei tuae erit? Fidei meae erit*. See, e.g., S. RICCOBONO, 'Stipulatio ed instrumentum nel diritto giustiniano', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 35 (1914), pp. 214–303, at 259–260.

¹¹ Trans. S. P. SCOTT, *The Civil Law*, New York 1932, vol. V, p. 95

¹² U. MANTHE, *Gai Institutiones III. 88–181. Die Kontraktobligationen: Text und Kommentar*, Berlin 1999, pp. 103–114; B. NICHOLAS, 'The form of the stipulation in Roman law', *Law Quarterly Review* 69 (1953), pp. 63–79, at 64, who suggests that Gaius list is exhaustive: only the verbs recorded in his list could be used in the act of *stipulatio*. But convincingly pace A. WINKLER, 'Gaius III 92 anlässlich der These von B. Nicholas: nur die hier genannten Stipulationsformen seien bis zum Jahre 472 zugelassen gewesen', *Revue internationale des droits de l'antiquité* 5 (1958), pp. 603–636, at 635–636.

besides the *sollemnia verba* was not validated before 472 CE, in a constitution of the emperor Leo (Cf 8.37.10) that declared that *omnes stipulationes, etiamsi non sollemnibus vel directis, sed quibuscumque verbis pro consensu contrahentium compositae sint, legibus cognitae suam habeant firmitatem*, ‘All stipulations, even if they are not expressed in formal or direct words, but in any words whatsoever, with the consent of the contracting parties, and they are in conformity with the laws, shall be valid.’¹³

According to the working hypothesis proposed here, the *sollemnia vel directa verba* in Leo’s text were none other than the terms sampled in Gaius’ list, the same terms through which, according to Pomponius, the obligor declared that he would perform in the future the stated act. After 472 CE, the use of these words was no longer necessary, as long as the parties gave expression to their joint intention to form the same contract.¹⁴

In his *institutiones*, promulgated in 533 CE, the emperor Justinian dedicates five passages to the *stipulatio*.¹⁵ Much of his text is in complete accord with the classical tradition. So is the definition of the *stipulatio*, made at the beginning of his discussion of that institution (*verbis obligatio contrahitur ex interrogatione et responsione, cum quid dari fieri ve nobis stipulamur*, ‘A verbal obligation is contracted by question and answer, when we

¹³ SCOTT, *The Civil Law* (cit. n. 11), vol. VI, p. 292.

¹⁴ The *status quaestionis* anno 1997 in presented by A. S. SCARCELLA, *La legislazione di Leone I*, Milan 1997, pp. 213–218, and, most recently, LOMBARDO, *Studi di ‘stipulatio’* (cit. n. 4), pp. 26–33. The debate revolves around the following questions: (1) did Leo intend the *stipulatio* to be created verbally, or could it be created in writing, provided that the document gave expression to the parties’ consent? (so, e.g., SCARCELLA, [*loc. cit.*]); (2) if the contract was still created verbally, which of the old elements were retained, and which now became disposable? LOMBARDO (*loc. cit.*), suggests that the Leonine *stipulatio* remained verbal, and retained the structure of a question by the obligee, followed by the obligor’s response. This definition would be compatible also in the case of the ‘Egyptian’ *stipulatio*. G. G. ARCHI, *Indirizzi e problemi del sistema contrattuale nella legislazione de Costantino a Giustiniano*, Milan 1946, p. 709, presupposes a performance *verbis*, but stresses that stipulations are only valid if based on an established *causa*, meaning an established type of contract.

¹⁵ See especially, G. MACCORMACK, ‘The oral and written stipulation in the *Institutes*’, [in:] P. STEIN *et alii*, *Studies in Justinian’s Institutes in Memory of J. A. C. Thomas*, London 1983, pp. 96–108, at 97–100; LOMBARDO, *Studi di ‘stipulatio’* (cit. n. 4), pp. 27–29 *et passim*. On the broader, Justinianic context, cf. G. DIOSDI, ‘Giustiniano e la “stipulation”’, *Labeo* 17 (1971), pp. 39–51.

stipulate for something to be given to us or done for us'),¹⁶ taken from Gai. 2 *Aur. (Dig. 44.7.1.7)*. In his discussion of various aspects of the institution, *Inst. 3.15.2–3.19.27*, Justinian treats *stipulatio* with *sollemnia verba*. Since for the most part the discussion is in the present tense, these passages do not give us any reason to assume that Justinian departs, in his concept of *stipulatio*, from the classical tradition.¹⁷ At the same time, in *Inst. 15.1*, recording a sample of the *sollemnia verba*, Justinian notes that these were 'once' in use. Justinian also treats the *sollemnia verba* as outdated at the end of the same passage, in his discussion of the constitution of Leo:

sed haec sollemnia verba olim quidem in usu fuerunt: postea autem Leoniana constitutio lata est, quae, sollemnitate verborum sublata, sensum et consonantem intellectum ab utraque parte solum desiderat, licet quibuscumque verbis expressus est.

These solemn words, however, were indeed formerly used, but afterwards the Leonine Constitution was promulgated, which dispensed with the verbal formality, and required that only the meaning and intention should be understood on both sides, no matter in what language they were expressed.¹⁸

The text reveals an inner conflict: if the *verba sollemnia* are still commonly used in the *stipulatio* in the first half of the sixth century CE, how can they be outdated? Alternatively, if they are outdated, how can *stipulationes* featuring that language be described as the prevailing practice?¹⁹ The present paper aims at proposing a possible solution to that conundrum. It is based

¹⁶ Trans. SCOTT, *The Civil Law* (cit. n. 11), vol. I, p. 111

¹⁷ E.g., *Inst. 3.15.2: spondes dare*. The only exception is *Inst. 3.19.4: Item si quis ita stipulatus erat: si navis ex Asia venerit, hodie dare spondes? inutilis erat stipulatio, quia praepostere concepta est*. But the imperfect is used because Leo is said to have rescinded the rule. In general, LOMBARDO, *Studi di 'stipulatio'* (cit. n. 4).

¹⁸ Trans. SCOTT, *The Civil Law* (cit. n. 11), vol. I, pp. 113–114.

