Contract Norms and Contract Enforcement
in Graeco-Roman Egypt

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ABSTRACT

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This dissertation explores the ethics and norms associated with contracting in Ptolemaic and Roman Egypt as a contribution to the institutional study of ancient contract and its relationship to the economic history of the Roman world. Although ancient contracts in the Hellenistic tradition (i.e., non-Roman law contracts) have been studied rigorously from a legal perspective, there has been no systematic study of contract as an economic institution in the eastern half of the ancient Mediterranean. The first three chapters argue that such a study is a historical desideratum and seek to establish the theoretical and methodological basis and scope of such a project. Theoretically, the most decisive factor in determining the nature, extent, and success of contract as an economic institution is actual enforcement, as opposed to mere legal “enforceability.” While the modern (Western) state has been justly credited with having had a transformative effect on contract by publishing clear rules (i.e., contract law) and providing effective “third-party” enforcement, even modern contracts depend on the enforcement activities of the individual parties and the power of social norms. Historically, there is no question that the ancient state, Rome included, was less invested and less effective in its support and promotion of private contracting than its modern counterparts. Ethics and norms therefore played a larger and more important role in ancient contracting than they have in the last century and as such need to be studied in their own right. The nature of the project also argues for Egypt being the primary locus of study, since the papyri afford us the most complete access to ancient individuals and organizations using contracts to organize transactions. After the theoretical and methodological
discussion, there follow explorations of several important social values and norms with respect to contracting in Graeco-Roman Egypt, including trust (pistis), “respect” (eugnōmosynē), and “breach.” The results show how “personal” contracting was and reveal some of the ways in which individuals bridged the inevitable “trust gaps” in their efforts to build credible commitments with those outside the immediate circle of their trusted intimates. It also illuminates the discourse of reputation, a key lever in ancient contract formation and enforcement. Finally, the notion of breach is shown to have become both more common and to have evolved conceptually in written contracts over time. It is argued that these changes in the idea and drafting of breach should be interpreted in light of a larger pattern of historical and legal development spanning the second century BCE to the second century CE, a period which witnessed an increasing “moralization” of contract, itself an adaptation to an enforcement regime heavily dependent on ethics and norms. The last chapter offers a synthesis of the findings and a prospectus of the next phase of the project, which turns to the role of the state, arguing that it was generally more effective and activist than the current opinion allows.
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parentibus patientibus, uxori patientissimae
CHAPTER 1: LAW, ECONOMY, AND CONTRACT IN ROMAN EGYPT

Approximately 2,500 written contracts have thus far been published from Roman Egypt, or nearly one in every ten published documents for the first three centuries CE.¹ This, of course, is only the tip of the iceberg: documents on papyrus have survived only in particular locations, mostly from the provincial cities and villages of the Egyptian heartland, or chōra, and consequently the pattern of survival is anything but representative of Egypt as a whole, regionally or socio-economically. Indeed, it is almost shocking how few documents remain from Alexandria, a cultural capital of the Roman Empire and an important commercial nexus of the Eastern Mediterranean. Typically, this last statement is uttered with a sigh: “If we only had the documents of Alexandria!” True, there is no denying that we should have learned a great deal had they survived, but I am certain that we would not have been surprised to find a good number of contracts among them. The same holds for the larger, wealthier, more sophisticated and politically connected poleis, like Ptolemais, whose documents also do not survive in numbers that accurately reflect their socio-economic importance. But would we have ever guessed that tens of thousands of middling provincials and illiterate peasants went to the trouble and cost of writing leases every year for agricultural land that had been farmed quite literally for millennia?² Or would we have imagined that they would have had professional scribes draw up and register

¹ Derived from keyword searches of the Heidelberger Gesamtverzeichnis der griechischen Papyrusurkunden Ägyptens (hereafter the HGV). Included in this number are some documents which are not themselves contracts, but letters, petitions, registers, etc., related to contracts. Of course, behind such documents were almost always written contracts that did not survive.

loans, deposits, and other financial transactions for sums as small as 12 drachmai? As it turns out, the sheer range of what was settled by contract in the pre-industrial villages and towns of Roman Egypt is surprising: beyond major financial transactions and marriages, we find contracts for wetnursing, apprenticeship, various forms of economic and legal representation, construction, transportation, entertainment, lodging, renunciation of claims, partnerships, etc. In short, there would seem to have been few areas of economic life in Roman Egypt that one could not or would not regulate by contract. The evidence thus suggests that the culture of contract extended far beyond the boundaries of urban areas and the upper classes.

3 See, e.g., *P.Mich.* 123r, col. x.36 (Tebtynis, 45/46), on which see immediately below. All dates are CE unless otherwise indicated.
1.1 Contracting in Roman Tebtynis

Though we shall never have anything other than an impressionistic sense of the numbers of contracts written in Roman Egypt from the actual papyrus contracts that survive, we are fortunate enough to have discovered a telling window onto the world of ancient contracting in the *grapheion* registers from Tebtynis in the Michigan collection.\(^4\) *P.Mich.* II 123r, for instance, contains a register, or ἀναγραφή, of documents concluded through the local notarial office (the *grapheion*) for Claudius’s sixth regnal year (45/46). The register, which theoretically lists all the official documents drafted and issued at the *grapheion*, including receipts, memoranda, petitions, and returns of various sorts, contains approximately 800 entries for the year, of which the lion’s share, 673, are contracts.\(^5\) This number immediately puts our 2,500 records for the whole of Roman Egypt into a sobering context. Yet how should we assess these 673 contracts? Was this a lot or a little?

Most scholars estimate the population of Roman Tebtynis, a large village in the Arsinoite nome, or the modern Fayyum, at about 4,000 to 5,000 people.\(^6\) According to our current demographic model for Roman Egypt, approximately 60% of the population would have been


\(^5\) For the total number of contracts as opposed to other document types, see Rowlandson 1999: 141. We should not confuse this document for a full record of contracting activity in Tebtynis. First, the record itself is incomplete, as we see mistakes in the transcription of documents from source records, like the εἰρήμενον, or running list of contract abstracts, in *P.Mich.* II 121r, to the ἀναγραφή on the other side (*P.Mich.* II 121v). For instance, the compiler omitted contracts by mistake (e.g., the abstract of *P.Mich.* II 121r III.xiv is omitted from the register for Pachon 26). Second and more importantly, as will be suggested below the ἀναγραφή is not a full record of private documents drawn up in Tebtynis, and perhaps not even within the office itself, cf., e.g., *P.Mich.* V 266, 338, 353, and 354.

\(^6\) Rowlandson 1999: 147n31.
between the ages of 15 and 65, the ages at which one might expect a person to be party to a contract.\(^7\) \textit{P.Mich.} II 123r therefore suggests that nearly half of the residents of the area who were of age to be conducting business visited the \textit{grapheion} in 45/46 in order to execute a contract.\(^8\) It is clear, however, that some people were repeat visitors, and so perhaps we should think of the pool of \textit{grapheion} customers as smaller and less random than a cross-section of the entire village population. Also, not all contracts were made between villagers, since there are indications, both in the registers and in the contracts that survive, that residents of other localities made contracts with villagers through this \textit{grapheion}.\(^9\) Then again, many contracts involved more than two parties. We should also perhaps include more than the contracts themselves in our index of contracting activity, since so many of the non-contract documents listed are in fact related to the wider process of contracting. If so, we could include such documents as: (i)

\begin{footnotesize}
\begin{itemize}
\item Bagnall and Frier 1994: 103-5.
\item Assuming 4,500 residents, 60\% of whom were of age to execute a legal contract, or 2,700. The 673 contracts means at least 1,346 parties, or 49.9\% of the adult population, or 29.9\% of the total population. The ages of the parties only appear in the abstracts of the \textit{εἰρύμενα}, not the \textit{ὁνάγγαραφαί}. \textit{P.Mich.} II 121r contains a partial \textit{εἰρύμενον} covering an entire month in 42, and there is only one minor recorded (II.x), while the next youngest party is 22, though he also appears with his parents in his acknowledgement of a dowry (IV.i). The oldest party was apparently 72 (I.ix: this abstract is fragmentary and the editors suggest that this man was likely a guardian). The rest of parties were all between 24 and 55 years old. This suggests that the pool of active parties may have been functionally smaller than the 2,700 or so that is captured by the theoretical limits of 15 and 65.
\item The Tebtynis documents do not typically record place of residence. However, deep connections revealed in the contracts and other documents between Tebtynis and the nearby villages of Theogonis (cf. Crotti 1962), Kerkeosoucha Orous, and Talei suggest that “non-residents” used the \textit{grapheion} at Tebtynis on a fairly regular basis. These other locations at times had their own record offices, which sometimes appear shared with each other or as branches of the main \textit{grapheion} in Tebtynis. See the Fayyum Project for articles on each village: http://www.trismegistos.org/fayum/index.php. Also, the definition of “resident” for the purpose of such counting is difficult, as many families had property in more than one locale. Cf. \textit{P.Mich.} V 276 [Arsinoite, 47], a sale of part of a house in Ptolemais Euergetis, in which the sellers promise to register the sale via a particular kind of contract in the \textit{mnēmoneion} of Ptolemais whenever ordered to do so by the buyer. The papyrus was found in Tebtynis and belongs to cache of documents from an extended family that had holdings in and around Tebtynis (and apparently further afield), and did extensive business through its \textit{grapheion}. On this family, see \textit{P.Mich.} V, Introduction, pp. 16-18.
\end{itemize}
\end{footnotesize}
receipts cancelling a fulfilled obligation under a previously executed contract (e.g., an agreement of receipt, or ὀμολογία ἀποχής, or the rarer ὀμολογία περιλύσεως, an outright cancellation of a debt); (ii) secondary agreements confirming or renewing existing contracts (e.g., a ὀμολογία εὐδοκήσεως: P.Mich. II 121r IV.xii, cf. P.Mich. V 282 and 283); (iii) official annulments of contracts (i.e., to make a document ἀκυρώσιμος: P.Mich. II 123r vii.14, xviii.14, xix.29, cf. P.Mich. V 298); or (iv) petitions concerning contract disputes (cf. P.Mich. V 232, a petition written in the Tebtynis grapheion to the exēgētēs on behalf of a widow concerning a mortgage adjustment and a foreclosure). Taking such documents into account would represent a countervailing tendency to the “repeat-customer” and “out-of-towner” phenomena, since along with the rise in documents comes a rise in the number of unique individuals. More importantly, however, it suggests the intensity of the contracting relationship in Roman Egypt: in the vast majority of cases it was not an act confined to a single afternoon in the grapheion when the contract was inked, but included other stops along the way, both before and after the execution of the contract itself.\(^{10}\)

The register, moreover, is equally interesting for what it does and does not report. The following is a complete list of the sales and cessions\(^{11}\) executed through the Tebtynis grapheion in 45/46:

\(^{10}\) Cf. P.Mich. V 266 (Arsinoite, 38), a cheirograph, or private document, that serves as a preliminary commitment to go to the grapheion to arrange a formal sale via an official document (p.8 below) and the discussion of contract as “framework” and relational contracting in Chapter 2.

\(^{11}\) Cession or parachōrēsis was a mode of land conveyance that approximated common-law lease-hold (as opposed to free-hold via sale). Already by the late Ptolemaic period, cession was for all intents and purposes tantamount to sale. Cession as a mode of conveyance and a category of land tenure, however, outlived the Ptolemaic order by two centuries. On sale and cession, see Rupprecht 1984; Montevecchi 1988: 209-11; and literature cited in Rupprecht 1994: 115-17.
Table 1.1 *Sales and cessions recorded in P.Mich. II 123r*

<table>
<thead>
<tr>
<th>Object</th>
<th>Number</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural land</td>
<td>8</td>
<td>iii.8, iv.10, xv.12, xvi.11, 17, xvii.7, xviii.32; xix.39</td>
</tr>
<tr>
<td>Fodder/Hay land</td>
<td>3</td>
<td>xi.7, 8, xiii.11</td>
</tr>
<tr>
<td>Undeveloped land</td>
<td>7</td>
<td>iii.29, vi.14, ix.38, x.8, 15, xvi.27, xxi.30</td>
</tr>
<tr>
<td>Residential property</td>
<td>13</td>
<td>v.31, viii.21, 41, xii.33, 42, xiv.24, 25, xv.17, 32, xvi.3, xix.33, xxi.15, 36</td>
</tr>
<tr>
<td>Pastophoria</td>
<td>4*</td>
<td>vi.34, xii.14, xvi.39, xix.31</td>
</tr>
<tr>
<td>Slaves</td>
<td>3</td>
<td>vii.48, viii.18, xiii.24</td>
</tr>
<tr>
<td>Bulls</td>
<td>1</td>
<td>v.34</td>
</tr>
<tr>
<td>Donkeys</td>
<td>8</td>
<td>v.19, 21, vi.1, 4, vii.14, xii.25, xiii.17, xv.18</td>
</tr>
<tr>
<td>Sheep/Goats</td>
<td>2</td>
<td>ii.9, ix.42</td>
</tr>
<tr>
<td>Looms</td>
<td>10</td>
<td>ii.20, iii.19, vii.18, viii.29, xi.5, xiv.12, 15; xv.13, 24, xvi.10</td>
</tr>
<tr>
<td>Anvils</td>
<td>1</td>
<td>vii.10</td>
</tr>
<tr>
<td>Unknown</td>
<td>4</td>
<td>xx.28, xvi.14, xxi.16, xxii.30</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>64†</strong></td>
<td></td>
</tr>
</tbody>
</table>

* Most of these transactions seem to relate to a single pastophorion; cf. *P.Mich.* V 238r ii.66, 87 (Tebtynis, 46).

† The state of preservation necessarily means that we do not have a full record: there many missing and illegible entries.

When we recall that the total number of contracts for the year was 673, the number of sales and cessions strikes one as quite low—just 64 for the entire year—and the list of things sold or ceded is surprisingly small and stereotyped—just eleven categories. Even more surprising is the distribution among the categories and the glaring absences. Why should there be so many contracts for donkeys as compared to other animals? Where, for instance, are the camels?
Camels were sold via contract in the first-century Arsinoite, as BGU XI 2112 attests: could it be that no camel was bought or sold in Tebtynis for an entire year? Again, why are there so many looms being sold through the grapheion? And why is there a deed of sale for an anvil, of all things? Could not the latter just have been bought and sold on the open market?

No one expects contracts to be written for all objects, but what explains why certain sales were recorded via written contract here in the grapheion while others were evidently sold without one on the market or perhaps transferred via some other means? Similarly, we may note that leases appear to represent more than 20% of the contracts executed in the Tebtynis grapheion in the mid-first century, but it is important to note that many, if not most, are in fact subleases, often of public, imperial, or temple land. Interestingly, the original terms on which public land was held by the sub-lessee were not, apparently, contractual at all. Thus, while the register and our surviving contracts demonstrate the importance of leasing in the system of land tenure and management, this was in some sense a secondary market (if we may call it that), overlying a primary system of land tenure that was in large part not regulated by written notarial contract at all, but by other, older social and political structures.

12 The Greek Law in Roman Times (GLRT) database created by U. Yiftach-Firanko and hosted by the Hebrew University of Jerusalem reveals that there are 35 documents relating to camel sales, all from the Roman period, but none from Tebtynis.

13 Cf. Rowlandson 1999; cf. Yiftach-Firanko 2007. The category of land and the nature of the lease is usually only visible from the contracts themselves or when we have the abstracts of the ἐπήμενα, e.g., P.Mich. 121r II.v, vi and III.viii record subleases of public land, but the ἁναγραφή on the verso at ii.9-10 and iii.2 does not specify type of land. Cf. 121r IV.xii (verso iii.18); III.x (verso iii.4); IV.v (verso iii.12).


15 On Ptolemaic land tenure, see Manning 2003; for the patchwork system inherited by the Romans and its transformation over the course of the early imperial period, see Monson 2005; 2007.
register—and the mass of contracts we have for Roman Egypt—tell us about the relationship of contracting to marketing and other modes of exchange in Roman Egypt?

It is also worth remembering when looking at documents like this register that it purports to record only officially drafted contracts: it does not include cheirographa (contracts recorded in letter form, nominally in the handwriting of the issuer), or any other “privately” drafted documents, nor does it (obviously) include unwritten contracts. With respect to the first category, we know such private documents constituted an important and growing category of written contract throughout the Roman period. We even have evidence that some were drawn up in the grapheion of Tebtynis itself, drafted in the hand of the principal lessee and chief scribe of the grapheion, Kronion. One of these private documents is particularly interesting with regard to the relationship of private and public contracting. In *P.Mich. V* 266 we have an example of a cheirograph from a certain Lysimachos to his sister Hero, wherein the former states:

ο ο ἐπάναγκον ὑπηνίκαν | ἔναι μοι συντάσσει καταγράφειν σοι | διά τοῦ ἐνΤεβτύνι γραφίου | τὴν ὑπάρχουσαν ἐνὸπτον | ... ἰπέλώνα ... | ... ὀνπερ | ἐώνημα παρὰ Διδύμου τοῦ | ἀμφότερων ἀδελφοῦ, ὅντος | δέ σου ἀνδρὸς ...

I acknowledge that, as soon as you command me, I must convey to you through the grapheion at Tebtynis the vineyard ... in my possession ... which I have purchased from Didymos, our common brother, who is also your husband ... (lines 5-14).

Here, then, is a private contract recording an obligation to frame the agreed-upon transaction as a public document at the grapheion, or a contract to contract. This cheirographon and others, 18

16 On private documents and their growing importance in the Roman period, see generally Wolff 1978: 106-27, but also now Yiftach-Firanko 2007 (on the hypomnēma) and 2009a (on the cheirographon). Three cheirographa survive that were written in the grapheion: *P.Mich. V* 266, 338, and 353.

17 l. τὸν ὑπάρχουντα.
such as the camel sale mentioned above, or *P.Mich. V 354*, written to Kronion by a certain Ptolemaios, i.e., a truly autographic “cheirograph,” point to a hidden universe of *private* contracting going on outside the official purview of the *grapheion* and the government archives in the nome capital and Alexandria to which it reported. Indeed, Kronion’s personal accounts tell us as much, since there are loans recorded that were either not documented in public contracts or were not entered onto the *grapheion’s* books or both.19 That said, depending on the transaction and the period, contracts did not necessarily have to be written in order to be valid, and so the body of oral contracts constitutes a potentially even greater mass of dark material in the universe of contracts than that suggested by the private documents. Indeed, one interesting question about the document above is why it was felt necessary to reduce an oral agreement to go to the *grapheion* as a written agreement. In other words, what force or purpose could this document *qua* document have and in what context?

This brief glance at contract practice through the *grapheion* records of Roman Tebtynis suggests that the culture of contracting in Roman Egypt, though extensive, also had a definite shape, or particular characteristics and boundaries demarcated by other social and economic

18 Technically, this *cheirographon* is a commitment to go and register (*katagraphein*) the property as sold at the *grapheion* (see also *P.Mich. V 276* [above n9]; *SB VI 9108* [below p. 482]; and *BGU II 543* [Hawara, 27 BCE], an oath in which a man swears to carry out a land cession). In the Ptolemaic period, or so argues Wolff (1948: 60, 77-89), a contract for the sale or cession would have been drawn up first (or made orally), and then registered, whereas by the Roman period the drafting and registration functions of the *agoranomos* or *grapheion* had merged such that the registration was effectively the contract and no longer a separate act. For this reason, we may see this acknowledgement as an agreement to contract, and not merely to register (cf. ibid. 87-88, cf. 91-96 on this papyrus and the changed meaning of *katagraphein* in the Roman period). See now also Wolff 1978: 111n19 and Yiftach-Firanko 2009b: 544-45.

19 For instance, we have a series of loans made to Kronion in order for him to be able to pay the central administration for his right to operate the *grapheion* (e.g., *P.Mich. 123v iv.16-19*) that appear nowhere in the official transactions of the office (cf. the same date in the ἀνεκραφή, *P.Mich. 123r xvi.17-18*). Cf. n616.
institutions, such as markets, the family, and the state. This raises a host of intriguing questions, such as, what was the relationship between the marketing and contracting? And, on another level, how and why did people decide on private versus public documents for their transactions? From the perspective of contracting itself, however, perhaps the most pressing historical question is: What should we make of the character and quality of the provincial justice system that was responsible for the enforcement of contracts?
1.2 Papyrus Contracts, Roman Justice

The older view of Roman provincial justice, still current in many places, is that the Empire was a more or less lawless place. Typical of this view is the characterization of Ramsey MacMullen in his interpretation of *P.Mich.* VI 423-424:

Throughout all our evidence, scattered though it is over several centuries, the methods employed and their openness point to the existence of extralegal kinds of power to a degree quite surprising. However majestic the background of Roman law and imperial administration, behold in the foreground a group of men who could launch a miniature war on their neighbor—and expected to get away with it! ... Brute strength ... counted for much in the minor quarrels of the village. The only defense lay in one’s family. Had government cared more, no doubt their subjects would not have taken the law into their own hands. (1974: 7, 12)\(^{20}\)

This sentiment was shared by one of the greatest papyrologists of the twentieth century, Naphtali Lewis. Though he emphasized that “there is no reason to suppose that village life was more crime-ridden in Egypt than elsewhere” in the Roman world (1983: 77), his understanding of Roman justice, based as it was on the detailed evidence of the papyri, was more nuanced, but ultimately no less damning than MacMullen’s in its assessment of its effectiveness. Lewis sketched a system that was slow, riven with delay, unpredictable (“One did what one could and took one’s chances”), skewed towards the rich, and beset with implementation and enforcement problems at all levels.\(^{21}\) Times have changed, and with them opinions as to the nature of violence in the ancient world and the character and possibilities of Roman justice and government. Local

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\(^{20}\) See Ratzan forthcoming on the dispute that served as evidence of this position.

violence, for instance, is more likely to be understood in explicitly sociological, instead of purely legal, terms (i.e., as “crime”), and Dominic Rathbone has recently characterized Roman provincial justice in Egypt as “flexible,” open to “local legal traditions,” and “prepared to judge cases by precedent and common sense” (2007b: 718). Rathbone’s vision of provincial justice is articulated as part of an overall re-assessment of the attitude of the Roman state towards “the economy,” which he sees as having “deliberately fostered a general climate of probity and equity in public and private business” (718), and driven in part by an “ideology of good government, protecting individual property rights against officials and other individuals, whose effect was that documents about legal disputes constitute a high percentage of the surviving papyri” (717).

Rathbone’s basic position on the character and quality of Roman justice is gaining ground in Roman history generally, but the case now needs to be made on a detailed examination of the evidence. Many of the assertions, like the Roman preference for a system of private property, are unassailable historically, but such high-level assessments need to be matched against the evidence for how such preferences and ideologies were translated into practice “on the ground,” for there were competing ideologies and preferences, both within the government and without. The negative view of Roman justice epitomized by MacMullen and Lewis (who would in fact have disagreed with MacMullen on several points) is one that is, in essence, built from the ground up on the basis of the evidence. The question, then, is how and

22 E.g., Bryen 2008.


where do these two perspectives meet? They most certainly meet in the realm of contracting, for it is precisely here that individuals encountered the state and its agents and tested the state’s interests in and capacities for good government, the rule of settled law, and the protection of property or other economic rights by asking for help in enforcing their contracts. The culture of contract, in other words, for its shape, depth, and vitality, depended mightily on Roman justice.
1.3 Of Enforcement and Enforceability

How was a contract enforced in Roman Egypt?

This would seem a straightforward question, one for which there should be a ready answer after a century of research into the law, society, and administration of Roman Egypt as revealed in the now thousands of published documents on papyrus. And, after a fashion, a ready answer exists: there are two handbooks dedicated to the law and legal instruments of Ptolemaic and Roman Egypt, as well as numerous monographs and articles on specific contract types and how they were enforced.25 The majority of this literature, however, is written for an audience whose chief interest is either papyrology or the history of the law. One curious, if not entirely unpredictable result of this perspective is that enforcement is usually narrowly defined as legal enforceability, with actual enforcement more or less assumed or postponed—to be discussed elsewhere, much as it is in a modern casebook on contracts in an American law school.26 The scholarly literature is therefore dominated by discussions of the legal nature of contractual obligation in Roman Egypt and the various legal remedies, which in turn accounts for the centrality of such debates as that surrounding the alleged “dispositive” status of written documents, the legal effect of certain clauses (e.g., the infamous καθάπερ ἐκ δίκης-clause), or the effective differences between “public” (notarial) legal forms and “private” forms.27 If one


27 For introductions to these debates, see Wolff 1978: 141-44 (dispositive documents) and Rupprecht 1994: 148 (καθάπερ ἐκ δίκης-clause).
reads further, one will also find useful historical reconstructions of the various contractual forms and procedures. So, for instance, Raphael Taubenschlag’s *The Law of Greco-Roman Egypt* offers a succinct, step-by-step description of ἐμβαδεία, a procedure by which one foreclosed on real property in the case of contracts for secured loans.

Legal enforceability, however, never completely coincides with actual enforcement. Nor does the existence of legal forms, procedures, and remedies necessarily tell us the whole story regarding the manner or extent to which such things mattered or operated in practice. If our aim is to determine how a contract was *actually* enforced, “on the ground,” we will need to consider factors that lay alongside, or indeed outside, the law. To continue with the example of ἐμβαδεία and similar enforcement procedures (different types of security were subject to slightly different forms of execution), in addition to the legal procedure we also should like to know how expensive foreclosure was and who bore the cost? What steps did one usually take before proceeding? Did creditors ever choose modification over foreclosure, and, if so, in what circumstances and why? Again, to what extent and how did the provincial administration defend a creditor’s newly acquired rights to foreclosed property (or, for that matter, protect debtors from illegal foreclosures)? How did relative social standing in the community affect enforcement substantively and strategically? Similarly, how did the administration’s reliance on government by local elites shape the ways in which one went about enforcing legal agreements, either on the part of the parties themselves or the government agents who were charged with enforcement? After reading the description of execution procedures in the handbooks (e.g.,

28 See Kehoe 2007 for insight into this question in a western imperial and Roman law context.
Taubenschlag 1955: 531-35), one might find it surprising to happen upon PSI XIII 1328 (Oxyrhychos, 201), a wonderfully complete document illustrating every step of the legal foreclosure process, but with the unexpected twist that the creditor apparently waited *four years* between securing official permission to proceed and exercising his right to foreclose.29 Indeed, the creditor in this case seems to have delayed at each stage. Why? And what does this suggest about attitudes toward foreclosure, or the ways in which the law figured into one’s overall enforcement strategy?30

Such observations or questions, of course, did not escape the scholarly giants of the past century; their interests and training as lawyers, however, drew them more to historical problems in the development of the law of contract itself and therefore away from the place contracting as a whole occupied in the wider social and economic matrix of Roman Egypt. For example, the orthodoxy on the right of *praxis*, or execution, is that winning a judgment at trial in the case of breach or default did “not lead to ordering the debtor to provide the performance, but rather to authorizing enforcement first by means of a controlled private initiative, then by compulsory enforcement through the official. The judgment only confirmed the prosecutor’s right of compulsory enforcement; it did not bring about enforcement.”31 As suggested above, and argued in Chapter 2, it is precisely the nature of the “controlled private initiative” and the “compulsory enforcement through the official” that matter the most to contract as an economic institution.

29 Cf. *P. Flor.* I 56 (Hermopolite, 233/234).

30 See also pp. 210f. below.

31 Rupprecht 2005: 337. Yet see Sec. 6.2.
This difference in emphasis or perspective perhaps justifies a study of contract enforcement in Roman Egypt in its own right, one which attempts to recover more of the full spectrum of contract enforcement, including extra-legal and illegal strategies and actions, and contextualizes them alongside the legal ones. There is, however, another compelling reason to study contract enforcement in Roman Egypt in just such a wider context: the relatively new and growing appreciation of the economic growth experienced by the Roman economy.

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32 The neglect of actual enforcement is still prevalent in ancient legal studies. For example, Connolly 2010, an interesting and highly informative social history of the law on the basis of the rescripts collected in the third-century *Codex Hermogenianus*, tends to treat a legal decision in court or a rescript from the emperor as automatically enforced, such that extra-legal “force” was “[p]robably the most popular alternative to litigation” (20). There is, no doubt, some truth in this, but what happened when the verdict or imperial pronouncement required actual, physical enforcement? Similarly, how do we jibe the claim that rescripts were “effective” with the evidence she cites for force going unpunished (20-21) and harassment for the mere act of petitioning (26)? Finally, how, precisely, could rescripts be used to “pressure” an opponent to settle out of court absent of the prospect of official or sanctioned private “force”? I am not suggesting that Connolly is incorrect—clearly, the same argument I make for the obvious functionality and value of contracts on the basis of the resources poured into drafting and defending them may be adduced for petitions and rescripts—but rather that she has left out, as many have, the reality behind the law as an institution in dispute resolution. For example, we have a good example of precisely this sort of “pressure to settle” being applied in *BGU* II 614 (Arsinoite, 217), on which see pp. 202ff. We should think, as Hobson 1993 suggests, of petitions as an opening salvo (Sec. 2.3); cf. Williamson on court orderings as delimiting “threat positions” (Sec. 2.2). Though this is certainly a difficult topic to tackle from the evidence of imperial legal codices and the *Digest*, I do wonder whether more can be done from the perspective of actual enforcement from such sources so as to complicate the notion that “force” was an “alternative” to law (cf. Bürge 1980).
1.4 Contract and the Ancient Economy

Until quite recently, there were three general answers to the question, “What role did contract play in the economic history of the Roman Empire?” The first follows a traditional, implicitly neo-classical, micro-economic analysis of certain types of contracts. One may see such an analysis at work in the discussions of various forms of apprenticeship contracts, classifying them as “teaching” contracts or “apprenticeship” contracts depending on how the costs of maintenance, instruction, and wages were balanced between the parties.\textsuperscript{33} The analysis thus focuses entirely on the underlying transaction and tends to take the fact that it was concluded by contract for granted. The contract itself becomes a given, a transparent vehicle for the transaction, like the vacuum of space through which light travels.\textsuperscript{34} Since this perspective does not consider the contract as a separate component or element of the transaction, and is in any case rarely expressed in terms of, or with reference to, any explicit overarching model of the ancient economy, it ends up assuming that “contracts” were a natural part of the economic landscape of antiquity without ever defining what a contract was or what relationship it had to other types of economic activity.\textsuperscript{35}

The second response is more explicit in seeing contract as an “important” development arising from the growing sophistication and importance of trade and commerce in the late

\textsuperscript{33} E.g., Westermann 1911; Hermann 1958a; Hengstl 1972; and Bergamasco 1995.

\textsuperscript{34} An ironically imperfect analogy: gravity warps light in the “vacuum” of space.

\textsuperscript{35} Cf. Finley 1951 on Pringsheim 1950. I will argue in Chapter 2 that contract as a governance structure does in fact affect the transaction, or to put it in another (vaguely Aristotelian) way: just as there is no matter without form, so there is no such thing as a transaction independent of and unaffected by its mode of governance.
Republic and early imperial periods. This answer flows from an appreciation of the historical development of Roman law, which there is no disputing: over the course of this period Roman law became more “efficient” with respect to the ways it dealt with agency, contractual arrangements, insolvency, and many other economically important functions, such that it constituted “[o]ne of the most striking illustrations of the high development of economic life in the Empire in the first two centuries of our era.”36 This is a response, then, that unlike the first links law to economic performance generally, but not in a way that explains the dynamics of the relationship between social and economic change and legal change.37 In other words, why was Roman law so responsive to economic needs in this period; and how did Romans come to rely on it so heavily for organizing their affairs; and what reciprocal effect did this have on transactional efficiency and business practice? Furthermore, the fact that for most of this period more than half of the Empire did not use Roman law in its economic arrangements, even as it depended on Roman authorities for justice, is frequently passed over in silence. So the question remains: what was the relationship of this particular history of Roman private law to the economic history of the Empire as a whole?38 To answer such a question involves not only a renewed engagement with the old problem of the relationship of Reichsrecht to Volksrecht (though with different

36 Rostovtzeff 1957: 182. Cf. Harris 2007: 519 with references at n34, and Johnston 1999: 77-111. However, some Romanists, like Alan Watson, have insisted that the law was more or less detached from real world concerns, a system that responded to the needs of elegantia in the system of the law rather than reality. On this debate, see Aubert and Sirks 2002, esp. introduction and concluding chapters, and Watson’s riposte in Watson 2007.

37 The outstanding exception to this is, of course, Bruce Frier, esp. Frier 1980 and 1985; cf. Bürg 1980. See now also the similar criticism by Peter Bang in his review of Scheidel, Morris, and Saller, eds. 2007 as to the “common fallacy” of assuming that institutions, and in particular, law, are generally productive: “It is a small step from the attempt to discover the rationality of a given arrangement to the conclusion that it was also efficient and generated growth” (2009: 203).

38 Again, see Kehoe 2007, which adumbrates some answers to this thorny question.
parameters and goals than those established by Mitteis 1891), but also a model of how law
related generally to economic activity in the Roman world. Absent such a theory, the relationship
between law and economic performance becomes the assumption, and contracting becomes by
default an index or “illustration” of economic development.

Finally, the third response could perhaps be summed up as: “Little to none.” Perverse or
counter-intuitive though it may seem, this is the only real attempt to “answer” the question, since
it takes economic, instead of legal history as its point of departure. Nevertheless, it comes (and
was meant to come) as a shocking conclusion, especially in light of the history of Roman law
and the evidence for contracting from Roman Egypt and sundry other corners of the Roman
world, whether it is the Frisian coast, central Romania, or Dura Europos on the modern Syrian-Iraqi border. How could it be thought that all that contracting and contract law had so little
economic impact, when contracts are today widely thought of as vitally important instruments in
the generation of the fantastic economic growth of the past three hundred years? It is, in fact,
the undeniable difference between the performances of the ancient and modern economies (to
speak in grand generalities) that explains the negative or indifferent assessments of law generally
in this tradition of ancient economic history, for until quite recently adherents of this line of
interpretation understood the ancient world to be structured in such a way as to all but preclude
properly “economic” behavior and so any possibility of real economic growth.

39 Friesland: FIRA III.137, now understood to be a loan (Bowman, Tomlin, and Worp 2009); Romania: the triptychs
of Alburnus Maior, on which see Ciulei 1983; Dura Europus: P.Dura.

40 On the economics of contracting, see Chapter 2.
The great articulator of what has been dubbed the “structural” view of the ancient economy was Moses Finley. His general model of the ancient economy is widely known, and the impact of his views on the trajectory of modern ancient economic historiography has been appraised in a number of recent excellent publications.\(^{41}\) Here, therefore, we need only briefly to review his account with a view to the particular place he accorded to law and legal instruments. This may be done conveniently from his influential Sather Lectures (*The Ancient Economy*), since he re-published them shortly before his death with a post-script replying to his critics, in which he added one substantial amendment to his generally dim view of the economic role or potential of the law. The orthodox assessment of Finley is that he “vigorously argued that the values and beliefs of ancient social and political élites ... constrained their economic actions, and that this obstacle helps to explain why the ancient economy remained fairly static in comparison with that of late medieval and early modern cities.”\(^ {42}\) This is certainly how Finley would have summed up his own position, yet somewhat to the detriment of his own argument, as it fails to take into account the importance of other, non-ideological constraints on ancient economic behavior in his thinking.

In Finley’s view, the ancient economy—for there was essentially one—was characterized above all by a lack of “economic rationality,” which for him was both a mentality and a behavior: one understands exchange in primarily material terms (the mentality), and therefore

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\(^{41}\) For literature on Finley and his impact, see Ian Morris’s introduction to Finley 1999 [1985]; Andreau 2002; and Scheidel, Morris, and Saller 2007.

\(^{42}\) The convenient summation of Frier and Conison 2009: 512.
enters into exchange in order to maximize one’s material return (the behavior).\textsuperscript{43} For economic rationality to develop and become the defining mentality of exchange, several supporting ideas and institutions must already be in place, such as, for instance, private property.\textsuperscript{44} Another precondition, or so Finley frequently implied, is the requirement that there be a sufficiently wide set of alternatives in order to stimulate one’s faculty of analysis. Without real options, there is no scope, and so no reason, to attempt to tease out the specifically economic dimensions of material and financial decisions. It was the lack of alternatives that for Finley held such profound implications for ancient economic behavior and performance.

Specifically, Finley argued that the real structural limitations on transport and manufacture in the ancient world left most capital with no place to go but into land or “non-productive” consumption.\textsuperscript{45} Given these restrictions, the popularity of land as an investment was a reasonable, if not always an economically rational, choice. Even so, the comparative dearth of options neutered this act of choosing so as to obscure any specific character it might have had as an economic “investment” \textit{per se}. In other words, the purely economic nature of the “investment” never stood out as distinct from or above the social and cultural associations traditionally bound up with ownership of land.\textsuperscript{46} In a similar fashion, the ineluctable

\textsuperscript{43} Specifically, Finley understood economic rationality in its exclusively neo-classical formulation as a “maximising orientation” (see, e.g., Finley 1999 [1985]: 23, 43, 109-11, 117, 121-22, and 132). Cf. pp. 90f. on “satisficing” as an alternative mentality and literature cited in Sec. 2.2 n82.

\textsuperscript{44} 1999 [1985]: 28-29. Cf. the critique of this passage and Finley’s general understanding of land tenure in the Eastern Mediterranean, including Egypt, in Manning 2005.

\textsuperscript{45} See, e.g., 1999 [1985]: 126-28, 138-39. Note the connection between the limits of transport and the ideals of self-sufficiency and consumption in these passages, themes which he elaborates in earlier chapters on the moralizing and ideological framework for ancient economic thought and behavior (cf. pp. 108-10).

\textsuperscript{46} 1999 [1985]: 95-122, esp. 108-10, 116-18, 121-22; cf. 188-89.
The precariousness of ancient life guaranteed that at the center of the ideal of self-sufficiency was a definite economic reality; but again it was the lack of options for productive investment that helped translate this ideal into a common and “non-rational” management strategy. With no incentive to identify, analyze, and implement the most economically efficient use of their resources, ancient individuals instead strove to cut the costs they could readily see and control, in the process missing out on economies of scale and other efficiencies that would have maximized their return on property. 47 Finally, the absence of real options meant that the disposition of labor in agriculture, certainly the largest “sector” of the ancient economy, was organized not on the basis of negotiation or market forces, but more or less dictated by traditional status arrangements. For a variety of structural reasons, most ancient landlords were often left with little real choice as to which form of labor to deploy on their land (i.e., slave, free, or dependent), and by the same token, most free peasants worked either by force or by force of custom, with the only real alternative before them being to leave the land altogether. 48

The hallmark of Finley’s ancient economy, then, is a fundamental and ramifying lack of choice. This basic condition of what we may call “effective unfreedom” existed, moreover, on multiple levels. As per the traditional view, Finley indeed understood social constraints as not only the most important, but perhaps also the original, limitation on choice, with the result that oppressive non-economic ideologies and social relations—status in particular—shaped what we


48 1999 [1985]: 62-94, esp. 70, 83-84, and 92; cf. 23: “to speak of a ‘labour market’ . . . is immediately to falsify the situation.”
now see as economic life at every level of society. Yet, in making his central argument one about the nature and dynamics of choice, he reasonably and insightfully suggested other, non-ideological limits, both material (e.g., transport) and institutional (e.g., labor pool), yet without ever suggesting how these three different sources of limitation might relate to each other. Our aim here is not a critique of Finley so much as to point up the fact that in his and other structural interpretations of the ancient economy, “the issue is,” as he put it, “one of choice,” with effective unfreedom the defining condition of ancient economic life.

This basic stance explains Finley’s otherwise surprising silence with regard to the economic function of the law. In the whole of the Ancient Economy he mentions law only a handful of times, with his most extended discussion devoted to public law. His view was that laws were passed either with non-economic ends in mind or aimed merely at maximizing state revenues with no regard to likely overall economic effect (both conclusions follow on his views of the economic rationality of the legislators). Of private law, there are but a few brief notices. Typical are his remarks on the oppressive nature of ancient debt law and his observation on the

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49 Indeed, the “confusion” of social and economic relations was one long in the undoing, constituting one of the chief aims of Smith’s Wealth of Nations, as in Book 1, ch. 8, where he attempts to rewrite customary “master” and “servant” relations as “employer” and “employee” relations to the material and moral benefit of both. For Finley’s discussion on the role of choice when it came to work or occupations, wherein even the élite were limited, see 1999 [1985]: 43. Recent research (e.g., Rosenstein 2008) suggests that many of these limitations were something of a façade.

50 1999 [1985]: 43. The lectures are in many ways as much an extended meditation on freedom as they are on economic history.

51 Surprising in no small part because Finley trained first as a lawyer (Morris’s foreword to Finley 1999 [1985], p. xi).

52 1999 [1985]: 161-68.

53 Cf. 1999 [1985]: 133 (on the Hadrianic law governing the export of Athenian olive oil [SEG XV 108]) and 136 (on there being no Greek laws imposing controls or tariffs on manufactured goods).
disappearance of the Roman law of *locatio conductio rei*, or leases, in the course of the fourth century CE.\(^5^4\) The leases, in his view, disappeared along with the notional freedom of peasants who took them, and this for Finley showed the extent to which the law was merely epiphenomenal to pre-existing labor relations. The historical change, in other words, was in form only: the legal formality of lease died with the merely juridical formality of “freedom.”\(^5^5\) This is, in fact, the same basic understanding that informs his view of debt law as custom or status in a different guise.\(^5^6\) Elsewhere he denies—without argument—the laws that required guardians to invest the property of their wards any economic impact.\(^5^7\) If choice was more or less illusory or nonexistent, then ancient law, private or public, had no economic impact of its own, partly because those who wrote it and used it did not pursue economically rational ends, and partly because the law had no independent institutional existence, but was instead merely a formalized or codified version of underlying social relations.\(^5^8\) In the end, Finley was convinced of the economic irrelevance of law, and particularly so of private law.\(^5^9\)

\(^5^4\) 1999 [1985]: 40 and 92, respectively.

\(^5^5\) Cf. 1999 [1985]: 187-88 on post-classical Roman law catching up with long-standing traditions of self-sale.

\(^5^6\) Cf. 1999 [1985]: 70 on debt-bondage and dependent labor.

\(^5^7\) 1999 [1985]: 121. Saller 1994: 202-3, on the other hand, advances sound reasons to believe that such laws might have had a profound economic impact.

\(^5^8\) “[T]he law … was often less important than custom, tradition, social and political pressures” (1999 [1985]: 95, cf. the frequent and telling collocation of law and custom, pp. 66, 69, cf. 52, 55.)

\(^5^9\) Saller 1994 offers a very different analysis of private law in his chapters on succession and guardianship.
Finley was a self-conscious and skilled polemicist, and his work succeeded in attracting impassioned partisans both for and against his model and his method.\textsuperscript{60} In the ensuing debate, several elements of his model have been challenged successfully (though the same is not true of his method), and one of the most important of those challenges is the case that has been put forward for “significant,” and perhaps “intensive,” economic growth during the Empire.\textsuperscript{61} The case is not air-tight, and the proper characterization of the growth that did occur is still hotly debated, as the recent exchange between Walter Scheidel and Andrew Wilson forcefully demonstrates.\textsuperscript{62} Yet whatever the outcome of this debate, it now seems abundantly clear that there was not one “ancient economy” as Finley would have had it, and more specifically, that the Roman economy was not of a piece with the “Greek” one that preceded it.\textsuperscript{63} Ancient economic history, therefore, is in a real sense not what Finley supposed it be. Had he been correct in this instance, that for structural reasons there was essentially but one ancient economy characterized by a persistent lack of growth, then ancient economic history would been have reduced to the history of ancient social structures and their effects on the distribution of wealth. In such a history, law can have no independent economic effect because there is no change in performance to explain: why ascribe economic potential to the law if that potential is never realized? If,

\begin{footnotes}
\item[60] Saller 2005.
\item[63] Finley’s assessment of the contribution of the Roman Empire to ancient economic history: “Virtually nothing” (1999 [1985]: 165). Of course, there was not one “Greek” economy either: see the chapters relating to classical and Hellenistic Greece in Scheidel, Morris, and Saller, eds. 2007 and now Ober 2010.
\end{footnotes}
however, we believe that there was change over time in the performance of the Roman economy, then real economic history remains to be written (i.e., the history of production), and the roles of all factors need to be reconsidered, including that of law.\textsuperscript{64}

The question, then, must be asked anew: how are we to relate the evidence for contracting that survives from this period to the economic performance of the Empire? One possibility is that we interpret the evidence of contracting as merely a passive index of economic activity. There is, no doubt, a good deal of truth to this: if more economic activity took place in the Roman period (which would not have necessarily entailed intensive growth), then it stands to reason that more contracts were concluded, and this in turn would have likely driven the development of contract law, since each contract has within it the seeds of litigation. Yet, as above, this interpretation does not help us to understand the nature or mechanics of the relationship between economic activity and law or contracting in the Roman world. There is, however, a second possibility: that contracting was part of a suite of social and legal institutions that, while not of Roman invention, nevertheless spread and flourished with Roman power and helped to support and promote economic growth in a dynamic fashion. This is Rathbone’s implicit suggestion in his assessment of the provincial administration of Roman Egypt, and one which motivates the following project (see Sec. 6.2).

\textsuperscript{64} This is not to suggest that law was the chief determinant in the history of ancient economic growth, or even as important as population and technology, but rather that it was potentially one factor (cf. the comments Bang 2009, esp. 198-206, in his review of the \textit{Cambridge Economic History of the Greco-Roman World}. The switching of analytical frames from structure to performance with respect to ancient economies (Scheidel, Morris, and Saller 2007) was in some ways anticipated in the law and economics and New Institutional Economics fields just about the time Finley delivered his Sather lectures. See Posner 1980, who declared the debate between “modernists” and substantivists” on the ancient economy “sterile” (2)—predating Richard Saller’s declaration to the same effect (2005) by more than two decades—and whose goal was to see “whether and how far the theory that law is an instrument for maximizing social wealth or efficiency ... could be extended to primitive law” (4); cf. North 1977; 1978.
1.5 The Argument

What follows is the first installment of a larger study of the institution of contract in one region of the Roman Empire, the province of Roman Egypt, with a view not only to its inner workings but also its economic potential. As will be argued in subsequent chapters, the best way to approach this question is to study the possibilities and modalities of enforcement. Since the value of a contract is directly related to the perception of its actual (not merely legal) enforceability, actual enforceability (and the perception thereof) represents a controlling factor in the decision whether or not to organize an economic exchange by contract. This approach in turn recommends Roman Egypt as the locus of study: it is only in the papyri of Egypt that the complex interactions involved in actual contract formation and enforcement in the Roman world are most thoroughly and consistently brought to light. In them we may witness not only the role played by the state, but also those played by real individuals and multiple sources of power and authority, and further how all these actors, organizations, and institutions came together into a system of social and legal control that individuals and organizations navigated, with varying degrees of success, in negotiating, drafting, and enforcing contracts.\textsuperscript{65} The ultimate aim of the larger project, then, is two-fold: (1) to elaborate the full spectrum of contract enforcement that operated in Roman Egypt; and (2) to assess what this spectrum meant with respect to the economic potential of contract as an institution in the Roman world. This larger project is beyond the scope of a dissertation, which presents just the first two steps: a discussion of the theoretical

\textsuperscript{65}Social history can, of course, be written from Roman law sources, but they are by nature much less rich with respect to the question of actual enforcement (cf. n32 above on Connolly 2010).
perspective and goals of an institutional study of contract, and an exploration of the foundational elements of the spectrum of enforcement, the norms and ethics of contracting.

Chapters 2 and 3 seek to define the theoretical perspective underlying this approach to contract more precisely. The sorts of questions asked above, questions that seek to understand the relationship of institutions, and in particular of law, to economic choices and performance, are ones that have been asked in a systematic fashion by lawyers and economists of modern contracting over the last four decades, often in light of one of two theoretical traditions now known as “Law and Economics” and the New Institutional Economics, or NIE. Law and Economics, pioneered by Richard Posner and others, has aimed to discover the economic foundations of law (usually the common law). Such scholars tend not only to read the law in economic terms, but presume that the law primarily exists in order to further economic ends, that it should, in a word, be economically efficient. The NIE project, on the other hand, has been precisely that of understanding the relationship of institutions, law among them, to economic performance and decision-making. Both movements aim attempt to forge a descriptive model of the relationship of law to economics writ large in service of prescriptive goals (i.e., to improve the law such that it becomes an economically more efficient institution). My interest in each has nothing to do with their prescriptive aims but rather their ability to describe contract as an economic “institution” instead of merely a legal one. However, given their explicitly prescriptive goals and the modern assumptions on which their theories rest, to my mind it repays the effort to

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66 On Law and Economics, see, e.g., Boukaert and De Geest 2000, vols. 1 (history and thematic areas) and 3 (contracts), and more recently Polinsky and Shavell 2007. Polinsky 2003, Mercuro and Medema 2006, and Cooter and Ulen 2007 are useful surveys and introductions to methods, themes, and problems in Law and Economics.

67 On NIE generally, see Furubotn and Richter 2005 and Ménard and Shirley 2008.
come to grips with this sort of thinking in a comprehensive manner, with attention to its models,
assumptions, possibilities, and limitations, before attempting to apply it to Roman Egypt. This is
the aim of Chapter 2, reviewing modern theories of contracting with an eye to establishing what
an “institutional” economic analysis of contract in Roman Egypt might profitably entail.

The main conclusions of Chapter 2 may be summarized as follows. First, we may only
arrive at an institutional understanding of contract and an assessment of its economic efficiency
if we set out to understand contract as a process (i.e., as contracting), the boundaries of which
stretch beyond the law of contract itself. Second, contract must be understood to represent but
one mode of organizing exchange, as opposed to other “governance structures,” namely
“marketing” and “hierarchies”, each with its own characteristics and modalities. Contract as a
governance structure does not exist side-by-side but interlocked with these other structures.
Third, as suggested above, enforcement matters; in fact, it defines the efficacy and efficiency of
contracting as a governance structure. Fourth, since contract as an institution is “larger” than the
law of contracts, we cannot think of contract enforcement as coming from the state alone, even
as it was an admittedly important source of enforcement; instead, there were other sets “rules”
beside law that helped to control the formation and enforcement of contractual relations, and
these rules were policed by sources of authority or power other than the state.

Chapter 3 presents an institutional “map” of contract on the basis of the framework set
out in Chapter 2. When viewed from the perspective of enforcement, contract is articulated by
three overlapping zones, each with a different topography generated by the intersection of three
broad sets of “rules”: ethics, social norms, and law. I explore the implications of this approach
with respect to how these rules, with their different origins, powers, and enforcers, should be
thought of in relationship to each other, both from the perspective of “formality” (i.e., the “informality” of norms and the “formality” of law), as well as from the perspective of the parties themselves. Specifically, I suggest that the analysis of contracts from the perspective of actual enforcement, which is nothing more than the attempt to follow the calculations ancient parties made in navigating these sets of overlapping rules, provides fresh insight into the degrees of effective freedom and choice in the ancient world.

The institutional map I draw largely follows the pioneering work of Robert Ellickson. I thus suggest a system of enforcement for ancient contracts that begins with “first-person” enforcement, or the “self-sanctions” one administers in maintaining one’s own ethical commitment to keeping one’s obligations. For methodological reasons, ethical enforcement is difficult to trace and interpret in the papyri, and I therefore conclude that we focus on norms, since these are much more easily and securely discovered from our sources. Social norms are “third-person” sources of enforcement in that they are the rules of the community at large, controlled by neither party to the contract. Theoretically, so are those of the state. Importantly, both sources of third-person enforcement can be invoked, deployed, even captured, by parties in their efforts to enforce their contracts. Chapter 2 argues that contracts are written with the possibilities and modalities of enforcement in mind, and that this is no less true of the third-party enforcement of norms than it is of the third-party enforcement of law by the state.

The final zone of enforcement is that of the contract itself, or the monitoring and actions of the parties over their mutual performances. This Ellickson calls “personal self-help.” For reasons I discuss in both Chapters 2 and 3, ancient contracting relied far more on the power of norms and self-help than has generally been admitted by those who have invested the most time
in studying ancient contracts, and certainly more than is the case for modern contracts. Accordingly, any true appreciation of contract as an economic institution must incorporate the historical evidence for these vital sources of enforcement and how they related to the law and state enforcement.

Chapter 4 begins the study of contract norms in Graeco-Roman Egypt, starting with two key values, trust (πίστις) and “respect” or “consideration” for the other party (ἐγνομοσύνη). Trust has been studied from a juridical point of view, which is to say as a legal standard akin to the role fides played in Roman law. As is typical of juristic work of the twentieth century, this study grounded its definition of pistis in the literary sources of classical Athens. Given the historical development of law in the Hellenistic age, such evidence is certainly relevant insofar as it illuminates one of the key points of departure for the role of trust vis-à-vis the perspective of the Greek immigrants who brought their legal and cultural constructs with them to Egypt. However, such sources only tell us, at best, part of the story. In order to understand what contracting parties might have meant in inscribing pistis into their contracts as a fiduciary legal standard, we also need to know what they meant by pistis in a social and business context. Furthermore, since contracts are in essence relationships of trust, we need to study the dynamics of trust as they relate to the formation and enforcement of contractual relationships as such, not merely in connection to those contracts that explicitly invoke some legalized version of trust.

One may consider eugnōmosynē, or “respect,” as the outward face or manifestation of pistis. Pistis is a subjective evaluation of another person; it is, in a word, a measure of the stock

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68 Schmitz 1964.
one puts in someone else. *Eugnōmosynē*, on the other hand, is a characterization of another person’s *gnōmē* towards oneself. Those who are *eugnōmones* have the proper respect for others. One who was considered *pistos* was therefore usually interpreted to be *eugnōmōn*, while one who was *agnōmōn* was almost certainly not to be trusted. Like *pistis*, *eugnōmosynē* was not exclusively a business concept, though it appears predominantly in that context in the papyri. As we shall see, the determination of another’s *gnōmē*, whether it was “good” (*eugnōmōn*) or non-existent (*agnōmōn*), was crucial to the decision whether or not to enter into a contract with someone, as well as to the rhetorical stance of those who litigated broken contracts. Both *pistis* and *eugnōmosynē* were thus important concepts in the reputational discourse of contracting, the terms in which people evaluated potential contract partners and threatened backsliders on the verge of breach. Finally, while it is difficult to trace an evolution in the notion of *pistis* over the Ptolemaic and Roman periods, the same is not true for *eugnōmosynē*, wherein the sense of obligation moves from one tied directly to the person to one tied to the debt that exists between people. By the later imperial period, the notion of *eugnōmosynē* is so closely tied to one’s business reputation that it has become a word for credit-worthiness, with *eugnōmonein* often meaning “to repay.”

Chapter 5 moves from what one might call the “positive” to the “negative” norms of contracting. Instead of looking at what contract parties meant by trust and respect, we turn to the notion of breach. This chapter is far more legal than the one before it, a reflection of the source material we have for the study of breach. I argue that the notion of breach *per se* was inchoate for the first hundred years of Ptolemaic rule, despite the fact that one can find evidence of it in fourth-century Athens. Moreover, when specific words for breach begin to appear in our
documents, namely παρασυγραφεῖν and παραβαίνειν, they do so in a particular sequence and exhibit a differentiated pattern of usage, both significant for the legal, social, and economic history of contract in Graeco-Roman Egypt. Parasyngraphein appears first in the late third century BCE and remains the dominant word for “breach of contract” until sometime around the turn of the first century BCE. Parabainein is first attested in a documentary setting to mean “breach of contract” ca. 140 BCE, but grows over the course of the next two and a half centuries to become the only word for breach. I argue that both the tendency to inscribe breach per se in contracts, and the shift from parasyngraphein to parabainein, or from “breach” to “transgression,” is part of a broader “moralization of contract.” This, in turn, participates in an even larger shift which includes the displacement of oaths from private legal transactions and the eventual success of the homology at the expense of the protocol. On a smaller scale, I also argue that the conception of breach per se was implicated in, and perhaps instrumental to, the evolution of a set of consensual contracts, which I have called “transactional agreements.” In these contracts, the “transaction” they record is nothing more than the agreement of the parties to the terms of contract (i.e., there is no other causa), and the contract gains legal force by a mutual agreement not to breach, which is at heart an extension or reinterpretation of a common clause penalizing litigation (the so-called Nichtangriffsklausel).

Chapter 6, the conclusion, draws together the findings of Chapters 4 and 5 in light of the theory elicited in Chapter 2 and 3, and then sets out a prospectus of the next phase of the project, evaluating the nature and quality of state enforcement in Roman Egypt. My general contention in the present study is that we have spent too little time understanding the moral universe in which contracts were made and how this affected contract formation and
enforcement. The thesis I intend to prove in the next phases is that many scholars of the past generation have been too quick to dismiss the quality of state enforcement in the Roman world, particularly with a view to what had proceeded it in many parts of the Greek East, if we may take Egypt as an example.

Finally, a word on the period selected for this study. Although I have couched this study in terms of what it might be able to tell us about the Roman economy, it is in fact impossible to study contract as an institution purely in the Roman period. Or, rather, one could do this, but the experience would be akin to interpreting a single cross-section of a geological stratum: one is likely to get the synchronic relations between deposits correct, but have no sense of trajectory or of the significance of the particular relations. Is one deposit waxing or waning? How might we interpret this deposit differently if we knew that it disappeared in the stratum above, or appeared here only for the first time? Since institutions are human creations and evolve over time as agents and organizations change the rules in the act of using and abusing them, so we must study them diachronically in order to understand any particular moment in time. Such considerations, taken together with the fact that the Roman period papyri, though numerous, are not so rich as to afford us the luxury of being able to rely on them alone for evidence, has led me to broaden the scope to include the Ptolemaic period in this inquiry.

It is, for the reasons given above, almost always justifiable to begin one’s research earlier than the period of interest, and indeed, as I indicate in Chapter 3, a systematic study of contracting norms before the Ptolemaic period would be interesting, and no doubt useful to the understanding of the norms in the subsequent periods. Beginning with Ptolemaic rule, however, is the right starting point here since it represents a major turn, or a moment of rupture in the
evolution of contract in Egypt, as Greek notions, language, and bureaucratic control of contracts entered the stage *en masse*. It was this accommodation and assimilation of the Greek and Egyptian traditions that the Romans inherited when they finally took control of the country as a province in 30 BCE. Understanding the trajectory established under the Ptolemies is therefore of prime importance for the interpretation of contract under the Romans.

Ending points, on the other hand, are more difficult and often arbitrary. I chose a rough date of 300 CE for the terminal point. At the end of the third century and through the beginning of the fourth several trends, each of which observable to some extent throughout the Principate, combined to produce what is arguably a qualitative change in the institutional landscape for contracting by the mid-fourth century. First, the system of *grapheia* seems to have disappeared sometime after 300, with the *bibliothēkē engktēseōn* following suit shortly thereafter. From then on drafting, registration, and publication of documents occurred through other processes.  

Second, though people still petitioned on the basis of their contracts, changes in the administrative hierarchies meant that their petitions went to different people. Also, there were profound changes at the level of state mechanics underlying the enforcement one could expect from such petitions and litigation. To mention but one, it appears that the local police system, which existed for the first three centuries of Roman rule and played a role in producing defendants, was progressively transformed over the course of the third century. At the same time as this administration re-organization there appears to be an increase in the use of mediation

\[69 \text{ Wolff 1978: 18, 49; Mitteis 1912: 87-89.}

\[70 \text{ Gagos and Sijpesteijn 1996: 79-80. The *praktores xenikôn* also disappear at the end of the third century, cf. Płodzien 1951. On general administrative changes, see Bowman 1974.}\]
to resolve disputes, and the two may be connected, or perhaps both products of a more fundamental social change. While such changes may have amounted to nothing more than bureaucratic reshuffling, and the increase in arbitration perhaps an artifact of our evidence, such assertions need to be proved rather than assumed.\textsuperscript{71} Third, it was precisely over the course of the later fourth and fifth centuries that Roman law ideas and forms with respect to contracting appear to take hold.\textsuperscript{72} Fourth and finally, the growing importance of Christianity produced not only new social arrangements and power structures relevant to contracting (e.g., monasteries and church hierarchies), but also the possibility of new conceptions of old ideas fundamental to contract, like \textit{pisits} and \textit{parabasis}, now words for faith and sin as must as for trust or credit and breach.\textsuperscript{73} Again, we might wonder what substantive effect any of these developments had on contract, but together they paint a picture of a social, moral, legal, and economic landscape sufficiently different from that of the centuries which preceded to justify the study the institution of contract in the fourth century and beyond in its own right.

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\textsuperscript{71} See Bagnall 1993: 162-64; Gagos and van Minnen 1994 (with review by Bagnall 1995); and Feissel and Gascou 2004, esp. the chapters by Zuckermann and Gascou (cited in bibliography below).

\textsuperscript{72} Wolff 1956a; cf. Schmitz 1964: 101-11; Mélèze-Modrzejewski 1970: 347-77; Wolff 2002: 191-200; Maehler 2005. From the perspective of the sixth and seventh centuries, as Beaucamp 2007 argues (in part on the basis of her earlier work), the impact of Roman law appears to have been uneven. Certain areas, like property transmission, appear to have been more susceptible to the influence and penetration of Roman law than many areas of family life and social mores (e.g., divorce).

\textsuperscript{73} Cf. Lampe 1961, \textit{s.v.v.}
CHAPTER 2: THE ECONOMICS OF CONTRACT

Why do we believe that contracts have the potential to promote economic growth? And is this potential particular to modern contracts or a feature of all contracts? In other words, to what extent does the growth-promoting potential of a contract have to do with the contract itself, and to what extent does it have to do with the institutional environment in which the contract is made, and how do both relate to enforcement? A significant body of legal and economic theory has been built up over the last century to answer these questions in a modern context, and reviewing the answers will help us to assess what questions we should and can ask of the ancient evidence.

2.1 Contracts and Exchange

First, what is a contract?

The common law has settled on the following definition of a contract: it is a voluntary promise of future exchange that is enforceable by law.74 These three elements—voluntariness, futurity or the existence of ongoing rights and obligations, and legal enforceability—all

74 E.g., Second Restatement of Contracts, § 1: “A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.” Cf. Farnsworth 2004: §1.1-3; and Shavell 2004: 291. Each of the elements of this definition are the subject of a long historical and legal evolution, but for our purposes the most important is the limitation of contracts to promises related to true exchanges recognized by law. Atiyah 1979 argues that the centrality of promise is an outgrowth of its procedural use in the history of common law notions and doctrine contract, a history that is only beginning to be considered in discussions of Hellenic and Hellenistic theories of contract (e.g., Carawan 2007), and not at all in the discussion of contracts in papyrological circles. In practice, the modern common law of contracts is not far removed from the contemporary civil law of contracts with respect to its definitions and economic implications: see, e.g., Whincup 2001.
contribute to the economic importance of contracting as opposed to other forms of exchange. However, it is important to see first that free or voluntary exchanges in themselves can create wealth by allowing “resources [to] gravitate toward their most valuable uses” (Kronman and Posner 1979: 1-2). Kronman and Posner give the following example:

If $A$ owns a good that is worth only $100$ to him but $150$ to $B$, both will be made better off by an exchange of $A$’s good for $B$’s money at any price between $100$ and $150$; and if they realize this, they will make the exchange. By making both of them better off, the exchange will also increase the wealth of society (of which they are members), assuming the exchange does not reduce the welfare of nonparties more than it increases $A$’s and $B$’s welfare. Before the exchange—which ... takes place at a price of $125$—$A$ had a good worth $100$ to him and $B$ had $125$ in cash, a total of $225$. After the exchange, $A$ has $125$ in cash and $B$ has a good worth $150$ to him, a total of $275$. The exchange has increased the wealth of society by $50$ (ignoring ... any possible third party effects).

In this example the wealth-maximizing effect is not dependent on any contract; what we are witnessing is the efficiency of free exchange. Built into this example are several basic assumptions of neo-classical economics, namely (i) that the participants can find each other, i.e., there is a market; (ii) that they can accurately and instantaneously assess the value of the good vis-à-vis their respective positions; and (iii) that willingness to pay is an accurate assessment or gauge of value. I will return to some of these assumptions below. For the time being, however, the point is that contract is not coterminous with exchange. Of course, a contract may be implied in the situation above or in any market situation, and the evidence of this would be the ability of $B$ to enforce rescission of the object due to some defect for which $A$ was legally liable. While the legal implication of contracts does have important economic effects, we are interested here in the
economic characteristics of express or formal contracts. What economic value do these add and in what circumstances? Indeed, there are situations in which one can easily imagine that stopping to draw up a contract would be positively detrimental to the gains of exchange, e.g., buying a cup of coffee.

*Simultaneous* exchanges of simple goods and services in general have no need of an express contract. If one purchases a glass of wine to drink on the spot, a simple cash transaction or barter exchange will suffice: there is no need for contract *per se* as the transaction is effectively completed in the moment. *Sequential* economic activity, on the other hand, is inherently riskier by virtue of the time it takes to complete the transaction. For instance, if A pays B to build a house for A to live in, the fact that it takes a certain amount of time in which to complete the building means that there exists the potential for B to act opportunistically. For example, B may “hold up” A after building half the house by demanding more than the originally negotiated amount to complete the work. Similarly, *unforeseen circumstances* may intervene in the time between the performance by one party and the completion of the reciprocal performance by the other. For example, B breaks his leg and cannot complete the job, leaving A out in the cold. We should also include in this category transactions that appear to be simultaneous, like sale, but are in fact not. Of course, in one sense, a sale is simultaneous: at a real estate closing, A hands over money, and B the title to a house, both at the same time. Done deal, end of story. But

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75 Contracts “implied-in-law” (as opposed to “implied-in-fact”: see Farnsworth 2004: §§ 2.20, 3.10) are equivalent to the Romanist and continental quasi-contract, wherein the state essentially legislates rights and responsibilities on analogy with a contract, though in fact no contract exists. See also Zimmermann 1990: 15-24 and Posner 2007: §4.14.

what if the title is defective in some way, or the boundaries are not as they were advertised?

Unlike an apple or the money A handed over, B will own and use the house for a comparatively long time, such that his ownership or use is in fact open to risk should the house, e.g., turn out to sit on someone else’s land. This is why some sales are concluded by contract, even though the transaction itself appears to be simultaneous: the durative nature of the consumption of certain items brings with it some of the same risks as a more obviously sequential transaction.

Sequential transactions thus carry with them certain inherent risks, and unless one can effectively protect against them, these risks will tend either to inhibit such transactions from taking place, like those that entail long-term agency relationships, are based on credit or payment on delivery, or operate as a form of insurance or speculation—in short a range of economically important, but more complex, exchange.77 Protection against these risks is the basic function of a modern contract: it formalizes an agreement as to rights and responsibilities for a certain period of time extending into the future such that the original bargain can be enforced in the event that those risks materialize and one party refuses or fails to perform to the other party’s detriment. A world without contracts is thus a world more or less confined to simultaneous transactions; or put

77 “The interval over which contract performance occurs is presumably a positive function of the complexity of the economic activity being regulated by the contract” (Posner 1980: 35). Cf. Farnsworth 2004: §1.3; Shavell 2004: 296-97; Posner 2007: 93-94. We have examples of all these complex economic uses of contracting from antiquity. See, for example, Jakab 2009 on contract and risk management in advance wine sales, or the bottomry (emporic) loans documented from classical Athens (Cohen 1992: 136-60), or even seed loans as a form of arbitrage. One early and no doubt anachronistic example comes from Arist. Pol. I.11, where we are told how Thales leased (mistrov) all the olive presses out of season in anticipation of a bumper crop by putting down deposits (arrabōn) and then capitalized on his monopoly when the crop came in by releasing the presses (ekmistrov). This story was told, according to Aristotle, as a popular demonstration of the economic potential or “usefulness” (ōphelia) of sophia (in this case, astronomy). He, however, rejects this interpretation, seeing Thales as merely coming up with a common “financial scheme” (katanoēma ti chrēmatistikōn) based on a general truth (ti katholou) about the value of securing of monopolies. The truth of the story is inconsequential; what matters is what it reveals about the possible speculative uses of contract in the second half of the fourth century BCE.
another way, contracts help to expand the world of possible exchange to include sequential transactions, and in doing so increases the percentage of resources that can be put to efficient ends via free exchange.⁷⁸

To sum up thus far, contracting is not exchange, but rather a mode of exchange. Specifically, it is a mode of exchange that relates to sequential economic transactions, which are inherently vulnerable to the intrinsic uncertainty of future events, as well as the uncertainty of the opposite party’s potential to renege, cheat, or otherwise fail to carry out its obligations. The efficiency of contracting *per se* is therefore distinct from the efficiency of the underlying transaction. If the efficiency of voluntary exchange is measured by the extent to which it maximizes wealth, the efficiency of contracting is measured by the success with which it mitigates or reduces the inherent risks of sequential transactions. Similarly, just as the efficiency of any exchange is not absolute (e.g., if there were a *C* in the example above for whom the object was worth $170 and would have paid $135, *C*’s exchange with *A* would have been more efficient), so must the efficiency of contracting be measured against that of other modes of exchange. This sort of question, the efficiency of modes of exchange, is the province of the New Institutional Economics (NIE).⁷⁹

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⁷⁸ “The absence of legally enforceable rights would bias investment toward economic activities that could be completed in a short time; and this would reduce efficiency” (Posner 2007: 93-94).

⁷⁹ Cf. Williamson 1996: 16-17 on the importance of differential transaction costs between governance structures, on which see next section.
2.2 Contract and NIE: Contract as Governance Structure

NIE’s historical and intellectual point of departure is the realization that neo-classical economics fails to explain the current economic landscape.\(^{80}\) For instance, if markets are the most efficient way of organizing exchange, as neo-classical economics posits, why is it that firms exist, since they allocate resources via hierarchies instead of markets?\(^{81}\) Why haven’t they simply disintegrated, disaggregated into a series of independent actors and transactions on the open market? Or better yet: how did they ever evolve if they are inherently inefficient? One response is to see the firm and the market as representing two different modes of exchange in the modern economy, or in Oliver Williamson’s terms, the market and the firm represent “governance structures,” each designed to organize and promote a different type of transaction.

The type of transaction varies with three basic dimensions of exchange. First, counter to the assumption of neo-classical economics, actors are imagined to have a “bounded rationality”: they enter into transactions intending to act in their self-interest but have only a limited capacity for understanding it (in the absence of perfect knowledge, there can be no perfect rationality).\(^{82}\) Second, parties to an exchange will, in certain circumstances, act opportunistically. Perhaps better put, if there is the possibility of opportunism, parties will in most cases be alive to it, such that it is a constant source of risk.\(^{83}\) The third dimension pertains to what is called “asset

\(^{80}\) Cf. the overview and critique of Bates 1995.

\(^{81}\) This is the founding question of NIE: Coase 1937.


\(^{83}\) Williamson 1985: 47-50, 64-67. Williamson has come under considerable criticism for his insistence on universal opportunism that does not take into account the possibility for cultural or historical differences in norms.
specificity,” which is a measure of the degree to which the value of assets involved in a given transaction is tied to that specific transaction (I give an example below). ⁸⁴

These three factors are present in different degrees in different types of transactions (there are other dimensions to consider as well, such as the frequency of transactions between parties), and particular suites of these characteristics in turn suggest particular governance structures. For instance, the “market” is a useful governance structure for buying oranges, since (i) there is low asset specificity (i.e., the oranges can be quickly and cheaply “redeployed,” or sold to another person if the first buyer decides that he does not want them at check-out); (ii) limited possibility of opportunism (i.e., the structure of the market itself helps to defend against opportunism through conspicuous competition, keeping the seller honest as to quality and price); and (iii) one needs little knowledge and planning in order to select and use oranges (i.e., bounded rationality converges for all practical purposes with complete rationality). On the other hand, if Amazon seeks to have a certain technology company build the Kindle as a medium for its electronic books, this is a transaction that has high asset specificity (i.e., were Amazon to pull out, these companies could very well be left having invested heavily in equipment and technology which no one else wanted), and so great potential for opportunism (e.g., Amazon might renegotiate after the company had already invested because it knows that there are no other buyers), as well as for the impact of bounded rationality to make itself felt (e.g., in good faith Amazon discovers that the Kindle is not the wave of the future, or the company

⁸⁴ Asset specificity would seem to have nothing to do with the ancient world, and indeed Williamson is here imagining technological differences (e.g., a choice between using a general purpose or re-deployable technology versus a specific or dedicated technology), but this concept can be of some, albeit limited, use in the analysis of ancient contracts, cf. n89.
manufacturing the device drastically underestimated its costs). In such a transaction, the open market would offer no protection at all; in fact, this transaction would be so fraught with risks and unknowns that Amazon might very well decide to produce the Kindle entirely “in house.”

In other words, a transaction with this sort of asset specificity might require the hierarchical organization of the firm in order to proceed, even though this organizational structure comes with its own costs.

Finally, there is a third way of organizing transactions, which is contracting, a governance structure distinct from both the “market” and the firm. Seen in the light of NIE, a contract is not limited to the positive law of contract, but rather serves as a “framework” for a particular kind of economic transaction. The particular purpose of contract as a governance structure is, as suggested in the previous section, to allow sequential or more complex economic activity to go forward by offering a protection against the risks inherent in these transactions at a cost lower than that which hierarchical integration imposes. From this perspective, as opposed to the legal perspective, the transaction is the basic unit of analysis, and the contract is merely a

85 Predictably, reality is more complicated than the illustrative binary solution suggested above: some aspects of the Kindle manufacture are handled internally, while others are contracted out. However, it is the sort of analysis outlined above that informs the decision as to which functions to retain and which to contract for. Significantly, no step is left to the open market, though some contracts may be closer to market purchases, e.g., the mass-produced processor, while others likely involve much deeper relational contracting, e.g., the proprietary electronic paper display technology produced by E Ink Corp.


87 Strictly speaking, Williamson 1985: 68-84 envisions each governance structure as itself a species of contract law, with market governance conforming to the assumptions of classical contract law. Contracting as a governance structure thus corresponds to MacNeil’s “relational contracting,” which Williamson terms “bilateral” governance (as opposed to the “unified” governance of the firm). I thus diverge slightly from his terminology.

device, or “framework,” which structures it. This in turn suggests that we must analyze contracting in a wider lens than lawyers, ancient or modern, have typically done, investigating it “in its entirety.” In practical terms, this means looking at all the costs associated with organizing transactions via contract (as opposed to a market or a hierarchy). 89

If the transaction is the basic unit of analysis in NIE, then transaction costs (TC) are the basic units of measure. There are several ways in which to conceive of and categorize TC. Perhaps the most common conception of them is as the “friction” of the world of exchange. 90 The costs associated specifically with contracting as a governance structure may be grouped in any number of ways, but for our purposes here the best way is to relate them chronologically to the formation of the contract, but with a view to the transaction as a whole, or to think of them as ex ante (before the fact) and ex post (after the fact), with the defining moment of the contract representing a fulcrum. 91 The ex ante costs include the cost of negotiating, drafting, and “safeguarding” an agreement. This last category could potentially include the cost of notarizing, or of discovering one’s legal rights with regard to the contract, or warranties, guarantees, or

89 There also arises a corollary question with respect to hierarchies in antiquity: if asset specificity is one of the most significant drivers of hierarchical integration in the modern world, what was its role in driving ancient integration? There were assets with high specificity in antiquity, e.g., vineyards, and in a future paper I hope to show how continued investment in physical plant over the course of the imperial period may help to explain in part the change in the way vineyards and other production facilities were managed, from simple leases to highly specified labor contracts or fully integrated into large estates (i.e., shifting from the market end of contracting to the firm end of contracting along the spectrum of governance structures).


91 Williamson 1985: 20-22. North defines TC generally as the cost of information (1990: 27), and the costs of contracting as “those of searching out who has rights with respect to what is being traded, what rights they have, and what are the attributes of those rights; those of searching out prices associated with the transaction and the predictability of those prices and those of stipulating contracts and contract performance” (1985: 558). Cf. Allen 1997. On typologies of TC with reference to contracting in particular, see Ellickson 1989.
earnest money incorporated into the contract designed either to limit the other party’s exposure or to signal a “credible commitment” on one’s part. Ex ante costs are therefore assumed largely for the purpose of aligning the parties’ interests before performance begins.

Ex post costs, on the other hand, are those involved in getting the other party to perform after the contract is signed. As such, they include, among other things, the cost of monitoring or measuring performance, or enforcing the contract should measurement of performance reveal a breach, or even of renegotiating or modifying the contract. They are thus the costs assumed in adapting to unforeseen circumstances, or, to paraphrase Williamson, of getting to Y after having contracted for X. Ex post costs are clearly the costs of enforcement, but this is in fact too narrow a view. Since the purpose of a contract, whether at law or as “framework,” is to protect against the inherent risks of sequential, complex transactions, it is important to see that even the ex ante costs are incurred with an eye to enforcement. Aligning interests, in other words, is but the anticipation of enforcement, a cost of making the contract enforceable according to the conditions (or the perception thereof) in which the bargain is struck: “[A] contract will be written with enforcement characteristics of exchange in mind.” As noted in the first chapter, however, not all contracts are enforced legally, or merely legally; indeed, as private agreements all contracts begin as extra-judicial relationships, and all will therefore have some, if not a predominantly, extra-legal character to their enforcement.

93 Williamson 1985: 21, 168-75.
As suggested in the first chapter, _ex post_ activities (and their costs) are not typically viewed as the domain of contract proper by lawyers and legal scholars precisely because they are _ex post_. In fact, classical contract law and neo-classical economic theory both generally assume enforcement by assuming that: (i) access to courts is cheap and easy; (ii) legal knowledge and skill evenly distributed; (iii) the courts capable of accurate and costless measurement of performance and of compelling a resolution; (iv) the courts apply the law in an even-handed fashion; (v) the authorities are willing and able to enforce decisions. In such a world _ex post_ costs will indeed be negligible: parties will litigate, and the correct resolution will be discovered and implemented. Of course, none of these assumptions is true, certainly not in antiquity nor even in the twenty-first century: litigation is anything but easy or automatic; access to courts is often difficult and expensive; legal knowledge and skill, like any other sort of knowledge and skill, are unevenly distributed and usually expensive; the risk of error or incompetence on the part of a court is significant and can make the already expensive process of litigation potentially disastrously so in its results; etc. Given these realities, it is unsurprising that many parties negotiate or arbitrate contractual differences instead of litigating them.\(^9^5\) They are, after all, better placed to understand the original agreement and measure performance than a third-party, and moreover have an obvious stake in discovering a mutually advantageous resolution. They are also less likely than legal professionals in most cases to be bound by rules that can get in the way

of a reasonable and satisfactory resolution.\textsuperscript{96} Therefore, it is often the case that a “court ordering is better regarded as a background factor rather than the central forum for dispute resolution. Thus, although the legal technicalities of contract law remain useful for purposes of ultimate appeal, thereby to delimit threat positions, legal centralism (court ordering) gives way to private ordering as the primary arena.”\textsuperscript{97} For all these reasons, part and parcel of the recognition of contract as “framework” is an accounting for \textit{ex post} costs. We must therefore move beyond the assumptions of classical contract law in analyzing our ancient legal documents and recognize that there is more than one source of enforcement, with the necessary conclusion that the interpretation of contracts must seek to read \textit{ex ante} design and costs in light of \textit{ex post} costs and the full system of enforcement.

\textsuperscript{96} Galanter 1981. Dickens’s scathing critique of Chancery and the lawyers litigating the case of Jarndyce and Jarndyce in \textit{Bleak House} gives a particularly vivid, if fictional, example of what may happen when the law becomes an end in itself.

2.3 Contract Enforcement and Self-help

In the next chapter I will draw a full model of contract from the perspective of enforcement, but here I would like to concentrate on the main source of contractual enforcement other than the legal system (“official third-party enforcement”), which is the self-help the parties exercise themselves (“second-party enforcement”). Third-party enforcement in the form of official or state enforcement is, of course, the most familiar type in the modern context, and therefore needs no special discussion here: as implied immediately above, it is no more than the law of contracts, which sets out which contracts have legal force, and the remedies therein prescribed, coupled with the actual capacity and execution of the state in the promulgation, application, and enforcement of its laws and judgments.\(^98\) Second-party enforcement, or self-help, on the other hand, is recognized by legal professionals and scholars, but often tends to be disregarded even by the laymen who exercise it, since it is conceptually, if not always actually, outside the law.\(^99\) For related reasons, it has also been fairly narrowly conceived by scholars of ancient law over the course of the twentieth century. When they have considered self-help at all, it was usually with respect to violent acts that appear antithetical to the rule of law, or Eigenmacht. This tendency is the natural counterpart to the widely-adopted evolutionary model of Roman law developed by Jhering, who speculated that “the origin of Roman civil procedure ... resulted from the State’s imposition of restraint and order upon the régime of self-help and private vengeance which in

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\(^98\) Third-party enforcement need not be official or by the state or some other authoritative body: it is also applied by social pressure in a Tocquevillian manner, which Ellickson calls “vicarious enforcement.” See Sec. 3.3.

primitive times was the only known way of enforcing supposed rights and redressing supposed wrongs.\(^\text{100}\)

To take discussions of law in Graeco-Roman Egypt as a relevant illustration of the last point, in the last half century there have been only two significant discussions of self-help for the imperial period. Sixty years ago Raphael Taubenschlag sketched a brief account from a purely legal perspective. He argued that there was a general prohibition against self-help in Ptolemaic and Roman Egypt, with the exception of a few discrete areas of law in which self-help was permitted either by a positive grant of the legal authorities or in “cases where legal selfhelp [was] admitted by private agreements.”\(^\text{101}\) He then proceeded to catalog these exceptions. Several decades later, Deborah Hobson approached the concept obliquely from a sociological angle in a paper in which she sought to describe the typical villager’s relationship to “the law.”\(^\text{102}\) Of the two, only Taubenschlag offered an explicit definition of “self-help”:

Selfhelp in the technical sense of the term exists when somebody unilaterally secures or satisfies his real or pretended claim; that means that somebody takes the law in his own hands without the permission of his adversary and without the intervention of the court and proceeds against the person or the property of his adversary. (1959: I, 135)

Several elements of this definition are problematic when tested against the evidence, chiefly the strong opposition he erects between self-help and the law and the concomitant exclusion of state

\(^{100}\) Kelly 1966: 2. Selbsthilfe and Eigenmacht are often used synonymously in German juristic and Romanist writings, but tendentiously so, since the equivalence argues for this evolutionary view of self-help. Cf. Whitman 2001; 2002. His broad-brush and breezy history conceals more thoughtful approaches to the question, at least in Roman law (cf. Meyer-Maly 1961: 315; Kelly 1966; and Bürge 1980).

\(^{101}\) Taubenschlag 1959: I, 135-41, quote p. 140.

\(^{102}\) Hobson 1993.
participation in acts which are nonetheless best described as “self-help.” The most troubling element of Taubenschlag’s definition, however, is one that remains implicit in the passage above but is evident in his treatment as a whole, namely that self-help rises to the level of a legal doctrine in antiquity. This notion is not only historically false, but also leads Taubenschlag into conceptual difficulties which obscure the nature and role of self-help generally, and particularly in particular with regard to the manner in which it functioned in the legal culture of Roman Egypt.

As stated above, Taubenschlag interpreted the instances of self-help he collected against the backdrop of a general, legislative prohibition. For such a prohibition, however, there is no evidence. For the Roman period he cites but a single document, *P.Flор. 61 (=M.Chr. 80* [unknown, 85]), a transcript of official proceedings in which the Prefect threatens to have the plaintiff whipped, apparently for his having imprisoned an ἐψχημων and his wife in an attempt to collect on a debt (ll. 8-12; 59-66). The document obviously speaks to self-help, and indeed at one point the rhētor for the defense refers to term-limits on certain actions as embodied in a “general rule” (τὸ καθολικόν, ll. 44ff.), but nothing in this papyrus suggests the existence of a general prohibition of self-help.103 So far from it being a specific “punishment” for the “crime” of self-help, the threat of whipping rather appears to be the spontaneous reaction of a piqued Prefect, frustrated with what he clearly considers a frivolous or fraudulent plaintiff.104


Taubenschlag also adduces two fourth-century papyri in support of his notion of a prohibition, *SPP* XX 88 (unknown, 337) and *P. Oxf.* 6 (Herakleopolite, 350), in which the plaintiffs assert that others have acted “illegally” by proceeding “without a court decision” or “order,” ἄνευ δικαστικοῦ δικαίου and ἄνευ δικαστικοῦ προστάγματος, respectively. In these phrases, Taubenschlag heard a verbal echo of an imperial decree of Marcus Aurelius (*Dig.* 48.7.7; cf. 4.2.13 [Callistratus]), and asserted that the “same principles” articulated in these two petitions “underlay the decretum divi Marci and were applied in Egypt in the Roman epoch.”

The echo is indeed striking, but so are the dates of the papyri. The decree, at the time that it was issued, was intended to affect only those who dealt with each other on the terms of Roman law, which is to say, Roman citizens, not the mass of Egyptians who were allowed by and large to conduct their affairs according to traditional legal practices, particularly in business matters. Even after the implementation of the *constitutio Antoniniana* in 212 CE, the influence of Roman law on legal transactions in Egypt, at least as far as they are documented in the papyri, increased only marginally, and superficially at that. Indeed, the fourth century is precisely the period in which we begin to see Roman law leaving a more profound impression on the private legal documents of ancient Egypt. These two papyri, then, in no way attest to any formal legal prohibition of self-help in the first three centuries of Roman Egypt. Rather, if they do in fact

105 *Dig.* 48.7.7 (Callistratus): *quisquis igitur probatus mihi fuerit rem ullam debitoris non ab ipso sibi sponte sine ullo iudice temere possidere, eumque sibi ius in eam rem dixisse, ius crediti non habebit.* (“Whoever then shall be proved to me to be in possession, recklessly and without resort to a judge, of any property of a debtor which has not been handed over to him by the debtor, and to have said that he had a right over that property, shall not have creditor’s rights.”). Translation adapted slightly from Watson 1985. Cf. Bürg 1980; Cloud 1988; 1989.


attest to the application, or at least the dissemination of Marcus’s decree in Egypt, they thus bear witness to the emergence and development of a new principle in the evolving legal culture of late antique Egypt. 108

The theoretical problems associated with conceiving of self-help as a legal doctrine, however, are at least as profound as the historical ones. Even if such a prohibition had been decreed, with the authorities subsequently carving out and reserving certain areas for self-help, by what authority or on the basis of what legal theory could individuals by merely private agreement “opt out” of areas of law not so designated and thereby establish new legal competencies for self-help? In other words, what other status but “illegal” could a private agreement have that created an idiosyncratic law of process or execution in an area not already marked out for self-help by positive law? Taubenschlag’s conception of self-help as the product of official waiver from a blanket prohibition would seem to exclude the possibility of the individual having the right to establish the limits of self-help. And yet, he very rightly documented a number of important instances in which we may see individuals engaged in just this sort of activity in contracts of various sorts. 109 Significantly, the principal provisions and actions he collects, namely personal execution and the foreclosure of pledged or mortgaged property, are not only common in the papyri and clearly regarded as “legal” by the authorities when litigated, but were just as clearly the primary methods by which such contracts were

108 Cf. pp. 34f.

109 See, e.g., examples in 1959: I, 140-41.
enforced.\textsuperscript{110} That is to say, if personal execution and foreclosure are at least in part self-help mechanisms, then far from being a marginal or exceptional or epiphenomenal to the system of legal enforcement—the impression with which Taubenschlag leaves us—self-help would seem to constitute one of the foundations of legal economic transactions in the Roman Egypt. The two foci of Taubenschlag’s account, the official and the private, are thus left unintegrated, and so his idea of self-help remains broken-backed, regardless of the historicity of his prohibition.

In the larger perspective, Taubenschlag’s short article would hardly seem to merit even the attention given to it so far, despite its being the only direct treatment of the subject. And yet, the fact that it stands vitally alone in the scholarship is itself noteworthy and indicative of how comparatively little attention the topic has generated. How could scholars all too aware of the defects and deficiencies they themselves saw in the ancient legal systems neglect to study the ways in which those defects were made good, the ways in which force and power were given to the legal agreements and processes they studied? How, in other words, could this short article be the only article on self-help in the legal literature of Roman Egypt, particularly when we bear in mind just how small the Roman “government” in Egypt was?\textsuperscript{111}

In one sense, the answer is simple: since these forces and mechanisms were neither those of the state nor those of the law \textit{per se}, so they were either irrelevant or regarded as antinomian by the lawyers who studied them. The late nineteenth and early twentieth centuries produced

\textsuperscript{110} Cf. Rupprecht on \textit{praxis}, quoted above p. 15.

\textsuperscript{111} And what counts as “government” when it comes to such questions? Cf. pp. 13f. above. There are no scholarly estimates for the size of the “government” in Roman Egypt before the fourth century, on which see Bagnall 1993: 62-67, 133-38, 149-80.
historians and legal scholars who inherited and by and large embraced progressive theories of the state and the law, having witnessed the fantastic and undeniable growth in power of both. Contemporary history and progressive theory thus combined to produce a general tendency to overestimate the importance of positive law and the power of central authorities to dictate the norms of lawful behavior, an attitude that has been dubbed “legal centralism.” An essentially legal centralist perspective permeates not only Taubenschlag’s work, but much of late nineteenth and early twentieth century historiography of the ancient world, e.g., the common view of Ptolemaic Egypt and the later Roman Empire as proto-totalitarian regimes. Taubenschlag, however, was, if anything, quicker than most of his contemporaries to posit positive legal authorization in order to explain the evidence which ancient legal systems left behind. His alleged prohibition of self-help is thus echoed by his similar recourse to a legislative codification and reception of ὀ νόμως τῶν Αἰγυπτίων in the beginning of the Roman period. As with the general prohibition of self-help, so also there is no positive evidence of such a codification or reception, and neither seems likely prima facie given what is known of the nature and practice of Roman provincial administration in Egypt and elsewhere.

Though many of Taubenschlag’s historical theories have been discarded, the historical and intellectual paradigm on which they were based was and is still widely held. And the impact has been significant with respect to the study of self-help, since such a perspective can only be

113 See Manning 2009 on previous historiography of Ptolemaic Egypt, and Rebenich 2009 for a review of the historiography of late antiquity, esp. pp. 86-88.
hostile to it, as its zone of action necessarily lies in the penumbra of the law. Indeed, in this tradition—which is essentially the Roman law tradition, the primary training of the majority of twentieth-century juristic papyrologists—the use of self-help has often been considered an index of legal primitivism, barbarism, or decline, set in direct opposition with “law.” It is a major limitation of the literature on Roman law that it tends to consider self-help as largely coincident with an early evolutionary phase left behind with the institution of the Twelve Tables and the subsequent development of Roman society.\textsuperscript{115} No legal system could ever afford in practice (whatever it pretended to in theory) to crowd self-help out entirely with official enforcement, not even truly totalitarian regimes.\textsuperscript{116} In point of fact, neither the Greeks nor the Romans ever pretended or aspired to this, Taubenschlag’s general prohibition against self-help notwithstanding.\textsuperscript{117}

\textsuperscript{115} See, e.g., Kaser [Hackl] 1996: 1, 27-30, 90-91, 96 (with n42), 146n6, with the literature cited therein; cf. Zimmermann 1990: 651-62 (on \textit{metus}), 770, 1063. Kaser and Hackl adhere to a juristic definition of self-help (esp. p. 1 and 28n20) that belies the reality of legal practice (cf. Kelly 1966, Bürge 1980), and even the reality of the law discussed therein (which is a history of increasing restriction of “uncontrolled” self-help (p. 90), not its elimination). An exception is Meyer-Maly RE s.v. \textit{vis} (1961): 315-23. It is telling that in neither Kaser [Hackl] 1996 nor Zimmermann 1990 is there any discussion of the legitimate or accepted role of self-help. Kelly 1966, while drawing attention to the fact that self-help remained a part of Roman law far after the Twelve Tables, has nevertheless externalized the idea that only \textit{Eigenmacht} is relevant. Note, in this regard, his clear (and somewhat naive) legal centralism (e.g., p. 4-5), his insistence on interations between highly unequal parties as the best test case, and his brief and rather dismissive treatment of what appears to be evidence of effective reputational sanctions (pp. 21-26). All this underscores the inadequacies of Roman litigation without telling us anything about why parties clearly used the Roman legal system. Cf. Whitman 2001 on the intellectual tradition.

\textsuperscript{116} Cf., e.g., Belova 2005 on contract in Soviet Russia, where Marxist theory inimical to contract (and law generally: Collins 1982) was overturned by the simple need to use it as a governance structure.

\textsuperscript{117} Meyer-Maly’s formulation is apt: “[Fälle der Rechtmäßigkeit von Eigenmacht] stellen sich freilich nicht als Residuen einer ursprünglich fast unbeschränkten Herrschaft der Selbsthilfe dar ... sondern sind auf die wohl nie vermeidbaren Mängel des staatlichen Rechtsschutzes zurückzuführen” (1961: 315). Kelly 1966 represents one of the most thoughtful See also Cohen 1995 on law and violence in Athens and Nippel 1995 for public order in Rome, esp. 35-46, 113 (cf. his earlier work, 1988: 79-86). Both deny that law in either culture actually displaced or was intended to displace private violence altogether, though neither deals with self-help in commercial transactions. For a recent treatment of the relationship of violence to social order, see North, Wallis, and Weingast 2009.
The lack of the sort of regulation Taubenschlag envisioned does not mean that the Roman provincial government was unconcerned to regulate self-help (for it was), nor that self-help operated independently of state enforcement (which it did not). Yet, given the discussion above, we clearly need to rethink our basic set of questions with regard to enforcement so as to integrate a fuller, more realistic view of self-help into our discussion of ancient contracting. For instance, at what point did “rights” to self-help created in contracts run afoul of the prerogative of the state and positive law, and how did this notion evolve over time? By the same token, how and to what extent did the self-help provisions drafted in contracts relate to the modes and possibilities of state enforcement in Roman Egypt? We also need a better understanding of the psychology and calculation involved in self-help: how and when did our contract parties in Egypt decide to attempt to “unilaterally secure their real or pretended claims” instead of seeking state enforcement, or pursue some mixed strategy? Indeed, how did they conceive of their enforcement actions? Did they see themselves as “taking the law into their own hands,” as Taubenschlag would have it, or did they perhaps understand themselves as agents of the law in that moment? Again, how did the authorities relate to self-help measures set out in private contracts, and what was the difference between what they (or the community) saw as legitimate self-help, vigilantism, or outright “crime”?\footnote{118}

These are all important questions, and ones for which we need a new model for self-help, one which enables us to make sense of its complicated relationship to law and the legal authorities. Hobson’s work leads us toward the sort of framework we are searching for. Her

\footnote{118 Cf. Ratzan forthcoming b.}
essay is not a study of self-help per se, but rather a wider-ranging exploration of the ways in which villagers and Egyptians higher up the socio-economic ladder, though still only of metropolitan status, related to “the law” in the period with which we are primarily concerned. Accordingly, her first goal was to understand the sociological place of positive law in Roman Egypt. She concludes that most of the inhabitants of the Heptanomia and the Thebaid (whence come the vast majority of our papyri) would have been aware of law “in its manifestation as bureaucracy rather than legal codes, ... whether or not the individual villager perceived this as law,” a finding, as she remarks, that is inescapable on the basis of the papyri since they are themselves largely the product of this bureaucracy.119 Within this broad conclusion, however, she also finds that most people would have been oblivious to the technical differences between the various fonts of positive law that have been of traditional importance to scholars and jurists (e.g., edicts versus rescripts), as well as perhaps of the various competencies of governmental officers (if, indeed, the officers understood such differences themselves).120 Finally, all of this is carefully qualified according to socio-economic status: the relationship and use of positive law by the comparatively wealthier and more centrally-located inhabitants of Oxyrhynchos is predictably be shown to be more profound and sophisticated than that of the inhabitants of the village of Soknopaiou Nesos, a small, almost entirely Egyptian temple village on the far northwestern edge of the Fayyum.121

119 1993: 197


121 1993: 194 and passim; cf. now Lippert and Schentuleit eds. 2005 on various aspects of the village.
The rest of Hobson’s analysis is given over to petitions, since in her view these documents “give us the most direct information about how and when village inhabitants appealed to legal bodies to assist them in settling disputes, and ... therefore ... the most realistic insight into how individuals actually experienced the judicial system in their everyday lives.”

Here she advances several important conclusions concerning the nature, role, and efficacy of petitions in Roman Egypt. First, she understands these petitions as “the end of the disputing process rather than the beginning,” finding many indications that complainants had made previous attempts to “rectify the situation before calling for outside help.” In her view, the petitioning process thus “exists on the perimeter of what is essentially a system of self-help rather than a penal system as we know it.”

Second, she finds that the petitions rarely, if ever, clearly differentiate between “criminal” and “civil” complaints; instead, “the frame of reference is not ‘the law,’ though a violation of some law may be involved, but rather the belief that the rights of ... the petitioner have been violated in some way.” Third, she imagines that a “satisfactory resolution” to a typical complainant’s problem via this route was “improbable” given the evidence for multiple petitions and multiple referrals for the same suit, as well as the lack of evidence for concrete measures either requested of or performed by the various officers who were petitioned. After all the steps involved in bringing a suit (e.g., finding the culprit,

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122 1993:197-98.
123 1993:199, 205.
124 1993: 205.
125 1993: 203-10, esp. 209.
drafting and filing the requisite documents, compiling evidence and collecting witnesses, traveling to the audience, etc.), “it seems that enforcement depended on the moral authority of the judgment for its efficacy.”\textsuperscript{126}

The value in this approach to the law for this historian is the obvious one associated with sociology generally, in that it seeks to understand the operation of the law on the basis of observed behavior instead of the prescriptive pronouncements of jurists and officials. This approach also incidentally serves to redress the important imbalance inherent in the dominant legal centrist perspective of the earlier, and still influential, historiography of ancient law. Furthermore, it jibes with the theoretical proposition that contracts need to be interpreted from the perspective of enforcement. What is needed, then, is an integration of Hobson’s perspective into discussions of contract, a sort of ancient legal realism. Specifically, this will mean: (i) recognizing a conceptually wider notion of self-help as an integral feature of the landscape of actual contract enforcement; (ii) paying greater attention to non-legal evidence, substantively (i.e., understanding motivations, attitudes, norms, etc.) and therefore generically (i.e., reading our contracts in light not only of legal documents, like petitions or trial transcripts, but also of letters, which reveal non-legal evidence); and (iii) establishing the relationship of “crime” to contract disputes. Before we attempt this, however, we need a better understanding of the relationship of contract to the various sources of enforcement suggested both by the theory laid out in the beginning of this chapter and the historical observations of scholars like Hobson. This is the task of Chapter 3. And since self-help will be found to be defined or constrained not merely by the

\textsuperscript{126} 1993: 210-15, esp. 214.
ethical sensibilities and physical capacity of the contract parties, but also by social norms and law, so must each of these elements—ethics, norms, and law—be established before we may attempt a systematic treatment of self-help and its relationship to crime.
2.4 Contracting in the State of Nature

The legal centralism of both the historiographical tradition and, more justifiably, of modern experience has left us at a disadvantage with respect to ancient contract parties, who were profoundly and practically aware of the potential, modes, and costs of official and second-party enforcement when they went to the local *grapheion* to ink their contracts. Given the importance of extra-legal sources of enforcement described above, it is incumbent upon us to refocus our sights on the non-legal aspects of contracting, attempting to read ancient contracts through ancient eyes. It will be helpful, then, to distinguish in the abstract those features of contract design with an eye to second-party enforcement.

Anthony Kronman has helpfully explored this topic by considering contracting in a “state of nature.” By “state of nature” Kronman means the following:

When two individuals (or groups) exchange promises and neither has the power to compel the other to perform, and there is also no third party powerful enough to enforce the agreement on their behalf, I shall speak of them as being in a state of nature vis-à-vis one another … . When I say that neither has the power to compel the other’s performance, I mean that neither possesses such power on his own or can acquire it without the other’s cooperation (for example, by the voluntary transfer of a hostage). In a state of nature, the parties to an agreement must establish, by themselves, the conditions of whatever enforcement powers they hope to enjoy—these powers do not exist by nature and, more important, they do not exist by virtue of the effective guarantees of a dominant third party. (1985: 7)

Kronman recognizes that the term is overdetermined, and so adds the following two qualifications (1985: 9):

1. “[T]he term … is not intended to suggest any specific level of moral or cultural development on the part of those to whom the term is applied. The attainment of a high level of cultural refinement, the existence of shared moral beliefs, and general agreement in matters of taste are all consistent with the absence of a ‘common power’ strong enough to enforce agreements between the parties. It would be wrong, therefore, to conceive the state of nature as a condition of backwardness or to associate it exclusively with historically primitive societies.”
Kronman’s state of nature is thus a heuristic device for modeling contracting in the absence of third-party enforcement, or in other words, under the condition of pure second-party enforcement. That said, there are historical situations that have approached this scenario, like the Gold Rush of 1848 in California, when fewer than a thousand US troops occupied the territory and Mexican law pertaining to mineral rights had been formally abolished. Despite, or perhaps because of, the potential for anarchy, miners drew up contracts defining their prospecting rights, and the design of these contracts responded to the nature of the enforcement possibilities and changed over time as more and more miners flocked to California in search of gold, altering the balance of power on the ground.\textsuperscript{128} Now, Roman Egypt may have had a “small government” of limited capacity when compared to the modern technological nation state, but it was clearly no state of nature or as anarchic as California during the Gold Rush. Indeed, characterizing the Roman government and its attitude towards and capacity for contract enforcement is itself an important task,\textsuperscript{129} and our contracts, and the extent to which they can be shown to rely in their very design on self-help, obviously constitute an important piece of evidence in this analysis. It therefore repays the effort to investigate some of the primary methods by which contracts can be

2. The “dominant third power” need not have the physical power of the modern state in order to qualify as such from the perspective of the contracting parties. Kronman specifically gives the example of the parties nominating “a village elder respected for his wisdom and regarded by everyone in the community as the supreme bearer of traditional authority. Though the compulsion that he exercises over the parties is entirely psychological and rests exclusively upon an appeal to their convictions and beliefs, [he] may be as much a ‘common power,’ from the standpoint of the parties themselves, as any modern state apparatus enjoying a monopoly of physical violence.”

\textsuperscript{128} See Umbeck 1978.

\textsuperscript{129} Sec. Sec. 6.2, cf. Manning 2009 on Ptolemaic Egypt.
made to be “self-enforcing” in the mental laboratory of a state of nature.\textsuperscript{130} Drawing on earlier economic and legal literature, Kronman isolates four techniques for crafting “self-enforcing” contracts: (a) hostages, (b) collateral, (c) “hands-tying,” and (d) union. As pointed out below in the text or notes, we have examples of each strategy in ancient documentary contracts.

A party may give a hostage in order to ensure his own performance, and the key to this technique is that the hostage is of idiosyncratic value to the giver (for otherwise, the taker might simply abandon the contract and make off with the hostage).\textsuperscript{131} As Kronman puts it:

\begin{quote}
Hostage-giving is, in fact, simply a means for achieving a simultaneity that would otherwise be unattainable; the hostage acts as a bridge between two temporally distant moments of performance and brings them into an artificial union with one another. In this sense, the function of hostage-giving is to transform exchange back into barter. (1985: 13)
\end{quote}

In other words, this technique takes direct aim at the root problem of contract enforcement, the sequential nature of the underlying transaction, by splitting one sequential transaction into two simultaneous transactions: a performance for a hostage and the hostage for the reciprocal performance. There are problems with this solution, however. For example, the giver could overstate the value of the hostage, leaving the taker with little real leverage over the giver; or the

\textsuperscript{130} On self-enforcing contracts see also Telser 1987: 187-219; North 1990: 55. The concept of self-enforcing rules was not unknown to the ancients. Significant, however, is that this was seen as a quality of natural, as opposed to human, law. Cf., e.g., Xen. \textit{Mem.} 4.4.19-24, a discussion of the self-enforcing nature of unwritten laws (\textgreek{dropsi} n\textgreek{imos}), wherein Hippias acquiesces to Socrates’ proof of the identity of natural law and justice with the following: νὴ τὸν Δί’, ὃ Σώκρατες, ... θεοὶς ταύτα πάντα ἔοικε τὸ γὰρ τοὺς νόμους αὐτοὺς τοῖς παραβαίνοντι τὰς τιμωρίας ἔχειν ἐπιτείνοντα ἢ κατ᾽ ἄνθρωπον νομοθέτου δοκεῖ μοι εἶναι (24: “By god, Socrates, ... all this does seem like the handiwork of the gods. That laws themselves should carry retribution for those who transgress them seems to me to be the hallmark of a superhuman legislator.”). Oaths (obviously related to the idea of natural or divine law) were another way of creating a self-enforcing mechanism, on which see below, Secs. 5.2, 5.6.2, and 5.7.

\textsuperscript{131} Cf. Williamson 1985, esp. chs. 7 and 8.
hostage-taker could not return the hostage at the time of performance, and then the positions would be reversed. Thus, the hostage becomes itself a source of opportunism.

The use of collateral, which by definition is of value to both the giver and the recipient, solves the particular opportunism problem of hostage-giving (i.e., you give me a hostage of little actual value to yourself), but it raises a different strategic problem in its place. It is now necessary to match the level of commitment and expectation in the contract to the level of security. If the recipient is under-collateralized, he thus effectively ends up in the hostage position again (i.e., he has too little leverage over the giver’s performance). If, on the other hand, he is over-collateralized, he may simply walk away or bargain to extract more of the giver’s performance in exchange for returning the collateral (the “hold-up” problem all over again). In fact, this will be true even if the recipient is perfectly collateralized: presumably the collateral still means more to the giver than it does to the recipient, otherwise it would have been the basis of the transaction instead of merely collateral. This state of affairs, in fact, represents a structurally unavoidable incentive to the giver to resist full collateralization. Finally, the obvious strategic potential in this form of security clearly necessitates some bargaining and measurement costs, which even when expended cannot remove all possibility of the risk of opportunism they are meant to mitigate.\(^\text{132}\)

The third technique, “hand-tying,” involves prescribing “actions that make a promise more credible by putting it out of the promisor’s power to breach without incurring costs he

\(^{132}\) Collateralization in the papyri show evidence of all of the risks mentioned above. See, e.g., *P.Ryl.* II 119 (Hermopolis, 62-66; cf. Anagnostou-Canas 1991: 55-56) and *P.Oxy.* XLIX 3468 (Oxyrhynchos, I), both petitions complaining about foreclosures on property worth far in excess of the loans (in the second case, it is claimed that that the difference in tenfold, a house valued at 2000 dr. posted against a loan of 200 dr.).
could otherwise have avoided” (Kronman 1985: 18). In other words, a self-executing sanction is inscribed in the contract such that the effect is more or less automatic upon breach and does not involve any action on the part of the promisee (like destroying the hostage or defending possession of the collateral). Kronman’s example is having a tailor cut cloth for a suit at the time of order. By agreeing to do this, the tailor effectively turns his own cloth into a specific asset: unless the tailor makes the suit, he will have to wait for someone with the exact same order to come in or otherwise be forced to use it for a lower value use, e.g., re-cutting it for a smaller suit. The contract thus makes the tailor hold his own cloth hostage for his performance. Of course, such devices are not necessarily available for every transaction, and in any case there is still room for opportunism as in the hostage technique: for whatever reason, the action could turn out to be worth less to the promisor than the promisee calculated. For instance, if one ordered a dark blue wool suit, size 42 Regular, this will not tie the tailor’s hands very effectively, as it is a very common suit size, color, and material. Hence, it will be no great hardship for the tailor to wait for another customer with the same order to appear (though of course in this instance he might as well make it for you).\textsuperscript{133}

\textsuperscript{133} Ancient examples of this technique abound. For example, most provisions for publicity involve hands-tying, e.g., the witness requirement for \textit{res mancipi} in Roman law, or if we accept the procedural origin of the \textit{homologia} in Athenian or classical Greek law (basically a form of self-incrimination, cf. Pringsheim 1950; Wolff 1957). Again, the use of oaths is a prime example (cf. Secs. 5.2, 5.6.2, and 5.7 below). Specific examples revealed in the papyri include the mutually graduated investment scales of apprenticeship contracts. Breach is thus discouraged on both sides, since the master only recoups his training investment in the later years of the contract, while the parents can only look forward to wages and bonuses upon completion (see literature in n33 above and Ratzan forthcoming a). Finally, there is some interesting evidence for a particular use of seals, in which the parties agree to put goods under joint seal, so as to create a ready case before the authorities if they are broken (cf., e.g., \textit{PUG II} 62 [Oxyrhynchos, 98] and \textit{P.Mil.Vogl. I} 25.iv-v [Tebtynis, 127]). I will pursue this use of seals in a separate study.
These three techniques, hostage-giving, collateralizing, and hands-tying, all “assume an opposition of interests on the part of those involved; their aim is to moderate the effects of this opposition by altering the costs and benefits of breach, but the existence of the opposition is a fact that each of these techniques takes for granted” and so cannot fundamentally resolve. The fourth technique, union, differs insofar as it attempts to unite the two parties such that they are no longer independent, thereby extinguishing the possibility of opportunism. “Hands-tying, hostage-giving, and the use of collateral are methods for transacting within the state of nature; union is a method for abolishing it” (Kronman 1985: 23). Attempts at union may be seen in the structures and ideology of family life, which encourage members to subordinate personal interests or identify with one another. Marriage, for instance, is just such an institution, and one frequently deployed in order to handle complex and extended political and economic relationships at all levels in ancient society, whether seen from the perspective of papyrus marriage contracts or the ill-starred marriage of Caesar’s daughter Iulia to Pompeius in 59 BCE. Though union as a strategy would seem to provide the ultimate solution to the problem of contracting in a state of nature, there are two significant problems. The first, of course, is that it is simply very hard to achieve; it is rarely a practical strategy. The second problem is related: when union is not complete, the parties are in fact still independent and potentially still strategizing around their respective conceptions of self-interest. One party can therefore be caught off-guard all the more easily,

\[134\] 1985: 22.
particularly in the beginning, if it has made a fundamental commitment to union, while the other has not. This makes union a potentially rewarding, but highly risky, strategy from the outset.

These strategies may sound familiar: they are but another way of viewing Williamson’s choice of governance structures. Hostage-giving, collateral, and hands-tying are all techniques meant to help forge “credible commitments” by parties looking to the end of a transaction. Union, on the other hand, is the end of contracting proper and a move towards integration, or the “firm” (loosely speaking) as a governance structure. Implicit in both models is a certain sort of reasoning or strategizing around the basic costs associated with different paths to a transactional goal, with the costs not only dictating the choice of path, but the decision to take the first step:

In the state of nature, the parties to a transaction have a choice, generally speaking, between the following four alternatives: they can make their exchange simultaneously; they can simply accept the risks which nonsimultaneity implies and go forward without any security at all; they can forgo the exchange completely; or they can adopt one (or some combination) of the techniques ... Which alternative they choose will depend, in any particular case, upon its relative cost. If it is very costly to achieve simultaneity, for example, the parties may have to choose between an extremely risky exchange, no exchange at all, and an exchange supported by hostage-giving or some other form of security. If they choose the latter alternative, the parties must also select from among the various techniques available to them—again, on the basis of their relative cost. None of these techniques is costless and each has its own specific limitations. Indeed, they may all be too costly, given the expected benefits of a particular exchange, in which case the exchange itself will either be made without security or simply fail. (Kronman 1985: 23)

Cf. below on the phrase ἀλλότρια φρονεῖν in marriage contracts, pp. 452ff.
2.5 Contract and NIE: The Historical Perspective

The second half of Kronman’s essay is dedicated to reminding his audience that “the existence of
the state and an enforceable law of contracts do not put an end to the risks that parties transacting
in a state of nature face, and in this sense they do not put an end to the state of nature itself”
(Kronman 1985: 24). In other words, no one writes a contract, even in places today where
there is effective third-party enforcement, with such enforcement exclusively in mind, since, as
suggested in section 2.2 above, private orderings are frequently preferable to court orderings
regardless of the effectiveness of the third party. By the same token, however, the number of
contracts one would likely enter into were there no effective third-party enforcement, or in
Kronman’s state of nature, would be much more limited. And, as Williamson points out, even in
a world of relational contracting court orderings do have a background function in delimiting
“threat positions.” In other words, they represent a basic assurance of an independent and
ultimate arbiter, guaranteeing a forum both for being heard (a powerful psychological motive in
some cases) and for definitively ending the dispute should the private ordering fail. In fact, the
very incapacity of this forum to resolve disputes in a satisfactory or predictable way may prove
to be the best incentive for parties to resolve disputes on their own. A good part of the value of
the third-party enforcer, therefore, is found in its bare existence (though there must also be the
occasional demonstration of its power).

Yet one must not discount the fact that the majority of a third-party enforcer’s value to
contracting parties resides in the quality of its justice, or its ability to generate fair, predictable,

and effective outcomes that serve to end disputes. This is to recognize that contract as an institution or governance structure depends on a certain institutional matrix (or a certain institutional investment) in order to operate in anything but the most rudimentary and limited manner. Specifically, it depends on institutions that help bring down the *ex post* cost of enforcement, which will in turn bring down some of the *ex ante* costs, since they are interrelated. And this is a matter of history, not theory. Not all third-party enforcers are or have been of the same quality, and therefore no sense can be made of contracting as an institution in any particular time or place without an adequate picture of the state or whatever entities are responsible for third-party enforcement.

To answer this question requires a change in lens. There are (at least) two basic schools of NIE, one represented by Oliver Williamson, whose basic model we have recapitulated above, and the other represented by Douglass North, who refers to it as the “University of Washington approach.” While these two schools share basic assumptions, terminology, methodology, and a common point of departure in the foundational importance of TC, they are nevertheless difficult to synthesize, even by their own admission.¹³⁷ No systematic attempt, therefore, will be made to do so here. Rather, I will employ them as two different frames of analysis.

The Williamsonian frame of reference is static and given to comparing forms of organization horizontally across a stable set of coexisting, synchronic options. For instance, it assumes a set of behavioral attributes differing from those of neo-classical economists (cf. Section 2.2. above), but for that no less universal. The possibility of opportunism is thus a

constant, and no room is made for the effects of different ideologies or institutions which might conceivably alter this behavioral assumption. Similarly, it also tends to assume that the TC associated with various governance structures are constant, thereby ignoring the power (and motives) of states to transform them through time. Of course, given Williamson’s basic aims, this is not only understandable but unexceptionable: he was building a model to clarify the organizational working and choices of a fairly developed and stable system, the late twentieth-century western economy. However, this frame of reference needs to be opened up and made more dynamic by the inclusion of ideology, politics, and change in basic institutional relations, and therefore TC, over time if it is to be useful for historical purposes. This is the approach pioneered by Douglass C. North.

Over the course of his career, North has attempted to develop a mode of economic history based on TC that explains differential performance of economies over time. Thus, instead of attempting to answer at any one moment why an actor might choose one form of economic governance over another, he seeks to understand what factors led to the fantastic economic growth of western economies beginning in the early modern period (or, conversely, what explains the relatively poor performance of contemporary developing nations). This is precisely the sort of comparative question at stake in studying the ancient economy, and accordingly his approach has begun to be adopted by ancient economic historians. North’s basic observation is that with the change in ideologies and institutions over time, there are corresponding changes in the relative levels of TC, which are themselves the origins of

institutions, or the “the humanly devised constraints that shape human interaction,” defining and limiting the set of choices individuals may make.\textsuperscript{139} In his view, institutions may be formal, as in the law of contracts, or informal, like an unwritten code of ethics or social conventions.\textsuperscript{140} The agents of change in this model are individual actors and organizations, like guilds or the Prefect’s office, which not only play by the rules, but push them at the margins in the pursuit of their own interests, and in so doing effect changes in the rules themselves over time.\textsuperscript{141} While alive to possible institutional discontinuities brought about by war, revolutions, and the like, North instead insists on the incremental, path-dependent nature of institutional change as representing the norm over the \textit{longue durée}.\textsuperscript{142}

The overall question of performance is linked to the extent to which a society’s institutions not only allow parties to capture increasing percentages of the gains from trade (or, in other words, to increasing perfect property rights), but also to promote adaptive efficiency.\textsuperscript{143} The latter may be envisioned as the product of an institution that contains within it a sort of feedback loop for capturing the gains of institutional learning by agents and organizations as they play by the rules.\textsuperscript{144} In other words, adaptively efficient institutions not only channel existing

\textsuperscript{139} Quotation: 1990: 3; change in TC over time: 1985; 1990: 68.

\textsuperscript{140} 1990: 36-53. This dichotomy has been challenged recently: see below, Sec. 3.2.

\textsuperscript{141} 1990: 73-91.

\textsuperscript{142} 1990: 89-91.

\textsuperscript{143} 1990: 33-34, 80.

\textsuperscript{144} This observation is made particularly with an eye to the relationship of TC to technological development, or the protection of intellectual property rights, since in North’s view TC and production costs are interdependent (see, e.g., 1981: 158-98 on the Industrial and “Second Economic” Revolutions).
exchange into allocatively efficient modes, but also incentivize the development of skills that are oriented towards new forms of productive, efficient exchange. For example, in enforcing contracts, a third-party enforcer promotes contracting as such; and, as more contracts are written, more learning takes place in the society as to how to forge better and more efficient contracts. Of course, a quick glance at the historical record shows that there is no necessity for efficient institutions of either sort, allocative or adaptive, to exist: societies have routinely developed and fostered institutions that raise instead of lower aggregate TC, maintaining them for a considerable time. “Inefficiency,” then, “is neither necessary nor sufficient for institutional change to occur.”145 This is largely because formal institutions are designed by particular individuals and organizations with myopically personal interests in mind (self-interest wrongly understood), and those interests need not align with the social good or the growth of social wealth.146

As with Williamson, the engine driving North’s model is TC, though he adopts a slightly different definition of TC as the cost of information:

the costliness of information is the key to the costs of transacting, which consist of the costs of measuring the valuable attributes of what is being exchanged and the costs of protecting rights and policing and enforcing agreements. (1990: 27)

North’s point is not so much that one must exclude from the category of TC concrete costs such as filing fees, but rather that such costs are of secondary importance: the controlling cost is that


of information precisely because it is so difficult and costly to collect and value.\textsuperscript{147} One pole in North’s information spectrum of TC is represented by measurement costs (cf. the need to measure asset specificity in Williamson’s model), while the other is represented by enforcement costs. In contradistinction to Williamson’s organizational model, North’s historical model holds that TC and production costs are neither independent nor static, but interdependent and variable. Specifically, he notes the importance of recognizing that enforcement costs are not constant, as Williamson’s static model assumes, but have changed throughout history, and most dramatically with the invention of the modern Western state, which lowered the costs of enforcing contracts and property rights to a historically unprecedented level.\textsuperscript{148} Thus, for instance, the state may standardize weights, measures, and currencies, or establish guarantees as to the quality of products, or license dealers. Each of these acts could lower the cost of information to a potential buyer as he sought to compare products or prices, discover latent defects, determine the reputation of a potential partner, and facilitate enforcement of the transaction in the face of malfeasance. These actions thus have the effect of altering the prevailing landscape of TC, and so the differential calculus of the sort that Williamson engages in as an individual deciding how to proceed with his or her transaction. Enforcement costs can therefore be seen generally to depend in large part on politics and ideology, or on how and why a state does what it does with respect to the institutions that shape economic life.\textsuperscript{149}

\textsuperscript{147} Cf. North 1990: 56, 61-63, where he integrates determinate and indeterminate information costs into a single example.

\textsuperscript{148} North 1981.

\textsuperscript{149} North 1990; 2005.
More specifically, North has repeatedly stressed that the “most distinctive feature of the cost of transacting in the pre-modern world [has] centered on the cost of enforcing contracts” (1985: 560). His particular interest has been the historical process by which European states turned the state into an impartial, effective third-party enforcer, thereby lowering the TC involving in contracting to such an extent as to foster productive impersonal exchange, or transactions between parties that do not depend on pre-existing, often non-economic, personal relationships.\(^{150}\) Just as contracting is an institution that widens the zone of efficient exchange from merely simultaneous transactions to sequential transactions, so effective third-party enforcement increases the number of potential contracting partners, representing both an enlargement as well as a deepening of efficient exchange. North’s basic evolutionary model is one that begins with exchange through networks of personal relationships, wherein the participants have a high degree of knowledge about each other. Put another way, North sees the ancient condition as essentially contracting in the state of nature (above section 2.4), wherein one either contracts on the basis of union (his personal connections), the few limited strategies for forging credible commitments, or (usually) not at all.

One adaptation to such a world, one route to greater impersonal exchange, is via the bazaar.\(^{151}\) In one sense this represents an advance: the bazaar is a market in which impersonal trading is possible. In another sense, however, it defines the limits of exchange in a world without effective third-party enforcement, as the bazaar is itself an expensive institution. The

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\(^{150}\) North 1981; 1990.

\(^{151}\) Geertz 1979; cf. North 1985. Peter Bang has recently argued that this is a model for the Roman empire writ large (2008).
constant haggling and bargaining and the attempts to “clientelize,” or foster repeat transactions between partners, all point to the fact that “[o]ne makes money by having better information than the adversary.”\textsuperscript{152} The bazaar is thus a solution to the problem of impersonal trading, but not a socially efficient one. Moreover, it is ultimately self-defeating, insofar as its participants aim at re-personalizing exchange in order to escape its associated TC. It is only with the invention of the modern state that North sees a quantum shift to third-party enforcement by a political entity, which allows impersonal contracting on a large scale with increasingly productive returns, since the gains from trade are not dissipated by the parties on enforcement, as in the bazaar, but rather encourage adaptive efficiency. This, however, is possible only when the state has an effective monopoly on coercive power and “the interest of the rulers of the State [are] coincident with that of furthering exchange” (1985: 563).\textsuperscript{153}

Avner Greif has recently critiqued this evolutionary model by suggesting that it falls down when “trying to describe how economies make the transition from reputation-based personal exchange to law-based institutions” (2006a: 222).\textsuperscript{154} In other words, North’s model does not adequately account for the quantum shift from purely personal enforcement to efficient third-party enforcement and the rise of impersonal contracting. In response, Greif has suggested that the “community responsibility system” that operated in medieval Europe represents just such a link. Briefly, this was a system of control whereby autonomous political communities, whether

\textsuperscript{152} North 1985: 565.

\textsuperscript{153} Cf. 1990: 54-60.

\textsuperscript{154} Cf. his full treatment in Greif 2006b.
Italian city-states or religious communities, like the Baghdadi Jewish community of Cairo, held other communities responsible for the debts of their members. While this system could result in trade wars when one community failed to honor the request of another for satisfaction on a debt, on the whole it tended to work because communities understood that their common welfare was linked to their ability to trade with each other. Also, the community was often better placed to police its own members than were foreign merchants. Finally, the success of the system depended not on the impartial justice of some overarching third party, but rather on the partiality of the community, but operating on a community level. The institution only worked, in other words, to the extent that the political elite saw itself as the community, and so its interests aligned, if only temporarily or situationally, with those of a foreign merchant with a legitimate claim (self-interest rightly understood). This institution thus differed from third-party enforcement, on the one hand, in that there was no third party; on the other, it differed from the mere private ordering of individuals in a state of nature in that the individuals did not need to take each other’s personal qualities into account so much as that of each other’s communities. The system was, therefore, a form of personal ordering on a grander scale, which set the ground rules for lower-order contracts within the context of an overarching relational contract, itself established in a “state of nature.” On the basis of this study, Greif rightly concluded that we need “to consider the developmental ramifications of social structures that, like the communes, fall into a gray area between states and communities” (2006a: 234).
2.6 The Economic and Institutional Study of Ancient Contract: An Agenda

This chapter suggests that in order to study the institution of ancient contract from an economic perspective, we need to study enforcement, but in such a way that moves beyond mere legal enforceability to actual enforcement and enforceability, since it is in light of the realities of enforcement that contracts are negotiated, drafted, and enforced. To do so is to look at contracts as “frameworks” and our parties as economic agents more interested in the transaction than in the contract itself. We must build a model, therefore, that takes into account not only the law of contracts (itself a difficult topic when it comes to Greek East and one in need of consolidation), but also other salient rules, such as ethics and norms, and integrate them into a system of enforcement. Our discussion also suggests that self-help, or second-party enforcement, is a vital component of contract enforcement, especially so in antiquity, given the comparative weakness of the state. Self-help therefore deserves particular attention, specifically in the ways in which it related lawfully, if not legally, to official third-party enforcement (i.e., not in its overtly anti-social Eigenmacht manifestation).

Our model must be both capable of explaining synchronic choices across contemporaneous governance structures (i.e., Williamsonian questions), as well as be alive to diachronic changes in TC through time (i.e., Northian questions). In order to accomplish the first, we will need to see contracts in relation to other ancient governance structures (cf. the questions asked in Section 1.1). With respect to the second type of analysis, we should seek to understand just how close Roman Egypt was to a functional “state of nature,” and what the state did in defense of contract and why. Additionally, following Greif, we should look for evidence of ancient tertia quaes, alternative sources of third-party enforcement besides the state, akin to
Greif’s communes. We do not have far to look, but they are under-appreciated and under-studied. And finally, we should ask—to the extent that this question is answerable—what role and what effect contract had on the performance of the Greek and Roman economies.

As a final note, it is worth pointing out that virtually all of the major practitioners of NIE or historical law-and-economics have generally refrained from discussing or theorizing about the institutional development of the Roman Empire. Posner specifically excluded it in his discussion the economics of “primitive” law since he limited himself to pre-literate societies. More significantly, North largely avoided the Roman world, concentrating either on the so-called “First Economic Revolution,” which saw the invention of property rights and the state in the Neolithic era, or on the medieval and early modern periods leading up the Industrial Revolution. The few comments he has made with respect to the Empire are so broad-brush as to be cartoonish and show little appreciation for the texture of Roman history or the reality of life in the Empire. For instance, his discussion on law shows little knowledge as to the extent Roman law actually controlled exchange in the Empire and even less interest in the administrative procedures or ideologies of the Roman state. Moreover, his interest is almost

155 Though recently the subject of a Columbia dissertation by Taco Terpstra (2011).

156 This is, of course, not the only question one can ask about the institution of contract. For instance, it seems to me that a wider-ranging reassessment is warranted, e.g., what social and political role did contract play in classical antiquity? Cf. Sec. 5.2, App. II.


158 A theme revisited from a different angle in North, Wallis, and Weingast 2009.

exclusively on the demise of the Roman Empire, which he takes for the demise of the ancient state in toto. While some of his observations as to the fall of Rome may be apt from the perspective the Middle Ages, there is no recognition that the Roman world was in any way different from that of Classical Greece. This is a position that no ancient historian is likely to find acceptable from a social, political, or, increasingly, economic point of view, as it echoes, ironically if quite unconsciously, Finley’s position.\textsuperscript{160} We therefore need to test North’s theory of the state (among others; cf. Manning 2009), which depends on competition and is largely modeled on the early modern period, against the history of the imperial period when the Roman state had few serious competitors, in order to see whether it can account for the development of the Roman state and not merely the demise of the ancient state in its Roman manifestation.

Greif’s work, on the other hand, is more rooted in the particular history of his period—and, indeed, his challenge to North is basically historical—yet there remains the question whether the community responsibility model, which seems a plausible parallel for some international trading activity in the classical world, is one that fits the Roman situation with respect to domestic contracting. Also, unlike the situation in medieval Europe, there was an overarching state in the Roman world to which people everywhere could and did appeal,\textsuperscript{161} and more importantly for the purpose this study, a unified provincial administration in Roman Egypt. As suggested above, there is no doubt that there were other sources of third-party enforcement in

\textsuperscript{160} Cf. Sec. 1.4.

\textsuperscript{161} Millar 1977; cf. Conolly 2010.
the Roman world and the province of Egypt: the question is how did they relate to the Roman state, and how did ancient individuals negotiate between the two.\textsuperscript{162}

\textsuperscript{162} In many ways, the classical Greek and Hellenistic eras would seem to be better parallels for Greif’s model. One fruitful area for research would be the extent to which community-based enforcement intersected with the regulation of jurisdiction in antiquity.
As we see from surviving documents on papyrus, a contract in Graeco-Roman Egypt went by any one of a host of names: ὀμολογία, συγγραφῆ, χειρόγραφου, συνάλλαγμα, συμβόλαιον, γράμμα, ἀσφάλεια, συγχώρησις, διαγραφῆ, οἰκονόμιον, δημόσιος χρηματισμός, and ὑπόμνημα are the most common words used specifically to refer to a “contract.” Many of these terms are generic (συνάλλαγμα, οἰκονόμιον, γράμμα, συμβόλαιον, δημόσιος χρηματισμός), often meaning little more than a legal “document” of any sort. Others describe very specific instruments (e.g., διαγραφῆ), while still others describe types or forms of contracts (συγγραφῆ, συγχώρησις, χειρόγραφα, ὑπομνήματα). This last category may be divided roughly into “public” or notarial documents (i.e., those drafted by scribes and registered in public archives, such as συγγραφῆ and συγχώρησις), and “private” documents (χειρόγραφα, ὑπομνήματα, and the so-called “private protocol,” which, so far as we know, had no ancient term consistently associated with it). Documents of this latter class could in theory be drafted by anyone—the parties themselves, a slave, an agent, or a scribe authorized to write

\[163 \text{This list is not exhaustive: for terms and discussion, see Mitteis 1912: 72-75; Taubenschlag 1955: 292-303; Wolff 1978 passim. The sources also refer to contracts metonymically by way of the underlying transaction, much as we do today when we talk about a “loan” or a “lease” (Wolff 1978: 142). Some of these terms may be used in such a way as to distinguish between the contract and the document recording it, but such distinctions are not always observed, e.g., P.Oxy. I 34 verso (Oxyrhynchos, 127): γραμματεῖς...κατὰ τὸ παλαι[όν] ἔθος ἐγγονιξα...θορᾶν τὰ συναλλάγματα περιλαμβάνουσι[ες] τὰ τῶν νομογράφων...καὶ τὰ τῶν συμβολασσόντων ὁνόματα καὶ τῶν ἀριθμῶν τῶν οἰκονομι...μίν καὶ [τὰ] εἰ[δη] τῶν συμβολασσόντων (i.8-11: “The scribes shall count up the agreements according to the old custom, including the names of the nomographoi and the parties, the number of the documents, and the types of contracts.”); cf. P.Fay. 11 below, pp. 461ff.} \]
public documents. What made them “private” was that they were not registered except pursuant
to a subsequent and separate act of registration, either *ekmartyrēsis* or *dēmosiōsis*.

To complicate matters further, each of the types above has a particular and regional
history within Egypt. For example, *synchōrēseis* appear to have been uniquely Alexandrian
documents. Private protocols were drafted in both the Oxyrhynchite and Arsinoite nomes, but
on different templates, and they appeared much earlier in the Oxyrhynchite. The history of the
*cheirographon* is one of increasing importance vis-à-vis notarial forms throughout the period in
all regions. *Hypomnēmata* as contracts (they were originally petitions or applications), on the
other hand, become popular relatively late and have been associated with growing socio-
economic distance between parties in the third century. And so on. And this, again, is only to
treat the words that refer to specific contractual forms that have been subjected to intensive
study: there are a host of other words that signify contracts more abstractly as “agreements” or
the like, which, as I shall argue, are at least as illuminating for the study of contract as are set
forms like the *synchōresis* or *cheirographon*. In the face, then, of this constantly changing
patchwork of contractual forms and in the absence of a single word in Greek that corresponds to

165 Wolff 1978: 95.
the idea of “contract” or “obligation,” how far may we speak of “contract” as a uniform or coherent legal or social institution in Roman Egypt?\textsuperscript{169}

In one sense, it is of course redundant to prove that contract was an institution in Roman Egypt: the evidence leaves no doubt that contracts were, as we saw in the very first instance with the Tebtynis registers (Sec. 1.1), used to help organize exchange on a regular basis, and so constituted a widely recognized set of “rules of the game” of exchange, to use North’s simile.\textsuperscript{170} What is needed is a better sense of the character, boundaries, penetration, and relative importance of contract as an institution, or just what the rules were, and where and how the “game” was played in Roman Egypt. The suggestion of this and subsequent chapters is that we think of contract in Roman Egypt as a coherent institution that encompassed or sat atop the multiplicity of contractual forms listed above; but that it was nonetheless a \textit{thin} institution, one that in many circumstances was susceptible to being pushed into the background or liable to dissolve in the face of more vivid or concrete institutions. Of particular importance, then, will be a thorough understanding of just what a “contract” was, so that we may compare it to the concept of contract developed in the previous chapter.


\textsuperscript{170} North 1990: 4.
3.1 Contract in Egypt

Egypt had a long history of written contract before the Greeks arrived. Documentary examples, in fact, stretch back well into Pharaonic times. By the time the Romans gained control of Egypt in 30 BCE, contracting had undergone three major phases of development in recent history. First came the consolidation of demotic in the Saite and Persian periods, with it becoming the predominant language of legal and administrative documents and introducing new forms and revealing new conceptions of obligation. Then, in the second phase, Greek legal forms were introduced by the immigrants who arrived with the Ptolemies, after which Egypt appears to have been in regular legal and commercial dialogue with the wider ambit of Hellenistic practice until the end of antiquity, if not beyond. In both phases contract was but one of several areas in which economic and institutional innovations were directly precipitated or specifically introduced by the new hegemonic powers and populations effectively in control of the state. In the third phase, the Ptolemies attempted to exert wide-ranging control over legal instruments as part of their overarching plan of rule. They were specifically interested in controlling the legal processes and instruments tied to revenue streams vital to the regime, such as those related to the conveyance of land or sales. The system of legal and judicial control which they established in

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173 Others include changes in land tenure (Manning 2003), coinage and monetization (von Reden 2007), and improved hydrology.

turn had a decisive influence on the elaboration of the basic relationship of contracting parties to the state, especially in the use of written contracts, with lasting impact on contracting practice throughout the Roman period. In Egypt, then, the Romans inherited a well-established and mature institution of contract, and because their aims at the time were not substantially different from those of the Ptolemies vis-à-vis Egypt as a province (i.e., revenue extraction), this was an inheritance they were more than content to accept, and there was no attempt to impose or encourage the use of Roman law contracts for non-citizens, or even citizens for that matter.175

“Well-established,” however, should not be taken to mean that contract was necessarily a highly “formal” institution. With respect to contract, “formal” has been used in several ways. It will therefore be useful to identify and distinguish three different uses of the word, or legal, economic, and institutional “formalism.”

175 See Wolff 2002 on the legal history of Graeco-Roman Egypt generally. The Roman authorities made few, if any, legal (as opposed to administrative) changes to contract rules, and Roman citizens can be seen using contracts drafted in Graeco-Egyptian, Roman, and hybrid forms, all of which had the same legal force (ibid. 162-70). The Romans, of course, were well aware of how contracting worked in the Egypt and the East generally before they formally assumed power in 31 BCE. Romans both presided over courts that dealt with non-Roman law contracts (e.g., Cicero’s provincial edict in Cilicia, which dealt with local contracts, Ad Att. VI.1.15=SB 115), and used them in their dealings with peregrines. The most famous and relevant example comes in Rabirius’ financial dealings with Ptolemy XII Auletes from 58 BCE onwards. The king’s loans were naturally not Roman law contracts (Rab. Post. 6: factaque syngraphae sunt in Albano Gn. Pompei), and Rabirius eventually came to control the king’s finances as dioikētēs (Rab. Post. 22, 28). On this episode, see Siani-Davies 1997.
3.2 Formalism, Credibility, and Choice

In legal terms, formality denotes qualities or acts prescribed by law that must accompany the formation or recording of a legal act, in this instance a contract, so as to make it enforceable at law. Examples of legal formality include the Roman requirement that a stipulatio be given with precise wording in order to be considered effective, or the requirement set out by the celebrated Statute of Frauds (29 Car. II. c. 3 [1677]), which dictated that most common law contracts, particularly those involving sales of land and goods, personal sureties, and employment contracts lasting longer than a year, be reduced to writing and signed.176

“Formality,” or perhaps more often the lack of it, is also frequently attributed to an economy. Indeed, most of us find discussions of “informal” economies at the “margins” of society a familiar concept. In this discourse, the “formal economy” is the “legal” one, “out in the open,” “regulated,” “sophisticated,” etc., as opposed to the “informal” economy, which can be characterized as “non-observed, irregular, unofficial, hidden, shallow, parallel, subterranean, informal, cash economy, black market, unmeasured, unrecorded, untaxed, non-structured, petty production, and unorganized.”177 This use of “formal” has no direct application to contracting, except insofar as legal contracts are considered part of the “formal” economy. I will never use “formal” in this sense.178

176 For the formality of the stipulatio: Zimmermann 1990: 82-89.

177 Sindzingre 2006: 59

178 Cf. the so-called “invisible” economy of classical Athens, see Cohen 1992, esp. ch. 6.
This leads us to the final context, the institutional. Many scholars speak in terms of “formal” and “informal” institutions, among them D. C. North, who generally understands “formal” institutions as those that are “designed” and articulated in a set of written rules.\(^{179}\) Such institutions are often created, and typically policed by, relatively sophisticated organizations within a society, like the state, guilds, the army, etc. Typologically, they are set against “traditional” institutions, like customs or norms, which are seen to evolve “spontaneously,” and whose rules are almost always unwritten. Thus, contracts may be considered either “informal” or “formal,” depending on the extent to which they conform either to law (formal) or norms (informal), and therefore (theoretically) go without the state’s protection.

One may see at a glance how the three uses of “formal” overlap with each other, and how they differ. Legal formalism, for instance, is indeed an expression of “formal” contracting, or contracting according to the rules of contract law set out by the state (institutional formalism), but only incidentally so: the state could just as well abolish legal formalism, as was in fact the tendency in Roman law over the course of the late Republic and early Empire.\(^{180}\) For this reason, among others, some scholars have questioned the usefulness of the formal/informal dichotomy. As Alice Sindzingre has recently pointed out in her review of the concept, it would appear analytically irrelevant in many countries, since “formal” institutions are in fact less credible and effective than “informal” ones, though of course the reverse is usually taken to be the norm. She similarly points to research that shows that contracts in countries with strong states are not

\(^{179}\) Cf. section 2.5 above.

supported purely by “formal” rules, but indeed rely on “informal” mechanisms like trust, reputations, etc. in order to operate effectively.181 She concludes that the formal/informal opposition is an essentially useless distinction, at least with regard to a correlation with the effectiveness of rules, and that we are therefore better off speaking in terms of the credibility afforded a rule or set of rules, whatever the origin and however articulated: “The various mechanisms underlying the credibility and compliance with rules have more explanatory power as to the effectiveness of rules than the dichotomy of formality versus informality.”182

Sindzigre’s analysis and conclusion are particularly pertinent for the study of ancient contract for two reasons. First, in Roman Egypt we are dealing with a society ruled by a state far weaker than almost all modern comparanda,183 and particularly those which served as the basis for the development of NIE analysis. One consequence of this difference is that there was naturally far greater scope for other, “informal” institutional structures at the local level to affect the practice and enforcement of contracts than we see in our day. In other words, with Sindzingre we should see individuals (in our case, ancient individuals) making decisions on the basis of the credibility they (often correctly) attached to the rules they saw as functionally operative, with less attention to the type or source of rules than their perceived usefulness or applicability.184


183 Egypt has been called one of the greatest “social cages” in history and the “easiest place on earth to tax” because of its geography (Manning 2009: 141; cf. Mann’s [1987: 112-15] dictum about Egypt being the world’s most total “social cage.”). The geography would have tended to channel parties into formal contracting because it made the state more powerful and relevant.

184 Cf. the general observations of Hobson 1993 (see pp. 57ff. above).
Again, this is not to say that the state and its rules, particularly as regarded the registration of certain contracts—all “formal” elements of one sort of another—were not important in Roman Egypt when it came to contract: clearly the evidence says that the reverse was true (see Sec. 6.2). By the same token, however, they were not therefore the only, or even self-evidently the most important, elements to contracting simply because they were “formal.”

Second, there is the curious fact that even the “formal” rules of contract in Roman Egypt were strikingly “informal”: there was, in fact, no such thing as “contract law” per se.\textsuperscript{185} There were, of course, legal rules governing contracting, but these laws were primarily administrative and procedural (e.g., the evidentiary value of written evidence of a contract), and at their core so under-theorized and as a body so unsystematized that, at least so far as we can tell, there was not even an explicit legal definition of what a “contract” was.\textsuperscript{186} Such a state of affairs complicates any modern attempt to arrive at a definition or doctrine of contract in Roman Egypt, but it also necessarily means that contract was a more amorphous or “fuzzier” legal institution than that to which we are accustomed, since there was no core theory around which contracts gravitated, and a lesser role for authorities to articulate and enforce doctrinal purity than there was to some extent in Roman law.\textsuperscript{187} The economic implications of which binding agreements the law

\textsuperscript{185} Cf. Finley 1951 (critiquing Pringsheim 1950 on this very point) and Rupprecht 2005, esp. 335-38. I have given an “economic” definition of contract in Ch. 2.

\textsuperscript{186} As compared to what we find in the national codes of France or Germany, the Second Restatement of Contracts for the United States, or indeed Gaius (if we may take him as accurately representing the law of contracts) and later Justinian’s Institutes for Roman law.

\textsuperscript{187} Cf. Rupprecht 2005: 336, who does not extrapolate the necessary conclusion above from the acknowledged lack of theory and legal authorities. On Roman law, see Frier 1985; cf. Schiller 1978: 298-302 on the ius respondendi; and Metzger 1998: 11-14 on Inst.Iust. 1.2.8. For legal experts in Roman Egypt, see pp. 404ff.
recognized and on what basis—whether, e.g., consensual contracts were legally binding, as opposed to merely real or purely formal contracts—are vast (cf. Chapt. 2); but in large part the law here followed a social “definition” of what constituted the sort agreement one could bring before the authorities and receive “justice.”

There is thus no reason to expect all of our evidence of practice to conform to any “doctrine” that we might be able to extract from it, and we should expect custom to play what we might consider an out-sized role in formal, legal contracts. Such a state of affairs goes beyond even the modern scenarios Sindzingre envisions, yet in such a way as to sharpen the relevance of her main conclusion: the rules governing the enforcement of contracts cannot profitably be distinguished on the basis of their “formality” or “informality” if only because the state in Roman Egypt itself did not do so, but instead relied on a core of customary rules and definitions as to what a contract was when issuing its rules or rendering its judicial decisions. While there is nothing particularly strange about this in itself—American and British courts, for instance, have for centuries piggy-backed on “prevailing business practice” or “merchant codes” when writing new law or re-interpreting old law—the extent of the intermixture of custom and law,

188 Rupprecht 2005: 336. See Rupprecht 1967: 39-60 for a review of theories as to the essence of contractual liability, though in service of his particular discussion of loans. Note that many of them presume a notion of “Greek” law, or were developed largely for classical Athens (principally, Pringsheim 1950 and Wolff 1957; see now also Cohen 2006 and Jakab 2006). “Greek” law is a problematic concept (see Finley 1951 and Gagarin 2005; contra Rupprecht 2005), and only Seidl’s Prinzip der notwendigen Entgeltlichkeit was developed specifically with a view to the Egyptian context (1956: 40-45; 1962: 113-68), though Wolff 1946 is a study based entirely on papyrus leases (yet still in the service of a notion of “Greek” contract). Besides administrative and procedural rules, there were some positive restrictions on the freedom of contract. See, e.g., the case of P.Oxy. IV 706 (pp. 403ff.).


190 See, e.g., Atiyah 1979: 122-23, 190-91 on Lord Mansfield’s attempts to incorporate business practice into the nascent commercial law and p. 137 on the “incorporation” of merchant practice with respect to bills of exchange into the common law of the 17th century.
and the (legal) informality of the reception of custom into law, resulted in a situation in which custom often carried “formal” weight. Certainly, there was no simple, constant relation—parallel, complementary, or antagonistic—between what most would see as the “informal” and “formal” institutional components of contract in Roman Egypt.191

Given the conceptual problems with the formal/informal dichotomy in institutional analysis, its particular irrelevance to the situation in Roman Egypt, and the potential confusion between institutional and the legal formalism, I will restrict my use of the word to refer only to legal formalism, where the label has a clear and intelligible meaning. This dichotomy, however, is deeply rooted in institutional literature (not to mention conventional historiography), and so on occasion it will be necessary to speak in these terms with respect to the institutional aspects of contracting. When I do so (as immediately below), I will use scare quotes so as to keep the problematic quality of the term in mind.

Finally, a note about replacing “formality” with credibility as a central criterion or dimension of institutional analysis. Doing so obviously and quite intentionally privileges the individual or organizational actor’s vantage point, and as such fits hand-in-glove with the current appreciation of individuals’ “satisficing behavior,” characteristic of their “bounded rationality,” as they choose between immediate economic alternatives by the lights of their subjective experience. A major difference in the ancient and modern conditions, of course, is the extent to which our modern consciousness of satisficing matters; that is, the extent to which our behavior

191 The role of law in contracting in Roman Egypt has, largely for the reasons above, never been considered as such, and the studies that come closest to such a project typically frame the question in terms of “Greek” contract (cf. n188). Nor has it been studied together with the primary evidence for official enforcement. This is the next step in the larger project, cf. Sec. 6.2.
changes with the knowledge that (i) there is, theoretically, an optimal solution, and that (ii) we have a tendency to discount the future. Certainly, ancient actors had no such knowledge, and therefore no such consciousness; but I think it safe to say that satisficing is the original, if not the still dominant, behavior. Here I want to draw attention to two implications of focusing on subjectivity when it comes to economic institutions that will become important in subsequent chapters.

First, there is no reason why an apparently satisficing solution may not be the most efficient for the actor, given the actual TC involved. We, of course, are in a relatively poor position to measure the distance between a merely satisficing solution and a truly optimal one in antiquity, since our grasp of the institutional matrix (and associated TC) in which ancient people operated is only partial and indirect. This would suggest that we need to let ancient people be our guide, that we, in the words of one legal scholar whose ideas we will explore more fully below, start from the premise that

people are smart. Not necessarily informed. Not necessarily literate. Smart. That workers are smart. That people who work in personnel offices are smart. That these people are smart enough to understand intuitively that transaction costs are large, even though it is inconceivable that they would have heard of this ivory-tower phrase.\footnote{Ellickson 1989: 625.}

Of course, instead of “workers” we may have peasants; and instead of bureaucrats in “personnel offices” we may have \textit{phrontistai} managing private estates, or \textit{hypēretai} carrying out judicial functions in contract disputes. Since satisficing is the original condition, however, such social roles change nothing with respect to the mechanics of individual decision-making. Assuming
that ancient people are “smart” prompts us to take their decisions seriously from the outset as we attempt to understand why they made the decisions they did, which is to say why they found certain rules more credible than others in certain circumstances, and what costs they were balancing off each other when they chose between different options or sets of rules.

The second implication is that individual agency and freedom of action are considered both real and central to understanding how institutions work. This is obviously problematic for the ancient world, since it was full of all sorts of barriers to all manner of freedom (as Finley and others stress). Therefore, we must ask: how were ancient actors free and how free were they? This question will be a motif running through the rest of this study, but here it is appropriate to ask how we might conceive in the abstract of a “meaningful” choice, since one’s right and ability to make choices would seem to mark the boundaries and degrees of an individual’s effective freedom.

To my mind, Aristotle’s discussion of the nature of choice and its role and implications for morality are helpful here. He asked whether or not acts proceeding from various forms of duress, such as a tyrant’s threat to kill hostages or the threat of capsizing unless one jettisoned cargo, were voluntary or not (NE 1110a1-11b3). For him involuntary acts had as efficient causes external forces acting upon passive “agents.” For example, someone who falls into someone else only because he was pushed can be called an “agent” in only a formal sense: such an “agent” was not the origin of the act, but merely an instrument in its execution. In this circumstance, one

\[\text{193 Cf. Sec. 1.4.}\]

\[\text{194 Cf. App. I.}\]
cannot even call his falling an “act” as such. On the other side of this line are the vast majority of acts properly so called, since they originate with the agent himself. So long as one does not act in ignorance (1110b18-11a21), acting as such is voluntary, even if no one would choose to act in a similar way absent the particular circumstances (1110b5-9, cf. 1110a18-19). Duress, therefore, merely qualifies the choice as significantly constrained with respect to our moral feeling but does not alter the fundamentally voluntary nature of action (by the nature of reality all choices are constrained or “particular,” as Aristotle recognized, e.g., 1110b8-9, 1112a18-13a14, 1140a24-b8). In his system, then, it is choice that creates and defines moral meaning: it demarcates the realm of the moral, since it is an expression of the agent’s will (1111b6-1112a17), and its scope is the yardstick by which we may measure degrees of responsibility. Crucially, there is no requirement that the alternatives be good ones in order for the act of choosing to qualify in itself as a “choice.” Jettisoning cargo or facing near-certain death is an admittedly terrible choice, but it is nevertheless a choice.

I see no reason why Aristotle’s discussion of the role of choice in ancient ethics cannot be helpful in thinking about the role of choice in ancient economic matters. As in Aristotle’s examples of ethical duress, so many economic choices both now and in antiquity are “involuntary,” or not choice-worthy in and of themselves but nevertheless capable of being ranked, or susceptible to preference, given the circumstances. Thus may we understand a peasant’s decision to decamp (anachōrēsis) rather than pay taxes or rent, or Germany’s decision to bail out Greece in 2010 rather than risk the currency union. Furthermore, adopting a strict

195 Without, of course, accepting Aristotle’s exclusion of women and slaves from the category of “rational” agents capable of “choice.”
definition of choice in no way prevents us from recognizing that some choices are more economically meaningful than others. For Finley, *anachōrēsis* was the paradigmatic example of a meaningless “choice.”  

Certainly, it is not to be doubted that “duress” of one sort or another in the economic realm produced a series of economic “Sophie’s choices” for the majority of ancient people in the Mediterranean, and one should not romanticize or gloss over this historically important dimension of ancient life. At the same time, however, one must also not forget an equally important and competing element of ancient reality, namely that its history, like any other, is nothing but the sum of individual choices, no matter how constrained. To lose sight of this reality is to risk missing not only the many hard, but revealing choices, but also potentially a wider range of options indicative of more meaningful choices than one might have assumed to have existed.

Focusing on credibility, then, avoids a misleading and illusory emphasis on “formality,” but also pushes us to give priority to the choices, good and bad, that ancient people made in their economic lives as the basic units of analysis. Starting from the presumption that people are “smart” is not the same as presuming their infallibility, and a strict definition of choice

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197 The question of the possible meaning of “ignorance” in economic choice, analogous to Aristotle’s discussion ignorance and moral choice in Bk. 3 of the *NE* (1110b18-11a21), is a difficult one. Aristotle believed that those who are properly agents but in the possession of some will-altering mood or drug were to be thought of as acting “through ignorance” (*διὰ ἄγνοιαν*), and so “without a will” (*οὐχ ἔχων*). As such they act less voluntarily than even children or animals (cf. 1111b7-10, 1111b13-19), which was morally reprehensible, since, unlike children or animals, adult men had the capacity for moral choice. On the other hand, a person who is ignorant of some particular dimension of his act was merely acting “ignorantly” (*ἄγνοια*). Such actions are bad, but potentially excusable, since *mutatis mutandis* the agent made what he thought was right choice (1111a3-15). Finley, it seems to me, argues that ancient actors were effectively precluded from acting economically, which would correspond in some loose fashion to the first distinction (the analogy is admittedly imperfect). Most scholars, on the other hand, have tended to see ancient economic agents as acting “ignorantly,” both from their perspective and from ours (e.g., the common criticism of Diocletian’s price controls or the short-sighted debasing of currencies), though the two frames of
proceeding from the historical reality of agency does not necessarily mean that all choices were equal good or equally free. Indeed, it is this degree of freedom that we need to uncover and characterize in a more subtle way than is possible if we begin from *a priori* assumptions of effective unfreedom. And again, we shall only be able to assess the quality of economic choices if we recognize them as choices and weigh them from the ancient perspective, taking them seriously in our reconstruction of what the alternatives were, and why certain alternatives were believed to be better than others. As I and others have shown elsewhere, a “meaningful” degree of economic choice can often (but not always) be recovered in the contracting of Roman Egypt, with ancient actors strategizing around several different layers and types of alternatives.\(^\text{198}\)

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3.3 An Institutional Map of Contract

The problem of “formality” aside, we still stand in need of a way of conceptionalizing the theoretical relationship of the various elements of contracting to each other, or of how the various sets of rules related to each other apart from their credibility, which can only be demonstrated empirically. That contract was not a unitary but a composite institution is guaranteed by the fact that the law of contracting in Roman Egypt, as mentioned above, relied so heavily on norms. We therefore need a model of contract that incorporates and relates a range of rules of different types. Here I turn to Robert Ellickson’s model of social control, not only for its general institutional analysis, but also for its emphasis on enforcement, which renders it a useful model for the subsequent chapters on the various modes of contract enforcement.

In *Order without Law*, Ellickson studied the social, economic, and legal interactions of ranchers and farmers in Shasta County, California. His aim was first to describe the norms that controlled decisions to invoke the law or legal authorities or not in the settlement of disputes; and second, to theorize about the rules that define the content of those norms. In other words, why did ranchers or farmers call in the authorities in some cases and not in others? And when they did decide to solve the problems themselves, what rules were they using if not the rules of law? (Indeed, one of the most fascinating portions of Ellickson’s study is the one in which he shows the extent to which the rules of self-help depart from the rules set down by law.) In order to answer these questions and others, Ellickson built a model of social control that posited particular relationships between norms (“informal” public rules), law (“formal” public rules), and private rules (ethics and “private orderings” or “contracts”).
Ellickson’s model consists of a tripartite taxonomy with five subdivisions, each articulated by the identity of the controller (see Table 3.3 below). “First-party control” is exercised by an actor over him- or herself. This is the realm of ethics, wherein a person’s personal system of values erects a system of rules and purely psychological sanctions. A purely personal commitment to “fair dealing” would be an example. “Second-party control” is the world of contract or private orderings: “[a] promisee-enforced contract is a system of second-party control over the contingencies that the contract covers; the person acted upon administers rewards and punishments depending on whether the promisor adheres to the promised course of behavior” (126-27). “Third-party control” consists of non-hierarchically organized social forces, organizations (nongovernmental hierarchies), or governments (state hierarchies). Third-party social control is thus characterized by the application of rules to which the primary actors may not have agreed, and enforced by people not involved in the transaction. Both of these characteristics distinguish it from second-party control wherein the rules are negotiated and enforced by the parties themselves.

Each of the sources of control is a source of rules. The rules of second-party controllers Ellickson calls “contracts” in a broad sense, i.e., he would include arrangements based on norms; the key determinant is whether or not the parties themselves establish and enforce the rules of the relationship. The rules established by decentralized social forces are called “norms,” while organizations establish “organizational rules” and governments, “laws.” (One can see here the influence of the formal/informal dichotomy.) Finally, each source of control is also a source of

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199 This discussion reprises Ellickson 1991: 123-36.
sanctions. Second-party controllers administer sanctions under the rubric of “personal self-help,” while from social forces emanates “vicarious self-help” (the difference will be explained shortly). Organizations provide “organization enforcement” and governments “state enforcement.” This taxonomy is best understood visually, so I reproduce Ellickson’s table illustrating the various sources of social control in his paradigm.
Table 3.3 *Elements of Ellickson’s comprehensive system of social control*

<table>
<thead>
<tr>
<th>Controller</th>
<th>Rules</th>
<th>Sanction</th>
<th>Combined System</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First-party</strong></td>
<td>Personal ethics</td>
<td>Self-sanction</td>
<td>Self-control</td>
</tr>
<tr>
<td><strong>Second-party</strong></td>
<td>Contracts</td>
<td>Personal Self-help</td>
<td>Promisee-enforced Contracts</td>
</tr>
<tr>
<td>Person Acted Upon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Third-party</strong></td>
<td>Norms</td>
<td>Vicarious Self-help</td>
<td>Informal Control</td>
</tr>
<tr>
<td>Social Forces</td>
<td>Organization Rules</td>
<td>Organization Enforcement</td>
<td>Organization Control</td>
</tr>
<tr>
<td>Organizations</td>
<td>Law</td>
<td>State Enforcement</td>
<td>Legal System</td>
</tr>
<tr>
<td>Government</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Source:* Ellickson 1991: 131, Table 7.3.

As the table implies, the controller responsible for the rule is usually the one which administers the corresponding sanction (but not always; see below). For instance, promisees, who negotiate the terms of “contracts,” generally take steps to protect themselves against breach by engaging in self-help actions, like malicious gossip aimed at devaluing the reputation of the opposite party (thereby making it more difficult for him to engage in subsequent transactions in the same community), refusing delivery or payment, unilaterally exacting small retaliatory “payments” for failures to live up to agreements fully, etc. This is called “personal self-help” because it is the parties themselves that engage in such sanctions in order to enforce the contract. Norms, on the other hand, like one dictating that goods be sold for a “fair price,” are often
enforced in a decentralized manner by “society” at large, or the community as a whole, in the form of social pressure to conform, hence the term “vicarious self-help.” It is “vicarious” because no individual or organization is capable of controlling it, even though they may actively attempt to benefit vicariously from the pressure exerted by society. A recent and very public use of vicarious self-help was the Obama administration’s attempt in early 2009 to shame executives of companies rescued by public funds who then received “outrageous” bonuses. In employing such rhetoric, the administration hoped to activate a norm of “fairness,” and so achieve by the pressure of public opinion what they were loath to attempt by law.

Lastly, we have organizations and the state. Both establish the rules and administer sanctions in response to what they perceive as deviant behavior. We find examples of organizational rules in Roman Egypt in the charters of metropolitan gymnasia or priestly organizations, which regulate the dues and behavior of their members. The state, in one sense, operates like a very big organization; however, it is distinct from mere organizations by virtue of its overarching authority and overwhelming capacity to deploy physical force. As a consequence, its rules are usually invested with a particular dignity and called “law,” though, as

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200 *Justum pretium* was not a requirement of legal contract in classical Roman law, though we may be sure it was a social norm. It was later received into law, forming the basis of *laesio enormis*. See Zimmermann 1990: 255-67.


202 E.g., *P. Mich.* V 243-245 (14-47, Arsinoite), on which now see Venticinque 2010.

203 Weber’s famous “monopoly of violence.” This monopoly, however, was far from perfect in antiquity. See now Manning 2009 on the capacity of the Ptolemaic state to project power.
above, the status of the rules as law does not necessarily mean that they are always the most credible or salient rules in every situation.

Finally, the rules of each controller may themselves be divided into five categories according to the level at which they control decisions or behavior.204 “Substantive” rules define primary behavior as either “good” or “bad” (in the case of norms), “legal” or “illegal” (in the case of law), etc. “Remedial” rules define rewards or sanctions on the basis of the substantive rules. For example, lying could be considered “bad” (as per a substantive rule), but the remedial norm for lying about one’s weight will likely prescribe a very different sanction from that for lying about damaging a neighbor’s property. Next, there are “procedural” rules. These guide decisions as to the application of remedial rules, defining, for instance, the way in which one is to weigh particular types of evidence when deciding whether or not to apply a particular sanction. For instance, before punishing a lie, which *qua* lie is always “bad,” the usual practice is to assess the “badness” of a lie by attempting to discover its context and motivation. At a very different level, there are “constitutive” rules that govern the internal structures of controllers, like a charter providing for the election or appointment of officers in an organization. Finally, there is what Ellickson calls “controller-selecting rules.” These are master rules which help to define which substantive rules an individual or organization are to apply. They are to the world of substantive rules what jurisdiction is to the world of law.205 The content of these rules was Ellickson’s ultimate goal, as he was interested in the rules that guided his ranchers and farmers in

204 The fact that there are five types is a coincidence and does not depend on the primary schema of controllers.

one set of circumstances to apply various forms of “informal” control (i.e., the full universe of self-help, personal and vicarious), while in another set of circumstances the third-party control of the state (i.e., law).

From the perspective of Ellickson’s controller-selecting rules, we are justified in seeing the whole model as one complex institution of dispute resolution, with branching pathways leading to so many sub-routines, as in a complex computer program. These sets of rules intersect at distinct nodal points depending on the nature of the dispute and the relationships between the disputants. One of these nodal points is contract. We have already seen in the last chapter that one way of looking at contract as an institution is to understand it as a “framework,” or a structure that attempts to facilitate a transaction, with the transaction itself being of greater importance than the contract. To see contracts in this light is to see them as instruments designed to anticipate potential disputes, and indeed this is true of all governance structures: the potential for different types of disputes explains in large part the choice of one governance structure over another. Contract as framework, then, is but another way of expressing the idea that contract is a node in the larger, complex institution of dispute resolution. If this is so, it should be possible to take Ellickson’s model and reorganize it around the node of contracting, thus arriving at an institutional map of contract that can be represented visually by Figure 3.3.

206 Another node would be what we call tort or delict; the prime difference, of course, is the nature of the relationship (involuntary versus voluntary), cf. Arist. Nich. Eth. 5.4 (on which see Biscardi 1982: ch. 5, esp. 133-35).
Fig. 3.3 An institutional map of contract
The circles in Figure 3.3 represent zones of first-person control, or the ethical rules of acceptable behavior particular to each party as it enters into a contracting relationship. The overlap between the two parties represents the area of second-party control. This is the zone of rights and responsibilities agreed upon by the two parties. This zone can be wide and relatively undefined, even to the extent that one party might think they have an agreement (i.e., that they are within the zone of contracting relations), when they do not. Of course, this possibility is not a result of the merely private or extra-legal (“informal”) nature of the agreement, but of the inherent possibility for miscommunication in the act of agreeing itself. Uncertainty as to the existence or establishment of contractual relations is for this very reason a major area of modern contract law (e.g., the doctrines that surround the definition of offers and acceptances in common law) and one of the chief drivers of legal formality (one of the main functions of formality is to provide clarity about the boundaries of legal relationships, e.g., those established by clear offers and acceptances).\footnote{It was also a major preoccupation of the Roman jurists, whether touching on the conditions of a valid stipulation with respect to offer and response (Zimmermann 1990: ch. 3), the need for a certain price in a sale (ibid, pp. 253-55), or various forms of error on the part of the parties as to the transaction (ibid., ch. 19).}

The areas of first- and second-person control are shaped both by the immediate controller (i.e., idiosyncratic personal morality and the explicit terms of an agreement between two parties), as well as by norms, the latter represented by the shaded area that surrounds the entire relationship. This is to say that no one’s personal morality exists in a vacuum: norms may support or run counter to one’s sense of right and wrong, but either way the influence of
society’s views will exert a perceivable pressure to conform. Similarly, the intersection that constitutes the zone of contracting relations may be more or less explicitly defined according to the time and care the parties take to craft their agreement, but all aspects of what it is to make a binding agreement, e.g., what one can agree to, whether or not it should be legally formalized, whether or not certain terms “go without saying,” etc., also depend in part on social norms.

Finally, within the zone of contracting relations there is a smaller zone which represents the positive law of contracts. As the figure suggests, the state generally, but not always, recognizes only a restricted area of potential agreements as legal contracts, thus leaving a significant area of agreement outside the protection of law (the portion of the overlap between the two spheres not included in the box).\footnote{208} In fact, this gap between second-party or normative rules and the official rules of contracting can generate some significant misunderstandings if the parties do not understand where the boundary of the law is. For instance, a party may try to use the law to enforce what is merely a contractual agreement (but not a legally recognized contract), or, vice versa, persist in using second-party sanctions when in fact legal remedies are available which might prove more effective.

What this model suggests, then, is the importance of ethics and norms to contracting generally, and that we should accordingly expect a significant amount of enforcement to happen “outside” the law in two senses (cf. Ch. 2). First, and most importantly, since contracting relations are private orderings made against the backdrop of public norms, the first line of enforcement is likely to come from the other party, which not only has the greatest interest, but

\footnote{208} A court may also “imply” contracts when the parties have made no explicit agreement, hence the extension of the box in the figure beyond the area of intersection. Cf. pp. 38f. and n75.
also is likely in the best position to monitor the other party’s actions. Contracts between all but the most sophisticated parties are made first and foremost in the social arena, and most often the state only becomes aware of contracts in the event of a dispute. Contracts are therefore by their nature essentially extra-legal in the strictest sense of the term: they are law-like agreements, but they conform in the first instance to the “laws” of norms and personal ethics. Hence they are almost always enforced, at least at first, by opposing parties engaging in personal self-help, often with the aid of vicarious self-help, and indeed these forces combined are usually strong enough to preserve a contract without the aid of the state. The fact that comparatively so few contracts are litigated, both then and now, is an eloquent, if silent, testament to just how powerful such extra-legal enforcement is. Second, given the reasons above we can appreciate how and why agreements that have no legal protection may nevertheless be enforced: extra-legal sanctions, which often have the weight of social norms behind them, may be just as successful in enforcing contracts not recognized by law as they are in enforcing legal contracts, which is but another way of saying that there is honor even among thieves.
3.4 The Evidence for Norms

Such a view of the relations of contracting to ethics, norms, and law may seem counter-intuitive—for what could be more “legal” than a contract? Here we do well think in terms of Theresa Morgan’s recent caveat that we not think of ethics and norms “as ancillary to political, social or economic phenomena ... Ethics must, for the most practical reasons, be among the first systems to evolve in any developing human society ... There is as much justification for speculating that political and social structures come into being to encode, protect and enforce ethical structures as the other way around.”209 But how well does the map of the previous section fit contracting in Roman Egypt?

Ideally, we should like to begin to measure the fit by starting with the ethics of contracting, asking what sort of first-person commitments the people of Roman Egypt made when they entered into contracts, and how binding they were in general, before moving on to second- and third-person rules and enforcers. This, sadly, is all but impossible due to the nature of the evidence. Unlike Ellickson or other modern legal anthropologists, we cannot (obviously) interview our ancient contracting parties. Instead, the majority of our evidence comes in the form of isolated contracts, letters, petitions, trial proceedings, and decrees, scattered over place and time, wherein we find either an expression or attribution of ethical or normative values attached to contracting. Such expressions or attributions, however, are difficult to interpret for several reasons.

209 Morgan 2007: 3.
First, many of our documents are by their nature stereotyped. This is obvious and particularly true of standardized legal documents drawn up by scribes, such as contracts or petitions. Yet, even when not stereotyped, many of our documents show signs of scribal intermediation. Thus, although transcripts would seem to present a record of the precise words parties used in litigating their contracts, the evidence suggests that, at a minimum, the record was typically compressed, if not altered in other ways. This, in combination with the fact that the context, facts, and precise legal nature of the disputes are often uncertain, renders interpretation precarious. We are on firming footing with ancient letters. Most personal letters, if not written by the person themselves, were dictated to scribes, and the voice of the sender often comes through quite clearly. The same may also be said of petitions occasionally, although drafts allow us to see just how much crafting went into the art of the petition.

Second, our documentary evidence is highly tendentious. Petitions and trial statements—and often even letters—as to the propriety of either keeping or breaching a contract naturally aim to justify certain actions or persuade the reader or hearer as to a particular point of view. Any ethical position evinced will therefore, almost of necessity, correspond to some norm that the reader or hearer is expected to recognize and endorse. This quality represents both a liability and a strength. On the one hand, there is always the chance that a party is merely saying what needed

\[\text{\textsuperscript{210}}\text{Coles 1966.}\]

\[\text{\textsuperscript{211}}\text{Cf. Bagnall and Cribiore 2006: 59-65.}\]

\[\text{\textsuperscript{212}}\text{Cf. Montevecchi 1985, esp. 239-40, on } BGU \text{ IV 1139 (a scribe clearly controlling a story by a low-status, uneducated, and oppressed couple); and } P.\text{Oxy. XXII 2342 (from a savvier petitioner of higher station). In both cases, the erasures and cancellations show how the story was shaped for legal and rhetorical effect.}\]
to be said in order to prejudice or persuade another other party in its favor. Consequently, purely ethical actions (if such things can be said to exist) are revealed with certainty only when they run counter to prevailing norms, a situation that in itself suggests the limited evidentiary value of such positions, as they are by definition highly idiosyncratic. On the other hand, ethics are useful when discussing particular situations, while norms are broadly shared values which we can expect to be in operation more or less across a group (and one question is how we define our “groups”; see below), and so useful to the interpretation of every situation. Since, as per Edward Cohen’s principle of “forensic attestation,” we may reasonably assume that the rhetorical purpose of forensic evidence guarantees that at the center of every assertion as to a general practice or norm there resides a hard kernel of truth, without which the attempt at persuasion would fall flat, then we are entitled to believe that our evidence—precisely because it is so tendentious—is a reliable witness to general norms and expectations. Of course, this principle does not relieve us of the necessity of interpretation: we still must thresh the wheat from the chaff, but it is a comforting fact to know that there is seed to be found in all that sifting.

Third, while the absolute number of papyri is impressive, often overwhelming for the ancient historian, the record is nevertheless spotty and meager in the final analysis—at least when compared the richness the modern anthropologist or sociologist can achieve through field work. For example, we should expect there to have been a range of ethical positions and norms

\[\text{\textsuperscript{213}}\text{As judges were well aware, cf. } M.\text{Chr. } 93 (\text{Hermopolis, ca. 250}), \text{where a } i\text{ndex pedaneus (Hermanoubis) exhorts a witness to tell the truth, without “making it pleasing to anyone”: Ερμανουβίς Πείσων εἴπε· ὡς πρεσβύτης καὶ πίστως ἄξιος εἶπε· ὁ δὲ ὁ δίδας ἐν τῷ πρά-||ματι, μηδενὶ κεχαρισμένου ποιήσῃ (38-39).}\]

\[\text{\textsuperscript{214}}\text{Cohen 1992: 26-27, 36-40.}\]
given the social structure of Roman Egypt. Did contracting ethics or norms change as one went from the *chôra* to the *mêtopoleis*, or from the *mêtopoleis* to Alexandria? Did different standards, rules, or expectations apply when one dealt with a slave versus a freedman, a peasant versus a social equal or a social superior? Did social and juridical categories such as Roman, Greek, Jew, and Egyptian have significant effects on contracting behavior or practice in the notoriously divided and fractious Alexandria or elsewhere in Egypt? All interesting questions, yet few answerable to any satisfying degree given the surviving evidence. Here I make no systematic attempt to do so.

Instead, I attempt to reconstruct some of the broad ethical and normative standards that most inhabitants of Roman Egypt were likely to share, those that nearly anyone would understand or associate with a “contract.” In so doing, it is important to recall that we shall never be able to tell precisely how important or powerful either personal ethics or normative values were in most cases (for the reasons above), or in the system of enforcement as a whole: we have no sense of the total number of contracts, informal or formal, or of the number of stressed or breached contracts as a percentage of the whole in which ethical and normative forces were the decisive factor in enforcement. This is to say that we cannot quantify the number of cases in

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216 Perhaps the most disappointing element of Morgan 2007 is not so much the fact that she fails to recover differences of this type in her study of the ethics of the Roman Empire, but her insistence that they were more or less irrelevant (e.g., pp. 2, 17, 55-56, etc.). At one level it is, I suppose, true that there was a shared ethical culture in the ancient Mediterranean, but such broadly shared norms for which this is true are accordingly of comparatively little interest (cf. Finley 1975 [1966]: 137 on the emptiness of an overly-broad notion of “Greek law”). Moreover, it would seem that the content of the material she studies cannot be severed from the reasons why it was collected in antiquity and who the intended audience was, at least to the extent that she does in her effort to construct a popular morality of some 50 million people, many of whom did not necessarily speak, much less think in, Latin or Greek, in a time before mechanized transportation, universal literacy, the printing press, and mass media.
which contracts were enforced primarily by extra-legal forces versus those that needed legal enforcement. In fact, we do not even have a sense of the distribution of cases in any official’s docket (i.e., what percentages of an official’s administrative or judicial work was given over to what we might call contract disputes), nor an accurate idea of how many of the disputed contracts which we happen to know about were successfully enforced via the law.\footnote{Cf. the method Friedman used in his study of American contract law in Wisconsin (1965). Cohen 1992: 27-36 provides a salutary warning on attempting to draw statistical conclusions from inadequate ancient data (pp. 27-28 comment with particular regard to the analysis and reconstruction of Athenian dockets).}

Finally, just as we should expect there to have been different ethical positions and norms between various groups in Roman Egypt, so should we naturally expect some change with respect to the ethics and norms of contracting over time.\footnote{I am here speaking specifically of ethical attitudes and norms relating to contracting \textit{per se}, which must be distinguished from the attitudes and norms relating to the underlying transactions. Marriage contracts, for instance, certainly changed over this period in very specific ways (see Wolff 2002: 88-91; Yiftach-Firanko 2003; and Maehler 2005), but it is not at all clear given the present state of research how those changes (e.g., in the status of women, the disposition of dowries, the responsibility to provide for dependents in the case of death, etc.) related to changes in the attitudes towards contract itself.} Indeed, such changes become increasingly visible starting in the fourth century as Roman legal ideas and Christianity began to exert a new influence on core ideas in contracting, like the importance of the Roman law notions of \textit{consensus} or \textit{bona fides}.\footnote{Cf. Wolff 2002: 198-200.} Some of these historical movements in the norms and law of contracting will be traced over the next two chapters, and in order to better appreciate those changes—as well as the continuities of the institution—the discussion will necessarily involve a good deal of Ptolemaic material, since this is the period in which, as above, the institution has its particular origins, its Tocquevillian \textit{point de départ}. Indeed, one major area for further research is to integrate the material in the following chapters more systematically with the demotic

\footnote{Cf. Wolff 2002: 198-200.}
evidence. Since contract in Roman Egypt was a composite institution from its inception, such
documents testify to norms that informed, and in many cases persisted, into the Roman period.\footnote{116} 
With these caveats in mind, the remainder of this study is devoted to the investigation of the
basic norms of contracting, and to a lesser and more speculative extent, to the personal ethics of
contracting, which together with law constitute one of the twin bases of our institutional
“definition” of a contract in Roman Egypt.

\footnote{The demotic legal documents are highly stylized, and so less revealing than their Greek counterparts (yet cf. below, Sec. 5.7). But these may be supplemented with the evidence of decrees, trial transcripts, “letters to Gods” (like Versnel’s “prayers for justice,” cf. n363), oracle questions, dream descriptions, and private letters (for these genre’s, see Depauw 1997), which either provide other perspectives or are in themselves less stylized.}
3.5 The Norms of Contract in Graeco-Roman Egypt

As we saw in the previous chapter (Secs. 2.1 and 2.2), the fundamental risks that contracting as a governance structure is meant to overcome are those associated with sequential transactions, namely opportunism and unforeseen circumstances. The fundamental ethical value associated with contracting is therefore trust. Is one’s partner to be trusted to keep his or her agreement, regardless of changes in objective conditions or in perceptions of subjective advantage? From this core value of trust ramify two subsidiary ethical and normative values, namely the opposed notions of freedom and obligation.

Though it may remain implicit or under-developed, there can be no conception of contract without some recognition of freedom, for the economic essence of any contract is choice (cf. Sec. 3.2 and Apps. I and II). What distinguishes a contract from a tax, or some other sort of obligation (e.g., tort or delict), is precisely its essentially voluntary nature, wherein one agrees in some significant or substantial way to commit oneself or recognize oneself as bound to a course of action. The idea of freedom is also present, if latent, in the idea of breach: only free actors,

\[\text{\footnotesize{221 Ulpian’s assertion in Book 4 Ad Dictum as to the fundamentally (if not juristically) consensual nature of contracts is worth quoting in full in this regard (Dig. 2.14.1): Huius edicti aequitas naturalis est. quid enim tam congruum fidei humanae, quam ea quae inter eos placuerunt servare? (1) Pactum autem a pactione dicitur (inde etiam pacis nomen appellatum est) (2) et est pactio duorum pluriumve in idem placitum et consensus. (3) Conventionis verbum generale est ad omnia pertinentis, de quibus negotii contraheendi transigendique causa consentiunt qui inter se agunt: nam sicuti convenire dicuntur qui ex diversis locis in unum locum colliguntur et veniunt, ita et qui ex diversis animi motibus in unum consentiunt, id est in unam sententiam decurrunt. adeo autem conventionis nomen generale est, ut eleganter dicat Pedius nullum esse contractum, nullam obligationem, quae non habeat in se conventionem, sive re sive verbis fiat: nam et stipulatio, quae verbis fit, nisi habeat consensum, nulla est. Sed conventionum pleraeque in aliud nomen transeunt: veluti in emptionem, in locationem, in pignus vel in stipulationem. (―There is natural equity in this edict. For what so accords with human faith as to preserve what people have agreed to amongst themselves? (1) Moreover, ‗pact’ is derived from ‗agreement’ (whence we also get the word ‗peace’), (2) and ‗agreement’ is the agreement and consent of two or more persons about the same thing. (3) There is a general word ‗covenant,’ which pertains to everything consented to by those who make some contract or settlement with each other; for just as those who are collected and come from different places into one place are said to ‗convene,’ so those who, from different}}\]
or those capable of having independent intentions and acting on those intentions, can “breach” an agreement. This freedom, at once integral to the economic utility of contract, is also a threat to it. The dilemma is that one wishes to deal with free agents because they supposedly can and will do something one cannot or will not do for oneself, such as provide grain or credit or land or transportation, etc.; yet one needs these agents to exercise their freedom within the bounds prescribed by one’s interest. Hence, we return to the question of trust: how can one trust a free agent? One can, provided he or she is sufficiently “bound.” And so we come to the seemingly contradictory (but in reality complementary) notion of obligation. In the final analysis, a contract is the channeling of the power of one party’s freedom for another’s gain.

Now, although freedom of action is essential to the idea and operation of contract, it does not therefore follow that the relationship of freedom to contract is constant. This is largely because freedom is an idea or value that has a prior, independent social and political existence. In a word, it is larger than contract, such that contract operates within the framework of social and political freedom. It is this larger notion of freedom that establishes differing notions of legal capacity to contract on the part of women, children, non-citizens, slaves, wards, the insane, etc., as well as differing standards of consent. The first aims to clarify the extent to which a potential party is free to bind him or herself, and so to be held accountable, while the second seeks to define the extent to which the binding was the product of volition. Similarly, though the essence motions of the mind, come to be of one mind on one thing, that is form one opinion, [can be said to ‘consent.’]. Moreover, so true is it that the word ‘covenant’ has a general significance that Pedius neatly says that there is no contract, no obligation which does not consist of such ‘coming together,’ whether it is achieved by the handing over of something or by the use of certain words. For a stipulation, which is made by the use of certain words, is void unless there is consent. But most covenants are called by some other name, for example ‘sale,’ ‘hire,’ ‘pledge,’ or ‘stipulation’.”). Translation adapted from Watson 1985.
of a contract is to bind or channel personal freedom in a particular way, the source of that obligation is not identical in all legal cultures. Again, the fundamental notion as to why someone is obligated under a contract is derived not from the law so much as from basic social notions of what is just. For these reasons, these three fundamental ideas or values, trust, freedom, and obligation, are to be seen as rooted not in the law, but in the ethics and norms of contracting, with the law representing a particular interpretation or reflection of them from the perspective of the state (cf. Morgan’s observation above in the beginning of Sec. 3.4 and Apps. I and II).

In the subsequent chapters I will trace several norms associated with contracting that bear on trust, freedom, and obligation via philological analysis of the papyrological evidence. I begin with two positive expressions of such norms, namely “trust” (πίστις and its derivatives and cognates) and being “considerate” (ἔνγνωμων). From there I move to negative values, studying the words for “breach” (παραβαίνων and παρασυγγράφειν) and fraud (κακοτεχνία). I end by briefly investigating the one attestation of a word that signifies the condition of “being under contract” (ὑποσύγγραφος) and some of the norms of litigation. This final cluster of words illuminates not only more negative values associated with breaking contracts, but also attitudes towards involving third parties or the authorities in contractual disputes. Certain words and values I leave for a later discussion of the law of contract since they are best discussed in the context of the legal or “formal” side of contracting. I thus postpone investigations of:

- δεξιαί, or verbal pledges, since they are best discussed in light of the role of writing;
- explicit mentions of “freedom” or “willingness” in contracts and contracting, given their overlap with actual freedom and the juridical capacity to contract (but see Sec. 5.6.2);
• “consent” (e.g., εὐπτεθῇς, εὐδοκεῖν), since this was not only a norm associated with
the inherently voluntative idea of contracting, but also potentially a formal
requirement for drafting legally binding contracts;

• and finally, for obvious reasons, notions of “right” or “legitimacy” (e.g., δίκη and
νόμιμος).

This, clearly, is not an exhaustive list of the norms or values (or words) pertaining to
contracting, and, as indicated above, it would be profitable to trace all these norms further
back through their demotic and Egyptian counterparts. Similarly, the method employed does not
uncover all important values. Focused studies on the actions of individuals through dossiers
and archives would reveal other values, norms, and indeed particular ethical positions, somewhat
in the way that Pliny’s letters have for Roman financial ethics and norms. This is yet another area
for future research.

For example, I have postponed a discussion of “goodwill” (εὖνοια) and its relationship to contracting for another
time.

Cf. Dover 1974: 46-50 on the “lexical approach” to studying ancient morality.

Cf. Ratzan forthcoming b, an investigation of the moral and legal claims in the dispute recorded in P.Mich. VI
423-424.
4.1 The Study of Pistis

It might seem a banal observation that contracts involve or are based on “trust.” So one man complained in a Ptolemaic petition that his landlord had “put aside the trust that exists among men” when the latter “refused to carry out what was in the document” and collected the rent twice. But what exactly was “trust” in Roman Egypt? What was its color and its content, and how was it imagined as working in the contracting process?

While there is a dissertation on the word pistis in Greek legal papyri from Egypt (Schmitz 1964, to which I will return), there is no sustained discussion of the norm of trust in Graeco-Roman Egypt on the basis of the papyri. There is, of course, a scholarly literature on trust in antiquity, though it is scattered across six broad areas: (1) the philological study of Roman fides; (2) the study of fides and bona fides in Roman law; (3) research into ancient epistemological and rhetorical theories and techniques intended to induce belief; (4) the study of ancient credit and trade; (5) the study of ancient friendship; and (6) scholarship on belief and faith in ancient religion, predominantly in early Christianity. Notable in the list above is the missing counterpart to the scholarship on Roman fides in the literature on Greek culture, which is largely restricted to

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225 P. Erasm. I 1.16-17 (Oxyrhyncha, 148/147 BCE): ἀθέτησας τὴν ἐν ἀνθρώποις υπάρχουσαν πίστιν... ἁργοῖνται... ἀτε ἐν χρηματισμῷ διεξάγεσθαι (16-17, 26-8).

226 At certain points, Schmitz does connect the legal meanings of pistis to its wider social meaning (e.g., 1964: 1-2, 5), but only with reference to classical Greek sources, not contemporary evidence from Ptolemaic and Roman Egypt. There is a short but interesting discussion in Boyaval 2001: 70-73, 74-76, which accords with the interpretation put forth in this chapter.
the relationship of *pistis* to oath and the relationship between *pistis* and *fides*.\(^{227}\) There is, for instance, no analysis of the concepts *pistis/pistos* in Pearson’s *Popular Ethics in Ancient Greece* (1962), and Dover devotes but one page to the idea of trust in his *Greek Popular Morality in the Time of Plato and Aristotle* (1974).\(^{228}\) Similarly, Theresa Morgan in her recent *Popular Morality in the Early Roman Empire* (2007) has little to say about trust, and that which she does say comes mostly from Latin sources and in the context of friendship.\(^{229}\) One reason for this scholarly state of affairs may reside, as Heinze proposed, in a cultural difference, namely that *pistis* was not as central a concept to the Greeks as *fides* was to the Romans, suggesting that the analog to Roman *fides* was the Greek preoccupation with *dikaiosynē*.\(^{230}\) Be that as it may, it is also certainly a product of scholarly interest: the Demosthenic corpus has quite a bit to say about the role of *pistis*, though it has rarely figured in discussions of the concept.\(^{231}\) As Edward Cohen asserted nearly forty years ago, “there is abundant opportunity to see from the sources that, in the Greek business world, good faith and fair dealing, not litigation, were the lubricants of commerce” (1973: 133, citing Dem. 56.2 as evidence of the importance of reputation and


\(^{228}\) Dover 1974: 194-95.