¹⁹ On the broader context see, in general, F. WIEACKER, *Römische Rechtsgeschichte*, II: *Die Jurisprudenz vom frühen Prinzipat bis zum Ausgang der Antike im weströmischen Reich und die oströmische Rechtswissenschaft bis zur justinianischen Gesetzgebung* [= *Handbuch der Altertumswissenschaft* 10/3.1.2], Munich 2006, pp. 287–291 and 442–443.

primarily on a study of papyri from Egypt. But I hope that the tentative result developed in its course will evoke some interest among students of classical and post-classical Roman law.

2. TWO GREEK STIPULATIONS FROM EGYPT

As we saw earlier, in the Greek text of the *stipulatio* the verb denoting the response of the obligor is *ὁμολογέω*. In Greek documentary texts from outside Egypt, as well as in Greek jurisprudential literature and documentary papyri from the Byzantine period, *ὁμολογέω* acquires the same rendering as *spondeo* or *promitto*.²⁰ In that case, it is followed by the infinitive of the aorist, future, and (for some verbs) the present tense. Yet this is not the only, or even main use of *ὁμολογέω*. In its earliest attestations, in the scientific discourse of the early fifth century BCE, the verb *ὁμολογέω* is used in relation to a state of affairs. One person makes an assertion about a given fact, and another, literally, ‘says the same thing’.²¹ In the law of contract, the given fact is the past performance, by the concurring party, of an act that has elicited his contractual obligations. As such, the verb *ὁμολογέω* is used to express the creation of unilateral contractual duties.²² In Egypt, *ὁμολογέω* regularly takes the infinitive of the perfect tense, recording the past performance of the act of contracting, or the present tense of *ἔχω*, which has intrinsic perfective value.²³

²⁰ A list of the Greek parallels to the Roman terms has already been recorded by Gaius *Inst.* 3.93, but it has not survived in the Verona manuscript, and is restored in modern editions of the *institutiones* on account of Theophilus, 3.15.1 (pag. 322,20–24 Ferrini): δώσεις; δώσω· ὁμολογεῖς; ὁμολογῶ· πίσται κελεύεις; πίσται κελεύω· ποιήσεις; ποιήσω. Cf. MANTHE, *Gai Institutiones* (cit. n. 12), pp. 103–114. The same use is abundantly attested in the *Basilika*. See, e.g., *Bas.* 43.1 fr. 5.2: τῶν ἐπερωτέσεων ἡ μὲν ἐνοχοποιεῖ τὸν ὁμολογοῦντα, ὥστε καὶ ἄλλους δοῦναι τὸ αὐτὸ προσομολοῦντας, οὓς θέλει ὁ ἐπερωτῶν, ἡ δὲ ποιεῖ το ἀρέσκον τῷ λαμβάνοντι.

²¹ Cf., e.g., E. N. POWELL, *A Lexicon to Herodotus*, Cambridge 1938, p. 265, s.v. ὁμολογέω.

²² H. J. WOLFF, ‘Die Grundlagen des griechischen Vertragsrechts’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 74 (1957), pp 26–72, at 53–61.

²³ Sampling the first two centuries of Roman rule, I collected five cases in which the verb *ὁμολογέω* introduces a future obligation. In all these cases the contract is somewhat

As already said, in the Greek text of the *stipulatio* outside Egypt, *ὁμολογέω* is used to express the *responsio*, the obligor's affirmation that he will perform the required task. Yet in the vast majority of the papyrological attestations of *ὁμολογέω* in the context of the stipulation-clause, the object of the verb is left unmentioned. A priori, these cases allow both for the 'Pomponian' and the traditional Greek rendering of the verb.²⁴ Still, there are also ca. 120 texts composed before the end of the fourth century that cast light on the function of the Greek *stipulatio* in Egypt. In sixteen documents of sale, all from the Oxyrhynchite nome, the vendor confirms in the stipulation-clause the payment of the price. In some cases, the scribe uses the *nomen actionis*: *περὶ ἧς ἀριθμήσεως τῆς ὀλοκλήρου τιμῆς*, 'regarding the payment of the entire price', but elsewhere one uses the perfect tense of the infinitive, which is nominal, in the genitive, introduced by the preposition *περί*: *περὶ τοῦ ἡριθμησθαι με ἐξ ὀλοκλήρου*, 'regarding the fact that I have been paid the price in its entirety': the *stipulatio* is used not to create a future obligation but to confirm the past act of payment.²⁵ A second stipulation-

idiosyncratic: *P. Bour.* 14, l. 8 = *C. Pap. Gr.* I 28 (wet-nurse contract; 126 CE, Ptolemais Euergetis); *P. Flor.* III 370, l. 2 (partnership; 132 CE, Hermopolites); *P. Kron.* 16, ll. 10–11 = *P. Mil. Vogl.* IV 227 (novation; 138 CE, Tebtynis); *P. Lond.* III 1229, p. 142, ll. 4–5 (novation; 145 CE, unknown provenance); *P. Oslo* II 36, ll. 8–9 (*locatio operis*; 145 CE, Euehemeria).

²⁴ Such formulation would be acknowledged as a valid act of stipulation according to *Dig.* 2.14.7.12 (Ulp. 4 *ad ed.*): *Quod fere novissima parte pactorum ita solet inseri rogavit Titius, spondit Maevius, haec verba non tantum pactionis loco accipiuntur, sed etiam stipulationis: ideoque ex stipulatu nascitur actio, nisi contrarium specialiter adprobetur, quod non animo stipulantium hoc factum est, sed tantum paciscentium.* But the Ulpianic origin of the text as recorded in Justinian's Digest has been fervently contested. See, e.g., RICCOBONO 'Stipulatio ed instrumentum' (cit. n. 10), pp. 282–285; ARCHI, *Indirizzi* (cit. n. 14), p. 699; PRINGSHEIM, 'Stipulations-Klausel' (cit. n. 1), p. 230; G. SACCONI, *Ricerche sulla stipulatio*, Camerino 1989, pp. 155–158.