\(^{229}\) Substantive passages: pp. 68 (cf. 82), 99, 136.

\(^{230}\) Heinze 1929: 163-65, with compelling examples from Cicero taking over Greek passages about justice and reinterpreting them as *fides*.

\(^{231}\) It is most surprising that Dover has so little to say on the matter, since his study was based largely on the orators.
reliability).\textsuperscript{232} The type of evidence preserved in the papyri, however, affords us an even greater opportunity, as it brings to light the discourse of trust outside the courtroom as well.

From the various scholarly threads above a general picture emerges, against which we must plot our own investigation of trust in the papyri. First, most ancient historians, regardless of period or scholarly interest, see the ancient world as one marked by personal connections.\textsuperscript{233} The highly personal nature of ancient society thus helps us to make sense of topics as diverse as credit markets in Classical Athens, Roman Republican politics, and late antique theological controversies.\textsuperscript{234} The concept of trust, naturally, should reflect personal nature of ancient society. Fraenkel (1916) and Heinze (1929), for instance, disagreed fundamentally as to the ethical aspect of \textit{fides}, yet both saw it as originally a word that denoted the quality of trustworthiness or reliability of a person.\textsuperscript{235} The most important consequence of the personal nature of antiquity for

\textsuperscript{232} I interpret the importance of this particular speech differently (cf. Sec. 5.2), but agree with Cohen in general. For instance, see also the evidence of Dem. 33.6-8, 12; 34.30; and 36.44. The most important recent discussions of trust in Greek culture have been largely legal, e.g., Vélissaropoulos-Karakostas 1994, Jakab 1994, and Vélissaropoulos-Karakostas 2002. While valuable and suggestive of a new interest in \textit{pistis}, all are nonetheless brief. Cf. also Cohen 1992: 147-48 and Carter 2007: 67-69.

\textsuperscript{233} Cf. the assumptions of North, Greif, and others discussed in Chapter 2.

\textsuperscript{234} For this view of Athenian credit, see, e.g., Millett 1991. Any work on the political history of the last century of the Republic will reveal the importance of knowing one’s prosopography. For an application of social network theory in the explanation of the fourth-century Origenist controversy, see Clark 1991. For a recent application of network theory in ancient history, see Ruffini 2008.

the idea of trust is its relationship to experience. As we shall see, trust was a category of empirical knowledge of particular people, nothing like what we might associate with “faith.” Trust, in other words, required proof in antiquity. This conclusion finds an analog not only in the study of Roman fides, but also in some of the scholarship on religious pīstis.\textsuperscript{236} Though I do not explore this angle here, it also seems to me that one sees a negative reflection of this idea in the theorizing about the rhetorical creation and manipulation of pīstis: persuasion depends on leveraging categories of knowledge so as to have the hearer accept mere representations as the truth. In other words, it aims to induce trust in the absence of experience.\textsuperscript{237}

Heinze also noted that law had essentially nothing to do with fides, at least early on: the law produced security on the basis of impersonal (i.e., third-party) rules and sanctions (hence the heavy emphasis on formality, the very essence of a rule), whereas fides was a security based in personal relations.\textsuperscript{238} For Heinze, this observation served to demonstrate the essentially moral quality of fides against Fraenkel’s thesis that fides was “morally indifferent,” meaning only “a

\textsuperscript{236} Cf. Heinze 1929: 143: “Zunächst ist fides niemals unser ‘Glauben’, im Gegensatz zum ‘Wissen’, als nicht gesicherte Überzeugung: sondern ausschliesslich das feste Vertrauen auf die Wahrheit oder Richtigkeit einer Behauptung oder einer Überlieferung oder auf die Zuverlässigkeit eines Menschen und dgl. mehr, im Gegensatz zu ‘Misstrauen’ oder ‘Zweifel’.” Intriguingly, several attestations of fides in Plautus (e.g., Rud. 953; see n267) map quite well onto the uses of pīstis, as Lombardi saw (1961: 22). Schmitz suggests that this may not be a coincidence, but the consequence of translation of Greek originals (1964: 121n1). Cf. also Hay 1989 on the use of the word pīstis as a “ground for faith” in Philo and Josephus; and Lindsay 1993.

\textsuperscript{237} Cf. Grimaldi 1957; Lienhard 1966; Mirhady 1991; Schmitz 2000. See Rapp 2010 for up-to-date bibliography of the philosophical discussion of the Rhetoric. Nothing I have read thus far has read the concept of rhetorical pīstis against the background of a cultural understanding of trust. Cf. Polyb. 8.36, below n248.

guarantee in the widest sense.”239 Heinze’s insight as to the different manner in which *fides* and the law established obligation brings us an important methodological point. It is true that in Roman legal history, one sees the notion of *fides* progressively taken up into the law as a sort of standard, specifically *bona fides*, a notion which made progressive inroads into the contractual language and law of Roman Egypt over the course of the later Empire.240 But what does such a history show? Attestations of the word *fides* (or *pistis*) in legal contexts are of use only in assessing the role or importance of the concept of trust within the law: they tell us comparatively little about how trust actually functioned beneath or outside the law. It is, for example, significant that certain legal relationships came to be predicated on trust, like *fideicommissa*, or that *pistis* should be invoked in legal documents wherein someone is bound to do something τῇ ἐξυτοῦ πίστει or τῇ ἰδίᾳ πίστει;241 but the creation of legal relationships based on “trust” or the use of “trust” as a legal standard provides us with no insight as to why or how the two particular parties came together in such legal relationships in the first place. How did one decide whom to choose as a trustee and with whom to contract on the basis of good faith? For without trusted people one can be sure that neither trusts nor good faith standards will be of much use. How did the norm of trust and the rules of law relate when it came to contract? Were they alternatives, parallel tracks, intertwined, arranged in some sort of hierarchy, or was the relationship shifting depending on the precise situation?


241 See Schmitz 1964: 80-91 for examples and discussion.
By far the most useful discussions of trust for our purposes are those that study it in the context of Greek *philia* and in the realm of credit. Philological research reveals that *philia* was largely coextensive and coterminous with the notion of *pistis* in archaic Greece. One trusted *philoi*, and *philoi* were in some sense by definition “trusted people.” Indeed, the reciprocal nature of Greek *philia* framed it as something of a bilateral contractual relationship in itself. Millett in his work on credit in Classical Athens (1991) understood *pistis* and *philia* to run in parallel with law and contract: one first turned to credit from *philoi*, and only when this avenue had been exhausted or trust betrayed did one turn to bankers, who charged interest and secured their loans with law instead of by the norms of *philia* and *pistis*. Such an account, however, is fundamentally unsatisfying, both from the perspective of Athenian banking and the forensic discourse of *pistis*.

A more dynamic, plausible, though impressionistic, account has recently been sketched by Julie Vélissaropoulos-Karakostas (1994; 2002), who reasonably sees the growth of contractual relations in fifth- and fourth-century Athens as a response to social and economic complexity, the product of the growth of mistrust. This mistrust accounted for the predominantly “real” character of Greek contracts, for only in this way did one preserve the right to a *dikē* for damages on the basis of partial performance or unjust enrichment (or more precisely, Wolff’s

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244 *Contra*: Konstan 1997.

245 Cf. Cohen 1992. Moreover, Millett and others who hold similar views seem to assume that legal agreements were enforced legally and efficiently, cf. the quote by Heinze 1929, n238 above.
Neither purely consensual contracts (contracts based on promises) nor a *dikē* for breach of contract *per se* developed in Athenian society because promises rested on *pistis* and *philia*, and friends did not sue. But this did not mean that there were parallel paths, *pistis* or contract. Instead, complexity opened up a wider range of possible relationships, or degrees of mistrust, from friends relating in the old aristocratic mode of *philia*, to associates trusting each other and relying on norms to maintain contracts, to more formal contracting between parties who had no other way to bridge the gap in trust. Contract was in this way progressively normalized even between associates, if not *philoi*, as an acceptable backstop to economic relations. To this account, I might offer a further observation. Significantly, it was the idea of trust, not friendship, which was extended or analogized in economic relationships as time went on. In a more complex world with an increasing number of transactions, one had to operate at the margins or limits of personal knowledge more frequently, and though contracts speak to mistrust, one still had to trust something (the immediate delivery of goods and the power of the law); hence *pistis* and its cognates came to mean both “security” and “credit” in the Hellenistic world.

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246 See Wolff 1957.

247 Cf. the renewed discussion of consensual contracts in classical Athens, Cohen 2006 and Jakab 2006.

248 Arist. *Prob.* 950a-b asserts that deposits are held on the basis of trust and friendship, with no thought to profit, whereas if “a debt is involved there is no friend; for if a man is a friend he does not lend but gives” (ὁ μὲν οὖν τὴν παρακαταθήκην ἀποστερῶν φίλον ἀδικεῖ· οúdeis γάρ παρακατατίθεται μὴ πιστεύων. οὐ δὲ τὸ χρέος, οὐ φίλος· οὐ γάρ δανείζει, ἐὰν ἦ φίλος, ἀλλὰ δίδωσιν). Precisely the same logic led to the notion of security as *pistis* since there is no true *pistis* (i.e., personal experience) on which to base the loan, as lending was already not the act of a friend. On *pistis* as “credit” and “security,” see Schmitz 1964: 5-8, 32-64. Cf. the connection drawn at Polyb. 8.36: διὸ καὶ τοῖς μὲν ἀσκέπτως ἑαυτοῦ ἐγχειρίζουσι τοῖς ὑπεναντίοις ἐπιτιμήτοιν, τοῖς δὲ τὴν ἐνδεχομένην πρόνοιαν ποιομένοις οὐκ ἐγκλητέον· τὸ μὲν γὰρ μηδεὶ πιστεύειν εἰς τέλος ἀπράκτων, τὸ δὲ λαβόντα τὰς ἐνδεχομένας πίστεις πράττειν τὸ κατὰ λόγον ἀναπτιμήτον. εἰδι δ’ ἐνδεχόμεναι πίστεις ὑρκοὶ, τέκνα, γυναῖκες, τὸ μέγιστον ὁ προγεγογοῦς βίος. ὡς καὶ τὸ διὰ τῶν τοιούτων ἀλογοθῆναι καὶ περιπεσεῖν οὐ τῶν πασχόντων,
Schmitz’s work on *pistis* in Greek legal papyri is useful and thorough, but stands in need of a prolegomenon, a grounding in the ways in which *pistis* worked before and during a contract, its mechanics and its content. In other words, who is trustworthy and why? In what circumstances, and to what extent, or for what purposes? If there are two things the papyri tell us on this score, it is that trust was neither won easily nor in great supply. In fact, the papyri tell us a good deal more than this: they illuminate who was considered trustworthy, the sort of things for which trust was valued or needed, and its role and potential when it came to business and contracting.

The following discussion therefore deals with instances of trust largely outside of legal documents. It begins with an exploration of trust entirely in the social realm, in various settings and between people of varying stations (4.2). From there, it moves to the discourse of trust in what we might call “business” settings (4.3). On the basis of the evidence presented in these two sections, I argue that trust is a species of knowledge based on one’s personal experience of another person’s capacity (as opposed to will) to perform or execute a task or promise. I then turn to the language of trust in contractual settings (4.4), some of which are informal, with the aim of demonstrating the essentially moral quality of contractual relations. Vélassaropoulos-

άλλα τῶν πραξάντων ἐστὶν ἔγκλημα. διὸ καὶ μάλιστα μὲν τοιαύτας ζητεῖν πίστεις (δεί), δι’ ὧν ὁ πιστεύεις οὐ δυνάμεται τὴν πίστιν ἀθετεῖν. ἐπεὶ δὲ σπάνιον εὑρεῖν ἐστι τὸ τοιοῦτο, δεύτερος ἂν εἶπί πλούς τὸ τῶν κατὰ λόγου φροντίζειν, ἵν’ ἂν του καὶ σφαλλώμεθα, τῆς παρὰ τούτων ἐκτὸς συγγνώμης μὴ διαμαρτάνωμεν (“While, therefore, we must censure those who incautiously put themselves in the power of the enemy, we should not blame those who take all possible precautions. For it is absolutely impracticable to place trust in no one, and we cannot find fault with anyone for acting by the dictates of reason after receiving pledges being oaths, wives, and children held as hostages, and above all the past life of the person in question; thus to be betrayed and ruined by such means carries no reproach to the sufferer but only to the author of the deed. The safest course of all therefore is to seek for such pledges as will render it impossible for the man in whom we trust to break his word, but as these can rarely be obtained, the second best course is to take reasonable precautions, so that if our expectations are deceived, we may at least not failed to be condoned by public opinion.” Trans. Paton 1979: 503-5).
Karakostas suggests that in classical Athens that the development of the institution contract speaks to a growth of distrust in the society or community. This may be to look at the glass half empty. The following discussion shows that trust was considered basic elements of informal and formal contractual relationships, and so we should rather look at contract as an institution that allows one to transact on the basis of an imperfect level of trust.

The discussion of *eugnōmosynē* follows the same general pattern. It begins with the social uses (4.5), distinguishing three basic sources of obligation, familial, social (i.e., respect for authority or higher status people), and promissory, through which the quality of someone’s *gnōmē* was revealed. One was thus expected to show the requisite “respect” to one’s parents, superiors, and peers, and in doing so, one would win a reputation for *eugnōmosynē*. Interestingly, superiors were also expected in certain cases to show “respect” for others, and one area in which this respect was made manifest was in promises. Next, I turn to the business uses (4.6-4.7), and show that one was expected to “honor” both debts and contracts, though it is difficult to determine whether the respect one showed to contract was due primarily to the notion of debt or promise. Over these two sections, I also trace the historical development of the term, as it increasingly moves from a subjective mode of evaluation in which “respect” is mediated by the type of obligation (e.g., by respecting this debt or my status as your father, you are respecting me) to an objective quality, with *eugnōmosynē* coming to mean “creditworthy” and *eugnōmonein*, “to repay.” I suggest that this development is in part related to the use of the term as a coin in the currency of reputation: in becoming an act or characteristic of a person as he relates to obligations *per se*, *eugnōmosynē* necessarily becomes less of a subjective quality of a particular relationship.
The chapter ends with the exploration of several letters in which we see the discourse of reputation at work in both contract formation and enforcement, as well as two petitions which include this language of norms. These last documents show the connection, conceptually, ideologically, and rhetorically, between norms and law in contract enforcement as one moved from personal and vicarious self-help to official enforcement. This final topic will be picked up again in Chapter 6.

Of the numerous attestations of *pistis* and its cognates which appear in the papyri from the third century BCE until the mid-fourth century CE, many are technical terms in legal documents, most of which are discussed by Schmitz. For the reasons set out immediately above, the discussion below will tend to refer to such uses only infrequently. I have also ignored attestations that relate to Christian faith. Finally, one more sub-set may be put to the side: the use of *pistis* in describing relations with or to the state. These are, of course, related: the trust one has in another person and the trust one exhibits or has in relation to the state, and at various points I make these connections (e.g., pp. 133f., n290). However, the use of *pistis* in these settings, usually liturgical, and in highly stylized documents, like oaths, deserves to be studied in its own right for what it reveals of the political ideology of the Ptolemaic and Roman administrations of Egypt.²⁴⁹

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²⁴⁹ Cf. Schmitz 1964: 2-4, 17-32 (with no study of the term in this respect under the Romans); and Vélassaropoulos-Karakostas 2002: 135; Konstan 2010 on civic *philía* and *pistis* in classical Athens.
4.2 The Social Dynamics of Pistis

Trust in Graeco-Roman Egypt was conceived of in terms similar to light: it radiated from a central point and diminished geometrically with distance.\textsuperscript{250} At the center, of course, was oneself, a condition expressed by the old and ubiquitous saw that people trust their eyes more than their ears, for trusting one’s eyes is tantamount to trusting oneself.\textsuperscript{251} This condition also accounts for the fact that the single most common circumstance in which we hear about the issue of trust in the documents is the need for or lack of some trusted person to deliver something. In the ancient world travel was comparatively slow, and information travelled at the speed of people.\textsuperscript{252} Letters could be lost, stolen, or tampered with \textit{en route}, and one would only know of this in a return letter, weeks, perhaps months later, when the initial carrier might be long gone. This, then, was the most common instance in which one needed to act at a distance and depend on reports, the most routine and quotidian experience of this sort of risk and consequent need for trust.

The post, as informal and potentially risky as it was, seems in fact to have been fairly reliable, at least insofar as we may infer from the tendency of letter-writers to reproach each other for not responding or reciprocating with a return letter. In other words, people generally assumed that their letters arrived in a timely fashion and that silence was the fault of their

\begin{footnotesize}
\textsuperscript{250} Cf. Millett 1991:110-11 on the concentric circles of kinship and \textit{philia}.

\textsuperscript{251} See Otto 1890: 251 \textit{s.v. oculus} (9). Cf. Philo, \textit{De confusione linguarum} 140, discussed below with respect to the verb \textit{propisteuein} (pp. 144ff.)

\textsuperscript{252} Cf. now Adams 2007.
\end{footnotesize}
correspondents, not their couriers.\textsuperscript{253} Of course, however, were another matter. While most letters were of little value to anyone but the intended recipient (and the couriers were as likely to be illiterate as not, though some were in fact the letter-writers), almost all objects had an obvious and intrinsic value.\textsuperscript{254} Such things therefore needed to travel with trustworthy people. Money, for instance, could only be sent “if you can find someone very trustworthy from those with you.”\textsuperscript{255} Such people, however, were evidently not often to be had, as a common excuse for not sending money was that the would-be sender had no one to hand whom he could trust.\textsuperscript{256} This solicititude

\textsuperscript{253} E.g., \textit{P. Mert.} II 82 (unknown, late II). Winter 1933: 82-3 gives a lively sketch of the postal “system” and people’s attitudes towards delivery and answering letters. The post was apparently reliable enough that some people even charged those who did not respond with having torn up their letters, e.g., \textit{SB} XVIII 13867.52-6 (Arsinoite, II B.C.E): περὶ τῆς ἔπος- \textit{[πολλ]ης ἡς μοι ἐπέμψατε, \[οὔ] κομισάμενος εἰπε|δὲ: οὐ μά τόν Σάραπιν\textsuperscript{> σφ} ὁνό-|κ η[σ]χισα: οὐ γάρ εἰμι ἀμαθῆς. (“Concerning the letter which you sent to me, since I did not receive it I said: ‘I did not tear it up, for I am not an idiot!’”).

\textsuperscript{254} Sometimes, however, letters were valuable and one could not trust that they had been passed on by interested intermediaries, e.g., Cic. \textit{ad Att.} I.13.1: quibus epistolus sum equidem abs te lacesitus ad rescribendum; sed idcirco sum tardior, quod non invenio fidelem tabellarium. quotus enim quisque est, qui epistulam paulo graviorem ferre possit, nisi eam pellentione relevavit? (“And in these letters [you sent], I am indeed urged by you to reply; I am rather slow to do so, however, because I find no trustworthy carrier. How many men are there who are able to carry even a vaguely heavy letter without lightening it with a perusal?” He goes on to mention the other logistical trouble of coordinating the timing of the arrival of letters and the whereabouts of recipients..), cf. \textit{SB} XVI 12579 (Toka \textit{[Oxyrhynchite]}, late II), on which more below. On a very different level, Symmachus could pride himself that his letters were thought worthy of stealing: \textit{quaes [sc. responsa nostra], ut confido, iam tradita sunt}, nisi forte denuo aliquis ex urbaniis divitius insessor viarum scripta nostra furaverit (\textit{Ep.} 2.48: “And [our responses], as I trust, have already been delivered, unless perchance one of those rich ‘highwaymen’ from the city stole our writings again.”).

\textsuperscript{255} E.g., \textit{P. Fay.} 122 (Euhemeria, ca. 100), lines 20-2: ἕκα τι- | να εὑρησ κατὰ παρό[υ]παξα| ἔχοντα|πείς (l. πίστην) πολλήν. Cf. \textit{P. Oxy.} II 269 (Oxyrhynchus, 57): καὶ ἑκα τῷ[πή]ς ἀσφαλέ|μὴν (i.e., ἀσφαλή [Gignac 1977-81, I: 135]) δύς (l. δύς) αὐτῶ τῷ ἄρ-|γυρίνον ἐνέκα μοι (ii.10-12). \textit{P. Mich.} III 203 (Karanis [but sent from Pselkis in Nubia]), 114-16, is interesting in this context. The writer Saturninus reassures his mother that everything she sends (including his allowance or \textit{epimménidia}) via a certain Julius in fact arrives, saying that the latter has “promised” to act as a courier: οἱδεις ὑπ’τι τί ἐκκ δύς (l. δύς) ἰουλίω φέρει μοι ἀ κα ὑμολογήσει μοι (28). Von Soden classes this as one of the few Roman examples of the non-technical uses of \textit{homologein} to mean “to promise” as opposed “to acknowledge,” a meaning much more common in the early Ptolemaic period (1973: 34). By the second century, however, this word must have sounded more “legal” compared to other more common words for promise (e.g., \textit{tattesthai} or \textit{hypischneisthai}), and was perhaps chosen for this reason, to impress on upon the mother the seriousness with which Julius took his courier duties.

\textsuperscript{256} E.g., \textit{P. Tebt.} II 418 verso, lines 11-16, cf. pp. 132ff.
embraced not just money or important or valuable items, like keys\textsuperscript{257} or produce,\textsuperscript{258} but indeed all items of any worth whatsoever, as we see, e.g., in \textit{P.Yale I 80} (unknown, II), a \textit{σκευάριδιον ἀφροδεί[?]}, and \textit{P.Mich. VIII 514} (Alexandria, III), an infant’s chiton. It also extended to important legal functions, which were either carried out by trusted agents or not at all.\textsuperscript{259} The state, naturally, had similar concerns.\textsuperscript{260} Thus standard instructions in orders for grain shipments from the Arsinoite to Alexandria toward the end of the Ptolemaic era provided that the “usual documents” and the samples attesting to the quality of the wheat were to be given over to “the most trustworthy klerouchic \textit{phylakitai}.”\textsuperscript{261} Similarly, the state put a premium on “trustworthy” local agents when it came to administration and taxation.\textsuperscript{262}

\textsuperscript{257} \textit{E.g., SB XIV 12106} (Oxyrhynchos?, II): [\ldots τὴν τῆς | θυρίδος | σου κλείδα έχει Πέρις | ἦ ἐσω ἐκεῖ | εἰ μή, ὅπως ἀν ἑκατέρῳ [α]/ ἥ[ν], | σήμαινοι, | οὔ γάρ ἀλλόν τινα' ἐξω τοῦ | δυνάμενον ἀπενεχθεῖ | μοι | εἰς Αλεξάνδρειαν πιστῶς, | ὅστε μὴ ἀμελήσῃ. (1-7: “\ldots Persis, the women who is in there, has the key of your wall cupboard. Otherwise, whenever an opportunity [i.e., of finding a trustworthy person] arises, let me know. For I shall not have anyone else who can reliably bring it to Alexandria for me, and so do not neglect it.” Trans. of the \textit{ed. pr.} by Youtie (\textit{ZPE} 24 [1977]: 128).

\textsuperscript{258} \textit{P.Mich. XII} 657.11-14 (unknown, II-III): [σ]υ δὲ τῶ ἀσφα- | λέστερο[ν] φέροντά τά | φωνικά | ἅ/ωσις ίνα | μή κακ[ο]ιργηθῆ (“But you, give the dates to someone who will transport them safely, in order that they will not be pilfered.”). On \textit{kakourgein}, cf. n629 below.

\textsuperscript{259} \textit{E.g., P.Oxy. XXXIV} 2726 (Oxyrhynchos, II), a request by one friend and business partner to give documents in need of registration to the agent who brought them or ἥ ὥ ἐν ἐν δοκουμάσει | ἐτέρω ἀσφαλέ | (22-23). For \textit{asphalēs} as a synonym for \textit{pistos}, see \textit{P.Oxy. II} 269 (n255 above). For the full semantic implications of \textit{dokimazein} in this context see pp. 142ff. below.

\textsuperscript{260} See Kehoe 2007 and Manning 2009 in particular on the “agency problem” in the ancient administration.

\textsuperscript{261} ἐπιβιβασθεῖται φυλακτῶν κεκληρουχημένων τῶν καὶ μάλιστα πίστιν ἐχόντων ὧν καὶ τὸ δεῖγμα κατεσφαγισμένων ἐπιτεθῆσαι ἐν γείνοις ὧμοις ἀγγείοις καὶ παρακομιούσι παρὰ τοῦ πρὸς τῇ σιτηρά τῆς ἐξαράσεως τοῦ καθήκοντας χρηματισμοῦς ... (“After the most trustworthy klerouchic \textit{phylakitai} embark, to whom the sample, sealed in unbaked, earthen jars, is given, and who convey the usual documents from the one in charge of the \textit{sitaria} at the dock, …”). See \textit{BGU} XVIII 2736-2738 for examples and discussion of the type.

\textsuperscript{262} \textit{E.g., P.Teh. I} 27=W.Chr. 331 (Kerkeosiris, 113 BCE), which contains reprimands and instructions from the \textit{dioikētēs} to subordinates in charge of revenue collection, passed down the chain of command to the \textit{basilikoi grammateis} and thence to the \textit{topogrammateis} and \textit{kōmogrammateis}. A chief complaint throughout is the lack suitability and quality of the local agents dispensable to the proper functioning of the revenue system.
In the latter two examples, the state was not content to employ people who were trustworthy, but also took security for performance, either in the form of property, which was liable in the event of failure or malfeasance, or oaths, or (as often) both. Private individuals, of course, also took security in many cases, but such “trust” in objects and others (security and sureties, mortal or immortal, were both often referred to as pisteis in a transferred sense)\textsuperscript{263} was secondary to trust in the individuals themselves: pistis was first and foremost a personal quality.

It is for this reason that no one would ever normally “trust” an “unknown” person. A nice example of this comes in a letter which a certain Aquila, likely a procurator, wrote to Ptolemaios, a landholder of a large estate, reporting that some of the latter’s dependants in the village of Toka (Oxyrhynchite nome) were protesting that they were not about to hand over some cypress wood to an adēlos.\textsuperscript{264} In order to clarify the order, they sent a letter to Ptolemaios through their phrontistēs Athas. So troubled were they at not receiving a direct reply that they apparently “attacked” their overseers and “harassed the entire neighborhood,” assuming that Athas had pocketed the letter instead of passing it on. For whatever reason, they needed confirmation

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\textsuperscript{263} Cf. Schmitz 1964: 5-7, 36-44. Pistis was also a word for oaths in the Ptolemaic period, see Seidl 1933: 32-36; Schmitz 1964: 10-17; and now P.Heid. VI 376 (Herakleopolite, 220 BCE), note to lines 15-16. Cf. n248.

\textsuperscript{264} SB XVI 12579 (late II), lines 20-22: τὰ κυπαρισσά| σ[να γάρ] τῶ[ν] ἀδήλωρ οὐ δυνάμεθα / μ[ , , , , , , , , ] , . . . , α. On adēlos, see ed. pr. note to line 20 (ZPE 34 [1979]: 98).
directly from the top: “Since he is our landlord, on this account we wrote to him, so as not to write to an unknown.” Aquila mocks the simple men of Toka for assuming that Ptolemaios’s silence was due to the corruption of his men rather than the relative unimportance of their request, but their attitude of distrust is revealing nonetheless. One simply did not trust those one did not know in important matters, even on the say-so of those one did, like Athas.

In the shadows, then, were the *adēloi*; who was on the inside, and how far did the light of trust shine? The inner circle, of course, usually included one’s family and closest friends. Thus we find a certain Sarapias requesting that her brother Sarapion alias Alexandros be appointed guardian of her recently orphaned daughter, since Sarapias had “determined on the basis of his goodwill, fidelity, and ties of kinship that he would protect the revenue of her child honorably.” However, while one was perhaps most likely to trust one’s most intimate relations, family members were not trusted as a matter of course. Trust had to be earned and maintained, even within family.

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265 18–20: ἐπὶ (ἐπε) ἤμων γεούχος ἐ-| ἀττική, διὰ τοῦτο ἐγράψαμεν αὐτῷ ἵνα | μή [τῷ ἀδῆ] ὠρ αγράψαμεν.

266 11–14: τῇ ὑπορία αὐτῶν λέγοντες | ἃτι ἀντιγραφῆ|υ θέλομεν τῇ | ἐπι- | ἑτοι καὶ τάχα λελύκατε αὐτὸ καὶ ὦ | ἐπεικαστεῖσαι αὐτῷ. (‘... saying in their folly: ‘We want an answer to the letter. You probably opened it and did not send it to him.’’

267 Cf. Plaut. *Rud.* 951–53, where the joke is that anyone should be *fidus* to an unknown person (*do fidem tibi, fidus ero, quisquis es.*).

268 *P. Tebt. II* 326=M. Chr. 325 (Tebtynis, 266–267), lines 7–12: ὑπὲρ ὑπὸν κηδεμονίας καὶ διοικήσεως τῶν ὑ- | παῖδος | σαρπίσιμον τῇ παιδὶ τὸν ἵδεον ἐμαυτῆς ἀδελφὸν Ἀὐ- | ῥήλιον Σαρπίσιμον τὸν καὶ Ἀλέξανδρον καὶ αὐτὸν Ἀντιοχία | εὐνοία καὶ πίστι καὶ τῇ τοῦ γένους οἰκείωτη τοκαμάσασα προ- | ὄνομα ἠθελεῖ τὴν γυναικὸς τοῦ παιδίου τὴν πρόοδον ποιούμενα αὐτοῦ | καὶ τῷ ἴδιῳ κηδεμονίᾳ ἐπίστευσεν τῇ παιδὶ ἀποφασίσαντι. Sarapias’s petition also suggests that her brother’s Antinoite citizenship, which he shared with her late husband and presumably her daughter, recommends him as a guardian.
We have a vivid example of this in a difficult letter that nevertheless succeeds in revealing the sort of ties that bound friends and families, as well as the stresses such ties came under. In *P.Mich.* VIII 485 (Karanis, ca. 105) a certain Ammonios writes to Gaius Iulius Sabinus, a *signifer* (most likely) of the *legio XXII Deiotariana*, ostensibly to congratulate him on the elevation of his son Apollinarios to the position of *secutor* under one Valerius Pius. Ammonius’s real purpose, however, was to exhort Sabinus to take his own son in hand—confusingly also called Valerius—with the aim of having Valerius *fils* follow the advice of his friend (the aforementioned Apollinarios) and write to Pius in order to accept a post that he (Valerius *fils*) had been offered on the same staff.²⁶⁹ We therefore have two families, linked by friendship at two levels. In the younger generation, one son (Apollinarios) attempts to help the other (Valerius *fils*) navigate the channels of power and preferment in the army (Apollinarios wishes Valerius to accept the post in part “to have him with him,” i.e., to be “under his protection” (9-10), so that both will rise through the ranks together). In the older generation, one father (Ammonios) relies on the other (Sabinus) to get his own son (Valerius *fils*) to follow the advice of the other’s son (see fig. 4.2 below).

²⁶⁹ The relationships are confusing due to the coincidence of names and a rather inartful use of pronouns (cf. Youtie’s assessment in the introduction to the *ed. pr.*). The basic reconstruction here follows Strassi 2002.
Ammonios’s particular request of Sabinus is as follows:

δ[ιό] παρακάλω σε, ἀδελφέ, ἀντ’ ἐμοῦ
πάλ[ι]ν γενέσθαι καὶ προτρέψασθαι τὸν
12 Ὀνα[λ]έρι[ον] γράψαι τῷ Πείωι πειθόμενον
τῇ ἐμ[ῇ] πίστει καὶ δεξίᾳ, ἵνα πάντοθεν
ἡς ο[ὐ] μὴ [μό]νον βοηθὸς τοῦ πράγματος
ἀλλὰ καὶ ἀγαθὸς κυβερνήτης, υἱὸν πατρὶ

Wherefore I beseech you, brother [i.e., Sabinus], to stand in my stead once more and urge Valerius [filii], trusting in my faith and pledge, to write to Pius, so that you may in every way be not only a help in this matter but also a “good pilot,” restoring a son to his father.

The phrase πειθόμενον τῇ ἐμ[ῇ] πίστει καὶ δεξίᾳ has ever since the editio princeps been interpreted as agreeing with σε in line 9, i.e., Sabinus. But this makes little sense: why should Sabinus need to rely on Ammonios’s pístis and dêxia to urge a course of action on Valerius?

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270 Stated explicitly at Strassi 2002: 168.
Strassi suggests that in using the language of trust Ammonios is attempting to underscore the relationship of trust that characterizes his friendship with Sabinus. Yet pistis and dexia are qualities and actions that bespeak risk, not merely friendship, and there is no risk here to Sabinus.

Compare, for instance, a letter already alluded to above, *P.Tebt.* II 418v (Tebtynis, III). In this letter Soterichos writes to his friend Horigenes, asking among other things that Horigenes provide for his wife on their joint journey to him: καὶ | [οὐ]τοις ἐὰν χρεῖσθαι ἐξή κερ−| [μι]στὸς δοσεῖς αὐτῇ ἐως εἰσέλθῃς | [κ]αὶ ἀπολάβῃς παρ’ ἐμοῖ καλῇ | πίστει, ἐπεὶ οὕδεν ἐπίστευσα | [ὁ]στε αὐτῇ κομίσαι. (“And give her whatever money she may have need of until you arrive [sc. in Tebtynis with my wife] and receive it back from me in good faith, since I have trusted no one to take it to her.”). The position and tone of friendship here echoes that of *P.Mich.* VIII 485, as we may hear in the form of address (A to B τῷ τιμωτάτῳ πλείονα χαίρειν), the punctuation of the central requests with the apostrophe ἀδελφά (*P.Tebt* II 418v.8 and *P.Mich.* VIII 485.9), and the address on the verso (both style themselves as φίλοι). Each of these elements is conventional in personal letters of the Roman period, and so tells us very little about the degree of intimacy in and of themselves, but as a suite they mark the letters as ones written between friends. The difference, of course, is that the role trust plays in *P.Tebt.* II 418v is

271 Strassi 2002: 167-68.


273 On the opening formula, see Exler 1923: 31, 62-63 (note that this particular formula does not extend to business documents drafted in epistolary form (cf. 36-42, cf. 63-68), cf. Zilliacus 1949: 33-34. On the use of the term adelphos, see Dickey 2004, esp. 144, 154-56. She cautions her readers that “the term carries no necessary implication of intimacy or affection; often the person to whom it is applied is a distant acquaintance or colleague.
clear: Soterichos is asking Horigenes to trust him by advancing money to his wife on credit. The friendship is the foundation on which that trust is built, but the particular act of trust is invoked only because of the introduction of a definite and specific risk (i.e., the advance). In the case of P.Mich. VIII 485, then, we must ask: cui periculo?

Immediately after the portion of the letter quoted above there is a lacuna in what starts off as an alternative (ἐάν δὲ πως ...), but ends with Ammonios promising to sail down to Sabinus at once “when the moment comes” (15-17). Why Valerius fils is with Sabinus and why he is ignoring the advice of both Apollinarios and his father, we have no idea; but it is clear that this is not the first time Sabinus has been called on to play the role of father to him (ἄντ’ ἐμοῦ | πάλιν γενέσθαι, 9-10), and that this rift has, in Ammonios’s eyes, left his son rudderless (i.e., in need of a proverbial “good pilot”), though not so wayward as to rule out all hope of reconciliation (ὑιὸν πατρὶ | χαρὰς ζῶντος, 14-15). The only person taking a risk here, therefore, is Valerius fils in trusting his father, something he is clearly loath to do, perhaps generally, but certainly with respect to this particular matter.

with whom the writer has little or no real emotional involvement” (155-56). Given the sheer number of attestations in Roman papyri, Dickey may be forgiven for giving us no sense of how often it was so used. In any case, this is no argument against seeing its use in some circumstances as a way of suggesting the intimacy and connections of brotherhood (whatever the specific cultural or ideational content of Greco-Egyptian “brotherhood” might have been). The same might be said of the epithet timiōtatos. No doubt it had come to be applied “rein mechanisch” over the course of the Roman period (Zilliacus 1949: 34), but this does not necessarily rob it of its obvious meaning when appropriate.

Καλὴ πίστις in this instance not only clearly has a quasi-technical meaning of “credit,” as opposed to simple “trust,” but is also just as clearly a gloss of, or at least influenced linguistically by, the Latin bona fides (see Schmitz 1964: 101-12; cf. Wolff 2002: 198-200). The circumstances of the letter justify seeing this as non-technical use of the concept: this is a one-time temporary arrangement, not a formal contract invoking a fiduciary standard. It is the equivalent of saying to a friend, “Trust me, I am good for it when you arrive.”

Cf. SB IV 7354, a similar argument between a father and son over a military career (pp. 331f.).
There is, moreover, no grammatical objection to construing the participle πειθόμενον with τὸν Ουσιλέριον, which is after all the closest accusative. The argument for construing it with σε rests largely, it would seem, on the contrast affected by the adjective ἐμὴ qualifying πίστει, a contrast heightened by the return to the second person in the purpose clause that follows. The contrast is real but misinterpreted. Writing to his friend about an important favor in what was likely his own hand, Ammonios naturally reached for ἐμὴ instead of the more objective and unnecessary τοῦ πατρός. The proper translation, therefore, is: “Wherefore I beseech you, brother, to stand in my stead once more and urge Valerius to trust in my faith and pledge, and to write to Pius ...”

276 To judge from Youtie’s description (no image is available online), it would seem that the letter was penned by Ammonios himself, since the subscription is in the same hand as the body and the address of the letter. From Cicero we know that autography signalled not only authenticity and confidentiality, but also constituted a sign of intimacy and esteem (e.g., ad Att. 8.13.1, 5.17.1, 4.16.1, etc.; cf. Bagnall and Cribiore 2006: 42). Given the circumstances and the general emphasis on respect and friendship throughout Ammonios’s letter, we certainly would have expected an autographical letter had Cicero been the author. Sadly, our evidence for the cultural value of autography in Greek letters, documentary and literary, is almost entirely negative (Bagnall and Cribiore 2006: 42, cf. the extended version in the ebook, paragraph 203). Two documents, however, suggest that autography might have carried a similar meaning. BGU II 423 (=SelPap 1.112; Misenum?, II), preserves a famous letter from a young naval recruit to his father, in which he begs his father to write him a letter so that he might have news of his family and “kiss your hand(writing)” in gratitude for his education (ἵσου προσ υ ήσω τὴ χέρ [l. χερι], 15-16). Such a sentiment would make no sense unless a person’s hand was seen as an extention of his personality, a physical embodiment of the individual capable of evoking, in this instance at least, an correspondingly intimate and physical response. In a different vein, St. Paul clearly used his handwriting not only to authenticate his letters (e.g., 2Thes. 3:17, cf. 1Cor. 16:21), but also to communicate emphasis (Gal. 6:11: ἰδεῖτε πιλόκοις ὑμῖν γράμμασθαι ἕγραψα τῇ ἐμῇ χερί; cf. Martin 1998: 560). Of course, Paul could have told the scribe to do this, but the exhortation—and the fact that he evidently did not—indicate that special authority and effort could be invested and recognized in handwriting, not particularly surprising given the clear importance of styles in epigraphy and bookhands. I know of no example in the papyri where emphasis is so added, nor any discussion of graphic emphasis in ancient letters. The closest parallel might be the routine order from Prefects to post edicts in “clear” letters (e.g., P.Oxy. VIII 1100 [Oxyrhynchos, 206]: διατάγμα- | τον προτεθυτον υπ' ἐμον ἐν τῇ λαμπροτάτῃ Ἀλεξανδρείᾳ ἀντίγραφον ἐπεμώζ ὑμῖν δι | ὑμείς φροντίσετε εὑδῆλοις γράμμασθαι ἐπί τι[ζω]ν μητροπόλεως καὶ ἐν τοῖς τῶν νομῶν φα- | νερωτάτοις τόποις προς θείναι ... (“I sent you a copy of the edict posted by me in most illustrious Alexandria, which you will take care to post in clear letters in the metropoleis and the most most conspicuous places of the nomes ...”). See Cavallo 2009, with plate 5.21.
Once lost, trust was hard to rebuild, and it is not surprising that Ammonios attempted to heal the divide via alternate avenues of trust, namely through his son’s relationship with “uncle” Sabinus. The first line of defence, of course, was not to let the cracks appear in the first place; hence the constant reciprocal demonstrations of trust in word and deed that characterized ancient friendship and social relations generally.\textsuperscript{277} However, if one did see trust beginning to flag or fail, it was best to intervene immediately. Thus an unnamed woman wrote to Kopres (\textit{SB III} 6264 [Arsinoite, late II]), hoping to maintain his trust even as Kopres’ wife was attempting to undermine it:

\begin{verbatim}
τῷ Κοπρῆ
χαίρειν.
τῷ μὲν γοργόν
σοῦ οἶδα, ἥ δὲ
γυν[ή] ἐκά
λαλο[ύσα] πᾶσαν
ὡρ[ἀν], ὃτι σοι
οὐδέν δίδω. ἀνερ-
χόμενος\textsuperscript{278} δὲ ἔδω-
κά σοι κερμάτιον,
ὁτι δέξασα τὰ
σιτάρια ἐν αὐτῷ
γὰρ τῷ μηνί [οüz]-
χ ἐὑρον δῶναί σο[ι].
οὐδέν σε γὰρ
\end{verbatim}


\textsuperscript{278} I. ἀνερχόμενος? The letter is rife with extraneous γάρς and vernacular forms (e.g., δίδω and δέξασα, cf. Gignac 1976-81: II, 382 and 325-56 resp.). Bagnall and Cribiore 2006: 282 reasonably suggest against Bell, the original editor, that it is more likely that the writer made a mistake of case than gender. This would, however, create a sort of interlocking word-order that strikes me as out of line with the mode of expression in the rest of the letter, which is entirely linear. Cf. similar uses of this participle as an immediate adverbial modifier of a conjugated verb: \textit{P.Fay.} 121, \textit{P.Heid.} II 215, \textit{P.Oxy.} XIV 1757, \textit{P.Prag.} I 111, \textit{P.Vind.Sijp.} 26, \textit{SB XIV} 12083 and XX 15165. My translation therefore follows Bell’s suggestion.
ὑποστέλλομεν, πάντα σοι γάρ πιστεύω, ἢ γάρ γυνὴ σου λέγει, ὅτι
ουδέν πιστεύη (I. πιστεύει)
pολλα. [ - ca. ? - ]

Text breaks, but on the left margin it continues:

ουδίς σε δύνατε φιλῆσαι (I. φιλήσαι.), ἐκινή γάρ ἢ τὸ σύνφορο(ρον) αὐτῆς ξύει [σε(?)...] ὡς γάρ σου τὰ στρεφή.

To Kopres, greetings. I know your temper, but your wife inflames you, saying every hour that I give you nothing. When I came up, I gave you pocket change because I did not find (anything) to give you, since I received the grain that same month. I am cheating you in nothing, for I entrust you with everything. Your wife says, “She entrusts nothing ...” (In the left margin) Nobody can love you, for she shapes [you(?)] according to her advantage ...

As usual with these ancient letters, the precise context cannot be reconstructed. What seems tolerably clear is the following: The writer owes Kopres money, and she hopes to persuade him that her past, insufficient payments are in fact tokens of her commitment to repay him. Kopres’ wife, on the other hand, is attempting to persuade him that he is a fool for trusting the writer. One in fact wonders whether there are competing notions of “trust” in this letter. The unfinished complaint in the mouth of the wife beginning in line 19, for instance, may in fact refer to security of some sort, with her exclaiming that Kopres should have taken some security in light of the writer’s delinquency, in effect saying “She has not entrusted anything ...”279 If so, this would

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279 Pisteuein can mean “to pledge as security,” e.g., P.Cair.Zen. IV 59626 (Philadelphia, mid-III BCE); cf. Preisigke, Wörterbuch, s.v. πιστεύω 2 with later examples wherein it means anvertrauen in various contexts.
help make sense of the writer’s response that she has in fact put “everything” into his hands (i.e., she hopes to avoid giving security).

More interesting for our purpose (and more certain) is the illumination of the sort of damage and stress failure to perform could do to a relationship of trust. Some leeway is afforded extenuating circumstances—hence the writer’s resorting to the excuse concerning her own late receipt of grain—but we see here the quick leap from failure to fraud, even in the author’s own mind (οὐδὲν σε γὰρ ὑποστέλλομε ...). Rebutting the wife’s every claim, the writer’s defensive rhetorical ploy is to drive a wedge between Kopres and his wife: though he is easily incensed, it is she who provides the match; though he is naturally lovable, he is being whittled away by “that one” into a tool for her own ends such that no one will be able to love him. It was this pointed competition between the writer and “the wife” that clinched the sex of the writer (who used one masculine and one feminine participle in referring to herself) for Bell, the original editor (1919: 207). Bagnall and Cribiore expand on the suggestion: “The general tone of this letter suggests that the writer was the mother of Kopres. In replying to her son, who had complained of being treated unjustly, this woman puts the blame entirely on her daughter-in-law” (2006: 282). Whatever relations we infer, in this struggle for trust within Kopres’ inner circle the writer’s letter can only buy her time, for the problem does not in fact lie with the wife, but with her own

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280 Philein need not imply any particular kind of affection, i.e., sexual or familiar. See examples in LSJ and Preisigke Wörterbuch s.v. φιλέω, cf. Ammonios, Περὶ ὀμοιών καὶ διαφόρων λέξεων, s.v. (§ 499): φιλεῖν ... τὸ ἄγαπᾶν καὶ ξευζέειν.
failure—whatever the reason—to keep faith. Actions, not intentions or kinship, were the lifeblood of ancient trust, and so the only winning strategy open to the writer lay in repayment.  

Cf. Heinze 1929: 147n1: “Die fides ‘Credit’ (im geschäftlichen Sinn) gründete sich ursprünglich gewiss auf die Zahlungswilligkeit, nicht Zahlungsfaehigkeit.” This is an observation that will be borne out in the discussion of eugnōmosynē below.
4.3 The Business Dynamics of *Pistis*

The last example in the previous section mixed business with family, a common combination in the ancient world, but now we need to turn to how trust operated at its furthest edges, between friends, acquaintances, associates, and business partners. Suggestively, the bright line that divided those who were trustworthy from those who were not helped to construct an abstraction of a “trusted” person. For example, in *P.Yale I 79* (unknown, ca. 150) Harpokras writes to his friend and partner Sarapammon about some false coin which they had received from their banker, a πιστευόμενος:

\[
\text{λέγουντός σου πε-} \\
\text{ρί τού τραπεζε}- \\
\text{τού ὅτι ὁφείλι βε-} \\
\text{βληχέναι τ[δ]ν} \\
\text{χαλκόν, σα[πρ]ού(ς)} \\
\text{στατηρίας (ι. στατηρίας,) ὁφεί-} \\
\text{λομεν δοκι-} \\
\text{μάσαι. τὸν [χ]αλ-} \\
\text{κόν ἐγὼ ἡμέ-} \\
\text{λασα, θαυμά-} \\
\text{ζων εἰ ἀνθρώ-} \\
\text{πος πιστευόμε-} \\
\text{νος τοῦτο ποι-} \\
\text{εῖ. εὗρον οὖν ἡ} \\
\text{σαπρούς καὶ μᾶ} \\
\text{τὴν σωτηρίαν σου} \\
\text{καὶ τῶν παι-} \\
\text{δίων μου, τούς} \\
\text{γ ἐντετίναχα.} \\
\text{ἀχρίστους ὄντας} \\
\text{ἐπεμψά σοι τοὺς} \\
\text{ε. εἰ ὁμοσάτω (ι. ἡ ὁμοσάτω,) ὅτι} \\
\text{oὐκ εἰσί αὐτοῦ ἢ} \\
\text{ἀλλαξάτω.}
\]
Although you were saying about the banker, that he ought to have paid the bronze, we should have tested for rotten staters. [But] I took no thought of the bronze, surprised that a trusted man should do this [i.e., pass bad coin]. I then found 8 rotten ones, and by your life and that of my children, I disposed of 3. Since they are worthless I sent you the (remaining) 5. Either let him swear that they are not his or let him change them.

As Harpocras relates, he did not bother to check the coins himself not only because Sarapammon had said that the banker had already done so, but also because he assumed that the banker, whom they considered a “trustworthy man,” would naturally have done so. Assaying coin had been a standard function of banks since Athenian times, and it is clear that banks in Roman Egypt were generally counted on to pass good coin. In this document the term pisteuomenos seems to rise almost to something like a standard of commerical behavior, akin to the Roman Law standard of the bonus paterfamilias. Yet this is clearly not a legally defined duty of care: Harpocras and

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282 The editors tentatively translated ββληχέναι as “checked (?),” but ballein nowhere else means “to check” or “assay” (on the swapping of intervocalic kappa and chi, see Gignac 1978-81: I, 92; the word is not discussed at all in the exhaustive work of Bogaert 1968). And what would have prevented Harpocras from using dokimazein twice, if this is what he meant (cf. 10-11)? When ballein is used of coin, it invariably means “to pay” (Preisigke, Wörterbuch, s.v. 1; cf. Kiesling, Wörterbuch, s.v. 4). Antiballein and prosantiballein are used in papyrological and literary sources to mean the “checking” of manuscripts and documents by collation; but the meaning here is generated by the prepositional prefixes that describe the act of comparison, not the root verb. Also, now see the recently published O.Claud. I 166 (Mons Claudianus, 100-120), where antiballein clearly means “to repay.” The fact that the banker was to “pay” and not specifically “check” the coin did not in any way relieve him of the responsibility to check the coin before paying it out, as the letter indeed attests.

283 On bankers assaying money, see Bogaert 1976: 18-20; 1968: 39-41, 44-47, 317-22. According to Bogaert, τραπεζίτης “[c]hez plusieurs auteurs de l’époque impériale ... est employé pour désigner l’essayeur des monnaies” (39-40). Cf., e.g., P.Oxy. XII 1411 (Oxyrhynchite, 260), an order for banking bankers (οἱ τραπεζίται τῶν νομίσματων) to accept and exchange (kakakermatizein) new, devalued Imperial coin; and Jerome, Comm. in epist. ad Ephes. 3.5.10 (Migne, PL XXVI, col. 557): in morem prudentissimi trapezitae, qui sculptum numisma non solum oculo, sed et ponderie et timnitu probat (“in the manner of an exceedingly careful banker, who tests an engraved coin not only by eyeing it, but by its weight and ring”; this comment derives its point from the fact that one could expect a merely prudens trapezita to check coin, if only by one method of testing). Public assayers (δοκιμασταὶ) and the associated tax (the δοκιμαστικὰ) disappeared from Egypt in the Ptolemaic period (Bogaert 1976: 24-27). Presumably, the burden of checking coin thereafter lay squarely on the shoulders of the bankers and their patrons. Cf. P.Cair.Zen. II 59176.60-64 (Philadelphia, 255 BCE), another instance of a banker delivering bad coin (49 out of 100!). Bogaert 1976: 26 believes that this was due to the scarcity of adequately trained personnel, not fraud.
Sarapammon obviously had had dealings with this banker before, and it was on his past performance that they relied, not merely his professional capacity or legally mandated duty as a banker.

Harpocras’s solution to his problem is interesting and revealing, and reflects on the role of trust in commercial relationships, for in fact he had two interrelated problems: the bad coin and the damaged business relationship with the banker. With respect to the former, he clearly felt no compunction about passing off whatever bad coins he could—presumably to people for whom he was not a *pisteuomenos* himself! Those he was unable to get rid off, he returned with the instructions that the banker was either to swear they were not his or exchange them. The editor commented that “Harpocras has no chance of proving any misdeed done by the banker, but he can hope that the banker would be frightened by the thought of perjuring himself before the gods and would thus admit his wrong-doing” (p. 248). True, but this is to mistake the purpose of the oath, I think. It is being used in its quasi-evidentiary function for a past act, as is familiar from Egyptian custom, but it also—and more importantly—a test of the banker’s interest in the future of the relationship. If he swore the oath, Harpocras and Sarapammon would of course be stuck with the bad coin since there would be no winning a judgment against him, but more importantly they would know that the business relationship was over; if, however, the banker wrote off the cost of the bad coin and exchanged the staters, he would redeem the relationship by accepting responsibility—and the cost—for his failure to perform up to the standard of one on whom others rely. The banker was thus given the choice of proceeding on the basis of law or

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norms for future relations with Harpocras and Sarapammon, with the oath serving as a decisive nodal point between the two. In other words, he had to decide which was the more expensive route, a lost customer, who would not deal with him if he insisted on a relationship based only on the law, or swallowing five staters, which earned him a continued reputation as a pisteuomenos. In this instance, then, the oath is as much—or more of—a test for future relations than a way of resolving the immediate dispute. Just as the ancients assayed the quality of their coin, so they tested their partners when in doubt.

The picture of trust that emerges from these documents is one of a quality firmly based on actions and personal experience. This aspect perhaps comes through most clearly when people talk about those whom others would trust, as in the case immediately above. Another illuminating example comes in PSI IV 377 (Philadelphia, 249 BCE), in which a person known in some capacity to the recipient, whom we assume to be Zenon, writes in the hopes of landing a contract to pasture his sheep:

... παραδοθησε-
4 ταί δέ μοι καὶ ξεύγη δ, ἡ ἐγὼ θρέψω, καὶ τὰ λοιπὰ δὲ κτήνη καὶ ἡ ἁμαξα. καὶ πρόβατα δέ σά, ἂμ μοι παραδοθη, ἀθάνατα παρέξω καὶ [έ]καστοι σοι δώσω κατὰ γίγ μὴ πόκον ἕνα
8 καὶ τάς ἵππους γ ἐπιτόκους παρέξω. εἰ δ᾽ οίον διαπιστεῖ<£> τι ἄξιω σε, εἰ σοι δοκεῖ, συναποσταλήναι μοι τινα ὃν ἂν δοκιμάζησις, ἔως ἂν τοῦτον τοῦ (ήτους) πεῖραν σοι ἀποδώμεν. εἰ δὲ μή, δεῖ σε ἀπόφασιν μοι δούναι ἕνα μὴ ἐνταύθα κατα-
12 φθείρωμαι. εὐτύχει.

But also let four teams be given over to me, which I will feed, along with the rest of the cattle and the wagon. And your flocks, should they be given over to me, I will guarantee
as “immortal,” and for each one I will give you one fleece every thirteenth month and three horses for transport. But if you distrust me in some way, I ask that you, if it seems good, send someone with me whom you have tested until I return a specimen of this year [i.e., the first payment under the terms proposed]; if (this does) not (seem good to you), then you should give me an answer so that I may not be ruined here. Farewell.

We have no reason to suspect that Zenon (for our purpose the precise identity of the recipient is inconsequential) distrusted the writer in particular; indeed, the fragment of the sentence before the section quoted above suggests that Zenon knew and potentially respected the writer’s opinion, since it contains news and an endorsement of another person as ἀξιόχρους with respect to some business about a bath. The writer, then, was something of a known quantity. The “distrust” (diapistein) may simply arise the fact that two had not entered into this sort of arrangement before, or perhaps did not have a “business” relationship at all: as we have seen, one did not properly “trust” another absent personal experience. Then again, there may have been a personal reason, based on some negative experience with the writer, or perhaps a report of his inexperience or incompetence. Whatever the case, a deal was stillborn unless this trust-gap could be bridged.

The writer therefore suggested two ways to bridge this gap. First, they may limit the risk of exposure or reliance to a trial period; second, Zenon may send someone with him whom he has “tested” (dokimazein) and therefore trusts. Here we should consider the implications of this notion of testing. Although dokimazein may mean simply “to approve” or “to think fit,” along the lines of dokein (to which it is etymologically related), its original sense is precisely to test,

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285 I.e., he will return the same number of sheep as he receives. In other words, he is leasing a flock of a certain size not a collection of particular individuals. See Hengstl 1979 on this clause.
used very early for assaying the quality of metal or coin.\textsuperscript{286} Thence it was transferred to people, both in a general sense (i.e., determining true worth) and in a technical sense (e.g., to test by examination).\textsuperscript{287} In the case above we obviously have the idea of testing personal, moral worth. Zenon either had had no opportunity to test the writer himself or (less likely) had come up with a prior bad result; either way the writer understood that Zenon did not truly know his quality and therefore could not trust him. The solution was to send a “tested” person, one on whose proven quality both could rely until such time as the writer proved himself.\textsuperscript{288} The first proof, which also marks the first step away from reliance on surrogate trust to personal trust, will be the πειρα. In one sense, the peira is the first remittance under the terms of the lease, or so many fleeces delivered on time, on which basis Zenon will judge the writer’s reliability. Semantically, however, this “specimen” completes the discourse of trust through experiment and experience, it being the physical proof of this first test of trust.\textsuperscript{289} Though this is an early example, we often find dokimazein in the same complex of ideas as pists and its derivatives.\textsuperscript{290} In fact, this is the


\textsuperscript{287} Cf. Chantraine 1968-80. s.v. δοκάω III (p. 291).

\textsuperscript{288} Cf. O.Claud. 134 (Mons Claudianus, 107), in which the curator Domitius, in response to some dispute about how much oil should be used for a job related to the hydrophoria, suggests that Successus send someone to monitor his usage: ει δε έμοι ου πιστευεις, διτ το\-\το μ\-\ο\-\ν ι δαπα\-\να, π\-\μ\-\μου ι\-\να τω\-\ν α\-\ν κα\-\θι- | έαι μ\-\ιαν ημ\-\μ\-\ραν ι\-\να πιρα\-\ς (8-10). The status and relationship between the two is not clear (cf. ed. pr., p. 111), but obviously approximates the conditions of, or at least contains many of the same tensions as, a contractual relationship.

\textsuperscript{289} Incidentally, these various devices appear to have worked: the verso of the papyrus contains an account of sheep, by all indications the very flock the writer was offering to lease on the recto.

\textsuperscript{290} Cf. P.Oxy. XXXIV 2726 (n259 above) and P.Oxy. XII 1415 (Oxyrhynchos, ca. 280-300): Ευδαι\-\μων ε\-\ξηγη\-\τη\-\ς ε\-\π\-\(\epsilon\)υ Πτο\-\λε\-\μα\-\ο\-\ς πε\-\ί\-\ς τ\-\ι\-\ς προ\-\α\-\ς\-\ε\-\ς\-\ω\-\ς α\-\τ\-\ο\-\υ πο\-\λ\-\λα\-\ς δ\-\ε\-\δ\-\ς\-\κ\-\ε\-\ν (29). At this meeting of the Oxyrhynchian boulē, Eudaimon the exēgētēs attempts to support a certain Ptolemaios in his request not to be appointed to a second liturgy. Eudaimon points out that the boulē had already had proof of Ptolemaios’s ready good will in the past, with the implication they should trust him now when he begs off by saying that he cannot bear two
very word Sarapias used five centuries later in *P.Tebt*. 326 (see n268) when she testified to her brother’s fitness to be guardian to her daughter.291

One curious word confirms this picture of trust since it expresses the idea of trusting on insufficient grounds, i.e., without testing, akin to Plautus’s *eis qui subito credas male* in the Temple of Castor (*Curc*. 481): προπιστεύειν. The word appears but once in the papyri, *P.Freib.* IV 69 (unknown, II-III):

Γέμελλος Σίμων χαίρειν.
θαυμάζωι 1 πῶς πάλιν ἡμέλησας
γενέθθαι παρ[...] ω. ὑγιήγοισι-μαι (I. ὑγιήγοισιμαι) σοι καθὼς ἦγερ[...]σάς μοι περὶ τῷ
νομάρχῳ (I. τοῦ νομάρχου), καὶ ἄ[λλοτε] νοι ἔραμα
καλῶς ποιήσεις [... ] Κυρίλλῳ προ-
πιστεύσαι μόνον [στὸ] ταξιωμὸν ἄν
φέρι μοι φοινικίων. μὴ ὄν ἀμελήσῃς.
ἐρωσθαί σε εὔχοι[μαι].

Gemellos to Simon, greetings. I am surprised that again you neglected to be with NV. I will explain to you, since you wrote to me about the nomarch. Even another time [i.e., “already once before”] I wrote to you that Philantinoös did not pay the 30 [ ...]. You will

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291 Cf. *SB* XX 14585 (unknown, 319), a similar document wherein a woman appoints her brother-in-law to represent her before the Prefect in a dispute over the disposition of an inheritance (or perhaps the administration of a guardianship), saying δαρεσθαί σα τῷ μέλλον ἐκ γαμβρόν μου δότα πάσαι πιστὶν καὶ εὔνοιαν ἄπο- | [δείξειν π]ρὸς ἐμέ (“being confident that you will display full faith and goodwill towards me, since you are my brother-in-

ash of an inheritance” or perhaps the administration of a guardianship), saying δαρεσθαί σα τῷ μέλλον ἐκ γαμβρόν μου δότα πάσαι πιστὶν καὶ εὔνοιαν ἄπο- | [δείξειν π]ρὸς ἐμέ (“being confident that you will display full faith and goodwill towards me, since you are my brother-in-

law,” 9-10). Unlike Sarapias, she has not “tested” him, but merely *hopes* that he will prove true. This statement, then, is aspirational and rhetorical, meant to pressure her brother-in-law into doing the right thing by communicating an expectation that he likely would not want to be known for having disappointed.
do well [...] to entrust to Kyrillos before only [...] of the dates which he brings to me. Do not be negligent. I pray for your health.292

Unfortunately, the lacunae render the sentence in lines 7-9 all but unintelligible, but, as the editor suggests, propisteuein appears to mean something like “to entrust beforehand,” relating to the giving or receiving on credit (i.e., trusting before paying). Just such a business meaning appears in Pollux’s Onomasticon (7.194), when he uses the word while relating a joke about credit made by the fifth-century comic Hermippos: Ἐρμίππος δὲ ἐπὶ τοῦ προπιστευθέντος ἀνεύ ἄργυριον πίνειν ἐκ κατηλείου “πρόδοσιν πίνειν” εἴρηκεν (“Hermippos said of one who was trusted beforehand that to drink at a tavern without money was ‘to drink credit’.”)293 But why “pre-trust” and not just “trust” or pisteuein? Indeed, one could use pistis to mean “credit,” as we see from a first-century tavern or brewery account, in which several patrons are recorded as drinking on “trust” (pistis), i.e., on subscription (P.Tebt. II 401, esp. lines 27 and 39ff.). What, then, does it mean to “pre-trust,” and what did this word communicate beyond the idea of mere pistis?

Propisteuein can have a purely temporal meaning, literally “to trust something before something else,” though it usually only means this in the passive (see, e.g., citations from Sextus Empiricus in LSJ). Most often, however, “trusting beforehand” carried with it a decidedly negative connotation, since trusting beforehand was often tantamount to trusting blindly or undeservedly.294 Demonsthenes, for instance, in his speech against Aristocrates, in which he

292 Trans. slightly adapted from the ed. pr.
293 PCG vol. 5, Hermippos fr. 78.
294 One in fact wonders whether or not it has this meaning in Sextus Empiricus as well, since all three attestations occur in discussions of circular reasoning (i.e., some premise that must be “pre-trusted” or taken for granted, which in fact needs itself to be based on proof for the argument to hold).
argues against putting Athens’s reputation and resources on the line for mercenaries like Charidemos, says that there is no trusting those who are out only for themselves, since they are not axiopistos, and that “he who is thoughtful ought to get the better of such men by guarding against them, not by indicting them after having trusted them upfront” (23.127: ἀλλὰ δὲ οὖν τούτων, δυστικῇ φρονεῖ, φυλαττόμενον περιείναι, μὴ προπιστεύσαντα κατηγορεῖν). Similarly, Philo uses the word several times, each time with the sense that propisteuein is to trust too early or without proof, representing in effect unearned trust (e.g., Vita Mos. 1.174, In Flac. 89, and esp. De confusione linguarum 140 where he equates the act of propisteuein with trusting hearsay instead of autopsy, cf. p. 131 above). This, presumably, is the vein in which Pollux understood the wit of Hermippos: the barkeep should be serving wine, not “advances” on the mere expectation of payment.

295 Cf. Ael. Arist.’s Fourth Leuctrian Oration (Or. 14), where the advice to the Athenians is not to lose sight of what each side, the Spartans and the Thebans, had done in the past when deciding on what an alliance with each might bring. The speaker here insists that pistis is based on past acts, and that one must therefore discount the future in one’s deliberations since “many things may come about in the fullness of time which are impossible to foresee and cannot be trusted beforehand” (πολλὰ γὰρ ἐν τῷ παντὶ χρόνῳ γένοιτ’ ἀν ἂν καὶ προεδρύσῃ ἀμήχανον καὶ προπιστεύσῃ OURCE ἔνεστιν, § 11). I count only 12 attestations of the word before the fourth century, one of which is Dion. Hal. reworking Demosthenes’ sententia by placing it in the mouth of Lucius Valerius Potitus at the end of his speech against the Decemvirs (Rom. Ant. 11.20).

296 Of the 12 imperial citations, seven are from Philo, but the sentiment can be found in other contexts and texts, e.g., Ben Sirach 6:7: εἰ κτάσαι φίλον, ἐν πειρασμῷ κτῆσαι αὐτὸν καὶ μὴ ταχὺ ἐμπιστεύσῃς αὐτόν (If you would acquire a friend, acquire him by testing and do not trust him too quickly”). Trans. Lindsay 1993: 46, and see ch. 3 for more examples and discussion. Cf. Hay 1989. Christians subsequently (and predictably) made “pre-trusting” into a virtue: e.g., Photius, Ep. ad Amphipholia 205.52-55 concerning the significance of Abraham’s circumcision: κάκεινο δὲ σοι δῆλον οἴμαι καθεστάναι, ὡς τὴν περιτομὴν ὁ θεοπτέσιος Ἀβραὰμ οὐτε πίστεως ἔσχεν αἰτίαν, οὐ μὴν οὖδ’ αὐτὸ γε τούτω τάξιν ἐπέχουσαν πίστεως (προπιστεύεις γὰρ), ἀλλὰ τῆς προὐπαρξάσης αὐτῶ μόνον σφαγίδα ταύτην ἐδέστο (“I think that the point has been settled clearly for you now, that the divine Abraham received his circumcision not as a cause of his faith, nor again for this reason, that it upheld a rule of faith (for he pre-trusted), but rather he received it merely as a sign of (the faith) which already existed in him.”). This was the beginning of the historical relationship of God with the Jews in particular; Abraham had no evidence, as others would have later, of God’s intentions and fidelity, and so in trusting God for the first time he was actually “pre-trusting.”

297 The jury could have justly taxed Androcles in Dem. 35.6-8 with having “pre-trusted.”
From the modern perspective trust is often conceived of in opposition to knowledge, in that often one trusts because there can be no proof or in circumstances that are inherently uncertain.\textsuperscript{298} The ancient perspective tended to conflate, or at least associate, the ideas of trust and knowledge, since the former was properly constituted in the accumulated personal experience of another person, duly tested.\textsuperscript{299} To act on this firm basis was \textit{pisteuein}, while what most of us do every day in our economic lives would be \textit{propisteuein}. To return to \textit{P.Freib. 69}, perhaps we should understand Gemellos’s use of this rare word as a way of coloring the nature of the credit that was being extended, particularly if some form of \textit{μόνος} is to be restored in line 8: Simon, evidently prone to failure and needing to be told things twice, must be sure to limit the “credit” with respect to those dates.

\textsuperscript{298} On the capacity for \textit{pistis} to mean “faith” in antiquity, see Lindsay 1993; cf. Rad’s influential distinction between human trust as \textit{Erfahrungsweisheit} and the development of faith or \textit{theologische Weisheit} in the Old Testament.

\textsuperscript{299} Cf. n236 above.
4.4 *Pistis* and Contract

From the outline sketched above, it is hardly surprising that trust was an essential element to relational transactions or contracting. In order to see precisely how it informed both the contracting process and enforcement, let us turn to the following letter of Ptollas to his dilatory debtor Isas (*SB XIV* 12172 [unknown, 7]):

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Πτ<o>λλάς ἵσατι
πλείστα χαίρειν
καὶ ὑγιαίνειν.

4 γίγνωσκε ὦτι
ἐν τῇ ἐπίστολῇ
ἡν ἀπέστειλα σοι
οὐκ ἐνἡντ ἑκεῖν

8 γεγραμένοις
ὦτι δός τινι τόκον
οὐ δὲ κεφαλαίαν.

12 ἔγραψα [δὲ] σοι

[τε] λέγων
ὦτι ἔστω ἡ τι
ἐξ ὧτοι κέρδησαι
τὸ κερμάτιον,

16 οὐ δὲ φάσιν
ἀπέστειλαν ἐμοί.

20 ἔχρησα σοι. εἰδὼς
τὴν σὴν πίστιν
οὐδενε ἔδωκα
τὸ γράμμα. <ἀ>ν εὐρησ.

24 τινα πιστόν

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300 Ptollas was a “slow writer” (cf. Youtie, *Scriptunculae* II, ch. 30) and this letter has errors and phonetic spellings in more than half of the words. Ease of reading therefore requires that I reproduce Youtie’s corrected text. A diplomatic transcription and notes on the linguistic aspects of this letter are available in the *ed. pr.* (*ZPE* 28 [1978]: 262-64).
Ptollas to Isas, abundant greetings and good health. Know that in the letter which I sent you, there was not included in what was written there the statement: “Give the interest to someone but not the principal.” I wrote saying that it is two years since you borrowed the money, but you sent me no word. For if I had not known that you are trustworthy, I would not have lent it to you. Knowing your good faith, I gave the note to no one. If you find someone trustworthy ... send the interest and the principal. Year 37 of Caesar, Thoth 5. Farewell.  

Ptollas had lent Isas a sum of money over two years ago, but Isas seems only to have made some interest payments without returning the capital—or at least this is best sense I can make of Ptollas’s sardonic remark that his first collection letter did not instruct Isas to send the interest but not the principal. In any case, Ptollas begins by upbraiding Isas for not responding to that first letter, even though two years had elapsed (the loan was almost certainly overdue), and then warns him that he is now risking his reputation as well as a visit from some sort of collection agent to whom Ptollas might give the *gramma* (lines 22-23). Although we might regard such a step as the “real” threat, it was not the only—or even necessarily the most serious—threat. Instead of proceeding directly to collection procedures (and again, it is worth noting how long he had already waited), Ptollas attempted to enforce the contract in the first instance by writing a

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301 Trans. *ed. pr.*

302 *Pace* Youtie, who insists that the “letter maintains from start to finish a smooth, courteous, friendly tone” (*ZPE* 28 [1978]: 262).
series of letters aimed at helping them both avoid the unpleasantness and expense of forced collection.

This letter is the first arrow in Ptollas’s enforcement quiver: the threat of loss of reputation. In reminding Isas that the only reason he had loaned to him in the first place was that he “knew” him to be *pistos*, Ptollas insinuates not only that he is unlikely to loan to Isas again, but also that no one else will loan to him if it gets about that he is not *pistos*, for trust is the basis of credit (a distinction difficult to convey in Latin or Greek). Ptollas hammers this message home by saying that it is only Isas’s *pistis* that has kept him from handing over the debt to a collector. Here we may cite Boyaval’s recent argument (2001: 70-73) that the use of *pistis* in a Jewish metrical inscription from Leontopolis in Lower Egypt (Bernand 1969, no. 70) celebrates not the deceased’s religious “faith,” but rather his “social credit,” or reputation, in his community. If one’s *pistis* was worth commemorating in public, then here we should see both forms of “credit” as at stake (and indeed, perhaps one and the same). Indeed, it is easy to see how *pistis* came to mean “security,” for Isas’s reputation in every sense is Ptollas’s hostage. The same property that makes trust the foundation of contracting also made it an important and effective tool in the enforcement of contracts.


304 Cf. Schmitz 1964: 5-7, 34-48. For the idea of hostage-taking in contracting, see Chapter 2.
We find another interesting example of *pistis* and reputational enforcement in a letter from a Jewish woman Johanna to a certain Epagathos (*P.Bad. II* 35, lines 2-11 [Ptolemais Hermeiou (Thinite), 87]):

ὀ[ν κ[αλ]ῶς ἐποίησας ἄπαντα ὑπάλληλον]
καὶ παραβάσας σου τὴν συνταγή[ν τήν]
καὶ ἐπιδεξαμένην με κ[υρίαν εἶναι]
(δραχμῶν) καὶ τῶν τόκων (ὶ. τῶν τόκων) ἀλλὰ κ[εφ][άλας][ὸν μὲ]
ἵσχεσθαι (ὶ. ἱσχεσθαι). ἥμαξο, πῶς τὴν πίστιν
ζευγής μὴ μ᾽ ἀνανκάζεις

ο[ν, θέλο ποιῆσαι καὶ ἐπὶ τόπων]
τὸ[πόν] διαπρέπαι σε μηδὲ ἐπιστο[λη]
δια τὸν μεκαπη τὸ τόκος σήμα ἐστὶν
τούτο ἀγνομοσύνης.

You have not done well by having [changed?] everything and transgressed your agreement, which accepted that I was the [owner of] the 20 dr. and the interest. Allow me
to have the principal. I am amazed that you have gone back on your word. Do not force me then [...].³⁰⁵ This is a sign of your lack of consideration.

Johanna starts in immediately after the greetings with a charge of faithlessness with regard to some sort of “agreement” involving a loan. The details cannot be recovered, but it seems tolerably clear that Johanna believes Epagathos to have loaned out twenty *drachmai* in his own name, but with the understanding that the money was in fact hers. Now he has apparently gone back on his word, and Johanna would seem to have no proof other than his word that the money was in fact hers. One surmises this from the fact that she calls their relationship a συνταγή, a term which nowhere denotes a written contract. No doubt it was improvident of Johanna not to have gotten her agreement with Epagathos in writing, or even to have had the loan made in his

³⁰⁵ Tcherikover and Fuks (*C.Pap.Iud II* 424), largely following Bilabel’s suggestions, offer the following translation for lines 7-10: “Don’t compel me then—I want to make you act on the spot and not by letter, lest I lose the interest too” (but see the suggestion of Olsson 1925 for the nonsense in line 10).
name at all (if we are to believe her), but there may have been good reasons at the time.

Whatever the particular circumstances that led to the transaction, the vocabulary of this letter is illuminating as to the role trust played in contracting decisions.

Central to any interpretation will be our understanding of the syntagē. Did Johanna have a “contract” with Epagathos, and if so, of what sort? In fact, syntagē is not a usual word for contract. To judge from the papyrological record, it is not a word for contract at all: almost all instances of the word carry the meaning of “order” or “command.” The only cases in which it could be interpreted to mean something like “contract” are much later, e.g., the fourth-century P.Kell. 11, 74, and 80, in which the editor vacillates between translating the phrase κατὰ τὴν συνταγήν in all three as either “according to the arrangement” (11) or “according to the order” (74 and 80). Tcherikover and Fuks in their re-edition of the papyrus (C.Pap.Iud. II 424) wondered whether σου in line 3 was a mistake for μου, so as to accommodate a meaning of “order” here. This could well be correct: Johanna could have given Epagathos something like a mandate, which “order” he accepted (cf. ἐπέδεξαμένην) but is now disregarding. Nor does such a reading necessarily depend upon the pronoun: in saying that Epagathos had “transgressed his order,” Johanna could mean that he had trangressed the order he had received (an objective understanding of the “order” she had given him). 306 While there is some support for this interpretation, there are, I think, better grounds for seeing the pronoun σου as correct and syntagē as meaning “agreement.”

306 I thank Prof. Bagnall for this suggestion. I have yet, however, to find an example of such an objective use of an order or mandate.
Before proceeding with this assumption, we might wonder whether the *syntagē* an “order” in the sense of a “mandate.” *Syntassein* was a regular verb for “to order, to give instructions,” and most attestations occur in either official contexts or orders given to inferiors. While there are no examples of mandators using *syntassein* to describe their instructions to mandatories, we do find instances of *prostassein* so used. Thus, for example, in *P.Oxy.* VII 1062 (Oxyrhynchos, II) a certain Markos rebukes Matreas for not sending some fleeces. Matreas had altered Markos that he was in a position to buy good fleeces, suggesting that “the summer ones are best” (4-5). Markos took him up on his offer: περὶ τῶν πόκων σου ἐπαγγελλ[ο]μὲνοι | καλὰ ἀγοράσαι ... | σ[ο]ὶ π[ρ]οσταξά- | μὴν ὅτι ὅταν καλὰ γένηται τὸ[τ]ε | ἀγόρασον (3-7: “About the fleeces, since you promised to buy good ones . . . I instructed you: ‘Whenever they are good, buy.’”). Also, the word that was used to translate Roman law mandate in later Greek was ἑντέλλομαι and its derivatives.307 It therefore seems somewhat unlikely that this is what *syntagē* means here.

*Syntagē* routinely means “promise” or “convenant” in Christian writings from the fourth century onwards (with a small “c”: the Covenant of the Law is usually referred to as the *diathēkē*), often denoting a vow made to God or a promise made on the basis of faith. However, it appears at least once in the literary corpus with the sense of a more mundane, contractual “agreement” or “promise,” the promise to betray Jesus for thirty pieces of silver (Eusebius, *Demonstratio evangelica* 10.1). This use is likely paralleled in the Septuagint, *Psalm of Solomon* 4:4-5, a poetic discourse on the hypocrite, whose tongue swears false contracts (ἳ γλῶσσα

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307 Mitteis 1912: 261, 269; cf. Preisigke 1915 *s.vv.* ἑντέλλομαι, ἑντολή, ἑντολεὺς; *LSJ* *s.vv.*; and Goetz and Gundermann 1888 [1965]: 300.
αὐτοῦ ψευδῆς ἐν συναλλάγματι μεθ’ ὀρκοῦ and who “speaks” with his eyes to every woman “in an agreement of evil” (ἐν ὀφθαλμοῖς αὐτοῦ λαλεῖ πάση γυναίκι ἐν συνταγῇ κακίας). The contrast here between synallagma and syntagē could be that between a contract and an order, but this section of the poem is characterized by a rich interplay between lying words (spoken miscommunication) and knowing glances (unspoken communication), and so it is more in keeping with the overall theme of hypocrisy to see the distinction as that between a formal contract sealed by an oath and an informal, indeed unspoken, agreement “written” (as we would say) “in his eyes.” Sadly, no Hebrew version of the Psalms of Solomon survives to help us understand why the translator chose syntagē, though its resemblance with other words for contract, e.g., synchōrēsis, synthēkē, synallaxis, and, of course, synallagma, may have recommended it as a word that could represent something like an informal “agreement.”

There was, however, another word that the translator could have chosen to have accommodated his needs: συνταξίας. We can see these two near-relatives as rivals for the meaning of “informal agreement/contract” during the the Hellenistic period, as attested to by section 47 of the Ptolemaic Revenue Laws (Arsinoite?, 259 BCE), which I will discuss below. In the middle (and the passive of the middle) syntassein had long meant “to agree” (i.e., syntassesthai, cf. LSJ, s.v. συντάσσω, III). Nouns of the type –ή, –σις, and –μα (e.g., syntagē, syntaxis, and syntagma) are all verbal derivatives, but whereas the first two usually denote abstract verbal notions, the third typically designates the result of an action. The –μα form therefore competed with nouns of the first two types less frequently and intensely, while the first two were often in direct competition with each other. The pattern of nouns derived from syntassein bears out this general rule: although we find some overlap between all three,
syntagma is never used in the sense of an agreement, which is to say that its various meanings represented the products of syntassein (active). On the other hand, in the Hellenistic period syntagē and syntaxis appear to have been equally available to denote the action of, or it would seem from above, the product of syntassethai (middle). Given the evidence of P.Kell. and the Christian writers—and now P.Bad. II 35—it would seem that syntagē had won out by sometime in the late Hellenistic or Roman period. This was not unreasonable result given the plethora of technical meanings that had accrued to syntaxis over the same period.308

P.Bad. II 35, then, affords us a rare glimpse into a little-known corner of philological history. In a way, we should not be surprised to find such a word in this particular letter, as it appears to have been written by Johanna herself (i.e, without the mediation of a scribe who might have chosen a different word). In other words, what we hear here is the voice of informal business relations—though “business” may be too overdetermined a word in this instance. There is also no reason to suspect that it had a “Jewish” ring to it. As stated above, we can do nothing but speculate as to why the translator of the Psalms of Solomon preferred it to syntaxis, though perhaps his reasons were not so very different from those that contributed to its eventual success in the later Roman period (i.e., the other meanings of syntaxis). Similarly, we should see subsequent Christian usage as reflecting just the sort of popular speech we have here rather than the assumption of some particularly “Jewish” vocabulary that Johanna would have drawn on in the first century. Here we are reminded again of Boyaval’s suggestion that the best interpretation

308 Cf. Preisigke, Wörterbuch, s.v.
of pistis in the Jewish metrical inscription from Leontopolis is grounded not in the religion of the deceased but rather in contemporary linguistic conventions.

So, why did Johanna use this word, and what would it have likely meant to Epagathos?

The place to start is section 47 of the Revenue Laws:

[συνταξιο|ας 
δε προς τους έλαιους |περι της] ρύπεως 
tου έλαιου μη πο<ι>ειθω μητε ο οικονόμος μητε ο πρα-
γματευόμενος την ώνην παρευρέσει μηδεμια,

4 μηδε τα όργανα τα εν τοις εργαστηρίοις του αργον 
tου χρόνου άσφραγιστα ἀπολειπτώσαν. έαν δε συν-
tαξιωναι προς τινας των έλαιουργων ή άσφραγιστα 
tα όργανα απολειπο[ς]ιν, άποτε[ε]ινωσαν εις μεν

8 το βασιλικόν έκαστος των αιτίων άργυρων (τάλαντον) α 
και έαν τινα/ ή ώνη έγδειιαν ποιη.

Neither the oikonomos nor the manager of the contract shall make an arrangement with the oil-makers concerning the flow of the oil on any pretext, nor shall they leave the implements in the factories unsealed during the time when there is no work. If they come to an arrangement with any of the oil-makers or leave the implements unsealed, each of the guilty parties shall forfeit one talent of silver to the Crown and make good any deficit incurred by the contract.

The agent appointed by the oikonomos and the antigrapheus shall register the names of the dealers in each city and of the retailers, and together with the managers of the contract come to an arrangement with them as to how much oil and castor oil they are to take and sell from day to day; and in Alexandria they shall come to an arrangement with the traders; and they shall draft a written contract with each of them, with those in the country every month, and with those in Alexandria ...
The fact that the regulation speaks in terms of *syntaxes* instead of *syntagai* presents no real difficulty: as we have seen, there were simply alternative substantives for *syntassesthai* in the Hellenistic period. Particularly instructive in this section is the distinction drawn between an “arrangement” and a “contract.” The legislator understands a *syntax* as the product of mere agreement, which may in turn be formalized in a *syngraphē*. The written document prescribed in this section of the *Revenue Laws* is not essentially different from the *syntax* on which it is based: the *syngraphē* is envisioned merely as a legally recognized and defensible record of the agreement ( ... ἐν Ἀλεξανδρείᾳ δὲ συντασσόμεθαν | πρὸς τοὺς παλινπρατ[ο]ύντας, καὶ συγγραψάμεθαν | [πρὸς] ἐκ[α]στ[ο]ν συγγρα[φ]ῆν ... ). In other words, its importance is procedural: the formalization of the *syntax* in a *syngraphē* will help protect those contracts for which the state was concerned to have a firm record. By the same token, there can be no question of a *syngraphē* in the first portion of this regulation concerning the agents and the producers. The point of this section is precisely that it is illegal for the state’s agents to collude and come to side agreements with the producers. No one was going to draft such a *syngraphē* (as opposed to some informal written memorandum of understanding), much less sue on it; the state was merely making its position clear by explicitly ruling even such (necessarily) informal agreements out of bounds.

This idea of the *syntagē* being an informal agreement fits well with the rest of Johanna’s letter, particularly as her language throughout is moral, not legal. This is signalled from the outset, as she begins by taxing Epagathos for “not doing right” by having “transgressed” their agreement, amazed that he should have “gone back on his word.” As we will see in Chaps. 5 and 6, *kalōs echein* (in this case, *kalōs poiein*) is commonly associated with breach in petitions
(i.e., breaching is the opposite of “doing right”), while parabainēn is a verb often used to denote breach of contract in the Roman period. Both, however, were originally moral terms, and while they take on a particular legal color in contracts and contracting disputes, they do not for that reason lose their primary moral valence. Johanna also says that the syntagē “accepted” that she was the owner of the principal and the interest. The verb she uses here is, like syntagē, odd and unparalleled, but similarly revealing, since it routinely communicates the sort of moral obligation on which proper legal obligations were established, without implying that such an obligation existed as such.

*Epidechesthai* ranges in meaning from “to admit” or “allow” to “to undertake” in more formal legal settings (e.g., as in a liturgy or a contractual obligation), with all meanings stemming from the basic sense of accepting. It comes to be an increasingly common verb in applications for leases and contracts of various sorts (particularly but not exclusively in the Oxyrhynchite nome) after the middle of the second century—a fact due at least as much to the growth of such one-sided applications (often generically called *hypomnēmata*) as to changes in diction over this period. An ἐπιδοχαί signalled an offer to undertake an obligation, on the condition that the offer was accepted and confirmed in a legal contract. A good example is *P.Oxy.* II 279 (=W.Chr. 348; Oxyhynchos, 44-45), an early Roman lease application in which a certain Theogenes applies to the basilikos grammateus to say that he is willing to undertake (i.e., will accept) to pay a proposed rent on the farming of a particular piece of gē basilikē if it should

309 Cf. Preisigke and Preisigke-Kiessling *Wörterbuch* and LSJ, s.v. ἐπιδεχομαι.

be contracted to him (ἐπιδέχομαι, συνχωρηθείσης[5 μ]οι ... τῆς γεωργίας, ... τελεῖν...). Epidechesthai must be contrasted in this light with another important verb in the contracting process, homologein, which signified that one or both parties have acknowledged their obligations. Whereas epidechesthai represents a promise to undertake, which, strictly speaking, is tendered prior to and conditional upon a formal contract coming into being, homologein is theoretically and typically post eventum, a recognition of the existence of a formal obligation. This difference is explicit in documents like P.Oxy. XVII 2109 (Oxyrhynchos, 261), a public notice of the offer tendered by Aur. Horion son of Kolluthos and Tereus to lease premises belonging to the city of Oxyrhynchos. The offer was converted into a binding contract only after it was formally accepted, as stated in the original epidochē (ἐὰν δὲ μὴ κυρωθῶ, οὐ κατασχε- | θῆσομαι τῇ ὑποσχέσει, lines 52-3, cf. lines 36ff: βεβαιομένης δὲ μοι τῆς | ἐπιδοχῆς, χρῆσομαι τῷ ἔργα- | στηρίῳ ... | καὶ ἀποδώσω ... ), and indeed as implied by the advertisement period itself (the purpose of which was to solicit other bids before letting out the contract) and the extensive use of future verbs in this and most epidochai. Such offers, if accepted, were then confirmed (bebaioun) and reduced to legally valid contracts (kyroun) by homologiai over the contents of the offer, as we see in the Tebtynis registers, e.g., P.Mich. II

311 The drafter lost his place in the construction and wrote τελέσω (i.e. fut. ind., first person sing.) instead of the infinitive.


The entire force of *epidechesthai* in this context thus revolves around the notion of promise, which accounts for the common qualification of the offer to undertake as ἐκουσίως (over 100 examples from the second to sixth centuries, including *P.Oxy. XVII* 2109). As recognized in most legal systems, promises are only meaningful when made by free agents (hence the exceptions for duress, fraud, mistake, etc.), and here the explicit characterization of the undertaking as “free” or “willing” underscores the promissory nature of the offer. But mere promises *qua* promises did not (and in most legal system do not) of themselves establish a legal liability. Technically, there was no legal obligation to do what one had promised (i.e., pay the rent, farm the land, etc.), unless and until the offer was accepted and the deal ratified. Only on this condition was one to be legally bound by one’s promise (cf. ἐὰν δὲ μὴ κυρωθῶ, οὐ κατασχεθῶσαι τῇ ὑποσχέσει), and this binding was signalled by the act of acknowledgement, the *homologia*. In this light, it is perhaps significant that Johanna did not write that in his agreement Epagathos had (legally) “acknowledged” (e.g., ὡμολόγησεν; cf. *P.Mich. III* 203, n255 above), or that the *syntagē* had “stated” (e.g., διαγορευόσην) or

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314 It may be noted that *P.Oxy. XVII* 2109 mentions that this particular *epidochoi* was itself “acknowledged” (κυρία ἐπίδοχη, 50-1). This is a different sort of *homologia* from those recorded in the Tebtynis registers. It represents a later formality, the so-called “stipulation-clause” (see Simon 1964: 49-51; cf. Maehler 2005). What is being acknowledged in this clause is the formal (i.e., legal) extension of the offer itself, which has no bearing on the acceptance of its contents. Before the introduction of the stipulation-clause in the third century, *epidochoi* simply stated κυρία ἐπίδοχη (e.g., *P.Oxy. III* 498 and *SB VIII* 9918, both second century Oxyrhynchite).
“acknowledged” (e.g., διομολογούμενη) that the money and interest was hers; there was merely an “agreement” that “accepted” that it was so.\(^\text{315}\)

Epagathos’s obligation was moral, not legal, and what he had breached was trust, not a formal contract: “I am amazed that you have changed your faith.”\(^\text{316}\) Here, then, we have an informal contract—an agreement, a transaction, perhaps even the offer to undertake an obligation (if we are to read more into the use of *epidechesthai*)—existing somewhere in that zone of contracting relations, but characterized as outside the law of contract (see Fig. 3.3 above), even as it used some of the contemporary language of contract (cf. Chaps. 5 and 6). In keeping with that character, it thus depended on trust, not law, for its formation and its enforcement. This is not to say that Johanna therefore had no basis for a legal claim, for others in similar situations resorted or threatened to resort to going to law (cf. the discussion of *P.Fay*. 124, pp. 208ff.); she did not, however, have the makings of a promising suit. But even this is perhaps to miss the most important point: she clearly did not envision such an eventuality when she made her arrangement with Epagathos.

Johanna’s language was meant to evoke a contractual responsibility that approximated a legally defensible contract. However, since her agreement had not been reduced to a legally formal contract, her chief weapons—and not merely her opening gambits as in the case of Ptollas and Isas above (pp. 155ff.)—were shame and self-interest. Given the tone of the rest of the letter,

\(^{315}\) I understand ἐπισεξαμένη as intended to operate on a sort of forced analogy to the participles used to relate the contents of contracts in petitions. For an example of *diagorein* see *P.Enteux*. 59 (pp. 260ff.); for *diomologeisthai*, see *P.Polit.Iud*. 9 (pp. 338ff.).