²⁵ That the *stipulatio* is confirmatory, and not promissory, is beyond doubt, as shown by the confirmation of receipt of the payment by the vendor, immediately preceding the *stipulatio*. SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), pp. 68–70, and, e.g., *P. Oxy.* IX 1208, ll. 16–17 (291 CE, Oxyrhynchos): *αἱ εἰσι ἀργυρ[έ]ου τάλαν[το]ν ἐν καὶ δραχμαὶ τρισχίλια, ἄ]σπερ αὐτόθι ἀπέσχον παρὰ σοῦ διὰ τοῦ αὐτοῦ πατρός σου ἐκ πλήρους διὰ χειρός, ἀποχαρισθέν σοι ὡς προσφέρῃ | κατὰ [χ]άριν ἀναφέρετον (read ἀναφαίρετον) καὶ ἀμ[ετανό]ητον, καὶ περὶ τοῦ ἡριθμησθαι με ἐξ ὀλοκλήρου ἐπακολουθοῦντος τοῦ π[ατ]ρός μου καὶ συναριθμουμένου ἐπερωτηθεὶς ὑπὸ σοῦ ὡμολόγησα.* The clause is recorded in 14 documents, almost all *cheirographa* stemming from the city of Oxyrhynchos, and dating to the late third

clause, recorded at the end of the document, records a *responsio* by the vendor as well. It relates to the composition of the contract as a whole. Here, too, the infinitive is nominal, in the genitive, introduced by the preposition $\pi\epsilon\rho\acute{\iota}$. In the text of the clause which best attested in sale documents from the Herakleopolite *agoranomeia*, but has established itself after the *Constitutio Antoniniana* throughout Egypt, the infinitive is in the perfect tense: $\pi\epsilon\rho\acute{\iota}$ δὲ τοῦ ταῦτα ὀρθῶς καὶ καλῶς γεγενῆθαι / γεγονέναι / πεπράχθαι ἐπερωτηθεῖς ὡμολόγησα, ‘Having been asked I have acknowledged regarding the fact that these things have been performed correctly and well’.²⁶ Here too, then, the stipulation-clause is focused on a past, not future activity. In short, in all the above cases, the stipulation-clause is used to confirm the past performance of a contractually fundamental act, and not the pledge to perform one in the future.²⁷ The ‘Pomponian tenet’ is not applied.²⁸

and fourth century CE. Land sales: *P. Laur.* IV 176, l. 10 (316 CE, Oxyrhynchites); *P. Mich.* XV 719, ll. 14–15 (3rd cent. CE, unknown provenance); *P. Oxy.* IX 1208, l. 17 (291 CE, Oxyrhynchites); XIV 1705, ll. 10–11 (298 CE, Oxyrhynchites); XX 2270, ll. 3–4 (5th/6th cent. CE?, Oxyrhynchites); XLIII 3144, ll. 9–12 (313 CE, Oxyrhynchites); XLIX 3498, ll. 21–22 (274 CE, Oxyrhynchites); LXIX 4751, ll. 10–11 (310 CE, Oxyrhynchites); LXXIII 4966, l. 15 (371 CE, Oxyrhynchites); SB VI 9214, ll. 19–20 (311 CE, Oxyrhynchites); X 10728, ll. 14–15 (318 CE, Oxyrhynchites); XVI 12946, l. 10 (474 CE, Antinoopolis); XX 15096, l. 13 (363 CE, Oxyrhynchites). Marriage document: *P. Oxy.* X 1273, ll. 19–22 = *Sel. Pap.* I 5 (260 CE, Oxyrhynchites).

²⁶ DE VISSCHER, ‘D’une clause de style’ (cit. n. 1), pp. 20–21. The formulation is already recorded in Egypt, before the *Constitutio Antoniniana*, in *P. Leid. Inst.* 50, ll. 12–13 (211/2 CE?, Oxyrhynchites); *P. Mich.* XV 707, ll. 21–22 (after 185 CE, Oxyrhynchites). This version is recorded in 95 texts, primarily from the third and fourth centuries CE, almost exclusively in documents recording the sales of immovable composed at the nomes’ *agoranomeia*, later also in *cheirographa*. Cf. PRINGSHEIM, ‘Stipulations-Klausel’ (cit. n. 1), pp. 224–230; SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), pp. 46–48. The latest text known to Simon was *Stud. Pal.* XX 117, ll. 51 (411 CE, Koba, Herakleopolites). *P. Köln* III 155 (6th cent. CE, unknown provenance), published in 1980, is considerably later. See below, n. 33.

²⁷ SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), p. 47.

²⁸ In 28 documents, the verb $\gamma\acute{\iota}\gamma\omicron\mu\alpha\iota$ takes the infinitive of the aorist (10 cases), or the present tense (18 cases). Aorist: *CPR* VII 14, l. 18 (305 CE, Hermopolis); *P. Flor.* I 29, ll. 11–13 (4th cent. CE, Hermopolites?); *P. Lips.* I 4, ll. 31–32 (293 CE, Hermopolis); *P. Lond.* III 1158, l. 15 (226 CE, Hermopolis); *P. Oxy.* XII 1475, ll. 34–35 (267 CE, Oxyrhynchites); XIV 1636, ll. 37–38 (249 CE, Oxyrhynchites); 1704, l. 22 (298 CE, Oxyrhynchites); *PSI* XII 1249, ll. 38–40 (265 CE, Oxyrhynchites); SB VI 9219, l. 21 (319 CE, Hermopolis); XIV 11703, ll. 7–8, 9 (3rd cent. CE,

The radical difference between the ‘Egyptian’ and Roman *stipulatio* has been noticed by past students of the clause. Some went so far as to deny any relation between the two clauses.²⁹ This view is not tenable. The Egyptian clause exhibits unmistakable similarities to its Roman counterpart,³⁰ and its proliferation immediately after the *Constitutio Antoniniana* removes any doubt of its Roman origin. The ‘Egyptian *stipulatio*’ was introduced into the document by new Romans to render their claims actionable in a Roman court of law, by the same means placed at the disposal of stipulants in the ‘Roman’ *stipulatio*. It is also quite certain that authors of these documents would not have chosen that formulation, were it not to be admitted as a *stipulatio* by the provincial office-holder who adjudicated the case.³¹ Such an admittance would only be possible if the provincial office-holders who acted as judges forewent the requirement of the *sollemnia verba*. In other words, as early as 221 CE, the earliest date in which the ‘Egyptian *stipulatio*’ is recorded,³² provincial office holders

Herakleopolites). Present tense with *γίνεσθαι* or *γείνεσθαι*: *P. Cair. Goodsp.* 13, ll. 15–16 (341 CE, Hermopolis); *P. Coles* 27, ll. 16–18 (4th cent. CE, unknown provenance); *P. Köln* XIII 535, ll. 8–9 (3rd cent. CE, Oxyrhynchites); *P. Lips.* I 6, ll. 2, 18 (306 CE, Hermopolis); *P. Mich.* XI 604, ll. 24–26 (223 CE, Oxyrhynchos); 614, ll. 15–33, on ll. 26–27 (c. 258/9 CE, Oxyrhynchos); 636, l. 20 (302 CE, Ptolemais Euergetis); XVIII 792, ll. 27–29 (221 CE, Oxyrhynchos); *P. Oxy.* VII 1040, ll. 32–35 (225 CE, Oxyrhynchos); X 1273, ll. 40–41 (225 CE, Oxyrhynchos); 1276, ll. 20–21 (249 CE, Oxyrhynchos); XIV 1702, ll. 17–18 (290 CE, Oxyrhynchos); XXII 2350, col. 1, ll. 28–30, col. 3, ll. 21–23 (224 CE, Oxyrhynchos); LXI 4117, ll. 18–20 (240 CE, Oxyrhynchos); *PSI* III 182, ll. 29–32 (234 CE, Oxyrhynchos); VI 702, ll. 17–18 (3rd cent. CE, Oxyrhynchos), as well as the non-Egyptian *P. Yadin* 17, ll. 16, 38–39 (128 CE, Ma’ozza). According to the translators, these cases have a confirmatory import. Cf., e.g., *P. Oxy.* XII, p. 227: ‘... having been asked by you the formal question whether this is done rightly and fairly I have given my consent’.

²⁹ E.g. DE VISSCHER, ‘La pseudo stipulation’ (cit. n. 1), pp. 165–166, and ‘D’une clause de style’ (cit. n. 1), pp. 21–22. Pace PRINGSHEIM, ‘Stipulations-Klausel’ (cit. n. 1), p. 248; SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), pp. 3–16.

³⁰ So in particular in the formula *ταῦτα ὀρθῶς καλῶς* already recorded in Varro, *Rust.* 2.2.5: *haec sic recte fieri spondesne?* The evidence is listed in, e.g., PRINGSHEIM, ‘Stipulations-Klausel’ (cit. n. 1), pp. 202–204.

³¹ In the same direction also PRINGSHEIM, ‘Stipulations-Klausel’ (cit. n. 1), 229–230, who asserts, however, that the Greek stipulation-clause does not derive from a verbally performed *stipulatio*.

³² *P. Mich.* XVIII 792, ll. 27–29 (221 CE, Oxyrhynchos).

had already introduced the same concept that was sanctioned by Leo, and then by Justinian, three centuries later.

Yet it is anything but certain that the confirmatory *stipulatio* was in itself addressed in the Leonine constitution: in Egypt, the *stipulatio* used to confirm the payment of the price is well recorded in the source material from the third and fourth centuries CE (6 from the 3rd cent., 7 from the 4th cent., 2 from the 5th cent.). The *stipulatio* confirming the past due performance of the contract is best attested in the source material of the third century (82 cases). The fourth century yields fifteen texts, and the fifth just one, *Stud. Pal. XX* 117 from 411 CE Koba in the Herakleopolite nome.³³ The second half of the fifth century provides no pertinent piece of evidence on the nature of the *stipulatio* in Greek documents from Egypt. When the evidence resumes, in the sixth century CE, it yields a completely different picture: a predominance of the ‘Pomponian’ *stipulatio*.

Some of the evidence is indirect – such is the case with the syntax and vocabulary of legal documents. In the course of its long history, the *stipulatio* was the habitat in which terms denoting individual contractual duties were nurtured, later to be employed outside the *stipulatio* as well.³⁴ The Greek counterparts of the said terms are known primarily from Greek jurisprudential literature of the Byzantine period.³⁵ The assumption that Roman legal terminology is not only first-attested but also gained ground in the same period in the documentary practice in the Greek East is corroborated by a contemporaneous shift in the language of the legal document, which now increasingly absorbs terms of jurisprudential origin.³⁶

The change can be demonstrated in the sphere of clauses recording the delivery of objects in the course of the contract, where the verbal

³³ PRINGSHEIM, ‘Stipulations-Klausel’ (cit. n. 1), p. 230; SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), pp. 48–49. A later case is *P. Köln* III 155, ll. 10–11 (6th cent. CE, unknown provenance), where the scribe still uses components of the confirmatory clause outside the *stipulatio*: *περί τε τοῦ ταῦτα οὕτως ὀρθῶς | καὶ καλῶς πεπρᾶχθαι*.

³⁴ See in particular PASTORI, *Negozio verbale* (cit. n. 4), pp. 286–299.

³⁵ See, e.g., RICCOBONO, ‘Stipulatio ed instrumentum’ (cit. n. 10), pp. 219–220.

³⁶ H. J. WOLFF, ‘Das Vulgarrechtsproblem und die Papyri’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 91 (1974), pp. 54–105, at 68–82.

forms *παρασχεῖν*, *ἀποδοῦναι* and *διδόναι* become prevalent in the sixth and seventh centuries, roughly the same period in which it is amply documented, in the same context, in the Greek jurisprudential literature.³⁷ Since the use of the same forms pervades Greek legal documentation in general, its attestation in Greek documentary texts is not per se indicative of the impact of the *stipulatio* in sixth-century Egypt. At the same time, from the mid-sixth century, *παρασχεῖν*, *ἀποδοῦναι* and *διδόναι* are also introduced by *ὁμολογῶ* that denotes, as it does in the Roman, ‘Pomponian’ *stipulatio*, ‘to promise’. Such is the case, for example, in the loan contract *PSI III 239* (601 CE, Oxyrhynchos), where the verb *ὁμολογέω* is recorded twice, once (ll. 13–17) in line with the Greek formulaic tradition, followed by perfect infinitive *ἐσχηκέναι*, to record the past act of a loan, and once (ll. 17–21), followed by the aorist infinitive *ἀποδοῦναι*, to introduce the future duty of delivery.³⁸ There is no unequivocal proof that this latter *homologia* was conceived as a *stipulatio* per se, but such a hypothesis is supported in multiple cases, in the *Basilika*, where the Greek text of a *stipulatio* is conveyed through *ὁμολογέω* alone.³⁹

The most direct and unequivocal source for the introduction of the ‘Pomponian’ *stipulatio* into Egypt is a new version of the complete clause, recorded in thirty-five documents from the end of the fifth century to the eve of the Arabic occupation. Just like the third- and fourth-century

³⁷ E.g. *Bas.* II.2.52 (*παρασχεῖν*); 37.7.12 (*διδόναι*); 39.3.105 (*ἀποδοῦναι*).