\(^{316}\) Cf. *P.Lips*. I 107 (Theadelphia, 253): ἐθαύμασα πῶς μέχρι σή- | μερον ούκ ἀνηλθήτα| ἐς ἄλλα- | ξας τὸν λόγον. Cf. Sec. 5.6.2 below.
which does not suggest an imminent break or a threat of escalation à la Ptollas v. Isas, we should see shaming as her primary tactic in this letter. That said, there is an appeal to self-interest here, for she says (after a sadly garbled passage) that his behavior would be a “sign of agnōmosynē.” This is not a chance word, but one deeply implicated in the language of contracting and trust, along with its opposite, eugnōmosynē and its cognate forms.\(^3\) Johanna is warning Epagathos that his behavior may be interpreted as that of an agnōmōn, just as Ptollas reminded Isas that his reputation for pīstis hung in the balance with his loan. We may gather immediately that one did not want to become known for one’s agnōmosynē, but what precisely did this mean, and what connection did it have to contracting?

\[^3\] Indeed, the glossators understood *fidelis* as a translation of both πιστός and εὐγνώμων: Goetz and Gundermann 1888 [1965]: 71 (s.v. *fidelis*) and 316 (s.v. *eugnώμων*).
4.5 The Social Dynamics of *Agnōmosynē* and *Eugnōmosynē*

Like *pistis/pistos, eugnōmōn* and *agnōmōn* are words that originated in the moral realm and only gradually took on specific commercial or legal meanings as they were progressively subsumed by the world of business and contracting. The following discussion takes into account virtually every attestation of the word in the papyri until the mid-fourth century. As far as I have been able to determine, the term has never been subjected to analysis.

Both words speak to the quality of an agent’s will or intentions with respect to others—whether, in other words, he or she has a good regard for other people or no regard for them at all. 318 We might translate the pair initially as “considerate” and “inconsiderate,” though this does not accurately communicate the characteristically Greek opposition of the prefix ευ- and the *alpha* privative. So, for example, a man complains of a woman who appears to pay him little attention (the editors suggest that he has a “crush” on her) as being “completely inconsiderate” (ἀγνωμονεστάτη), adding later that her failure to bid him good-bye is characteristic of her *agnōmosynē*. 319 This points, of course, to a norm as to what sort of regard one owed people.

Particularly telling in this connection is the parallelism constructed in a petition from the famous twins in the Serapeion in Ptolemaic Memphis to Ptolemy and Kleopatra Philometores, with the twins praising the previous royal decision to grant their request as emanating from the monarchs’

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318 Cf. Pollux, *Onomasticon*, 4.7-14, where he collects both under the general rubric of *epistēmē*, presumably a sort of knowledge of how to treat others.

319 *SB* XVIII 13867 (unknown, mid II), lines 66-8, 98-101. Cf. *P. Lond.* VII 1946 (Philadelphia, 257 BCE), a letter in which the author hopes to have others write a recommendation for a friend so that “they may treat him with consideration” (6: ὃπως ἂν ἑπιγνωμόνως [ὁ ἑγγονόμων] χρήσωται; cf. 1945.4-5). Here the editors suggest that being “fairly treated” is a euphemism for being allowed to transport items without having to pay duty on them (*ed. pr.*, p. 33).
“reverence for the divine and their consideration for all mortals” (πρὸς τὸ θεῖον εὐσέβειαν καὶ πρὸς πάντας ἄνθρωπους εὐγνώμοσύνην). Balanced here are the correct relations with both gods and humans, with each relationship constructed upon the recognition of the proper debt one owed to each, fear or worship on the one hand, and cognizance or respect on the other. By the same token, those who blatantly and callously disregarded other people’s “rights,” both narrowly and widely conceived (i.e., based narrowly on a particular status, law, or privilege; or widely on what we would call “human rights”), were open to charges of agnōmosynē, as we see in numerous complaints and petitions from the Ptolemaic period.

While one was always obliged to relate to others of the same status or higher with “consideration,” it was not always for the same reasons. For instance, one owed a debt of respect to one’s parents because they were one’s parents. Thus we see a charge of agnōmosynē in a petition from the Herakleopolite nome, in which a mother asks an official to force her son first to return some grain he had sold in her name but without her permission, and second to delay yet


321 Cf. Pollux, Onomasticon 4.7-14, where the eusebeia and eugnōmosynē are also paralleled.

322 E.g., UPZ I 6 (Memphis, post 163 BCE): ὅξιοι se, βασιλεύ, μὴ ύπεριδεῖνυ | με παρ᾽ ἑκαστα υπὸ τῶν προγεγραμμένων ἑνωμούνος πολιορκουμένων | καὶ ὑπερθυμομένων καὶ ἀνούμοιούμενον (32-34, concerning what the petitioner saw as an unreasonable search and outright looting of the temple in which he was resident); BGU VI 1256 (Philadelphia, post 147 BCE): αδειο μὴ ὑπερ- | ἐδείν με ἑνωμονομένον (24-25, concerning the petitioner’s being impressed improperly as a lampadarch); P.Dion. 9 (Hermopolite, 139 BCE; on which see below, pp. 172ff.); PSI VII 816 (Aphroditopolis, II BCE: μηθάν ἀξίωσῃ ύπεριδεῖν [- ca. ? -] ἑνωμονομένον καὶ μεμαστηγωμένον ἀκρίτως (5-6, context unclear); and SB XII 15546 (Theadelphia, mid-II BCE; see B. Kramer’s comments in AfP 41 [1995]: 297-98 for context.). The word was common in Ptolemaic petitions, e.g., P.Tebt. III.1 793 iv; P.Heid. VI 382; P.Diosk. 12; and BGU VIII 1865. Compare also the connection of “consideration” with the justness of requests (qualified as ἴδια καὶ εὐγνῳσόνμην) in P.Cair.Zen. IV 59638 (unknown, mid III BCE) and P.Petr. III 53(j) (Arsinoite or Herakleopolite, mid-III BCE). Cf. Pollux Onomasticon 8.7, who collects agnōmosynē and cognates under the rubric of justice and injustice.
another duplicitous sale, this time of her slave, “if it seems right to him not to allow her to be treated unfairly by her heedless son.”

In a similar vein nearly five centuries later (339), a mother (Demetria) claims in a deposition that her son (Asynkritios), who died childless, “disregarded her” (ἐν οἷς ὑμὸνευευς) in his will. We have no indication of what precisely is meant here by “disregarded,” though presumably Demetria was passed over, even though Asynkritios had no direct heirs. By the fourth century mothers had gained the right to contest wills from which they had been gratuitously excluded (i.e., querella inofficiosi testamenti), and a rescript of 321 (CJ 3.28.1-2) confirms this right pursuant to an investigation as to whether the mother had been passed over for cause. Perhaps the deposition we have here is related to just such an inquiry. In any case, in both examples we have attempts to use the law to help enforce familial norms. This is not to say that no law had been broken; rather, the point is that the rhetorical argument in the first case, and the legal argument in the second (since the norm had been received into law as a standard), both depend on the existence of a norm of “consideration”

323 P.Hamb. IV 238 (pre 159 BCE): ἐὰν σοι φαίνεται . . . μὴ ὑπεριδεῖν μ’ ὑπὸ τοῦ ἀγνωσίμονος υἱοῦ κατα- βραβανθήνων (19-22; see ed. pr., note to lines 21-22 for discussion of katababeuein). Compare the formula here to those in the preceding note.

324 P.Harrauer 42 (Hermopolis, 339): ὁ ἐμέτερος εἶμι- ρος (l. εὐμοῖρος) υἱὸς Ἀσυκρίτης μέλλου (l. μέλλων) τὸν [βιον λιπε]ῖν ἄτεκνος | ὥν διαθήγας ἐπὶ[π]ήσατο δὴ [ἐν ἡγνὲωμὸνευευς] | τὴν μητέραν (4-7, see ed. pr. ad line 6 for discussion of the form agnōmoneuein versus agnōmonein.

325 Krüger 1939: 272; Kaser 1971: 711 and evidence in n15; cf. Kaser 1959: 365-69 (on the law before and after Just. Nov. 115 [542]). The (hardly surprising) norm was to include mothers in wills, though comparatively few were likely to be alive when wills were made. We do have a couple of later papyrus wills that name mothers as heirs: P.Princ. II 38 (Hermopolis, 264) and P.Oxy. XXVII 2474 (Oxyrhynchite, mid-III), cf. P.Cair.Masp. III 67312 (Antinoopolis, 567), in which Fl. Theodoros leaves his property to a monastery, a convent, and his (still living!) maternal grandmother (grandmothers were included in Just. Nov. 115). Several wills also leave property to women whose relations to the testator is unspecified (Montevecchi 1935: 81); perhaps some mothers lurk in this list?

or “respect” due to one’s parents that limited one’s purely “legal” rights in the eyes of others and the authorities.

One could also be heedless of one’s obligation to authority. Thus a certain Apollonios says that one Dikaios has been “inconsiderate” in not following his orders to send a subordinate with a key to a storeroom.\(^{327}\) Centuries later, we hear hear a Roman centurion bark that “his first letter should not have been ignored,” and that he expected the recipient to come immediately upon the receipt of the second letter.\(^{328}\) On the other side of this sort of relationship, we have the writer of *BGU XI* 2129 (Alexandria?, II), who is forwarding a copy of a *prostagma* concerning veterans issued by a high official to his fellow veteran Agrippianos. He urges Agrippianos to share the contents of the order with all their friends “so that we do not appear heedless before the *epistratēgos*.”\(^ {329}\) Kings did well to render the justice their subjects deserved, but inferiors did better to recognize the debt of obedience they owed their superiors.

A sense of obligation or debt also arose from promises. Hence we hear again from the twins in the Serapeion that although Achomarres, the temple supervisor, had been called on the carpet by Psintaës, the “*epistatēs* of the temples,” and ordered to pay the twins what they were owed in back wages, this “most inconsiderate of men” nevertheless promptly reneged on his

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\(^{327}\) *P.Yale I* 39: ἀγνώμων γέγο-| νας μὴ οὐκ ἄποστει-| λας Σαραπίωνα | τὸν παρὰ σοῦ κο- | μίζουν τὴν κλει- | δα τοῦ Πεταιρω- | πος ταμείου, κα- | θῶτι ἐτάξω. The papyrus has no provenance, and though clearly Ptolemaic, the date is now in question since it is unclear as to whether or not it belongs to the Leon archive (see W. Clarysse: [http://www.trismegistos.org/arch/archives/pdf/131.pdf](http://www.trismegistos.org/arch/archives/pdf/131.pdf), Jan. 2, 2007). As the present discussion makes clear, there is nothing “polite” about the term, as the editors suggest.

\(^{328}\) *SB VI* 9290 (mid II, unknown): ἐδεί σε καὶ τὰ πρῶτα γράμματα | λαβόντα μὴ ἄγνωμονήσαι, | ἀλλὰ ἐλθεῖν πρὸς ἐμὲ | . . . | . . . καὶ νῦν δὲ | τὰ γράμματα ταῦτα λαβὼν | ἐλθεῖ πρὸς ἐμὲ (2-9).

promise to do so when Psintaës left Memphis. Achomarres’ brazen repudiation of his promise appears to be the act that wins him the distinction of being superlatively inconsiderate, yet this was surely the straw which broke the camel’s back: by rights he had already earned the epithet agnōmōn from his refusal to recognize both what he owed the twins in the first place and the obligation to follow the express orders of his superior.

A clearer example of a promise establishing a sense of obligation comes in P.Giss.Bibl. III 20 (=Sel.Pap. 1 117), a letter from Trajanic Alexandria. The writer, after dealing with sundry other business, turns to the trouble he is having rounding up documents related to some slave sales. At one point he says that a certain rhētoriskos, who had purchased a slave from the addressee, “though frequently having promised to tell us the date of the sale, ignored us” (15-17: πολλά- | κις ταξάμενος τὸν χρόνον ἠμῖν εἴπεῖν | τῆς ὤ[νή]|ς ἀγνωμόνησεν). The sense in which this man had “treated them inconsiderately” was by not recognizing that he owed them a duty on the basis of his promise. As in the letter of Kopre’s above (SB III 6264, pp. 141ff.), in which her failure to perform shaded immediately into failure to keep faith, so here the assumption is that failure to keep the promise was in fact a callous refusal to do so. Or, perhaps more accurately, the failure of this “petty pleader” to do what he said he would is perceived through a subjective lens: whatever his reasons, he evidently did not have enough regard for the writer and his correspondent to keep his promise to them.

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330 UPZ I 42 (Memphis, 162 BCE): καὶ προσκαλεσάμενος τὸν Ἀχομαρρήν | συνέταξεν ἀποδοῦναι ἡμῖν τὰ ὀφειλόμενα. ὁ δὲ πάντων | ἀνθρώπων ἀγνωμονέστατος ὑπάρχειν ἡμῖν μὲν ὑπέσχετο | τὸ προκείμενον ἐπιτελέσειν, τοῦ δὲ τοῦ Ψινταέους ὕποι ἐκ τῆς | Μέμφεως χωρισθέντος οὐκέτι | οὐδένα λόγον ἐποίησατο. See Thompson 1988 : 110-12 for the personalities involved here.
4.6 The Business Dynamics of Agnōmosynē and Eugnōmosynē

From these sorts of obligations or debts one moves easily to monetary debts and contractual obligations. First money. It would seem that a sense of obligation arose directly from the holding of another’s property, not from the promise to pay it back. A good illustration comes in P.Cair.Zen. IV 59651 (Philadelphia, mid-III BCE), a memorandum and petition to Zenon from Nikarchos. Nikarchos claimed that his partner Dionysodoros owed him for various operating expenses and cost overruns associated with the farming of land leased (presumably) out of Apollonios’s estate (hence the petition to Zenon). After reckoning the debt as it then stood, Nikarchos made the following request:

12 καλῶς ἄν ὁ ἑ [ν] ποι- ἔσαις ἐπαναγκάσας, ἐπειδὴ αὐτ- τὸς ἄνωμων ἔστιν ἑκἀ- λει εἰς ἐνεγκαί, ἣν εἰς τὴν γῆν ἀνή-

16 λωθῆ, τὸ μὲν ὀμόλογον ἡδή ἀπο-

doύναι, περὶ εἰ <δέ> τινος ἀντιλέγει ... ἵσταμε [ ... ] αὐτὸν λ[ - ca. ? - ]

Traces of 1 line

Therefore you would do well—since he is agnōmōn and does not wish to pay—to force him to pay the amount he has already acknowledged, in order that it may be spent on the land; but if he disputes anything ...

Dionysodoros is “inconsiderate” because he does not wish to pay a debt that he has acknowledged. As shown in the discussion above (pp. 166f.), his acknowledgement or agreement (τὸ μὲν ὀμόλογον) as to what he owed is not so much a promise as a recognition of the existence of a debt, and to repudiate this is a sign of disrespect for both the person owed and the social norm of obligation (recall the similar sentiments of P.Erasm. I 1 above with regard to
trust, p. 121). Significant, however, is the fact that Nikarchos is anticipating a counter-claim from Dionysodoros, not as to the fact of indebtedness but with respect to the amount that is owed. We see the same thinking in *P.Cair.Zen* IV 59355 (＝*C.Ptol.Sklav*. I 49), a long and fascinating account of a loan by Zenon to Philo, Apollonios’s baker, for 900 *drachmai*. The account is appended to documents relating to litigation over the loan initiated by Philo. In Zenon’s request to be referred to a judge he claims that he has “been put off for a long time by Philo’s *agnōmōs*” (108-9: [πλ][ει][ω γ]άρ χρόνον[ν π]αρειλκυσμε[θα δια τήν] | [Φ][ι][ων ος ήν, άγνωμου[ος ν]ην), which has in turn caused the usual host of negative consequences (additional expense, lost work, etc.). Again, merely the act of disputing the amount apparently exposes Philo to a charge of being unwilling to pay, and strictly speaking this is true: he is refusing to honor the obligation as his creditor has defined it. Lost in the shuffle in both cases, however, is the notion that there may be a good faith disagreement as to the size of the outstanding debt.

The other side of this coin is the sort of consideration expected of those who recognized their debts. Thus, we have a letter from Teos to Zenon concerning the settling of accounts (*P.Cair.Zen*. III 59516 [Arsinoite, mid-III BCE]):

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331 For the circumstances of the loan, see Würstle 1951 and Orrieux 1983: 36-37.

332 Cf. *P.Col*. IV 121 (Krokodilopolis, 181 BCE), a letter from a certain Lysimachos, who appears to be an official, to a group of joint-lessees who were in arrears with respect to their lease of a garden: οὐ διαγεγρα- | φηκότες τά προσοφειλόμενα πρός τὴν μίσθωσιν τοῦ παραδείσου | σὺν οἷς ἔξεδέσατο ὑμᾶς Ἀρπαλός (τάλαντα) ίγ/ ἀγνώμονες <ἐν>έθε (1-3). He then threatens to jail them unless they pay immediately upon receipt. The term here sounds quasi-technical: “If you have not paid the additional amount you owe with respect to the lease of the garden (i.e., 13 talents), for which Harpalos stood surety for you, you will be ‘defaulters.’” The letter has been interpreted as relating to taxes the lessees owe the state as a consequence of the lease (the garden was located on royal and gift land, *P.Mich*. III 182.18, cf. *P.Col*. IV 122, a circular concerning Lysimachos’s visit in order to collect *ta prosopheilomena* in their districts). If so, *agnōmōn* here, seemingly uniquely, describes their status vis-à-vis the state. Cf. pp. 265ff. on *P.Mich*. III 182 and 183.
Τέσσερεις ευχαριστήρια

Ο Θεόπομπος άρχισε να μας περιγράφει την κατάσταση με το Νεολαίων, την επικοινωνία και την κατάληξη της συνεργασίας. Μάλιστα επικοινωνεί και τις αιτήσεις του για την επικοινωνία με τον Νεολαίων. Μεταξύ των γεγονότων της γραμματικής κατάληξης, ο Θεόπομπος καθιστά την επικοινωνία με τον Νεολαίων ελάχιστη και τα πράγματα, που χρειάζεται να μας περιγράψει, επικοινωνούν στην επικοινωνία με τον Νεολαίων. Μας περιγράφει την κατάσταση με το Νεολαίων, την επικοινωνία και την κατάληξη της συνεργασίας. Μάλιστα επικοινωνεί και τις αιτήσεις του για την επικοινωνία με τον Νεολαίων. Μεταξύ των γεγονότων της γραμματικής κατάληξης, ο Θεόπομπος καθιστά την επικοινωνία με τον Νεολαίων ελάχιστη και τα πράγματα, που χρειάζεται να μας περιγράψει, επικοινωνούν στην επικοινωνία με τον Νεολαίων.
Here we see Teos establishing his credentials as someone with the proper respect for debts. Zenon appears to have pre-paid for the honey, or perhaps more likely had some sort of a running account with Teos (hence the need for Theopompos to come and settle accounts and Teos’s offer to pay the rest in honey or cash, according to Zenon’s wishes). Teos begins by apologizing for the delay and the waste of Theopompos’s mission, insisting that he is not (as Philo was accused of doing) “putting him off,” and then carefully reckons what has been paid and what is still owed. The force of lines 23-26 reiterates his concern to return whatever he still owes with convenience and speed. Finally, he volunteers to give an account in person if Zenon does not wish to send another agent about this debt (cf. lines 9-12). This is the proper conduct for one who wishes to be seen as trusted and eugnōmōn by a creditor and a business partner.

One might also hope for a proper accounting of the bill by a debtor with a proper respect for his debt. At the quoted price per chous, 100 choes should equal 150 drachmai, not 160. At this value, the honey is being sold at a price of 9.6 obols per chous (presumably 9 obols and 5 chalkoi). In P. Cair. Zen. IV 59570, an account also belonging to the Zenon archive, we find a price for honey of 16 silver drachmai per metrētēs, or the equivalent of 8 obols per chous. A price difference of one obol per chous (8 in 59570 and 9 in 59516) is obviously within the normal range of prices (i.e., Teos is not gouging Zenon on his quoted price), but a 10-drachma mistake or premium on the total, given the point of this letter, would seem to be embarrassing to his claim of eugnōmosynē. Perhaps we should understand the price per chous as quoted in

333 1 drachma = 6 obols. The quoted price of 9 ob. per chous = 1.5 dr. per chous, or 150 dr. for the 100 choes in the letter.

334 1 metrētēs = 12 choes. Hence the honey is being sold for 1 1/3 dr. or 8 ob. per chous. The author of the account in fact miscalculated his subtotal for honey: it should be 348 dr., not 349 dr. (line 22).
fractions of silver drachmai, but the debt with Zenon reckoned in bronze drachmai. At about this time there was an approximate 10% surcharge to convert bronze to silver. The discount rate conveniently attested in the more or less contemporaneous P.Cair.Zen. 59570 is 13:12, giving us a slightly low agio of 8.33%. At this rate a total of 150 silver drachmai would equal 162.5 bronze drachmai. If this is what is going on, the 160 dr. value set on the honey by Teos represents an agio of just 6.67% at 9 ob. per choos. On this theory, Teos could be giving Zenon a bit of a break on the price, in addition to the 50 free choes, as perhaps another sign of his goodwill and respect.

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335 Maresch 1996: 18
4.7 *Agnōmosynē, Eugnōmosynē, and Contract*

Contracts were themselves obligations to be respected, regardless of whether they were for loans or not. For instance, in *P.Cair.Zen. III* 59362 (unknown, 243 BCE) we have a letter from Pyrrhos regarding a message from Zenon, who had asked him to take care of some shepherds who had been assigned some land for pasturage within Pyrrhos’s demesne.\(^{336}\) The shepherds had evidently not gotten satisfaction from Pyrrhos and so appealed to Zenon. Pyrrhos, for his part, responded indignantly that not only had he given them the land that they had been assigned, but he had also given them another piece which he could have otherwise leased. The shepherds, however, “were so inconsiderate that they ordered (me) to assign them the land which I had leased to others in a *syngraphē* as well” (17-21: [ἄλ]λ’ οὖ[τοι] ἄγνωμονές | ξ[ίοι]γ οὐτ[οι] ὡστε καὶ τὴν γῆ[ν] | [ἱ]ν μεμίσθωκα ἀλλ[οις κα-] | [τὰ] συγγραφή[ν] παραδει- | [κ]υ[έω]ν αὐτ[οῖς ᾧ]κελεύουσιν ’.) Now, as we have seen, this concept derives its original force from the subjective quality of not being treated with consideration. Therefore, it may be that here Pyrrhos saw the shepherds as *agnōmones* because of their high-handed manner (note the use of *keleuein*). This, however, would not account for the inclusion of the information that the land they wanted had been disposed by *written contract*. Pyrrhos, apparently, was not about to set aside formalized contracts (as opposed, perhaps, to informal agreements) in order to accommodate the shepherds, and he no doubt explained this to them and found them oddly indifferent to this justification when they persisted in their “orders.” Of course, these *syngraphai* were not *their* contracts, but

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\(^{336}\) Pyrrhos was a tenant and a fairly substantial correspondence with Zenon survives. See the *Prosopographia Ptolemaica*, no. 10449.
more importantly Pyrrhos evidently believed that contracts, and in particular, formalized contracts, deserved respect even if they were not one’s own. The point of this comment in his report is to communicate their disrespect not only for him personally, but also for the notion of contractual obligation generally.

We may also wish to include *P.Dion.* 9 (Hermopolite, 139 BCE) in this category. This papyrus contains a petition in which a Kephalos son of Dionysios complains to the king and queen that a certain Lysimachos, from whom he had purchased 300 *choes* of wine, had not issued a receipt for the final installment of what he owed, only to shake him down years later for a balance he had supposedly already paid.337 “Thus he is attempting to make me pay twice for the same thing” (24: ὑπολαμβάνων τῶι τοιούτωι τρόπωι δις ταύτα π[ρά]ξειν με).

Kephalos accordingly sought that the authorities “not allow [him, i.e., Kephalos] to be ensnared by a person so wholly lacking in consideration” (μὴ με ὑπεριδ[ε]ν ἐνεδρευόμενον ὑπὸ ἄνθρωπον | [ἄγ]νόμονος), specifically requesting (i) that his petition be heard by Apollodoros, the *epistatēs* and *grammateus* τῶν κατοικῶν ἱππεῶν; (ii) an investigation be opened into the matter; and (iii) a moratorium be imposed on any and all measures by Lysimachos aimed at forcing Kephalos or his sureties to pay up until a decision was reached. Such disputes abound in the papyri, and we are in no position here to condemn Lysimachos on the basis of this one petition.338 Also, as we have seen, the phrase μὲ ὑπεριδεῖν κτλ. with some form of ἀγνωμονεῖν/ἀγνωμόνως/ἀγνωμονεῖν was common in Ptolemaic petitions (cf. n322), and

337 The reverse of this situation was dealt with explicitly in Demotic contracts: debtors were forbidden from claiming that they had already paid; see, e.g., *P.Dion.* 1.17, 2.16-17, 3.19-20, etc. Cf. sec. 5.7 below on kakotechnia and heurēsilogia.

338 See the balanced analysis of the editors (*P.Dion.*., pp. 149-50).
therefore one cannot press it very far. Yet, insofar as it seems to have been used to signal that the accused was trampling on one’s “rights” or ignoring some sort of moral or legal obligation, the question becomes, why was it employed here? Perhaps it refers to the general disrespect of driving a free man into slavery, a risk Kephalas says he is running in light of Lysimachus’s purportedly unjust treatment (4-5). But perhaps the formula refers to Lysimachos’s (alleged) failure to abide by his contractual obligation. As the petitioner of *P.Erasm. I 1* said in a very similar position (i.e., charges of withheld receipts, new contracts, extraction of double payments; p. 121 above), Kephalos may be inviting us to see Lysimachos as having “put aside the trust that exists among men” by refusing to recognize his obligation to treat him as he deserved under the original contract.

As we enter the Roman period, we find two interesting developments. First, while the purely moral meaning of *eugnōmōn* and its derivatives is still available (e.g., *SB* XVIII 13867 [p. 170], and the examples under the other sources of obligation), the word is rarely found characterizing a generalized sense of due justice or respect in legal documents or business contexts, but instead almost always specifically associated with one’s attitude toward monetary and contractual obligations. Second, verbal forms become more prevalent.

The first shift is interesting precisely for how concrete the notions of *eugnōmōn* and *agnōmōn* become. As in the Ptolemaic period, one may still qualify an act of repayment as being *eugnōmōn* in the Roman period, as we see in *SB* XX 14401 (Arsinoite, 147), a petition in which Ptolemaios son of Diodoros complains directly to the *epistratēgos* that a local creditor, also called Ptolemaios, is charging exorbitant rates of interest and extracting it by gang violence while the *stratēgos* sits on his hands. He therefore requests:
ὅπως ἐννιά τοῖς εὐμενεστάτοις τοῦ κυρίου ἡμῶν Ἀντωνίνου [καὶ] ἄνθρωπος <δυνηθῶ> ἐν τῇ ἰδίᾳ συνμένειν <καὶ> κελεύεσθι γραφήμαι τῷ τῆς

| Ηρακλείδου στρατηγῷ ὅπως ἀνεπιτρέποις καὶ ἀνύβριστος ὑπὸ τοῦ Πτολεμαίου
| φυλαχθῶ καὶ <οὖ> ἀποδέδωκα εἰς τόκον περίσσου τοῦ δραχμαίου εἰς κεφάλαιον μοί ἐλλογηθῆναι, καὶ ἐάν τι φανώ αὐτῷ ὁφείλων μετὰ ταύτα, ἱσχύσω αὐτῷ ἀποδώναι εὑργομίνως ... |

that in the most gracious times of our lord Antoninus (I may be able) to remain in my place of residence and that you may order written instructions to be sent to the stratēgos of the meris of Herakleides so that I may be kept free from threats and acts of outrage by Ptolemæus, and that the interest (which) I have paid in excess of a drachma per mina per month be credited for me against the principal, and if it is apparent that I owe him anything after this, I shall undertake to repay him in a reasonable manner. (trans. Whitehorne 1991)

Here Ptolemaios the petitioner (who wrote numerous petitions, many of which survive) is not in fact promising to repay “in a reasonable manner,” but is stating much more concretely that he is willing to pay what he owes and not an obol more. The adverb here signifies his recognition of the debt: he is not repudiating it as such, though he is disputing the amount, and hopes to have the epistratēgos pressure the stratēgos not only to stop the violence, but also to establish the size of the debt.

In P.Mil.Vogl. I 25 (Tebtynis, 127), on the other hand, we find a debtor disputing the very existence of a debt, and this over time comes to be the dominant meaning of ἀγνόμοισυνή, the repudiation of a debt or obligation outright (cf. Johanna’s meaning in P.Bad. II 35 above, pp. 158ff.). The papyrus contains a transcript of a hearing before the stratēgos of the Polemon division of the Arsinoite nome in the matter of Demetrios freedman of Herakleides against
Paulinos son of Patron. The defendant was the brother of the now-deceased Geminos and represents his estate at trial; the plaintiff was the one-time *phrontistēs* of the deceased.

Demetrios had at least two claims against the estate. The first concerned some pledged property, the second a deposit for 2,000 *drachmai* Demetrios had purportedly made with Geminos in the name of his “friend,” Deios son of Atrenos. To support this second claim, Demetrios submitted two *cheirographa*, one of deposit made out to Deios by Geminos and one by Deios apparently ceding the right to collect the debt to Demetrios. The case turned, as Wolff astutely pointed out, on the validity of the documents presented at trial and the manner in which the plaintiff came to possess them. The status of both documents were disputed vigorously by Paulinos’s lawyer, who accused the plaintiff of stealing the original document and falsifying his connection to Deios, alleging that Demetrios did not even know who this Deios was. In the event, Demetrios was able to produce not only the document of deposit with Geminos but also the document executed between Deios and himself, thus completing the paper trail from Deios to Geminos to Demetrios.

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340 Against the plaintiff’s claim that he is the executor of his brother’s estate (ii.12), Paulinos asserts that he is not liable for the debt in the first instance, since he is not the guardian of his brother’s children, but consents to rebut the claim in the interest of justice (ii.21-25).

341 The lacuna in iii.23 renders precision as to the nature of the second document impossible; but see iii.32 and n344 below.

342 The majority of the scholarly literature on this document revolves around the question of whether or not there were freely circulating negotiable debt instruments in antiquity and the so-called “dispositive” nature of Hellenistic legal documents. See the original commentary by Arangio-Ruiz in the *ed. pr.*, contra Wolff 1978: 148, 166-69; cf. Bagnall and Bogaert 1975 and Bogaert 1983.
However, there were still some troubles for the plaintiff’s case, most significantly that the document with Deios post-dated the deposit by more than a year. After having the documents read out, the *stratēgos* enquired:

\[
\text{διὰ τὸ σῶχ ἄμα} \ [\tauο] \ [\small{[\text{το}]\overline{[\text{υ} \ \text{Γε}]}}] \ [\text{μελίνου} \ \gammaράμ[μ]αιν καὶ παρὰ}\\ iii.32 \ [\text{τοῦ} \ [\text{Δείου} \ \epsilonξουλογομένου} \ \tauὴν \ \piστὶν \ τὸ \ \chiρόγραφον}\\ \epsilonἶλησα;} \ \text{Δημήτριος;} \ \epsilonφ’ \ \text{δὸς} \ \text{ὁ} \ \Gammaεμίνος \ \piερὶν \ \ύπειο}-\\ \chi[ν]εῖτο \ \piοδόωσε[ν], \ \muετὰ \ \delta' \ \tauελευτὴν \ \εκεῖν[ο]υ \ \alpha[γ]νωμο-\\ νοῦντων \ \τῶν \ \ἀντὶ[δίκων] \ \εδέ[ησ]ε \ με \ \καὶ \ \γρά[μ]ιατ[α] \ \τοῦ}\\ \text{Δείου} \ [\lambda] \ [\text{αβεῖν}.}
\]

“Why did you not take a cheirograph from Deios acknowledging the trust (i.e., the money made over in trust for the deposit) at the time you got the document from Geminos?”

Demetrios: “As long as Geminos was alive, he was promising to pay, but after his death, I had to get documents from Deios as well since the defendants were refusing to recognize the obligation.”

The defense followed up by pointing out that this statement was contradicted by the evidence of the documents read out only moments before on two grounds: first, the document with Deios was dated to *before* the death of Geminos; second, it characterized the transaction with Geminos as a loan, not a deposit (iii.36-iv.5). The first discrepancy is probably explained by a lack of precision on Demetrios’s part. It could very well have been the case that Demetrios had attempted to recover the funds on Geminos’s deathbed when his heirs and executors were more or less *de facto* administrators of his estate, and when they refused to honor the debt (α[γ]νωμο- | νοῦντων), he went back to Deios in order to secure a better legal position and bolster his claim.\(^343\)

But even this interpretation is unnecessary: whatever the precise timing of the drafting

\(^{343}\) Cf. Wolff 1956b: 360, quoted below.
of the second document, the imminent death of Geminos (presuming that he did not die suddenly) had to have worried Demetrios since his name was not the one of record on the deposit. In his testimony, then, he might naturally have concentrated on the motive (i.e., Geminos’s death) rather than the precise sequence of events. The second problem was even less significant. It was perhaps technically incorrect for Demetrios to have recorded the transaction with Deios as a loan, but hardly a fatal mistake as we may surmise from the stratēgos’s subsequent actions, impounding the documents and postponing the trial until Deios could be produced to corroborate Demetrios’s testimony.344

Significant in this case are the several layers of normative and legal contracting, and how they relate to each other. If we trace the chain of events as laid out by the plaintiff (and for our purposes we do not need them to be true so much as plausible), he made a formal deal with his “employer” (for lack of a better term), who came from one of the wealthiest families in the Arsinoite nome, whereby he “deposited” the hefty sum of 2,000 drachmai with him, but was apparently content to put up a straw man in his place. Wolff ingeniously suggested that this fiction might have been at the instance of Geminos, who found the thought of being formally indebted and liable to praxis by his freedman phrontistēs distasteful, and so sought to have the person of record be of higher status.345 Regardless of the motive, it seems that Demetrios found

344 The stratēgos characterizes Deios’s cheirograph as a pistis (iii.32: ἐξομολογομένου τὴν πίστιν). This is best interpreted as his understanding the document read out as a cession of the right of praxis against Geminos on the deposit; cf. the same language in M.Chr. 247.11 (=P.Flour. I 86, Hermopolite, post 86). See Wolff 1956b: 360; Schmitz 1964: 52-64 (with reservations about Wolff’s interpretation based on his reading of an earlier cession, BGU IV 1171: 61 and 64n2). On the “confusion” of the nature of the transaction, deposit or loan, see the following note.

345 Wolff 1956b: 361n16. Cf. Smolders (n339) for the relevant literature on the archive and the status of the family of Geminos. We might also wonder if the same motive accounts for the form of the transaction: presumably it was more in keeping with his status for Geminos to hold a deposit than to receive a loan. This may account for the
such a person, a “friend” and merchant from the Hermopolite nome (iii.19, iv.6). No doubt Demetrios informed Deios that he was using his name, but it seems that he saw no need to formalize this relationship at the time (i.e., between Demetrios and Deios). The result was that Demetrios had but the most meager of formal evidence for his transaction, and what he did have was indirect.

We see here two norms in dynamic operation with contracting, social status, and trust, and a calculation of transaction costs with respect to formalization and enforcement. First, if we accept Wolff’s explanation as to the existence of the straw man in the original transaction, we may see contracting as in some sense deformed by social relations. Doubtless Demetrios would have preferred to have his name be the one of record on the deposit, but he was willing—or induced—to accept a less advantageous position in light of his relationship to a man of much higher status. Though the contracting relationship was deformed and obscured by status and power relations, it is significant that two people of such different stations still used a formal contract in order to conduct their business.

Second, we may see the formalization that Demetrios did insist upon as representing a minimum of sorts. Clearly, 2000 drachmai was far too substantial a sum to go without any documentation, but the level of trust (power relations notwithstanding) was such that between Demetrios and Geminos an oblique formalization of their contract sufficed, and between

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346 Cf. P.Oxy. I 71 (Ptolemais Euergetis, post 303), a petition to the Prefect in which a woman complains that two phrontistai, whom she hired to help her manage her affairs while her son was away on military service, failed to keep faith with her: νομίζουσα τοῦτος τὴν καλὴν μοι πίστις ἀποσῳζεῖν (11). Cf. Schmitz 1964: 105-11; Wolff 2002: 198-200 on kalē pistis and its relationship to bona fides in this period.
Demetrios and Deios nothing at all. This state of affairs, and indeed his subsequent actions, can be explained only with reference to Demetrios’s understanding of the probabilities and modalities of enforcement. As Wolff noted:

In der Tat wird gerade so ihre nachträgliche Aufführung dieses Umstandes [sc. of the document with Deios] glaubhaft: solange Geminos lebte, konnte sich Demetrios auf ihn verlassen und sich mit einem bloss formellen Anerkenntnis begnügen, das ... einem Strohmann [i.e., Deios] gegenüber abgegeben worden war. Als aber der Tod seines Dienstherrn herannahnte, musste ihm an einer Legitimation gelegen sein, die ihm gegebenenfalls ein klageseeides Vorgehen dessen Erben ermöglichte. (1956b: 360)

The trust upon which the contract primarily relied (cf. 33-34: \(\upsilon\pi\varepsilon\iota\sigma\) - \(\chi[n]\varepsilon\iota\tau\o\)) died with Geminos, and it was only when the heirs repudiated the debt (34-35: \(\alpha[y]\nu\omicron\omicron\omicron\) - \(\nu\omicron\nu\omicron\omicron\omicron\ 
\tau\omicron\omega\nu\ \alpha\nu\tau\iota[\delta\iota\kappa\omicron\omega\nu]\)) that Demetrios backtracked and converted his wholly informal agreement with Deios into a formal one—what the stra\-\(\tau\epsilon\gamma\omicron\) called his \(\pi\iota\sigma\tau\iota\) (32)—so as to be able to enforce the purely formal contract to which the original transaction had been reduced with the loss of the personal connection. What the first cheirograph represented, then, was not the “normal” path to official enforcement, but a legal lifeline, an option to formalize, should the need ever arise. Of course, Demetrios could have, as the stra\-\(\tau\epsilon\gamma\omicron\) suggested, gotten his supporting document from Deios simultaneously or immediately thereafter, but not only did Demetrios evidently trust Geminos to keep his word, but obtaining the second document also involved some “cost” that Demetrios saw no need to incur. Granted, there was no need to pay a scribe (the cheirograph is purportedly in Deios’s hand), and in any case the cost of a scribe paled in comparison to the amount deposited. More significant, perhaps, was the fact that Deios was not resident in the Arsinoite (at the end of the trial, Demetrios promises to produce Deios from wherever he is, most likely the Hermopolite nome, within thirty days). Demetrios and Deios
were likely to have been in regular contact, and no doubt they could have created a paper trail soon after the deposit was inked, for in the end Demetrios did, in fact, get a hold of Deios as soon as he saw the need. But this is precisely the point, however slight the absolute cost, it is clear that in relative or marginal terms, it was not worth incurring so long as Geminos was alive. For Demetrios Geminos’s promise and the foothold in the law which the cheirograph of deposit provided sufficed, given the foreseeable future; the advantage of full formalization was not worth the additional time or money. Yet, when confronted by the agnōmosynē of Geminos’s heirs, which by definition is the defiance of the norms of trust, respect, fair-dealing, and obligation on which contracts rested, Demetrios braced himself for enforcement actions that went beyond personal self-help, exercising the option of official enforcement he had preserved.

By the third and fourth centuries the predominant meaning of eugnōmōn in legal and business documents was something like “willing to repay,” with eugnōmonein meaning simply “to repay,” while agnōmōn/agnōmonein meant “to refuse to repay” or “to repudiate a debt or an obligation.” An English translation with something of a similar trajectory would be “to honor” an obligation or a debt. A couple of examples will suffice. In P.Oxy. LIX 3993 (Oxyrhynchos, II-III), Koprys and Sinthonis write to their children about a debt of 500 drachmai they are collecting on their behalf from Petosiris and his associates. Petosiris disputes the amount,

347 According to the OED, the first attestations of “to honor” in this sense come from the beginning of the 18th century. I would like to thank Prof. Bagnall for suggesting this English parallel.

348 Cf. M. Chr. 93.15-17 (Hermopolis, ca. 250); PSI IV 303.14 (Mendes, 245-303; pace the translation of Lewis in BASP 16 [1979]: 118); III 222.10-12 (Herakleopolite, III-IV); P.Oxy. I 71 i.20 (Oxyrhynchos, post 303); P.Amh. II 142.17 (Herakleopolite?, post 341); P.Oxy. XLVIII 3400.20-22 (Oxyrhynchos, 359-365); and P.Neph. 6.11-18 (Alexandria, IV). See Preisigke and Kiessling Wörterbuch for later examples.
insisting that he owes merely 448 drachmai. In contrast to their Ptolemaic analogues, Koprys and Sinthonis assure their children that the debtors are not agnōmones:

οὐ γὰρ ἄγνωμονοὺσιν. εἶπαν
gὰρ ἡμεῖν ὅτι, “συλλέγομεν αὐτά.” ἔλεγον γὰρ ὅτι,
16 “εἰσίν (δραχμαί) υμη,” εἰ [ο]ὐν γὰρ εἰσίν αὕται, δῆλωσον ἡ-
muεῖν. περὶ γὰρ αὐτούς ἐσμέν ὅτι, εἰ θέλετε παρ’ ἡ-
μῶν τὰς (δραχμὰς) φ καὶ ἡμεῖν τὸ γράμμα δοῦναι.

They are not refusing to pay. For they said to us: “We are collecting it.” They were saying: “(The debt) is 448 drachmai.” If this is (what they owe), make it clear to us. For we are working on them, (saying): “If you wish to have the 500 drachmai from us and give us a document, (you can do that).”

Koprys and Sinthonis wish to confirm the amount they are to collect, and if the original amount was indeed 500 drachmai, they propose to pay their children and transfer the debt into their name for the full amount, presumably on new terms with Petosiris and his associates. Unlike in the Ptolemaic cases, we here have a distinction being made between late payment in the context of a dispute about the size of the debt and outright repudiation. This is only possible because of the newly restricted sense of what it is to be “inconsiderate”: it has moved from being a subjective term denoting a lack of consideration for the creditor personally, a relationship mediated by the debt, to an objective term describing one’s relationship to the debt itself. The result is that only wholesale repudiation of the debt, a complete unwillingness to repay, and not the disrespect of quibbling about terms with one’s creditor, counts as agnōmosynē. Hence Koprys and Sinthonis apparently had no real trepidation about transferring the debt: they saw the

349 Trans. adapted from ed. pr.
debtors as fundamentally *eugnōmones*, or the sort that (eventually) honor their obligations and repay what they owe.

Although the words were used primarily with reference to actual monetary debts in the Roman period, they were still extensive enough to refer to any and all obligations established by contract. A particularly telling example comes in *P.Mil.Vogl.* VI 264 (Tebtynis, 127), another document from the archive of the descendants of Patron (cf. *P.Mil.Vogl.* I 25 above). Briefly, Herakleides, the father of Geminos’s wife, had passed away and left a portion of his estate to Patron junior and Satorneilos, his minor grandsons by Geminos, and to his daughter Thaubarous (Geminos’s sister-in-law and Patron junior’s aunt). Some dispute arose as to the inheritance between the brothers and Thaubarous, and they struck what seems to have been an interim agreement by which some property was locked away and sealed by all parties, with the keys deposited with Paulinos (Geminos’s brother, or Patron junior’s uncle and Thaubarous’s brother-in-law) until the minor heirs came of age (lines 3-14, cf. *P.Mil.Vogl.* I 25 iv.18-v). Here Patron junior applies to the *archidikastēs* because Thaubarion had petitioned the Prefect to set aside the “agreement” brokered by Paulinos in order to claim her entire inheritance immediately.\(^{350}\) She had then been referred to the *archidikastēs* and so it is to him that Patron makes his request.

After reprising the situation set out above in his petition, Patron characterizes his aunt’s appeal to the Prefect thus: “Therefore, since Thaubarous repudiated (the agreement) and petitioned his excellency the Prefect ... (15-16: ἐπείδη [ὁ] Ἐθαυβαροῦς ἀγνωμονοῦσα | ἐνέτυχε τῷ

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\(^{350}\) The agreement seems to have been called a *συκατάθεσις* (8), cf. *P.Mil.Vogl.* I 25 iv.36: παρακαλεῖται [ὑπὸ] τὸ ὀμφοτε[ρόν] μεσοτητα[ν]. See Mélèze-Modrejewski 1952 on private mediation. The parties were still engaged in this matter two years later, in yet another court (*P.Mil.Vogl.* I 27 [Tebtynis, 129]).
κρατίστω [ἡγ] ἐμῶν).” Though two years later Patron would claim that his aunt owed him for the property and revenues she appropriated (P.Mil.Vogl. I 27 [Tebtynis, 129]), there was no question at this point of a debt as such, i.e., it was no monetary debt that she was “disrespecting.” Instead, the language of the petition suggests that Patron sees her act of petitioning as the product of her attitude toward the mediated settlement he just described. Instead of doing what she had promised and what she “owed” Patron under the terms of the agreement, she went outside of it and petitioned a third party, in effect breaching the agreement.351

As mentioned above, the restriction of meaning seen in the Roman period coincides with the increased use of the verbal forms.352 Besides the participial form in BGU VIII 1865 (an intriguing, but enigmatic case) and UPZ I 144 (discussed immediately below), there is only one other attested instance of the verb eugnōmonein before the Roman period, P.Grenf. II 14a, a letter between two bureaucrats from 232 BCE. The reading of the line in question is uncertain, though according to BL I, both Grenfell and Wilcken corrected the original edition, independently as it would seem, to arrive at the infinitive: διό, ἐὰν σοι δόξη ἐγνωμονεῖν, ἔτι | τὴν ὄνον καὶ τὰς ἀρ(τάβας) τῶν πυ(ρῶν) | ἀ δεῖ, πορίσον μοι.353 This, if correct, appears to be the first attestation of the verb (as opposed to the participle) in the entire Greek corpus, literary or documentary.354 That said, there is nothing particularly inappropriate about the use of

351 Cf. the participial use of verbs of breach, sec 5.4.1 and the “transactional agreement,” sec. 5.4.2.
352 Compare the evolution of the verb δημοσιόω: see P.Col. X 254, note to line 8.
353 The original reading was ἐγνωμονέω εύσαι.
354 The earliest literary references I have found are in the proem to Anaximenes’ Ars rhetorica and Epicurus, VS, no. 62 (if this saying is to be regarded as original). The next attestation comes from the first century BCE with Diod. Sic.
the verb in this document—it is an almost cravenly polite request of a superior, a relationship in which we have seen *eugnōmōn* used.\(^{355}\) There are also no papyrological attestations of *agnōmonein* before the Roman period besides participial forms in petitions.\(^{356}\)

The two phenomena, the restriction of meaning and the increased use of verbal forms, are perhaps to be connected. The growth of verbal forms would seem to signify a shift in conception from the notion as a condition to an action and a predicate. In other words, being “considerate” came to be seen increasingly in objective terms as an act in an of itself or a character trait rather than the manifestation of a subjective relationship between two people. Since contracts and debts are by their natures the most concrete and visible sources of obligation associated with *eugnōmosynē*, and moreover the ones about which one is most likely to complain in petitions to the government or in business letters, they accordingly account for the majority of our discrete acts of *eugnōmosynē*. Thus, while in the literary and even legal corpora the general notion of *being* just, fair, or considerate is still current throughout the imperial period,\(^{357}\) in the papyri there is this marked shift to these more concrete acts of justice and injustice. Yet this shift does not seem to be a artifact of documentary preservation or an idiosyncrasy of regional usage: Christian texts from the fourth century onwards also show a tendency to equate *eugnōmonsynē* __________

13.22.8. Plutarch uses the verb frequently, and there are a couple of attestations in Strabo and Josephus. It is relatively common from the fourth century onwards.

\(^{355}\) Even so, it strikes me as a bit odd: this line should no doubt be checked again from the original or a photograph.

\(^{356}\) See n322.

\(^{357}\) Cf. Just. Nov. 88 (539), where εὐγνωμονεῖν is the gloss for *benigne agere*. 
with repayment (though, as befits the context, in gratitude rather than money).\footnote{Cf. Lampe 1961, s.v.} Although such linguistic changes are not reducible to simple explanations, the role of eugnōmosynē in the communication of reputation may have been a factor, as will be discussed in the next section.
4.8 Of the Importance of Being *Pistos* and *Eugnōmōn*: Reputation and Contract

We may now pull the threads of this discussion together with the previous one concerning *pistis*. One may easily imagine that people expected to be treated *εὐγνωμόνως* by those whom they trusted, in all arenas, not just in business matters. Also, as we have seen, both *pistis* and “consideration” were originally subjective values, the former a measure of confidence based on personal experience, and the second a judgment of one’s own value in the eyes of others (i.e., “are they treating me as they ought?”). The ways these norms worked in business and legal matters suggests just how “personal” business was in antiquity, in every sense of the word.

We find a particularly interesting collocation of the two concepts in *UPZ* 144 (perhaps 164/163 BCE). This document is a “letter,” which, as Wilcken saw, was some sort of exercise or model for those learning the niceties of elite or chancery correspondence.\(^{359}\) Not only is there the tell-tale hand of a corrector (which I have not indicated in the extract below) and other evidence of copying from an exemplar (e.g., lines 13, 20, 46), but the sentences are also ponderously periodic, the language elevated (containing several *hapax legomena* for the papyrological record), and there is a studied avoidance of hiatus. Also, the sentiments are entirely stock, and there are no details of the sort that would point to this being an actual letter. For all that, Wilcken is probably right to see it as cobbled together from extracts of actual letters scrubbed of purely personal elements. The “letter” itself purports to be from someone who has suffered an “injustice” in the form of a broken contract at the hands of an erstwhile friend:

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ἐγὼ τὰ μέγιστα ἡγυωμονημένος ὑπὸ σου καὶ μειμαθήκως ἔτι πρότερον τοῖς μὲν ἀδικήμασιν ἀπαρακαλύπτωσ [ὁ]γρίγιοζεθαί  
καὶ δυσχεραίνει: πρὸς δὲ τοὺς ὁμοοδηποτοῦν ἡγυωμονηκέναι φάσκοντας εὐδιάλυσσα καὶ πραέως διατίθεθαί, καλῶς ἔχειν ὑπέλαβον ταύτην ἔτι τὴν παροικίαν  
ἀγαγείν πρὸς σέ, οὖχ οὕτως προαιρούμενος, ἵνα μετακληθῆς ἔτι πρὸς τὴν ἐμὴν αἰρεσίν, ταύτην (I. τοῦτο) γὰρ ἀπέγνωκα: δι’ ὁν/ προσ-φάτως πορεῖλημα φιλον, ἀλλὰ τοῦ καλῶς  
ἐχοντος στοχαιζέμενος: ἐγὼ γὰρ πιστεύσας σοὶ τε καὶ τοῖς θεοῖς, πρὸς οὖς οἰκῶς καὶ δικ[[α]] δικαίας πολιτευσάμενος ἐμαυτὸν ἀμε-ψυμοίρητον παρέσχημαι: ὑπὸ δὲ σοῦ νυνεῖ  
παρασπονδημένος (I. παρασπονδημένος) προῆγμαν πέμψαι σοι τὸν ἄπολογισμὸν τούτον. ἔδει μὲν οὖν <σε> δημοδικῆι παιδήα (I. δημοτικῆι παιδείαι) προσκεκληρωμένον καὶ μεμνημένον τῆς ἐκ παιδός πρὸς τε  
τὸν ἡμέτερον πατέρα καὶ τὴν οἰκίαν [[ἐκεί]] καὶ τὴν ὑπόστασα (οἰκ.) πρὸς ταται  ὑπόστασα (οἰκ.) πρὸς ταται  
τὸν ἡμέτερον πατέρα καὶ τὴν οἰκίαν [[ἐκεί]] καὶ τὴν ὑπόστασα (οἰκ.) πρὸς ταται  
καὶ μεμνημένον τῆς ἐκ παιδός πρὸς τε  
ἐκείνην (I. ἐκείνου) φιλίας, ὁμοι/οσ ἔδει καὶ τὴν (I. τῆς) πρὸς ταται οἰκήπτητα (I. ὁικ.) πρὸς ταται  
οἰκήπτητα (I. ὁικ.) πρὸς ταται οἰκήπτητα (I. ὁικ.) πρὸς ταται  
ἐπείτα δὲ ἐξουσιεθαίν  
ἀσκήσαντα καὶ τὴν ἐν χρόνῳ βουλευμόμενην ψήφου ἐξε/τάσαντα περὶ τ[ούτοι|υ?] ἔν/θ[...] ... ...  
τὸ (I. τῷ) τηνικατί ἐστηκότι λ[ογισµωι] πάν/παν  
μὴ παραβαθέαιν τὰ κατὰ [τᾶς] συνθήκας.  
ἡγεμονικώτατον γὰρ καὶ μέγιστον ἀγαθόν ἐν πράγμασιν τὸ πάντρ’ ὀικονομεῖσαθαί καθαρῶ/σ] καὶ δικαῖως: τοῦτο δ’ ἐν ἐφαίνετο καλὸν καὶ ...  
εἰ σὺν τῳ δικαῖῳ ὑπὸ σου ἐτέτις.  

I, who have been treated with the utmost thoughtlessness by you and who have learned already before this both to be openly angered by and resentful of your injustices, but also to comport myself with an air of reconciliation and mildness towards those who admit their thoughtlessness, I understood it as right to adopt even this freedom of speech with you, not so choosing so with the aim of your being recalled once more to my way of thinking—for of this I despair because of the friend you have lately acquired—but rather as one who aims at what is right. For having trusted you and the gods, before whom I

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360 A crux: see UPZ I 144, note to line 21 (p. 627).
have dealt in a holy and just manner, I conducted myself with no grounds for complaint; but now, suffering a breach of faith at your hands, I have been led to send you this reckoning. You, the recipient of a humane education and mindful of the friendship since childhood towards our father and his house, as well as of your familiarity with them (?), you ought not to have set yourself against dealing with us; and moreover, having exercised piety and examined the long-considered decision about ... with the already-established reasoning, you ought not to have transgressed anything in the agreement in any way. For everything to be managed purely and justly is the most important and greatest good in business matters. This would have seemed good ..., if it (?) had been borne by you with justice.

The “author” goes on to speak of the hard times that had befallen him, with more about some court trial, before moving on to commonplaces about the role of the gods and *nemesis* punishing those who do not “live in the best manner” (47-51). The scenario, then, is one in which the writer had a contract (cf. τὰ κατὰ [τὰς] συνθήκας) with respect to some business matter (ἐν πράγμασιν, τῇ πρὸς ἡμᾶς ἐπιμείξει) with a person who had a long-standing personal relationship to his family. That “friend,” however, “breached his trust” (παραστονθημένος, a *hapax* in the papyri) and “transgressed” (παραβαίνει) their agreement (see Sec. 5.6), induced or suborned, it would seem, by a new friend (10-11). Though the narrative is difficult to follow precisely, it also appears that there had been one attempt at mediation or litigation (24-26, cf. 46), with perhaps further legal action in the offing. The writer insists that he has no practical aim in writing, not even that of reforming his wayward friend; instead, pure moral conviction drives him to write, almost as if he were the herald of *nemesis*, delivering divine judgment: the former friend is utterly in the wrong; the writer himself has dealt honestly before gods and men. That said, the writer is open to an apology freely given by those who “admit their *agnōmosynē*” and return to doing “what is right.”
The tenor of the letter is emphatically moral, and one of the few instances we have of the invocation of the divine or religion in business matters or contract enforcement from Graeco-Roman Egypt outside the use of oaths. Breaching the trust involved in a contract was a serious business, and displayed not only an utter disregard for people (as the “letter” opens), but also revealed a certain species of atheism, of which the writer rather pompously accuses his former friend throughout. The genre of this document renders the sentiments it contains an intriguing, but difficult type of evidence. On the one hand, it is obviously not a real letter (though bits of it likely are); on the other hand, the fact that the whole complex of notions regarding the moral and religious basis for making and keeping contracts could be assembled into something like an exercise is powerful proof of their normative status. One question we should ask ourselves is: what is the status of the religious “argument” with respect to trust and agnōmosyne? Does it represent an opening gambit, a form of normative pressure on the party in breach before turning to the law, or a last-ditch return to moral suasion in the face of unsuccessful litigation? The text

361 Cf. Ratzan forthcoming b. Cf. Sec. 5.6.2-5.7.

362 Cf. Versnel 2002: 44 on this relationship in Classical Athens. Cf. also Surah 83.1-11 of the Koran:

Woe to those that deal in fraud—
Those who, when they have to receive by measure from men, exact full measure, but when they had to give by measure or weight to men, give less than due.
Do they not think that they will be called to account?—
on a mighty day, a day when mankind will stand before the Lord of the Worlds?
Nay! Surely the Record of the Wicked is in Sijjīn.
And what will explain to thee what Sijjīn is?
A Register inscribed.
Woe, that Day, to those that deny, those that deny the Day of Judgment.

Fulfilling contracts is a religious duty (Surah 2.177) and the Koran legislates the basic terms of contracting, including the need to reduce all future obligations to writing (2.282-83).
suggests the latter. As in the contemporaneous UPZ 41 (above, p. 170), asebeia and agnōmosynē are seen here to go hand-in-hand. The particular reason for linking them in this case seems to be the recipient’s disregard for some “long-thought-out judgment” (τὴν ἐν χρόνῳ βουλευμένην | ψήφου) in the breaching of his contract. The friend has thus broken not only the writer’s personal trust (πιστεύσας | σοί; παρασπονδημένος), but he has disregarded a legal decision of some sort. The only source of enforcement left to the writer is divine vengeance. This is, of course, an old theme, one that predates formal law (e.g., Hesiod’s Works and Days, 248-55). Yet, as Hobbes was only too keen of note, divine vengeance is much less effective than earthly justice, for “though the [power of Spirits Invisible] be the greater power, yet the feare of [Men] is commonly the greater Feare” (Leviathan xiv.31). If religious sentiment or belief had failed with respect to first-person enforcement (i.e., personal ethics and self-control; sec. 3.3 above), it was unlikely to succeed now, when things had progressed so far. Rhetorically, the religious “argument” represents a final “elevation” of the dispute to the ultimate arbiter in a cosmic court, but in reality it is a return to the primary field of norms and first- and second-person enforcement in a final attempt to secure performance.

Turning now to the documentary evidence, we find a lively reputational discourse in pistis and eugnōmosynē. Since one generally engaged in long-term relations of economic risk only with those whom one trusted (i.e., personally) or over whom one had some personal power (i.e., not merely the force of law), so one looked out for people who were known to be eugnōmones, or the sort to recognize the necessity or obligation of promises, contracts, and

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debts. By the same token, people worried about their reputations for *eugnōmosynē* as an element of their general reputation for being *pistos*. With the restriction of the sense of *eugnōmōn* in the fourth century, the connection was a tight one: one could trust someone who was *eugnōmōn*, or someone who recognized and made good on obligations. In a sense, it was repeated acts of *eugnōmosynē* that established one’s “credit” or status as trustworthy. Thus in *P.Oxy.* IX 1223 (Oxyrhynchite, ca. 370), Hermias writes to Horion to send money quickly, “for we owe so many debts and I am not longer trusted, unless I repay” (25-8: τοσαύτας τάρ προσδοχάς χρε- | ὡστούμεν, καὶ οὐκέτι πιστευ- | ὀμεθα, ἐὰν μὴ εὐγνωμονῃ- | σωμεν). He has, in other words, run out of credit, and it will take repayment to re-establish his reputation for being trustworthy.

Similarly, in *PSI* IX 1081 (Oxyrhynchite, late IV), a *pronoētēs* informs a landowner that a group of men from Paomis have arrived in the *epoikion* of Psankerma looking to borrow “a few *solidi*” (7: ὀλίγων νομισματίων ἕνεκα), a fairly substantial sum. As it turned out, the landowner was not there, so the *pronoētēs* sent a letter, noting that the villagers had come ready with the contract and the interest (perhaps the first installment?) “in their hands,” and further that the entire village had signed on to the loan (10-11: καὶ ὁτι οἱ δοκοῦντες ὄλοι οἱ ἀπὸ | τῆς κώμης ἕγράψαντο). The *pronoētēs* then gives his recommendation: ἐὰν δοκεῖ | σοι | δέσποτα μου, δοῦναι αὐτοῖς, | μέλλουσι εὐγνωμονήσει (I. εὐγνωμονήσαι) καὶ ἄλλο- | τε γὰρ ἦν ἐλαβὲν καλὼς ἀπέκα- | τέστησαι (11-15: “Therefore, if it seems good to you, my lord, give (it) to them; they will pay (it) back. For even at other times they have returned what they have received just as they should.”). He then goes on to mention that they have also exhibited a spirit of cooperation in the
past with regard to “all the impositions laid upon them with respect to relations with their landlords” (16-17: πάντα τὰ ἔπιτα τὸμενα | αὐτοῖς τοῖς γεουχικοῖς πράγμασι). Here the relationship of trust precedes the villagers: they have shown themselves to be trustworthy and the amount asked for is small. All this adds up to an assessment of their credit-risk: they are “good for it.”

The examples above illustrate how the communication of reputation helped to drive the verbalization and the objectification of eugnōmosynē. One would, like the pronoētēs, extrapolate from past personal experience and interpret the performance of an obligation by party B as evidence of B’s being eugnōmōn toward oneself (A). But, if asked by a third party C whether or not he should deal with B, A can only really say, “Well, B has always been eugnōmōn to me.” A has no insight as to B’s gnōmē towards C. Upon hearing this C may decide to interpret B’s eugnōmosynē as evidence of his capacity and ethical commitment to performing “as he ought” in an absolute sense, independent of the person whom he owes. With enough evidence and time, one could speak of B to others as simply being eugnōmōn in an abstract sense, and “honoring,” eugnōmonein, could mean an act of repayment regardless of the identity of the payee or the precise personal relationship between creditor and debtor.

Anyone relying on reputation engages in an inherently risky act of induction, even if the reputation is true and well deserved, since he cannot be sure that all the conditions surrounding the prior acts on which the reputation is built obtain in the present instance (i.e., the reputation may be irrelevant). The development of the abstract notion of objective obligation, however,

means that reputational discourse can be more accurate. If B can be seen (and sees himself) as socially and legally beholden to the obligation he assumed, and not to A personally, this theoretically means that an important variable in the construction of reputation has been eliminated. A and C, in other words, may communicate fairly precisely about B’s relationship to obligation instead of to either A or C personally. (In reality, however, the identity of the party to whom he owes the obligation may still make a difference to B’s performance. For instance, modern legal abstraction notwithstanding, people may be more inclined to repay friends and neighbors than large, national, impersonal institutions.) What is fascinating about tracing the use and evolution of eugnōmosynē in the papyri is the extent to which we find a personal or status reputational discourse about subjective relationships transformed in part through repeated acts of extrapolation into a more abstract or objective discourse about a person’s relationship to obligation per se. Significantly, the discourse of eugnōmosynē never seems to have become entirely objective. Even in an era when eugnōmonein most often meant “to repay,” the pronoētēs is still careful to couch his advice in the framework of the personal relationships: in his estimation they are to be trusted “with respect to relations with their landlords.” The relevant experience was still personalized.

We have one clear case of the reputational role eugnōmosynē played in deciding with whom one would enter into a contractual relationship. P.Ross.Georg. III 1 (Alexandria, ca. 270) contains a letter from a young doctor, Markos, to his parents, in which he relates a recent battle, after which he attended to some wounded soldiers, before moving on to discuss some routine business. Towards the end of the letter he addresses a possible business transaction of his mother’s:
καὶ ὁ Ἀπολλώνιος ὁ τυφλὸς ἤλθεν πρὸς ἐμαῖ (I. ἑμὲ.)

λέγον μοι ὅτι ἐπαφέωκεν (I. ἐπαφέωκεν.) Σεραπιάκος τῇ μητρί σου τὰς ἄλουρ(ας) [I. ἄρουρ(ας)].

ἐδ[ν οὐν ἦν(?)] ἐπα(φ)εῖς καὶ εἰδὴς τὴν τοῦ Ἀπολλώνιον τοῦτο τοῦ τυφλοῦ γνώμην ὅτι εὐγνώμων ἔστιν, μή[ίς]θωςον αὐτῷ αὐτᾶς, ἐὰν μὴ σοι ἄν ἐκεῖνος, πειρῆς δοῦσα [τὸ]ν σεῖτον.

And Apollonios the blind came to me, saying, “Serapiakos has released the arourai back to your mother.” If he has released (them) and you know the gnōmē of this Apollonios the blind, that he is eugnōmōn, lease them to him; if he has not been (eugnōmōn) to you, try giving him the grain.365

This short passage is interesting on several counts. First, it is perhaps somewhat surprising how far news of available acreage owned by Antonia, the mother, has spread. Markos is certainly in Alexandria; and while we have no sense of where his parents are, they are clearly some distance away in the chōra, for in another letter of about the same time Markos’s brother Serenos asks his Antonia and his sisters to join them (the father had likely passed away in the meantime), telling Antonia dispose of her property in such a way as to suggest that the journey was long enough to

365 Presumably for περῆς (present subjunctive). Gignac does not list this as a common confusion, though alpha-contracts occasionally do have epsilon-contract endings (1977-81: II, Ch. IX); there is, however, no other example I can find in the papyrological corpus of this phenomenon with περᾶς (Gignac himself mistakenly took περῆς for a genitive noun, 1977-81: II, 5). This also assumes that the original reading was correct. In any case, the editors understood this to be a jussive subjunctive (i.e., “Wenn er dir nicht zur Verfügung stehen wird, so mache den Versuch mit der Veräusserrung des Getriedes.”), matching the imperative in the prior condition. Such subjunctives, however, are almost always aorist, though in the centuries that followed this letter the present became more common (cf. Mandilaras 1973: §§ 554-59). Finally, the use of a supplementary participle with περᾶσθαι is well attested in classical Greek (Kühner-Gerth, § 482, Anm. 8 [II, 58-59]), but not in the papyri, in which we find only the dependent infinitive (cf. Mayer 1970: II.1, 165-66). Kühner-Gerth (§ 484.30) suggests that there is a difference in meaning between the constructions in the classical era, which perhaps suggests that its use may be meant to communicate some particular shade of meaning. More curious and troubling, however, is the use of the active here instead of the middle, which is by far better the better attested voice in the papyri. On balance, however, the translation above seems to be the most natural interpretation.

366 The recent translation of this passage in Hirt Raj 2006: 336 is impossible, as it depends on inapposite attestations of ἐπαφέωμαι in Preisigke’s Wörterbuch, where it is attested as meaning “to release (an animal to graze).” She apparently ignored Krüger’s translation in the ed. pr., which Kiessling adopted in his volume of the Wörterbuch. “To you” is no doubt too strong for the dative of reference in line 23, but its presence is important to the interpretation, hence the tendentious translation.
merit an extended stay (*P. Ross. Georg.* III 2, esp. lines 29-31). In any case, Apollonios the blind, who must also be in Alexandria, but also has connections back home (wherever that is), has heard that Serapiakos had “released” the land he had previously held on lease from Antonia. He now wants to know if this is true, and if so, whether he could lease it himself. Instead of merely having whoever sent him the information go and ask Antonia directly, Apollonios goes to Marcus to confirm the report, or perhaps to have him put in a good word.

The two obviously know each other, though intriguingly Markos does not, apparently, know Apollonios’s gnōmē when it comes to business matters. In other words, one might have expected that like the pronētēs in *PSI IX* 1081 above, Markos would have extrapolated from his experience, in essence asking himself whether he would trust Apollonios and lease him the land, and advise accordingly. Instead, he instructs his mother to consult Apollonios’s local reputation, in effect suggesting that she do her “due diligence” and find out whether he is the sort to abide by a contract or not (Markos clearly had his doubts). The alternatives stemming from the judgment of Apollonios’s gnōmē are also revealing. If she knows that Apollonios has not been eugnōmōn “to her” from personal experience (note the past tense and σοι in line 23), then she should attempt to “give” him the grain instead of the lease. I take this to mean that if he is not the sort to be trusted with a lease, one could still sell him the crop. This would probably be less lucrative, but also less risky, as a long-term contract of tenancy would be replaced with a simple

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367 *Cf. BGU* II 531, business letter from the late first-century Arsinoite, in which the author, after issuing a series of instructions, ends: ἐὰν δὲ ἀστοχήσης | [αιωνίαν] μοι λοίπην (λ. λύπη) παρέχων μέλλεις, πέπεισαι | [γάρ] μοῦ τῇ γνώμῃ, ὥς οὔτε εἰμί δίκος οὔτε | ᾧ[λ]οτρίων ἐπιθυμητής (“But if you fail me [in carrying the previous instructions], you will cause me eternal grief, for you trust in my gnōmē, that I am neither unjust nor desirous of other people’s things.” Πέπεισαι here effectively has the force of “know,” cf. the discussion in Secs. 4.2-4 above).

368 For this meaning of didōmi, see Kiessling, *Wörterbuch*, s.v. 4.
sale. Here we clearly see the dynamics of *eugnōmosynē* as they factored into the decision-making process surrounding contracting, and the extent to which it had been partially objectified.

Nearly a century earlier we have a business letter (*P.Oxy*. XLI 2996 [Oxyrhynchos, II]) that revolves about the attempt of one Anhestianos to get Psoïs the potter, who is massively in arrears, to live up to his obligations and act with respect. The letter begins with Anhestianos complaining that he had just sent his agent Sarapammon “once more” to Psoïs so that he might pay “what has already been testified to (as being owed) time and again” (ὅπως ἡδή | ποτὲ τὰ προημαρτημέ- | να σοι καὶ ἀπαξ καὶ δεύτε- | ρον διορθώσῃ) for the price of some chaff and the hire of the animals and containers to transport it. The debt now stood at 700 *drachmai*, to which he added some wheat Psoïs had received from Horion, his fellow-potter. Anhestianos then accuses Psoïs of behaving “once again” in such an “insulting” (27: πάλιν εἰς ἐπηρεάσας τῷ ἔργῳ) fashion as to hinder or obstruct production by taking no account of Sarapammon, instead giving him some excuse about having just returned from abroad with some pitch. Anhestianos quotes Psoïs’s excuse to Sarapammon *verbatim* as an explicit sign (*sēmeion*) of his knowledge of recent events. He also informs him that he has, for these reasons, found it necessary to make alternative arrangements, asking Psoïs’s friend Dionysios either to pay the

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369 *Cf. P.Oxy*. III 533.11-14, a slightly older letter from Oxyrhynchos, in which we see a different set of equally personal characteristics informing a leasing decision: τὴν οἶ- | κίναν Τ'[. .] βιοι μη μισθώσης μηδενι ει μη τι[νιννε> γυναικι μελλουση εν αυτη οι- | κεν[. .]σατ[. .]ρη [. .]γηρ [. .]ον εστιν τοιαυτινοιν οικιαν παρα[β]αλλε[ι]ν νεανι- | κοις ινα μη έχωμεν στοιμάξου[ς] μηδε φθόνου (“Do not lease the house of Τ...bios to anyone except a woman who intends to live in it . . . for it is (wrong? foolish?) to throw away such a house on young men, so that we may not be the cause of anger or envy.”).


371 *Cf. Mayerson 2004 on the importation of pitch into Egypt (he discusses this papyrus on p. 203).*

372 On this use of *sēmeion*, see Youtie 1970.
debts or for Psoïs to supply Dionysios with jars in lieu of payment (34-38: ἐδήσεν οὖν | μὲ ἐρωτήσαι τὸν φίλον Διο- | νύσιον ὡστε σε ἀπαιτη[[σ]]- | σαι ταύτα ἃ ὁφείλεις ἃ δοῦναι | σε αὐτῷ ἐν κούφοις). The editors of P.Oxy. XLI 2996 followed the ed. pr. in assuming that Dionysios is Anhestianos’s friend. However, the article (i.e., τὸν φίλον Διο- | νύσιον) is just as likely to mark the friend as Psoïs’s, and it would make more sense for Anhestianos, after having sent Sarapammon twice, to turn not to his own friend, but to Psoïs’s friend, who would be put in the uncomfortable position of acting as a de facto surety. As a friend, Dionysios was, perhaps, in a better position to dun Psoïs (certainly Anhestianos believed that Psoïs was less likely to “insult” him); and, if he was unsuccessful, Dionysios would pay up and (it seems) accept repayment from Psoïs in pots.

Such an interpretation fits with the overall strategic aim of the letter: to get Psoïs to respect his obligations and those to whom he owes them, without escalating the conflict to the authorities. Indeed, this is a threat that is meant to induce him to deal with Sarapammon, whom Anhestianos is sending one more time before he proceeds to official enforcement:

`έγρα- ψα δὲ καὶ Σαραπάμμων ἐλ-`  
40 θεῖν πάλιν πρὸς σ(ε)· ἵνα μὴ ἀναιδομαχὴς ἄ[γν]|ωμο- νῶν πρὸς τὴν ἀπαίτησιν προφασιζόμενος, ἀλλὰ`  

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The papyrus breaks off.

And I also wrote to Sarapammon to go to you once more. So do not argue shamelessly (with him), refusing to recognize your obligations and making excuses about the request, but just honor it, or else I suppose I will proceed in a wholly different manner against you, having you summoned by the nomophysylax...

It is difficult to translate eugnōmonein here, since it clearly encompasses a wider sense of obligation than mere repayment (though this is indeed part and parcel of what it will mean to act with eugnōmosynē here). Anthestianos wants to effect a total change in attitude from Psoïs’s present one of agnōmosynē and all that it entails (i.e., ἐπηρεάσας, ἀναδομαχής, προφασιζομενος, etc.). Psoïs, moreover, has no legitimate dispute with the existence or size of the debt—or at least not most it, since it had “already been witnessed one and twice before”; he is instead merely (and shamelessly) putting Anthestianos and his agent off. As with the letter of Kopres above, excuses might buy Psoïs time, but they are ruinous to his credit: the life-blood of trust and reputation were deeds, not words. Anthestianos’s quotation of Psoïs’s excuse serves as sign of the heightened atmosphere of distrust and scrutiny in which the latter must now operate: Anthestianos thus reveals himself to be counting the excuses and by now Psoïs cannot have many left. In any case, Anthestianos has elevated the dispute by moving on to Psoïs’s friends,

374 I prefer to punctuate after σ[έ] in line 40 and read the following negative ἵνα-clause as imperatival, since (a) purpose makes little sense here (Antithestianos is sending Sarapammon so that Psoïs will not cavil about the debt?); and (b) it correlates more naturally with the imperative set off by ἀλλά in the next phrase. Imperatival ἵνα-clauses often are paired, as here, with true imperatives: see Mandalaras 1973: 263-64.

375 Pace the translation of the ed. pr. and P.Oxy. XLI 2996, there is no other instance of αγνωμοσυνίν with πρός (as we have seen, it takes an accusative directly); it is more likely being used absolutely here, cf. τύχωμονῆσον in line 44 and P.Mil.Vogl. I 25.34-35 (above, pp. 175ff.).

376 Cf. PSI IV 377 above (pp. 141ff.), in which a potential contracting partner invites extra scrutiny as a way of establishing trust.
and surely this must disturb Psoïs, not only because of the trouble and expense to which his friends might be put and the obligation he would then be under, but also because it was a sign that the destruction of his reputation had commenced in earnest. Finally, Anthestianos signals that unless Psoïs act as he should, the next step would be legal proceedings. He has made repeated attempts to collect in a reasonable manner, applied direct and indirect social pressure, but if faced with total shameless, immoral intransigence or agnōmosynē, he will be forced to “proceed in a different manner” by going to the authorities. 377 Again, as in the case of Paulinos and Demetrios (P.Mil.Vogl. I 25, pp. 183ff.), when personal morality and social pressure fail to enforce an obligation and the transaction is sufficiently valuable, the next resort is law—if one had the requisite documentation and resources.

Here we should also adduce a very interesting second-century letter from Theogiton to Apollonios (P.Fay. 124, Euhemeria):

[Θ] εογι[των Απ] ολλωνίω
[χαίρει] [ν.
4 [ . . ] μαι φ[ . . . των ἔργων σαν] [ . . . .] μὴ εἰθισμένου μον
τοῖς [γ]ρ[άμμασι], καὶ νῦν οὖν
πάλαιν ἐπὶ<ε> ἱράθην γράφεται<ε> σοι
8 πρὶν ἢ τὶ περαιότερον ἐγγυότερον
ρήσω ποι[εί]ν, ἕτοιμον μὴ εὐ-
[γ]νομονής τὰ πρὸς τὴν μη-
τέρα. πάνω γὰρ μοι δοκεῖς
12 ἅφρων τις εἰ[ν]ς αἱ τοῦ δύνατος μη-
ψ[α]ς μὴ φυλάσσειν τετ. . . σου τὴν δε-
ξίαν, εἴπερ εἰ καὶ γράμματα

377 It is difficult here to communicate the ambiguity of πράξω here: it is almost as if he were saying, “I will now engage in a totally different form of praxis.”
Theogiton to Apollonios, greetings. (Again your deed compels me to write to you), though I am not accustomed to writing, and so now again I tried to write to you before I take it in hand to do anything further, if you do not act with consideration with respect to your mother’s affairs. For you seem to me to be an utter fool for not keeping your pledge this month. Even though there were no documents, thank god there is no a priori reason (that inhibits us) such that you should believe that we are to be pushed aside without our rights. If you now do not comply and pay the allowance to your mother as you are obliged, there will be consequences for this and your greed will once more cause you regret. For you should not suppose that your mother is taking these matters quietly.

As in the previous letter, here we have a person attempting to get someone to live up to his obligations, backed by the threat of “further” action (cf. also the letter of Ptollas above, pp. 155ff.). Sadly, we know nothing more of the persons in this letter. Even though it was found with other documents in the so-called “Gemellos archive” (really the archive of his phrontistēs Epagathos), no connection has been established between it and the people therein attested. Hence, we have no clue as to the particular interest Theogiton has in the affairs of Apollonios

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378 I. ἔνα δόξης ἀνευ νομίμων ἡμᾶς ἀπωθείσθαι, cf. the mistaken quantities in εὐ[γ]νομίων- of lines 9-10 and 21 and throughout.

and his mother (perhaps he was her second husband or her brother?), though he clearly identifies with her (note the shift to the second person plural). Regardless of the connection, Theogiton chooses to express Apollonios’s *agnōmosynē* not in terms of his personal or familiar obligation to himself or his mother, but with respect to his personal pledge (*dexia*). This was, as the letter makes clear, purely an oral and informal “contract”: the pledge to provide his mother with a monthly allowance was a mere promise, never reduced to writing. Something like Johanna’s *syntagē* (see above, pp. 158 ff.), it was a contract based entirely on trust and the expectation that the parties would act as they ought. Nonetheless, it created an obligation that he was morally bound to recognize as a sign of the respect he had for his mother. To go back on it now was not only immoral, but “foolish,” since the lack of documentation was not going to hinder Theogiton and the mother from pursuing their “rights” (*nomima*). However one takes *prolēpsis* (and no particularly apt translation comes to mind), the meaning is clearly that nothing stands in the way such that they seem themselves as blocked before they get out of the starting gate of legal proceedings and official enforcement.\(^{380}\) Though his mother and Theogiton had not anticipated the need for a document, they nonetheless feel confident that justice stands on their side, and so the better course for Apollonios is to return to his senses (cf. 12: ἄφρω)—and his pledge—and pay his mother what he promised. If not, there will be “consequences” and “cause for regret,” because Theogiton is prepared to go “one step further” (*peraioteron*). This may mean the courts, but not necessarily, and perhaps this threat was left intentionally vague. This is a game of

\(^{380}\) The translation of the *ed. pr.* (“preconceived notion”) strikes me as too indebted to Epicurean terminology.
chicken, and Theogiton wants Apollonios to know that he is prepared to raise the stakes and that he has his mother’s full support, since “she is not taking this lying down.”

Before concluding this section on trust and “consideration,” it is worth looking at two Roman petitions to the authorities about the agnōmosynē of others. First, BGU II 614 (Arsinoite, 217) contains a request by a soldier, Marcus Aurelius Julius Ptolemaios, to the stratēgos of the Herakleides division of the Arsinoite in April of 217 to serve a copy of hypomnēma on his former brothers-in-law concerning a debt. Ptolemaios had several financial ties to the family of his wife (technically, his concubine or phōcaria), the nature of which are now unclear. They appear, however, to have included an advance of some sort (a prochreia), seemingly connected to his mother-in-law’s public obligations, for which he might have stood surety (13-15). He may also have had separate dealings with his brothers-in-law (28-29). Sometime after his wife’s death, Ptolemaios demanded repayment of the advance from her brothers, apparently on the grounds that they were ultimately responsible for the debt as the heirs to his late wife’s portion of

381 On a final note, we may wish to read [π]ρ[άγ]ματα in line 6. There is nothing about the hand of this letter that suggests that the writer was uncomfortable or unaccustomed to writing, and it is an almost inconceivable sentence to dictate (note also that the subscription is in the same hand as the body). Theogiton’s rhetorical strategy is to demonstrate his patience and good faith efforts to get Apollonios to abide by his word. It would therefore make sense for him to say that although he is not used to “law suits,” and that he would like to avoid them (hence, his writing “again”), he was nonetheless prepared to go beyond moral suasion and remonstrance and bring the matter to the courts. The traces, however, are slightly better for the orginal reading: the space for the intial letter is a bit constrained for pi as opposed to gamma, and the trace before the extant mu accords better with a preceding mu than a gamma.


383 Or, the phrase περὶ ὧν μοι ἰδίως ὀ[φ]ε[ί]λι ὦ ἐφ ρ η[ρ]αμ[με]νων Ἀσκληπιάδης may represent a claim on a penalty for breach. Cf. P. Köln III 147 (pp. 234ff.) and Berger 1911: 56 on the phrase ὦς ἰδιον χρέος (though published at the time, he does not discuss BGU II 614).
their father’s estate (17-18). The family refused to recognize his claim (on what grounds, we do not know), and so Ptolemaios proceeded to write to the authorities in order to initiate legal proceedings.

Ptolemaios’s first move was to petition the Prefect sometime before Dec. 26, 216, the day on which he received a vague subscription to his petition, “If you have any right, you are able to avail yourself of it” (18-19: εἴ τι δίκαιον ἔχεις, | [τ]ούτω χρῆσθαι δύνασαι[ι]). Mitteis interpreted this Delphic response, paralleled elsewhere (e.g., P.Oxy. II 237.v.37-38), as one given to an “abnormale Verfügung,” in this case perhaps because the soldier petitioned for a hearing before the Prefect in Alexandria instead of waiting for the conventus in his home district. The Prefect was thus in effect inviting the soldier to pursue his rights by petitioning anew via the appropriate venue, namely when the conventus came to his area. Ptolemaios, however, responded by petitioning the archidikastēs, apparently citing his military service as the reason for wanting Alexandria as the venue (19-21). He also likely suggested in this petition that the Prefect’s response was ambiguous, if we accept the restoration of the archidikastēs’s subscription, which Ptolemaios received on Jan. 26, 217: [σαφῆς ἐστιν ἡ] τοῦ λαμπροτάτου ἣγεμόνος ὑπογραφή (21: “The subscription of the illustrious Prefect is clear.”). While Ptolemaios might have been

384 Cf. Taubenschlag 1955: 218-19 and citations to there to Kreller 1919.

385 Mitteis 1910: 97-99, cf. 1912: 37 and Foti Talamanca 1979: 218-25. Ptolemaios must have been in Alexandria the whole time, since (a) he was able to submit and receive a response to his second petition to the archidikastēs on the same day; and (b) in his first petition to the archidikastēs he requested a hearing in Alexandria because his military service prevented him from travelling to the Fayyum for trial.

386 The restoration, first suggested by Wilcken, is supported by the language in lines 21-22 and 26, which comes from Ptolemaios’s third petition, his second to the archidikastēs (see below).
legitimately puzzled by the Prefect’s order, there is little doubt that this response represented a flat-out denial of his specific request: there would be no hearing before the archidikastēs in Alexandria. Not a promising start, then, for Ptolemaios’s suit.

Undeterred, Ptolemaios proceeded to petition the archidikastēs yet again on Feb. 16, 217. This time he did not request a hearing, but rather that the archidikastēs authorize the serving of a copy of this, his third petition, on his brothers-in-law. To this the archidikastēs assented and so ordered the very same day (cf. the date of the petition in line 29 and the authorization in lines 7-9). Two months later, on April 7, 217, Ptolemaios submitted through a local agent his request to the stratēgos for service of his authorized hypomnēma, and this is the document we have today, the body of which is taken up with the contents of the third petition, his second to the archidikastēs.

One particular aspect of this hypomnēma stands out: Ptolemaios did not include copies of the first two petitions to the Prefect and archidikastēs respectively, but only their responses. This, in fact, is one of the reasons why it has been so difficult to determine what the Prefect might have meant by his response: there is no petition by which to measure it. It was, however, standard practice to include more or less intact all former documents in legal orders of this sort, as we see from countless examples. The point of creating such an embedded dossier was to demonstrate clearly what had been sanctioned by the authorities. Indeed, this explains

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387 Certainly other petitioners found this sort of response ambiguous or obscure: cf. P.Oxy. XLIII 3094.30-31 (Oxyrhynchos, 217/218), in which a certain Gaia calls a similar direction ἀμφιλοξος (see Foti Talamanca 1979: 225-29).

388 Foti Talamanca 1979: 223.

why we have the third petition embedded in our present document: by virtue of the
archidikastēs’s response to the third petition, the hypomnēma and its contents now carried an
official imprimatur. With respect to the first two petitions, however, we have every reason to
believe that they were effectively denied, even if in on technical grounds (e.g., wrong forum or
lack of jurisdiction) and in ambiguous language. Including the first two petitions, therefore,
could only have served to highlight the fact that his specific requests had been rejected. There
were thus good strategic grounds for selectively paraphrasing them instead.390 But if that is the
case, why should Ptolemaios have included the subscriptions to these singularly unsuccessful
petitions at all? Once disassociated from the precise context of the petitions, these responses,
both from high officials, did not prima facie suggest a rejection of Ptolemaios’s claims on
official enforcement per se. Indeed, Ptolemaios attempted to make their very ambiguity work
to his advantage by writing a hypomnēma re-presenting the responses in a more favorable context.
He thus introduced the Prefect’s rescript as an endorsement of his interpretation of the facts and
legal argument in lines 12-18, while the archidikastēs’s subscription establishes that the Prefect’s
order was in fact “clear.”391

But what was “clear”? Ptolemaios (or his notary) suggested the following:

\[ \text{ἵνα όνον μὴ} \]

390 This is not to say that the above document is the only one in which a previous petition is paraphrased rather than
appended (see, e.g., BGU III 970 below), only that the choice of paraphrasing versus including was one that was
likely in part driven by tactical concerns as much as custom or proper form.

391 One wonders why Ptolemaios includes the details he does about the second petition, as they do not seem to help
him. Did he see the points set out in lines 19-21 as important in themselves and validated by the archidikastēs, or
were they merely the least inconvenient elements of the contents of the second petition available to introduce the
archidikastēs’s subscription?
The purpose of this hypomnēma is to add persuasive content to the Prefect’s “clear” instructions, ostensibly so that there may be no more “obscurity.” Ptolemaios thus sketches out in his own terms what “using his right” will mean in practice, an interpretation he then has certified by the

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392 I have re-punctuated this passage in an effort to make Wilcken’s suggested reading clearer (see AfP 1 [1901], p. 130n2; cf. Gradenwitz 1900: 32-46). Personally, I wonder whether it might not be preferable to read with Brinkmann εὐγνωμονοῦτες for εὐγνωμωνοῦσι in line 23, with the latter influenced by ὑπαντῶσι (cf. Gradenwitz 1900: 41n1). Cf. the participial use in P.Oxy. I 71.1 (Ptolemais Euergetis, 303), P.Mil.Vogl. VI 264 above (pp. 182f.), cf. sec 5.4.1 on the use of participles in breach and sec. 5.4.2 on the “transactional agreement.”
archidikastēs and grandly elevated to the status of a diastolē, or an officially delivered order.\textsuperscript{393} Indeed, this may be one reason Ptolemaios turned to the archidikastēs: his was the office through which creditors had diastolai or diastolika formally issued in all manner of debt proceedings.\textsuperscript{394} Serving the notice in this way effectively presented the debtors with what appeared to be an officially sanctioned road-map as to how the rest of the dispute would, theoretically, play out: the brothers could either recognize their obligation (eugnōmonein) and respond to the request (note that, as above, it cannot simply mean “to pay”); or, if they persist in their agnōmosynē, they may run the risk of a trial. The first route is a settlement out of court, a return to the world of mutual respect and normative social relations governing contracting relationships; the second represents the necessary consequences of agnōmosynē, and with it the risk of putting the matter before a third party. Never mind that the one thing Ptolemaios has not been able to secure is precisely the hearing (κατάστασις)\textsuperscript{395} he here threatens—he has discovered in these subscriptions what amounts to a blank check to be drawn on the authority of the Prefect, endorsed by the archidikastēs, and deposited by the stratēgos. This bluff takes us as close as one can go to the border of official enforcement without actually crossing it, this document being in essence no different than the letters of Anthestianos or Theogiton above, since Ptolemaios has yet to follow the Prefect’s order by submitting a petition that either he or the archidikastēs will recognize. All


\textsuperscript{394} A convenient summary in English of the procedure with references to recent literature is found in the introduction of P.Mich. XI 614 and now Yiftach-Firanko 2003: 253-54. For interpretations of the possible juristic reasons Ptolemaios might have applied to the archidikastēs, see Foti Talamanca 1979: 223-24 and n507.

\textsuperscript{395} Κατάστασις is a legal proceeding at which each side presents its case (“kontradiktiorische Gerichtsverhandlung,” Preisigke 1915).
told, then, this “order” is nothing more than a threat to go to the authorities written on imperial letterhead, and for his brothers-in-law one last chance to settle out of court as *eugnōmones*.

We find a similar situation in *BGU* III 970 (= *M.Chr.* 242 [Arsinoite, 177]), another petition about business matters between in-laws. In this case, Tapetheus is complaining that in violation of imperial law her sister-in-law Helene is denying her rights as a dowered wife after the death of her husband to be “first creditor” (*prōtopraxia*). From this petition we learn that when Tapetheus married Helene’s brother Limnaios more than twenty years earlier in 151/152, she gave her dowry over to his control, but secured its return against some real property of his by an *ēγγραφὸς ἀσφαλεία* (13-19). Set out in this *asphaleia*, she claims, was the condition that she repay a loan of 100 *drachmai* to one of Limnaios’s creditors out of the pledged property, should she should survive him. In the event, Limnaios died sometime around 173/174, and Tapetheus duly upheld her end of the bargain by repaying the loan. Helene, however, was Limnaios’s heir and disputed Tapetheus’s claim. The matter thus ended up before the authorities:

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396 “[L]’approssimazione più plausibile che si possa fare è quella un’intimazione stragiudiziale ad adempiere, particolarmente solenne, in quanto avallata dall’ufficio del *katalogeion*” (Foti Talamanca 1979: 223-24). “Stragiudiziale” in one sense, to be sure, but I take this instance to be at least as revealing as to how litigants generally used the law and the litigation process. Indeed, it is quite amazing the extent to which Ptolemaios succeeds in dressing up his threat in the language and form of law, for he has, after a fashion, a legal document, and the previous rejection of the *archidikastēs* does not suggest that his office was in the habit of carelessly granting requests, i.e., this *hypomnēma* was apparently an “order” he was willing to give, while he was unwilling to give Ptolemaios the bargaining chip of a hearing in Alexandria. It is also a good example of a use and strategy Connolly 2010 suggested for imperial rescripts (n32).
When he [i.e., my husband Limnaios] died, then, I repaid the 100 drachmai and got a receipt. I published this, the stated cheiromaphon of my husband [i.e., the asphaleia], by dēmosiōsis in the 14th year of our lord Emperor Aurelius Antoninus [173/174] and I served it on his sister and heir, the aforementioned [i.e., Helene], saying: “May it be that she, in accordance with the prefectural and imperial decrees, recognizes her obligation and either returns my property or repays me the money.” She, however, dared to serve me with an antirrhēsis though which ... for her personal desire.