³⁸ *BGU XII 2205*, ll. 12–15 (590 CE, Hermopolis): [*ἀποδοῦναι*]; XVII 2694, ll. 24–27 (608 CE, Hermopolis): *διδόναι*; XIX 2810, ll. 14–18 (559 CE, Hermopolis): *διδόναι*; 2828, ll. 8–11 (600–625 CE, Hermopolis): *διδόναι*; *P. Amb.* II 150, ll. 24–31 (592 CE, Oxyrhynchos): *παρασχεῖν*; *P. Flor.* I 70, ll. 10–13 (627 or 642 CE, Hermopolis): *παρασχεῖν*; *P. Oxy.* LXXXII 4930, ll. 16–20 (614 CE, Oxyrhynchos): *διδόναι*; *P. Princ.* III 145, ll. 1–5 (6th cent. CE, unknown provenance): *διδόναι*; *PSI III 239*, ll. 17–21 (601 CE, Oxyrhynchos): *ἀποδοῦναι*; *SB XIV 11617*, ll. 13–16 (580 CE, Oxyrhynchos): [*ἀποδοῦναι*]; XXII 15595, ll. 9–11 (6th/7th cent. CE, Hermopolites): *διδόναι*.

³⁹ *Bas.* 7.16.9: ὁ ὁμολογῶν δοῦλος ἐν δίκῃ παρίστασθαι οὐκ ἐνέχεται, οὔτε οἱ ἐγγνηταὶ αὐτοῦ, and *Dig.*, 2.11.9pr.: *si servus iudicio se sisti promittat, non committitur stipulatio neque in eum neque in fideiussores eius*. Cf. BRANDILEONE, *La ‘stipulatio’* (cit. n. 4), pp. 15–17; PRINGSHEIM, ‘Stipulations-Klausel’ (cit. n. 1), p. 231; SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), pp. 31–32, 34; PASTORI, *Negozio verbale* (cit. n. 4), p. 266; SACCONI, *Ricerche* (cit. n. 24), p. 170 and, e.g., *Dig.* 45.1.134.2. I thank J. Urbanik for discussing this question with me.

confirmatory clause, the new clause is placed at the end of the document. Yet while the older text was used to confirm the past performance of the act of contracting, the present clause creates the pledge of the obligor to meet his future obligations. Such a clause has already been introduced into Roman documentary texts centuries earlier: *omnia quae supra scripta sunt dari fieri praestari stipulatus A, sponondit B*.⁴⁰ The new text runs ἐπερωτηθέντες ἐπὶ πᾶσι ταῦθ' οὕτως ἔχειν δώσειν ποιεῖν φυλάττειν ὡμολογήσαμεν.⁴¹ Some users of the new clause also wish to convey that the *stipulatio* is not a dead-letter, that the verbal discourse really took place, as is the case in *P. Lond.* I 77 (p. 231) ll. 68–71 = *MChr.* 319 (c. 610 CE, Ta Memnoneia) and *P. Münch.* I 13, ll. 68–71 (6th cent. CE, Syene), where the *responsio* is said to have taken place verbally after the Greek text was translated for the

⁴⁰ E.g. G. CAMODECA, *Tabulae Herculenses. Edizione e commento* I, Rome 2016, p. 300 = *AE* 2017, 225, ll. 19–21 (60 CE, Herculaneum) and BRANDILEONE, *La 'stipulatio'* (cit. n. 4), pp. 10–11, 13–14; SACCONI, *Ricerche* (cit. n. 24), pp. 158–164; SIMON, *Praxis der Stipulationsklause* (cit. n. 1), pp. 26–29.

⁴¹ *CPR* VII 46, ll. 15–18 (6th cent. CE, Hermopolis); *P. Bingen* 130, ll. 15–17 (526–548 CE, Aphrodites Kome); *P. Cair. Masp.* I 67032, ll. 83–86 = *FIRA* III 179 (551 CE, Constantino-ple); 67097 ro, ll. 72–74 (571/2 CE?, Aphrodites Kome); 67120 vo fragm. I, ll. 1–2 (c. 567/8 CE, Aphrodites Kome); II 67156A, ll. 33–34 (570 CE, Antinoopolis); 67158, ll. 30–31 = *FIRA* III 158 (568 CE, Antinoopolis); 67159, ll. 48–49 (568 CE, Antinoopolis); III 67298, ll. 29–37 (527–565 CE, Tentyris or Antinoopolis); 67299, ll. 66–68 = *FIRA* III 115 (527–565 CE, Antinoopolis); 67314, ll. 44–46, fragm. 3 (569/70 CE, Antinoopolis); *P. Flor.* III 323, l. 20 (525 CE, Hermopolis); *P. Herm.* 32, ll. 30–31 (6th cent. CE, unknown provenance); *P. Köln* III 155, ll. 11–12 (6th cent. CE, unknown provenance (?)); 157, ll. 36–37 (589 CE, Apollonopolis Heptakomias); XIV 592 fragm. G, ll. 36–37 (631/2 CE, Aphrodites Kome); *P. Lond.* I 77, ll. 70–71 = *MChr.* 319 (c. 610 CE, Ta Memnoneia); II 483, ll. 89–94 (p. 323) (615/6 CE, Apollonopolites Heptakomias); *P. Mich.* XIII 659, ll. 273–276 (527–547 CE, Antinoopolis); 662, ll. 61–62 (615, 630, or 645 CE, Aphrodites Kome); 663, ll. 36–37 (6th cent. CE, Aphrodites Kome); 664, ll. 39–40 (584/5 or 600/1 CE, Aphrodites Kome); 665, l. 95 = *SB* XVIII 13320 (613–641 CE, Aphrodites Kome); 667, ll. 30–33 (mid-6th cent. CE, Aphrodites Kome); 672, ll. 10–12 (557 CE?, Aphrodites Kome); *P. Michael.* 41, ll. 70–71 (539 or 554 CE, Aphrodites Kome); 45, ll. 65–66 (540 CE, Aphrodites Kome); *P. Münch.* 4 + 5 vo, ll. 46–47 (581 CE, Syene); 7, ll. 82–85 = *P. Lond.* V 1860 (2nd half of 6th cent. CE, Syene); 13, ll. 68–71 (2nd half of 6th cent. CE, Syene); *P. Princ.* II 82, ll. 74–76 (481 CE, Lykopolis); *P. Vatic. Aphrod.* 4 fragm. C, ll. 14–15 (2nd half of 6th cent. CE, Aphrodites Kome); *SB* XX 15020, ll. 24–25 (527–565 CE, Thebais); XXII 15477, ll. 91–93 = *P. Mich. Aphrod.* (2nd half of 6th cent. CE, Aphrodites Kome); XXVIII 16908, ll. 1–3 (c. 527–547 CE, Antinoopolis).

obligor into Egyptian.⁴² In two further instances, *P. Köln* III 155 (6th cent. CE, unknown provenance) and *P. Lond.* II 483, ll. 89–94 (p. 323) (615/6 CE, Apollonopolites Heptakomias), the stipulation-clause besides recording a ‘Generalstipulation’ also addresses the future performance of specific tasks: paying a penalty in the former, feeding the livestock and payment of salary in kind (wine) in the latter.⁴³

In short, the papyri yield a picture which is diametrically opposed to what we would expect if the scribe were to follow the tenets of his contemporary dogma. Down to the fifth century, a period in which the *stipulatio* was meant to exhibit the *sollemnia verba* and follow the ‘Pomponian tenet’, the *stipulatio* as recorded in the papyri from Egypt does not feature the same tenet: it records the past performance of a contractually significant act, not a future duty. In the sixth and seventh centuries, after the constitution of Leo had waived the requirement of the *sollemnia verba* and they became, according to Justinian, outdated, they present themselves in the source material from Egypt to an unprecedented scale: the *stipulatio*

⁴² *P. Lond.* I 77, ll. 68–71 (p. 231) = *MChr.* 319 (c. 610 CE, Ta Memnoneia): ἐπερωτηθεὶς εἰς | ἅπαντα ἐρμηνευθέντα μοι διὰ τῆς Αἰγυπτιακῆς διαλαλείας (l. διαλαλίας) παρὰ τοῦ ἐξῆς συμβολαιογράφου) ἀρεσθέντα | μοι καθὼς τῷ ἐμῷ στόματι ἀφηγγήσασθαι. ταῦθ’ οὕτως καλῶς ἔχειν δώσειν ποιεῖν φυλάττειν στέργειν ἐμμένειν | ὠμολόγησα καὶ ἀπέλυσα. *P. Münch.* I 13, ll. 68–71 (6th cent. CE, Syene): καὶ ἐπερωτηθέντες (l. ἐπερωτηθεῖσαι) κατὰ πρόσωπον | εἰς προσώπου (l. πρόσωπον) ὠμολογήσαμεν καὶ ἀπελύσαμεν ταῦθ’ οὕτως καλῶς ὀρθῶς δικαίως ἔχειν ποιεῖν | δώσειν φυλάττειν ἐμμένειν διατηρεῖν εἰς πέρας ἄγειν καὶ εἰς τέλος συνελᾶσαι, φυλαχθῆναι ἡμεῖς τε καὶ | οἱ μεθ’ ἡμᾶς εἰς ἅπαντα, ἀναγνωσθέντα καὶ ἐρμηνευθέντα ἡμῖν κατὰ τὴν αἰγυπτιακὴν γλῶτταν | καὶ ἀρεσθέντα ὠμολογήσαμεν καὶ ἀπελύσαμεν.

⁴³ *P. Köln* III 155, ll. 11–12 (6th cent. CE, unknown provenance): καὶ ἐπερωτηθεὶς ὠμολόγησα ἐπὶ τῷ ὑμᾶς (l. ἡμᾶς) | ταῦτα ἔν δε (l. τινι) παραβενοντα (l. παραβαίνοντας) ταύτην πρᾶσιν δωσω (l. δώσειν) ὑπὲρ παραβασίας χρ(υσοῦ) νο(μισμάτια) ι; and TAUBENSCHLAG, *The Law of Greco-Roman Egypt* (cit. n. 2), p. 397 n. 5; SIMON, *Praxis der Stipulationsklause* (cit. n. 1), pp. 93–94. *P. Lond.* II 483, ll. 89–94 (p. 323) (615/6 CE, Apollonopolites Heptakomias): ἐφ’ ἅπασιν τοῖς | ἐγγεγραμμένοις) ἐπερωτηθέντες) ὠμολογήσαμεν) δηλονότι ὡς ἀνωτέρω εἴρηται ἐπὶ τῷ τὸν αὐτὸν Ἰωάννην φαγεῖν τὰ κτήνη αὐτοῦ ὅ | τὴν βοσκήν τῶν αὐτῶν σπορίμων γηδίων καθ’ (l. κατ’) ἔτος καὶ διδόναι ὑπὲρ τῆς τοῦτοῦ ἴ | τιμῆς καθ’ (l. κατ’) ἔτος | οἶνο(ν) μούσθο(ν) ἢ (l. μούστου) ἀγγία (l. ἀγγεῖα) δύο τῷ πεντεξέστω μέτρῳ ἀπὸ καρπῶν τῆς σὺν θ(εῶ) ἔκτης | ἰνδ(ικτίονος) καὶ αὐτῆς καὶ ἐφεξῆς καθ’ (l. κατ’) ἔτος | ἐπὶ τὸ διηκεῖς καὶ εἰς τοῦτο καὶ εἰς τὰ προγεγραμμένα) ἐπερωτηθέντες) ὠμολογήσαμεν), and SIMON, *Praxis der Stipulationsklause* (cit. n. 1), p. 95.

is used to create a duty to perform a future act. This conundrum too, I think, may find a tentative explanation.

3. 'REICHSRECHT UND VOLKSRECHT'

The above Egyptian *stipulatio*, as recorded at the end of documents of the third, fourth and early fifth centuries CE, runs 'having been asked I have acknowledged regarding the fact that these things have been performed correctly and well'.⁴⁴ The subject is the obligee, who in the *stipulatio* confirms the performance of the past act which resulted in his forthcoming duties. As already stated, this clause would qualify as a *stipulatio* in its Leonine terms: the exchange of a Q&A that expresses the contractual intent of both parties.