Tapetheus then begins to recount her actions with the praktōr xenikōn, the official in charge of praxis, before the papyrus regrettably breaks off.

Having repaid her husband’s loan, Tapetheus fulfilled the obligation set out in the document she had executed with her husband two decades before, and then immediately published the document, which she then had served on Helene. Note that as in so many other instances before the third century, eugnōmonein is used here in a wider and still personalized sense and does not mean simply “to repay”; in fact, Tapetheus helpfully spells out what being eugnōmōn in this case entails: returning the value of her dowry or letting her proceed with execution on the pledged property, i.e., honoring the obligation established by Limnaios’s written agreement. Although Tapetheus does not put it as starkly as others have done, her presentation has the same rhetorical aim of painting herself as eugnōmōn in light of her having upheld the provisions of the asphaleia and Helene’s agnōmōn in her disregard of it. The dispute, however, had already passed beyond the bounds of normative and second-party enforcement: Tapetheus has embarked on legal foreclosure, to which proceedings Helene has issued a formal
response, or *antirrhēsis*. In Yiftach-Firanko’s interpretation, Helene had likely already disposed of the specific property that formed the basis of the security agreement between Tapetheus and Limnaios, leaving Tapetheus with no other option but to proceed as a general creditor against her husband’s estate, hence the importance of Tapetheus’s claim to *prōtopraxia*.\(^{397}\) This is likely the correct interpretation, but why does Tapetheus assert two claims simultaneously, one contractual and the other statutory, and why does she use the language of norms?

One key to the relationship between norms and law here is the role *dēmosiōsis* plays, or the official registration of private documents (“publication”). *Dēmosiōsis* was voluntary and came at a cost. As such, it represented a clear moment of strategic choice for contract parties.\(^{398}\) Generally, people certified private documents either in order to record new and valuable rights therein embodied or to strengthen their hand whenever they saw their privately recorded transactions in trouble. Thus, for instance, in *P.Oxy. XII* 1474 (Oxyrhynchos, 216) we find a creditor serving a notice of *dēmosiōsis* on a debtor who had taken out a seed-loan in December of 214 to be paid back six months later after the harvest in Epeiph of the same year (June-July, 215). The creditor, however, waited until the following Mecheir, or the end of January 216, to register the cheirograph via *dēmosiōsis* as a preliminary step in initiating legal proceedings. We discover a similar situation in *PSI XIII* 1328 (Oxyrhynchos, 201). Here the creditor made a loan of two talents in Epeiph 194, with monthly interest payments beginning the next month (Mesore)

\(^{397}\) Yiftach-Firanko 2003: 251-58.

\(^{398}\) On *dēmosiōsis* generally, see Wolff 1978: 129-35 and now Yiftach-Firanko 2009a, esp. p. 337.
and running until the following Mesore, or July-Aug. 195, when the principal was also due. The loan went into default and creditor’s petition relates the sequence of his next steps:

τῆς δὲ ἀποδόσεως μὴ γεγονοῦσα ἐδημοσίωσα τὸ δῆλον χειρόγραφον ὑπομνήματι τῷ δ (ἔτει) Αθύρ ὀπερ ύποτέα ταχα ἐτῇ ρω ὑπομνήματι τῷ ἑνεστῶτι ἔτει Τυβί,

οὐ καὶ ἀντίγραφον μετεδόθη τῷ Ἀπολλωνίῳ τῷ καὶ Διονυσίῳ ἐνωπίω δι’ Ἀμμωνίου ἀρχιδικαστικοῦ ὑπηρέτου ἄκολούθως ταῖς οὖσαι ὑπὸ τὸ τῆς δημοσίωσ[εω]ς υπογραφαῖς, καὶ μὴ [οὐ]τῶς τῆς ἀποδόσεως γεγονοῦσης, β]ούλομαι τὴν πράξιν ἀγνόσσαθαι ...

But since there had been no repayment, I published the stated *cheirograph* in a *hypomnēma* in Hathyr of Year 4 (Oct.-Nov. 195), which I appended to another *hypomnēma* in Tybi of this year (Dec. 199-Jan. 200), of which I also had a copy served personally to Apollonianos who (is) also (called) Dionysios [i.e., the debtor] through Ammonios the assistant to the archidikastēs, in accordance with the subscriptions on the (memorandum) of *dēmosiōsis*. And since there has thus [i.e., still] been no repayment, I wish to effect *praxis* ...

The creditor in this case waited a full four months after the loan was due to publish the document, which he did for the explicit reason that there had been no repayment. He then waited a full four years before serving it. Perhaps the most fantastic such delay is *P.Mich.* XI 614, in which we discover a debtor who waited over 30 years to register his *cheirograph*! A systematic study of the timing of *dēmosiōsis* might produce interesting results, but in the meantime it is clear that in this period extensive good faith efforts were often made to save the contract before proceeding even to the preliminaries of official enforcement. This effective “grace period” was no doubt in part the product of the cost of creating such a paper trail: there

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399 Cf. *P.Oxy.* XII 1474.23.

400 Sometimes, however, people proceeded with official enforcement prematurely in bad faith: see *P.Oxy.* XLIX 3466 and *P.Oxy.* XLIX 3468.
was not only the registration fee associated with the δέμοσιοσις itself, but the series of petitions to be written and delivered, the need for someone trustworthy to go to or be in Alexandria to submit the application, fees for the ἕπερεται who served the documents, etc. (cf. Demetrios’s failure above in P.Mil.Vogl. I 25 to create a paper trail until the death of Geminos, pp. 183ff.).

Likely of equal weight, however, was the value of the business and personal relationships one would prefer to preserve, if possible, until they became too expensive.

To return to Taptheus and her sister-in-law: she published her husband’s cheirograph (i.e., the engraphos asphaleia) because, by virtue of having paid her husband’s debt, she had activated the conditional right set out in the document, and was thenceforth in the position of creditor vis-à-vis her husband’s heir. There was, of course, little sense in publishing the document before this point: Tapetheus could very well have predeceased her husband, and so this would have been a case of being “over-insured”—needless enforcement protection, wasted money. Suggestive, however, is her immediate publication. As we have seen, there was often a significant lag when it came to δέμοσιοσις, as creditors naturally hoped to extract payment without the cost, financial and personal, of official enforcement. Not so in this case: here we see a rush to fortify an inherently weak position by anticipating litigation and official enforcement.

In addition to the immediate publication we also have the odd verbatim report of Tapetheus’s wish for Helene to be εὐγνῶμον: εἶ ἡ μὲν οὖν αὐτὴν ἀκολουθῶς ταῖς ἡγεμονικαίς καὶ αὐτοκρατορικαῖς διατάξει—σιν εὐγνωμόν[ο]νεὶν καὶ ἡ ἀποκαταστῆσαι μοι τὰ

401 Cf. P.Oxy. XXXIV 2627 (Oxyrhynchos, II) and III 533 (Oxyrhynchos, II-III).

402 More puzzling is why Limnaios’s creditor (δαυσιτής) should have been content to wait until his death for repayment. The language does not suggest a legacy, but perhaps this was the manner in which the equivalent of a fideicommissum was made, clothed as a “loan.”
Memoranda ordering payment (diastolika), as we saw above in the case of BGU II 614, were served either through the stratēgos’s office, or occasionally by agents of the archidikastēs, who issued the order (e.g., PSI XIII 1328 above). We know this in large part because ancient petitioners took pains to be specific, including the manner in which their documents were served (in some cases we also have the subscriptions of the hypēretai themselves). There is no mention of the stratēgos or any hypēretēs here, but this is an unusual, not an unparalleled, omission: we can be sure that Tapetheus did not “serve” the document herself. Instead, I take λέγ[ου]σα in line 23 to mean that Tapetheus is quoting either what she said to herself, or more likely a portion of her petition to the archidikastēs, which was served by some officer and to which Helene responded in her antirrhēsis. This quote does not merely resemble, but in fact has the same strategic function as the ultimatum Ptolemaios embedded in his diastolē to his brothers-in-law in BGU II 614. If, as Yiftach-Firanko suggests, the pledged property had been disposed in such a way as to keep Tapetheus from taking possession of it as per her asphaleia, and if we take her quote as reported accurately, then we should conclude that Tapetheus already knew the status of the property when she published her asphaleia. In other words, she published it even as she knew it to be a dead letter by virtue of Helene’s actions. There is, after all, no reason why Tapetheus would not have had prior

403 On optative here, see Mandalaras 1973: § 631. The closest parallel I have found is C.Étiq. Mom. 1850 (Bompae [Panopolite], II-III).

404 Cf. Strassi 1997, who does not include BGU III 970.

indications that getting her dowry back was going to be difficult even before her husband’s death, for she had no doubt known Helene for years, if not for decades. Indeed, paying the prescribed debt, getting a receipt, and immediately registering the *asphaleia* after Limnaios’s death suggests that Tapetheus was girding herself for *bibliomachē*. Like Ptolemaios, Tapetheus wanted to get “out in front” of the case and establish an imposing legal position against Helene’s formidable *de facto* position of ownership. She therefore fired all barrels at once, serving her sister-in-law with her published contractual claim while simultaneously insisting on her statutory claim to *prōtopraxia*. The confusion or simultaneity of claims is thus to be explained by the fact that Tapetheus knew Helene’s *gnōmē*: Helene was not going to honor her obligation, and so Tapetheus wanted to overwhelm her with as many cogent legal claims as possible and have them “preserved,” after a fashion, by having them made part of the record from the start.

The appeal to *eugnōmosynē* here reflects the liminality of this particular point in the dispute. As noted, here the term is not restricted to repayment in the quasi-technical sense it acquired through this period, but encompasses the wider notions of honor and respect due certain obligations. The *diastolikon* Tapetheus issued was a last chance to get Helene to respect (a) her as her sister-in-law, (b) the wishes of her dead brother (as embodied in the *asphaleia*), (c) the legal document she had published, (d) the debt it recorded as paid and the property it recorded as

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406 The particularly vivid *hapax* in *P. Oxy.* I 68 (Oxychynchos, 131).

407 On the confusion of some legal scholars as the nature of the legal claims, see Mitteis 1912: 272. Yiftach-Firanko’s analysis of the legal issues is undoubtedly correct, and explains why the *asphaleia* was necessary at the time of marriage and *prōtopraxia* at issue at this point, but it does not explain the representation of the relationship between the contractual and protopraxial claims, particularly as it is expressed in lines 23–24.
owed, and (e) the authority of the Prefect and the rule of law—in short, almost every conceivable relationship constituting an obligation commanding respect. All these obligations could be met by following either the contract or the law, the choice was Helene’s. If she did neither, then she was flagrantly agnōmōn, and the only recourse left to Tapetheus was to proceed via the authorities. Here, then, we are at the moment of no return, or so it is represented. Ptolemaios in BGU II 614 was anticipating or bluffing that this point had been reached; not so Tapetheus: this was the last chance for resolution before going forward with risky, costly, and unpleasant legal proceedings. As remarked above, agnōmosynē can, by definition, only be countered with the law, hence its appearance in petitions. Those who persist in it have “forced” the petitioners to “take refuge” in the law and the authorities, and the petitioners go to great lengths to demonstrate the extent to which they have attempted to resolve the matter on their own. Hence, the necessary counterpart to agnōmosynē: the “boldness” and “self-pleasing” attitude of those who prefer to go to law rather than to act as they should (cf. ἥ [δ]έ ἄτολ- | μησεν μεταδώναι μοι ἀντίρρησιν δι᾽ ἥς ἐνε. . . τις πρὸς τὴν ἰδίαν ἐπιθυμίαν). It is the progression from norms to law in enforcement and dispute resolution which we have seen in the last few documents that accounts for the overtly moral claims in ancient petitions about those who would use the law. Only the “bold” break their promises and pledges, betray trust, and defy the norms of respect and obligation that one owes to others, so as to “force” a matter into court (cf. Chapter 6).
4.9 Positive Norms: Conclusion

Before moving on the negative norms surrounding legal enforcement and litigation, we need to pause to sum up the preceding discussion, which has set out two positive norms of contracting in Graeco-Roman Egypt, namely trust and “respect.” These norms are proper to contracting relationships as I have defined them (i.e., contracts as frameworks, not restricted to formalized, written contracts), and as such they constitute rules both prior to and coexistent with the laws of contracting. In other words, these norms help to determine both with whom and how one contracts before the decision is made to formalize the contract, as well as the behavior of parties during the life of the contract (i.e., in addition to whatever the parties understand to be their strictly legal rights and responsibilities).

Trust was a personal quality of the contracting parties, but one based on experience rather than status. That is to say that while one was more likely to trust family, and while friends were by definition trusted people, one trusted them not because they were family and friends but because they had proven themselves worthy of trust. Indeed, the entire vocabulary of trust emphasizes this essentially empirical nature, showing it to be a quality based on constant and repeated testing: ancient trust was only as firm as the last demonstration of its existence.

Moreover, in a world in which trust was a species of knowledge, actions necessarily mattered more than motivations. One could thus lose trust by failing to perform, regardless of reason or desire, for what this quality denoted above all was precisely the likelihood that a person would deliver. For similar reasons, one could not properly be said to “trust” those one did not know; to do so was the product of folly or naïveté, an act of propistis (to coin a noun).
There were, however, ways in which one could bridge trust gaps, and of these have seen a few examples in this chapter. Though such strategies need to be studied systematically, at this juncture it is fitting to note that most of them revolved around limiting exposure (including not engaging in a transaction, cf. Chapt. 2), putting up real security, or leaning on the *pistis* of an intermediary until trust could be established between the contracting parties themselves (e.g., *PSI* IV 377, pp. 148ff. above). Only the second strategy may be seen as *replacing* personal trust, and it remains an open question the extent to which people in Roman Egypt did in practice secure transactions on real security alone, absent any knowledge of the other party. The significance of real security in this context is that it suggests a willingness to rely on law and the state more than norms and personal relationships (unless we are to believe that only the powerful were able to extract security and enforce foreclosure). We will return to this theme and its implications for “impersonal contracting” (cf. Sec. 2.5) in Chapter 6.

With respect to the law itself, it is true that *pistis* was a legally recognized standard in some of the legal transactions recorded in the papyri, akin to the standard of Roman *fides*, and furthermore that legal documents could be said themselves to have *pistis* (e.g., *P.Oxy.* I 70; see nError! Bookmark not defined.) yet it should not for those reasons be considered a component of law *per se*. Instead, when the law invokes or codifies trust, we should see it as relying on or incorporating a norm. Nor is this sort of interplay between norms and law surprising: as suggested above, in one light business law is nothing other than a state-sponsored device to bridge trust gaps, primarily by acting as a guarantee of fulfillment, with the result (if not the conscious aim) of extending (and perhaps in part replacing) the trust on which contracts rely in
the first instance. This is, however, not the only way in which law or the state can—or did—act to widen the ambit of contract.

Next, like trust, “honoring” an obligation, or being *eugnōmōn*, also began as a personal quality. It properly and originally denoted one who had a “right” relationship to another person, just as *eusebia* characterized a “right” relationship with the divine. “Right” in this context was articulated by a sense of duty or what one owed another person. The sources of obligation were manifold, ranging from familial or filial “debts,” to those owed authority figures and, at the most rarefied, to those owed other people *qua* fellow humans. Promissory, contractual, and monetary obligations were initially all thus interpreted through this personal lens: to reneg on a promise, to not honor a contract, to refuse to recognize a debt—these were all received as personal slights. Insofar, then, as *eugnōmosynē* was conceived of as a quality of character, revealed but not constituted by acts, it was different from *pistis*. Over time, however, the notion of *eugnōmosynē* became more abstract and objective: it was the obligation itself that increasingly (but never completely) became the object of respect as opposed to the person owed. Concomitant with this change was the rise of the use of the verb *eugnōmonein* to describe discrete acts of *eugnōmosynē*. By the late Roman period, the verb could—and often did—mean simply “to repay,” without comment or reference to the regard in which the parties held each other (though, of course, it was always “good” to repay what one owed). That said, well into the third century it is still found describing the act of honoring obligations of all sorts, including contracts. In other words, contractual obligations and parties with whom one entered into contractual relations were both deserving of respect.
Finally, the same factors that made trust and “respect” so important to the decision to enter into contracting relationships also enabled them to play potentially significant roles in enforcing the terms of those relationships. Just as one contracted with those whom one trusted to perform, so one sought out those who had the right gnōmē with respect to their contracts and contracting partners. As we have seen, parties thus sought out reputational information about potential partners before entering contracts, and in one instance (P.Ross.Georg. III 1) we even find a party calibrating the level of contractual investment or reliance to the gnōmē of the potential partner. By the same token, once in a contractual relationship, we find ancient people threatening each other with reputational sanctions in the face of breach. We should not be quick to discount the effectiveness of such threats: losing one’s reputation for pistis or becoming known for agnōmosynē was no trivial matter for anyone with an interest in future transactions—after all, it was pistis and eugnōmosynē that controlled one’s access to the world of contractual relations. After a manner of speaking, then, trust and the proper gnōmē (or one’s reputation for each, if we side with Glaukon in Bk. 2 of Plato’s Republic) acted as limiting reagents for complex transactions: contracting proceeded only as far as trust and respect for obligations ran, or could be extended to run by various devices, the law, or other institutions.

Our petitions suggest that law took up where norms left off. Rhetorically, it is the repudiation of norms (agnōmosynē) that drives the petitioner to take refuge with the authorities. Rhetoric, however, is not reality. In reality, the controlling power of norms did not end abruptly at the boundary of the law. Indeed, this is apparent from the same petitions if we read them from the perspective of what the petitioners wanted from the state. From this perspective the state appears as an entity responsible (or attempted to be made responsible) for policing the norms of
contracting. Thus, while it may have been the refusal of one party to act “correctly” that “necessitated” a suit in a case of breach, the act of justice required of the state involved not the punishment of de jure illegal acts so much as the righting of moral wrongs. Of course, if one could also charge the breaching party with an actual “crime,” so much the better, at least with respect to succeeding in getting the state involved. This was, for instance, Tapetheus’s strategy (BGU III 970), who combined a statutory claim with her contractual claim in order to build the strongest, most imposing case she could against her sister-in-law: Helene had disregarded not only her brother’s obligation, which she inherited, but the law as well. Far from constituting separate realms, norms and law, society and government, were related in a complicated and dynamic manner, and the authorities often understood and endorsed norms that kept contracts together and parties out of court. These are themes to which we will return in Chapter 6.

The law and the state were every bit as much objects of the social imagination as any other human institution, loci around which and through which second-order values and norms developed. Breaking or litigating contract were therefore not merely legal acts, but ones interpreted and in part controlled by norms about how and when one should or should not breach a contract, and when one should or should not take the opposing party to court. Here we are dealing with Ellickson’s “controller-selecting” rules: why did people sometimes elect to proceed on the basis of norms and at other times on the basis of law? At what point and why did people seek third-party enforcement in Roman Egypt? As suggested above, one may see the traces of these norms and the calculus they forced adumbrated in the decision of the parties to formalize

408 Cf. BGU III 1011 [unknown, II BCE]), in which an official is said to be aiming (unsuccessfully) at getting the parties to act eugnōmonōs in some sort of dispute and so come to some mutual settlement.
their contracts in the first instance, since one important reason to do so was to facilitate access to official enforcement.\textsuperscript{409} The decision to press one’s legal rights was, therefore, not one based purely on one’s estimation of one’s legal case, and to treat it as such is to misapprehend the possibilities, costs, and strategies of contract enforcement. A full understanding of the norms of contracting must embrace not only those norms that surrounded the establishment and maintenance of contracting relationships, but also those that informed their dissolution and litigation, and this in turn demands a study of the notion of “breach.”

\textsuperscript{409} As Prof. Bagnall has reminded me, there were other cogent reasons for reducing contracts to writing. We have, for example, several examples of either unenforceable contracts (e.g., \textit{BGU} IV 1144 [pp. 295ff.]) or contracts that have no enforcement provisions in them whatsoever (e.g., \textit{P.Mil.Vogl.} II 101 [Talei, 118]), both of which suggest that writing either served enforcement via other means or indeed other purposes altogether. Also, the high mortality rates of antiquity made reducing contracts to writing important even if official enforcement was not anticipated, a sort of general protection given inherent uncertainty of ancient life. We have, in fact, seen death intervene in several instances above (e.g., \textit{P.Mil.Vogl.} I 25 and \textit{BGU} III 970) where it appears to have affected enforcement calculations, and so the steps people took in formalizing their contracts.
For the study of breach we will largely rely on a genre of document conspicuously missing in the preceding chapter: the contracts themselves. In this chapter, however, I am not particularly concerned with the legal effects of breach, but rather the language of breach, or the way in which it was conceived, how that conception changed over time, and what both can tell us about the kind of commitment a contract was. Although I will argue for a particular legal history with respect to the inscription of breach in papyrus contracts, most legal scholars will be surprised at the subject matter of the discussion: almost all of the words studied in this section have not been thought to have had a legal significance. Indeed, most scholars have dismissed the words we will investigate in this section as at best meaningless, and at worst “superfluous,” “mere fluff,” and “degenerate.” And, seen from the light of the law, they would be correct. There was, for instance, in almost all cases was no legal distinction to be drawn between the primary words for breach, παραβαίνειν and παρασυγγραφεῖν: both denote “breach.” Similarly, explicit prohibitions against practicing κακοτεχνία (“fraud”), διαμφισβήτησις (quarrelling, i.e., disputing the contract), or εὑρησιλογία (“finding excuses”) did not add anything legally to the contract: fraud was not permitted, regardless of how one drafted a contract; “excuses” were not legal defenses; and no clause could legally bar the other party from disputing the terms of the

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410 E.g., Sethe-Partsch 1920: 546 on the phrases ἀνευ ὑπερθέσεως καὶ εὑρησιλογίας and ἐπαναγκον ... ἀνυπερωτετῶς, etc. (cf. pp. 546n3 and 548), in Greek contracts: “Nur haben diese griechischen Ausdrücke in der hellenistischen Zeit schlechterdings keinen Sinn in den Urkunden, sondern sind blosse Floskeln, würdige Vorgänger des Schwulstes der Byzantiner.”
agreement. Yet these same words, if read in the light of wider cultural practice, will be shown to be socially and historically significant, revealing how ancient people thought about the contracts they wrote, the nature of the obligation embodied in them, and what it meant to break them. Finally, if we believe, as I have argued in Chapter 2, that contracts need to be read against the modalities and possibilities of enforcement, then the history in this chapter takes on a greater significance. For, in studying breach, we are in effect studying the negative of enforcement, and the history of breach will be shown to be one reflection of the evolutionary adaptation of written contracts to the enforcement regime.

Section 5.1 introduces the main verbs for breach, παραβαίνειν and παρασυγγραφεῖν, and demonstrates that there was in Alexandria during the Augustan period a latent difference between them that could be actualized. This in turn suggests that they were not the simple synonyms most scholars have taken them for (e.g., Berger 1911). In fact, if one traces the history of their usage, one discovers that each exhibits a distinct chronological and generic distribution in the papyri. These distributions are the fossilized traces of the evolution of breach in both conception and drafting in Graeco-Roman Egypt, and by reading this record we can both explain the subtle differences we observe in usage and meaning between the two, as well as reconstruct something of the moral attitude towards breach.

Section 5.2 returns to the prior history of both words in the literary and epigraphic sources of the classical and Hellenistic period. From the discussion of this evidence, we discover that although parabain ein is used to mean “breach of contract,” the association with private contract appears to be weaker than that with treaties, oaths, and public law. The fact that we have just one fourth-century contract (Dem. 35.10-13), however, means that nothing conclusive can be
determined with regard to whether or not breach *per se* was inscribed in contracts with the verb *parabainein*, as opposed to specific injunctions or conditions that constituted breach (e.g., not repaying, not returning a ship at a certain time, etc.). We are on firmer ground with *parasyngraphein*. There is one literary attestation of the word in Dem. 56, *Against Dionysodoros*. I analyse this speech with respect to the rhetoric of breach, since it serves as a useful foil for trial transcripts from the Ptolemaic and Roman periods, and place *parasyngraphein* in the context of the speech as a whole. *Parasyngraphein* is shown to be an intransitive verb that expresses an attitude towards contractual obligation and one’s contract partners. That is, one “breaks a written contract” with respect to someone else, one does not “break” the contract itself, and as such is part of the rhetorical program of the speech, and not at all the technical legal word that it would come to be in Ptolemaic Egypt.

With Secs. 5.3-5.4 we return to Egypt and look at the first attestations of the words for “breach of contract.” The distribution is surprising. *Parasyngraphein* is revealed as the first, and for a long while, the only word for breach. It first appears in a petition from the last quarter of the third century BCE, and then progressively in contracts over the course of the second century. The evidence suggests that the inscription of breach *per se* begins in earnest sometime in the mid-second century (in other words, after more than a century of written contracts), with the practice becoming wide-spread sometime in the final quarter. *Parabainein*, on the other hand, is attested only once to mean “breach of contract” in the second century, but begins to supplant *parasyngraphein* as the regular word for breach over the course of the first, attaining a dominant position sometime around the time of the Roman conquest. Section 5.3 is dedicated to exploring these first uses of *parasyngraphein*. Specifically, I argue that the verb is used in two distinct
ways, to describe either “general breach” of any sort of contract or “specific breach” in contractual quit-claims or cessions with disclaimers of right based on the Nichtangriffsclause, a declaration by a party that he or she will not sue over the rights waived in the document.

Sections 5.4-5.5 trace the development of these two strands of breach, the general and the specific. I argue that both uses can be seen in the Ptolemaic period, but collapse by the end of the first century BCE. In the Ptolemaic period, the specific meaning of parasyngraphein in conjunction with a creative use of the Nichtangriffsclause produced a certain sort of consensual contract, in which the transaction was the syngraphē itself. I discuss these contracts, which I call “transactional agreements,” in Sec. 5.4.2. By the turn of the millennium, however, parasyngraphein had effectively merged in meaning with parabainein, and was being progressively supplanted by it, with both denoting general breach. The Roman attestations of parasyngraphein are stereotyped and narrowly circumscribed in a particular set of transactions, frozen in a few formularies for cession and sale, retaining nothing but a conventional association with the Nichtangriff language. Parabainein thus continued the tradition of general breach, while the pattern of parasyngraphein in the Roman period traces the weakening momentum of the Ptolemaic tradition of specific breach.

Section 5.6 briefly discusses the pattern of parabainein in Roman contracts before concentrating on the use of parabainein before it was used to mean “breach of contract.” In the early Ptolemaic period it was associated with public law and oath and promise, and I suggest that its “transgressive” meaning or connotation was still present in its subsequent life in contracts. Sec. 5.7 argues that the shift from “breach” (parasyngraphein) to “transgression” (parabainein) in contract was not an isolated change, but rather part of a larger trend that witnessed the
“moralization of contract.” I thus connect this change in the language of breach to the appearance of other legally irrelevant, but morally significant contract vocabulary, which I adduced at the beginning of the chapter. Many of these words, like *kakotechnia*, have a long history in oaths that had often attended or covered contracts and treaties. Others without this specific history nonetheless share with *kakotechnia* a concern for the foundational commitment to contract, or the core morality of contract “to abide,” and began to appear in the texts of contracts at about the same time. Intriguingly, this moralization of the text of contracts coincides with what appears to be a decreased use of juristic oaths. This and other formal changes in contracts over the Ptolemaic and early Roman period together suggest a displacement of the functionality and mechanics of moral obligation from oaths and promises to the legal instruments of contracts.
5.1 The Vocabulary of Breach

There are two principal words for “breach of contract” in the papyri, παραβαίνειν and παρασυγγραφεῖν, the former being the most common in the Roman period. Both verbs appear in petitions concerning contracts and in the contracts themselves, where they usually form part of the protasis of a penalty clause (e.g., “if X breaches, X will pay the following penalty”).

Before we proceed, however, there is one word that has been taken—wrongly—to signify breach of contract, παραχειρογραφεῖν. Paracheiropigraphein is derived from the complex χειρογραφεῖν/χειρογραφία, and exists as a purely technical legal term in Roman-period papyri, without a single attestation in literary or epigraphic sources. Cheiropigraphein signifies the drafting of a χειρογραφία, or affidavit, of which we have numerous attestations and examples spanning the third century BCE to the third century CE, often containing a written version of the royal or imperial oath. These affidavits, and the oaths which they contained or

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411 Cf. Berger 1911: 1-4. There are other words for “breach” in Greek that do not appear in contracts. We have already seen παρασυγγραφείν in the sub-literary letter preserved in UPZ 144.16 (see above, pp. 186ff.). Even in literary sources, however, this verb is not typically used of contracts, but of public treaties, truces, and agreements. See, e.g., Polybius’s schema of ἀδέξημα, παραστόχημα, and ἀδίκημα at 36.9.14-17 (though with the comments of Walbank 1957-79 ad loc.), cf. Polby. 11.29.3, 15.17.3; and IG II² 236.17 [treaty with Philip, 338/337 BCE]). Like parabainein, πλημμελεῖν can mean “to transgress” with respect to the law (e.g., Din. 1.62, P.Oxy. VIII 1119; XXXIV 2705), though it is never used of breach of contract. The meaning originally was to play a false note “outside” the melody (see Chantraine 1968-80 and LSJ, s.v., and note that its opposite is ἐμμελεῖς, cf. emmenein). Though there are attestations of this and other legal uses of plēmmelein and its cognates from the classical through the Byzantine period, it seems to become more popular in the third century, the date of the two Oxyrhynchite papyri above. Chantraine notes (loc cit.) its continued life in modern Greek, esp. πλημμελειόδικειον for “tribunal correctionnel.”

412 BGU V 1210 (Theadelphia, post 149), P.Mich. IV.224 (Karanis, post 173), P.Oxy. XVII 2112 (Arsinoite, late II), P.Fay. 42a (Theadelphia, late II-early III), and most recently O.Narm. 112 (Narmuthis, late II-early III). For a history of the word, see Palmer 1946: 75, 129 (he cites an attestation of paracheiropigrapheia from the first century, but this would seem to be an error). The fact that all attestations appear in documents from the Arsinoite is likely insignificant: the rules of the Gnomon (BGU V 1210) applied to all of Egypt unless otherwise stated (e.g., §100), and P.Oxy. 2112 is an official docket, and so less likely to reflect merely local drafting practice.
recorded, safeguarded a wide variety of declarations and promises, primarily those relating to taxation and other administrative or fiscal activities, but also those related to purely private matters. Significantly, the verb never means to draft a χειρόγραφον, a nominally autographic contract, nor is a cheirographon ever called a cheirographia, or vice versa in this period.

Paracheirographein, a relative late-comer to legal vocabulary, thus naturally meant ―to submit a false declaration or cheirographia‖ (i.e., to perjure oneself), with no direct or necessary connection to contract.

This otherwise straightforward picture is complicated by §§98-99 of the so-called “Gnomon of the Idios Logos” (BGU V 1210.218-20), a second-century copy of a loosely

See, generally, Seidl 1933.

Preisigke 1915, s.vv. χειρογραφέω and χειρογραφία; Wörterbuch, s.vv.; Mayser 1970: III.1, 131; Palmer 1946: 75, 127; cf. Seidl 1933: 132-34. In P.Mich. II 123 verso, col. iv loans are attested as χειρογραφαί, which the editors assume to be cheirographiai, but interpret as “contracts of loan.” The fact that repayment is promised “under oath” (ἀπόδοσις μετ’ ὀρκοῦ), however, suggests that we have here are promises to pay under oath, and not contracts (note also that these loans were not in the register (cf. p9), and see Sec. 5.6.2, esp. pp. 343ff.). There is little epigraphic evidence for either cheirographein or cheirographa. In Egypt, its meaning is the same as in the papyri, see, e.g., White and Oliver, Hibis I (the “Edict of Capito” = OGIS 665, but without the readings of White and Oliver) and SB XVIII 13315. What evidence there is outside of Egypt does not suggest a connection to cheirographa (which are attested epigraphically). E.g., in ID III 1403 Bb col. 2.31 and 1442 A.82, second-cent. BCE temple inventories from Delos, the word describes a feature of a pinax, where I presume it refers to a vow made in the name of the deity, if we are to extrapolate from its use in Egypt. Lampe’s article on χειρογραφάω suggests some slippage between cheirographiai and cheirographa in late antique and Byzantine patristic sources (1961, s.v.). If so, it is striking that more than 70 years after Seidl’s monograph on the oath there are still no documentary examples prior to the middle of the third century in which we find evidence of this phenomenon. Moreover, late examples suggest to me that this “slippage” occurred because of a change in contract practice, and are not the product of simple linguistic confusion. P.Cair.Goodspeed 14 (Hermopolis, 343), for example, is a copy of a contract, which is indeed called a cheirographia; but it is also a contract secured by an oath to the Christian god. Compare other later documents that combine elements of affidavit and contract: P.Lips. I 57 (Hermopolis, 261), P.Oxy. XXII 2347 (Pela, 362; no doubt an example of what was to be sworn by a sailor in P.Oxy. IX 1223.15-16 [Oxyrhynchite, ca. 370], pace the interpretation of Woytek 1996: 240), P.Flor. I 43 (Hermopolis, 370), P.Lips. I 52 (Thebes, 372), and perhaps PSI Congr. XX 16.2-3 (Oxyrhynchos?, ca. 330?). There is no need to expand χι on the verso of SB XII 15286, a loan from the Arsinoite dated to 362, to χι(ρογραφία) instead of χι(ρόγραφον), cf. the verso of P.Nag.Hamm. 63 (Diospolis parva, 341). Cf. the discussion of Seidl 1933: 130-34; Berger 1911: 46; and Wolff 1978: 107n3 and 123.

organized epitome of rules for use in the office of the Idios Logos, a bureau charged with a
variety of fiscal and judicial functions. These provisions have long been connected with
penalty clauses in papyrus contracts that contain the so-called Fiskalmult, or the penalty to be
paid to the state in the event of breach (see P.Köln III 147 below for an example). The
mistaken idea that cheirographein could refer to the drafting of cheirographa, and the
putative connection of the Fiskalmult with the above-cited sections of the Gnomon, have
resulted in a lingering misperception that paracheiroigraphein means “to breach a contract”
(see, e.g., O.Narm. 112, published in 1993). But as even Meyer admitted, and Seidl found
decisive, such a meaning is impossible for the second century, the period in which we find all
five instances of the word. The question of the Fiskalmult and its relationship to the Gnomon
touches directly on the role of the Roman state in contracting, since it was a device by which
parties could harness the enforcement power of the state in defense of private obligations.
Similarly, the relationship of oaths to contracts is an important topic, not only because oaths
occupy something of the same ethical and normative (and linguistic) ambit as contracts
insofar as they relate to the notion of obligation, but also because they had the power to turn
private facts into public facts, as the oaths sworn were customarily made in the name of the
King or Emperor. We will return to oaths in Secs. 5.6-7, but the relationship between the

the Fiskalmult, see Mitteis 1891: 523-36; Berger 1911; Schwartz 1920: 179-84; and Pierce 1972: 159-78.
418 This problem no doubt persists in part because Kiessling only revised Preisigke’s Wörterbuch though ἐπικόπτω,
leaving the Wörterbuch with the wrong definition, “Verstoss gegen die Abmachung” (citing the Gnomon), which
had also been adopted by LSJ.
Fiskalmult, oaths, and paracheirographia will have to await a separate study. In the meantime, however, we may state with confidence that this word did not mean “breach of contract,” and so we may put it to the side and concentrate on parabainein and parasynergaphain.

Parabainein means to “step over” something, directly cognate with the English “transgress.” Used of contracts since classical times, it typically takes a direct object, usually a contractual provision or term, though it may also be used absolutely (see, e.g., the Herakleopolite documents in CPR I). Not infrequently the participle is used to denote the party in breach, thus designated ὁ παραβάς or ὁ παραβαινων. Just as the breaching party “oversteps” the boundaries established by the document, so the party abiding by the terms of the contract is said to ἐμμένειν, or to “stay within” its bounds. Of course, parabainein was not restricted to contracts or even legal contexts, but was a word capable of expressing all manner of “transgressions,” physical and metaphorical, moral and religious.

Parasynergaphain was, like paracheirographia, a technical term, but one derived directly from the language of contracting, meaning to do anything “against” or “outside” a συγγραφή, in accord with the general metaphor of transgressing the boundaries of a contract. While in the Roman period this verb is used synonymously for parabainein, it

419 E.g., Dem. 34.33; 35.21; 40.11; 48.46, 50; 56.10, 44, 48. The last speech also contains our sole literary attestation of parasynergaphain (see n422). Cf. Table 5.2 below.

420 This party may also be designated by the participle, i.e., ἔμμενων (e.g., P.Mil.Vogl. I 23.19-21 [Tebtynis, 108]).

421 See LSJ and Preisigke, Wörterbuch, s.v. παραβαινω, and Secs. 5.6-5.7 below.

422 Pollux 8.140: τὸ ἔξω τι ποιησα τῶν ἐν τῇ συγγραφῇ συμβαθέντων, citing Dem. 56.28, 34, our only literary attestations of the word, though the formulation in fact quotes Dem. 34.3. In 56.38 the speaker (Darios) suggests that
appears to take on a specific meaning in a handful of documents from early Roman Alexandria that contain two penalty clauses, the first set off by *parabainein* and the second by *parasyngraphein*. One such document is *BGU IV 1120*, an Alexandrian *synchôrēsis* dated to 5 BCE. This contract records the leasing of three tomb-gardens (*kēpotaphiai*) by a certain Diodorus to Hermias and his family for a five-year period. Bundled into this lease is a starter-loan of 200 *drachmai*. The lease specifies: a rent schedule in both money and produce (lines 8-19, cf. 38-40); alternative payment plans for the loan, seemingly within the discretion of the lessees (19-25); and the responsibilities of the lessees, namely to deliver the produce to a certain location (38-40) and to keep the garden and its physical plant in good working condition (29-34). In return, the lessees receive the aforementioned “interest-free” (*atokos*) loan “for the planting and care of the *kēpotaphiai*” (20) and “the possession of existing and future crops during the period of the lease,” from which they “shall retain the profits, paying

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423 Cf. *BGU IV 1116, 1117, 1119, 1120-22; P.Köln III 147* (all leases datable to the reign of Augustus and from Alexandria). Contrast to *CPR I 2, 11, 6, 64, 89, 103, 123, 124, 130, 133, 141-44, 146, 148, 153, 203, 220; VI 73, P.Neph. 29; PSI XV 1546; SB XIV 11703, SPP XX 47*, all third-century documents from the Herakleopolite nome which contain both verbs, but with no difference in meaning. On these latter documents, see pp. 310ff. in general, cf. App. III.

424 On which, see Herman 1958b *passim*. 

the contract carried a provision against breach: μὴ ... ἄλλο τι παρά τὴν συγγραφὴν ποιήσῃ, cf. Sardis VII 1.ii.4 (ca. 200 BCE); ἔν δὲ μὴ βεβαιώσωμεν ἢ παρά τὴν συγγραφὴν παραβαινόμεν τὴν γεγραμμένην ἐπὶ [the various provisions]); and *BGU VIII 1844.24-25* (Herakleopolite, 50-49 BCE): ἀξιόμεν ἐὰν φαίνηται | συντάξαν γράψαι Ἀθηναῖοι φρουράρ[χ]ῶι τὸν | ἔγκαιρομενον καταστήσοι ἐπὶ σέ, ὅπως ἐπα- | ναγκας[θ]ὴ ἅποκαταστήσοι ἑβαίν ἐν πλείονι [τό] | παρά τὴν συγγραφὴν βεβαιοφημ[έ]ναν μέρος κτλ. The verb is formally derived from *συγγράφην* (Mayser 1970: I.3, 138; Palmer 1946: 128; cf. *paracheirographein*, n414 above), and can mean doing something outside or contrary to a *syngraphe*, as above, or be opposed to *syngraphesthai*, as often in Dem. 56. On this speech, see Sec. 5.2.
the rental and the produce reserved” for the lessor (27-29).\(^{425}\) For his part Diodorus guarantees the lease for the duration of the term and assumes some responsibility for the irrigation of the gardens, or he will be liable to a penalty (46-50). The lessees are not allowed to terminate the contract early, and the contract gives detailed instructions for what is owed at the end of the term (37-38, cf. 21-27).

At the end of the contract come the following penalty clauses:

\(^{425}\)\textit{In this situation the interest was likely bundled into the loan, rather than the loan being truly interest free, as suggested by the “penalty” of having to pay interest in the event of breach, lines 40-41, cf. Pestman 1971. The translation of this papyrus is adapted from Johnson 1936: 134-35.}
If [the lessees] transgress anything, they shall pay up whatever rent they owe and the loan of 200 silver dr. with interest at 2 dr. per mina per month. They shall also reimburse for damages and expenses and pay a penalty of 300 silver dr., and Diodoros shall have the right of exaction from all three as mutual sureties or from any one of them he chooses or from their properties as if by legal judgment; nor shall they plead pacts, and any pact shall be invalidated. Diodoros shall have the right, if they breach with respect to any (of these terms), to eject them from the lease within the term, to transfer the lease to others, and to exact from them any loss in so doing. But if they do all things accordingly (i.e., per the contract), Diodoros on his part shall guarantee their lease for the term and the irrigating ... and the water ... the cistern. The lessees shall pay each month, apart from all the items above mentioned, the imposed ... and give the leaseholds, and Diodoros shall omit nothing of the above mentioned ... or he shall be liable to an equal penalty. Whatever waste material there is in the garden stuffs between months ... shall belong in part to Diodoros ... If the lessees give up the lease at the end of the term, the right of disposition of the crops shall remain until the month of Mecheir of the last year to whomsoever the lessees may contract.

There are, as we see, two penalty clauses here, one governed by parabainein, the other by parasyngraphein, with the penalties of the former distinguished from the latter. The first clause considers damages arising from failing to comply with particular terms of the lease; the second establishes the lessor’s damages from the perspective of the lease as a whole, specifically in the event that Diodoros needs to find another tenant. The parabainein-clause thus defines a breach that could in theory leave the contract intact. For example, the late payment of a month’s rent could be seen as a “transgression” triggering the specific penalties listed (i.e., payment of back rent, money interest on the loan, damages and expenses, and the
300 dr. penalty), without necessarily resulting in the termination of the lease itself.\textsuperscript{426} The *parasyngraphein*-clause, on the other hand, envisions a breach that gives the lessor the right to terminate the contract unilaterally (though note the lessor’s guarantee in line 47), while reserving the right to demand that Hermias and his family cover any shortfall incurred by a new lease. An obvious problem is that it is left open what constitutes a *parabasis* versus an act of *parasyngraphē* (the object of both verbs is “any (term)”: τι and ἕν τινι, respectively), and how such a determination is to be made.\textsuperscript{427} That said, the result of the combination of the two clauses is clear, i.e., the creation of a virtual saving clause in the space between “breach” and “material breach.”\textsuperscript{428} In other words, the drafter used the more specific verb *parasyngraphein* in order to establish a class of act that could be determined as undermining the contract as a whole (what we would today call “material breach”), thereby giving the lessor the right to see the entire contract as abrogated, as opposed to mere “transgressions” which violated certain terms, but did not therefore necessarily entail the cancellation of the contract.\textsuperscript{429}

\textsuperscript{426} Cf. the specificity of the *parabainein*-clause in a similar lease: *BGU* IV 1119.32-33 (Alexandria, 6/5 BCE): ἥ καθ’ ὃ ἐξήπ | παραβάειν, which follows a list of specific actions constituting breach.

\textsuperscript{427} See Secs. 5.2-5.3 on the transitivity of *parasyngraphein*. The first reliably dated occurrence of παράβασις or παραβασία to denote the abstract idea of “breach of contract” appears in the fifth century (*P. Flor.* III 313 [Hermopolite, 449]). See Preisigke, *Wörterbuch*, s.v. παραβασίας. Παρασυγγραφῆ is attested only in Pollux (see n422).

\textsuperscript{428} We should count the ambiguity of the double breach-clause as working in the favor of the lessor, since the language suggests that he could exercise both clauses cumulatively (i.e., the same act could trigger both clauses). It is also worth noting that the right to recover the shortfall from re-leasing is in fact simply that of imposing another penalty: one would guess that the first penalty clause would almost certainly cover any shortfall (cf. Berger 1911: 158-59). Compare, however, *BGU* IV 1121, a lease with a double breach clause and an express saving clause that would seem to work in the lessee’s favor, i.e., should the lessor breach by disturbing or breaking the lease, the landlord will not only pay a penalty, but remain liable for the lease.

\textsuperscript{429} Cf. Berger 1911: 2, 158-59; cf. 47-50 on express *clausulae salvatoriae*. 
To this document we may compare *P.Köln* III 147, another Alexandrian document (though not a *synchôrēsis*) datable to the same period as the documents from Abusir el-Melek in *BGU* IV. *P.Köln* III 147 appears to be a *homologia* for a long-term lease or lease-sale of a ship.\(^{430}\) The document is fragmentary, with only the end surviving:

> τὴν συνάλλαξιν ἐντὸς τοῦ χρόνου. [..] .. [..]. [ca. 23 letters]

4 σὺν τοῖς σκεῦσει ἐπὶ τῶν κατ[ά] Ἁλε[ξ]ανδρ[είαν ὅρμων] ἐμ ὑμενὶ κατα-
> βεβλαμένα πλὴν τριβῆς καὶ σ[κ] ὑμεὼς, πλὴν ἐὰν μὴ τι βίαιοιν ἐκ θεοῦ

γ[ἐ]ν[τ]αί κατὰ χιμῶνα ἢ πυρὸς ἀπὸ γῆς πάθη το πλοῖον ἢ ὑπὸ πολεμίων
> ἢ ληστῶν περιπασθῇ ὃ καὶ συμφανεῖς καταστήσω. ἐὰν δὲ τι τούτων

8 παραβαίνω, ἐκτείνω σοὶ τά τε βλάβη καὶ ὃ ἐὰν ὀφιλήσω πρὸς τά τῶν
> ναύλων μέρη σὺν ἡμιλαίαι καὶ ἄλλας ' ὡς ' ἰδιον χρέος ἀργυρίου δραχμὰς
> πεντακοσία[ς]

καὶ ἱερὰς Καίσαρι δραχμάς διακοσίας χωρίς τοῦ μένειν κύρια τά
> προγεγαρμένα,

> τῆς πράξεως σοὶ ὡσὶν ἐκ τε ἐμοῦ καὶ ἐκ τῶν ὑπαρχόντων μοι πάντων

καθάπερ ἐγ θίκης ἀκυρῶν ὅσιῶν ὃν ἐὰν ἐπενέγκαι πίστεως πασῶν
> καὶ πάσης σκέπης. ἐὰν δὲ τι παρασύγγαφῳ, ἐξεστῶ σοὶ ἐγβάλλοντά με
> ἐκ τῆς μισθώσεως εὐχρόνου ὁμοῦ ἐτέρῳ μεταμιθώσαι καὶ εἰσ-

> πράσσειν τὸ ἐσόμενον ἀφεύρεμα παρά τῇ ἐξαιμίσθωσιν

16 ὑπὲρ ὃν καὶ ἐν ἡμεραῖς χρηματιζούσας πέντε ἁρ. ἦς ἐὰν μοι προ-
> [είπτις ca. 18 letters] τῆς ἁσφ[ά]λειαν ἀνυπερβέτως.

... the right created by contract (*synallaxis*) within the period ... [the ship] with its
equipment to the harbors in Alexandria in no way damaged except for wear and tear,
unless anything violent should come about from the god in a storm or the ship suffer
from fire on land or be hijacked by enemies or pirates, which (circumstances) I will
undertake to make clear (i.e., if any of these eventualities come to pass). But if I
transgress any of these (provisions), I will pay you both the damages and whatever I
owe for the share of the freight charges with *hēmiolia* and another 500 *drachmai* as a
private debt and another 200 *drachmai* sacred to Caesar, without prejudice to the
aforewritten terms, which remain valid; (and) you have the right of *praxis* both from
me and all of my belongings as if by legal decision, with all such defenses as I may
bring forward, as well as all protection, being invalid. But if I *breach* in any way, it
will be in your power to expel me from the lease within its term, assign the lease to
another, and collect the ensuing shortfall from the new lease, concerning which [I will

\(^{430}\) See Rathbone 2007a on the relationship of this document to the *mîsthôprasai* of ships.
funish you] a security without delay within five business days from the time you make it known to me.

Here we see the same technique of drafting a virtual saving clause: transgression exposes the lessee to liability for penalties, but does not ipso facto rise to material breach and cancellation of the contract, an event for which separate sanctions are prescribed. The same problem of interpretation remains as above (i.e., what constitutes parabasis versus parasyngraphē), but this was likely intentional: the point of this virtual saving clause was not to protect the lessee from losing the contract on the basis of a non-material breach, but to state explicitly that breach (parabainein) did not automatically release the lessee from the contract; and if he was released for material breach (parasyngraphein), that he was still responsible for the lease as a whole until the lessor covered with a new lessee.\footnote{This differentiated use of parabainein and parasyngraphein appears in several Alexandrian synchōrēsis leases (App. III, nos. 24, 26, 29-32; no. 27 is technically a labor contract, but for work in a vineyard, and it has therefore been assimilated to a lease). One can also distinguish a change in template in these documents: those from around 13 BCE (nos. 24-28) tend to use the participle, while those from 6-3 BCE (nos. 29-32) conjugate the verb in a separate penalty clause as above, with the exception of no. 31, which uniquely uses the verb in a genitive absolute. The form of \textit{P.Köln} III 147 may therefore point to its being closer to the turn of the millennium than to the beginning of Roman rule. Finally, to these synchōrēsis, one should also compare the very different double penalty clauses in \textit{P.Oxy.} XVII 2134 (Oxyrhynchos, ca. 170), a petition to serve notice of intent to foreclose. Embedded in the petition is the original contract, in which \textit{parasyngraphein} governs a second penalty clause calling for a penalty for “any sort of breach” (έαν δέ τι τούτων παρασυγραφῆ, 26-28), while the first breach clause secures the right of foreclosure in the face of delinquency (έαν δέ μὴ [ἀπὸ]διὸ καθ᾽ ἀ γέ[γ]ρο[σ]πτο, 21-26). Unlike the aforementioned Alexandrian synchōrēseis, \textit{parasyngraphein} is not here being set against parabainein, and “material breach” is clearly covered by the first penalty clause. That said, it is perhaps significant that the second clause is being used as a catch-all covering clause against the specific action establishing breach in the first clause, cf. Sec. 5.3 below.}

From these documents we may conclude that \textit{parasyngraphein} could, if necessary, denote breach of contract \textit{per se} or \textit{in toto}, as opposed to merely the breach of specific terms. The word \textit{syngraphein} only came to mean “contract” as such in Egypt in the Byzantine period; in the Ptolemaic and imperial periods it almost always referred to written contracts issued by
the *agoranomos* or *grapheion*. Wolff reasonably suggested that this state of affairs was an artifact of Ptolemaic legal history: the *syngraphē*, the oldest contractual form in the Greek world, had come to be so firmly identified with official drafting and its products over the course of early Ptolemaic period in Egypt that the term did not expand to embrace *cheirographa* and other newer contractual forms until quite late. Yet, by the Roman period *parasyngraphein* was used to describe an act of breach in all parts of Egypt without regard to contractual form or public or private status, so long as the form routinely made provisions for breach, e.g., in *synchōrēseis*, *syngraphai*, and *cheirographa*. While the concept of the *syngraphē* thus retained something of its aboriginal specificity in Roman Egypt as a contract type and not a word for contract as such, the same was not apparently true of the idea of breach, which developed from its etymological basis.

The fact that Alexandrian scribes could apparently activate or realize a latent difference between *parabainein* and *parasyngraphein* in the early Roman period suggests that they were not originally synonyms. This hypothesis will be borne out by the historical distribution and pattern of usage of each verb, which we will trace and interpret in Secs. 5.3-

432 See the introduction to Chapt. 3 for the lack of a word for “contract” in Greek and the various names of contractual forms.


435 For instance, we see the word used above in *BGU* IV 1120, an Alexandrian *synchōrēsis* from early in the imperial period, as well as in a copy of a mortgage rendered in cheiographic form and embedded in a petition relating to registration of the loan in *P.Oxy*. XVII 2134 (Oxyrhynchos, 170; see n431). It does not appear in *hypomnēmata*, but this rose to prominence as a contractual form in the Roman period (cf. Yiftach-Firanko 2007), and in any case did not typically carry penalty clauses. In fact, I have found only two that do: *P.Kron.* 38 (Tebtynis, 137) and *P.Mil.Vogl.* III 143 (Tebtynis, 170/171).
5.6. Both of these words have a history that stretches back to the classical era, and therefore our analysis should begin with the Greek evidence of the fifth and fourth centuries BCE. There is, in fact, only one literary attestation of *parasyngraphein* in the entire Greek corpus, and that appears in Dem. 56, *Against Dionysodoros*. This speech is illuminating not only for what it can tell us about *parasyngraphein*, but also for the sort of rhetorical arguments employed and social values implicated in what we might call a pure contract case in classical antiquity. A full discussion of it with respect to breach will therefore serve as a helpful basis of comparison for when we turn to contract disputes in Ptolemaic and Roman Egypt.
5.2 Breach and Demothenes’ Against Dionysodoros (Dem. 56)

Dem. 56 is a forensic speech delivered in an Athenian dikē emporikē around 323-22 BCE. The plaintiffs are, from all appearances, two metics, Darios (the speaker, whose name is known only from the hypothesis) and Pamphilos, who had loaned 3,000 drachmai to a pair of traders, Dionysodoros and Parmeniskos, for the grain trade between Athens and Egypt (§§ 6, 9). Dionysodoros and Parmeniskos, however, never made it to Egypt, but stopped in Rhodes and sold the cargo, and now two years on the ship had still not returned to Athens (§ 45). From Darios’s argument we gather that the contract took into account only two contingencies: full repayment if ship “returned safely” to Athens (σῴζειν/σῴζεσθαι, §§ 22-25, 32-37) or full remittance if it was “lost” (δισφέρεσθαι, § 32-37). When Dionysodoros returned, however, he claimed that the ship had been “damaged” (ρήγνυσθαι, § 23, 40-43), and was therefore willing to pay interest on the loan only for the portion of the trip completed to Rhodes (§§ 12-14). Darios confirms that he and his partner were approached with this compromise solution but rejected it, despite the fact that it was accepted by other creditors (§§

436 There is a good deal more going on in and behind this speech than will be covered here: see Carey and Reid 1985 for text, date, and commentary; cf. Isager and Hansen 1975: 200-213; Cohen 1973: 97n4 (older literature); 1992: 164-69; Usher 1999: 256-57 (rhetorical structure); and most recently Schuster 2005 (legal analysis).

437 Nor had, it seems, Parmeniskos: Carey and Reid 1985: 198.


439 Release from repayment if the ship was lost was a basic feature of these loans: Cohen 1973: 127-29; Isager and Hansen 1975: 79-81; Cohen 1992: 141-43. Other contingencies were, of course, not only possible, but also sometimes covered in maritime contracts, as shown by Dem. 35. Such provisions, however, were not necessarily boiler-plate, as apparent from Dem. 56 (cf. Isager and Hansen 1975: 80-81; Cohen 1992: 55-57, 164-66).
12-30). Instead, he insisted on the full amount, with penalty, in accordance with the terms of their *syngraphē*.

Though there are several complicating factors at work in the dispute which led to its being litigated, it seems reasonable to suppose that the traders did not fulfill the express terms of the contract; otherwise, Darios’s case would be nonsense, resting as it does squarely on the contract. Indeed, Darios attempts to hitch the fortunes of contract as an institution to the successful defense of his particular *syngraphē*, making his case as much about contract in general as about his specific contract. To this end, Darios pursues two lines of argument: one from within Athenian contract law for the strict interpretation of the *syngraphē*; and one from without, in which he advocates for strict interpretation *per se* as the appropriate default rule for Athenian commercial law. Both lines of attack are approved by Aristotle in his discussion of contracts (*synthēkai*) as evidence in the *Rhetoric* (1376a-b, quoted in notes below).

Darios’s internal or legal argument relies on the Athenian homology law. As he says, creditors receive but the merest scraps of paper (*γραμματείδια*) in return for their cold, hard cash (§1), and so they must rely on the Athenian jurors and their laws if they are ever to see their money again:

> ήμεις δ’ ού φαμεν δώσειν, αλλ’ εὐθὺς τὼ δανειζομένῳ δίδομεν τὸ αργύριον. τῷ ούν ποτὲ πιστεύοντες καὶ τί λαβόντες τὸ βέβαιον προϊέμεθα; ύμιν, ὦ ἄνδρες δικασταί, καὶ τοῖς νόμοις τοῖς ὑμετέροις, οἱ κελεύοντοι, ὃσα ἂν τις ἐκών ἐτέρος ἐτέρῳ ὀμολογήσῃ, κύρια εἶναι. (§2)

We, however, do not say we will give, but we give the money straight away to the borrower. In what, then, do we trust, what guarantee do we have when we issue payment?

440 See n436 above.
Why, we trust in you, men of the jury, and in your laws, which command that whatever someone willingly acknowledges to another is authoritative.\textsuperscript{441}

The law adduced here is the so-called “homology law,” the foundation of Athenian contract law, which established that whatever obligation or liability one officially or publically recognized to another (\textit{homologein}) was thereby constituted as the controlling or authoritative (\textit{kyrios}) terms of the agreement admissable in court, somewhat similar to the parole evidence rule in the common law.\textsuperscript{442} The \textit{dikai emporikai} were controlled by a set of jurisdictional rules, and most of the surviving speeches revolve around these rules (i.e., the \textit{paragraphē} trials), with the parties arguing whether or the dispute should be heard in the special court.\textsuperscript{443} These rules, however, had nothing to do with contracting \textit{per se}, and in fact this speech is the only one of the five emporic speeches that does not treat procedural issues of the \textit{dikē emporikē}.\textsuperscript{444} Legally, Dem. 56 is a

\textsuperscript{441}Cf. §§ 15-16, 26-27.

\textsuperscript{442}On the homology law, see Dem. 35.1342.12, 47.77, 48.54; Hyper. 3.13; Deinarch. 2.4; Isok. 18.24; cf. Pl. \textit{Symp.} 196c; Arist. \textit{Rhet.} 1376a-b. The classic discussions are Pringsheim 1950: ch. 3 \textit{passim}; 1955; Wolff 1957; Kussmaul 1969; Von Soden 1973; Thür 1977; and now Cohen 2006 and Jakab 2006. On this meaning of \textit{kyrios}, see Häufler 1960: 19-23; cf. Véliassaropoulos-Karakostas 2001; Cohen 1992: 161-62; 2006. At the heart of the debate is Wolff’s thesis of \textit{Zweckverfügung} as a theoretical description of the basis of contractual liability in Athens. See Wolff 1957, cf. Todd 1993: 256-57, 261-68; Véliassaropoulos-Karakostas 2002; Cohen 2006; Jakab 2006; Carter 2007; and Carawan 2007. In my view, Cohen has misinterpreted the combined force of \textit{homologein} and \textit{kyrios}: it is not so much that any “agreement” is “valid” (i.e., a consensual contract) as any “acknowledged obligation” is “authoritative.” A law controlling what terms are to be accepted by a court as the final and relevant terms of the contract has nothing to say whatsoever about the sort of agreement people came to. That is, one’s \textit{homologia} could be executory and consensual or partially performed and real: all this law determines is the status of the \textit{homologia} as the final version of the deal. As we shall see in the case of Dem. 56, which relies almost entirely on the \textit{homologia} law, the contract was real and partially performed (i.e., the plaintiff handed over the money immediately): what he was suing on was whether or not the express terms of the \textit{syngraphē} should be the only point of consideration before the court (as opposed to “equity” concerns). That this case, which is one of the purest “contract” cases to survive from Athens, turning as it does on the homology-law, should be about a real contract and not an executory one, should give us pause in thinking that there were many consensual, executory contracts being drafted in classical Athens. Cf. Sec. 5.4.2 on the “transactional agreement.”


contract case, pure and simple, though the written nature of the contract will play an important rhetorical role. The homology law, as Darios argued, constituted the *syngraphē* before the court as the only legitimate framework for measuring and justifying the actions of the parties with respect to their agreement, and Darios therefore spends a good deal of time parsing (διδαξαί, § 31) the meaning of the terms in the contract, particularly σωζειν/σωζεθαι and διαφθείρεσθαι.

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445 There is, however, the matter of § 10: καταφρονήσαντες δὲ τῶν νόμων τῶν ύπερέρων, οὗ κελέουσι τοὺς ναυαρίτους καὶ τοὺς ἐπίβατας πλεῖν εἰς δ ἵ ἂν συνθῶμαι ἐμπόριον, εἰ δὲ μὴ, τὰς μεγίστας ζημίας εἶναι ἐνόχος. If this refers to a specific law (otherwise unattested), it would merely constitute a special case of the general homology law (see n442; cf. the formulation of Isager and Hansen 1975: 142, 210, 212; Schuster 2005: 165-66), and therefore a corollary of main breach of contract claim. It is telling, however, that Darios nowhere seeks to hold Dionysodoros liable for the penalties mentioned above, and so perhaps we should wonder whether this is merely a highly tendentious phrasing of the general homology law meant to suggest that the traders had run afoul of the grain laws, without necessarily saying so (cf. the claims that that Athenians had been “wronged” (adikein) by the traders in § 44, 47)? Darios invokes these laws directly with respect to his own loan (e.g., § 6), not the activities of Dionysodoros and Parmeniskos, presumably because as aliens they were not covered by them (though he comes closest to doing so in § 3; cf. Carey and Reid 1985: 197, 207). This would, after all, be consistent with the general rhetorical strategy of painting the traders as profiteers associated with Cleomenes and taking advantage of—if not causing—the recent grain shortages (§§ 7-10, on which, see Carey and Reid 1985: 204-5, 210-12; Isager and Hansen 1975: 200-8, 212-13).

446 Cf. Arist. *Rhet.* 1376α33-76b1: περὶ δὲ τῶν συνθηκῶν τοσαῦτα τῶν λόγων χρήσις ἔστιν ὅσον αὔξειν ἢ καθαρεῖν, ἢ πιστάς παῖεν ἢ ἀπίστους—ἐκάνειν μὲν αὕτω ὑπάρχω σαι, πιστάς καὶ κυρίας. As Isager and Hansen suggest (1975: 211-12), even if it was standard business practice to split the losses in the way in which Dionysodoros suggested, there is no reason to suspect that such practices had been received into the law as legally recognized defaults. Indeed, the emphasis that Darios lays on the kyrios-quality of his contract shows that he was arguing against custom (and the actions of other creditors, §§ 26-31) as legally relevant. In light of the argument as a whole, and the repeated emphasis on *syngraphai* being kyria, I cannot agree with Isager and Hansen that Dario’s *syngraphē* did not contain language as to the kyrios-quality of the document similar to what we find in Dem. 35.13. Moreover, in §§ 11-15 Darios admits that he was willing to entertain a compromise and “take a haircut” (ἄλλ’ ἡγούμενοι δεῖν ἑλπίσσασθαι τι καὶ συγχροφεῖν) in order not to appear litigious (φιλόδικος; cf. 42.12), but not at the price of nulling the contract (ἀναίρεσθαι), which at this time was accomplished not by destroying it, but merely by noting that it was akryos, or no longer authoritative, in front of a banker (ὁμολογήσαμεν ἑναντίον τοῦ τραπεζίτου ἄκρων ποιεῖν τὴν συγγραφήν, i.e., Darios would admit the existence of additional pacts, which had modified the original agreement, such that he could not pursue precisely the case he presents here: cf. Dem. 33.29). The reason he cites for not being willing to cancel the contract in its entirety was that he needed evideince that he had not broken the law himself by loaning money for grain export from Athens, cf. Dem. 33.35-38, n445 above, and Carey and Reid 1985: 215-16.
This legal argument is supported by a rhetorical strategy that characterizes the parties according to their attitude towards law. Those who recognize the kyrios-quality of contracts tend also to recognize the authority of law generally (e.g., §§ 2, 11); while who refuse to abide by the terms of duly executed contracts thereby reveal a certain arrogance or boldness, even imperiousness: to disregard the rules one writes up with another is to show contempt not merely for that specific private ordering and the rules of contracting, but the rule of law writ large.\(^{447}\) It is, in Darios’s phrase, to set oneself up as a law unto oneself (§ 12: αυτὸς ἐαυτῷ νομοθέτων καὶ οὐχὶ τοῖς ἐκ τῆς συγγραφῆς δικαίως πειθόμενος).

This high-handedness is not just a moral vice, but a political one as well. More than once Dionysodoros is cast as a man given to issuing “orders,” “as if [his] order were more authoritative than a written contract” (ὡσπερ τὸ σὸν πρόσταγμα τῆς συγγραφῆς δέον κυριώτερον γενέσθαι, § 41).\(^{448}\) In this charge few in the jury would have failed to hear an echo of the κυριώτερον-clause, an example of which is preserved in the contract recorded in Dem. 35.13 (κυριώτερον δὲ περὶ τοῦτῳ ἄλλῳ μηδὲν εἶναι τῆς συγγραφῆς)\(^{449}\)—and even fewer the

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\(^{447}\) τόλμη: §§ 3, 19, 21, 41; ὕβρις: § 12; ἀναισχύντα: § 41; καταφρόνησις: § 10. Cf. Isok. 20.7-8; Hypereides 3.31; Andok. 4, which is a study in such character assassination. Again compare the rhetorical position with Arist. Rhet. 1376b7-11: ἢ γὰρ συνθήκη νόμος ἔστω ἵδιος καὶ κατὰ κέρος, καὶ αἱ μὲν συνθήκαι οὐ ποιοῦσι τὸν νόμον κύριον, οἱ δὲ νόμοι τὰς κατὰ νόμους συνθήκας, καὶ δλας αὐτὸς ὁ νόμος συνθήκη τῆς ἐστιν, ὥστε ὅσις ἀπιστεῖ ἢ ἀναλεῖ συνθήκη τοὺς νόμους ἀναφέρει. Cf. Kussmaul 1969: 30ff.

\(^{448}\) Cf. the use of ἐπιτάττειν in § 16, and contrast both to the speaker’s assertion at § 26: οὔδ’ ἐστιν ἡμῖν οὔδὲν κυριώτερον τῆς συγγραφῆς.

echo of laws that reserved the ultimate authority for nomoi over psēphismata.\textsuperscript{450} Since in the democratic discourse of Athens the only entity capable of issuing authoritative “orders” was the people through their legitimate organs,\textsuperscript{451} individuals who arrogated to themselves the right to issue “orders” were guilty of a usurpation of sorts, betraying a dangerously oligarchic, perhaps even a treasonous or tyrannical, character.\textsuperscript{452} As Darios reminds this jury in his summation, the only people who should be “legislating” (νομοθετεῖν) are they themselves, the men of Athens (§ 48).

This legal argument for a strict interpretation is framed by a larger policy argument whose terms and justifications are properly external to contract law. Just as Darios opened with a warning that maritime credit rested “on you and your laws” (§ 1 above), so he closes by recapitulating this theme (§§ 48-50):

\begin{quote}
χωρὶς δὲ τούτων, ἀνδρεῖς Ἀθηναίοι, μὴ ἀγνοεῖτε, ὅτι νυνὶ μίαν δίκην δικάζοντες νομοθετεῖτε ὑπὲρ ὀλου τοῦ ἐμπόριου, καὶ παρεσταίζει πολλοί τῶν κατὰ θάλατταν ἑργάζεσθαι προαιρουμένων ύμαις θεωροῦντες, πῶς τὸ πράγμα τούτῳ κρίνετε. εἰ μὲν γὰρ ὑμεῖς τὰς συγγραφαῖς καὶ τὰς ὁμολογίας τὰς πρὸς ἀλλήλους γιγαντεύας ἱσχυρὰς οἰσεῖθε δεῖν εἶναι καὶ τοῖς παραβαινοῦσιν αὐτὰς μηδεμίαν συγγνώμην ἔξετε, ετοιμὸτερον προῆσθοντα τὰ ἑαυτῶν οἱ ἐπὶ τοῦ δανείζειν ὄντες, ἐκ δὲ τούτων αὐξηθῆσαι ύμῖν τὸ ἐμπόριον. (49) εἰ μὲντοι ἔξεσται τοῖς τῶν αὐξηθῆσαι ύμῖν τὸ ἐμπόριον. εἰ μὲντοι ἔξεσται τοῖς ναυκλήροις, συγγραφὴν γραφαμένοις ἐφ’ ὧν τε καταπλεῖν εἰς Ἀθήνας, ἐπεῖτα κατάγειν τὴν ναῦν εἰς ἑτέρα ἐμπόρια, φάσκοντας ῥαγῆναι καὶ τοιαύτας προφάσεις ποριζομένους οίαιστερ καὶ Διονυσόδωρος οὕτως χρῆται, καὶ τοὺς τόκους μερίζειν πρὸς τὸν πλοῦν ὅν ἄν φίλοσων πεπλευκέναι, καὶ μὴ πρὸς τὴν συγγραφὴν, οὐδέν κωλύσει ἀπαντά τὰ συμβολαὶ διαλύεσθαι. (50) τίς γὰρ ἐθελῆσε τὰ ἑαυτοῦ προεσθαῖ, ὅταν ὅρα τὰς
\end{quote}

\textsuperscript{450} E.g., Dem. 23.87, 218; 24.30.

\textsuperscript{451} Cf. the “orders” of the polis and the law in other speeches in the Demosthenic corpus: προστάττειν: (e.g.) 24.53, 43.59, cf. Arist. Nich. Eth. 1130b; ἐπιτάττειν: (e.g.) 24.53, 80, 92, and 39.7.

\textsuperscript{452} See esp. rhetorical accusation in Dem 24.76; cf. 26.9; Isok. 4.176, 14.10; and Andok. 4.16-19.
Besides this, men of Athens, you must not forget that, while you are today deciding one case alone, you are fixing a law for the whole port, and that many of those engaged in overseas trade are standing here and watching you to see how you decide this case. For if you hold that *syngraphai* and *homologiai* made between parties are to binding, and show no leniency towards those who transgress them, lenders will be more ready to risk their money, and the business of your port will be increased. But if shipowners, after drafting a *syngraphē* to sail to Athens, are to be permitted to put their ships into other ports, giving out that they have been disabled, or advancing other pretexts such as these of which Dionysodoros has availed himself, and to reduce the interest in proportion to the length of the voyage which they say they have made instead of paying it according to the *syngraphē*, there will be nothing to prevent all contracts from falling apart. For who is going to be willing to risk his money when he sees that *syngraphai* are unenforceable, while arguments such as these prevail and the claims of wrongdoers take precedence over justice? Do not permit this, men of the jury, for it is advantageous neither to the mass of your people nor to those engaged in trade, who are men most useful to you publicly in general and privately as individuals who have dealings with them. For this reason you should be careful of their interests. ⁴⁵³

Darios thus reminds the jury that in deciding this case they will be establishing a precedent likely to have a profound effect on the credit market in the Piraeus. If they opt to defend this contract they will thereby strengthen the efficacy (*isχυράς*) of all contracts. If, however, they admit other considerations, i.e., do not treat the contracts as *kyrioi*, then they risk *all* contracts falling apart (*οὐδὲν κωλύσει ἀπαντα τὰ συμβόλαια διαλύσθαι*). ⁴⁵⁴ And the credit market will, according to Darios, rise and fall with the enforceability of contracts. Darios thus

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⁴⁵³ Trans. adapt. from Murray 1936.

supported his legal argument with a rhetoric of political morality, but his call for strict justice according to the law (αἱ σίτιαι τοῦ δίκαιου, § 50; cf. § 28 and τὰ ἐκ τῆς συγγραφῆς δίκαια passim) with a clear and unabashed argument for self-interest rightly understood on multiple levels: creditors are good for business, and what is good for business is good not only for Athens as a whole, but also those members of the jury who in their own affairs “just happen to have dealings with these most useful of men” (οἱ περὶ χρησιμωτάτοι εἰσιν καὶ κοινῆ πάσιν ὑμῖν καὶ ίδία τῷ ἐντυγχάνοντι).455

Of course, there might have been good reason for the jury to recognize what one might call “the equity argument” in this case,456 particularly if the sort of compromise Dionysodoros proffered represented a customary business response to the intervention of unforeseen circumstances.457 Theoretically speaking, there is nothing necessarily destructive to credit markets in reaching such a decision and validating prevailing business practices: to the extent that courts consistently or expressly recognize standard business practices they thus become

455 On “usefulness” as a business and banking term in Athens, see Cohen 1992: 65-66, 72, 147-48, 154-55. Cohen 1973: 93-95 plausibly suggests (with evidence from the sources) that the dikasts were men experienced in emporic affairs, which helps to explain this wink to the jurors at the end of the speech. Arguments from expediency are common in epilogues, as well as the combination of arguments from both justice and expediency: Usher 1999: passim. Cf. Dem 34 and Arist. Rhet. 1375a-b on contracts and 1360a on the need for the orator to recognize the usefulness (chrēsinos) of the commercial class, who work on the basis of synthēkai and symbolai in providing for the polis. On dikaia as “claim-rights” emanating from contract, cf. Carter 2007, but without sufficient grounding in the relationship of dikaios to nomos generally and rhetorically in Greek thought (e.g., what happens to a “claim right” based on positive law when juxtaposed to that which is dikaios according to natural law? Cf., e.g., Arist. Nich. Eth. 1134a39-32, 1137a31-38a2; Rhet. 1376b14-30).

456 Carey and Reid 1985: 200.

457 Cf. the provisions in the syngraphē preserved in Dem. 35, likely delivered before 340 BCE, on which see Isager and Hansen 1975: 169-70.
established or received as a default rules that the parties can depend on or negotiate around.\textsuperscript{458} That said, the fact that decisions of Athenian courts were not issued in written form meant that it would have been difficult for those legal spectators to whom Darios alludes to interpret the reasoning behind the decisions. In fact, this holds true for subsequent Athenian juries as well, thus weakening the power and value of precedent.\textsuperscript{459} Unless, of course, the jury upheld an already established law: to do so clearly was to strengthen the only written rules there were, the public laws of the state and the “private laws” of individuals (Aristotle’s phrase in the \textit{Rhetoric}, n447 above).\textsuperscript{460} So, self-serving and rhetorically-motivated as Darios’s argument obviously was, the bright-line default of \textit{caveat stipulator} he advocated was also likely to have been the clearest and most predictable default rule for fourth-century contracting, especially when it came to complicated emporic transactions: surely, in this of all courts, \textit{written} contracts ought to be \textit{kyrías} and \textit{ischyrai}, not \textit{logoi}.

Darios uses the verb \textit{parasyngraphein} twice in the speech, at §§ 28 and 34, and \textit{parabainein} three times at §§ 10, 44, and 48. \textit{Parabainein} was, as stated above, the usual word for transgressing the boundaries set by the law, an oath, or an agreement. The precise historical relationship between treaties, oaths, and private contracts in Classical Greece is not

\textsuperscript{458} Cf. the arguments about predictability in Athenian contract law by Laani 2007. She notes that Athenian juries were not bound by precedent, but the question seems less one of being bound than that it was difficult to communicate, discover, and adhere to precedent, for Darios is clearly arguing for the advantage of setting precedent here.

\textsuperscript{459} Cf. Frier 1985: 227-31 on the effects of purely oral verdicts in Roman law of the late Republic.

\textsuperscript{460} Cf. Laani 2007: 230-32.
of immediate concern here;\textsuperscript{461} but we do need to establish the wider context of breach so as to be able to recover the differences between \textit{parabainein} and \textit{parasyngraphein} in Dem. 56.

There are 52 instances of \textit{parabainein} in the Demosthenic corpus where it means to “transgress” in a metaphorical sense (see Table 5.2).

\textsuperscript{461} Oath and its relationship to contract are receiving renewed attention: see, e.g., Cohen 2006, Jakab 2006, and the essays in Sommerstein and Fletcher eds. 2007.
Table 5.2 Attestations of the transgressive meaning of parabainein in the Demosthenic corpus

<table>
<thead>
<tr>
<th>Object</th>
<th>Total</th>
<th>Refs.</th>
</tr>
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<tbody>
<tr>
<td>τὸ εὐσεβές</td>
<td>2</td>
<td>9.16; 18.157</td>
</tr>
<tr>
<td>τὸ δίκαιον</td>
<td>2</td>
<td>9.16; 25.17</td>
</tr>
<tr>
<td>νόμος</td>
<td>15</td>
<td>20.89, 153; 21.30, 92, 147, 177; 23.71; 42.4, 12; 46.27; 58.5, 24, 49, 50, 55</td>
</tr>
<tr>
<td>τούτων τι (of a law)</td>
<td>2</td>
<td>21.10; 24.18</td>
</tr>
<tr>
<td>ψήφισμα</td>
<td>3</td>
<td>18.28; 58.49, 50</td>
</tr>
<tr>
<td>δόγμα</td>
<td>1</td>
<td>26.13</td>
</tr>
<tr>
<td>νόμιμα</td>
<td>2</td>
<td>26.13; 59.117</td>
</tr>
<tr>
<td>όρκος (securing public treaty)</td>
<td>2</td>
<td>17.22; 19.318</td>
</tr>
<tr>
<td>τούτων τι (of the heliastic oath)</td>
<td>1</td>
<td>24.151</td>
</tr>
<tr>
<td>ἄλες (private)</td>
<td>1</td>
<td>19.191</td>
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<tr>
<td>σπουδαί (private)</td>
<td>1</td>
<td>19.191</td>
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<tr>
<td>εἰρήνη</td>
<td>5</td>
<td>6.2; 9.6, 17.2, 3, 8</td>
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<tr>
<td>συνθηκαί (public)</td>
<td>3</td>
<td>17.26; 18.165, 181</td>
</tr>
<tr>
<td>κοιναὶ ὁμολογίαι</td>
<td>2</td>
<td>17.21, 22</td>
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<tr>
<td>τι τῶν κοινὴ ὁμολογηθέντων</td>
<td>1</td>
<td>17.19</td>
</tr>
<tr>
<td>κοιναὶ πίστεις</td>
<td>1</td>
<td>18.164</td>
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<tr>
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<td>48.38, 46, 50</td>
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<td>συγγραφαί</td>
<td>2</td>
<td>46.28; 56.48</td>
</tr>
<tr>
<td>τι τῶν ἐν τῇ συγγραφῇ</td>
<td>3</td>
<td>34.33; 56.10, 44</td>
</tr>
<tr>
<td>τὰ γεγραμμένα</td>
<td>1</td>
<td>35.21</td>
</tr>
<tr>
<td>ὁμολογίαι (private)</td>
<td>1</td>
<td>56.48</td>
</tr>
</tbody>
</table>

NB. The total number of entries does not equal 52, since (a) some attestations took more than one object, requiring two entries, and (b) I have listed multiple attestations in the same paragraph only once.

Approximately half of the attestations refer to nomoi (20), while 12 refer to public treaties and another 10 to private contracts. The rest describe the violation of the boundaries set by oaths,
abstract values (e.g., τὸ ἐὖσεβές), and custom. This pattern is generally mirrored in the other Athenian orators, except that it is very rarely used to describe the breach of private contracts.\textsuperscript{462} We should likely attribute this to the accident of the topics addressed in the speeches—there are simply more commercial cases in the Demosthenic corpus—since we find the language of private contractual transgression expressed clearly in Deinarchos’s citation of the homology law (Against Philocles § 4: καὶ ὁ μὲν κοινὸς τῆς πόλεως νόμος, ἐὰν τις ἐναντίον τῶν πολιτῶν ὀμολογήσας τι παραβῇ, τούτον ἐνοχὸν εἶναι κελεύει τῷ ἀδίκειν) and playfully deployed by Plato (e.g., Crito 52e, 54c; Theat. 183d).\textsuperscript{463}

The earliest Greek texts which reliably and regularly use parabainein are fifth- and fourth-century Attic inscriptions of treaties and oaths, the earliest of which appears to be the Phaselis decree (IG I\(^{3}\) 10, ca. 469-450 BCE): ἐ- | [ἀν δὲ τις παραβῇ]α [ι]νη | τὰ ἐψη- | [φισμένα, ὄφε]ε[λετ]ω μυρίας δ[ρ]- | [αχμάς ἱερ]ᾶς τῆ Ἀθηναίαι (19-22). In this case, there is a monetary penalty for breaching the decreed terms of the symbolaion, though it is the offending party, not the polis, that is liable for the fine in the case of “breach.”\textsuperscript{464} Internal

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\textsuperscript{463} Aristotle uses the verb, but surprisingly never of private agreements, cf. the pseudo-Aristotelian Περὶ ἄρητῶν 1251a37-b1; Prob. 950a. The closest Aristotle comes to discussing breach is Nich. Eth. V.8 (justice in business relations), cf. IV.7 (moral truthfulness vs. ethical business practice); and VII.13 (“useful” and “legal” friendship, i.e., contractual relations).

\textsuperscript{464} Cf. IG I\(^{3}\) 157 (ca. 440-410 BCE), a fragmentary symmachia of some sort (frag. b, line 6), with a similar penalty clause.
decrees also sometimes carried similar penalty clauses, with fines for those who
“transgressed” (e.g., IG I 3 153, ca 440-425 BCE).\textsuperscript{465} Breach of a public treaty by the polis or its representatives was typically punished with a curse, as, for instance, in IG I 3 9 (ca. 458), a treaty with the Delphic Amphictyony with an oath to abide (emmenein) by the symmachia and a curse for breaching (parabainein only partially survives, but is almost certainly to be restored). Similar are the inscribed loyalty oaths forced on others, like the Colophonians (IG I 3 37, 447/446 BCE). Such oaths themselves contained the terms, which, if “transgressed,” activated a curse.\textsuperscript{466} In other words, in such treaties the treaty was the oath (or vice versa), such that breaking one was tantamount to breaking the other.\textsuperscript{467} Indeed, treaties and the oaths that sealed them were so closely associated that they could be spoken of together as “sworn” (e.g., IG II 2 34, a treaty between Chios and Athens, 384/383 BCE),\textsuperscript{468} language echoed in Thucydides (e.g., 1.78 and 5.30).\textsuperscript{469}

To return to Dem. 56, the third instance of parabainein comes in § 48 (quoted above, pp. 253f.), and clearly conveys “breach” in a generalizing sense, as οὐράς obviously refers to syngraphai and homologiai. This instance should be contrasted with the first two, where Darios

\textsuperscript{465} Cf. IG I 3 78 (ca. 422 BCE), the Eleusinian first-fruits decree, the penalty added by Lampon in his rider (lines 47-59).

\textsuperscript{466} Cf. IG XII.5 109 (Paros and Naxos, post 411 BCE).

\textsuperscript{467} Cf. the discussion of self-enforcing contracts in Chapt. 2.

\textsuperscript{468} Interestingly and tellingly, there are no penalties for breach in this treaty. Athens was, if anything, more likely to breach than Chios, which sought the treaty. See Dušanić 2000 for historical interpretation.

\textsuperscript{469} Carter 2007 suggests that we should understand adikein and parabainein at Thuc. 2.71 as differentiating between treaty obligations and religious (oath) obligations. This is attractive (cf. Thuc. 5.30.1), but I suspect that it cannot be maintained after a systematic review of the evidence. It would nevertheless be interesting, and likely productive, to follow up on this suggestion.
appears to be paraphrasing the language from his contract. In § 10 Darios complains that Dionysodoros and Parmeniskos have “despised the *syngraphê* ... and the penalties—which they had drafted against themselves, should they breach any (term)” (καταφρονήσαντες μὲν τὴν συγγραφὴν ... καὶ τῶν ἐπιτιμῶν, ἀπενεγράψαντο αὐτοὶ οὔτοι καθ’ αὐτῶν, ἐὰν τι παραβαίνωσιν). The subordinated protasis here sounds very much like a quote from the contract, especially since penalty/curse clauses in the treaties above, the extant contract in Dem. 35, and indeed most extant contracts in Greek for the next century, were structured as similar “if/then” statements. Darios returns to precisely the same point in § 44, again seeming to quote the penalty clause of the contract and stressing the fact that it was the defendants who agreed to the penalty: “For it would be a terrible thing were you (sc. the jury) to treat those who had written down a double penalty against themselves, should they breach any of the terms in the *syngraphê*, with comparative leniency, particularly when you have been wronged no less than us” (καὶ γὰρ ἄν δεινὸν εἶη, αὔτοὺς μὲν τούτους διπλασίαν καθ’ αὐτῶν τὴν ζημίαν γράψασθαι, ἐὰν τι παραβαίνωσι τῶν ἐν τῇ συγγραφῇ, ὑμᾶς δ’ ἡπιωτέρως ἔχειν πρὸς αὐτοὺς, καὶ ταῦτα οὕχ ἦττον ἡμῶν συνηδικημένους). From such statements we might conclude that the contract had expressly provided against “transgression” *per se*.

Section 38, however, suggests that *parabainein* was not the original language of the contract. At this point in the speech, Darios has the contract read out yet again and claims that it said the following:

\[\text{470 Cf. the summarized treaty in Thuc. 4.16, 23.}\]
ἀλλ’ ἐὰν μὴ ἀποδῆς τὸ δάνειον καὶ τοὺς τόκους ἢ μὴ παράσχῃς τὰ ὑποκείμενα ἐμφανῆ καὶ ἁνέπαφα, ἢ ἄλλο τι παρὰ τὴν συγγραφὴν ποιήσῃς, ἀποτίνειν κελεύει σε διπλάσια τὰ χρήματα.

But if you do not repay the loan and the interest or do not present the security publicly and untouched, or if you do anything against the syngraphē, it ordains that you pay double the money.

The phrase ἄλλο τι παρὰ τὴν συγγραφὴν ποιήσῃς is obviously an equivalent to the ἄλλο τι παραβαίνειν in the other instances, but this extract appears to be an exact quote of the contract which is being read out. It is certainly presented as such, unlike the other two instances above. We cannot, of course, be sure, yet I am inclined to think that this reflects the drafting of the contract, even though nothing, unfortunately, allows us to recover the original language of the contract with certainty, and both formulations above (i.e., parabainein and poiein allo ti para tēn syngraphēn) are found in later contracts.

From the preceding discussion, it is abundantly clear that parabainein conveyed “breach” of contract in classical Athens, if not in Greece more widely, both generally and with a view to specific contractual provisions. It was also used to describe breach in allied institutions, like law, oaths, treaties, and agreements, all of which were conceived as a set of legitimate boundaries. In commercial cases that revolved around written contracts, the verb stood in for periphrases like τι παρὰ τὴν συγγραφὴν ποιεῖν or ποιεῖν τι ἔξω τῶν ἐν τῇ συγγραφῇ γεγραμμένων (Dem. 34.3, cf. 34.33). It may even have been written into contracts themselves, though, as we just saw, there is no direct evidence of this (a point to which we shall return shortly). What need, then, was there for parasyngraphein?

Darios uses parasyngraphein twice, §§ 28 and 34. In the first instance, Darios is in the midst of arguing that the fact that other creditors had accepted ex post facto loan modifications
was irrelevant to the case at hand, which depended entirely on the interpretation of the
*syngraphē*. He thus challenged the defense to show “either that the contract was not *kyria* or that
it was somehow unjust (οὐ δίκαιος) for him to fulfill all of its terms.” He then says:

> εἰ δὲ τινες ἀφείκασιν τί σοι καὶ συγκεχωρήκασιν τοὺς εἰς Ῥόδου τόκους ὀτῳδήποτε
> τρόπω πεισθέντες, διὰ ταῦτα οὐδὲν ἀδικεῖς ἡμᾶς, οὔς παρασυγγεγράφηκας εἰς
> Ῥόδου καταγαγὼν τὴν ναῦν;

If certain men have remitted anything to you and have accepted the interest to Rhodes, after having been persuaded in some manner, do you therefore in no way wrong us, with whom you have broken your written agreement by putting your ship in at Rhodes?

The point of this section, as indeed most of the speech, is to stress the sanctity and controlling
authority of the written document. Darios repeatedly emphasizes the volitional element of the
contract (i.e., after all it was “they themselves” who agreed to these terms), especially the fact
that it was the defendants who had allowed these penalties to be drafted into a written document.
They had, accordingly to Darios, thus opted into two sets of rules: not only had they agreed to
the specific terms of the contract, but they also agreed to have it be under the jurisdiction of the
emporic court, where the *syngraphē* was the only *pistis* that mattered (or so he claimed; boldly, if
not provocatively, he calls no witnesses and offers no depositions in support of his account of the
defendants’ actions). Darios (or the speech-writer) therefore reaches for a more specific word
than *parabainein* to describe the particularity of the defendant’s act of malfeasance, i.e., their
having violated a *written* contract. In this connection, it is worth noting that the verb is
intransitive: one “breaks written contractual faith with” the opposing party, on analogy with
other verbs that take external accusatives of persons affected, like εὐεργητεῖν, κακογεῖν, 
ἀδικεῖν, υβρίζειν, κοκοῦν (cf. εὖ/καλῶς/κακῶς ποιεῖν).  

A few moments later in § 34, Darios asks the jury to compare the actions of the two 
parties in a highly tendentious manner:

σκοπεῖτε δὲ, ὃ ἄνδρες Ἀθηναῖοι, πότερον ἡμεῖς τοῖς ἐκ τῆς συγγραφῆς δικαίως 
χρώμεθα ἢ οὕτω, οἱ οὖτε εἰς τὸ συγκείμενον ἐμπόριον πεπλεύκασιν, ἀλλ’ εἰς Ῥόδον 
καὶ Αἴγυπτον, σωθείσης τε τῆς νεώς καὶ οὐ διεφθαρμένης ἀφειν οἴονται δείν 
eὐρίσκεσθαι τῶν τόκων παρασυγγεγραφηκότες ... 

But look and see, men of Athens, whether it is we who are availing ourselves of the rights 
of the syngraphē or these men, who sailed not to the agreed-upon port, but to Rhodes and 
Egypt, who with the ship safe and sound think it fit to seek an interest abatement, 
although they broke the contract ... 

Here the verb is used without an express object. It may be that it is being used absolutely (as 
parabainein sometimes is); but it is more likely that we are intended to hear the plaintiffs as the 
 implied object, as they are in § 28. Here the participle follows as a damning comment or 
qualification of the defendants’ asking for an abatement. Strictly speaking, the legal point has 
already been made with the preceding genitive absolute, since it contained the terms of the 
contract (σωθείσης / διεφθαρμένης) which the defendants ignored. Παρασυγγεγραφηκότες, 
on the other hand, points up the personal relations in the actions of the parties, as if to say: “they 
have the nerve to come looking for an abatement from us, even though its with us that they broke 
the contract?”

By this time, the word syngraphē had largely come to mean a written contract in Athens, and it would seem obvious that we are meant to hear an echo of the syngraphē in the verb parasyngraphein. As we have seen, the writtenness of a contract was, depending on the case, a point to be scored in the Athenian courts, and it was a bell Darios made sure to ring several times in his presentation. Carey and Reid have noted that syngraphē and syngraphesthai appear 105 times in the emporic speeches, with 48 of those instances occurring in this speech alone. This verb thus echoes the primary emphasis on the position and role of the syngraphē and syngraphesthai in this speech, expressing a violation of the highest standard of contractual dealings, the violation of a written contract with another party, who are the object of the act, not the contract itself. Put more concretely: one “transgressed” (parabainein) or did something “against” or “beyond” or “outside” the terms or boundaries of a contract, but “broke contract” (parasyngraphein) with the opposing party. On the one hand, parasyngraphein was an ethical word, negatively charged on analogy with other παρα-compounds (e.g., παράνομος/παρανομεῖν), used in order amplify the specific moral and ideological matrix in which it was embedded (i.e., the rhetoric of anti-social, tyrannical lawlessness). On the other, it was a technical word, invented and used by those for whom written contracts and business ethics were the stuff of life, a commercial species of parabasis. Aristotle understood business ethics

472 I know of no instance in which syngraphē denotes an unwritten contract, as opposed to other words that do not imply writing, e.g., symbolaia. Cf. Cohen 1973: 105-7, 135-36.