The functional identity does not mean, of course, that the author of the Leonine constitution had in mind the Egyptian *stipulatio* when he promulgated the law. The Egyptian *stipulatio* is best attested in the third and fourth centuries. As already stated, the 'confirmatory' stipulation-clause would not have been introduced into the document, if it were not recognized as effective by the provincial office-holders who were to adjudicate a litigation concerning the contract. But if the case would come before a Roman legal expert, the reaction would have been quite different. In the same period, a 'Roman' *stipulation* – a *stipulatio* acknowledged as valid by Roman lawyers – was still expressed through the *sollemnia verba*. As long as the 'Pomponian' *stipulatio* prevailed, it was not receptive to record 'confirmatory contents'. Accordingly, documentary texts in Latin, translating the term *ὁμολογέω* in its traditional 'Greek' sense of 'acknowledge', use for that purpose *fateor* or *scripsi*, never *spondeo*, *promitto* or any other *sollemne verbum*.⁴⁵ In two

⁴⁴ See above, pp. 176–177.

⁴⁵ Cf., e.g., *P. Fouad* 45, l. 3 = *ChLA* XLII 1207 = *FIRA* III 121 = *CPL* I 189 = *CEL* I 155 (153 CE, Alexandria) [*fateor*]; *Dig.* 12.1.40 [*scripsi*]. The same use of *scribo* is evident in the celebrated Gai., *Inst.*, 3.134: *praeterea litterarum obligatio fieri videtur chirographis et syngraphis, id est si quis debere se aut daturum se scribat, ita scilicet, si eo nomine stipulatio non fiat. quod genus obligationis proprium peregrinorum est.*

instances – that of the clause professing the sound quality of a slave offered for sale and the avoidance of present and future fraud – the *stipulatio* relates to a present condition. Yet even in that case some *jurisprudentes* accept the clause as *stipulatio* with much reluctance, exactly because of its departure from the ‘Pompenian tenet’.⁴⁶

Moreover, there is no direct proof that the ‘confirmatory *stipulatio*’ was common outside Egypt. When we consider documentary texts Mesopotamia, scribes seem to hold on to the Roman *stipulatio* with all its tenets in the period in which the Egyptian confirmatory *stipulatio* is prevalent in Egypt. *P. Euphrat.* 6, ll. 26–29 = *SB XXIV 16167*, a slave sale from 249 CE Markopolis can be treated as paradigmatic: ταῦτα οὕτως καλῶς γενέσθαι | φυλαχθῆναί τε πίστει ἐπηρώτησεν ἢ αἰωνημένη (l. ἐωνημένη), | πίστει ὠμολόγησεν ἢ ἀποδομένη μετὰ παρουσίας | Κωζα ἀδελφοῦ αὐτῆς, ‘The purchaser has faithfully asked, and the vendor, in the presence of Kosa her brother, has faithfully acknowledged, that these things will thus be performed and guarded well’. The text clearly follows the Roman paradigm: πίστει ἐπηρώτησεν = *fide stipulatus est* / *fide rogavit*, πίστει ὠμολόγησεν = *fide promisit*, with the verb ὁμολογέω introducing the aorist infinitive to constitute a prospective obligation for the future.⁴⁷

⁴⁶ *Dig.* 21.2.31 (Ulp. 42 *ad Sab.*): *Si ita quis stipulanti spondeat ‘sanum esse, furem non esse, vispellionem non esse’ et cetera, inutilis stipulatio quibusdam videtur, quia si quis est in hac causa, impossibile est quod promittitur, si non est, frustra est. Sed ego puto verius hanc stipulationem ‘furem non esse, vispellionem non esse, sanum esse’ utilem esse: hoc enim continere, quod interest horum quid esse vel horum quid non esse. Sed et si cui horum fuerit adiectum ‘praestari’, multo magis valere stipulationem: alioquin stipulatio quae ab aedilibus proponitur inutilis erit, quod utique nemo sanus probabit; and PASTORI, *Negozio verbale* (cit. n. 4), pp. 296–297. *Dig.* 45.1.83pr. (Paul. 72 *ad Ed.*): *Inter stipulantem et promittentem negotium contrahitur. Itaque alius pro alio promittens daturum facturumve eum non obligatur: nam de se quemque promittere oportet. Et qui spondet ‘dolum malum abesse afuturumque esse’, non simplex abnutivum spondet, sed curaturum se, ut dolum malum absit: idemque in illis stipulationibus ‘habere licere’ item ‘neque per te neque per heredem tuum fieri, quo minus fiat’; and PASTORI, *Negozio verbale* (cit. n. 4), pp. 293–294.**

⁴⁷ *P. Euphrat.* 7, ll. 20–23 = *SB XXIV 16168* (249 CE, Makropolis); 9, ll. 27–29 = *SB XXIV 16170* (252 CE, Beth Phouraia). Cf. BRANDILEONE, *La ‘stipulatio’* (cit. n. 4), pp. 10–12; PRINGSHEIM, ‘Stipulations-Klausel’ (cit. n. 1), 251; SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), p. 49. On the position of *fides*, cf. PASTORI, *Negozio verbale* (cit. n. 4), p. 272.

At the same time, all that the above pieces of evidence show, is that as long as the prevailing doctrine followed the ‘Pomponian tenet’, it was not receptive to the confirmatory *stipulatio*, and that the same obtains for those provinces in which the same dogma prevailed. Since we do not know the stance of scribes in the rest of the Roman east, it is impossible to reach affirmative conclusion on the dissemination of the confirmatory *stipulatio* outside Egypt before and in the fifth century CE. Until further evidence comes to light, this is a *non liquet*.⁴⁸ Yet even if the Egyptian ‘confirmatory *stipulatio*’ was not the direct prototype of Leo’s new *stipulatio*, it does give expression to what has already been trending in both parts of the empire long before.

For centuries, scribes were trained in composing legal documents where the contractual duties of the parties were recorded in writing. In the west, a ‘Generalstipulation’, a clause introducing the pledge of the obligee to perform his future duties (in accordance with the ‘Pomponian tenet’), was only added at the end of the text, to accord its terms actionability as *stipulatio*, if any other procedural means would prove ineffective.⁴⁹ In third and fourth-century Egypt, one used exactly the same location to insert the ‘confirmatory stipulation’, a clause by which the obligee confirmed the past due performance of the act of contracting. Given that the same formulation persisted, the question arose: if both claims were based on the clauses of the legal document, why should remedy be granted only in the Roman, but not in the Greek case?⁵⁰

One of the most fervently debated questions relating to the *stipulatio* is its performative nature. Did the obligee really ask the question that was answered by the obligor as written in the document? Did the record

⁴⁸ There are two pieces of evidence for the survival of the ‘confirmatory *stipulatio*’ into the Byzantine period, *P. Köln* III 155, ll. 10–11 (6th cent. CE, unknown provenance), where the scribe still uses components of the confirmatory clause outside the *stipulatio*: *περί τε τοῦ ταῦτα οὕτως ὀρθῶς | καὶ καλῶς πεπερᾶ χ’θαι*, and *P. Oxy.* XX 2270, ll. 3–4 (5th/6th cent. CE?, Oxyrhynchus), with a *stipulatio* following the acknowledgement of the receipt of the consideration. Cf. above, n. 26.

⁴⁹ SACCONI, *Ricerche* (cit. n. 24), pp. 154–155.

⁵⁰ That the constitution treated broader spectrum of issues is shown by *Inst.* 3.19.14, if referring to the same constitution.

of the *stipulatio* in the legal document create an irrefutable assumption of the performance of the *stipulatio*, or was the written document, with the stipulation-clause, seen the *stipulatio* per se, rendering the verbal act futile and dispensable? Leo was facing the same problem as encountered by interpreters of the *stipulatio* for centuries: defects in the performance that cast doubt of the validity of the act.⁵¹ Leo's solution was to remove all formal requirements, provided that the parties have given expression of their contractual intent. But did Leo go so far as to allow a written expression only? This preposition still seems doubtful.

In *Inst.* 3.15.1, we recall, Justinian asserts that the *verba sollemnia* came after Leo's law out of date. At the same time, Justinian still holds on, in his definition of the *stipulatio*, to the 'Pomponian tenet': *verbis obligatio contrahitur ex interrogazione et responsione, cum quid dari fieriue nobis stipulamur*. He also uses *sollemnia verba* in his discussion of the stipulation in the following passages. But the seeming discrepancy can be satisfactorily resolved. Apart from its performative function, the *stipulatio* also played a pivotal role in complementing and remedying structural deficiencies of established contracts. Best known is its use to enjoin the payment of interest in loans.⁵² It is unlikely that each of these ancillary agreements was also given a verbal expression. Accordingly, the conundrum in Justinian text can be resolved if we assume that the *verba sollemnia* were the text of the verbal discourse, while the rest of the analysis relates to the ancillary agreements, which have remained unaffected. Justinian also states that the *sollemnia verba*, as the contents of the verbal communication, have been abandoned since the constitution of Leo. Accordingly, if the present working hypothesis is tenable, Leo's act too focused on the *stipulatio* as a verbal act.

Leo and Justinian had in mind, when they treated the *verba sollemnia*, the verbal exchange, not the written documentation of the *stipulatio*. The use of the *stipulatio* in ancillary agreements has not been affected. In fact,

⁵¹ Cf. R. KNÜTEL, 'Zur Auslegung und Entwicklung der Stipulation im klassischen römischen Recht', [in:] M. AVENARIUS *et alii* (eds.), *Ars Iuris, Festschrift für Okko Behrends zum 70. Geburtstag*, Göttingen 2009, pp. 223–257, at 256–257.

⁵² Cf., e.g., PRINGSHEIM, 'Stipulations-Klausel' (cit. n. 1), p. 245.

on their own, independent merit, these ancillary agreements were kept in Byzantine jurisprudential literature and thought and proliferated into the language of the Greek legal documents in Egypt alongside other Roman terms and concepts of the sixth and seventh centuries CE.⁵³ The evidence has been discussed in the preceding section.⁵⁴

At the same time, as shown in the preceding paragraph, there are also thirty-five cases, in which Byzantine scribes still use a 'real' stipulation-clause following the Pomponian tenet at the end of the document, regardless of the fact that after Leo the archaic text was no longer necessary. The use of that text was, legally and procedurally speaking, insignificant, but it now assumes a new role. In these thirty-five documents, the scribe not only uses the *verba sollemnia*, but also underscores the ceremonial, public setting of the *stipulatio*, that now commonly took the form of an oath,⁵⁵ publicly performed, attended by witnesses who, in one case, even performed the *interrogatio* themselves.⁵⁶ In the new, solemn setting, the old 'Pomponian tenets' still seemed fitting long after the *sollemnia verba* had been dispensed with in Leo's constitution of 472 CE.

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⁵³ See, e.g., SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), pp. 91–92 and in particular, H. J. WOLFF, 'Das Vulgarrechtsproblem und die Papyri', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* (1974), pp. 54–105, at 68–82.

⁵⁴ Above, pp. 179–182.

⁵⁵ SIMON, *Praxis der Stipulationsklausel* (cit. n. 1), p. 95.

⁵⁶ *P. Cair. Masp.* III 67314, ll. 42–46 (569/70 CE, Antinoopolis).

THE JOURNAL OF JURISTIC PAPYROLOGY

FOUNDED BY
RAPHAEL TAUBENSCHLAG

EDITED BY
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ADAM ŁAJTAR
JAKUB URBANIK

VOL. LI (2021)



ΕΥΓΡΑΦΙΟΕΤΤ
ΚΕΝΩΘΗΚ
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THE RAPHAEL TAUBENSCHLAG
FOUNDATION

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Computer design and DTP by
Piotr Berezowski, Tomasz Derda, Grzegorz Ochala, and Jakub Urbanik

Cover design by
Maryna Wiśniewska

Warszawa 2021

ISSN 0075–4277

This publication has been published with financial support
from the Faculty of Archaeology and Faculty of Law and Administration
of the University of Warsaw

Wydanie I (wersja pierwotna)
Nakład: 200 egz.
Druk i oprawa: Sowa Sp. z o.o., ul. Raszyńska 13, 05-500 Piaseczno

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Joshua ALLBRIGHT

The rhetoric of aikia in petitions from Roman Egypt

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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:

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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

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

Lucia C. COLELLA

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

Federica NICOLARDI

Vocabulary and practices of manumission

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

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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.

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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.