474 1985: 200n50.
and “friendship” to be a subject or “virtue” of its own in the *Nichomachean Ethics*. While he, of course, had a particular intellectual and philosophical agenda, it does perhaps reflect a growing recognition of a new way of relating to others, the beginnings of a merchant code or business ethics. And this is what Darios is giving voice to here, helping to create a new vocabulary for a commercial vice. Crucially, it does not seem to be a *legal* term for breach of contract, as it would become in Ptolemaic Egypt.

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475 *Nich. Eth.* V.8, cf. IV.7; and VII.13.
5.3 Parasyngraphein and Early Ptolemaic Contracts

There are 81 attestations of parasyngraphein in the papyri, all but five of which appear in the texts of contracts, with the rest in petitions concerning contracts (see App. III; a probable exception is the last attestation, which is dubious on several grounds: see below, n556). Their distribution is intriguing with respect to chronology, contractual form, and transaction type.

To begin with the chronology, more than 500 contracts are recorded in the HGV for the period spanning the beginning of Ptolemaic rule down to the year 100 BCE. Parasyngraphein appears in the text of only 8 of those contracts. Of these, only three can be securely dated to before 150 BCE (we have approximately 340 contracts dated to before 150). Even more surprising is the fact that parabainein, the routine word for breach in contractual and similar settings in classical and Hellenistic times and in papyrus contracts of the Roman period, appears in precisely one contract before the year 100 BCE.\(^476\) If there were contracts—and we have scores of them—then surely there was a way of describing breach: what was it?

One finds in this initial period that breach was most commonly described not by a verb denoting the abstract idea of breach, but rather by a verb describing a specific action. Thus, a lease or a loan might read, e.g., ἐὰν μὴ ἀποδῆται τὸν σίτον οὐ εἰ μὴ ἀποδῆται κατὰ τὰ γεγραμμένα (see, e.g., BGU X passim), followed by a penalty.\(^477\) For the first two centuries of Ptolemaic rule contracts therefore rarely provided for “breach” \textit{expressis verbis}, but instead

\(^{476}\) \textit{P.Stras. II} 115, on which see below, p 307.

\(^{477}\) There are other variations. For instance, \textit{P.Eleph. I}, our earliest papyrus contract, drafted by Greek immigrants in 310 BCE (thus free from any specifically Egyptian influence), uses both conditional statements as well as injunctions specifying the acts that constitute breach.
stipulated for specific actions or failures to act which activated a penalty. This is true of demotic contracts as well: there was no word in them that meant “breach of contract.” Instead they were drafted with objective descriptions of breach with respect to the transaction, e.g., *P.Dion. 4.20-22:* “Si je ne les [sc. cows] livre pas | conformément à ce qui est écrit ci-dessus, je te donnerai 1500 (deben) d’argent ... au moins | en question, forcément es sans tarder” (Akoris, 108 BCE). They also typically rehearsed a series of procedural claims with respect to what constituted performance, but these should be considered periphrastic expressions of specific breach, e.g., “I shall not be able to say, ‘I have performed for you in accordance with everything which is (specified) above,’ while the instrument which is above is in your hand” (Pierce 1972: 17 [Saqqara, 108 BCE]); or *P.Dion. 5. 22-23:* “Je ne pourrai pas dire: ‘C’est un contrat de location qui se prolonge | un an,’ tant que tu détiens une parole à ma charge” (Akoris, 106 BCE). There was, then, no language describing breach inscribed in the contracts of the early Ptolemaic period, nor, interestingly enough, were there any provisions for general breach. By “general breach” I mean a provision that treats the contract from the perspective of the transaction as a whole, and thus works to include or imply terms which the parties had not reduced to writing, but likely would have, had they considered the particular circumstances now threatening the contract. General breach thus conceives of breach with respect to the transaction or the contract as a whole, whereas “specific breach” is a narrow contruction of particular actions that constitute breach as set out in a particular contract, as in the loan examples set out above.

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As we have seen in the previous section, some incoherent notion of general breach could have been inherited from classical and early Hellenistic contract experience, if not in drafting practice. The syngraphē in Dem. 35.10-13, our only preserved emporic syngraphē, contains a number of “if/then” contingency clauses, but no language of breach or a general breach clause. The evidence from Dem. 56 indicates that the disputed syngraphē may have carried some sort of general breach clause, but the most direct reference in § 38 suggests that the original text read something along the lines of \( \epsilon \alpha \nu \delta' \ \alpha \lambda \lambda \omicron \ \tau \iota \ \pi \alpha \rho \alpha \ \tau \iota \nu \ \sigma \gamma \gamma \rho \alpha \phi \iota \nu \ \pi \omicron \iota \sigma \omega \omicron \iota \).\(^{479}\) Thus the syngraphē most likely did not use the language of breach per se, although it appears to have employed a very close periphrasis for it, and more importantly, clearly provided for general, as opposed to specific, breach. It is telling, however, Darios did not rely on this general clause, if it existed, but instead argued from specific violations. The general breach clause was adduced only to point up the volitional element of the “self-imposed” penalty, while the argument for a general “faithlessness” was pressed with the charge of parasyngraphē (cf. n427).

Occasionally, we find in early Ptolemaic contracts a blanket clause of the following sort: \( \epsilon \alpha \nu \ \delta' \ \mu \eta \ \iota \ \delta \epsilon \iota \nu \ \pi \omicron \iota \omega \omicron \iota \ \kappa \alpha \tau \alpha \ \gamma \epsilon \gamma \rho \alpha \mu \mu \omicron \epsilon \alpha \omicron \ \sigma \omicron \ \nu \epsilon \gamma \gamma \rho \alpha \phi \alpha \nu \tau \omicron \) or even simply \( \epsilon \iota \ \delta' \ \mu \eta \).\(^{480}\) This phraseology is usually employed when a contract has numerous specific obligations, and so represents merely a summary term for the explicit provisions set out in the contract. That said, it is, perhaps, more open to interpretation than the specific

\(^{479}\) Cf. n422 and immediately below.

\(^{480}\) E.g., \textit{P.Cair.Zen.} I 59133 (Arsinoite, 256 BCE; paramonē contract and oath), \textit{SB} XIV 11659 (Philadelphia, 256 BCE; lease), \textit{P.Col.} III 54 (Arsinoite, 256-250 BCE; lease), cf. \textit{P.Dryton} I 11 (Diospolis Magna, 174 BCE; loan).
conditionals, and to that extent closer in effect to a general breach clause.\textsuperscript{481} However, it differs significantly from a general breach clause precisely in that it does not suggest that there are undefined (i.e., unwritten) actions that will constitute breach if they threaten or undermine the underlying transaction. Though there are contracts and petitions that claim that certain actions are παρα τήν συγγραφήν (\textit{P.Dryton} 11 [Pathyris, 164 BCE], \textit{BGU} VIII 1844 [Herakleopolite, 50-49 BCE], and perhaps \textit{SB} XXII 15545 [Theadelphia, 146 BCE]), I know of no example in the papyri of a periphrastic breach clause of the sort apparently written into the contract in Dem. 56. By the time breach was drafted as such in Egypt, it was conceptualized in terms of \textit{parasyngraphein} or \textit{parabainein}. As I shall argue below, the inclusion of terms for breach and provisions for general breach point to a greater sense of the contract as a distinct thing, a framework whose totality was more important that the specific provisions it included; or, put another way, as a set of interpersonal relations legitimated not by form but by the underlying reason for its coming into existence.

Not coincidentally, our first papyrological attestation of \textit{parasyngraphein} comes from a case in which general breach is precisely the claim. The word first appears on papyrus in a petition of 222 BCE from Magdola in the Fayyum (\textit{P.Enteux}. 59; App. III, no. 1). In this petition three lessees complain that their landlord Demetrios is ignoring their good-faith efforts to demonstrate their inability to fulfill the terms of their lease with respect to an

\textsuperscript{481} By the middle of the first century CE, such a blanket phrase was considered equivalent to a general breach clause, e.g., \textit{P.Oxy.} XIV 1641 (App. III, no. 49), lines 10-11: ἐὰν δὲ παρασυνγραφῶ ἢ μὴ ποιῶ καθὰ γέγραπται, κτλ.; cf. \textit{C.Pap.Gr.} I 14 (App. III, no. 39).
arbitration procedure set out in their *syngraphē*, and that his avoidance therefore betrayed “a desire to break the contract” (βουλόμενος παρασυνυγγραφεῖν):

To King Ptolemy from Thedotos, Gaddaios, and Phanias, greetings.

We are being wronged by a certain Demetrios. He let us the *klēros* of Nikias and Asklepiades, the 30 *arourai* holders in the village of Herakleia in the Themistos division, for two years, on the condition that the lease begin with the sowing of the 25th year for (harvesting in) the 26th, with the rent being 3 *artabai* of wheat for each *aroura*, and 3.5 *artabai* of wheat for the second year. And the *syngraphē* of *misthōsis* states: “guaranteed against risk, apart from drought or flood—the part which can be sown before the 10th of Choiak—(they will inspect?) whatever part cannot be sown before the 10th of Choiak, after having called in Demetrios and three mutually acceptable men.” Although we are trying to call in Demetrios to show him it cannot be sown, he has paid us no mind, wishing to break the contract; and he does not guarantee the boundaries which he showed us on the terms for which we contracted.

We beg you, King, to order Diophanes the *stratēgos* to write to Meleager the *epistatēs* of the village of Boubastos to send this Demetrios before Diophanes the *stratēgos* and,
if we are vindicated as to the truth of the allegations in this petition, to force him to uphold our right. If this comes about, we will have obtained justice. Farewell.

According to their *syngraphē*, if the lessees were unable to sow before the 10th of Choiak because of a poor inundation they were to have the evidence of this condition certified by Demetrios and three mutually acceptable witnesses. In this connection, it is important to note that lessees in this period generally appear to have assumed inundation risk by default.\(^{482}\) This explains why the lessees made sure to quote the part of their contract in which the risk had been explicitly assumed by Demetrios. The risk, however, had been imperfectly transferred, for the drafting of the verification process left the lessees with the responsibility of bringing the evidence of *force majeure* to Demetrios’s attention (6: \(π\alpha\rho\alphaλαβόντα\)). Demetrios, however, had every reason *not* to verify the level of the inundation, since this left the tenants responsible for the full rent. Poorly matched to his incentives, then, was the apparent lack of any positive responsibility on his part to make sure that the verification took place. In other words, careless drafting opened up a loophole for Demetrios, and in the event he seemed to be trying to slip through it ... by doing nothing. Indeed, all he had to do was to make himself scarce for a relatively short while. The 10th of Choiak, or Jan. 25, represented what the parties evidently saw as the last possible sowing date for a full harvest, coming as it did at the end of the sowing season.\(^{483}\) The petition is dated to Jan. 28, or three days after the date set for sowing or modification, and soon the evidence of a poor inundation would quite literally

\(^{482}\) Hermann 1958b: 144.

\(^{483}\) Cf. Schnebel 1925: 137-43.
evaporate as the flood progressively subsided, leaving the leasees at a disadvantage in any subsequent arbitration or litigation.

Once we recall that almost all contracts in this period defined breach in terms of specific actions, the legal problem before the lessees comes into sharper relief. Given the way early Ptolemaic (not to mention fourth-century) contracts were drafted, breach claims were necessarily more likely to revolve around concrete questions of terms and facts than intentions (cf. the strategy in Dem. 56 in Sec. 5.2). All a judge or jury need ask was: is a certain action or forbearance stipulated in the contract? And if so, did the defendant do or not do that action? If this contract, like others in this era, carried no general breach clause, Demetrios could plausibly claim that he was required merely to perform or forbear from only those actions specified in the contract, with no residual obligation to abide by the spirit of the contract as such. He could thus interpret the lease as saying that he had no positive responsibilities in the verification process as it was written. (Of course, he would no doubt have put it rather differently, e.g., that the defendants failed to inform him in a timely manner.)

Telling in this regard is the lessees’ second claim, that Demetrios had failed to guarantee the boundaries of the klēros (8: τὰ δὲ ὅρια ἡμεῖν ἃ παρέδειξεν ἐφ᾽ οἷς συγγεγραμμέθαι οὐ βεβαιοῖ). The lease, it seems, like many or most Ptolemaic leases included a bebaiōsis-clause, to which the plaintiffs hoped to hold Demetrios accountable. Why not simply rely on this claim? It may have been dubious, or hard to prove, but I suspect that the real reason was that it was simply not a compelling counter-claim to an accusation of

484 On bebaiōsis-clauses, see Hermann 1958b: 153-60 (P.Enteux. 59 is cited on p. 160).
manifest failure to sow. Indeed, one rather suspects that this second claim was tacked on precisely because it was a defined violation of the contract, whereas “breach” was not.\textsuperscript{485} In the end, however, it seems that the lessees and their scribe thought Demetrios better charged with the real offense of malicious avoidance, even if it was not explicitly covered in the contract. This, then, was the legal problem facing the plaintiffs: Demetrios’s act of breach was, strictly speaking, no act at all within the world of the \textit{syngraphē}.

This dilemma is reflected in the rhetoric and strategy of the lessees’ petition, as they accuse Demetrios of “\textit{wishing} to breach the contract” (\textit{βουλομένος παρασυνγραφεῖν}). This charge is balanced by their presentation of the contract as still in force: having done nothing yet, Demetrios cannot properly be said to have breached; similarly, they themselves are \textit{even now still trying} to get Demetrios to participate in the validation mechanism (note the conative present participle in the genitive absolute).\textsuperscript{486} Significantly, it is the legal inadequacy of the contract as a framework for the transaction that forces the plaintiffs to argue in terms of breach \textit{per se}. The plaintiffs opted for \textit{parasyngraphein} over a word like \textit{parabainein} for the obvious reason that \textit{parabainein} conceptually and grammatically took as its object one of the terms of the contract, and this is precisely what they cannot claim: Demetrios is “breaking the contract,” not “transgressing one of its enumerated boundaries.” Instead, the want to hold him accountable for his attitude towards the contract as a written instrument and themselves

\begin{quotation}
\textsuperscript{485} Another, admittedly less likely interpretation given the language, is that the claim was that Demetrios was in effect not “guaranteeing” the land by not participating in the verification and modification procedure.
\end{quotation}
as contract partners. The arguments for general breach and imminent breach (i.e., the importance of intention) collapse in the intransitive and totalizing verb *parasyngraphein*. One can easily see how it was this sort of distinction that eventually allowed the word to come to mean “material breach” as opposed to “breach” in the Alexandrian *synchorēseis* (Sec. 5.1).

The first attested contract to include the term is *P.Petr. II 47* (Arsinoite, 210/209 BCE; App. III, no. 2). The contents are rather murky due to the condition of the papyrus, but the document appears to represent a settlement over a loan that had already been litigated in some fashion. The settlement agreement ends:

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20 ...[καὶ μὴ ἔξειναι
Δονομάζει μὴδε Ἰστιαῖω περὶ τῶν χρημάτων ἄλληλοις
ἐπελθέν, ἐπιοῦτι [δὲ -ca.? - ἐὰν δὲ τὶς
παρασυγγραφήσῃ καὶ μὴ ἐμείνῃ τῇ ὁμολογίᾳ
24 ἢ τε ἐφοδὸς αὐτῶι ἄκυρος ἐστω καὶ προσ[αποτισάτω
ὁ ἐπιπορεύ[όμενος -ca.?- ] ...]

... [and it is not permitted] to Donomazis (i.e., the debtor) or to Istiaios (i.e., the creditor) to sue [each other] over the money ... [but if anyone (i.e., either)] breaches or does not abide by [the agreement], let his suit be invalid and let the one initiating the suit pay an additional fine ...
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The principal transaction of this *syngraphē* was one of mutual forebearance: the parties agree not to litigate over the disputed loan. *Parasyngraphein*, in other words, is not communicating general breach as in the previous instance, but instead constitutes a specific action, for in this contract there was nothing to “do” beyond abiding (*emmenein*) by the agreement recorded in

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487 See *M.Chr.* 135 and literature there cited.
the *syngraphē*. After a fashion, then, the *syngraphē* was the transaction.\(^{488}\) Though different in scope, this “specific” use of the verb here shares with the first case the facts that: (a) in neither instance does it govern a direct object, but is used either absolutely or with the opposite party as the indirect object; and (b) both emphasize, though in different ways, the *syngraphē* as a totality.

The next use of the verb comes in *P.Mich.* III 182 (App. III, no. 3).\(^{489}\) This document performs two legal functions, a fact reflected in its broken-backed construction.\(^{490}\) The contract is drafted as a *homologia* between three lessees of a woman named Eirene and her creditor Nikandros. Specifically, the lessees acknowledge that they are obliged to pay the rent owed to Eirene to Nikandros or his agents, at his discretion, on the rent schedule of the underlying leases, which is reiterated for confirmation. Then follows a penalty clause, in which the lessees must either pay the rent “according to what has been written,” or pay whatever they owe immediately with *hēmiolion*. The remainder of the contract is given over to obligations established between Nikandros and Eirene. First, if the lessees “in no way break the contract” (32-33: μηθὲν δὲ παρασυνγραφούντων αὐ- | τῶν), Nikandros is to receive the rent as payment on Eirene’s loan. Second, if any portion of the rent cannot be paid by the

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\(^{488}\) Cf. Secs. 5.4.1-5.4.2.

\(^{489}\) This document belongs to an archive that has been re-assigned to the lessees Leontiskos and his associates by the editors of Trismegistos, having previously been seen as having belonged to the lessor Eirene (Seidl 1962, following Westermann, Keyes, and Liebesney, the editors of *P.Col. IV*). The best discussion of the larger context for this contract and Eirene’s financial arrangements is still to be found in *P.Col. IV*, pp. 194-202, cf. n332 above on *P.Col. IV* 121.

\(^{490}\) Formally, it is a “Homologie in Syngrapheform, ohne Zeugen” (Rupprecht 1967: 65n6; on *homologiai* and *syngraphai* and objectivity vs. subjectivity of style, see Mitteis 1912: 72-75; Von Soden 1973: 3-7). There are some odd features, like the lack of witnesses and signalments (see Wolff 1978: 13n21, 82n7; cf. 1957: 58n77).
lessees due to certain specified circumstances, like crop failure, Eirene is to pay the difference and Nikandros will cancel the mortgage. Finally, if Nikandros receives the payments but does not credit them or cancel the mortgage, he must pay a penalty to Eirene.

Although it is a bit jarring to move from a series of infinitives dependent on *homologein* to a series of independent conditionals concerning parties who are not the subjects of the head verb, there is no break in the *homologia* formally: many early notarial *homologiai* exhibit the same grammatical structure (e.g., *BGU* VI 1262 [Oxyrhynchos, 216/215 BCE]; *P.Tebt.* 105, App. III, no. 11). Substantively, however, the first legal transaction ends with the first penalty clause. That is to say, it would be odd for the lessees to acknowledge new obligations constituted between Nikandros and Eirene over the recording and crediting of payments towards a mortgage in which they had no interest, and in fact they do not do so. Rather, the second half of the contract is, as described above, in effect a homology between Nikandros and Eirene, which erects a set of rules to safeguard Eirene’s interests in the payment scheme. Under this arrangement, Nikandros has no legal obligation to the lessees, but is obliged under penalty to credit the payments towards Eirene’s loan (44-52). This second transaction between Eirene and Nikandros could have been recorded in a separate document, but the parties economized on paperwork by having the new, three-way deal embodied in one contract.⁴⁹¹ This contract thus aims to connect and in part supersede two sets of prior

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⁴⁹¹ For the legal problems associated with substitution or assignment of obligations in the papyri, see Wenger 1906: esp. 186-209, 237-59; Weber 1932: 46-60, 63-70, 75-93, *P.Mich.* III 182 is positively schizophrenic when compared to the more unified examples discussed in the works above, cf. the example of *P.Oxy.* IV 728 below (n504). Wolff 1957: 59n77 suggests that there was a separate agreement between Nikandros and Eirene (i.e., besides the original loan), which is nowhere in evidence. As I read the document, this is precisely what lines 32-52 represent.
contracts, a series of lease *syngraphai* issued by Eirene to the lessees (19-22) and her loan agreement with Nikandros (9, 13). The convenience of the arrangement is clear, but there are legal problems to solve: (a) establishing Nikandros’s legal claim against the lessees; (b) establishing Eirene’s claim against Nikandros with respect to his responsibilities under the rent-transfer scheme; and (c) extinguishing certain of Eirene’s claims against the lessees under the old leases.

Technically speaking, there was no need to solve the first problem legally: Eirene could have simply told her lessees to pay Nikandros. We may compare in this connection *P.Tebt.* II 593 (Arsinoite, 115/116), which contains a letter ordering a tenant to pay a third party. In this case, the order no doubt sufficed: the landlord merely told his *geōrgos* to pay his brothers, and likely this arrangement was never legally formalized. Eirene could also have asked her lessees to be party to a homology directed to her to the same effect if she wanted to hold them legally responsible for getting the payments to Nikandros. Nikandros, however, wanted a direct legal connection to the lessees: they were to understand that they were obligated to follow his directions when it came to payment. This was, in fact, a typical move made by loan assignees. In this case, however, there was not even the fiction of a loan to rely on, and therefore no question of establishing an obligation on a real basis: the land and the leases were still Eirene’s. Nikandros therefore had them execute a *homologia*. Though

492 Orders assumed in Digest.

493 Cf. the “fictive loans” discussed by Rupprecht 1967: 118-47.
conceptually very different, the homologia was, like the Roman stipulatio, well suited to the recording of idiosyncratic, unilateral obligations.\textsuperscript{494}

Given the decision to formalize the new arrangement as a homologia between Nikandros and the lessees, Eirene’s order was transformed into an endorsement. This we have in \textit{P.Mich.} III 183, dated to the next day: a simple cheirographic statement of consent \textit{(synchôrein)} and a promise not to sue the lessees—in effect a waiver of the right to sue on the strict terms of the original leases.\textsuperscript{495} This was necessary not only because \textit{P.Mich.} III 182 affected a contract to which she was party (i.e., the leases, hence the consent), but also because the lessees needed to be released from the responsibilities and liabilities which had now been transferred to Nikandros (hence the waiver, satisfying the third legal problem). Otherwise, one can imagine that the lessees could legally be held liable to two penalties for the same default.

Like most assignments, Nikandros had not only the debt (i.e., the rent payments) transferred from the original contract to himself, but the benefits of breach as well (i.e., the first penalty clause).\textsuperscript{496} There are, as we recall, two mentions of breach in \textit{P.Mich.} III 182. In

\textsuperscript{494} Only one assigned loan of the Ptolemaic period was drafted as a homologia: \textit{P.Adler} 4 (Ptolemais, 109 BCE). Yet “[i]n unseren Urkunden [i.e., loans] wurde das Gewicht mehr auf den Akt der Auszahlung als auf die Erklärung der Schuldners empfangen zu haben oder zu schulden gelegt” (Rupprecht 1967: 136); hence most “novated” or “delegated” loans in the Ptolemaic periods were accordingly drafted as “real” loans typically were, i.e., as protocols. There was, however, no typical form for the redirection of rent, and since Nikandros was not taking over the lease (see below), this left the homologia as the most appropriate form.

\textsuperscript{495} Cf. Wolff 1978: 164-66, who notes that this is our earliest example of a “hypographic cheirographon.” The addition of the waiver, however, strikes me as going beyond the function of a subscription. Cf. Secs. 5.4.1-2.

\textsuperscript{496} This was not merely a matter of establishing a legal obligation: the penalty could have been left to Eirene to collect in the case of default. Penalties were real sources of revenue in antiquity, as indeed they are to contemporary banks, credit card companies, and cell phone providers. We know of abuses in the attempts to increase revenue from penalties, e.g., \textit{P.Fay.} 21 (Theadelphia, 134), a decree by the Prefect Mamertinus (133-137) aimed at suppressing
the first instance, breach is defined as a failure to pay “according to what has been written ...”
(29: ἐὰν δὲ μὴ ἀποδῶσι καθ’ ἀ γέγραπται κτλ.). If we compare contemporary leases, e.g.,
those found in BGU VI, we find that (a) breach by the lessee was typically defined precisely
by the phrase found in this contract, i.e., in terms of payment of rent, which was balanced by
the lessor’s obligation to confirm (bebaioun) the lease or pay a penalty; \(^{497}\) and (b) that these
leases nevertheless often included multiple terms beyond payment of rent and guarantees of
tenancy. \(^{498}\) Occasionally, the terms of lessee-breach are more attentive to the specific terms of
the lease (e.g., BGU VI 1266 [Takona, 203/202 BCE], line 26: ἐὰν δὲ μὴ ἀποδῶσι ἢ μὴ
καταστήσωσιν καθ’ ὀ | γέγραπται κτλ.; and the strikingly specific P.Ryl. IV 583
[Philadelphia, 170 BCE], with a breach clause to match, line 19: [ἐὰν δὲ μὴ παρὰ δείξῃ ἢ μὴ
ἐπιτε[λ]ῆ | ἕκαστα τ[ῶ]ν ἔρ[γων] κατὰ καὶ ὡν ἢ λίπη τῆν μίσθωσιν κτλ.]; but, more often
than not, the only verb defining breach before the middle of the second century BCE,
regardless of the content of the contract, was *apodidōmi*. By all indications, then, Nikandros
had the breach clause of the original lease *syngraphē* transferred to this new agreement more
or less *verbatim*, along with the only terms that were specifically relevant to his *homologia*,
i.e., the rent schedule, so as to give particular force to the penalty clause phraseology.

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creditors refusing to accept repayment in order to collect penalties or extort a portion of them from debtors.
(Balanced against this, however, was the cost of malicious prosecution by debtors, cf. another decree of Mamertinus,
reiterated by Valerius Eudaimon (142-143) in *P.Oxy*. II 237 viii.7-18). We should therefore see the assigning of the
penalty to Nikandros as part of the price of the mortgage.


The second breach clause comes in the condition attached to Nikandros’s obligation to Eirene: if lessees do not “breach in any way” (μηθὲν παρασυνγραφοῦντων αὐτῶν), he will credit the payments against Eirene’s loan or pay her a penalty. But why parasyngraphein? And, does this genitive absolute refer to the terms of the underlying lease, or the obligations embodied in the present homologia?

We might first wish to ask whether or not it was copied from the underlying leases, as the penalty clause appears to have been. In a handful of subsequent Ptolemaic leases from the second-century Arsinoite (App. III, nos. 5, 11, and 12) parasyngraphein is added as a general breach clause, very like what may have stood the contract at issue in Dem. 56: ἔαν ... ἢ ἄλλο τι παρασυγγραφῆ vel sim. In these Ptolemaic documents it always appears as a covering term additional to the lessee’s payment requirement and/or the lessor’s guarantee requirement (SB III 7188.35-36; P.Tebt. I 105.34, 43; 106.29; cf. SB XIV 11969.13 [App. III, no. 4]). We also find the phrase μηθὲν/μηθὲν παρασυγγραφῆ vel sim. in SB III 7188.32 (where it seems to refer to both parties mutually) and SB XIV 11969.23, as well as several subsequent documents (though not all leases: App. III, nos. 17, 18, 23, 37, 38, 42, 53, 54, 57, and 63).499

In PSI X 1098 (no. 23: an Arsinoite lease from 51 BCE), the phrase even appears in a genitive absolute before a penalty clause (cf. no. 31). From these examples is it obvious that the verb was simply added to the normal template of specific breach. Unfortunately, we have strikingly few leases from the first century BCE with which to determine the relative frequency of its appearance or the precise date or place of its introduction. On the other hand, BGU XIV 2389

499 For the correct reading of no. 52, see Litinas 2002: 75-76 (cf. n550).
(Herakleopolite, 72 BCE) and SB XII 10942 (Oxyrhynchos, 4 BCE) show that the custom of drafting leases without provisions against general breach continued until the turn of the millennium and beyond.\textsuperscript{500} On balance, then, the early date of \textit{P.Mich.} III 182 suggests that whereas a version of the first penalty clause with \textit{apodidōmi} stood in the underlying lease, the \textit{parasyngrapein} did not, the first attestation in a lease being some thirty years later in no. 5 (154 BCE).

If the verb was not simply imported from the underlying documents, we might reasonably wonder whether it was used here not for general breach, as it would be used in leases, but with specific force, as it appears to have been in \textit{P.Petr.} II 47 above. In fact, there are a series of circumstantial clues that together point in this direction. First, καθ΄ & γέγραπται in the first penalty clause is (obviously) plural. This could be interpreted either as reflecting the plurality of the underlying leases (19-20), or as including the leases \textit{and} the present \textit{homologia}, a reading supported by Eirene’s subsequent endorsement, \textit{P.Mich.} III 183.7-8: [ὕμων] ποιησάντων (sic) | τὰ κατὰ τὰς συγγραφὰς. Eirene explicitly agrees to the new terms of the \textit{homologia} and makes her waiver conditional on the lessee “acting in accordance with the \textit{syngraphai},” which, given the contents of her endorsement, obviously includes \textit{P.Mich.} III 182 (styled a \textit{syngraphē} in line 52). Moreover, ποιησάντων τὰ κατὰ τὰς συγγραφὰς is the positive formulation and the functional equivalent of μηθὲν παρασυγγραφοῦστων αὐτῶν in \textit{P.Mich.} III 182.\textsuperscript{501} Second, we have seen that the verb

\textsuperscript{500} The first lease to use \textit{parabainein} is SB XIV 11933 (Tebtynis, 27 BCE).

\textsuperscript{501} Cf. Berger 1911: 2 and nn3-4.
could used to mean a “breach against the contract as such” (P. Enteux. 59), but was first inscribed in the text of a contract denoting a specific act of breach (P. Petr. II 47). In neither case did it govern an express direct object (cf. Dem. 56), as it would later when it was assimilated to *parabainein*. Nor does it do so here in P. Mich. III 182 (I take μηθέν here, and originally, as an adverbial accusative, i.e., “in no way, at all”; later μηθέν is clearly conceived of as the direct object as the verb increasingly came to be thought of as transitive, e.g., App. III, nos. 37, 38, 42, and esp. 52 and 53). Third, while the penalty clause as a whole serves Eirene’s interests, it is itself conditional: Nikandros’s obligation to act is predicated on the lessees’ fulfilling their obligations. It is hard to see what interest he had in their doing anything but paying him rent: everything else was Eirene’s concern. Nor would she want his recording the payments based on their fulfilling all the other requirements of her lease. The genitive absolute, then, is Nikandros’s condition, and it therefore makes most sense to see *parasyngraphein* as referring to those terms in which he had the most interest, which were not those of the underlying leases, but of the present *homologia*.

Wolff understood this document not to be a “contract in the strictest sense,” but rather “the confirmation of an arrangement agreed to by the three parties, dressed up in a quasi-sollemnized form.”502 His judgment was based on two grounds. First, although called a *syngraphē* (line 52), and so almost certainly drafted by the *agoranomos*, this document is nevertheless missing several elements characteristic of contemporary agoranonomic instruments, 

502 1957: 58n77: “Der papyrus verkörpert nämlich in Wahrheit gar keinen Vertrag in strengen Sinne ... Der Text bietet daher wohl nur eine von den Pächtern dem Hypothekar gegenüber getroffene ... in eine etwas feierliche Form gekleidete Feststellung eines zu Dreien vereinbarten Arrangements ...”
including the long dating formula, the concluding signalments of the parties, and the registration marks. Second, and more important still for him, was the absence of the praxis-clause, or the clause by which liability to execution was understood to attach.\textsuperscript{503} Missing this clause, Wolff understood this contract to have no teeth: without the right to proceed to praxis, there was no collecting the prescribed penalties. Liability thus remained attached to the underlying contracts, and failure to perform by the lessee would set off a chain-reaction of reliance on previously established liability. In other words, Nikandros could claim the penalty pursuant to breach of this contract, but would be unable to collect personally. Instead, he would have to declare Eirene in default and rely on his praxis-clause against her to threaten foreclosure in order to pressure her to threaten to exercise her praxis-clause against the lessees when she dunned them for the penalty.

Wolff’s is a characteristically trenchant analysis, and one which is superior to those that have seen it a contractus in favorem tertii.\textsuperscript{504} Wolff is no doubt correct in the essentials of his interpretation, but there is an irony in his reconstruction: in the act of denying it the status

\textsuperscript{503} Cf. Wolff 1941: 429-32 on contracts missing praxis-clauses (where he does not discuss this document).

\textsuperscript{504} E.g., Taubenschlag 1955: 401, with previous literature. The main comparandum usually adduced is \textit{P.Oxy}. IV 728 (Thosbis, 142). This document is a private protocol drafted by two lessees who sell part of their future crop to a buyer on the condition that he pay the purchase money to the landlord as the lessee-sellers’ rent. The landlord gets the express right to both a penalty and praxis over the buyer if he fails to pay. Certainly, the impression is that it was the landlord who arranged the sale in the first place, since the lessees retain no right against the purchaser and the receipt that is appended to contract is made out directly to the purchaser by the landlord (cf. Berger 1911: 147n4 on internal confusion of the nature of the transaction). Nevertheless, this is a contract still written from the perspective of the assignors for the benefit of the assignee, who is not party to the contract, while \textit{P.Mich}. III 182 is drafted from the perspective of the assignee, for the benefit of the assignor, who is not formally party to the contract—even though it is an assignment! In the end, however, the comparison fails largely because of the underlying assumption that Hellenistic contracts observed the same rules of privity as Roman (or modern) contracts. \textit{Praxis} was routinely assigned to third parties (Wolff 1941), and on this score \textit{P.Oxy}. IV 728 is not exceptional (except perhaps in the ingenuity of its exploitation of this basic feature of the free assignability of praxis), while \textit{P.Mich}. III 182 clearly is.
a true contract, he demonstrates precisely how it worked. True, Nikandros might not have been able to pursue the lessees in *P.Mich.* III 182 on the strength of this document alone; but then, he did not have to: the *homologia* superseded the underlying contracts, but only in part, as was intended. Indeed, those underlying contracts were the necessary foundations on which this one was built. Legally inelegant and slip-shod, perhaps, but eminently workable, or it so seems from events. As it turned out, the lessees did default, as we know from *P.Col.* IV 121 and 122 (Krokodilopolis, Jan. and Feb. 181 BCE, resp.), both threats of arrest by a government official for non-payment of taxes owed by the lessees as required by their lease, though unrelated to payment scheme in *P.Mich.* III 182.\(^{505}\) Regarding the loan, Eirene’s accounts show that a year later she paid ten talents \(\text{στῆν ύποθήκην Νικόλερω} (P.Mich. III 200r.30)—no doubt part or all of the balance she agreed to pay according to the second condition set out in *P.Mich.* III 182.37-43. No word about any penalties assessed, unfortunately, but then if the failure was due to one of the three stipulated conditions in this rule, there would have been no penalties levied.

*P.Mich.* III 182 may not have been a stand-alone contract, but it was not designed to be; rather, it was designed to be a viable and enforceable framework to get something done. There are, in fact, several “arrangements” in the papyri, each missing a key component of what might make for legal enforceability, like *praxis*-clauses.\(^{506}\) This does not mean that they

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\(^{505}\) Cf. *P.Col.* IV, pp. 189-90, 198.

\(^{506}\) Cf. *P.Mil. Vogl.* II 101(Talei, 118), a sub-division by a lessee without *praxis* or penalty clauses, subscribed by all the parties and registered in the local *grapheion*, but seemingly drafted and executed without the consent, and perhaps even knowledge of the landlord.
were conceived of as unenforceable, actually or legally (though they might have been). Such contracts are, as a rule, understudied, but in some ways represent the cutting edge of contract as an institution, demonstrating a confidence in contractual frameworks as a social technology capable of ordering a variety of social and economic transactions.\textsuperscript{507}

In this section, we have interpreted the first three instances of \textit{parasyngraphein}, these being the first three recorded instances of the concept of breach of contract \textit{per se}. The first (\textit{P.Enteux. 59}) was fairly close to its use in Dem. 56, in that it was intransitive and a charge leveled at the party in breach. Even so, it seems to have acquired a quasi-technical coloring, constituting a charge in and of itself (one might imagine \textit{parabainein} being used in a similar context a century earlier in Athens). Significantly, we see it used precisely because the defendant is alleged to engage in acts that are intended to undercut the purpose for which the contract was drafted, but which do not therefore contravene its express terms. Subsequent contracts added \textit{parasyngraphein} as a covering term for general breach in an effort to capture and define such actions as breach. \textit{P.Enteux. 59}, then, stands at the head of the major tradition of the inscription of general breach in the contracts of Greco-Roman Egypt.

The other two instances, \textit{P.Petr. II 47} and \textit{P.Mich. III 182}, use \textit{parasyngraphein} to denote a form or specific breach. In these cases, the contracts have no underlying material component (as in a lease or a loan, where property is handed over), but dispose of rights in a form of mutual cession wherein the transaction is the contract itself. In \textit{P.Petr. II 47}, the transaction was the mutual forbearance from litigation, and in \textit{P.Mich. III 183}, it was the

\textsuperscript{507} Cf. the discussions of \textit{P.Oxy. IV 706} and \textit{W.Chr. 84} in Sec. 6.2 below (pp. 403f. and 423f., resp.).
mutual agreement of three parties to abide by an “arrangement.” These documents thus stand at the other head of the breach tradition, representing the specific use of *parasyngraphein*. Unlike general breach, this branch does not survive much beyond the reign of Augustus. Though one is general and the other specific, both uses of *parasyngraphein* recognize, and in a sense depend on, a notion of the totality of contract or contract *per se*. In fact, one might hypothesize that the abstract notion of contract as such, as something larger than merely the sum of its clauses or terms, was first grasped in the experience of an unanticipated breach, and that, ironically, the abstract idea of contract was conceived in breach.
5.4 *Parasyngraphein* and Later Ptolemaic and Roman Contracts

A brief glance at Appendix III suggests that a change in drafting practice with respect to the inscription of breach took place around the turn of the second century BCE. In contrast to the three or four attestations in contracts from the turn of the third century down to the last quarter of the second, we count 16 or 17 instances in contracts (or oaths attached to contracts) between the last quarter of the second century and the end of Ptolemaic rule, primarily in Herakleopolite and Oxyrhynchite cessions, but also in a handful of miscellaneous contracts from the Delta, the Arsinoite, and Memphis. This is a significant trend, since the HGV records more contracts for the second century than the first in absolute terms, even as the number of total documents climbs in the first (i.e., a relative decline in the frequency of contracts as a percentage of the corpus as a whole, suggesting that we have an higher frequency of *parasyngraphein* in what is effectively a smaller sample).\(^{508}\)

Thus far we have seen two uses of *parasyngraphein* in the papyri, both different modes of the same concept. In the third and early second century BCE, the verb denoted either a breach of *syngraphē* in a general sense (*P.Enteux*. 59) or a specific act of breach in contracts where the transaction was the promise to abide by the rules embodied in the *syngraphē* (*P.Petr*. II 47). Over the course of the second century the general use grows in popularity as the verb came to be added to the specific obligations set out in leases as a covering term (App. III, nos. 4, 5, 11, 12, and 23; and we should recall that our very first attestation [no. 1] refers to a lease). To these instances we may also adduce at least one non-lease example: *SB VI 8974*.

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\(^{508}\) See App. III and Sec. 5.6.
(no. 14). One of the clearest instances of this trend comes in no. 13, a loan in the form of a six-witness protocol from Memphis in which breach is described in traditionally specific terms (18-19: ἕνα δὲ μὴ ἀποδῶι καθό(τι) | γέγραπται), but the Fiskalmult is characterized, uniquely for the Ptolemaic period, as a “fine for breach paid to the royal (treasurey)” (24: τοῦ παρασυγγραφεῖν εἰς τὸ βασιλικὸν ἐπίτιμον).509

Over this same period one may continue to see instances of the specific use of the verb. Indeed, I will argue that the idea and practice of inscribing breach fostered of new type of consensual contract in Greco-Roman Egypt, one which was based on the idea of mutual cession and articulated by the specific use of parasyngraphein. I will call these contracts “transactional agreements,” since the agreement, or more properly the syngraphē which recorded it, was seen as the transaction, hence the appropriateness of proscribing parasyngraphē (5.4.2). These contracts were not the product of theory, but practice, being nothing more than an ingenious adaptation of a pre-existing document type (the Abstandsurkunde with the Nichtangriffsklausel) to a new and more sophisticated purpose (5.4.1). This early association of parasyngraphein and the Nichtangriffsklausel becomes a standard feature of sales and cession contracts, and it is this association and its ossification in scribal models that accounts for the majority of the attestations of parasyngraphein between 100 BCE-100 CE.

509 Cf. the phrase in the Roman Herakleopolite sales papyri (App. III, nos. 61, 65-80): ἐνέχεσθαι τὸν δείνα παραβάντα τῷ ὄρισμένῳ κατὰ τῶν παρασυγγραφοῦντων ἐπίτιμῳ (on which, see below, pp. 310ff.). I will explore the relationship between breach and the Fiskalmult in another place, since it needs to be explained in light of the rules treating paracheirographein in the Gnomon (cf. p. 228f. above).
The history of the verb from the early second century to the end of the Ptolemaic era goes some way to explaining the Alexandrian practice of using *parasyngraphein* in contra-distinction to *parabainein* when drafting clauses for “material breach” (pp. 240ff.).

*Parasyngraphein* was both the original word for breach and the most specific, relating to the *syngraphē* as such. It was therefore available for the meaning of “material breach,” or more properly “breach of the whole contract” or “breach of the contract itself.” As time wore on, however, *parasyngraphein* not only lost its original and distinctive significance, but was supplanted even in its more general meaning by *parabainein*. By the early first century CE, it appeared only in certain types of contracts based on older, Ptolemaic models.

In order to explain the pattern of fossilization in the later Ptolemaic and Roman periods, we need to explore the specific use of *parasyngraphein*, since the tradition of general breach was clearly taken over by *parabainein*. When not used as a covering verb, *parasyngraphein* appears in two closely related sub-categories of the specific use: (i) instances in which the verb appears in connection with the so-called *Nichtangriffs­klause*;510 and (ii) those in which it relates to the breach of a transactional agreement. The two are close cousins, since the transactional agreement represents an outgrowth or new application of the *Nichtangriffs­klause*.

The *Nichtangriffs­klause* is in essence a declaration or promise of one party (usually a seller or creditor) that he or she will not take legal action against the other party (usually a

510 Rupprecht prefers this term to the more traditional *Abstandserklärung* (1971: 15).
buyer or the debtor) with the words μὴ ἐπελθεῖν or μὴ ἐγκαλεῖν or both.\textsuperscript{511} It was followed by the assertion that any ἔφοδος was ἀκυρος and that the party in breach would be liable to an additional fine (προσαποτίνειν), which usually consisted of a penalty and the \textit{Fiskalmult}.\textsuperscript{512} The clause appears in all manner of cessions, quit-claims, and receipts, almost all drafted as homologies. There is a clear connection between the legal renunciation embodied in the Greek \textit{Nichtangriffsklausel} and the demotic cession document \textit{sh n wj} (known in Greek as a συγγραφὴ ἀποστασίου, whence the German \textit{Abstandsurkunde}), but the relationship is not one of mechanical adoption or translation, as Schwartz has shown.\textsuperscript{513} One of the principal differences is that from the very outset the \textit{Nichtangriffsklausel} characteristic of the Greek \textit{syngraphē apostasiou} was recorded as a \textit{homologia}, whereas the demotic \textit{Abstandsurkunde} was in the protocol format. There is a long and deep juristic discussion about the legal nature and history of these documents and their relationship to each other, for which the present discussion has a certain significance. My present interest, however, is to explain the pattern of usage and likely meaning of \textit{parasyngraphein} so that we may recover something of the moral valence of breach. With that in mind, we begin with the observation that there is a strong connection between documents that carry the \textit{Nichtangriffsklausel}, the \textit{homologia} format, and

\textsuperscript{511} The Roman period a host of other words added to the clause. See Rupprecht 1971: 15-17, 59-66, 95-103; cf. Sec. 5.7.

\textsuperscript{512} On \textit{ephodos} as an “attack,” see p. 393.

the verb *parasyngraphein* (see App. III). Since the basis of the transactional agreement is the *Nichtangriffsklausel*, it makes sense to start with this relationship before turning to the latter.
5.4.1 *Parasyngraphein* and the *Nichtangriffsklause* 

The earliest witness to the association between *parasyngraphein* and the *Nichtangriffsklause* is *P.Petr. II 47* (see pp 275f. above). This document at once a receipt (cf. ἀπέχειν in line 7) and something more than a receipt, since it clearly goes beyond the usual acknowledgement of money and the penalty is, atypically for receipts, bilateral. The next relevant document is *P.Köln IX 366* (App. III, no. 6), a late second-century homology recording the receipt of a loan. After confirming receipt (3: ἀπέχειν), the document continues with the *Nichtangriffsklause*, as is typical of all receipts.\(^{514}\) Then follows a penalty clause, which begins ἐάν δὲ Δημήτριος παρ[α]- | συγγραφῶν ἐπέλθη ἐπικ[αλῶ]ν [αὐτῷ] περί [τῶν] | προγεγραμμένων ἡ Ἀλ[λος] τις [τῶν] παρ[α] ἐπέθ[ῇ] (14-16). No other Ptolemaic receipt after this date uses *parasyngraphein*.\(^{515}\) Instead, those Ptolemaic receipts with penalty clauses (less than half: Rupprecht 1971: 19) characterize breach with the specific verbs of the *Nichtangriffsklause*, either *eperchesthai* or *epikalein* or both, e.g., *BGU XIV 2394* (Tholthis, 216/215 BCE), *P.Dion. 28-31, 35* (Hermopolite, 111-103 BCE), *P.Würzb. 6* (Theadelphia, 102 BCE), and *P.Ryl. IV 588* (Krokodilopolis, 78 BCE). Similarly, in *P.Köln IX 366* the main verb is the specific verb of the *Nichtangriffsklause*, ἐπέλθη, which has been characterized by the

\(^{514}\) On receipts, see, generally, Rupprecht 1971, and now the recent discussion in *P.Heid.* VII 399 and VIII 414.

\(^{515}\) The next instance in a receipt is no. 25 from 14 BCE, or what appears to be a receipt for nursing wages in the form of an Alexandrian *synchōrēsis*. The receipt is complicated by the presence of a third party (cf. discussion in *C.Pap.Gr.* I, p. 56), and this may explain the presence of the verb in addition to the more usual *parabainein* (i.e., this was a receipt which was more of an agreement than most receipts, like *P.Petr. II 47*). Sadly, it is not complete, hampering any real analysis on this score. See *BGU IV 1148* (Alexandria, 13 BCE) for a very close *comparandum* without the addition of the participle, cf. the discussion below on pp. 295ff.
addition of the participle. *Parasyngraphein* thus adds nothing particular to the clause other than the coloring of *eperchesthai* as constituting “breach of contract.”

This participial use of *parasyngraphein* is quite prominent and appears to be the manner in which it was first introduced, calqued onto older templates using specific verbs. In the oldest documents it qualifies, as we have just seen, *eperchesthai vel sim.* as breach (nos. 15, 16, 25, 52), while in some Roman documents it modifies a phrase like ἔαν μὴ ποιῇ καθὰ γέγραπται (no. 39 and likely no. 40). These later documents demonstrate both the loss of specificity of the verb (for qualifying such a phrase is tautological), as well as the extent to which it had become normal to write breach expressly into contracts: as we saw above (p. 267f.), earlier Ptolemaic contracts had drafted penalty clauses in similarly broad language as a summary term without such qualification. In other early documents, the participle is used proleptically to define the party in breach, designating him or her as ὁ παρασυγγραφῶν vel sim (nos. 7-9, 10, 24, 26, 27, 31). Significantly, in the earliest examples (7-9, 10) the party in breach is specifically seen to be so in light of having broken the terms of the *Nichtangriffsklausel,* whereas in the later documents this specific association is often missing: ὁ παρασυγγραφῶν is simply “the party in breach.” In sum, it appears as if in all of the early examples the participle was added to the existing template as a way of writing breach into the contract, a counterpart to the addition of the covering term in leases, but here with specific attachment to the *Nichtangriffsklausel.*

As stated at the beginning of this section, there is a connection between the *Nichtangriffsklausel* and the *homologia* form (again, see App. III). In the Ptolemaic period homologies recognizing the receipt of purchase price sales and renouncing all rights to the
objects regularly complemented the protocols which recorded the sales proper. Such homologies included the *Nichtangriffsklausel*, fortified with a penalty.\(^{516}\) Similarly, most receipts of loans show the same pattern of protocol and homology, protocol for the loan and homology for the receipt. This general relationship between homology and protocol in the Ptolemaic period was elucidated by Schwartz in 1913, who concluded that the *homologia* was a form effectively restricted to certain kinds of transactions. Von Soden (1973) weakened the strong version of the thesis by showing that no such restriction existed with respect to the homology, i.e., it could be used for transactions Schwartz had thought the preserve of protocols (no one challenges the restriction of the protocol). The tight connection between the *Nichtangriffsklausel* and the homology, however, was confirmed.\(^{517}\) Also, as was clear in 1913 and remains so today, the homology overtook the protocol over the course of the Ptolemaic period to become the dominant contractual form by the mid-first century CE.\(^{518}\) In other words, all kinds of transactions, with a very few exceptions, were increasingly drafted as declarations by one or both parties. In connection with this trend, we should that *parasyngraphein* is used as a word for general breach in the early Ptolemaic period exclusively in *protocols* (nos. 4, 5, 13, 14 and 23, perhaps no. 1?), whereas it is used as a verb of specific breach in *homologies*.

\(^{516}\) Berger 1911: 124-40; Mitteis 1912: 167-90; Schwartz 1961 [1913]: 183-85, 199-242; Schwartz 1920: 154-60 and *passim*. Cf. an example in *M.Chr.* 254 (Pathyris, 101 BCE).


\(^{518}\) Von Soden 1973: 65-68. Schwartz 1961 [1913] was in part an attempt to explain how the homology achieved an independent status.
We may now hazard a guess as to why *parasyngraphein* first appears in leases describing general breach: these were contracts that (a) dealt with a real (material) transaction, and so were recorded as protocols (whereas transfers of rights were recorded as *homologiai*); and (b), they the most potential for unanticipated breach in that they were truly relational in a way that other transactions recorded in protocols, e.g., loans and sales, were not. The import of the second fact is that leases were contracts more prone to the loop-hole problem seen in *P.Enteux. 59* than leases or sales, hence the need for the inscription of a general breach clause.

The connection of the *Nichtangriffsklausel* with *parasyngraphein* and the homology, coupled with the historical success of the homology, explains the bulk of the attestations of *parasyngraphein*. The *Nichtangriffsklausel* was carried by the homology, which progressively became the preferred contractual form, and with the *Nichtangriffsklausel* came *parasyngraphein*. A full half (40) of the instances in Appendix III come in land cessions or sales. These documents are the descendants of templates for earlier homologies wherein the verb was associated with the *Nichtangriffsklausel*. With respect to cessions, our earliest examples are nos. 15 and 16, cession homologies from the early to mid-first century BCE Herakleopolite. The text of the penalty-clause at the end of the homology is by now familiar:

\[ \text{ἐὲ ῥ} \text{ῳ ὡς ἔας \ \text{ὐπ'[ἐρ αὐτῶν] | παρασυνγραφούντες ἐπέλθωσι} } \\
\text{ἐπί Διούσιον ἔπι τούς παρ' αὐτ[ο]ό ἐνκαλῶν αὐτῷ περ}[ι τ]ούτων καθ' ἅ | } \\
\text{γέγραπται, κτλ. (e.g., no. 16, BGU VIII 1733.17-19). Precisely as with } \text{P.Köln IX 366 above, we here have } \text{parasyngraphein } \text{as a participle modifying the specific verb} \\
\text{eperchesthai, as well as the equivalent verb, } \text{engkalein, following as a second qualifying participle. This pattern is repeated in nearly all the cessions that follow (I will address the} “}
significant exceptions in Sec. 5.7). The general case for sales is much the same:

*parasyngraphein* appears right where we have come to expect it, in the breach formulation of the penalty clause after the *Nichtangriff* language, from our very first sale (no. 35) to our very last with the language in the fourth century (no. 80). These are all vestiges of time when this word was associated with independent *homologiai* carrying the *Nichtangriffsclause*, a testament to the durability of legal form (cf. Sec. 5.5).
5.4.2 Parasyngraphein and the Transactional Agreement

There are some contracts in which the *Nichtangriffsklausel* appears to have been put to greater work than the run-of-the-mill receipts and *Abstandsurkunde* cited above. These are what I have called “transactional agreements.” The transactional agreement is neither an ancient nor a modern jurisic category, but my own term for a miscellany of highly particular or ideosyncratic arrangements (cf. *P.Mich.* III 182 above, pp. 276ff.), which nevertheless share one essential feature: the agreement itself is in a real sense both *causa* and *solutio.*

Transactional agreements have typically been distributed by legal scholars into various sub-categories or types. Berger (1911), for example, classes the documents discussed in this section and other like them variously as *Quittungen, Teilungsverträge, Auseinanderseztungsurkunde, Zessionsurkunde* and *liberatorische Verträge.* I have no quarrel with these sorts classifications for the purpose of modern analysis—and indeed some of them were the truly salient categories for ancients who used these contracts. That said, classification of this sort also tends obscure the similarities which existed between them *at the level of contract* (which Berger recognizes, e.g., 1911: 181, 188-89).\(^{519}\) As I will argue below, the transactional agreement represents an innovation on a basic set of contractual tools, turning a form of cession into a type of bilateral consensual contract. The bulk of transactional agreements are either Berger’s *Auseinanderseztungen,* which are by nature heterogenous, or property divisions (*διαφῆς, Teilungsverträge*), which form a coherent group. The latter

\(^{519}\) Much the same may be said for Schwartz 1961 [1913]; cf. 1920. However, he is much more interested in the connections than Berger, particularly in the first essay, because of the historical, evolutionary nature of his question.
group is defined by a traditional “transaction” which was re-inscribed as a transactional agreement, creating a “type” of contract (see below, pp. 312ff.).

The transactional agreement, which we first see in *P.Petr. II 47* above (pp. 275ff.), is a bilateral agreement to follow a roadmap embodied in a written contract, given legal force by the *Nichtangriffsklausel cum* penalty. Breach in these contracts was described by *parasyngraphein*, for these were contracts for which the charge of *parasyngraphē* was specifically relevant: it was the most appropriate verb for breach of the “transaction,” which was the *syngraphē*. Indeed, just as the *apodidonai* reflected the core obligation stemming from an initial giving (*didonai*) in a contract for loan, so forbearance from *parasyngraphein* fulfilled the core obligation established by drafting a written accord (*syngraphesthai*).

Moreover, they are, as I will show, in essence *consensual* contracts, but not therefore *executory* contracts. By “executory,” lawyers mean contracts in which binding promises have been exchanged, but part or all of the performance still lies in the future. For example, I may contract to buy your car for a set price a month from now, but if I rescind my offer next week, I would be liable (in a common law system) for damages on the theory that you relied (or should have been able to rely) on my promise, regardless of whether or not any property changed hands. A contract like *P.Petr. II 47*, or any other like it wherein the “transaction” was the *syngraphē*, was not executory because it was in fact executed, as reflected by both the

agreement and the *Nichtangriffsklause*1. Both elements were effective from the moment the *syngraphē* was ratified, even as the obligations extended into the future. Or, put another way, performance began with ratification; there was no other defined moment or act of fulfillment, as one has in the example of the car sale.\footnote{Cf. Rupprecht 1971: 97 and n21.}

I have already argued for just such an interpretation of *P.Petr.* II 47 and *P.Mich.* III 182, that each represents a form of transactional agreement, fortified by the *Nichtangriffsklause*. The next example is *P.Tor.Amen.* 5, a document drafted in 119 BCE which we can reasonably reconstruct on the basis of the legal documents used in its litigation (App. III, nos. 7-9, cf. App. II). The contract is called a κοινὴ ὁμολογία by the parties (*P.Tor.Amen* 6.89; 7.7), who are two paraschistai, or embalmers.\footnote{I assume *koinē homologia* designates a bilateral declaration of the type NN καὶ NN ὁμολογοῦσιν ἀλλήλοις (cf. divisions below, pp. 300ff.). By way of parallel, one might cite *P.Ashm.* I 22 (Hawara, 103 BCE; also discussed under divisions). Pestman in his edition of *P.Tor.Amen.*, p. 54n1 has a similar idea as to what is meant, but cites *P.Grenf.* II 25 (Thebaid, 103 BCE) as a parallel, which has a different formula. The advantage of his parallel is that it is contemporary and comes from the same region, whereas there is no instance of the formula I cite from the same time and place. That said, *P.Grenf.* II 25 does not contain the sort of agreement we have in *P.Tor.Amen.* 5, but is instead a unilateral cession, *P.Ashm.* I 22, on the other hand, contains a bilateral agreement to abide by a demotic division. It is also a candidate, to my mind, for the restoration of some form of *parasyngraphein* in fr. B 5ff. as the editor suggests (p. 146). All of which makes it a much more attractive parallel to the present contract.} In this agreement, the embalmers divide up a territory as a shared monopoly.\footnote{To the literature cited in the introductions of *P.Tor.Amen.* 6-8, add also Berger 1911: 186. Cf. *P.Ryl.* II 65 (Oxyrhynchus, 67 BCE), another trial in a similar contract dispute (but where the contract used *parabainein*).} The contract is reprised at length in *P.Tor.Amen.* 8, where we are fortunate to find something very close to the precise wording of the original contract:

\[... ἐμένειν δὲ ἀμφοτέρους ἐν τοῖς πρὸς ἑαυτοὺς διωμολογημένοις καὶ μὴ ἔξειναι\]
We agree] that both of us abide by the terms which we agreed upon with each other and that it is not permitted for us to breach anything of the aforementioned (terms), but if we do not (abide), the attack is invalid and the breaching party will pay to the one abiding, with respect to whatever part or term he breaches, the additional penalty of ...

Important here is not only the connection to the Nichtangriffsklausel, but also the equivalence of parasyngraphein to emmenein (cf. P.Petr. II 47). One of the positive obligations was precisely to abide by the agreement, which strictly speaking was an “obligation” of all contracts. Here, however, it is an express, specific obligation, and parasyngraphein is not added as a mere qualification, as in the participial instances we saw in the previous subsection (e.g., no. 6), but acts rather to reinforce the notion that one is obliged to abide by the whole syngraphē.

Significantly, the contract is conceived of as a mutual cession, a traditional form of homology (ἀφίστασθαι, P.Tor.Amen. 8.7, 15). Yet, attached to this cession are “additional acknowledgements” (ἀμφότεροι δὲ προσομολογοῦμεν, 8.21), which are none other than the precise terms of the agreed-upon division of territory and clientele, without which the cession would not have served its purpose (and even so, it was litigated, as parties disputed the rights they had under it, cf. P.Tor.Amen. 6.13ff.). The verbs attached to prosomologein are in the future (θεραπεύσειν, λογεύσειν) or dependent on ἔξειναι. In fact, ἔμμενειν (in the portion

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quoted above) is not present, but future (i.e., ἐμμενεῖν). If we parse the entire sentence, we come up with the following construction (I omit the line breaks for clarity):
As the schema above shows, the futures appear in clauses dealing with the bilateral or mutual obligations and are directly dependant on prosomologein: (a) the injunction against giving care in “each other’s” villages; (b) the injunction against the charging of fees; (c) both followed by a combined term restating the injunction in terms of classes of client. These injunctions are then made specific by the clauses using ἔξειναι (c.i-ii), which are not mutual
but particular (ἐμοὶ, τῶι Ἀμενώθη), in form rather like a parenthetical id est explaining the import of the injunctions. Finally, (d) there is a return—signaled by δὲ—to the initial structure of future verbs describing mutual obligations (ἀμφοτέροις, πρὸς ἑαυτοὺς), but this time a positive obligation of the promise to abide by what they have agreed upon, which is then rewritten, as were the prior clauses, as an ἔξειναι statement (d.i).

Here we see something of the path-dependance of legal evolution. The way to solve the problem of legalizing a purely consensual contract was to leverage the Nichtangriffs­klausel of the homologies regularly used to confirm sales and cessions.⁵²⁵ By origin and general usage, the homologia was backward-looking, a sollemnized recognition of an act, an obligation, or a state of affairs, in anticipation of a possible suit (i.e., a sort of “pre-con­fession,” should a dispute arise as the to nature of the legal relationship).⁵²⁶ For example, most of the homologiai in the previous section functioned as declarations of completed loans, cessions, sales, etc. Just so here we have the recognition of a bilateral cession (aphistasthai). The Nichtangriffs­klausel served as a way of penalizing litigation or legal contestation on the grounds that the transaction had already been acknowledged (homologein) as completed. One was in effect being penalized for a form of perjury when one sued on a debt or contract

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⁵²⁵ The precise nature of contractual liability in Greco-Roman Egypt is debated, but it is clear that there was no doctrinaire view of contracts, such that there was any need, or indeed pressure, to reduce every contract to some core requirement, like the existence of a promise or consideration or a real (i.e., material) or formal (e.g., a seal) element, in order for them to be considered legally binding. There was also no need for contracts to be bilateral (cf. the Roman stipulatio), though all transactional agreements are bilateral by nature. For the major theories of contractual liability, see Rupprecht 1967: 39-60; cf. Wolff 1946 (who denies the existence of consensual contracts in the papyri, linking such evidence he finds to Roman influence, see esp. pp. 75-79). This debate has been rejoined in recent years with respect to contractual liability in classical Greece: Cohen 2006; Jakab 2006; Carter 2007; and Carawan 2007.

extinguished by a *homologia*. The *homologia* of a transactional agreement, on the other hand, testified to no real (material), prior, completed act or a condition resultant upon such an act (e.g., as in a receipt, *apechein*), unless one counts the act of agreement or the drafting of the *syngraphē* itself. This is to say that though the *homologia* was formally retrospective, the transactional agreement was functionally prospective, with but a sleight of hand to gloss over this tension.527 This is, in fact, perfectly illustrated here: ἐμμενεῖν δὲ ἀμφοτέρους ἐν τοῖς πρὸς έαυτούς διαμολογημένοις (31-32). The embalmers acknowledge that they had come to a mutual agreement and promise to abide by their agreement. Such an arrangement was given legal force by piggy-backing on the *Nichtsangriffklausel*, which, as we have seen in the case of *P.Petr.* II 47, could itself constitute a legally recognized obligation (recall that in this case it was also bilateral), and was by nature prospective. One final interesting note is the extent to which the consensual element is emphasized both in this contract and confirmed by the judges presiding over case (ἐνδοκούντες πρὸς έαυτούς συνεχωρήσαμεν, *P.Tor.Amen.* 8.38, cf. 6.18), another indication that there was no material element to the transaction.528

The next clear example comes in no. 22 (Oxyrhynchos, 63/62 BCE), a homology drafted by three uncles in which they promise not to proceed against their nephew Moschion, who had loaned their mother (his grandmother) an unspecified amount via a *syngraphē*,

527 Von Soden can account for the acknowledgement of the cession here (and all cessions) as the acknowledgement of a *Zustimmung* (1973: 27-28; cf. the less straight-jacketed definition of a *homologia* of Schwartz 1920: 153-55), but discounts almost all future infinitives dependent on *homologein* as “non-legal” uses of the meaning “to promise” (29-37). The evidence of *P.Tor.Amen.* 8 is not discussed and *P.Tor.Amen.* 6 is treated briefly in a note in the section on the use of *homologiαι* in trials (11-12n30).

because he agreed to “renew” it ἐν πίσ[τε] διὰ τὴν προγεγραμμένην | ἰδιότητα.\(^{529}\) The document is a difficult one for its use of the word *pistis.* Schmitz reviews the interpretations advanced of this contract and dismisses the suggestion of Grenfell and Hunt that *pistis* in this case means “pledge” or “security,” preferring to follow Schwartz instead in seeing this as an instance in which it refers to a fiduciary commitment (*Vertrauensverhältnis*).\(^{530}\)

The substance of the contract is in effect the *Nichtangriﬀsklausel:* the uncles ομολογούσιν ... μηθὲν ἐγκαλεῖν ... μηθὲν ἐγκαλέσειν μηθὲν ἐπελεύσοσθαι Moschion or his representatives about the earlier loan because of his “renewal,” subject to a penalty. The penalty runs thus: [ἐ]ὰν δὲ τις ἡμῶν παρά τὰ προγεγραμμένα: γραμ[μ]ένα παρασυγγραφὴν [ἡ] ἦ ἐπέλθη τὸ[/MIT] Μοσχίωνι, χωρὶς: τοὺς τὴν ἐφόδου ἀκυρο[ν] εἶναι καὶ π[ρο]σποτεισάτω [ὁ] ἐπ[ε]θῶν ἢ ὁ ὑπεραύτοῦ ὑπελεύσεως [ὁ] Μοσχίωνι | [ἡ] [/MIT] ἐπέλθη τῷ[ν] προσποτεισάτω ἢ αὖτοῦ ἐπὶ[ν] Μοσχίωνι [ἢ] ἢ ἠπέθανε Μοσχίωνι (21-25). In this clause we should note the following features:

First, *parasyngraphein* comes first, as it did in *P.Petr.* II 47. In *P.Tor.Amen.* 5 it came second, but importantly it was but the negative of the positive obligation to abide, which was a proper object of *homologein.* In all these cases the prominence of *parasyngraphein* is an indication of its being the principle act of breach, or of its specific use, which should be distinguished from its subordination to other specific verbs other contracts, like the leases, where it is acting merely an umbrella term for general breach. Second, we see here that it is equated to the

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\(^{529}\) Lines 18-21: ἕνεκα τοῦ τῶν Μοσχίωνα διὰ τινὰς αἰτίας τὸν | καὶ ποιεώμον τῆς προεηρμένης ἀργ[έ]ν [φικής] [συνα]λλάξεως: εἰς τὴν Ἀρσινόην ἐν πίσ[τε] διὰ τὴν προγεγραμμένην | ἰδιότητα πεποίθησα (the uncles will not sue Moschion “because Moschion for various reasons has effected the renewal of the above-mentioned money-agreement with Arsinoe [sc. his grandmother] (relying) on trust on account of the previously-stated kinship”).

\(^{530}\) 1964: 65-69. I will leave it to others to speculate as to the τινὰς αἰτίας (besides ἰδιότητα) that persuaded Moschion to renew the loan on the basis of *pistis.*
central element of the Nichtangriffsklausel, eperchethai. In P.Petr. II 47 and P.Tor.Amen. 5 parasn graphein was equated to emmenein, and then followed by the saving clause characteristic of the Nichtangriffsklausel. Here, on the other hand, the verb is tied much more tightly and explicitly to the Nichtangriff language. It is fruitless to speculate what this difference might mean precisely. This is one of those cases in which it is difficult to tell whether it is the transactional nature of the agreement or the Nichtangriffsklausel which explains the use of the verb. That said, the prominence of the verb, its (increasingly archaic) intransitive use, and the careful crafting of the language (we have no precise parallel for this penalty clause), coupled with the idiosyncratic nature of the agreement all suggest that it is being used here with specific force.

There is, however, a difference between this contract and the previous ones, namely that the homology here is not perfectly bilateral. Instead, we seem to have an unbalanced exchange of two different types of obligation. Moschion gratuitously novates his debt in a way that obviously puts him at a legal disadvantage, which he only agrees to do given the trust (pistis) he has that this disadvantage will not be exploited by his uncles. His uncles in return promise not to pursue any claims they may now have as a consequence of the novation and expose themselves to a heavy penalty if they do. On the one side, then, there has already been performance, as Moschion has novated the debt, whereas on the other the performance is open-ended, a present and continuing obligation to forbear into the future. Moschion’s partial performance is the causa of the homologia, which makes this document more like a typical retrospective homologic quit-claim than a transactional agreement. Then again, the uncles are not ceding rights they had, but rights they acquired, which makes it utterly unlike most quit-
claims. In this sense, then, the agreement to novate (and so renounce certain claims on the old
debt) is matched by the uncles’ renunciation of claims on the new notes of debt, and the
imbalance is explained by the respective starting legal positions of the parties. Although this
was essentially a mutual cession, it required a particular sequence of sessions rather than the
simultaneous cession typical of the transactional agreement. The specific use of
parasyngraphein points the underlying mutual nature of the cessions, even though the drafting
necessarily reflects only one half of the transactional agreement.

The last document we will discuss in this category is no. 28, a synchôrēsis from
Alexandria dated to 13 BCE. This document is an agreement between two recipients of a loan,
Pompeios and Ptolemaios, and their joint surety, Tryphon son of Tryphon. The document
states that a loan of 600 dr. was made by a party whose name is now lost (only his patronymic
survives) via a syngraphe and a bank diagraphe to all three. It then reveals that Pompeios had
spent 520 dr. and Ptolemaios 80 dr., meaning Tryphon, though legally party to the loan, had
not received any of the funds. He was thus a surety in fact, but a debtor by law. The rest of the
contract runs thus:

... συνχωρούμενον τω τω
συν τοῖς τόκοις ἐν τῷ κατά τὴν συγγραφὴν σημαίνουσαν (ἐνῳ
χρόνῳ καὶ παρέξεσθαι ἀμφότεροι μὲν τὸν Ἱπτόκος μη-
δὲν πρασσόμενον τοῦ δανείου χάριν, ἐκάτερος δὲ τὸν
έτερον οὗ κατακέχρηται κεφαλαίου, καὶ ἐκτείνειν ὃ ἔαν πρα-
χεῖν ἵπτωσθαι ὁ ἐτερος χάριν τούτων καὶ τόκους καὶ
τὰ βλάβη καὶ δαπανήματα, τῆς πράξεως γεινιμένης ἐκ τοῦ πα-
ρασυγγραφοῦντος531 καὶ ἐκ τῶν ὑπαρχόντων αὐτῶ πάντων κτλ.

531 πα- | ρασυγγραφοῦντος ex corr. γρα- | ρασυγγραφοῦντος.
We (therefore) agree on the following: that each will repay whatever capital lies to his account ... with interest in the period indicated in the syngraphē; and that both will render Tryphon immune to praxis with respect to the loan, while each (will render) the other (liable to praxis) for the capital he has spent; and that (each) will repay whatever has been exacted or will be exacted from the other with respect to these matters, as well as interest, damages, and expenses; with the right of praxis over the one who breaks the syngraphē and all of his goods, etc.

Pompeios and Ptolemaios thus agree to take full responsibility for the loan by making each other full sureties for the other, thereby extinguishing Tryphon’s obligation to repay under the terms of the underlying syngraphē. This was likely done without the creditor’s knowledge, or if he did know, he does not appear to have legally consented, at least within the four corners of this contract. This is, then, a side deal between the debtors, in no way affecting the legal rights of the creditor (contrast the involvement of Eirene in P.Mich. III 182 above, pp. 276ff.).

We should also note that there are no penalty clauses here. The three went in on the loan, with Tryphon doing the other two a favor by being party to it as a condition of its being extended. The creditor likely needed extra security in the form of a third person in order to make the loan, and he clearly included penalties (τὰ βλάβη καὶ δαπάνηματα) for which Pompeios and Ptolemaios now take full responsibility. Tryphon, on the other hand, seems to have felt secure enough in his relationship with Pompeios and Ptolemaios not only to agree to put himself in the position of a debtor, but also to dispense with the incentive of a penalty to make sure that the other two released him as promised. That said, he did not feel so secure as to dispense with a written agreement.

We can only speculate what value this contract would have had in a court of law.

Other contemporary synchoretic contracts for loan with multiple parties (e.g., BGU IV 1053
and 1056) give the creditor the right of *praxis* equally over all debtors equally.\(^{532}\) If the creditor approached these three for repayment and obtained easy satisfaction from Pompeios and Ptolemaios, it is hard to see why he would refuse this in order to exercise his right of *praxis* over Tryphon. But if he did not get his money, then surely his right over Tryphon trumped Tryphon’s over Pompeios and Ptolemaios, with this document serving only to indemnify Tryphon after the fact, if he were forced to repay the loan.

But why *parasygraphein*? First, we should note that there is no hint of the *Nichtangriffsklausel* here.\(^{533}\) On the contrary, the detailed provisions for mutual *praxis* suggest that the entire purpose in drafting this document was to establish where each party stood if and when litigation became necessary, not its renunciation. Second, this is the only instance in the Alexandrian *synchōrēseis* where the verb appears on its own without *parabainein*. There are ten instances of *parasyngraphein* in the Alexandrian *synchōrēseis*:

- seven are leases which use the verb to create a virtual saving clause;
- one is a labor contract (no. 27) which has been assimilated to a lease and uses the verb to the same effect;
- one is a receipt for wages for a wetnurse (no. 25), wherein there is a third party, perhaps explaining the use of the verb instead of the more usual *parabainein* (n515);
- and then we have the present document.


\(^{533}\) The clause does appear in *synchōrēseis* that act as receipts, e.g., *BGU* IV 1148, though usually with *parabainein*. The exception is no. 25.
We should compare these ten instances to the 49 instances of *parabainein* in the *synchōrēseis* from the same period. The latter was thus clearly the more normal word for “breach,” as demonstrated by the nine attestations of *parasyngraphein* above which coincide with the 49 instances of *parabainein*. The eight lease/labor contracts reveal *parasyngraphein* as a way of expressing “material breach” (cf. pp. 240ff.); and no. 25 is a receipt in which the verb is clearly added as a participle to the standard template, which we know from other documents typically uses only *parabainein* (cf. n515). This contract, then, is the only Alexandrian *synchōrēsis* to use the verb on its own. It could be that *parasyngraphein* is being used merely as a synonym for *parabainein*, but in the context of the general Alexandrian pattern it would seem reasonable first to see it’s solitary use as somehow intentional, and second to interpret its meaning here as something like “total breach” or “breach of the *syngraphē* as such.”

Taking these observations together with the substance of the contract, *parasyngraphein* refers to the present document, not the underlying loan, though there is a point of overlap where breach of one will constitute breach of the other. The *synchōrēsis* is activated only in the event of breach of the loan contract, and again it’s purpose is to order the consequences of that initial breach. It does so in two ways, first by distributing the liability of initial or underlying breach, and second by establishing mutual rights and obligations over each other consequent on that liability. From the creditor’s perspective, breach by one is tantamount to breach by all: they are all equally liable. From the perspective of this agreement, on the other hand, Pompeios and Ptolemaios may severally be in breach if one pays and the other doesn’t (lines 10-12). In this respect, then, breach of the loan collapses with breach of this document. Yet failure one of one to repay the other after *praxis*, or of one or
both to repay Tryphon, for example, is in breach only of this \textit{synchōrēsis}. Either event, failure to repay or failure to indemnify will result in giving the injured party \textit{praxis} over ὅ παρασυγγραφῶν and all his possessions. This contract differs from the other transactional agreements in that it is not cessionary in nature, yet it shares with them this mutual ordering of idiosyncratic future rights embodied in a \textit{syngraphē}, which in Alexandrian, with its tradition of using \textit{parasyngraphein} to mean “breach of the whole \textit{syngraphē}” suggested this verb for “breach” to the scribe rather than the regular \textit{parabainein}.

The final group of contracts to consider under this heading are the divisions or \textit{diairēseis}.\textsuperscript{534} In this category are App. III, nos. 10, 44, 45-46, and 47. The last three were drafted in Tebnyins between 46 and 48 (nos. 45 and 46 are copies of each other), while the first is from late second-century BCE Pathyris. The three from Tebnyins take the form of a mutual homology: ὁμολογοῦσιν ἀλλήλοις ... διηρήσατε πρὸς ἑαυτούς ἐξ ἐυδοκοῦντων διαιρέσει ἐπὶ τοῦ παρόντος ἀπὸ τῆς ἐνεστώσης ἡμέρας ἐπὶ τὸν ἀπαντα χρόνον τὰς ὑπαρχούσας αὐτοῖς (object X).\textsuperscript{535} Then come the precise terms of the division, which comprises the body of the document, followed by a reprise of the opening statement of division and a penalty clause (e.g., no. 47: \textit{P.Mich.} V 326.ii.55-58):

\begin{quote}
κρατεῖν οὖν καὶ δεσπόζειν ἕκαστον τῶν ὁμολογοῦντων καὶ τοὺς παρ’ αὐτῶν καὶ τοὺς μεταλημψιμένους ὃν κεκληρωται με-
\end{quote}

\textsuperscript{534} In general, see Berger 1911: 179-85; Mitteis 1912: 270-71; Kreller 1919: 77-93; Montevecchi 1988: 208-9.

\textsuperscript{535} Cf. Mitteis 1912: 270-71; Montevecchi 1988: 208-9. No. 44 is a variation on the theme: a unilateral release of claims (ἐξήστασθαι; cf. Schwartz 1920: 219-21) by one sister to another for an unstated reason. In lines 15-16, the party making the cession declares that she is satisfied (ἐμφηθή; cf. Schwartz 1920: 98n3), echoing the demotic documents of an earlier era, cf., e.g., \textit{P. BM Andrews} 21.11 (124 BCE).
ρῶν ἀπὸ τῆς ἔνεστώσης ἡμέρας ἐπὶ τὸν ἀπαντὰ χρόνον ἀναμφιλέκτως, καὶ μὴ
ἐπελεύσεσθαι ἐκάτερον αὐτῶν [ἐφ’] ἄ ὁ ἐτέρο(ς)
αὐτῶν κεκληρώται τρόπω ἡμὴν: ὁ τὶ δ.’ ἀν τῶν προγεγραμένων
παρασυγγραφῆς τις τῶν ὁμολογοῦντων ἀποτε[ἰσά]τωι ὁ
μὴ ἐμμένων τῷ ἐνμένοντι κτλ.

They (agree that) each of the contracting parties and their assigns and heirs shall
therefore own and control the shares which have been allotted to them from the
present day forever, without question, and that one shall not proceed against the share
which the other has received in any manner. If any of the aforesaid contracting parties
breaches with respect to any of the above terms, the party not abiding shall pay to the
party abiding by it etc.

One finds divisions of property serving much the same purpose in demotic papyri,
with at least some examples having clauses at the end which approximate the substance of
Abstandsurkunde and the Nichtangriffsklausel. As with the demotic Abstandsurkunde and
the syngraphai apostasiou, so here too there are important differences which suggest that the
Greek diairēsis is not a mere translation of an originally Egyptian instrument. For instance,
our demotic divisions are unilateral declarations, while our later Greek ones are typically
multilateral, as above. Sadly, it is hard to trace the evolution of this contract type since very
few Ptolemaic divisions in Greek survive. One of our earliest, though, is suggestive. P.Ashm. I
22 (Aueris, 106 BCE), is a συγγραφὴ ὁμολογίας drafted between two brothers who thereby
confirm some demotic documents previously executed concerning possessions and offices left
to them by their father (Fr. A.11-13: ὁμολογοῦσιν ἀλλήλοις ... | ... μένειν κυρίας ἂς
tέθε[νται] πρὸς αὐτοὺς συγγραφᾶς Αἰγυπτί[ας] | [π']ἐρ[ι τῶν ...]. καταλε[ἰφθέντων]

Significantly, it is already at this date in the mutual homology format of our imperial examples. The demotic documents confirmed here no doubt adhered to the traditional unilateral style of declaration, which is why they are referred to in the plural, while this is an entirely Greek contract.538

Closer to the demotic in some ways is one of our other early divisions, *P.Lond.* III 880 (no. 10). This is a unilateral homology by a father dividing his property amongst his children. The document ends with a penalty clause, impossibly still dependent on the father’s initial ὅμολογεῖ. Berger suggests that we understand καὶ μὴ ἐξέστω, which makes sense of the nominative ἔτερος as well.539 ὅμολογεῖ Τοτόης Πελαιοῦ ... διειρήθαι (I. διηρήθαι) τὰ ὑπάρχοντα [αὐ]τῶι ... καὶ μὴ <ἐξέστω> ἐπελεύσασθαι ἔτερος ἐπὶ τὸν ἔτερον περὶ τῶν | παρακεχωριμένων ἐκάστῳ μερίδων, εἰ δὲ μὴ, ἢ τ’ ἔροδος τῶι | ἐπιπορευομένῳ ἀκλ/ρ(os) ἐστω καὶ προσποτεισάτω ὁ παρασυνγρα(φῶν) κτλ. (10-11, 28-30).540 This is more obviously a form of will, unlike the subsequent divisions, but it is not like later “living wills” that we find from the imperial era.541 Instead, the division in this document had

538 Pace Hombert and Préaux 1938: 148, who believe that the language of the demotic documents suggested the mutual homology. As Wolff rightly notes (2002: 71n1, 81n42) this is an entirely Greek document, and importantly such a document was not needed to give the underlying demotic documents force (cf. *P.Hawara dem.* 16 and 17, unilateral divisions (*mesiteiai*) with Greek dockets from Aueris, 92 BCE). Wolff instead sees this contract as an expression of the cultural and legal freedom of the late Ptolemaic period.


540 Cf. *P.Stras.* II 85 (Pathyris, 113 BCE) is a virtually identical contract, complete with this phrase, but without *parasyngraphein*, replacing it with καὶ προσποτεισάτω ὁ μὴ ἐμένων τῶι ἐμένοντι.

541 See, e.g., *P.Mich.* V 321 (Tebtynis, 42) and the general discussion of Kreller 1919: 204-23.
immediate effect, as we know from *P.Lond.* III 1204, which shows that one of the children (the daughter) alienated her portion with the father’s consent and participation less than a year after this division. Indicative of this being a mutual cession rather than a pure will is the fact that breach is defined not between the father and the children (cf. *P.Mich.* V 321), but between the children themselves, who are technically passive in this document: it is the father who makes and acknowledges the division, through which the children somehow acquire rights and responsibilities vis-à-vis each other. One possible signal of the inherent mutuality of this agreement in the text itself comes in the phrase ἐκόντες συνεγράφαντο with which the contract begins, belying the formally unilateral nature of the declaration. Finally, the very presence of *parasyngraphein,* as we have come to see, further suggests that this is a transactional agreement, an interpretation born out by the daughter’s subsequent action: everyone needed to be “on board,” since sales or alienations were contemplated as at least possible, if not anticipated in the near future (indeed, one wonders if it wasn’t the need to sell that drove the division).

Schwartz’s interest in this document was in what it illuminated of the evolution of the self-standing cession homology.542 He argued that as a gift, there could be no protocol for a such a unilateral cession (i.e., the father received no price or other consideration in return for the division). And yet, both the parties and the state had good reason to ratify and record these important transfers of property in legal instruments. So, parties drew up the second half, as it were, of a sale, which was the *Abstandsurkunde.* The fact the homology attested to no

material transaction, no *causa*, was signalled in late second-century Pathyris with that curious phrase, ἐκόντες συνεγράψαντο, “bei diesen besteht, da die Urkunde keine *causa* angibt, welche die Verfügung motivieren würde, in besonderem Mass das Bedürfnis das Gewolltsein der Erklärung zu betonen” (1913 [1961]: 193-94). In other words, these were transactional agreements. The evidence of *parasyngraphein* in general supports Schwartz’s grand theory, it being another piece of evidence for the development of the basic contractual tool-kit of the *homologia* + *Nichtangriffsklausel* in the quest to give legal force to (merely) consensual contracts.
5.4.3 Addendum: *Athetein*

There is one word in the papyri that was used in a manner that approximates “breach of contract,” though it is relatively rare. *Athetein* in non-loan contracts means “to ignore” a provision or “to treat it as cancelled,” “to set it at nought.” As with *parabainein*, it also has a history in the language of treaties and oaths, e.g., Polyb. 8.36.5, 11.29.3, 15.1.7-9, 15.17.3, 23.8.7, 29.2.2, 31.10.1, 36.9.14-17. In contracts (and treaties and oaths) it therefore represents a different metaphor than either *parasyngraphein* or *parabainein*, but is closer to the latter. Like *parabainein* it is conceptually more attuned to the parties’ relationship to the particular rules of the contract, rather than to the contract as a whole, and it is the act of disregarding a rule that allows one to transgress it. In usage, however, it has more in common with *parasyngraphein* (see Tab. 5.4.3).

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543 For θέτης (cancellation) in loans and receipts, see Ruprecht 1971: 12-15, 75-81, 86-92. The noun is by far the most common form of the word to appear in loans and receipts.
Table 5.4.3 Attestations of athetein in non-loan contracts and wills

<table>
<thead>
<tr>
<th>Date</th>
<th>Prov.</th>
<th>Doc.</th>
<th>Form</th>
<th>Trans.</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>P.Ashm. I 22</td>
<td>106</td>
<td>Aueris</td>
<td>contract</td>
<td>homologia</td>
<td>division</td>
<td>Y</td>
</tr>
<tr>
<td>SB VI 8974</td>
<td>100-76</td>
<td>Busiris</td>
<td>contract</td>
<td>6-witness syngraphē</td>
<td>marriage</td>
<td>Y</td>
</tr>
<tr>
<td>P.Oxy. XLIX 3482</td>
<td>73</td>
<td>Oxyrhynchos</td>
<td>contract</td>
<td>homologia</td>
<td>cession</td>
<td>Y</td>
</tr>
<tr>
<td>BGU IV 1123</td>
<td>30-14 BCE</td>
<td>Alexandria</td>
<td>contract</td>
<td>synchrōsis</td>
<td>agreement</td>
<td>Y</td>
</tr>
<tr>
<td>BGU IV 1013</td>
<td>41-68 CE</td>
<td>Arsinoite</td>
<td>contract</td>
<td>homologia</td>
<td>division</td>
<td></td>
</tr>
<tr>
<td>P.Mich. III 186</td>
<td>72</td>
<td>Bakchias</td>
<td>contract</td>
<td>homologia</td>
<td>division</td>
<td>Y</td>
</tr>
<tr>
<td>P.Mich. III 187</td>
<td>75</td>
<td>Bakchias</td>
<td>contract</td>
<td>homologia</td>
<td>division</td>
<td>Y</td>
</tr>
<tr>
<td>P.Oxy. III 493</td>
<td>50-99</td>
<td>Oxyrhynchos</td>
<td>will</td>
<td>NA</td>
<td>will</td>
<td></td>
</tr>
<tr>
<td>P.Oxy. III 492</td>
<td>130</td>
<td>Oxyrhynchos</td>
<td>will</td>
<td>NA</td>
<td>will</td>
<td>Y</td>
</tr>
<tr>
<td>P.Oslo II 31</td>
<td>138-161?</td>
<td>unknown</td>
<td>contract</td>
<td>homologia</td>
<td>division</td>
<td>?</td>
</tr>
</tbody>
</table>

A = parasyngaphein in the same document
B = parabainēin in the same document

Three patterns jump out immediately from the table above. First, athetein very rarely appears on its own. Second, it is associated in succession first with parasyngaphein, and then with parabainēin. Third, it is limited to transactional agreements, with the exception of SB VI 8974 (App. III, no.14), an idiosyncratic marriage contract from the perspective both of the complicated arrangements and its drafting.544

The word is clearly an older word for breach than *parabainein* in the documents (cf. Sec. 5.6), but failed to catch on. Three possible reasons recommend themselves. First, the fact that it could mean “to cancel completely” could lead to confusion, since cancellation is obviously different from breach. We indeed see the verb used this way, especially, but not exclusively, with respect to loans (e.g., *P.Oxf*. 14 [unknown, II] and *P.Dura* 31 [Ossa, 204]; cf. n543). Second, it was slightly more difficult to add to the specific verbs than *parasyngraphein*, which could be expressed clearly in a participle without an object (cf. Sec. 5.4.1), whereas *athetein* would always have to have an object in order to distinguish between the unilateral exercise of a “line-item veto” and actual cancellation. Third, although the idea of ignoring a provision was clearly an act of arrogance and negatively charged\(^{545}\) and the verb could be used to describe dealing faithlessly with someone,\(^ {546}\) transgression rather than lawlessness seems generally to have been the more deeply embedded notion when it came to breach.\(^ {547}\) These same qualities, however, recommended it for use in transactional agreements, which consisted of newly erected rules and boundaries. That is, an alternative to thinking of a transactional agreement *in toto* (hence the contravention of which was *parasyngraphein*) was to conceptualize it as a series of new rules vulnerable to being ignored, a mode of conceptualization which may have recommended the verb to wills later in the Roman period.


\(^{546}\) Cf. LSJ s.v. ἀθέτεω I.3, cf. ἄθετημα and ἄθετησις III. This use is not attested in the papyri.

\(^{547}\) Lawlessness was, however, a second-order association, as we have seen in the rhetoric of Dem. 56 (Sec. 5.2) and will see again in *P.Tor.Amen.* 8 (App. II)
5.5 The Fall of Parasyngraphein

The transition to the more regular inscription of breach in papyrus contracts should be dated roughly to the third quarter of the second century BCE, when we begin to see it used with increasing frequency as a covering term in leases and in association with the Nichtangriffs-sklausel. It is impossible to determine from the evidence which was the “original” mode of parasyngraphein, the specific or the general, and indeed it may be that both emerged simultaneously. The very first attestation (P. Enteux. 59) seems closest in all regards to the forensic use we saw in Dem. 56, and one can easily imagine how either use, the general and the specific, might have developed from the personal (i.e., intransitive) charge of parasyngraphē embodied in that petition.

By the middle of the first century BCE, however, the use of parasyngraphein was already in decline, even as the inscription of breach was gathering steam. As opposed to the 80 attestations of parasyngraphein (I discount the last: see n556), there are 208 attestations of parabainein, of which 163 appear in contracts (cf. Tab. 5.6a below). The first documentary attestation is in P. Stras. II 115 (Philadelphia), a contract of indeterminate nature dated to either 148 or 137 BCE. It contains the Nichtangriff language, and therefore is some sort of receipt, division, or transactional agreement. After that, we must wait until 73 BCE for the

548 In the ed. pr. of SB III 7188 (Krokodilopolis, 154 BCE; see Wolff 1939: 104-17), Wolff restored parabainein in lines 28-29: [καὶ τὰ ἐργα πάντα, δόσις ἐκ τῶν ἐν τῇ στήλῃ ἔγγυες ἔγγυα μένων]. This is a contract that definitely contains parasyngraphein (App. III, no. 5). Given the early date, the fact that parasyngraphein appears (cf. next section), and that I can find no parallel for the phraseology of line 28, it is best not restored in the lacuna.
next contract to bear the word: *P. Oxy.* XLIX 3482, an Oxyrhynchite cession. From the mid-first century BCE on, *parabainein* steadily gains ground as the preferred word for general breach in our contracts. 

Nor is this merely a matter of raw numbers: the pattern is path-dependant and speaks to an evolution in the conception and drafting of breach. Once we subtract imperial cessions, sales, and divisions, *parassyngraphein* appears only in Oxyrhynchite documents, with all but one dealing with loans of one sort of another (nos. 34, 40, 55, 59, and 64). Furthermore, the last three instances show a distinctive penalty clause: ἐὰν δὲ τι τούτων παρασυνγραφῶ, ἀκυρων ἔστω καὶ προσαποτείσω καθ’ ὅ ἐὰν παρασυνγραφῶ εἰδος τὸ τε βλάβος καὶ ἐπίτιμον κτλ. *vel sim.* Significantly, this clause is first attested in an Oxyrhynchite cession from the first quarter of the first century (no. 37), and consistently thereafter in subsequent Oxyrhynchite cessions through the second century (e.g., nos. 42, 54, 56-57, 63). The impression, then, is of a migration of an old formula, originally used in cessions and sales, to other types of contracts, a consequence of the verb losing its distinctive flavor.  

Other indications point in the same direction. For instance, we find *parassyngraphein* used interchangeably for *parabainein*, stripped of all syngraphic specificity, in *C.Pap.Gr.* I 14.25-26: ἐὰν δὲ ἐὰν παρασυγγραφοῦντες μὴ ποιῇ καθ’ ἀν γέγραται (App. III, no. 39), to which we may compare similar tautologies in *PSI X* 1120 (no. 34), *SB XVI* 13042 (no. 40), and *P. Oxy.* XIV 1641 (no. 49). And this process is not confined to the Oxyrhynchite. No. 62, for instance, a division from Ptolemais Euergetis from 108 reads ὅ τι δ’ ἂν τῶν

549 On Oxyrhynchite legal conservatism, see Wolff 1946: 58, 63n24 and now Yiftach-Firanko 2006.
προγεγραμμένων παρασυγγράφωσι οἱ ὁμολογοῦντες, ἀπὸ[τισάτω] | ὁ παραβάσ τῶν ἐνμένοντι [παρά]χρῆμα τὰ βλάβη κτλ. (28-29). No other example of this clause pairs parasyngraphein and parabainein in this way, but, if qualifying the party in breach as such, does so by labelling him ὁ μη ἐμμενῶν (e.g., nos. 45/46, 47). The last attested qualification of a party in breach with the participle of parasyngraphein came nearly 30 years earlier in no. 53.550 Centuries earlier one would have reached for ὁ παρασυγγραφῶν (e.g., nos. 7-8, 10), but by the second century the natural opposite to emmenein in contracts was parabainein.551

We find yet another potential indicator of the verb’s slide into obsolesence in a pair of linguistic solecisms. In at least two instances, nos. 30 [Alexandria] and 36 [Oxyrhynchos]), the aorist subjunctive is conjugated as if it were a regular thematic verb (i.e., <

*παρασυγγράφω, *παρασυνέγραψα). The collapse of contract verbs is not uncommon in

550 Nos. 52 and 53 show an awkwardness of construction, perhaps evidence of the formula no longer being properly understood. Take, e.g., no. 52, lines 17-19: μηδὲν τιν ὧ[μ]ολογοῦσαν ... ἐκαλεῖν μηδὲ ἐγκαλεῖσθαι μηδ[ε] | [ἀμφοτερ]ηθῆσαι μηδ[ε] ἐπελεύσθαι τρόπω μηδὲν. [8, ] τ[η] 8’ ἀν τῶν προγεγραμμένων παρασυγγραφῶν, ἐὰν δὲ | μη βεβαιῶσθαι μηδὲ παρα[χ]θῆται, προσαπ[τισάτω] κτλ. Litinas (2002: 75-76) rightly corrects the original readings of μηθ[ε]ν ὧν to [δ, ] τ[η] δ’ ἀν and παρά[χ]θηται to παρα[χ]θηται on the basis of apposite parallels and autopsy. The editors of the ed. pr. had corrected παρασυγγραφῶν to παρασυγγραφῶντας, since they construed the participle with the previous clause. This was, however, the wrong correction, as Thases (the principal) is consistently the only declarant (ὄμολογεῖ, ὀμολογοῦσα, cf. the singular of the breach verbs and penalty verbs that follow). Instead of number we should correct the gender, i.e., παρασυγγραφοῦσα (we might also prefer βεβαιοῖ to βεβαιώσῃ, since no. 52 appears to be drafted on the same model as no. 53, even down to the mistake of gender; cf. no 40). I also do not understand Litinas’s assertion that the case should be accusative instead of nominative after his improvement of the text. While it is true that I can find no other instance of a participle appearing with ἄν in a relative clause, it still seems most natural to understand this as an awkward adverial participial phrase modifying the subject of βεβαιῶσῃ and παρά[χ]θηται, particularly in light of the history of participial use of parasyngraphein (cf. Sec. 5.4.1). Finally, CPR I 220 (no. 35), which Litinas also discusses, reads [παρα]συγγραφῆ (i.e., fut.), and does not need to be corrected to the subjunctive. Though rare, this use of the future is a known phenomenon, cf. no. 60 and Mandalaras 1973, §§ 408-10.

551 Contrast earlier formulae, which take care to repeat the same verb, e.g., nos. 37, 38, and 49.
imperial Greek, but generally only in forms derived from the first principal part. Likewise, although later Greek evinced a preference for sigmatic aorists or second aorists, consistently replacing the latter with the former, the aorist forms of contract verbs were strikingly regular. These two examples come from different places and record different transactions with different formulae: this is not, therefore, a matter of the replication of a scribal mistake in a model. Moreover, the only people who ever had occasion to write this word, particularly by the Roman period, were scribes. To my mind, the most likely explanation is that it had simply ceased to sound or look incorrect to write παρασυγγράψῃ or παρασυγγράψωσιν, even to those for whom the word was part of their professional vocabulary.

Finally, there is the mass of Herakleopolite sales and cessions from the third century (nos. 61, 65-80). After the Abstand/Nichtangriff language, they all contain the following formula: ἐνέχεσθαι τῶν δεῖνα παραβάντα (vel sim.) τῷ ὀρισμένῳ κατὰ τῶν παρασυγγραφούντων ἐπιτίμῳ κτλ. Although we have many documents from the Herakleopolite, at present I know of no securely dated sale or cession from this nome between the third-century documents in CPR I and late Ptolemaic documents in BGU VIII. I also see no reason to trust the second-century dates assigned to many of the documents in CPR I, and in many cases the Hearkleopolite origin cannot be confirmed. In fact, given the evidence, one


554 Of course, there are numerous homologous forms between regular and contract verbs, which can only be distinguished by accent (e.g., the nom., m., sing., act. participle). How many other attestations of *παρασυγγράψω lurk amid the non-diagnostic forms we will never know.
should probably consider it a definitive sign of Herakleopolite drafting if the contract carries this set phrase, perhaps stretching back to Ptolemaic times, cf. no. 13 (cf. p. 289 above).\footnote{Cf. the comments of Kramer and Shelton on P.Neph. 29, p. 106.}

Significantly, in this model the only modified verb is the participle of \textit{parabainein}, while the form of \textit{parasyngraphein} is frozen in place. These are the last attestations of the verb, and so it ended its days as a Ptolemaic left-over in a Roman legal refrigerator.\footnote{Cf. the mistake of one scribe in no. 79: \textit{παρὰ τῶν κατασυνγραφοῦντων}. The very last attestation (no. 81) is in a sadly garbled passage in a papyrus now lost (\textit{P.Sakaon}, p. 105). Besides the Herakleopolite documents, there is not a single attestation in the third century before no. 81. This is, however, a petition that deals with a land dispute, and it is just possible that \textit{parasyngraphein} appears by virtue of a reference to a sale document like those from the Herakleopolite. Sadly, the papyrus is now missing in the Cairo Museum, and given Jonguet’s comments in the \textit{ed. pr.} (\textit{Melanges Cagnat} [1912, Leroux: Paris], pp. 414-15), it seems more reasonable to assume that \textit{παρασυνγραφα} . . in line 26 was misread in the mess that is lines 24-26.}
5.6 Parabainein and Contract

Parabainein in the Roman period became the word for breach in contracts, in all nomes and regardless of transaction. In this section, I will first discuss the determinants governing the choice of verb for breach in contracts during the period of the final transition, and then the pattern of use of parabainein before it became the regular word for breach in contracts. With respect to the pattern, we will see that it was used in the early Ptolemaic period almost exclusively in connection with public law and oaths and promises. Since “breach of contract” is clearly shown to be a subsequent development, we need to consider what semantic connotations were carried over into “breach of contract” from the original uses of parabainein. I therefore explore the relationship of parabainein to law in Sec. 5.6.1, and its connection to promise and oath in Sec. 5.6.2, demonstrating that the verb was part of a foundational moral vocabulary, unlike parasyngraphein. I conclude by suggesting that we see the transgressive connotation of parabainein retained in its contractual use. I explore in Sec. 5.7 what it might have meant for “breach” to be replaced with “transgression,” and argue that this evolution was institutionally significant.

The three determinants governing the use of parabainein in contracts of the Roman period appear (in no scientific order) to be: (i) the conservatism of local style or formulae for certain transactions (e.g., whether or not the style called for parasyngraphein, as in Oxyrhynchite cessions); (ii) the dictates of the particular contractual form (i.e., whether or not it routinely included penalties); and (iii) the parties’ decision to draft penalties into the
contract. Before discussing each briefly in turn, it will help to see the pattern of usage visually (Fig. 5.6 and Tab. 5.6.a).
NB. By “active,” I mean instances where the attestation is of a living word. This applies only to *parasyngraphein*: all of the third century examples, which appear only in Herakleopolite cessions and sales, are fossils (see previous section). I do not include the Alexandrian *synchôrëseis* in the moving averages, since they represent an anomaly in the data set, but instead mark them as data points for reference.
Table. 5.6.a Active uses of breach verbs in papyrus contracts 300 BCE – 300 CE

<table>
<thead>
<tr>
<th>Century</th>
<th>parasyngraphein</th>
<th>parabainein</th>
</tr>
</thead>
<tbody>
<tr>
<td>250-225</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>224-200</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>199-175</td>
<td>1</td>
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<td>2</td>
<td>0</td>
</tr>
<tr>
<td>149-125</td>
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<td>1</td>
</tr>
<tr>
<td>124-100</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>99-75</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>74-50</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>49-25</td>
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<td>2</td>
</tr>
<tr>
<td>24-0</td>
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<td>2</td>
<td>6</td>
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<tr>
<td>25-49</td>
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<td>8</td>
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<tr>
<td>50-74</td>
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<td>75-99</td>
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<td>125-149</td>
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</tr>
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<td>8</td>
</tr>
<tr>
<td>TOTAL</td>
<td>61</td>
<td>161</td>
</tr>
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</table>
Reviewing the data above, I expect some to be surprised that there are so few attestations of *parabainein* in the contractual record. According to admittedly rough calculations for the number of contracts attested in the HGV, approximately 4% of contracts used the word over the course of the first three centuries. To any papyrologist, this likely runs counter to his or her experience with the texts: *parabainein* strikes one as a very common word in imperial contracts. Even after accounting for the inherently unreliable method of counting contracts in the HGV and the observation that many of our contracts are fragmentary or merely subscriptions or summaries (and so often give no indication of how breach was written into the contract)—even then, there is nothing unreliable about the 39 attestations from the whole of the second century. When set against the HGV’s approximately 1,000 entries for contract from the second century, this seems a very low number indeed.

We also get a sense of just how dependent our data is on the variables of local style and document survival from the spike of attestations in the late first century BCE, all but two of which come from the Abusir el-Melek cache of *synchōrēseis*.\(^{557}\) The HGV lists 93 contracts from Alexandria in this period, giving us a ratio of just over 50% carrying the word *parabainein*, far above the general average of 4%. In fact, the word occurs more often in these documents than in the whole of the second century! Moreover, the fact that Alexandrian data points sit so far above the trend lines suggests just how low our “average” is. In this connection, we must also remember that breach was originally described by specific verbs, and this tradition continued throughout the Roman era. While it is certain that the overall

\(^{557}\) The exceptions are *P.Amst. I 41* (a protocol from Ptolemais Euergetis, 10 BCE) and *P.Köln III 147* (cf. 241ff.).
inscription of breach rose from the Ptolemaic period, it nevertheless remained but one of several ways to describe breach. A full study of breach will therefore require a detailed study of contract styles over the course of the Roman period in order to relate the inscription of breach *per se* to specific or implicit breach.

That said, the moving averages do tell a story, one of the decline of *parasyngraphein* and the rise of *parabainein*. One factor shaping of this trend relates to style. As we saw in the last section, some models called for *parasyngraphein*, and they were surprisingly long-lived. In Oxyrhynchos the penalty-clauses of these models became detached sometime in the second half of the first century and were incorporated into models for other transaction types, allowing the verb a brief and limited second lease on life (cf. p. 321). Significantly, outside of Augustan Alexandria and the third-century Herakleopolite (which are both special cases of different sorts), only one document shows both verbs, no. 62 (cf. p. 321). The real rate of incidence of breach verbs for most of the nomes in the Roman period is thus the combined total for *parasyngraphein* and *parabainein*.

Form is another important variable. *Hypomnēmata*, for example, came to prominence over the course of the Roman period. 558 These were originally memos, and then applications, and increasingly used as contractual forms. Over time they acquired more and more of the usual elements of contracts, like *praxis-* and *kyria-*clauses. 559 However, only two from before the fourth century have penalty clauses: *P.Kron.* 38 (Tebtynis, 137) and *P.Mil.Vogl.* III 143


(Tebtynis, 170/171). This is not the place to revisit Arangio-Ruiz’s theory of social change and the rise of the hypomnēma, or what effect the subservient and unilateral form of the hypomnēma may have had on legal relations. Considered the perspective of the inscription of breach, the rise of this form depressed the incidence of parabainein.\textsuperscript{560}

Third—and unstudied—are contract forms that could and routinely did carry penalties, but did not (cf. BGU IV 1144 [App. III, no. 28] above, pp. 308ff.). As Berger rightly noted a century ago, parties in Graeco-Roman Egypt were free to incorporate penalties, theoretically at will.\textsuperscript{561} And indeed, we have many contracts without penalties. The study of these as a group will have to await another time; here we note only that those contracts which did not assign penalties very rarely inscribed breach \textit{per se}, creating another pool of documents without either verb. Third-century contracts which explicitly forbid breach but fail to include penalties constitute an important exception to this rule. Compare, e.g., \textit{P.Oxy.} XLI 2977 (239/240) and XXXI 2586 (264): both are apprenticeship contracts from Oxyrhynchos, both drafted as private protocols, both expressly prohibit breach with \textit{parabainein}; the main difference between them is that XXXI 2586 carries no penalty-clause. We could potentially explain this difference as a function of familiarity or community, since XLI 2977 concerns the training of a slave, while XXXI 2586 is made between two Oxyrhynchite weavers, who we know as a community made a practice of placing their sons with each other in apprenticeships


\textsuperscript{561} 1911: 34, 44. I say “theoretically” because actual practice no doubt depended on the relative social and economic power of the parties.
(note, however, that XLI 2977 does not include the Fiskalmult).

Alternatively, we might see in XXXI 2586 evidence of a trend towards the inscription of breach without penalties (cf., e.g., P.Oxy. VI 908 [Oxyrhynchos, 199], PSI III 218 [Oxyrhynchos, 250], and P.Cair.Isid. 80-81 [Karanis, 296 and 297, resp.]). Whether one should interpret such contracts as pointing to a decline in the use of penalties, or conversely as indicating the importance of inscribing breach regardless of penalties, is an open question.

What is truly surprising, perhaps even shocking, in this data is the comparatively late date at which we find a documentary use of parabainein in contracts, the second half of the second century BCE. As we saw in Sec. 5.2, the verb had been used since the fifth century to describe the violation of treaties and oaths—and often both together or metonymically one for the other. The language of transgression was clearly percolating through all manner of law-like arrangements at every level of Greek society in the fourth century, from priestly organizations and tribes using (or perhaps re-appropriating) the forms and language of law, down to individuals and their private orderings, and it continued to be part of the language of treaty, oath, and contract throughout the Hellenistic era. Unfortunately, we have no unambiguous evidence for the use of either parasyngraphein or parabainein in the text of a fourth-century contract (cf. pp. 260f. and 269). The first private contract I know of to use the

562 See Ratzan forthcoming a. Some first- and second-century weaving apprenticeship contracts did carry penalties: e.g., P.Oxy. IV 725 (183).


564 Cf., e.g., Staatsverträge 481, an agreement and oath between Eumenes and some mercenaries between 263-241 BCE (see pp. 354ff.); and IG XII.5 128 (p. 308), an early second-century BCE treaty between Paros and Naxos.
word is *Sard.VII* 1, a cheiographic (or at least subjectively drafted) mortgage (*parakatathēkē*) between a certain Mnesimachos and the temple of Artemis ca. 200 BCE, in which it appears as a covering term: ἕαν δὲ μὴ βεβαιώσωμεν ἣ παρὰ τὴν συγγραφὴν παραβαινόμεν τὴν γεγραμμένην ἐπὶ [the various provisions]. Before that, such epigraphic contracts as we have (mostly public, for obvious reasons) denote breach in specific terms (e.g., the Arkesine loans in *IG* XII.7 68-70, cf. Ditt. *Syll.* 3 955; see text in n449). Fittingly, perhaps, our very first papyrological attestation of *parabainein* with the meaning “breach” does not appear in a document at all, but the paraliterary *UPZ* I 144 (pp. 195ff.), where the word for contract is also the (by then) literary word for contract, *synthēkē* (27: μὴ παραβαίνειν τὰ κατὰ [τὰς] συνθήκας).

The best way to determine what it might have meant to have started to incorporate “transgression” into the text of contracts themselves is to study the verb’s pattern of usage (see Tab. 5.6.b).

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565 If we take Plutarch as an example of literary *koinē* (who is admittedly late for this purpose, but there is no Hellenistic author who covers as wide a range of material as he does), we find that he uses *synthēkē* when speaking of “contract” in a neutral sense, and *homologia* to mean an “(oral) agreement” (*Mor.* 742e). *Syngraphē* appears just once in his *oeuvre*, and precisely because it reeks of the quotidian world of business. At *Mor.* 1044a he lambasts Chrysippos’s advice to teachers on when to ask for payment, either up front, which is safer, or later, which is εὐγνωμονέστερον (Chrysippos’s word): καὶ πῶς ἢ χρημάτων καταφρονητῆς ὁ σοφὸς, ὑπὸ συγγραφὴν ἐπὶ ἀργυρίῳ τὴν ἀρετὴν παραδιδοὺς, κἂν μὴ παραδῷ τὸ μισθάριον εἰσπράττων ὡς πεποιηκὼς τὰ παρ’ αὐτόν, ἢ βλάβης κρείττων, φυλασσόμενος μὴ ἄδικηθῇ περί τὸ μισθάριον. (“And how is the sage either disdainful of wealth, if he hands over [with a pun on “betraying”] virtue for money under contract—and even if he does not hand it over, nevertheless extracting his pittance as having done what he could—or superior to injury, if he is taking pains to guard against being wronged with respect to his pittance?” (cf. the discussion of *hyposyngraphos* in App. I). That said, it is not a purely literary word: *synthēkē* appears in documents with the meaning of contract (e.g., *P.Oxy.* III 533 [Oxyrhynchus, late II-early III]).
The rise of *parabainein* in contracts and wills is impressive, particularly as we note that in nearly all other categories the incidence remains low and fairly consistent, with one exception: oaths. For the remainder of this section, I will explore the way in which *parabainein* was used first with respect to law (including the one judgment), and then with respect to promises and oaths.

### Table 5.6.b Objects of *parabainein* in documentary papyri from 300 BCE – 300 CE

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<th>&quot;pass by&quot;</th>
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<th>judgment</th>
<th>oath</th>
<th>promise</th>
<th>contract</th>
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<td>2</td>
<td>1</td>
<td>11</td>
<td>1</td>
<td>5</td>
<td>2</td>
<td>167</td>
<td>11</td>
<td>5</td>
<td>205</td>
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5.6.1 *Parabainein* and Law

In the Ptolemaic period the majority of the references to legal transgression come in petitions about official abuses with respect to royal *prostagma*ta. The one exception is *SB* I 5675 (unknown, 183 BCE), in which the king warns his agents against transgressing his orders. This was language that the Prefects adopted in their time. Somewhat oddly, petitioners in the Roman period did not accuse Roman officials, or anyone else for that matter, with having “transgressed” the law.

Two instances bear closer inspection. First, *P.Hib.* II 205 (Heliopolite or Memphite, 246/245 BCE) contains a heavily edited official report. In it, the writer complains about certain powerful people (ισχύοντες) who have submitted a petition disputing the amount they owe in taxes, while the rest, some with “rather poor” (καταδεξέστεροι) vineyards, have already paid:

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οὗτοι δὲ μ[όν]οι I τὴν ἐντευξίν] \πρὸς τὰς προφ[ό]δο[ς]/\\
[\παραβαίνουσι]/ [[ἐμβ]εβλήκασιν] λυσιτελε[σ]τάτος ἀμπελὼνα[ς]
[[ἐκ]κτημένοι] ξοντες/ ... (22-24)
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“These alone have submitted a petition have transgressed with respect to the revenues, despite being possessed of holding the most profitable vineyards ...”

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566 E.g., *P.Tebt.* III 1 786 (Oxyrhyncha, 138 BCE), *P.Tor.Choach.* 4 and 5 (Thebes, 111 BCE), and *UPZ* I 108 (Memphis, 99 BCE). This word is not discussed by Di Bitonto 1967; 1968; or 1976.

567 E.g., *M.Chr.* 188 (Oxyrhynchos, 127), *P.Prag.* II 122 (unknown, 191), *P.Cair.Isid.* 1 (Karanis, 297). Cf. n 411 on the increasing use of *plēmmelein* to mean legal transgression.

568 While *parabainein* does not figure in petitions, *paranomeini*/paranomos occasionally does (see Preisigke, Wörterbuch, s.vv. for examples).
As Turner, the editor, noted, “the correction of this phrase ... is revealing for official psychology” (p. 121). What it reveals in particular is the decision to characterize one side’s attempt to dispute via a recognized procedure as “transgressive” or criminal, reminiscent of the early dynamics of *agnōmosynē* in the private sphere (cf. pp. 175ff.).

The second instance comes in the form of a petition to the *stratēgos* by a certain Berenike, a citizen of the *polis* of Ptolemaïs, ca. 149-137 BCE (*P. Merton I 5*). In it, she claims to have been wronged (ἀδίκουμένη) by her neighbor Andronikos, who is alleged to have first encroached on her land (6-7: [ἐκείνου ἐπίβε] | ἑκένναι ἐπὶ μέρος τῆς ἐμῆς γῆς), and then to have played fast and loose with both the boundary markers and official procedure in the hopes of changing the facts on the ground permanently to his advantage. Although Berenike had apparently won an initial verdict before the *epistatēs* on the merits of her case, the decision seems not to have been enforced, as Andronikos ignored the order to restore the land and a certain Tychon, perhaps the village scribe who was charged with enforcement, failed to carry out his brief. This gave Adronikos an opening, so that he, “transgressing the judgment given in my favor as aforesaid, and removing the boundaries of the royal land [i.e., the land in

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569 A few lines later, and of piece with the tone of the correction, the writer accuses the rich of “conspiring” (ἐπισυνήσταται) at the instigation of Achoapios the nomarch. *Episynistathai* occurs just once more in the papyri (a fragmentary petition in the Zenon archive: *P. Cair.Zen. IV 56623* [unknown, 253 BCE]), but is well attested elsewhere, cf. LSJ, s.v.).
dispute], paid to the god Soter the customary first-fruits in violation of my contract of sale deposited in the public record office.\textsuperscript{570}

Without putting too fine a literary point on what is, after all, a petition (and one not without significant grammatical problems, e.g., the anacolouthon in the lines quoted above), we here see how an act of physical and legal transgression is translated into an act of moral transgression. Andronikos first physically “trespassed” on Berenike’s land, and here the term used is the technical, legal one for encroachment, \textit{epibainein}.\textsuperscript{571} Yet it was only after his acting in demonstrably bad faith, ignoring legal decisions and moving boundary markers, that Andronikos was manifestly guilty of “transgression.” At one point Berenike says that Andronikos “bent around” his responsibility to abide by the decision and willingly re-establish the boundaries (14-15: περικάμ[ψαντος δὲ] | τοῦ ἀντιδίκου τοῦ ἐκουσίως τὸν ἀφορισμὸν [ποιεῖσθαι.]). \textit{Perikamptein} is a \textit{hapax} in the papyri, and therefore something of a risky restoration, but not unreasonably so given the traces and dearth of possibilities. If correct, the meaning accords well with the core complaint in this petition, namely that Andronikos has not overstepped, but violated the boundaries of the legal decision she obtained before the \textit{epistatēs} (παραβαίνοντος τήν δεδομένην [μοι κρίσιν]),\textsuperscript{572} and is


\textsuperscript{571} Cf. \textit{Wörterbuch} IV (Kiesling), s.v. ἐπιβαίνω.

\textsuperscript{572} Cf. the use of \textit{parabainein} with respect to a judicial decision in the contemporaneous \textit{UPZ} 144 above (pp. 186ff.). Similarly, \textit{emmenein} appears in connection with “abiding” by official orders or judgments: \textit{P.Polit. Iud.} 3 (Herakleopolis, 140 BCE?), \textit{P.Oxy.} I 38 (Oxyrhynchos, post 49), \textit{P.Mert.} III 104 (Oxyrhynchite, early Roman), \textit{P.Ross. Georg.} II 20 (Arsinoite?, ca. 146), \textit{P.Oxy.} II 237 vi.38 (Oxyrhynchos, 186).
therefore now not encroaching on, but consciously violating the boundaries of her land (παροριζων την βασιλικην γη[v]),\textsuperscript{573} as well as those of her registered contract with Panas, from whom she bought the land (παρατεθεμενην) | ἐν τωι δημοσιωι ὑπην μου). The substitution of the preposition \textit{para} for \textit{epi} in the action itself (i.e., ἐπιβαίνειν → παραβαίνειν) and the accretion of παρα- at the end of this petition both aim to cement Andronikos’s actions as morally wrong and wantonly illegal, conflating the authority and legal status of her boundary markers and her duly deposited contract with those of the legal decision she received from the state.

\textsuperscript{573} Cf. Preisigke, \textit{Wörterbuch} and LSJ, s.v. παροριζω.
5.6.2 *Parabainein* and oath and promise

As with law, there is nothing surprising about finding *parabainein* associated with oaths in the papyri, yet the nature and history of its association with oaths has important implications for its subsequent association with contract. We will begin, however, with promise, since it stands at the foundation of oath, which is in essence a solemnized or sacralized promise.

A late third-century letter jokingly remonstrates with a friend (*P.Oxy. LV 3812.2-5*) [Oxyrhynchos]) who had “disregarded the earnestness of word in deed,” that although he was to be “forgiven” for his “lack of leisure” (άσχολία), this was no excuse for not keeping a promise, for promises were “serious business” (σπουδάσιον). Promises in our sources were serious business indeed. We have already come across promise as a basis for thinking of people in terms of their *gnōmē*: those who kept them were *eugnōmōn* while those who did not were considered *agnōmōn* (pp. 173). The study of promises in the papyri requires a separate treatment, but here we will note that many are implicated in contractual relations (unlike the letter above), of which I will give two examples.575

First, consider the letter of Protarchos to Zenon, in which the Protarchos asks Zenon to fulfill a promise he had made to supply natron:

... παρά τὸ σε ἐπαγγεῖλασθαι ἀποστελεῖν ἠμῖν
[... ei [...] τὰ χξ [...] ντ [...] τ[ [...] [- ca.14 -] αςκ [...] τ [...] [...] ε [...] .


... Because you promised to send us ...[nitron] ... we have not received delivery. Since there is no longer any in the nome, it has come to pass that we are going around and borrowing it from other nomes so that the boiling does not stop. Still even now you will do well—if you have not already sent it all together(?)—to send it right now and write a letter to us ... [in which?] you have determined how we might best take care (of this matter) and the linen-workers not be idled, since they have no nitron for the boiling.

This is a classic case of contractual reliance, even though there is no mention of a contract, and indeed the entire tenor of the letter runs counter to seeing any formal contract here, at least for the provision of natron.577 What the larger relationship between these two is difficult to say from this document alone, though there very well might be a contract at the basis of it, for example a lease.578 In this connection, we could compare it to C.Pap.Iud. I 13 (Philadelphia, mid III BCE), in which the tenants Alexander and Ismaelos complain to Zenon that the land they farm had gone dry “because you have not provided for us according to the

576 For ἐπὶ τὸ αὐτό;?

577 Contrast P.Lond. VII 2054 (unknown, mid III BCE), where the “promise” to supply gravel to Zenon is in fact a tender, cf. epidechesthai (pp. 165ff.). Cf. a Roman example in P.Herm. 12 (unknown, late II-early III), a letter from a father to his son concerning the use of “Cretan earth” in fulling: τὴν ἀπὸ σοῦ γενησομένην πρὸς ἡμᾶς | σπουδὴν ἀκριβῆς ἔδειν καὶ παρ’ Ἰ- | λιοδόρου ὁμοίως ἐπιθύμησιν καὶ ἀ- | πό τῶν σῶν γραμμάτων, οἷς | πιστεύ- | σας καὶ τῇ τοῦ τεχνίτου(*) ἐπαγγελ- | α Κρητικῆν ύπολαμβάνω ἐσχηκέναι ... (3-8: “I knew exactly the enthusiasm which you would display towards us, and I learnt of it alike from Heliodoros and from your letter. Trusting in this and the promise made by the craftsmen, I assume that you have received the ‘Cretan earth’...”).

578 We know nothing more about this particular Protarchos (see P.Bat.Lugd. XXI, p. 408).
contract” (5-6: παρὰ τὸ μὴ σε χρηγεῖν ἡμῖν | τὰ καὶ τὰ/ τὴν συγγραφήν). They therefore request that “you do as you promised, and extend us a loan” (6-7: σε ποιεῖν | καθάπερ ἐπηγγείλου, ὡστε καὶ προδανίζειν ἡμῖν). The “promise” of the loan was clearly not part of the syngraphe. It may have been suggested or offered by Zenon as a possibility under certain conditions when the lease was executed, but more likely it is a remedy put forward by the tenants, meant to take the place of the chorēgia that Zenon had purportedly failed to provide.

In pressing their case, they remind him that both sides have an interest in the land’s productivity,579 and so propose a modification that keeps the core contractual “promise” in place, even if by means not κατὰ τὴν συγγραφήν.580

Another good example, this time from the imperial era, does not use parabainein but a periphrasis for it to express the transgression of an informal contractual promise. P.Dubl. 15 is a second- or third-century letter from the Oxyrhynchite nome, in which the author accuses the recipient of engaging in “hold up” behavior (cf. pp. 41ff.), or renegotiating halfway through so as to extract greater value from the bargain than originally agreed to (“moving the goal posts”):

[...]θεων [π]αραγενομένου Πριά- [μ]ου ἀπόλυσον αὐτὸν, δοὺς αὐ- [τ]ῷ τὰ ὀντα παρὰ σοὶ πρόβατα
4 [ι]δ, σοῦ ἀπολαμβάνοντος δρα- [χ]ιάς ἐκατόν τεσσεράκοντα
μεθ᾽ ἂς ἐλαβες παρ᾽ ἐμοῦ ἐπί παρόν-

579 8-10: αὐτὸς γὰρ ἐπίστη ὅτι οὐθὲν γένημα γέγονεν | παρὰ τὸ τὴν ἀνυδρίαν γενέσθαι καὶ εἰς τὸν ἐπερ- | χόμενον χρόνου πεπόνηκεν.

580 An ancient example of Williamson’s “getting to Y after having contracting for X” (cf. p. 46).
τι μου (I. μοι) δραχμάς τεσσεράκοντα
και παρὰ Πριάμου ὑγδοήκοντα ,
ὡς εἶναι ἐπὶ τὸ αὐτὸ δραχμάς
dιακοσίας ἐξήκοντα . γειωσ-
κειν δὲ σε θέλω ὃτι παρὰ δεξίαν
ἐχρῆσώ . ἐμοῦ γὰρ παρόντος ὑπέ-
σχοῦ τὸ διά[r]ουρον τοῦ χόρτου
dραχμῶν ἐκατόν βρωθῆναι .
ὑπερουν δὲ ἐκαίνισας ἡμᾶς σὺν
16 τῇ τιμῇ τοῦ αἰγὸς δραχμάς τρ[1]-
άκοντα μηδὲ πλήρη ὄντων
tῶν πέντε ἀρουρῶν , εἰδὼς
ὅτι οὐκ ἀλλότριος προηρχόμην
20 ε[i] μὴ ἐμαυτοῦ . καὶ νῦν οὖν ,
[φί]λτατε , μηδεμίαν κατοχὴν
[πο]ιήσῃ ἄλλα εὐθέως ἀπόλυσον
ἀυτὸν καὶ Μαμερτείουν , ὑπηρετ[ή]-
σας αὐτοῖς πρὸς τὴν νῦκταν .
κακῶς δὲ ἔπραξας μὴ ἀνα-
βάς πρὸς τὴν ἑορτήν . κἀν
νῦν ἄνελθε διὰ ... τὸν φίλον . ἔρρωσο .

... when Priam arrives, release him [a third person, C] and give him the 14 sheep that are with you, you yourself taking one hundred and forty drachmai, in addition to the forty drachmai you got from me when I was present, and the eighty from Priam, making altogether two hundred and sixty drachmai. I want you to know that you behaved contrary to your pledge. For I was there when you promised that the two arourai of grass would be grazed for one hundred drachmai. Later on, you made a new demand for thirty drachmai along with the price of a goat, with the five arourai not even being paid, since you knew that I would not come out, by god, against my own interests.581 So do not now put any bond on him [C], my friend, but release him [C] immediately, and Mamertinos, putting them up for the night. You made a mistake in not coming up for the festival. But come up now on behalf of ... your friend. Farewell.

581 The ed. pr. translates: “...because you knew that I would not proceed in a hostile fashion but only in my own interest(?)” The general interpretation is correct, but the editor misconstrues certain key words. Proerchesthai in this context means little more than “to proceed, go forward,” and allotrios should be taken with the genitive ἐμαυτοῦ, as usual, meaning merely “alien, someone else’s,” not “hostile” or “aggressive” (cf. Kiessling, Wörterbuch, s.v. and pp. 467f.). Cf. P.Oxy. VI 963 (Oxyrhynchus, II-III), a letter in which a daughter tells her mother that she is acting in character: τὰ τοῦ ἑβους ποιεῖς. Instead of the intrusive and unintelligible ε[i] μη, I suggest that we read an implied oath, i.e., ε[i] μη<ν>, cf. P.Corn. 4 (p. 361).
The writer and the recipient (B) are clearly implicated in a web of dealings, which include the buying and selling of livestock and land (16-17), as well as a set of common acquaintances (25-27). Unlike the example from the Zenon archive, we should see these two as from the same socio-economic milieu, which accounts for the stronger tone. The writer, whom Grenfell and Hunt identified as Agathodaemon (P.Dubl., p. 83), appears to have purchased 14 sheep from B, making a down-payment at the time of 40 drachmai and agreeing to pay 100 drachmai for their pasturage. When the time came to collect, he sent an agent, whose name is now lost (C), but B demanded an additional 30 drachmai and “the price of a goat.” Now, there may be something more to this (the addition of the goat sounds suspicious: did C somehow cause the loss of a goat?), but Agathodaemon casts it as a simple hold up: B has his 40 drachmai, the sheep, and one of his men, and knows full well that Agathodaemon was not about to throw it all away by acting as if his property was none of his concern (ἐἰδός | ὅτι οὐκ ἀλλότριος προηρχόμην | ἐ[ι] ἐμαυτοῦ). In other words, B holds all the cards and he knows it. All Agathodaemon has in his hand is the recipient’s broken dexia (cf. 208ff.). B has, in Agathodaemon’s words, παρὰ δεξιάν ἐχρήσω (we should likely understand an implied dative, probably μοι), a verbal echo of parabainein. Note also that he stresses that this was a promise made to his face, not to an agent (ἐμοῦ γὰρ παρόντος). True to form and keeping his eye on his interests, Agathodaemon has now sent down another agent with the balance of the payment (whether the 260 represents the original or the new price is impossible to say). Interestingly, the letter does not end with reputational threats, as we saw in P.Bad. II 35 and P.Oxy. XLI 2996 (158ff. and 205ff. resp.), presumably because things had not progressed to
the point of retaliation. However, Agathodaemon is letting his associate “know the score” in the informal balance of accounts he is keeping, telling him that a black mark has gone down in his book against him.\textsuperscript{582}

We have two examples of broken promises described explicitly as “transgressed.” For reasons that will become apparent in a moment, I will begin with the later one. In one short letter from second-century Oxyrhynchus, \textit{P.Oxy}. III 526, we find the word used in connection with a purely personal commitment:

\begin{verbatim}
χαίροις Καλόκαιρε,
Κύριλλός σε προσαγο-
ρεύω. ούκ ἤμην ἀπα-
θής ἀλόγως σε κατα-
λείπων, οὐ γὰρ τις λαυ-
βάνων τοῦ Τυβί τὸν-
tόκον δεκαπλο[ῦ]ν] κε-
φάλαιον κομεῖς[ει. ἀλλὰ]
ἀναβένω (ι. ἀναβαίνω) σὺν [τῷ ὅρ]-
χηστῇ: εἰ καὶ μὴ ἄ[νεν]-
βενε ἓγῳ τὸν λόγον
12 μου ού παρέβενον.
εὐπτύχει.
\end{verbatim}

Greetings Kalokairos, I, Kyrillos, address you. I was not so unfeeling as to leave you without reason. For though a man gets his interest in Tybi tenfold, he does not recover his capital. I am going up with the dancer; even if he were not going up, I for one should not have broken my word. Farewell.\textsuperscript{583}

Besides the interesting insight we get into the psychology of credit and risk in this letter (i.e., that no rate of interest or penalties compensates for the risk to the principal), we also gain a

\textsuperscript{582} Cf. Ellickson 1991: 55-56 on the “mental accounting of interneighbor debts.”

\textsuperscript{583} Trans. adapted from \textit{ed. pr.}
sense of the ethical implications of keeping promises. There is no question of Kyrillos being in any way formally bound to go up the Nile; instead, he had merely given his word. Nor did his word rise to the level of even an informal contract, like B’s dexia to Agathodaemon or Johanna’s “agreement” (syntagē) with Epagathos (pp. 158ff.). We are instead firmly within the zone of first-person ethical commitment (cf. Fig. 3.3). Kyrillos felt this promise to have obligated him morally, and that in order to keep from “transgressing” it, he was willing to risk insulting his friend. The basic thrust of the letter, in fact, is to show that both the needs of business and this promise were sufficient reasons for his leaving Kalokairos, who would otherwise be justified in seeing his action as “without reason” and “heartless.”

We cannot, sadly, recover anything of the context, and so most of the letter’s point is lost. (For example, why so gnomic about the loan? And why so emphatic about the keeping of this promise to the dancer: at whom was the pronoun ἐγώ in line 11 directed?) Yet this does not negate the letter’s value as one of those rare authentic expressions of ethical commitment in the papyri, as well as of the norm of keeping one’s word. One was expected to keep within—and not “transgress”—the bounds one declared to others, and Kyrillos knew Kalokairos would agree. In its way, this is precisely the kind of conventional doxa that served as grist for Plato’s and Aristotle’s ethical mill, as they pondered the seeming paradoxes of “self-control” and whether one could one be unjust to one’s self, since it is, in a real sense,

584 Cf. P.Lips. I 107 (n316 above)

585 Cf. the etymological basis of one of the core words for promise, ἐπαιγγέλεσθαι.
impossible to “transgress” one’s own word.\textsuperscript{586} Such boundaries are the products of will, and as such they are incapable of exercising more authority than the ethical agent who erects them for his own sake. Indeed, the only other time we find parabainein governing the word logos is in the more normal situation: the violation of a boundary by another (i.e., it takes two to transgress). In \textit{SB} IV 7354 (unknown, early II) a certain Sempronios upbraids his son Gaios after learning that he was persuaded by a friend not to enroll in the navy as Sempronios had wanted: “In the future, then, see to it that you are not persuaded, and (if you are) you will no longer be my son ... Do not cross my words (μὴ ὀὖν μου τοῦ[ς] | ἔγονος παραβῆς ...”\textsuperscript{587}

The fact that Kyrillos can speak in terms of “transgressing” his own logos reveals the extent to which a promise could be thought of as having status independent of its author: one was obliged to respect one’s own word, not merely because others relied on it (and Kyrillos does not make this justification), but because it was, in a Kantian way, conceived of as a form of law.

\textit{UPZ} 1 24 (Memphis, 162 BCE) contains our other instance of someone describing the breaking of a promise as a transgression. It is a petition from Ptolemaios, the detainee at the Sarapeion, to the \textit{hypdioikētēs} Sarapion.\textsuperscript{588} Sarapion had apparently promised (8: 586-11: οὐκόν τὸ μὲν κρείττω ἀυτοῦ γελοῖον: ὃ γὰρ ἐαυτοῦ κρείττων καὶ ἠττῶν δὴ καὶ ἢττῶν κρείττων· ὁ ἀυτός γὰρ ἐν ἂπασιν τούτοις προσαγορεῦεται (“Isn’t the expression “master of himself” ridiculous? For he who is master of himself would of course be subject to himself and vice versa. For the same person is addressed in all these expressions.”).\textsuperscript{587}

\textsuperscript{586} E.g., Pl. \textit{Rep.} 430e-31a: Οὐκόν τὸ μὲν κρείττω ἀυτοῦ γελοῖον: ὃ γὰρ ἐαυτοῦ κρείττων καὶ ἠττῶν δὴ καὶ ἢττῶν κρείττων· ὁ ἀυτός γὰρ ἐν ἂπασιν τούτοις προσαγορεῦεται (“Isn’t the expression “master of himself” ridiculous? For he who is master of himself would of course be subject to himself and vice versa. For the same person is addressed in all these expressions.”).


\textsuperscript{588} On Ptolemaios’s petitioning on the twin’s behalf and the \textit{hypdioikētēs} generally, see Thompson 1988: 234-44.
ἐπηγγείλω μοι) to execute an order on a petition already recognized by the king on behalf of
the twins, but Sarapion’s order got hung up in the bureaucracy. Ptolemaios therefore asked
that he speed up the process so that the twins got their due. In characterizing Sarapion’s
motivation for subscribing the request, Ptolemaios appealed to his sense of reverence: σὺ δὲ

[ὁν] πρὸς τὸ θείον ὁσίως διακείμενος καὶ οὐ βουλό- | μενος παραβήναι τι τῶν ἐν τῷ
ιερῷ ἐπηγγελμένων ... (11-12: “But you being religiously disposed and not wishing to
transgress anything promised in a temple ...”).589 This is a warning swaddled in praise:

Sarapion was to be commended for having taken his promise seriously, as evident from his
forwarding the request on to the scribe with a favorable subscription (13-14); but he had to see
that his promise remained unfulfilled, for he had not promised to subscribe, but to have what
was owed paid out to the twins. Ptolemaios thus carefully frames the Sarapion’s actions in
order to support his interpretation of the “promise,” and quotes Sarapion’s own subscription
as evidence of his intent (14: ἐπισκεψάμενον τὰ καθήκ[ον]τ` ἀποδοῦναι). We, of course,
have no idea what Sarapion thought he had promised, if anything, and he no doubt received
dozens of requests when he visited the Sarapeion.590 Perhaps in a recognition that his case was
weak (the scribe had in fact acted on the subscription, but had latched onto ἐπισκεψάμενον
instead of ἀποδοῦναι), Ptolemaios suggests that Sarapion would not (of course) want to
transgress “a promise he had made in a temple.” Though Ptolemaios speaks of “promises,” he
is insinuating vows or oaths. Both the qualification of the promise as “in the temple” and the

589 Cf. Thompson 1988: 244.
use of *parabainein* suggest oaths: these were the promises most often made in temples and the most common objects of transgression after law.\(^{591}\)

The first instance of *parabainein* to describe the breaking of an oath comes in *P.Enteux.* 26 (Magdola, 221 BCE). In this petition Ctesicles claims that he has been wronged by his daughter Nike and a certain Dionysios, a comedian, who has “corrupted” her (11: τοῦ φθε[...]ραντος [αῦ]τήν κινα[...]δ[ou]). Ctesicles had previously prosecuted his daughter for ingratitude in Alexandria, at which time Nike swore out an affidavit with the royal oath (a *cheirographia*), promising to give her father 20 *drachmai* per month from her own labor as a pension. This promissory oath was accompanied by a penalty: ἔαν δὲ μὴ ποιήσῃ ἃ παραβαίνῃ τι τῷ ὑπὲρ κατὰ τὴν χειρογραφίαν | ἀπ[...]σεισά]ί μοι αὐτήν (δραχμὰς) φ ἃ τῷ ὀρκω[...]ν ἐναι (7-8). As it turned out, she did not perform in accordance with her oath (9: οὐ π[...]οι[...]̄ μοι τῷν κατὰ τὴν χειρογραφ[...]ν οὐδ[...]̄), and so Ctesicles now asks for the two of them to be summoned to a hearing so that Dionysios may be dealt with and Nike forced to recognize his “rights” (*dikaia*).

As the editor notes, we are dealing with an oath taken in a purely private affair, not one pursuant to some state interest (a common function of the royal oath). Here it is seemingly taken by Nike as a condition of Ctesicles dropping his suit. The oath, however, does not establish the obligation: this pre-exists, as *P.Enteux.* 25, another case of filial ingratitude, shows. In this second case, the son has agreed, perhaps before a magistrate, to pay his father a

\(^{591}\) Cf. UPZ I 71 (Memphis, 152 BCE). 10-14: καὶ γὰρ δὲ | ... | παραβαίβηκεν, \(\tauοὺς\) ὀρκουσ \(\tau\)ο/ , οὐς συνθέμενοι πρὸς | ἐαυτοὺς ὀμολογοῦμεν ἐν τῇ Ἱρακλείῳ | καὶ τοῖς ἀλλοῖς ἱεροῖς. On oaths in Egypt, see the literature collected by Depauw 1997: 138-39, esp. Seidl 1929 and 1933.
pension (6: [ο]ύδ` ὡς μοι δέδωκεν οὔθεν τῶν συγχωρηθέντων; cf. Ptolemaic synchôrēseis before chrēmatistai, e.g., P.Mert. II 59 [Krokodilopolis, 154 or 143 BCE], which is executed with a cheirographia [line 17]), but is now reneging and acting abusively. In a series of notes appended to the petition, the son Strouthos is recorded as having been summoned by the authorities, whereupon he promised to support his father Pappos to the tune of two bronze drachmai per month, all with his father’s consent (verso 1-1: καταστὰς Στροῦθος ἔφη δώσειν Πάππωι τῷ πατρὶ αὐτοῦ | εἰς τροφὴν αὐτῶι τὸι μήνα χαλκοῦ (δραχμὰς) β. παρὼν δὲ καὶ Πάππος εὐδοκεῖ ἐπὶ τούτοις). The last line has defied comprehension, but seems to mention a penalty for recalcitrance. From both examples, it is clear that there is a pre-existing, non-contractual obligation to care for one’s parents, which could serve as the basis of a legal claim (cf. the charge of agnōmosynē for not observing filial obligations, pp. 171f.). Such obligations were sometimes reinscribed in contracts, but this was merely to cloak one form of obligation in another. Nike’s oath and Strouthos’s forensic promise, on the other hand, were additive in that they attached a new liability with definite penalties to the old. We should also note the form: the penalty clause in P.Enteux. 26 looks for all the world like the later breach clauses of contracts, though note that the penalty is not a Fiskalmult or a religious dedication, but a penalty to be paid to the father in the case of perjury.

592 Verso 3: καὶ ἐὰν ἐνιαυτὸν μοι εὐτακτήσῃ ἡμ/ ἐπιγράψειν αὐτὸν ἐπὶ τὸ ἱερὸν τοῦ αὐτοῦ μέρους

593 Demotic Verpflichtungsurkunden (Depauw 1997: 148), cf. P.Enteux., p. 67 and the living wills of the imperial period in which parents received pensions in return for ceding effective control of their property (n.541). This arrangement is not the sole invention of the Egyptians: Friedman 1965: 36-38 describes intergenerational “support contracts” in nineteenth- and early twentieth-century Wisconsin which work much the same way, inscribing a moral duty as a contractual one.
The next document is *UPZ* I 71 (Memphis, 152 BCE), a fairly elusive letter from Apollonios the *epistatēs* to his friend Ptolemaios, complaining about the bad behavior of Ptolemaios’s brother, also called Apollonios. In lines 10-14 the *epistatēs* says that Apollonios has broken his oath: καὶ νῦν δὲ | ... | παραβέβηκεν, \\τοὺς ὥρκους [πο] /, οὓς συνθέμενοι πρὸς | ἑαυτὸν ὡς ὁμομόκειον ἐν τῇ τῷ Ἡρακλεῖῳ καὶ τοῖς ἄλλοις ἱεροῖς. He then asks for Ptolemaios to mediate between them. Wilcken (*UPZ* I, p. 339) and Seidl (1929: 82) concur that we are here dealing with another oath in a purely private matter (cf. the example of *W.Chr.* 110a [Thebes, 110 BCE]).

The third, *P.Amh.* II 35 (Soknopaiou Nesos, 132 BCE), is a petition by the priests of Soknopaios to Apollonios, the *stratēgos* and superintendent of revenues, concerning a dispute with Petesouchos, the *lesōnis* or chief priest. 594 Four days earlier, Petesouchos had allegedly collected 225 *artabai* of wheat under false pretenses from the priests’ tenants. The priests protested and Apollonios confiscated the grain. The aim of this petition, which was written just hours after the priests had lodged the initial complaint, was to: (i) file formal charges against Petesouchos; (ii) ensure that the wheat remain safely in escrow; and (iii) to request a trial date before the *epistatēs*. The priests make two criminal complaints against Petesouchos, accusing him of *bia* and perjury. 595 In recapitulating the *stratēgos*’s actions earlier in the day,


595 Note that they do not charge him with *paracheirographia*; this is not attested until the Roman period, cf. pp. 227ff.
they characterize his confiscation as motivated by, or somehow connected to, the oath-breaking:


υπέρ ὧν κεχειρογράφηκεν τὸν βασιλικὸν ὄρκον Πετεσοῦχος ὁ λεσώνις υπέρ τοῦ μὴ ἐφάνεσθαι τῶν ἐκφορίων τῆς γῆς ἴχνους πρὸς αὐτὸν συναλλάξει τῆς λεσωνείας τοῦ λῃ (ἔτους) καὶ παραβεβηκότος τὰ τῆς χειρογραφίας.

Because of what Petesouchos the lesōnis had sworn to in an affidavit of the royal oath, (namely) that he would not lay hands on the revenues of the land in any way in the agreement we came to with him for the lesôneia of the 38th year; and he has transgressed the content of his affidavit. 596

Several aspects of this document are fascinating, but here we are interested in just two. First, we discover that the chief priest holds his position by virtue of some sort of synallaxis.

Second, he is being prosecuted not for breach of contract, but perjury. 597

The precise nature of a synallaxis in this period is unclear. On the one hand, it was clearly distinguished from a syngraphē when it came to land tenure, although it nonetheless represented some sort of recognized contractual relationship. Royal land, for instance, was never held on the basis of syngraphē, but synallaxis. Yet, when the land was considered marginal, it could be let on an entirely ad hoc basis ἀνευ συναλλάξεως for a reduced rent. 598

596 The syntax is very hard to decipher. With respect to the last phrase, “the genitive has no construction” (ed. pr., p. 44).


598 P.Tebt. I 61b.89 (Tebtynis, 117 BCE); cf. Wilcken 1912: 274-75. Later synallaxis could mean something like “right of contract,” cf. BGU IV 1120 and P.Köln III 147 above (230ff. and 234ff. resp.).
Wenger (1902: 170) understands the *synallaxis* in the case above to be a full contract, and Petesouchos’s oath taken to strengthen the obligation. Wilcken, on the other hand, believes that Petesouchos had fallen afoul of an *Amtseid*, in which he promised not to steal revenues dedicated to the god (the priests insist that the grain under embargo belongs to Soknopaios, lines 23-24, 43-44; cf. *AfP* III [1906]: 518-19, cf. Seidl 1929: 91). While Wenger’s interpretation of the *synallaxis* is manifestly based on later usage and is therefore untenable for this period, the parallels Wilcken and Seidl cite seem too regular and formulaic for the particular case here. The priests stress that the oath was taken in conjunction with the particular *synallaxis* which they themselves had arranged. If the *cheirographia* was an *Amtseid*, it would seem to have been one designed specifically by them for the 38th *lesôneia*, and hardly one issued at the instance of the state or to protect its interests (Petesouchos may, of course, have taken another oath to the crown for that purpose). The priests may have extracted a *cheirographia* from Petesouchos precisely because the traditional arrangement they had with him was contractual (*synallaxis*) but not reduced to a written contract (*syngraphê*), or one that would not be recognized for some other reason. The *cheirographia*, however, would not only bind him before the state, but had the further advantage of being a form of written evidence. In any case, it is noteworthy that on the basis of a dispute over a contractual agreement the priests choose to indict for *bia* and perjury, but not breach *per se*.

The fourth and final instance in this section is *P.Polit.Iud.* 9 (Herakleopolis, 132 BCE). In this petition, Berenike, a Jew from Aphroditopolis (which one is not certain), appeals to the *archontes* of the Jewish *politeuma* of Herakleopolis, claiming that another Jew, Demetrios son of Philotas, failed to pay the purchase price of a slave and child that he had bought, as well as
the slave’s nursing wages for the child for the period between the sale and transfer of possession.\textsuperscript{599} Intriguingly, she says that Demetrios “issued me a letter of ancestral oath, which oath acknowledged” the terms of the agreement (7-8: προήκατό μοι ἐπιστολῆν ὁρκοῦν | πατρίου διομολογούμενος), which she then reproduces. One of the terms was the standard double penalty \textit{cum Fiskalmult}, with breach evidently framed with a specific verb (12: ἐὰν δὲ μὴ ἀποδοῦ). After this introduction, she complains that Demetrios has paid neither the purchase price nor the wage as set out in his “letter of oath”:

\begin{verbatim}
ta[û]ta δὲ καὶ ἄλλα τῆς ἐπιστολῆς περιεχοῦσι καὶ τοῦ Φιλώτου μηθὲν μοι ἀποδεδωκότος ὑπὲρ μέχρι
28 to[û] ψῦν, ἄλλα πα[ρ]αβεβηκότος τὸν πατρίου νόμον, διὸ ἴ ναγκασ[µ]ένη ἐξεντείας πείραν λαμβάνειν καὶ παρακεκομικὰ πρὸς υμᾶς ἄ[λ]-
32 λη[ν τώ]ν ἐν Ἀφροδίτης πόλει Ιουδαίων περὶ τούτ[ου] ἐπιστολῆν ἀξιῶ ἐὰν φαῖνηται σ[ψυτ]άξαι τῷ ὑπηρέτει παραπτ[µ]υσαι τὸν Δημήτριον καὶ ἀνα-
36 καλεσαμένους αὐτὸν ἐπαναγκ[ά]σθαι παραχρήμα ἀποδοῦναι καὶ ἀποτείσαι σὺν ἡμιολίαι (τάλαντα) ἵβ καὶ τ [.] ca.9-Βφ καὶ τὸν πόρον καὶ τάλλα ἀκολούθως
40 τῶι ὁρκῶι, περὶ δὲ [τ]οῦ ὡς ἔτος τὸ βασιλικὸν ἐπιτίμου κατὰ τοῦ παραβεβηκότος διαλαβεῖν μισοπονήμας.
\end{verbatim}

\textit{Date and traces.}

Since the letter contains these (terms) among others and Philotas [a mistake for Demetrios] has paid nothing up till now, but has transgressed the ancestral law; and since I am forced to hazard a journey from home and have brought before you a

\textsuperscript{599} On the \textit{politeuma} and the competency of its officers to hear cases, see the introduction to \textit{P.Polit.Jud.} by J. M. S. Cowey and K. Maresch.
foreign letter (of oath) from the Jews of Aphroditopolis concerning the defendant; I request, if it seems right, (i) that you order your attendant to send for this Demetrios; and, after having summoned him, (ii) that you force him to pay immediately, including the additional fine with the double penalty, being 12 talents, as well as ... the 2,500 drachmai and the income [for the wage] and the rest according to his oath; and (iii) that you judge harshly with respect to the fine to the royal treasury against one who has transgressed.

We have three elements here, law, oath, and contract: how do they relate, and which have been “transgressed”?

Demetrios gave Berenike a “letter of oath,” but the text of this oath reads like a Greek contract (cf. διομολογούμενος). This “letter of oath” appears in another document from the politeuma (P.Polit.Iud. 12), which concerns a promise to pay rent in arrears for land that had been leased three years earlier. The “ancestral oath” also appears once more in P.Polit.Iud. 3, a suit over a dowry. In this last instance there is a contract, a syngraphē synoikesiōu, but little can be made of the case as a whole since the papyrus is fragmentary and difficult to interpret. In all three P.Polit.Iud. “letter of oath” cases there were underlying contracts, and what unites them was the need to establish a more immediate sense of liability than that established by the contracts.

For example, in the document before us we have a sale on credit. Berenike has agreed to sell the slaves to Demetrios for a set price to be paid on a set day, but to retain possession

\footnote{Cf. Kiessling s.v. ἄλλος 4. Berenike is apologizing for bringing a matter before the court which may properly lie outside the jurisdiction of the politeuma, cf. P.Polit.Iud., pp. 10-23.}

\footnote{Κατὰ + gen. of the accused does not appear with διαλαβεῖν until two centuries later in the mid first century (e.g., P.Oxy. II 284 and 285). In the Ptolemaic period dialabein governs περὶ + gen. as here, which in the examples I found always precedes the verb. I therefore take the phrase κατὰ τοῦ παραβεβηκτοῦ to modify τοῦ ἐπίτιμου (i.e., the Fiskalmult levied against transgressors).}
until the price is paid. In the meantime, Demetrios as the new owner is responsible for their upkeep (i.e., the nursing wages). Sales were only actionable if the price had been paid; and sales on credit were typically accomplished by arranging a fictitious loan. In this case, however, we have no peg on which to hang legal liability, as this was a pure promise: there is no transfer of property, no arrha, no fictive loan, only a consensual sale, which was not recognized in Ptolemaic Egypt (hence the recourse to the legal fiction). Berenike therefore demanded “a letter of oath” as a sort of formal contract like a stipulatio: it could be the basis of a suit if the sale was never completed because it did not depend on traditio for liability to attach. P.Polit.Iud. 12 presents a different version of the same problem. In this case the defendant had leased land owned by the plaintiff’s father and then fell into arrears. Sometime later the tenant swore out a “letter of oath” on the debt to the plaintiff, the lessor’s son, not the lessor himself. Here, then, we must have some form of novation or assignment, as the debt is passed to the son, who was not party to the original lease. In both cases the oath established formal liability with respect to transactions that did not involve the transfer of money, either because the traditio had not yet taken place (P.Polit.Iud. 9) or because it had already taken place, but between two other parties (P.Polit.Iud. 12).

In her complaint Berenike accuses Demetrios first of transgressing the “ancestral law.” As the editors point out, she must be referring to the oath. What particular part of the

602 See Rupprecht 1994: 115-17 (sale); 119-20 (advance sales).

603 3-12: Ανδρομάχου τού | Νικάνορος ἱουδαίου ὁφεί | λοντὸς μοὶ (πυροῦ) (ἀρτάβας) ια τά ἐκφό | ρια ἦς | ἐμεισθωτο γῆς | παρά τοῦ πατρός μου | ἐν τῷ Ανδρονίκου κλήρῳ (ἀρουρίῳ) γ | εἰς τὸ λβ (ἔτος) καθ ἤν ἐβετό | μοὶ ἐπιστολήν ὥρκου πατρίου | καὶ μέχρι τοῦ γὺν οὐκ ἄποδε | δῶκότος μοὶ...

“ancestral law” she is citing is not clear, but there is both Old Testament authority on the swearing of oaths\(^605\) and contemporary evidence for the practice.\(^606\) The editors further comment that Berenike does not seem to ask for any particular punishment for perjury, and tentatively cite Philo’s testimony at *De Spec. Leg.* 2.28 that perjury was punished by death or public beatings. Perhaps if condemned Demetrios could expect such punishments at the hands of the *archontes*, but we should note that Berenike does in fact recommend a punishment for perjury: περὶ δὲ [τῇ] ὑπὲρ τὸν παραβεβηκότος διαλαβεῖν μισοπονήμως.

In other contract cases from this period, plaintiffs ask for all the penalties in their contracts in the event of breach. If we look to *P.Tor.Amen.* 8, for instance, there is a call for the party in breach to pay both penalties, the contract penalty and the *Fiskalmult*, in an undifferentiated manner, simply τὰ ἐπίτιμα (87; cf. 300f. and App. II below). In an earlier phase of the same dispute, one of the embalmers voluntarily waives “the fine” (*P.Tor.Amen.* 7.26: περὶ δὲ τοῦ ἐπίτιμου ἀπαλλάσσω), by which he seems to mean both the contract penalty and the *Fiskalmult* (cf. lines 13-15), asking only for his “rights” (*to dikaion*). While it appears that parties could waive penalties (only fitting as they were free to insert them), Berenike’s request suggests that it lay within the *archontes’* discretion to apply the fine or not, that they, in other words, could decide to condemn Demetrios to pay her the purchase price with the contract fine (the *hēmioloia*), but not the *Fiskalmult* to the king. This sheds an

\(^{605}\) E.g., Ex. 20:7 (=Deut. 5:11), Lev. 19:12, and Num. 30:2.

\(^{606}\) Philo, *De. Spec. Leg.* 2.6-8, 26-28; *De Dec.* 82-95, esp. 92-95; cf. the early Christian concern with swearing, e.g., Mt. 23:16-22.
interesting light on the assessment of penalties, and one cannot help but wonder whether all judges had similar discretion with respect to the *Fiskalmult*, or whether this severability was somehow particular to the *archontes* of the *politeuma* or other such courts, and if the latter, whether or not the status of the “letter of oath” was a factor.\textsuperscript{607}

Given the current state of the evidence, it is fruitless to speculate on such questions, but we might also pause for a moment to consider Berenike’s description of the *Fiskalmult* as τὸ ἐπίτιμον κατὰ τοῦ παραβεβηκότος. Besides the Gnomon, we have no evidence connecting the *Fiskalmult* to oaths *per se* before the Byzantine period (if indeed the *Fiskalmult* is relevant to the Gnomon, cf. above, pp. 237ff.).\textsuperscript{608} We have *cheiromaphiai* which include penalty clauses, e.g., *P.Enteux.* 26 above (pp. 348f.), but the evidence for the *Fisklamult* in Egypt points to its being used as a sanction against breach of contract, not oath (cf. *UPZ* I 125 [App. III, no. 13], line 24: τοῦ παρασύγγραφείν εἰς τῷ βασιλικῷ ἐπίτιμον). Moreover, we may be sure that Berenike is using *parabainein* here to mean “transgression” and not “breach of contract.” She already stated that Demetrios has “transgressed the ancestral laws.” The phrase οἱ πάτριοι νόμοι was the standard way to refer to Torah law in the Septuagint, just as *parabainein* was the standard Septuginal word for “sin” and “transgression.”\textsuperscript{609} By suggesting to this Jewish court as they deliberated over a case of Jewish

\textsuperscript{607} Cf. Seidl 1933: 122-23.


\textsuperscript{609} See Hatch and Redpath 1998, s.v. παραβαίνειν. I would like to thank Prof. S. Schwartz for recommending the Septuagint as a linguistic backdrop to this document, as well as the need to compare Berenike to Babatha (see notes below).
law that the *Fiskalmult* was “a penalty for those who have transgressed,” Berenike was attempting to dress up a civil remedy for breach of contract in the language of legal and religious transgression, just as she dressed up her (non-binding) contract of sale as a written Jewish oath.611

What is striking about the use of *parabainein* in connection with oaths is that many of the oaths were themselves connected to contracts. The orthodoxy on oaths in Graeco-Roman Egypt was articulated eighty years ago by Erwin Seidl (1929, 1933).612 Despite cataloging a fairly suggestive collection of instances in which oaths were used in private business, including contractual settings (1929: 81-86), Seidl concluded that the use of oaths in private legal transactions had diminished from a regular occurrence in the Saite and Persian periods to a comparative infrequency in the Ptolemaic and Roman periods, only to grow again in the Byzantine era. He attributed the waning of oath in private legal affairs to the intersection of a

610 Cf. the absolute use of *parabainein* in, e.g., Numbers, ch. 5.

611 If I am correct in my interpretation of the use of the “letters of oath” as formal end-runs around legal liability problems, it seems that the archontes were amenable to this use of this Jewish institution (or at least they attracted petitioners who thought so), but might they have had a problem with the *Fiskalmult* in the “letter of oath”? The *Fiskalmult* was in origin a Greek religious practice (Late 1920; Pierce 1972: 159-78), and it is more than possible that the archontes were aware of this, since the phraseology of some of the Greek and demotic versions of the penalty which speak in terms of money for “the burnt offerings and libations of the kings” or money “consecrated (hieros) to the kings,” who were, after all, gods with temples in Egypt. Jews had good relations with the Ptolemies, though it is perhaps conceivable that some purists or extremists regarded the *Fiskalmult* as a form of idolatry. The range of Jewish attitudes towards such institutions in classical antiquity ran the gamut, from the Essenes to the Babatha, who appears content to swear by the *tychē* of the emperor (*P.Yadin* I 16). Though the *Fiskalmult* in private instruments stretches back to the late third century, the evidence suggests that it become more popular in the mid second century, and may have therefore represented something of a novelty in “letters of oath” in 132 BCE. One could imagine that it might possibly seem an odd punishment for one who “transgressed” the “ancestral law” to be condemned to pay a fine “consecrated” to the king, hence the question of whether or not the archontes would recognize the *Fiskalmult* in a “letter of oath.” Whatever the reason, Berenike’s translation of the fine as for “transgression” instead of “breach” is intriguing.

declining religiosity and rising faith in the state in the Graeco-Roman period (1933: 114). It would be more difficult to maintain the first element of this proposition today, partly because more evidence connecting oath and contract has emerged since 1933. Also, our view of the Ptolemaic state has changed sufficiently that some of the examples he characterizes as supporting state interests would not necessarily be taken as such today.

Yet it is not merely a question of evidence, but also of object. Seidl’s consideration of the relationship between oath and contract is a narrowly legal one. He thus discounted the evidence he found for “oath-like assertions of no juristic value.” His object was the study of oaths that were recognized by the state, a self-evidently legitimate and valuable project. It should not, however, be confused with a study of the role of oaths in business (as Seidl recognized, collecting a few examples of non-juristic oaths: 1933: 118-19). If we start with the premise that there is a deep conceptual connection between law, oath, and contract, we might wonder what happened to the complex of ideas such that oaths could fall out from private legal business so completely. In other words, how might the associations between

613 E.g., P.Ryl. IV 585 (unknown, early II BCE), and most recently AnalPap 5 (1993) [Arsinoite, 156, BCE] and P.Köln VII 350 (Krokodilopolis, 143 BCE). Also, not all the available evidence was discussed in his section on the private use of oaths. P.Cair.Zen. I 59008 (Palestine, 259 BCE), e.g., was not discussed at all, and P.Freib. III 32 was only treated in connection with the form of the oath.

614 E.g., P.Cair.Zen. I 59133 (Philadelphia, 256 BCE), an oath by brick makers to remain (paramonē) in Philadelphia, subject to a penalty clause with specific breach (16: ἐὰν δὲ μὴ ποιῶμεν κατὰ τὰ γεγραμμένα ἐν κυρίῳ [ἐν] ἑαυτῷ and not the ἐνοχος-clause. This may be a novation of sorts associated with Zenon’s taking the dōrea over from Panakestor at this time (cf. the chronology in P.Bat.Lugd. 21, p. 226). Cf. P.Hib. I 65 (unknown, 265 BCE), with no obviously necessary connection between the oath mentioned in the letter and the state.

615 1933: 118-19: Eidesähnliche Beteuerung, “denen ein juristischer Wert nicht zukommt.”

616 To which we should add the χειρογραφαί-loans of P.Mich. II 123 verso, col. iv, where repayment was sealed by an oath: ἀπόδοσις μετ’ ὀρκοῦ.
these three institutions be affected by such a change both within themselves and vis-à-vis each other? The advantage of Seidl’s work is its clear and tenacious hold on the official oath, but this focus shuts out concomitant shifts in allied institutions, like contract. We should therefore ask ourselves what it might mean to have a morally-charged word like *parabainein*—which was otherwise reserved for the transgression of law, oath, and promise, and thus equated with crime, sacrilege, and faithlessness—to appear in contracts, replacing the comparatively antiseptic and legal *parasyngraphein*? And how might this be connected to the displacement of oaths from legal transactions? The suggestion of the final section is that the substitution of *parabainein* for *parasyngraphein* is part of a larger phenomenon, whereby contracts were increasingly assimilated to oaths.
5.7 The moralization of breach

Though *parabainein* appears in one second-century BCE contract (*P.Stras. I* 115), and is clearly used to mean breach of contract in the trial proceedings and petitions of *P.Tor.Amen.* 6-8 (to which we will return in App. II), the next contracts in which it appears are Ptolemaic cessions from the first century BCE. These contracts are all homologies attended by oaths, and all use *parasyngraphein* to describe breach (cf. App. III, nos. 15-21). It has now been demonstrated that *parasyngraphein* was the older verb for breach, and that its use in cessions is to be connected to its association with the *Nichtangriffsklausel*, which association extends back to the third century BCE (Sec. 5.3-5.4). We should therefore assume that the appearance of *parabainein* in these documents represents an innovation. The oaths, which were legally required, have been little studied in their own right since the publication of the Herakleopolite documents, and the interest at that time was predominantly in their relationship to the moment of legal transfer (i.e., had the cession been perfected before the oath was taken or was the oath necessary to execute the cession). Our interest is in the language of breach and how the two verbs relate to each part of the document, the homology and the oath. As we shall see, these

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617 E.g., *BGU* VIII 1731-40 (Herakleopolite); *P.Oxy.* XLIX 3482, XIV 1635, LV 3777, *P.Fouad.* 38, and *SB* XX 14997 (Oxyrhynchite).

618 See Wolff 1978: 204 for the essence argument. Rupprecht 1984 barely mentions the oaths in his exploration of cession (once on p. 375). Oates 1995: 155 suggests that because katoikic land was unalienable outside the community of the katoikic cavalry, the transfers were therefore less secure, with the oaths representing an index of that insecurity. I do not follow the logic of the argument for insecurity, but in any case the evidence strongly suggests that the oaths were legally required and not a response of the parties to heightened insecurity. Cf. Messeri Savorelli’s introduction to *P.Oxy.* XLIX 3482, p. 166: “The further fact that 3482 like the Herakleopolite deeds of cession (*BGU* VIII 1735-40) contains the royal oath (as does *P.Fouad.* 38 ...) demonstrates that this was no merely local usage but necessary for the full legal validity of the cession.” For some private oaths, see n628.
documents preserve archaeological traces of the shift from *parasyngraphein* (breach) to *parabainein* (transgression).

The Herakleopolite cession homologies are written from the perspective of the person ceding the property, who acknowledges that he or she consents (*eudokein*) to the administrative transfer of title (*metepigraphê*), followed by a description of the property, a guarantee of title (*bebaiōsis*), and then a penalty clause, which is the *Nichtangrißsklausel*.\(^{619}\) *Parabainein* is never attested in the text of the homology, only *parasyngraphein*. Cession documents from Oxyrhychos are by and large similar, but with the important difference that the homologies never use *parasyngraphein* in the participle, but always conjugate the verb, and draft the clause in such a way as to supplant *eperchesthai* altogether. There is thus is no explicit connection between the verb and any language of the *Nichtangrißsklausel*. Instead, the Oxyrhynchite declarant agrees: (i) to hand over the ceded property, guaranteed and free of encumbrances; (ii) not to interfere with the new owners; and (iii) not to act fraudulently with respect to the cession (e.g., *P.Oxy. XLIX* 3482. 13-14: \(\mu\eta\delta\varepsilon\ \kappa\alpha\kappa\o\tau\epsilon\chi\nu\iota\sigma\iota\upsilon\ \pi\epsilon\rho\iota \tau\iota\nu \pi\alpha\rho\alpha\chi\omega\rho\iota\sigma\iota\upsilon \pi\alpha\rho\epsilon\upsilon\rho\dot{e}\sigma\iota\upsilon \ | \ [\mu\eta\delta]\varepsilon\mu\iota\dot{a}\iota\dot{a}\iota\dot{a}\iota\dot{a}]).\(^{620}\) The form of the cession was remarkably stable in Oxyrhynchos, for almost the same formulae appear two centuries later in no. 63, long after the

\(^{619}\) See, generally, Rupprecht 1984 and Taubenschlag 1955: 228-29. Cf. the Oxyrhynchite cessions and cession oaths: *P.Oxy. XLIX* 3482 (73 BCE); *LV* 3777 (57 BCE); *P.Fouad* 38 (1 BCE); and *P.Mich. XVIII* 782+PSI IV 430 (18).

\(^{620}\) These responsibilities show the extent of the convergence of cession with sale (long noted, cf. the lit. cited in Rupprecht 1994: 117). Oddly enough, *parasyngraphein* does not appear in this, our earliest Ptolemaic witness from Oxyrhynchos, but rather the verbs *athetein* and *parabainein* (cf. pp. 304ff. above). In subsequent examples, however, it always appears (see App. III, cf. the list in Maresch 1989: 115).
The act of cession had any meaningful distinction from sale, and indeed long after it was usual to have any form of *parasyngraphein* in a contract.\(^{621}\)

The Herakleopolite oaths covering the cessions are promissory oaths, cast in the future, to abide (ἐμμενεῖν) by the homology, which is often referred to as a *syngraphē tou homologou*. I reproduce *BGU* VIII 1738\(^{622}\) as an example of an oath without the introductory dating formula (all of the restorations are guaranteed by the other examplars):

\[\text{Χαιρήμων Ἡρακλείδου Μακεδών τῶν κατοί[κων ἵππεών]}\]
\[12 \quad \text{kai ὁ ύιὸς Ἡρακλείδης Μακεδών [δ]ιά[χος τοῦ πατρικοῦ]}\]
\[\text{kλήρου Ἀπολλωνίῳ Εὐβούλ[ου Μακεδόνι τῶν κατοίκων]}\]
\[\text{ἱππεών ἐμμενεῖν καὶ ποιή[ειν σοί τε καὶ τοῖς παρὰ σοῦ]}\]
\[\text{πάντα τὰ κατὰ τὴν τοῦ ὄμολογ[ου συγγραφῆ ἢν τεθεί}-\]
\[16 \quad \text{μεθὰ σοὶ διὰ τοῦ αὐτοῦ ἄγορ[α]ν[ίου ἁμα τῇ χειρογραφίᾳ]}\]
\[\text{ταῦτην ἀναφέρ[ει]ομ[ε]νη, καθ'[ή[ν ἀνωμολογήμεθα ὃ μὲν]}\]
\[\text{ἡμῶν Χαιρήμω[ν τ]][ο]ὺ ὑπάρχ[εινοτοσ αὐτώι περὶ . . . . . .]}
\[\text{σταθμοῦ τόπω[ν ἐνοδοκεῖν τῇ μετεπιγραφή],}\]
\[20 \quad \text{τὸν δὲ ἔτερον συνε[δ]οκεῖν [τῇ παραχωρήσει καὶ πάσιν ἂ]}\]
\[\text{δηλοῦνται διὰ τῆς συγγραφ[ῆς, καὶ μὴδὲ παρασυγγρα}-\]
\[\text{φήσει μὴδὲ κακοτεχν[ή]σειν τ[ι τῶν διὰ τῆς συγγρα}-\]
\[\text{φῆς ἤ τῶν ἐν τῇ χειρογραφίᾳ ταύτη [γεγραμμένων]}\]
\[24 \quad \text{μήτε κρίσιν μὴδὲ δίκην μηδ[έν[α ἡμῶν γράφει]-}\]
\[\text{θαί σοι μὴδὲ τοῖς παρὰ σοῦ ἐπὶ μὴ[δενόδ]̄ς ἀρ[χ]̄[ν][οτο]̄[ς]}\]
\[\text{μὴδ' ἐπὶ κριτηρίου περὶ τῶν ἀπλῶς τῶν κατὰ τοὺς τόπους, ἐὰν δὲ τι παραβαίνωμεν τῶν διὰ τῆς συγγραφῆς}\]
\[28 \quad \text{ἡ τῶν ἐν τῇ χειρογραφίᾳ ταύτῃ γεγραμμένων, ἢ μὲν}\]
\[\text{πα[ρα]χώρησις κυρία ἐστώ καὶ ἡ πράξεις ἐστώ σοι τε καὶ}\]
\[\text{τοῖς παρὰ σοῦ τῶν καθ' ἡμῶν ἐπιτείμων ἄκ[ο]λουθω}-\]
\[\text{θῶς τῇ συγγραφῇ, αὐτοὶ δὲ ἑνοχοὶ εἴημεν τῶ[ν ὅρ[κω]}\]
\[32 \quad \text{ὀπτικὴ ἡν εὑ συνθῶμεν.}^{623}\]

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\(^{621}\) Cf. *P.Oxy*. XLIX 3482, introduction.

\(^{622}\) *Pace* the editor’s assignment, I see no way to connect the recently published *P.Bingen* 53 to lines 22-23 of this document.

\(^{623}\) There has been much discussion of this final phrase, particularly in light of the legal effect of the oath vis-à-vis the cession. The evidence has not been compared, so far as I know, to oaths appended to the Cretan treaties, e.g., Chaniotis 1996, no. 60.
We, Chairemon son of Herakleides, Macedonian of the katoikic cavalry, and his son Herakleides, Macedonian heir of his [father’s] klēros, (swear by the king and queen) to Apollonios son of Euboulos, [Macedonian of the katoikic cavalry], that we will abide and do for you and your assigns everything according to the syngraphē tou homologou which we have drafted for you through the same agoranomos at the same time as this cheirographia, according to which we [have declared] that (i) of us Chairemon [consented to the metepigraphē] of the stathmos belonging to [him], while the other [i.e., Herakleides] likewise consented [to the cession and everything which] is declared through the syngraphē; and (ii) that we will neither breach nor deal fraudulently with anything written in the syngraphē or this cheirographia; (iii) nor will either of us initiate proceedings against or indict you or your assigns on any charge in front of any officer or any tribunal for any reason whatsoever concerning these places. But if we transgress anything written in the syngraphē or this cheirographia, let the cession be valid and praxis be yours and your assigns’ for the penalties against us according to the syngraphē, and may we ourselves be held liable to this oath as soon as it has been duly executed.

The oath serves to make one’s foundational commitment to abide by the contract explicit. One thus promises not to parasyngraphein or kakotēchnein with respect to the contract. The word for breach in the oaths is always parabainein, as here, while in the homologies it is always parasyngraphein (cf. App. III, nos. 15-16). The oaths from Oxyrhynchos were similar in that they swore the following: ἐμμενεῖν ἐν ἀπασὶ τοῖς κατὰ τὴν συγγραφήν τῆς | ὀμολογίας ... | καὶ μηδὲ κακοτέχνῃ[σ]ειν Στράτωνα | περὶ τὴν παραχώρησιν τῆς γῆς μηδὲ περὶ ἄλλο | μ[ηδ]έν τῶν διὰ τή[ς ὁ]μολογίας ἀναπεφωνημένων | μη[δ]ὲ περὶ τὸν

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624 P. Oxy. XLIX 3482 has parabainein in a penalty clause, but not in the cession. There are in fact two homologies in this document: a cession (lines 1-16, where the breach verb is athetein, cf. Sec. 5.4.3) and a division (16-27), and the parabainein is used in the division. Sadly, we have very few Oxyrhynchite comparanda before the third century, but it is nevertheless interesting that Oxyrhynchite divisions should use parabainein in the first half of the first cent. BCE, while the Arsinoite persisted with parasyngraphein well into the first (cf. Sec. 5.4.2, pp. 300ff.).
The earliest extant oath also includes *parasyngraphein*, like the Herakleopolite examples (*P.Oxy.* XLIX 3482.35). By this time, however, the distinction between the contract and the oath had begun to break down, and mutual influence can be detected. Thus, even though no homology uses the word *parabainein* to set off its penalty clause, one can speak of “transgressing” a contract in an *oath* about a contract, e.g., *BGU* VIII 1737.15, where it appears that the usual παρασυγγραφήσειν (cf. lines 21-22 in the oath above) has been replaced with παραβήσο[εσθα]. By the same token, *kakotechnia*, which is properly a word that belongs in an oath about a contract (as we shall see next), appears in *BGU* VIII 1731.15 and in the text of all three Ptolemaic cession homologies from Oxyrhynchos. Indeed, this assimilation of contract to oath, or the bundling of oath elements into the contract, explains why *parasyngraphein* is, anomalously, not directly associated with the *Nichtangriff* language in the Oxyrhynchite cessions.

In Oxyrhynchite cessions, as described above, it is *kakotechnia* that is associated with the substance of the *Nichtangriff* language, and the promise is not to press a claim or deal fraudulently: μὴ ἐμποιήσεσθαι Θέωνα μηδὲ ἄλλον ὑπὲρ αὐτοῦ | [ὤν π]αρακεχώρηκεν

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**625** *Cf. P.Oxy. XLIX 3482.35-37*: καὶ μηθὲν παρασυγγραφήσειν μηδὲ | [κακοτεχνήσειν περὶ τὴν τῆς ὀμολογίας συγγραφήσειν μηδὲ περὶ μηθὲν τῶν δι’ αὐτῆς ἀναπεφωνημένων μηδὲ | [περὶ τὸν ὀρκοῦν τοῦτον παραρέσειν μηδὲ] ἐμείμαι I would in general consider emending *P.Oxy.* XLIX 3482 to be more in line with *P.Oxy.* LV 3777, e.g., line 31: [...] ἐμείμεν ἐν ἄπασι κτλ. instead of [...] εὐδοκεῖν ἐν ἄπασι κτλ.

καθότι πρόκειται μηδὲ μέρους μηδὲ κακοτεχνήσειν περὶ τὴν παραχώρησιν παρευρέσει | [μηδ]έμμηδι (P.Oxy. XLIX 3482.12-14). Kakotechnia also appears in connection with the Nichtangriff language in Arsinoite cessions from the imperial period,\(^{627}\) an apparent addition since earlier Ptolemaic cessions from the Arsinoite show merely the Nichtangriffsklausel (e.g., P.Tebt. III.1 820 [201 BCE]).\(^{628}\) Given (a) the use of the Nichtangriffsklausel in quit-claims generally, and in cessions specifically (Sec. 5.4); (b) the association of both kakotechnia and parasyngraphein with the Nichtangriff language; and (c) the homogenization of the cession contract with the accompanying oath such that certain elements originally in oaths ended up in the contract, specifically kakutechnia; it therefore seems reasonable to hypothesize that in the case of the Oxyrhynchite documents the specific language of the Nichtangriffsklausel fell out, in some sense replaced by kakotechein, while retaining the tell-tale parasyngraphein.

All the above, however, is predicated on there being an original relationship between kakotechnia and oath, and only a secondary association with contract. Is this the case?

\(^{627}\) SB VI 9109 [Tebtynis, 31]; P.Coll.Youtie I 19 [Ptolemais Euergetis, 44]; and BGU XI 2051 [Arsinoite, II]. E.g., SB VI 9109.7-8: δ' τι δ' αὖ τῶν προγεγραμένων παρασυγγραφής Κρονίων, ἐν μὲν ἐὰν πυήσηται (l. πυήσηται) τοῦ παρ᾽ αὐτοῦ (l. αὑτοῦ) περὶ τούτων ἐφοδον | ἦ| ἐκλήσιαν ἢ ἐμπώησιν (l. ἐμπώησι) ἢ κκωλυσιν ἢ κακοτέχνησιν κατὰ πάν μέρος ἄκυρος ἔστω καὶ προσαπτοσιστάτω κτλ.

\(^{628}\) But not all cessions have the clause, e.g., CPR XVIII 4 (Theognis, 231 BCE). This is, however, a rather odd cession (see CPR XVIII, p. 50). I know of only three extant Arsinoite land cession cheirographia: BGU II 543 (Aueris, 27 BCE), W.Chr. 111 (Soknopaiou Nesos, 6), and P.Tebt. II 382 (Tebtynis, early Augustan). None contain the relevant language, though we should note that W.Chr. 111, the most official-sounding, is incomplete, and the other two look as if they were sworn on the insistence of the parties, not for the sake of legal execution (cf. Seidl 1933: 117; Oates 2004: 174). There is thus no telling if the standard Ptolemaic oaths from the Arsinoite contained a promise concerning kakotechnia. But compare instances of kakotechnia from Arsinoite documents, where is it associated with both the Nichtangriffsklausel and/or parasyngraphein, e.g., App. III, no. 47: P.Mich. V 350, a release of claims (Tebtynis, 37); and P.Tebt. II 393 (Narmouthis, 150), the latter two documents having a cessionary character.
Kakotechnia and its cognates are very old words, stretching back to the beginning of Greek literature (e.g., Hom. Il. 15.14), and the meaning, as may be divined from its roots, is not merely to do, but to devise something “bad” or “evil,” with emphasis on the intentionality of the bad act.\(^6\) In classical times, the word as it was used in legal contexts signified either malicious plotting or deception in general (e.g., Antiphon 1.22 (cf. Löbl 1997: 147-48), Dem. 43.2), or in a more limited and technical meaning, the suborning of perjury (\(\delta\)ι\(\kappa\)η \(\kappa\)ακοτεχνη\(\iota\)η\(\iota\)ου).\(^7\) We perhaps see something of an intermediate stage between the general and technical meanings in attestations in which kakotechnia implies a sort of conspiracy to

\(^{6}\) Cf. the schol. ad Hom. Il. 15.14; Hesychius (Latte), s.v. δολομήτα and δολόμητα; Löbl 1997: 14-15. Metopos of Metaponion is explicit: Περὶ ἀρετῆς, frag. 1 Thesleff (p. 118): ἀ μὲν ὅπως κακία τῷ λογιστικῷ μέρεσι τᾶς ψυχᾶς ἐντῷ οἰκείωτέρᾳ ποτέοικε γάρ ἀ μὲν φρόνησις τὰς τέχνας, ἀ δὲ κακία τὰ κακοτεχνία: ἐξύν μαχανάσιος γάρ ποθὲν εὐρίσκει τὸ ἀδικοῦ . . . ἀ μὲν γὰρ πλεονεξία ἀπὸ κακίας, ἀ δὲ κακία ἀπὸ τῷ λογιστικῷ μέρεσι τᾶς ψυχᾶς. See also, e.g., Gorgias, Fr. 11a; Aesop, Fab. 36 (Hausrath and Hunger), Hdt. 6.74; Men. Dys. 301-24, 3Macc. 7:9, Lucian, Calumniae 10, 12, Alex. 4; Libanius, Or. 4.27, 18.184 (a forensic setting), Declam. 1.108. It is a common word in Christian authors for the devil’s work. The other meaning of kakotechnie is to “practice badly,” as in to apply one’s technē poorly (often referring to poor application of rhetorical or medical technique; see LSJ s.v. for examples). This meaning activates a different aspect of technē and is therefore irrelevant in this context. It is also, to my knowledge, never so used in the papyri, cf. the examples in Preisigke, Wörterbuch, s.v. The two meanings can, of course, converge in discussions of the relationship between virtue, art, and knowledge, e.g., commonly in Philo, De congressu 141, De mutatione 150, De Somniis 1.107, De Spec. Leg. 3.101, 4.48; cf. Quint. Inst. 2.15.1-2, Plut. Mor. 706d7, Strabo 7.3.7 (note the connection with pleonexia, cf. Metopos above), Lucian, De Parasito 27. A wonderful example comes in the Prefect Tiberius Julius Alexander’s edict of 68 (cf. Sec. 6.2), when he condemns the kakotechnia of assessments based on an average rise of the Nile, saying that “indeed nothing is more just than the truth,” ((καίτοι) τῆς ἀληθείας αὐτῆς ὀνδὲν δοκεῖ δικαιότερον εἶναι, OGIS 699.55f-58). Extrapolation, in other words, is malpractice in the service of dishonesty.

Kakotechnia/kakourgein is distinct from kakourgia/kakourgein until the later third century. Kakourgia is a general word for criminality, though often related to theft, e.g., P. Enteux. 84 (Ghoran, 285-221 BCE), P. Oxy. XXXVI 2754 (Oxyrhynchos, 111), SB XX 14662 (Arsinoite, 154), and P. Oxy. XII 1408 (Oxyrhynchos, 212-214); cf. Gagarin 2003. Any relationship to contracting is incidental. E.g., in M. Chr. 52 (Soknopaiou Nesos, 150-154), a man accuses a number of assailants of kakourgia because they violently forced him to issue a cheirograph of sale (cf. P. Mil. Vogl. 25). The also word appears in shipping contracts, but with a specialized meaning (see Meyer-Teermer 1978: 11-12, 119-20, but cf. P. Oxy. LXVI 4526 [Oxyrhynchos, 69/70]). Kakotechnia thus relates to deviousness with respect to one’s obligations under contract, whereas kakourgia is less specific. In the later third century, there was something of a convergence of the two, e.g., PSI XIII 1337 (unknown, 250-260: both words appear in conjunction), P. Oxy. XII 1468 (Oxyrhynchos, 256-258), W. Chr. 228 (Hermopolite, 298: oath on a property declaration), P. Oxy. I 71 (Oxyrhynchos, 303), but it was still used for common criminals, e.g., P. Abinn. passim.

\(^{7}\) Pollux 8.37 (citing Lysias), cf. Dem. 47.1-2, 49.56; Harpocratin (Keaney), s.v. γακοτεχνηων. See Pauly-Wissowa RE 10.2, s.v., coll. 1528-29 (Thalheim, but beware of typographical errors in citations).
defraud, often used of those plotting to “get their stories straight” before a trial or confrontation.631

The first association we have with the word in the realm of contract comes in fifth-century BCE treaties. E. H. Wheeler first described what he called “anti-deceit” clauses in treaty oaths, the earliest version of which were provisions in the oath to promise to uphold the treaty οὐδὲ τέχνη οὐδὲ μηχανή οὐδεμιᾶ or ἀδόλω.632 Wheeler’s particular theory about the rise of anti-deceit clauses in the fifth-century and concerns about the “sophistic interpretation” of treaties is immaterial to this discussion. What is important, however, is the general idea that treaties were accompanied by oaths to abide by them (cf. pp. 259f.), and that some oaths were more specific than others in spelling out what the parties meant by “abiding” by the treaty (i.e., an attempt to rule out sophistic interpretation). Kakotechnein (and the earlier οὐδὲ τέχνη κτλ.) appear in these oaths as variations of the “anti-deceit” clause. All oaths, however, aimed at strengthening the foundational commitment to the treaty; the anti-deceit clause was merely an attempt to write a better, more tightly binding oath. In the world of the treaty, on the other hand, this foundational commitment is presumed: it merely spells out the terms of the relationship.

A nice example of this version of the “anti-deceit” clause can be found in Staatsverträge 492, a treaty between Smyrna and Magnesia-on-Sipylos after the Third Syrian War (ca. 243 BCE) in which both sides agreee to swear oaths to abide (emmenein) and to

631 E.g., Dem. 29.11: 33.38; cf. Pl. Laws 936d and the quasi-legal Aesop, Fab. 67 (Hausrath and Hunger).

uphold or display other foundational values, like *eunoia*. They further promise: οὗθεν | παραβήσομαι τῶν κατὰ τὴν ὀμολογίαν οὐδὲ μεταθήσω ἐπὶ τὸ χείρον τὰ γεγραμμένα ἐν αὐτῇ οὕτε τρόπω οὕτε μηχανῆ οὐδεμιᾷ (63-64, cf. 72-73). Closer to a contractual setting is *Staatsverträge* 481 (*= OGIS* 266, 263-241 BCE), an agreement between Eumenes and his mercenaries. The “contract” is styled both as a request (1: *axiòmata*) and an agreement (16: *homologia*). The oath sworn by the mercenaries rehearses their foundational commitment to the relationship (based in *eunoia*), but also contains a good deal of what one might consider contractual provisions (e.g., the obligation to return items that belong to the king [36-40]; what to do about communication with others [40-45]). The oath concludes with an anti-deceit clause, the conditions of release from the oath, and the consequences of perjury: οὐδὲ κακοτεχνήσω περὶ τῶν ορκον τοῦτον οὐθέν | οὕτε τέχνη οὕτε παρευρέσει οὐδεμιᾷ. παραλύω δὲ καὶ Εὐμένη τὸν Αττάλου τοῦ ορκοῦ καὶ τοῦς μεθ᾽ αὐτοῦ ομωσίοντας συντελεσθέν - τῶν τῶν ὀμολογημένων. εὐρυκρούτι μὲν μοι καὶ ἐμμένοντι ἐν τῇ | πρὸς Εὐμένη τὸν Φιλεταίρου εὐνοῖαι εὗ εἰ καὶ αὐτώδει καὶ τοῖς ἐμοίς, | εἰ δ᾽ ἐφιστομή καὶ παραβαίνομι τι τῶν ὀμολογημένων, ἐξώλησ εἴθεν | καὶ αὐτός καὶ γένος τὸ ἀπ᾽ ἐμοῦ (45-51: “And I shall not deal fraudulently regarding this oath by any means or pretext whatsoever. And I release Eumenes the son of Attalus from the oath, and also those who swore with him, when the matters agreed upon have been carried out. And may it be well for me and mine if I keep my oath and remain in good-will towards Eumenes son of Philetairos,

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633 Cf. commentary in Petzl 1987, no. 573.
but if I should break the oath or transgress any of the agreements, may I and my line be accursed.” [Bagnall and Derow 2004, no. 23, p. 47]).

The first epigraphic example I know of in which *kakotechnia* appears is not in an oath at all. Kleonymos’s tribute decree of 426/425 BCE (*IG* I 3 = M-L 68) contains a second decree which concerns the implementation and efficiency of the first. This second decree provides:

εὖν δὲ τις κακοτεχνεῖ [ὁποῖος μὲ κύριον ἔσται] ἵπ τὸ φσέφισμα τὸ τὸ φόρο ἐ ἱποὺς μὲ ἀπαρχθέεστ-] ἰ ὰ ὄ ὀρο Ἀθέναζε ... (“But if anyone connives to the effect of invalidating the decree about the tribute, or to the effect that the tribute is not returned to Athens ...”). Though not in an oath, the allies were bound by treaty and oath to obey Athens’s *psēphismata*, and so the verb may appear because of the oblique link to treaty.

The earliest uses of οὐδὲ τεχνη ὦδὲ μηχανή οὐδεμιᾶ date back to the mid-fifth century, but the phrase also appears in the inscribed Arkesine loans from the turn of the fourth century in the *kyriōteron*-section (*IG* XII.7 68-70, text in n449). As with the Egyptian contracts over the last century of Ptolemaic rule, so here one can see the lines between contract and oath blur. The blurring in this case, however, is (from a legal point of view) somewhat more appropriate. The *kyriōteron*-clause establishes the status of the contract vis-à-vis other legally controlling entities, institutions, and contracts. Deciding how to resolve conflicting authorities belongs to the world of the contract insofar as it is setting “controller-selecting” rules. In other words, one may establish the relationship of one framework to

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634 Cf. *Syll* 972 (= *IG* VIII 3073, Boeotia, before 172 BCE); and Chaniotis 1996, no. 74 (= *IC* iii 5 [Crete, 2nd cent. BCE], perhaps no. 60 (111/110 BCE, copies in Athens and Rhodes).

635 Wheeler 1984: 257.
another without in any way calling into question or invoking the core notion of foundational obligation. Yet the kyriōteron-clause of the Arkesine contracts goes beyond merely establishing the jurisdictional status of the contract in that it anticipates a duplicitous or bad-faith attempt to argue that the contract is not the controlling authority the parties had originally intended it to be. A contamination of contract by oath, but indirectly via the question of legal priority.

The word only begins to be associated with private contracts in the course of the fourth century, a development just visible in Dem. 35 (Against Lakritos), dated approximately to ca. 351 BCE.636 The specifics of the speech are not relevant here, but only the plaintiff’s strategy, which consisted largely of proving that the bottomry contract underlying the dispute was never fulfilled, and that this was the result of kakotechnia (§§ 27, 56), with the defendants characterized as having regarded their syngraphē as mere οθλος and φλαρία (§ 25). The use of kakotechein here mirrors that of the other non-technical uses in the Demosthenic corpus in that it denotes a conspiracy to defraud, and so is in this sense unexceptional (note that it is not inscribed in the contract itself, §§ 10-13). The emphasis, however, laid on the moral imperative to follow a written contract and the assumption of its clarity (e.g., §§ 21, 25, 27, 37, 39) go beyond the need to establish the requirement that there be a written document in order to proceed with a dikē emporikē.637 Indeed, the rhetorical strategy plays the uprightness of the written contract off the tricky, sophistic words of the defendant, who was a student of


637 Cf. Sec. 5.2 above.
Isokrates (cf. §§ 2, 15, 22, 35-43, 56) and therefore trained in deceptive λόγοι (§§ 30, 40). The argument in this speech as to the clarity of a written contract and the depravity of one who ignores it becomes a presumption inscribed in papyrus contracts from the second century BCE onwards, namely that to do something against or beyond the provisions agreed upon in the contract is to do something intentionally kakos, with the equation of bad intent with breach very tight.

Of the forty attestations of kakotechnia in the papyri, all but five come from contracts or oaths supporting cession contracts. Our first attestation comes in P.Eleph. 1 (Elephantine, 310 BCE), the very first documentary contract to survive from Egypt. This famous marriage contract contains the following breach clauses: εἰάν (l. ἐὰν) δὲ τί κακοτεχνοῦσα ἀλίσκηται

〚ἀλίσκηται〛 ἐπὶ αἰσχύνη τοῦ ἡθροῦ Ἡρακλείδου Δημητρία ... (6) and μὴ ἔξεστα δὲ Ἡρακλείδη γυναῖκα ἄλλην ἐπεισάγεσθαι ἐφ’ ὑβρεὶ δημητρίας μηδὲ | τεκνοποιεῖσθαι εξ ἄλλης γυναικὸς μηδὲ κακοτεχνεῖν μηδὲν παρευρέσει μηδεμία Ἡρακλείδην εἰς Δημητρίαν (8-9). Here, much like the first attestations of parasyngrapein, the word is added as an intransitive participial modifier of the specific verb of breach. The next three attestations,
all late third-century BCE petitions concerning broken contracts, exhibit the same pattern: a participle used absolutely to qualify the party in breach as intentionally so (W.Chr. 337; P.Enteux. 85; P.Enteux. 4, all between 221-218 from the Arsinoite). The next example is C.Ord.Ptol. 43 (Tebtynis, 135/134 BCE), a list of ordinances in which the kings forbid *kakotechnia*, though sadly the frame of reference has been lost (18: προστετάχασι δὲ μηθένα κακοτεχυεῖν [...]).

With the exception of the last example, these attestations suggest that *kakotechnia* was an early contender with *parasyngraphein* for breach. Both were used in contractual settings; both were at this time ethical words that related directly to the intent of the other party (cf. P.Enteux. 26, pp. 348ff.); both addressed, though in different manners, the foundational commitment to the contract. In the event, *parasyngraphein* won the battle but lost the war. In the course of its evolution, or the evolution of the drafting of breach, *parasyngraphein* came to be transitive and to relate directly to the contract, and therefore spoke only indirectly to the intentions or attitude of the party behind the act of breach. In other words, it lost some of its moral color, and this created an opening for *kakotechnia*—not seen in a contract in Egypt since the late fourth century—at the turn of the first century BCE: P.Dion. 16, 17, 20, 25, 33 (Akoris, ca. 110-100 BCE). All are six-witness *syngraphai* recording loans, except for the final document, which is a cheirograph. All of them use the specific breach verb *apodidōmi*, and insist that the loan be returned ἀνευ δίκης καὶ κρίσεως καὶ πάσης κακοτεχνίας.
Some of the *P.Dion.* loans do not inscribe *kakotechnia*, but ἐὑρησιολογία instead (*P.Dion.* 14-15).\(^641\) This is clearly a matter of model or choice, for it appears in the same position as *kakotechnia* and in some cases the same scribe is responsible for both formulae (e.g., Ptolemaios, who wrote 14-17; see *P.Dion.*, p. 180). If we trace the usage of *heurēsiologia*, we find 43 attestations, 39 of which are in contracts, the vast majority being loans of one sort or another from all parts of Egypt.\(^642\) As with *kakotechnia*, so *heurēsiologia* appears in the last quarter of the second century BCE and then persists. Again, in a similar fashion, διαμφισβητεῖν is first attested in the second century BCE in petitions and reports on disputes (e.g., *P.Tebt.* III.1 771, *P.Lond.* VII 2188), but the appears in the text of a contract for the first time in the early first century, a sale in which it is associated with the *Nichtangriffsklausel* (*P.Hamb.* III 218 [Oxyrhyncha, 29/30]). Thereafter is it a fairly common word embedded in sales and cessions from the Arsinoite.\(^643\)

\(^{641}\) Cf. Düwel 1969 on παρεύρεσις, which has a fuller history in the documents, and appears in contracts earlier than either *kakotechnia* or *heurēsiologia*.

\(^{642}\) Should we connect both phrases with the demotic formulae in which certain “excuses” are forbidden, e.g., *P.Dion.* I.17-18 (“Je ne pourrai pas dire: ‘Je t’ai (déjà) donné du grain de ceux-ci,’ sans quittance qui se tient debout.” | Je ne pourrai pas dire: ‘C’est un contract de location qui se prolonge un an,’’ tant que tu détiens (une parole) à ma charge.”). Sethe and Partsch seem to have thought so (cf. n410 and below), but perhaps the views of recent demoticists are different. Pierce 1972 does not comment on this.

\(^{643}\) Cf. Rupprecht 1971: 96-97. The only concrete example of an action that constitutes *kakotechnia* appears in second-century Hermopolite mortgage documents. E.g. *P.Flor.* I 1 (=*M.Chr.* 243 [Hermopolis, 153]), in which it is stipulated that “it will not be possible (for the mortgager) to sell or mortgage (the property) to others or to commit any other act of fraud against (the mortgagees) with respect to any other matter concerning (this property) (8-9: καὶ μὴ ἔξεστω σα[υτῷ] | πωλεῖν μηδὲ ἐτέρῳς ὑποτίθεσι[θ]α[ι] μηδὲ ἄλλο τι περὶ αὐτῆς κακοτεχνεῖν ὑπεναντίον τούτως τρόπῳ μηδενί). It is thus used as a catch-all verb for actions of the same genus as those specifically mentioned that would tend to frustrate the particular purpose of the contract, showing once again its potential to describe general breach.
Prominent demoticists, among them Sethe, Seidl, and Pierce, have all debated the extent to which these words should be understood as translations of the demotic \textit{n htr (n) iwt} \textit{mn}.\footnote{The debate is reprised by Pierce 1972: 133-43; Wolff 2002: 93-95; cf. Kastner 1962: 38-41. This paragraph is based on these authorities.} Pierce has argued that the most direct translation of this phrase is the Greek \textit{ἐπάνωγκον}, “necessarily, with compulsion,” but it is generally agreed that there are several Greek variations, including the formulations with \textit{kakotechnia} and \textit{heurēsiologia} in the \textit{P.Dion.} documents, on what is essentially an execution clause, equivalent to \textit{καθόπερ ἐκ δίκης}. Partsch, for one, found these phrases “nur als überflüssige Floskel des Urkundenstiles” (1920: 544), and Mitteis agreed (1912: 120), with much ink having been spilled over what legal effect such clauses have, if indeed any at all. Wolff, on the other hand, saw the irruption of such phrases into Greek contracts as evidence of a mixing of Greek and demotic legal styles, the product of a maturing and more mixed Ptolemaic society. Both lines of interpretation are valid so far as they go, but neither answers the question \textit{why} such moralizing language was thought appropriate or necessary in contracts at this time. True, they may not be legal words, but is legal superfluity the same thing as social irrelevance? Again, there may be a mixing of styles, but why so many and such pointedly moralizing “translations” for an execution clause? Neither line of interpretation takes into account the historical uses of these particular Greek words and their prior relationship to contract via institutions like oath, nor has anyone yet seen that the very word for breach participated in this same moral revolution, as breach (\textit{parasyngraphein}) was recast as transgression (\textit{parabainein}).
This new moralizing contract vocabulary represents the inscription of values that touch on the core commitment to abide by a contract in the contract itself. The metaphysical relationship of the parties to the contract is, properly speaking, foreign to the contract itself, as the contract is but a set of rules. Oath was the proper sphere for the normative discourse about contract, a way of tying contract to bedrock values and powers, human morality and the divine order that guaranteed justice. The history of kakotechnia parallels that of parabainein: we find both originally used in oaths about treaties and contracts, then in complaints about breach of contract (i.e., still outside the contract), and finally in the contracts themselves. It is no accident that the point of entry for this moral vocabulary was the older Nichtangriff language, for this too touched on the commitment to abide by the contract. The language of legal renunciation was reinterpreted by the moral imagination as a test of ethical commitment.

We have, then, a series of broad and coincident trends that make for a very suggestive circumstantial case for the broad moralization of contract over this period.

1. There is the movement from protocol to homology, which is a movement from an objective description of a transaction to a subjective one. Even in so-called objective homologies (i.e., ὃ δεῖνα ὁμολογεῖ), the act is one of personal declaration (cf. Wolff 1946: 76-77 and point 4 below)

2. At the same time the cheirograph is also becoming more popular. This was a truly subjective format, regardless of the verbs used to record the transaction.

3. Autograph subscriptions to demotic contracts continue the trend toward subjectivity via yet another channel (see Depauw 2003).
4. Breach as such begins to be inscribed with increasing regularity. This is, inevitably, a recognition of the potential deviousness of the other party (cf. Williamson’s dictum about the ever-present threat of opportunism, cf. Secs. 2.1-2.2), as the early use of *parasyngraphein* and *kakotechein* in petitions show.

5. The use of oaths appears to drop off in legal acts, though not in society at large. Tellingly, some homologies contain elements or traces of oath. For example, *P.Corn. 4* (Pathyris, 111 BCE) is a short contract recorded by the *agoranomos* in which a carpenter makes his declaration with embedded, almost involuntary, oath: όμολογεῖ

Πετησ | Πεατίου τέκτων | ὡρω Νεχούτου ... | εἴ μὴν κατασκεύσαι | ζυγὸν ἀμαξικὸν | καὶ κόφινον ἁρεσ- | τα ἐὼς Τὐβὶ γ | τοῦ ζ (ἔτους) (“Petes son of Peatius, carpenter, acknowledges to Horos son of Nechoutes ... that he will (god willing) make a wagon yoke and basket before 3 Tybi of Year 7.”).\(^{645}\)

6. As the notion of general breach or breach *per se* grows in popularity, it is progressively replaced by the culturally more salient notion of breach, which is transgression or *parabainein*.

7. A host of words either associated with oaths about contracts or treaties, or similarly value-laden with respect to the core morality of contract, begin to be inscribed in the texts of the contracts themselves at the same time as the more morally-charged word for breach gains ground.

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\(^{645}\) On the particle εἴ μὴν, see Mays 1970: II.3, pp. 146-47; cf. von Soden 1973: 57. The theme of dependent future infinitives in homologies should be revisited with less of a doctrinal axe to grind than is the case in von Soden’s study.
Such is the outline for the circumstantial case for the moralization of contract, of which the inscription and then transformation of breach is but one element. The concomitant shifts listed above together point to the wider ethical and normative ambit in which contractual relations operated in Graeco-Roman Egypt, and the effect the social arena had on what purports to be a strictly “legal” discourse. Of course, it is impossible to say whether these changes in *written contracts* reflected a change in actual norms or attitudes towards contracting or merely a tendency to inscribe a fairly consistent set of norms into the contracts themselves. However much we should like to know the answer to this question, it is in one sense immaterial: although we cannot be sure that our evidence tell us much about changes in attitudes versus changes in drafting practice, it would be perverse to suggest that the attitudes they reveal were not held by those who made these contracts.
CHAPTER 6: CONCLUSION AND PROSPECTUS

6.1 Conclusion

I began this work by arguing that contract has not been studied in its own right as an economic institution in the Roman empire, even though ancient documentary contracts, Roman contract law, and the economy of the Roman world have all been central topics of scholarly concern for more than a century. This paradox is largely the product of the profound differences in training and intellectual and professional milieus of those who have devoted themselves to these areas. In the early part of the twentieth century, the divide was, if anything, less pronounced than it was to become, but history and law were still distinct pursuits, in large part because Roman law formed the basis of professional legal education in Europe. As papyri began to be published at the end of the nineteenth century, their potential to serve as a counterpart to Roman legal texts was recognized immediately by Romanists and legal historians, and so it was they who most naturally and energetically engaged with the evidence of legal practice preserved from Egypt.646 As papyrology matured, however, one of the major advances was the growing appreciation for the complex relationship between the two legal traditions, the Greco-Egyptian and the Roman, which made the papyrological evidence, on the whole, less relevant to the study of Roman law per se. This recognition at once helped to correct the constant and forced analogies to Roman law one routinely finds in scholarship from the first half of the twentieth century, but it also led Romanists to quit the

646 See Preisendanz 1933: 160-63 for the decisive intervention of Mommsen and the both of the highly influential German school of juristic papyrology. Cf. Purpura 1999: 52-60 for a brief history of juristic papyrology.
field in order to concentrate on Roman legal history proper, leaving legal papyri largely to scholars interested in “Greek” law and papyrologists, many of whom were increasingly not trained in law. And so, where there had been two academic silos, there now stood three—ancient history, juristic studies, and papyrology—a state of affairs with far-reaching consequences for the study of what appears on its face to have been a ubiquitous and fairly uniform economic institution across the Roman world (cf. Sec. 1.4).

One of consequences of the tradition of juristic study and its explicitly narrow focus on the law and the role of the state has been to confuse the legal institution of contract with contracting itself, thus obscuring or ignoring its vital extra-legal dimensions. As discussed in Chapters 2 and 3, the economic institution of contracting is wider or larger than the legal institution of contract, precisely because the state is neither the only source of rules nor the only entity capable of administering meaningful sanctions. In order to study contract as an economic institution one must therefore broaden the scope to include all salient rules and agencies of effective enforcement. Personal ethics and social norms represent the other two basic sets of rules guiding contracting in addition to the law. By the same token, one finds contract partners and the community imposing significant penalties—along with or instead of the state—on those who broke the rules, if not the law. Together with the law and the state, these extra-legal second- and third-party rules and sanctions significantly affected the calculations of parties as they negotiated, drafted, and enforced their contracts, often in ways

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\[647\] On the problems associated with the term “Greek” law, see n188.

\[648\] The role of organizations in creating contracting rules and administering enforcement sanctions is, for the time being, deferred, but cf. Terpstra 2011.
perceptible in our sources. The necessary consequence of recognizing contract as a complex institution, or as a nexus of different sets of rules bound together by corresponding sets of controllers (cf. Tab. 3.3. and Fig. 3.3), is the contextualization of the law, state enforcement, and the legal strategies of the parties in what was the primary field for ancient contracting, or the interpersonal and social arenas. This, however, has been done only too rarely by those who have worked most closely with the legal evidence for practice (i.e., the lawyers), as their aim has most often been to explain, “How did the law work?”, not “How did people use the law to accomplish their economic goals?”

Ancient historians, on the other hand, have been alive precisely to the social and economic contexts of ancient contracting, but this has often led them to discount the significance of contract as an institution in one of two ways. As discussed in Chapter 1, some have seen ancient contracting as a sham, an epiphenomenal legal institution superimposed on the deeper and truly salient structures ordering ancient economic life, namely status, gender, patronage, family, custom, and raw personal power. While this is perhaps an extreme view, it is nevertheless generally true that the economic historiography of the Roman world has until quite recently given fairly short shrift to the role of private law, despite the wide-spread recognition of the “achievement” of Roman private law and the avowedly “legal culture” of

649 See also Ratzan forthcoming a.

650 Cf. the view of a legal contract as a “framework” for an economic transaction (Sec. 2.2) and the sociological approach of Hobson 1993 (cf. Sec. 2.3)

651 Most provocative are Finley and MacMullen (cf. Sec. 1.4). Kelly 1966 takes the law seriously but only within social strata: relations between people of different rank were hardly “legal” at all, or if so, the law enforced rank.
the late Republic and early Empire. Seen in this light, the provocative pronouncements of a Finley or a MacMullen strike one as merely giving voice to the silent *communis opinio* (*quid expectas auctoritatem loquentium, quorum voluntatem tacitorum perspicis?*) Yet, even as it is indisputable that various non-legal social structures and ideologies came together in molding ancient economic behavior and activity, it is untenable—at least in the face of the considerable Egyptian evidence—to assert that the law and the state were mere reflections or amplifications of these social structures, or otherwise irrelevant because of the state’s incapacity and lack of concern. Were either proposition true on its face, centuries of personal, social, and governmental investment in law and state enforcement would be inexplicable: if without any practical result, why bother drafting, witnessing, recording, registering, petitioning, and litigating contracts? In other words, we should see Alice Sindzingre’s criterion of credibility (Sec. 3.2) as an Occam’s razor that cuts in either direction: while she deploys it in order to stress the salience of non-legal (“informal”) rules, we may turn it around and ask what else besides some basic credibility is demonstrated by the formal legal actions of hundreds of thousands from all but perhaps the lowest socio-economic strata with respect to their contracts over the course of antiquity?

Other historians have recognized the reality and importance of contracting in the ancient world, but have done little to differentiate contract as an institution from the market, or to understand its particular relationship to hierarchical economic organizations. Yet, as

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653 A stark exception is Rathbone 1993.
demonstrated in Chapter 2, there are very good theoretical grounds for attempting to do just this and to distinguish “contract” as a governance structure from both the “market” (or “marketing”), on the one hand, and “hierarchies” or “firms,” on the other. Reading our evidence for ancient contract as merely passive indicia for market behavior in the ancient world is reasonable, insofar as contracts are clearly related to market activity, but it is analytically imprecise with respect to the study of the organization of economic transactions. On yet another, perhaps more important level, it hardly does justice to contract as an ancient institution of obvious importance in its own right, apart from or alongside the historical development of markets. This is a study, moreover, that will repay the effort: the institutional nature of contract, with its dense implication of the individual, the community, and the state, holds the promise of illuminating not only certain aspects of the ancient economy, but also of shedding light on important questions touching on the fundamental relationships and dynamics between ancient actors, specifically the nature and scope of personal freedom and the relationship between the individual and the ancient state.

These observations suggest that the institutional study of ancient contract must proceed along three axes (cf. Sec. 2.6). First, we must relate legal contracts to the larger process of contracting, contextualizing contract laws and state enforcement by placing them in a system or spectrum of rules and enforcers which broadly follows the schema set out by Ellickson (Sec. 3.3). In practice, this amounts to a more systematic synthesis of the legal and historical strands of scholarship on contract. For example, I submit that there is no true understanding of the role of contract in secured loans without a model that embraces both the extra-legal and legal rules of enforcement. As I have suggested in previous chapters (pp. 15ff.,
219ff), the timing of the various steps of foreclosure on secured loans drafted as private
documents, from ἀνακαινισία to the final transfer of property to the creditor’s onoma,
cannot be explained by the legal rules alone. In other words, routine gaps of months or years
are neither predictable nor intelligible merely in light of the costs associated with legal
enforcement (e.g., availability of notarial services, tax implications of foreclosure, drafting
and filing fees, etc.). Rather, the pace of formal foreclosure procedures appears to reflect the
impact of additional transaction costs imposed by extra-legal rules (e.g., the consideration of
potential effects on reputation or future transactions, the ability of the opposite party to
monitor performance or impose self-help sanctions, etc.). Nor is a one-dimensional notion of
self-help as Eigenmacht particularly helpful in these cases (cf. Sec. 2.3), since it is the
creditor, typically the more powerful party, who delays. The timing thus reflects the
integration of the legal and extra-legal in practice, which we need to recover in theory.

The second axis is the systematic and analytic study of contract as a governance
structure (cf. Sec. 2.2), with particular attention paid to the boundaries or phase shifts between
governance structures. Specifically, this will mean research into the internal mechanics of
transactions as they were organized via different governance structures, as well as broader,
synoptic studies dedicated to exploring the boundaries and transitions between structures as
conditions changed either synchronically (e.g., the decision to buy or lease within an
organization, like a large imperial estate) or diachronically (e.g., the apparent shift from lease
to employment contract in the case of vineyard management over the course of the Roman
period in Egypt; cf. Rowlandson 1996: 228-36; and n89 supra). The larger aim will be to
recover the factors that guided transactional decision-making in antiquity, as actors opted for
one governance structure over another, as well as to delineate more precisely the extent to which the various fundamental aspects of transactions (e.g., asset specificity) may have accounted for changes in their organization or frequency over time.

The third and final axis consists of the “Northian” questions about the history of contract that we must pose alongside our “Williamsonian” questions about the relations between governance structures. As North and others have suggested, the key driver in this history is the state. When, how, and why ancient states first took it upon themselves to enforce private contracts are indeed historical questions of the first order. By the turn of the millennium, however, there was a long tradition of state enforcement established more or less throughout the Mediterranean, and so our historical questions for the Roman period are not the same as those which touch upon origins in classical Greece or Republican Rome. They instead relate to basic characterization of state involvement and its historical development. This is a pressing task precisely because the Roman state tends to be caricatured (unintentionally) by economic historians operating in the NIE tradition whose expertise typically lies in much later periods (cf. Secs. 2.5-2.6)

In line with the theoretical project sketched in the first three chapters, Chapters 4 and 5 commence with the work of reconstructing the larger institution of contract in Roman Egypt by proceeding along the first of the axes described above, tracing and defining some of the extra-legal norms associated with contracting. Chapter 4 dealt with two moral qualities, namely *pistis* (Secs. 4.1-4.4, 4.8) and *eugnōmosynē* (Secs 4.5-4.8). The latter concept

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654 See literature cited in n442.
translates roughly to the idea of “respect” and has to my knowledge never been studied except by a handful of lexicographers. “Trust” or “faith” in the wider Greek and Hellenistic worlds, on the other hand, does have a scholarly literature attached to it, though a surprisingly thin and disorganized one with regard to the place of 

I began with pistis because it is a fundamental value for contracting, historically and theoretically. “Trust” represents a foundational moral value for contracting as a governance structure in any age, since sequential exchange necessarily entails some degree of reliance—indeed, contracting is in essence nothing more than a series of rules designed to bolster or encourage reliance or trust. Historically, we see an early implication of the discourse of pistis in the world of business and law (as opposed to the discourse of philia, which remains more firmly in the social orbit, cf. pp. 126f.). Although pistis was first and foremost a moral quality, articulated by normative rules controlling its establishment, extent, and expectations (i.e., what sort of behavior was expected of people between whom there existed a relationship of trust), it had over time been received into the formal language of legal contracts, extended or transferred first to the notion of real “security,” and then subsequently raised to the level of a legal standard of fiduciary “trust,” later assimilated to fides in Roman Egypt. It is, in fact, only this secondary phenomenon, or the legal formalization of pistis, which has been studied in detail (e.g., Schmitz 1964; cf. Wolff 2002: 198-200), with no discussion at all in the literature of the primary social dynamics of pistis, or how trust operated in business and contracting relations.

The study of pistis in Chapter 4 revealed it as an interpersonal value, conceived of as being based on concrete and repeated personal experience. What appears to have been
decisive in the ascription of pistis was the recognition of the trusted person’s capacity to perform reliably, regardless of intention. The force or extent of pistis was therefore only as strong or as deep as its last demonstration. Although one was more likely to trust family and close friends, this seems in large part to be the natural result of their having the greater opportunity to prove their trustworthiness through continuous acts of reliability. Contractual relations based on pistis likewise proceeded on the basis of an explicitly empirical relationship of performance and counter-performance between “tested” partners, with little or no element of what we might characterize as “faith.” Such unfounded trust could be characterized, if not ridiculed, as naïve propistis (cf. pp. 151ff.). It is also important to point out in this connection that the objects of trust were overwhelmingly people. In fact, I found no single instance in which pistis or its derivatives were used to describe one’s trust in institutions, organizations, the state, or its agents.655 The only inanimate objects that are regularly referred to as “trusted” or “trustworthy” besides real security are the legal documents themselves, yet this comes comparatively late and may reflect the technical rhetorical or forensic meaning of pistis as “proof.”656

655 Cf. Dem. 56: “In what, then, do we trust, what guarantee do we have when we issue payment? Why, we trust in you, men of the jury, and in your laws ...” (pp. 238ff.).

656 E.g., P.Oxy. I 70 (Oxyrhynchos, 212/213), in which a bouleutēs and former agoranomos begins his petition to the epistratēgos about an outstanding debt with the declaration: “Every authoritative written agreement commands trust and truth” (4-5: πᾶσα κυρὶα ἐνγράφου καὶ δὲν δέχαι τὴν πίστιν καὶ ἄλληθεν ἔξων ἕξετε.) This rhetorical strategy of framing a particular dispute with an axiom of justice was a typical one in the second and third centuries (cf., e.g., P.Wisc. 33.10-12; cf. Thomas 1982: 114). On the meaning of kyrios here and elsewhere in legal contexts, cf. Sec. 5.2. Cf. P.Oxy. XII 1408 (Oxyrhynchos, before 210). For similar sentiments (though not all in contracts and not all apt, e.g., P.Oxy. XVII 2133), see Schmitz 1964: 89n1.
While *pistis* thus corresponded to an assessment of objective performance, *eugnōmosynē* represented a subjective interpretation of the *gnōmē* behind the performance. Being *eugnōmōn* meant having the “right” or requisite respect for another person, just as *eusebia* characterized a proper reverence for the divine (pp. 170f.). “Respect” is a derivative value, a measure of how well one has followed the social norms that control personal interactions. Accordingly, *eugnōmosynē* originally communicated the degree to which one was seen as treating another in line with the duties established by particular institutions, specifically the family, rank, and most interestingly for our purposes, obligations stemming from promises, loans, and contracts. All these institutions created “debts” of one sort of another, and so represented opportunities for people to reveal their *gnōmai*, either by living up to their obligations and paying their “debts” (*eugnōmōn*), or by repudiating them, thus revealing their contempt or lack of respect for the “creditor” (*agnōmōn*). Here, then, we have a natural counterpart to *pistis* in contracting norms: *eugnōmosynē* represented a moral inference drawn from the same experience, but directed to the intentions of the agent. Significantly, this notion of “respect” progressively lost its subjective frame of reference (i.e., “Are you honoring me because of what you owe me as your mother, your social superior, your creditor, etc.?”), being recast as an objective quality describing another’s attitude towards monetary debts (i.e., “Are you credit-worthy? Do you repay your debts?”).

*Pistis* and *eugnōmosynē* were the core values guiding the primary norms of contract formation and enforcement in Greco-Roman Egypt, and I will treat each process in order, though we should bear in mind that they are in reality dynamically interconnected (i.e., formation anticipates the modalities of enforcement; cf. Sec. 2.2). With respect to contract
formation, both are revealed as prerequisites for contractual relations, though in slightly different ways. This basic assertion is validated by the fact that unwritten contracts, informal arrangements, and promises or pledges were framed in the first instance as moral obligations based on personal trust and respect. Thus the banker in *P.Yale* I 79 (pp. 145ff.) was thought of as owing a duty to the writer and his partner by virtue of his being an *anthrōpos pisteuomenos*. Though the banker was legally responsible for passing bad coin, the writer’s solution suggests that he was at least as interested in testing the value of the relationship to the banker, which was based on trust, as he was in the value of the five staters, the recovery of which the law was unable to effect in any case. In a similar fashion, Johanna in *P.Bad.* II 35 (pp. 158ff.) remonstrates in purely moral terms with Epagathos for his having “gone back on his word.” Although the precise nature of the obligation is, sadly, less than clear, Johanna obviously had no documentary proof of the loan, which was not even made in her name. Instead, this contract was drafted according to the norms of *pistis* alone and she thus depended on his *eugnōmosynē*. Again, we may recall *P.Fay.* 124 (pp. 208ff.), in which the writer threatens a son with possible legal action for the “insanity” of having abandoned the terms of his *dexia* to his mother. The point of the letter is to let the son know that although his mother was content to have relied on trust in the first instance, even to the extent of not recording the terms of the *dexia* in writing, she was nevertheless ready, willing, and able to pursue her claim by law if he did not “honor his commitments” (*ἐάνπερ μη ἐψ- | [γ]νωσμονώς (l. *ευγνωσμονής) τὰ πρὸς τῆν μη- | τέρα*). Finally, *P.Dubl.* 15 (pp. 341ff.) describes a successful “hold-up” attempt by one partner in a commercial transaction that could have been
framed as a legal contract, but instead proceeded on the basis of personal pledge (*dexia*) and promise (*hypischnesthai*).

In all these cases, there was no attempt to formalize the transaction as a written contract; instead, the parties organized their transactions along the lines established by the norms of trust and respect, usually backed by an express promise or pledge. This is not to say that the aggrieved parties in these or similar cases therefore necessarily forewent access to the courts: the mother in *P.Fay.* 124, for instance, likely had the makings of a successful case, given what we know about Ptolemaic and Roman courts recognizing the obligation of children to support parents (cf. pp. 171f. and 348f.). Yet the law and the courts nevertheless appear to have been very far from the parties’ mind when they had arranged these contractual relationships, illuminating a process of contract formation that lay almost entirely outside the shadow of the law, proceeding instead according to the norms of trust and respect.

**Significantly,** these same norms can be seen at work in the formation of contracts which anticipate the possibility of legal enforcement from the outset. The writer of *PSI IV 377* (pp. 148ff.), for example, submitted an offer to lease a flock. Though we do not have the contract itself, if indeed the undertaking was reduced to a separate contract, the language of the offer is itself formal and legal. Yet the question of entering into a legal contract in this case was secondary to the establishment of *pistis*—and we should recall before proceeding that the potential lessor was a man related to Apollonios’ *dōreia*, and so in a position to command the considerable resources of the Ptolemaic state in the event of breach. In addressing the problem of trust, this document reveals the specific logic of *pistis* as it was expressed in contract formation: rather than offering up the protection of the law, the writer
instead attempted first to limit the exposure (and so the need for pistis), and then to bridge the evident lack of personal experience via a series of measures intended to leverage pre-existing pistis (i.e., the intermediation of a “tested” person on whom the lessor already relied to monitor performance) and to build new pistis (i.e., the payment schedule, which increased the number of testing opportunities within the lease). In a similar, albeit more indirect fashion we see Ptollas in SB XIV 12172 (pp. 155ff.) telling his debtor that he had only made him the loan in the first place because he had “known” him to be pistos. Ptollas was now prepared to use the loan document he had, but he preferred to keep the contract within the zone of personal pistis where it had originated and outside the realm of the state and its rules.

In each of these cases, then, the parties made sure to position their contracts within the sphere of possible legal protection (cf. Fig. 3.3), even as their attitudes and the contracts themselves reveal the priority of the normative rules of pistis. In other words, the first step in legal contract formation was the measurement, or, if necessary, the establishment of the requisite degree of pistis. We may think of these social norms as establishing a threshold to contractual relations per se. One effect of this threshold function was that the norms of trust became the first set of rules controlling the mitigation of transaction costs. In order to cross the threshold, in other words, many of our transactions had to adapt to the extra-legal rules of pistis rather than to legal ones of law. Again, we see exactly this phenomenon in the case of PSI IV 377, in which the duration, payment schedule, and monitoring requirements of the lease were all modifications made (and costs borne) in order to get the parties across the threshold to contract. Presumably, a trusted person (as the writer obviously hoped he would be the next time around) would have been able to get more flexible or advantageous terms. In the
cases above—and I suggest most cases in antiquity—the protection offered by the state for private bargains was neither conceived of nor used as a replacement for pistis; instead, it served as a secondary support to a necessary pre-existing minimum level of trust. Failing this minimum, there were three general solutions: abandon the transaction; employ extra-legal strategies that addressed the core problem of interpersonal trust; or adjust the governance structure.

The threshold to contract was thus a double threshold. As above, one way of framing the decision was to consider the contract as the transaction itself, such that it was all or nothing, e.g., “Shall I lease or not?” Faced with such a decision, one might turn to some of the strategies seen in PSI IV 377 in order to meet the threshold for contract. Sometimes, however, the decision was more of a Williamsonian one, in that the party deliberated as to what sort of contract he wanted. This second threshold operated at the level of the governance structure, as the party considered how best to organize the transaction. Our clearest view of this type of threshold calculation comes in P.Ross.Georg. III 1 (pp. 202ff.). In this letter, Markos writes to his mother with some advice about an offer for lease she is about to get from a character named Apollonios the Blind. Specifically, he advises her to organize the transaction according to her judgment of Apollonios’s gnōmē, i.e., whether or not he has shown himself to be eugnōmōn in past. If he is eugnōmōn, Markos advises her to lease him the land; if he is not, she should try and sell him the crop. In other words, another response to a basic trust deficit was to attempt to change the nature of the transaction to one which required inherently less pistis. Instead of a lease, which presented multiple sources of risk (e.g., of lessee abandonment, crop failure, poor inundation, late payment, lessee insolvency, poor
management and consequent degradation of the land or irrigation canals, etc.), the mother
could promise to sell the crop, a far less risky proposition. “Selling him the grain” could be
accomplished via two different routes: one could draft a formal advance sale, wherein
Apollonios paid the purchase price immediately for delivery later,657 or there could be an
informal agreement as to the future sale, with or without the price being set (cf. P.Dubl. 15,
pp. 341ff). Of course, in the latter case Apollonios could always refuse to purchase at the time
of sale, and so the mother would lose at least a certain buyer, and possibly whatever price he
had promised, with no hope of any sort of legal recovery. But when compared to the risks of
leasing, this was to assume practically no risk at all: there was always a market for grain, and
his promise was unlikely to be the decisive factor in her cultivating the land, which she would
normally do in any case. There was, then, little reliance involved in “selling him the grain,”
with such a contract in reality little more than the option to buy now or to buy first when the
harvest came. Markos’s advice thus lays out the thinking behind the extension of two different
types of contracts, one located at the center of contract as a governance structure (lease) and
the other at the very border of “marketing,” approximating in all essential aspects a cash sale.

So much for how pistis and eugnōmosynē informed contract formation; how did they
control enforcement? As stated in Chapter 2, contracts by their very nature anticipate
enforcement. Not necessarily legal enforcement, and not necessarily accurately, but even
poorly conceived, informal contracts are intended to be enforceable. The first line of defense,
of course, was not to enter into a contract at all, with the second being to modify the nature of

the transaction so that it was inherently less risky, as we just saw. Once one decided to proceed, however, there were a series of self-help strategies that one could use in order to enforce a contract. Self-help in contract enforcement is unintelligible if not set against the backdrop of official enforcement and “crime”: in the first case, most strategies depended on the law indirectly, with nearly all actions taken in view of what one considered to be within one’s “rights”; and in the second case, the boundary between justified self-help and what the state might be persuaded to regard as unlawful aggression was a particularly contested one, as one might imagine (cf. Sec. 2.3). A full discussion of self-help, then, must await a systematic reappraisal of the role of the state in contract enforcement (cf. Sec. 6.2), while here we must be content to review some of the basic strategies based primarily on the norms of pistis and eugnōmosynē.

As discussed in Sec. 2.3, most scholars of ancient law have explicitly or implicitly understood self-help as Eigenmacht, or private, unilateral acts of lawless or unlawful violence of a Hobbsian sort. I neither deny that Eigenmacht as such existed in the ancient world, nor that it was a serious problem; but I also submit that it was not the only economically or legally relevant form of self-help. For example, as I show in a forthcoming study (Ratzan

658 Taylor 1998: 846: “Although self-help is non-judicial, it is not extra-legal and does not lie outside the ‘shadow of the law.’ ... In most cases, parties have some understanding of legal rights. That understanding guides the determination to use self-help; a party that uses self-help does so with the backdrop of the legal system in mind ... ‘Pure’ self-help, steps taken without resort to official action, influences and is influenced by official treatment of the doctrine.”

659 By the same token, scholars today tend to overestimate the power of the contemporary state, though perhaps less so than they used to. No doubt a current ancient historian would think twice before asserting that “even the weakest plaintiff can sue even the strongest defendant without giving a thought to the physical, social, political or economic disparity between them” (Kelly 1966: 5). For Kelly, the only time modern conditions approximate the ancient are in times of war (1966: 5n1), which is to say that he is not so far from the sort of thinking embodied in MacMullen’s social history (p. 10f. above).
forthcoming a), the right to retrieve persons in power from those with whom they had been placed (e.g., for apprenticing or wet nursing) was a recognized self-help right (i.e., one did not need official permission to proceed, and the authorities defended its lawful exercise). Although some direct testimony survives as to this right (e.g., *P.Oxy.* I 37, a trial transcript in which a particular exercise of this right is contested), we find a wider, indirect record of it in our surviving contracts—above all in the Oxyrhynchite weavers’ apprenticeship contracts—wherein this right is the object of negotiation. Although inherent in any self-help act is the potential for violence, the evidence suggests that violence was used only rarely to enforce this right of repossession; indeed, it appears to have been generally accepted that the owner or guardian was entitled to terminate such a contract unilaterally for any reason, provided that he had not traded this right away, in which case he owed a monetary penalty and not specific performance (i.e., the restoration of the person for the duration of the original term).

Many, of course, might not see unilateral cancelation as “self-help,” but not only is it recognized as such by modern lawyers, but more importantly it can also be shown to have had an effect on contract negotiation and formation. It was, to return to a prior theme, a credible rule, even though it was one based in custom. In this light, we may note that the modified terms of *PSI* IV 377 not only leveraged or built trust as described above, but they also allowed the lessor to terminate early and unilaterally should either the initial “test” payment or the monitored performance prove unsatisfactory. Increasing access to monitoring and the

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660 E.g., Taylor 1998: 842: “Self-help ... includes any actions taken by either contracting party to limit the harm caused by defective performance, to attempt to preserve the contract, and to prevent non-justified termination of the contract.” She goes on to give examples of unilateral actions allowed by the UCC (e.g., the unilateral rejection of goods).
frequency of payment improve the other party’s ability to exercise self-help in a timely fashion, whatever form it takes, since such measures increase both the flow of relevant information about performance to the other party, as well as the number of milestones or benchmarks in the contract, which represent clear opportunities for cancellation.

On another level, there is evidence, primarily in letters, for parties taking defensive self-help actions during a contractual relationship, primarily the taking of hostages (cf. Sec. 2.4). We saw one example of this in *P.Dubl.* 15, in which writer accuses his partner of holding him up for a better price. This, however, represents (at least from the writer’s perspective) an unjust use of self-help because the partner had apparently agreed to different terms and now was going back on his promise (cf. *P.Fam.Tebt.* 37 below, pp. 432f.). Altogether different, I would say, is the case of a creditor temporarily seizing goods as collateral until the debt is paid and a sort of balance restored to the relationship. We see just such a case in *P.Oxy.* XLI 2983 (Oxyrhynchos, II-III), a letter in which Harpalos assures Heras that Herakleides owes nothing on the “Great Oasis account,” and so “there was no need to hold the camel” (23: καὶ οὐκ ἔχρην τὸν κάμηλον κατασχεῖν). Harpalos blames his own inaction for the detention of the camel (24-26: ἔγω γὰρ μειμούμενος ἐματῶν μέχρι | τούτου οὐδὲν ἔπραξα, καὶ μέχρι τούτου | ἦτω), since he had failed to let his associate (who was in one of the Oases) know that Herakleides had paid the debt incurred in the oasis in the Oxyrhynchite nome. The letter thus reveals a web of business and financial transactions between the Valley and the Oases, with payments made in multiple locations, perhaps by transfers (cf. note ad line 18). The relationships and the tone of the letter leave no doubt that this was no legal detention of the camel, but rather a hold placed by the associate until he heard from the principal as to the state
of the Great Oasis account, a hold which Harpalos regrets and is therefore eager to have explained to Herakleides (cf. ll. 31-32: εἰκῇ οὖν κατείχου τὸν κάμηλον. | πάντα μεταδώσεις αὐτῷ [sc. Ἡρακλείδῳ]). Nothing in this letter suggests a use of self-help that ran to *Eigenmacht*, but instead a standard strategy for maintaining a relational equilibrium between partners, a temporary suspension of business during which personal *pistis* was momentarily converted into a physical *pistis* of real security until trust has been proven once more.

The most important extra-legal sanction stemming from *pistis* and *eugnōmosynē* was reputational. Managing “reputation risk” is now a field of study in its own right, as corporations seek to avoid the costly effects of reputational sanctions in an age when destructive rumors and incomplete information can be disseminated to millions of people within seconds, driving down share prices and drying up sales.\(^{661}\) The vulnerability to reputation risk may be greater in the information age, but its existence is hardly new; and, if anything, the risk was more potentially catastrophic in antiquity since there was nothing like the same ability to repair one’s reputation. Ancient historians have been alive to the importance of reputation, but relatively few have attempted to trace the ways in which ancient reputations were made, managed, communicated, and undone. They have also tended to downplay its power when compared to that of the law, often seeing such extra-legal, self-help sanctions as merely filling in the gaps left by in the law.\(^{662}\) There is, of course, truth in this,

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\(^{661}\) E.g., Croft and Dalton 2003; Larkin 2003; and Neef 2003.

\(^{662}\) E.g., Kelly 1966: 21-23 on *existimatio* and *flagitatio* in Roman society, rightly corrected by Garnsey 1970: 187-93.
but we should not let the evolutionary model of the state blind us to the possibility that such sanctions were also in many cases cheaper, easier, and more effective than legal enforcement. Not only or always residual weapon of the weak, but also and often the first tools of choice.

We have already seen many examples in the preceding chapters when parties threaten to use reputational sanctions to enforce contracts, whether it was Ptollas letting Isas know that his pīstis was at stake, or Johanna warning Epagathos that his refusal to recognize his obligation was a σῆμα ἀγνομοσύνης, the idea being that were his actions to come to light, they would constitute a “sign” that others would be able to read as well as she (cf. P.Oxy. XLI 2996, pp. 205ff.). Indeed, the entire discourse of pīstis and eugnōmosynē has little other reason for being other than the communication of reputation, and papyrus letters are full of the sort of gossip that informed people’s contract threshold calculations.

For instance, we have the following first-century letter of unknown provenance in SB XIV 12084:

Ζωίλος Φιλομένη τῇ
ἀδελφῇ πλείστα χαίρειν
καὶ ὑγιεῖνειν. γείνωσκε (I. γίγνωσκε)
4 Πλουτάν ὡς ἐν μάχῃ μοι
ἀναβεβηκέναι καὶ ἥρκότα
μου ἀργυράφιον. λοιπὸν
οῦν μηθὲν αὐτῷ διαπισ-
τεύσῃ μηδὲ μὴν αὐτὸν
ἐπειδέξῃ. ἔἀν δὲ τὶ πο-
ήσῃς παρ’ αὐ (I. σοι) γράφωι (I. γράφω) σὺ αὐ-
τῆ τῇ ἀπίδιας ἔξις (I. ἔξεις). περὶ δὲ
8 τῶν γερδίων μὴ ἀμέλι (I. ἀμέλει)
ἀυτῶν. παρακάλει (I. παρακάλει) δὲ Ἰσαν τὸν
[...] ἐβοῦν ἵνα [...] ἐκτὸς

The papyrus breaks off.
Zoilos to Philoumene, his sister, most hearty greetings and good health. Know that Ploutas came up in a fighting mood and went off with some silver of mine. Do you therefore now put no faith in him, and don’t receive him in any circumstances. If you do anything contrary to what I write you, you yourself will have unpleasantness from it. And about the weavers, don’t neglect them. And ask Isas the ...

Here we understand that Zoilas, Philoumene, and Ploutas are all acquaintances, but what are we to make of Ploutas’s “lifting a little silver” from Zoilas? Αἱρεῖν is most often a neutral word for the taking and removing of objects, but it can also be used in the context of theft or unauthorized removal (cf., e.g., P.Ryl. II 127, 128 [discussed in App. I], 129, 136, 142, all mid-first century Euhermia). Now, it may be that Zoilas is accusing Ploutas of petty theft, or of being a bad house-guest, but the fact that he saw that Ploutas had “come up river ready for battle” suggests that he saw the “lifting” as retaliatory, even if unjustifiable. The origin of the dispute is unrecoverable, and it need not have been contract per se (though it could have been), but the sanction is contractual. Significantly, Zoilas does not go to authorities, or even intimate that such a move is to be contemplated. No doubt this is in part because the amount was small (ἄργυραρφίαν; see n6 in ed. pr.) and in part because this was not a run-of-the-mill “theft,” a word he never uses. Instead, Zoilas recognizes it for what it was intended to be: an “unpleasant” self-help act by a friend, acquaintance, or partner—perhaps even family member—in an on-going dispute, which, for the time being, all parties are content to hash out

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664 For the vocabulary of theft, see Taubenschlag 1955: 452-58.
amongst themselves. Zoilos, therefore, retaliates in kind, immediately drafting a letter to his sister in which he advises her neither to trust Ploutas nor to receive him. The latter is both a defensive precaution against any other retaliatory action he may be planning, as well as a potential signal to Ploutas that his behavior has consequences (cf. the language of “signs” in P.Bad. II 35 and P.Oxy. XLI 2996, pp. 205ff.). For all intents and purposes, his business with Zoilas and Philoumene was over, and he likely soon discovered that a good portion of his network had been rendered inactive (and vice versa for Zoilas and Philoumene) until amends were made and the dispute resolved.

The linguistic histories of both pistis and eugnōmosynē are interesting, but for very different reasons. We get little sense of the internal evolution of pistis—at least in its social, secular meaning (cf. Lindsay 1993 for its religious history)—but instead see the effects of external pressure from fides starting in the second century. With eugnōmosynē, on the other hand, we may trace what appears to be an internal development driven largely by its use to communicate reputation. Briefly, there were three broad trends: verbalization, objectification, and constriction of meaning. All three appear to be linked, though we must remember that changes such as these took place within the larger evolution of the language, and therefore we do not want to over-interpret them. That said, the most compelling explanation for the objectification and restriction of meaning resides in its use in the discourse of reputation.

Through repeated inferences from subjective judgments of eugnōmosynē in contractual

665 “Pleasure” is a core concept in the social discourse of normative behavior and social control in the papyri. I will be exploring this in a forthcoming essay. Cf. n671.

relations (cf. *P.Ross.Georg.* III 1), the concept increasingly came to express another person’s objective relationship to contract or debt *per se*, and not necessarily or primarily his regard for the person owed. From here, it was but a small step to *eugnōmonein*’s coming to mean merely “to repay” by the late third or early fourth century (cf. Sec. 4.8).

Such were the primary roles that *pistis* and *eugnōmosynē* played in contract formation and enforcement. Chapter 5 turned from what we might call “positive” values articulating contract norms, to a “negative” one, the moral valence associated with “breaching” a contract. The concept of breach would seem to be of key importance to understanding the way in which a contract was enforced, and yet, as with the core values investigated in Chapter 4, there has been to date no investigation of breach *per se*. This total lack of scholarly literature required that the history of breach be built from the ground up, beginning with the very vocabulary of breach itself. Though this approach produced a lengthy discussion, it is one that nevertheless speaks directly to the central questions of this project, since it reveals the moral dimension at the heart of the legal institution of contract. Here I will merely reprise the principal findings of that discussion before synthesizing them with those of Chapter 4.

Although “breach of contract” was a concept in classical Athens (see Sec. 5.2), it was not regularly inscribed as a term in the documentary contracts which survive from Egypt until the second century BCE.667 Instead, breach was defined by the specific action of the principal verb of the transaction (Sec. 5.3). Over the course of the second century BCE, however, it became increasingly common to include a form of the verb *parasyngraphein* in contracts for

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667 The evidence suggests that breach *per se* was not routinely inscribed in the classical Greek or early Hellenistic worlds either, though the evidence is far too thin to assert this with any confidence.
one of two ends: to function either as a specific verb in what I have called “transactional agreements,” wherein the contract itself is the transaction (i.e., the embodied agreement is the transaction, without any “real,” or material element, see Secs. 5.3-5.4.2) or as a verb denoting general or comprehensive breach. In the first case, parasyngraphein is itself a specific verb addressing the core obligation of a transactional agreement (syn graphesthai) embodied in a syngraphe, just as apodidonai represents the core obligation in a contract for loan, which is based on an initial transfer (didonai) of money or goods. In the second case, parasyngraphein represents an additional covering term in an attempt to expand the contract to include unspecified or unforeseen actions or inactions by the other party as constituting breach (cf. P.Enteux. 59, pp. 270ff.).

Around the same time that breach per se becomes more common in contracts, the vocabulary of breach also begins to shift (Secs. 5.5-5.6). Instead of parasyngraphein, one increasingly finds the word parabainein. The general scholarly consensus was that these verbs were mere synonyms. The history of use, however, suggests that one verb progressively replaced the other, with the persistence of parasyngraphein in the Roman period a function of its fossilization in certain formulae and models. Furthermore, one discovers that a latent distinction can still be activated in early Roman Alexandria, as synchôrēseis for lease routinely use parasyngraphein to mean “material breach” (i.e., from the view of the syngraphe as a whole), as opposed to the “breach” (parabainein) of one of its terms (Sec. 5.1, cf. the discussion of BGU IV 1144, pp. 308ff.). This change in vocabulary also coincided with the total collapse of the specific use of parasyngraphein: entering the Roman period, there
was a unified notion of breach as general “transgression” against the terms of any kind of contract.

This history—again interesting in itself—is relevant to the investigation at hand precisely because it can be shown to be part of a larger “moralization” of contract. 

*Parasyngraphein* was a neologism born of the increasing use of written contracts in classical Athens and the wider Greek world, and while certainly it carried a moral charge in the one classical speech in which it is attested (Dem. 56), where it properly denotes an act of (written) contractual faithlessness (see Sec. 5.2), it nevertheless was a word restricted to the courts and the world of legal, written contracts. This remained the case in Egypt: we have no non-legal, non-contractual attestation of this word (cf. App. III). Not so *parabainein*. This was a word with a heavy and persistent ethical valence throughout antiquity in both literary and documentary Greek with respect to all manner of boundaries, physical, metaphorical, legal, and moral. The two great shifts in breach in the late Ptolemaic and early Roman periods, then, were the generalization of the concept, as *parasyngraphein* ceased to refer to the specific act of contravening either a written contract or a transactional agreement; and its moralization, or the shift from a technical legal term for breach to an overtly moral one with a wider cultural resonance. We may in turn fit this moralization of breach into a larger history of the moralization of contract, which is adumbrated at the end of Chapter 5 (Secs. 5.6.2-5.7).

*Parabainein* was not a chance substitution for *parasyngraphein*, but a natural choice: it not only shared a deep conceptual affinity for the idea of the “boundaries” imposed by a contract (cf. the use of *emmenein* with both treaties and contracts from the fifth century on, Secs. 5.2, 5.3, 5.4.2), but it was also the traditional word to describe “breach” of oath (Secs.
5.2, 5.6.2). The relationship of oath to contract is a contested one in the debate over the origin and nature of contractual liability in fifth-century Athens (see n442). In the study of Ptolemaic and Roman Egypt, however, this topic has generated comparatively little interest and less controversy. To be sure, there has been work on oaths, but primarily from a legal point of view, particularly the role they played in certain state processes, like registration and declaration (e.g., the census). With respect to their use in reinforcing obligations, the *communis opinio* still follows the line established by Seidl, namely that the use of oaths became less frequent after the Saite and Persian periods (cf. pp. 358f.). Presuming this decline to be real (and it may be that a re-examination of the evidence is in order eight decades later), how should we interpret it? Does it mean, as Seidl suggested (1933: 114), that parties no longer needed to invoke a sense of moral and religious obligation, but could instead rely on the power of the state to enforce their contracts? Perhaps. But this is to presume that the use of oaths declined, and not just the evidence for use.

My suggestion in Chapter 5 is that we concentrate on the *function* and *mechanics*, and not the *form* of oaths covering private contracts in Egypt. If we do so, we discover that the change in practice documented by Seidl in fact conceals a sublimation of the moral mechanics of oath in the contracts themselves, and further that this represents a conservation of the oath’s primary enforcement function. This interpretation depends on the identification of *parabainein* as an originally and enduring part of the moral vocabulary. Historically, this is unassailable: the moral dimension of *parabainein* is well attested in classical literature, and while instances of *parabainein* in the papyri are thin, they are in the first century and a half of Ptolemaic rule nevertheless consistently associated with law, oaths, and promises, but not
contracts. Also suggestive is the evidence of the oaths covering mid-first century BCE cession contracts (sec. 5.7). Strikingly, in these contract-oath dyads *parasyngraphein* always and only refers to breach of contract, while *parabainein* always refers to breach of the oath, and occasionally to breach of contract. In other words, we see evidence here of the original linguistic domains of each word (*parasyngraphein* and contract, *parabainein* and oath), as well as of the encroachment of *parabainein* onto the world of contract. Finally, there is no mistaking the moral valence of *parabainein* and its derivatives throughout the Roman period and into Late Antiquity, it being a standard word for sin and transgression. The slow but inexorable replacement of *parabainein* for *parasyngraphein* is therefore best characterized as an infiltration of an explicitly moral discourse into the legal discourse of contracts, perhaps from the oaths that used to cover them.

As we might suspect, this infiltration was not restricted merely to this one substitution; rather it is but one vestige of a larger, systemic re-equilibration of the moral and legal conception of obligation. To see this, we must step back and survey the entire history of contract over this period, and the traces of this general realignment are visible nearly everywhere we look. For instance, it was not just *parabainein* that was imported, but other moralizing vocabulary as well, some of which can also be shown to have originated in the world of oaths, or the discourse of the foundational moral commitment surrounding treaties and contracts. In this category we gave pride of place to *kakotechnia* (Sec. 5.7, esp. pp. 367ff.). Other words, such as *heurēsiologia*, have less of a connection to oaths per se, but clearly participated in the same general moralizing trend in contract language (pp. 374ff.)— and there are still more elements of this picture to be sketched (e.g., the history of *pareuresia,*
cf. the limited but useful study of Düwel 1969). To this linguistic infiltration one may also match structural changes in the format of contracts. The most important of these is the turn towards subjectivity, reflected in the growing preference for the confessional form of the homologia and the personal declaration of the cheirograph and subscription, each recalling or perhaps replicating the subjectivity of oaths (cf. esp. P.Corn. 4, p. 377). All in all, the impression is of a decline in the use of oaths, but a conservation of their moral content and force as contracts slowly acquired some of their characteristics.

The questions before us, then, are why and to what effect?

The history of breach does not suggest that these changes were driven by the state. The inscription of breach per se in contracts has the obvious advantage of encouraging parties and courts to focus on the purpose of a contract (i.e., the transaction) rather its drafting (cf. the cautionary example of P.Enieux. 59, pp. 270ff.). This surely represented the initiative of imaginative individuals and competent scribes. By the same token, it is difficult to imagine the Ptolemaic or Roman state establishing formal requirements in contracts at the level of vocabulary. We do know of instances when the state appears to have either required or encouraged formal changes. For instance, in 146 BCE Ptolemy VI promulgated a decree requiring the Greek registration of demotic instruments, and this appears to have had an obvious and immediate effect upon registration practice.⁶⁶⁸ Centuries later, the rather sudden and wide-spread appearance of so-called “stipulation-clause” (e.g., ἐπρωτειῆς ὁμολόγησα vel sim.) also suggests the agency of the state, though perhaps indirect and inadvertent, if we

accept Wolff’s theory (i.e., the promiscuous use of this clause is best explained as an abundance of caution fueled by a misinterpretation of an adverse court decision concerning a stipulation after the Constitutio Antoniniana). The Roman administration similarly evinced a clear preference for written documentation, even if it did not make the reduction to writing a formal requirement of contracts (cf. Sec. 6.2). In each of these examples a clear point of administrative policy, law, or procedural convenience explains the state’s intervention, none of which goals are advanced by the substitution or inclusion of moralizing vocabulary. Moreover, as the survival of parasyngraphein suggests (Sec. 5.5), its decline and the rise of parabainein represented an organic change from the bottom up, driven by those who drafted contracts, not by those who adjudicated or registered them.

In one sense, it may seem odd or ironic that the language of legal instruments like written contracts should reflect or respond to popular morality as much as—if not more than—legal doctrine, statutory requirement, or the rules of procedure. The demonstrable fact that they did, however, should serve as yet another indication that the ancient parties who went to grapheia to draft a contract had more than the state and its laws in mind when they did so. As pointed out in various places in the discussion of preceding chapters (e.g., n409 and pp. 331ff.), we have examples of contracts without penalties or enforcement clauses, and in some instances even legally unenforceable contracts (cf. BGU IV 1144, pp. 308ff). The fact that such contracts were reduced to writing indicates that the parties understood them as serious commitments worth the cost of memorialization; on the other hand, the fact that they

failed to include incentives to perform or provisions for execution and recovery—or sometimes drafted with utter disregard to the law (e.g., the fictive deposits hiding the dowries of soliders, *M.Chr. 372.i.5-13*)—is more good, if oblique, evidence of the operation of extra-legal modalities of enforcement in the contracting process. Indeed, they suggest that we should not look at writing necessarily as only or always related to official enforcement, but rather as an aid to extra-legal enforcement as well.670

The moralization of contract is, I submit, one of these modalities, an attempt to leverage ethics (i.e., first-party enforcement) and vicarious self-help (i.e., the third-party enforcement of norms) through the language of the instrument. One may easily imagine that contracts were seen as resting on a more solid foundation if they were fortified by the express moral commitment of the opposite party (hence the original role of oaths). What better way to sharpen or quicken this sense of commitment than by having the party formally declare or acknowledge, *propria persona vel enim propria vox*, the obligations that he or she now undertook to perform, while agreeing not “transgress” the private law established by the document? At the same time, the field of “transgression” expanded in tandem with the progress of *parabainein*, as parties were enjoined from an increasing number of “immoral” acts (cf. Sec. 5.7). The fact that so much of the innovation we see in the texts of contracts is moral and not legal points up the perceived value of (or need for) such language. Though legally irrelevant, these were enforcement clauses all the same, drawing their meaning and

670 In this respect, it pays to recall that the origins—and continued efficacy—of many later procedural legal rules lay in the social power of publication. E.g., the legalization of the social custom of mancipation over agriculturally important goods; cf. Pringsheim’s theory of the evolution of *homologiai* (1951: 14-46).
power from normative views of what constituted the proper attitude and behavior of one who was contractually obligated. In the end, it may be as Seidl hypothesized, that the bureaucratic controls and official justice provided by the Ptolemies, and then the Romans, allowed average Egyptians to do away with the juristic oath. But oaths persisted in this society (cf. *P.Yale I 79* above), and it is not altogether unsurprising that the need to invest one’s contract partners with a heightened sense of moral investment remained, albeit sublimated, ultimately finding re-expression in the contracts themselves.

A different question is how successful this sort of enforcement was and at what cost it was purchased. All systems have a “downside,” or the costs associated with them, and the use of ethical norms to enforce contracts is no exception. It might seem that the costs of extra-legal, normative enforcement are quite low, and certainly lower than those of using the law: norms are widely known, easily discovered, generally uncomplicated, and require no professionals or administration to enforce. Of course, it is some of these same characteristics that generate the transaction costs associated with using them: norms are also generally incapable of nuance, may be contradictory (since not codified), and can be flouted by powerful individuals or groups, etc. These costs can be so high as to forestall transactions altogether, hence the need for a credible third-party enforcer, like the state (cf. Ch. 2). One particular cost is worthy of note here: since norms guide interpersonal relations, in contracting they tend to focus attention on the parties themselves instead of the transaction (cf. the early history *eugnōmosynē* in Sec. 4.5). In other words, unlike the insertion of general breach clauses, they draw attention away from the economic purpose of contract to the social dynamics of contracting. This is evident, above all, in the radically violent and antisocial
interpretation of litigation as an “attack” (e.g., *ephodos*; cf. the use of *eperchesthai* in the *Nichtangriffsclause*).\(^{671}\) Resorting to litigation was one’s legal right, but could for this very reason also be cast as an outright rejection of the moral codes of trust, respect, and obligation (cf. Sec. 4.9 and *P.Yale* I 79 above). The moral enforcement of contracts thus involved a distinct trade-off: on the one hand, it represented a firm lever for the parties as they engaged in self-help; on the other hand, the use of this lever almost certainly helped to personalize disputes and stigmatize the use of the courts (which, of course, was the point). To the extent such side-effects discouraged mutually beneficial solutions to contractual problems and disputes, contracting was obviously thereby rendered less efficient.

The work of recovering the normative rules of contracting has just begun; this dissertation makes no claim to completeness (cf. Secs. 3.4-3.5). Though it is a tired and somewhat craven caveat, it is nonetheless true that the preceding chapters represent a starting point: while there is a useful literature on the economic and legal norms of classical Athenians and Roman elites, there is, for all intents and purposes, no comparable literature based on the study of Egyptian papyri—which is to say that there is no study of norms on the basis of our best evidence for commercial and legal practice in the ancient world. Chapters 4 and 5 thus represent the first steps in working out the rules, history, and implications of this vital—some might even say obvious—yet still obscure side of contracting. While there is much more work to be done on norms, one glaring omission in this dissertation deserves a particular mention

here: there is no formal discussion of the role of social status. This gap is partly the product of an inherent defect in the discourse of the norms chosen for this study: *pistis* as a measure of personal reliance is a value associated with social equals, and true to form, the discourse of trust in the papyri is largely restricted to use within, and not between, social strata. This is less true of *eugnōmosynē*, as one of the lenses for respect was hierarchy (cf. Sec. 4.5).

Significantly, however, it was not by this lens that *eugnōmosynē* in contracting was measured, but rather by the lenses of debt and promise, as its evolution demonstrates. Whereas the claim of *agnōmosynē* against a debtor in the mouth of an early Ptolemaic elite like Zenon necessarily carried with it the sting of personal “disrespect” (e.g., *P.Cair.Zen.* III 59355 and 59516, pp. 176ff.), the history of the word shows that it was precisely this subjective dimension that was progressively muted in favor of a more objective conception of a person’s relationship to the obligation itself. This is not to say that the subjective element in contract relations disappeared or that status and hierarchy no longer mattered; quite the contrary, we have every indication that status, hierarchy, and dependence were very much alive, and perhaps stronger, in late antique Egypt than under the participate.\(^{672}\)

Therefore, it is not the existence or impact of such social norms on contracting that is in doubt, but rather the best way to track the presence and influence of social inequality in contracts. The main difficulty is that such differences were rarely advertised in contracts since they ran counter to the core logic of the institution, the essence of which was the personal binding of a notionally free agent (cf. pp. 94ff; Sec. 3.4; App. I and II). We saw an example of

\(^{672}\) See Bagnall 1993: Chapter 6, esp. 214-29; cf. Arangio-Ruiz 1961, who suggests that growing social and economic inequality are reflected in the rise of the *hypomnēma* as a contract form.
both the ideological tension between status and contract, as well as of the methodological problem in treating status in contracts, in *P.Mil.Vogl.* I 25 (pp. 183ff.). In this trial transcript it is revealed that Geminos, a particularly wealthy and eminent person, appears to have persuaded his freedman and one-time *phrontistēs* Demetrios to deposit a substantial amount of money with him in the name of Demetrios’s friend Deios, most likely because Geminos considered it undignified for a man of his stature to be subject to the *praxis* of a freedman, and one who had worked for him to boot. Since a written document was considered reliable proof of a transaction, the defense was forced into casting doubt on Demetrios’s relationship to the document (there was, apparently, no case to be made for its being a forgery). The advocate thus ruthlessly played the “status card” to this end, suggesting that Demetrios’s “poverty” (which he pointedly contrasted with Geminos’s position as a *eusχημονέστατος ἄθρωπος*) gave him both motive and opportunity to steal the note. Specifically, he asserted that it was all but impossible that Demetrios should have been able to scrape together the 2,000 dr. from his wages, while his “need” induced to steal the document from Geminos’s house, to which he had convenient access because of his position.

Everything we know about ancient law suggests that such status differences mattered not just socially or rhetorically, but legally, and indeed we have other trial transcripts in which status figures prominently, in the rulings as well as the arguments (cf., e.g., *M.Chr.* 80 [=*P.Flor.* I 61; unknown, 85] and 81 [=*P.Oxy.* IV 706; Alexandria, late I-early II]).⁶⁷³ Over the course of the third century, one finds evidence of status creeping into contracts, both with

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⁶⁷³ Status was tracked and recorded in both Ptolemaic and Roman Egypt for social, legal, and fiscal purposes: see Lewis 1983: 18-35. For the effect of status on Roman law and justice, see Garnsey 1970.
the rise of the hypomnēma (cf. n672 above), which was remarkably unilateral in form, and the inclusion of status designations in the body of the contract itself (e.g., P.Flor. I 16.20, 28 [Euhermeria, 239]; perhaps significantly, also a hypomnēma). Before that, however, the relative positions of parties as such were largely hidden from view, even though they can often be plausibly reconstructed on the basis of the parties’ personal designations (e.g., Alexandrian or citizen of Antinoopolis, former office-holder, or “Persian of the Epigone“675), the nature of the transaction, the terms, and occasionally information gleaned from other documents. The surviving examples of contemporary deposit contracts permit us to say with near certainty that the cheirograph of deposit which Demetrios executed between Geminus and Deios did not communicate the status difference between the two. Indeed, had either the cheirograph between the Deios and Geminus or the note between Demetrios and Deios survived, but not P.Mil.Vogl. I 25, we would have been hard-pressed to reconstruct the social dynamics behind the contracts, a cautionary example for assumptions about such differences on the basis of contracts alone.

674 With respect to the unilateral nature of the hypomnēmata, we should recall that some transactions that later became the objects of hypomnēmata were originally unilateral, like \ early animal leases, cf. BGU III 912 and PSI 961A (and in general, Bolla-Kotek 1969).

675 Originally an ethnic designation in the Ptolemaic system, Πέρσις τῆς ἐπιγονῆς had by the Roman period degenerated entirely into a legal fiction (see lit. in Rupprecht 1994: 148–49, and most recently Vandorpe 2008). By taking on the label of “Persian,” a debtor accepted that he or she was liable to personal execution. To the extent that this form of security was more common among those of lower status because they were typically in need of credit and less likely to have sufficient collateral, we may thus see it as revealing a status difference; but this is obviously only correlative, since the designation has nothing to do with status per se. It is highly doubtful—approaching impossible—that Geminus would have consented to such a designation.

The question of the effect of social inequality on contracting, then, will have to be pursued via a different method, but in doing so we should not be too quick to assume that contracts between unequals were always either the products of coercion or unenforceable. Indeed, one of the remarkable things revealed by *P.Mil.Vogl.* 125 was the flexibility of contract, or its ability in this instance to accommodate both the demands of rank and the needs of enforcement. These two possibilities, coercion and unenforceability, in fact represent two different tests of contract with respect to social status. The first is whether or not stronger parties could strong-arm weaker parties into disadvantageous contracts. There is no doubt that this happened in antiquity (and still happens today, so called “contracts of adhesion”); the question is whether the state recognized this use of social power as inimical to contract (or justice, which are not necessarily the same; cf. below), and what steps, if any, it took to remedy the use of social and economic power. The second test is how such differences played out on the ground and in court when the weaker party was the plaintiff (i.e., when the weaker party had the better end of the deal). Both questions implicate the state in contracting, viz. how it policed the default rules of negotiation; and how it enforced executed contracts. Hence it is to the state that we turn next.

677 And we may well wish to consider as well the norms against “taking advantage” and what sort of extra-legal strategies one could pursue in the face of an “unfair” (if not “illegal”) contract. Cf. Ratzan forthcoming b.
6.2 Prospectus

The state’s role in the institutional development of contract has been central, proving to be the entity most capable of remedying the defects of contracting in a state of nature. There is no need to argue that Egypt under the Ptolemies and the Romans was no state of nature; but what precisely did the state do vis-à-vis contracting? If the main thrust of this dissertation has been that scholars have paid too little attention to the normative rules of contract, the central critique of the next part of the project is that they have also generally been too dismissive of the role which the Roman state played in supporting and promoting the institution of contract (cf. Sec. 1.2). This view is the product of the last generation’s attempt to shrink the ancient state down to its true historical dimensions, correcting what they saw as anachronistically modernist interpretations and assumptions by drawing attention to its ideology and limitations. In so doing, however, they have left us with a Roman state that at times approaches the majestic indifference of an Epicurean god, while at others appears narrowly and ruthlessly bent on serving the interests of the great and the good at the expense of the bulk of the population.

To be sure, this is a gross generalization, and there has been significant work since the 1980s that has tended in the other direction. A now classic example is Frier’s discussion of the

678 Cf. Secs. 2.4-2.5. There have been other historical entities that have played a similar role alongside or instead of the state, e.g., the community-based system documented by Greif 2006a, 2006b (cf. Terpstra 2011), but such systems merely prove that an overarching state is not necessary to a system of contract.

679 Again, Finley and Kelly are apt representatives. A more recent version of this project is Manning 2009, though with the important exception that he measures the limitations and successes of the Ptolemaic regime against appropriately ancient comparanda.
jurists’ successful push for a conception of “autonomous law” at the end of the Republic, or
the attempt to establish clear rules of law independent of politics.\textsuperscript{680} More recently, some
ancient historians have been keen to stress what they see as the market-oriented philosophy of
Roman administration and justice, which in some formulations rises nearly to the level of an
economic philosophy.\textsuperscript{681} According to this view, the state can be seen as attempting to hew to
certain principles and not merely to certain social classes. In the main, however, the view of a
laissez-faire state with an often \textit{ad hoc} or “corrupt” justice system heavily tilted in favor of the
rich and powerful abides, and the papyri have often been used to enliven this characterization
with the authenticity and immediacy only they can provide (cf. p.11).

It would be bootless, of course, to argue that the Roman administration was as
effective or involved in contracting as a modern state, for it wasn’t. Moreover, as stated in the
previous section, status and privilege were not only real, but also deeply embedded in the
social and legal institutions of the Roman world, such that it would be wrong to discount their
effects. That said, there has been too much emphasis on the state’s spectacular failures of
justice (cf. the essentially negative assessment of Lewis 1983: Ch. 9), and too little
appreciation for its equally impressive, if less conspicuous, record of routine success when it
came to contract. This is in part because the view of contract has been far too narrow:

\textsuperscript{680} 1985: 184-96. The four main elements of such a view of law are: 1) a strong separation of law and politics; 2) a
conception of law as a self-consistent body of rules, which in turn helps to mark it off as a distinct exercise from
politics; 3) an emphasis on procedural regularity and fairness (formal justice); and 4) a commitment to follow the
rules and to effect change through regular (usually political changes). The point is that such a system of law does not
pick particular winners and loosers for personal or political reasons, even as it may still privilege specific classes
(e.g., men, those with property, etc.). Cf. the discussion of the Edict of Tiberius Julius Alexander below.

\textsuperscript{681} E.g., Lo Cascio 2006 and Kehoe 2007.
although what happened in court was clearly important, most written contracts were not litigated, and we must count this in itself as a form of success (cf. Chaps. 2 and 3). We would do well, then, to understand what roll, if any, the state played in it. By the same token, while status and privilege were very real, so were certain basic political considerations of imperial rule and deeply-held non-economic ideological principles, both of which motivated Roman officials and which sometimes ran counter to the bald enforcement of status and privilege. These principles, which I would sum up as an ethic and ideology of “good government,” did not rise to an economic or market philosophy, but nonetheless often served as an effective proxy for such. In short, my contention is that the Roman state did more than most scholars suspect with respect to the enforcement of private contracts for a variety of reasons, and that the proper appreciation of their administration of Egypt in this respect should factor into discussions of their economic policy and administration of the empire more widely, particularly as these same administrators took their understanding of imperial interests, administrative experience, and sense of mission with them wherever they went. To follow this contention is to proceed along the third axis of investigation outlined above (p. Error!), and the central questions we need to ask are: what did the state do, why did it do it, and what effect did it have on contracting? By way of conclusion, I would like to give a brief prospectus of my answers to these three questions, which I intend to argue in detail in the near future.

The actions of the state and the motivations of its officers are, for obvious reasons, bound up together intimately. Though axiomatic, this observation is the proper place to start, for there was, as I suggested in Secs. 3.1-3.2, no contract law per se. In one sense this is to
overstate the case, for there were some laws that pertained directly to contracts. Thus, for example, there was a law laid down about fines in synchōrēseis. Similarly, there was a νόμος τῶν παραθηκῶν, which called for a double penalty for failure to return a deposit. The evidence points to both as being Roman in date, the first likely connected to the Augustan reorganization of the Alexandrian katalogeion, the second perhaps datable to the reign of either Gaius or Claudius. With respect to leases, it has been suggested that the decline of the bebaiōsis-clause in Roman contracts might also be connected to a statute, one which made such guarantees implicit, thus rendering the phrase obsolete. If we turn to the miscellany of the Gnomon of the Idios Logos, we find that it contains a raft of rules pertaining directly or indirectly to contracts: §§ 1-2 (concerning the alienability of tombs), 65-67 (penalties connected to the improper sale or export of slaves), 70 (restrictions on dealings between public officials and the state, cf. §§ 109-11), 73 (prohibition on second mortgages from temple funds), 78 (priestly offices alienable only by sale, not auction), 100-101 (registration requirements), 103 (outlawing loans on “liquids”), 104 (prohibition on future sales), and 105 (statutory limit on interest rates). And there are those “laws” which we infer from practice. Thus we saw in P.Mil.Vogl. I 25 above that writing played an important and particular evidentiary role at trial: the document was considered prima facie proof of an obligation,


685 I do not include here §§ 98-99 since I understand them to relate to cheirographia, not cheirographa, cf. pp. 227ff.
leaving the defense either to claim that it was an outright forgery or to attack the plaintiff’s connection to the document. Though unwritten contracts were actionable, this rule of evidence clearly counted as one of the more important “laws” affecting contract practice.

Finally, there were restrictions on the freedom of contract made for policy reasons, such as we saw above in the case of the Gnomon. We have one papyrus in which we get to see precisely such a policy restriction being weighed and applied, a vivid and telling legal drama pitting status against contract. *P. Oxy*. IV 706 (Oxyrhynchos, 73 or perhaps 113-117) contains a fragmentary account of a trial between a freedman Damarion and his patron Herakleides before the Prefect in Alexandria. It seems that Damarion had attempted to buy his way out of any residual obligations he might have owed his former owner (the Alexandrian version of *operae*), in return for a cheirograph from Herakleides asserting that he would not longer have anything to do with him, no doubt an innovation on the receipt or the *Abstandsurkunde* (2-5: τὸν δὲ Ἦρα[κ]λειδην | [. . . . . . . . ἀπειλη]φέναι παρ’ αὐτοῦ ἀργύριον καὶ γεγρα- | [φέναι χειρόγραφο]αφόν περὶ τοῦ μηδὲν ἔξειν πράγμα | |[πρὸς αὐτόν?]). Herakleides, however, appears to have reneged, and so Damarion sued. The Prefect had the cheirograph read out in court and then consulted his consistory on what Egyptian law had to say about such a contract. In the event, he found that there was nothing in the law that conferred on freedmen the power to dispose of their residual responsibilities via contract (7-9: [ἐν μὲν τοῖς τῶν] Ἀἰγυπτίων νόμωις οὐδὲν περὶ τῆς | [- ca. 10 - καὶ τῇς ἔξουσίας τῶν ἀπελευθερωσάντων | [...] ). And

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686 Cf. loans that were made ἄγραφος (e.g., the recently published *P. Oxy*. LXXV 5052 [Oxyrhynchos, 86/87] ) and the common disclaimer on many receipts οὐδὲ περὶ ἄλλου οὐδένος ἀπλῶς γραπτοῦ ἢ ἄγραφον vel sim.

so, on the basis of the *astikoi nomoi*, he reinstated the freedman-patron relationship and added that if he found Herakleides in court again with a complaint against Damarion, he would have the freedman beaten. There is no mention of the money that Damarion paid (and Herakleides accepted), and given the Prefect’s sentence and the considerable leverage he thereby conferred on Herakleides, it seems all but certain that it was part of the price Damarion paid for his insolence.

Most of the discussion of this papyrus has centered on what these *astikoi nomoi* were, the *ius civile* or the laws of Alexandria, a question that has not been resolved, and likely won’t be unless further evidence appears.\(^\text{688}\) On the other hand, this trial tells us a good deal about the limits of contract as an institution in the eyes of the authorities. There was nothing wrong with Damarion’s contract *per se*; the question before the Prefect was merely whether this transaction could be the object of a legal contract. Significantly, he first checked with local law, but when this was silent, he made a revealing policy decision to curtail the freedom of contract in order to shore up the institution of slavery and status.\(^\text{689}\) One could not use contract to rewrite this status.

One could easily add other “laws” to the list above, but even this small selection confirms the statement that there was no contract law *per se*. Instead, we see a multiplicity of rules, some relating to contractual form (e.g., *synchorēseis*), some to transactions (e.g.,


\[\text{689}\] Cf. CJ 4.7.5 , a rescript of 294 to a man who petitioned seeking to enforce a contract prostituting his wife: *Promercalem te habuisse uxorem proponis: unde intellegis et confessionem lenocinii preces tuas continere et cauta quantitatis ob turpem causam exactioni locum non esse. quamvis enim utriusque turpitudo versatur ac soluta quantitate cessat repetitio, tamen ex huiusmodi stipulatione contra bonos mores interposita denegandas esse actiones iuris auctoritate demonstratur*. Cf. Connolly 2010: 91, 117.
deposits), some Egyptian, some civic or imperial, some related indirectly to fiscal concerns (e.g., many of those included in the Gnomon, esp. § 101), while others driven by policy decisions. There appears to have been no codification of these rules and no legal doctrine—or even definition—of contract, and relatively few cases turned on points of “contract law” as such (cf. App. II). When points of law did arise, the Prefect and other high officers could call on experts who were prepared to issue opinions (e.g., the Prefect’s philoi in P. Oxy. IV 706; cf. Thomas 1982: 132 for the analogous experts attending the epistratēgos), and their opinions were often presented as definitive (e.g., P. Oxy. IV 706.7-9 above). These lawyers appear to have played a role similar to that of the Roman jurists, as we may surmise from the meager first-hand evidence we have for their activities, and their services were sometimes available even to judges at the lower levels (e.g., the opinion of the nomikos Ulpianus Dionysodoros to Salvistius Africanus, a soldier who was hearing a case, P. Oxy. II 237.viii.2-7). When it came to adjudicating contracts, this cadre of trained legal professionals no doubt produced a greater cohesion in the law and rendered the courts more predictable, though we should remember that we know little if anything of their training or even the bases for their opinions (Dionysodoros, for example, cites nothing to back his opinion, though he mentions that are “also” helpful precedents for the case in point).

690 Taubenschlag 1955: 517-18, with examples and literature, to which one may add P. Oxy. XXXVI 2757.ii (Oxyrhynchos, post 79).

691 On such basis was, of course, the Greek translation of the Hermopolite legal code, P. Oxy. XLVI 3285 (on which, see lit. in Rupprecht 1994: 98).
Whatever one may believe about the motive forces behind the development of Roman contract law,\textsuperscript{692} it seems clear that rules that had the most impact on contract in Roman Egypt were those that supported contracting rather than controlled contract directly. There were experts, but they played an interpretive and stabilizing role; the creative force in the system resided with the Prefect and his officers, and so the institution reflected a certain vision of empire rather than some internal legal logic. Therefore, while we can (and should) attempt to sketch out the shape of “contract law” according to basic doctrinal contours (e.g., consent, capacity, duress, etc.), to do so exclusively would be to miss an entire set of rules, which while not directly related to contract as such, were nevertheless the credible rules by which the institution operated. Hence the importance of understanding the aims and ideology of Roman rule.

The Romans, of course, did not rule out of beneficence. Revenue extraction was the prime directive in their administration of Egypt. Tempering this predictable and self-interested motivation, however, was an ethic and an ideology of good government. One can find expressions of this in any letter, decree, or order emanating from the Roman imperial machinery (and we will see examples below), but why should we take such pronouncements seriously? Much of the time we need not: they are just so much window-dressing. There are occasions, however, when we can measure the effect of the principle of good government, or see it animating Roman administrators and in such a way as to support contracting.

\textsuperscript{692} Cf. n36.
Here I will give but two examples. First, Tiberius Julius Alexander in his Edict of 68 (Smallwood 1967, no. 391) addresses a host of problems brought to his attention by Alexandrian *euschēmonestatoi* and land-holders from the *chōra* (5-6). The first three articles of this important document are of immediate relevance. The first deals with forced leasing and tax farming, which Alexander forbids on the grounds that he has been “convinced” (πέπ σι) that such forced service is of no ultimate advantage to the state, which does better when the powerful engage with it willingly and enthusiastically (12-13). The second article treats the practice of officials’ buying up debts and enforcing them with the power of the state by virtue of their position (i.e., as if the debts were public). Alexander forbids officials from buying such debt in the first place (though they may make their own loans), and confirms Augustus’s grant of *cessio bonorum* in the case of private debts (public debts, however, could still land one in jail).

The third article touches on a very different problem created by the confusion of public and private contracts. Apparently, the right of prior lien (*prōtopraxia*) against people who had responsibilities to the state was having the unintended effect of disrupting their private affairs: fear, real or pretended, of being in the position of a creditor or buyer behind the state was inducing people to call in loans and cancel contracts with those who appeared to be liable to the fiscus. The language of the decree begins with an affirmation of the desire that private business be conducted “unburdened” by the state, which had a protective concern for “public credit,” *κοινὴ πίστις*, by which I presume is meant the general confidence that

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693 A long-standing problem, cf. *P.Tebt.* I 5.255-64 (=*M.Chr.* 36b; Tebtynis, post 118 BCE).
legally conducted business will be respected and effective (18-19: ἵνα δὲ μὴ ἄνθρωποι βαρύνῃ τὰς πρὸς ἄλληλους συναλλαγὰς τὸ τῶν δημοσίων ὄνομα μὴ δεῖ συνέχωσι τῆν κοινὴν πίστιν | οἱ τῇ πρωτοπραξίᾳ πρὸς αὶ μὴ δεῖ καταχρώμενοι). Alexander institutes the following solution to preserve the state’s right to prōtopraxia while mitigating the risk it introduces in private affairs: he increases the amount and quality of information about the extent of exposure. Whomever an imperial procurator or oikonomos “suspected” (i.e., of being over-leveraged or insolvent) was either to have a his account annotated or publically posted, “so that no one may deal with him” (ἵνα μὴ δὲς τῶι τοιούτωι συνβάλλει), or to have a portion of his estate sequestrated in order to cover his potential liability. Although the edict specifically says that these actions are only to be taken in those cases in which an official suspected that there might be a problem (22: ὑποπτὸν τινα ἔχην ἐν τοῖς δημοσίωι πράγμασι ὄντων), the fact that Alexander barred from legal action anyone who dealt with those were were liable to prōtopraxia and who had not participated in either of these sunshine measures meant that they were effectively going to be requirements for virtually everyone who had a state obligation. This solution was therefore not only economically smart, it was also politically savvy, since it resolved the rights problem while appearing to avoid the heavy-handed imposition of potentially embarassing declarations or onerous sequestrations: those who were uninterested in conducting private business need not worry.

This edict thus advertises a general concern with personal freedom and private business, at least of the propertied classes, and freely represents it as the product of core values and unvarnished expediency: ideally and practically, the government should not interfere unduly or unnecessarily with private contracts, but should rather promote and protect the *koinē pistis*. Should we take Alexander at his word? We might note that it took even less imagination than in the case of the first article to see that if the liability to the state was not made transparent, the state was going to have a difficult time getting the elite and landed classes it depended upon to deal with it. Be that as it may, one should not discount the impact of their own propaganda on the kind of solutions Roman officials (even ones born in the East) found to such problems. At the very least it reinforced their tendency to think in terms of property rights, even if the exercise was how to order them to their advantage. This represented a public good all in itself. Alexander’s solution is a case in point, as it shows both an understanding for the way property rights, markets, and contracting function together, as well as a facility with the levers at the state’s disposal to restore them to equilibrium. We may contrast this approach with that of the Ptolemaic state, which, when presented with similar problems, tended to protect particular classes of persons important to their revenues, like royal farmers, whom they effectively insulated from foreclosure (e.g., *P.Tebt*. I 5.221-47=M.Chr. 36a; Tebtynis, post 118 BCE).

The second profile in administration is a Roman Prefect under Domitian, M. Mettius Rufus. His activities represent a version of the ideology of good government that is, if anything, “purer” that the previous example. *P.Fam.Tebt*. 15 (Arsinoite, 114/115) contains part of the record of a well-known dispute between three parties and their descendants over
legal and financial responsibility for the documents in the bibliothēkē at Ptolemais Euergetis. 

The disordered state of the archive was only revealed accidentally when Mettius interrupted the proceedings of a case before him at the conventus to inquire why a document had no beginning (76-78: Μεττίου Ρούφου τοῦ ἡγεμονεύ- | σαντος διαλογιζομένου τοῦ νομοῦ καὶ ἐπενεγχέντος αὐτώι ἀκ τῆς βιβλιοθήκης βιβλίου ἀνάρχου, | ἐπιζητήσαντος δὲ τὴν αἰτίαν δὶ ἡν ἀναρχὸν ἔστιν). Upon finding that this was not an isolated example, but indicative of the condition of a good deal of the contents in the archive, Mettius ordered that the archive be fully restored, touching off 35 years of on-again, off-again litigation over who would bear the cost of replacing the documents. Indeed, Mettius appears to have had something of a reformer’s zeal when it came to archives and administration, for we know that he also issued a decree (preserved in P.Oxy. 237.viii.27-43) calling for a general registration of property because neither public nor private business was not being properly managed in the Oxyrhynchite due to long neglect of record-keeping (28-29: μὴτε τὰ [δὶ]ωτικὰ μ[ήτε τὰ δὴμ]纣ια | πράγματα τὴν καθήκουσαν λαμβάνειν διοίκησιν).

Of course, as with Tiberius Julius Alexander, Mettius’s interest in such matters was motivated in large part by the recognition that the Empire ran on records, for what good was the right of prōtopraxia if no one knew who owned how much of what?695 In P.Fam.Tebt. 15, however, we get an important glimpse behind the chancery curtain to see the Prefect in action. What the original case was when the partial record was handed up to him we do not know,

695 Cf. Minicius Italus’s declaration in connection to the same affair that the documents in the bibliothēkē are “indispensable” (ἀνγκαιοτατα), significantly in the context of a negative report on their status by the procurator oustiacus Classicus (P.Fam.Tebt. 15.110-30).
though it likely was a garden-variety monetary or property dispute. Also, the damage to the “beginning” of the document must been more or less inconsequential, perhaps missing the date or the name of the first party—whatever it was, the document was clearly still useful at trial, for the parties brought it along and submitted it into evidence—no doubt in better condition than what many a papyrologist has wrung sense out of centuries later. Again, Mettius seems to have had the eye (or more likely the ear) of a practiced administrator, such that when the clerk read out the document, beginning in media res, he had a premonition of what that missing opening portended for the state of record-keeping in the Arsinoite. Overall, however, the impression one gets is that this was a man who prized thoroughness not merely because it was necessary for the fiscalité impériale or the smooth workings of private business, but for its own sake, because “that’s how things were done.”

Speculations about Mettius’s personal work ethic aside, we have no reason to suspect the genuineness of his interest in the proper management of τὰ ἰδιωτικά. He goes beyond what would be necessary for tracking property rights for fiscal purposes by ordering that rights within family settlements receive proper attention (34-37), “in order that persons entering into agreements may not be impeded through ignorance (37: ἵνα οἱ συναλλάσσοντες μὴ κατ’ ἀγνοίαν ἐνδεχόμενοι ἔναντι τύχης [l. ἐνδεχόμενον ἔναντι τύχης]). Collecting all property dispositions in one place, even those that are dormant or latent, like wives’ katochai on their husbands property or children’s property interests as recorded in “living wills” (cf. n 541), clarified property rights, which in turn lowered the transaction costs of contracting. To the extent that this decreased the number of legal disputes, it was potentially beneficial to the state; but the connection to the state’s political and fiscal interests appears much more tenuous and indirect than in the
case of Article 3 of Alexander’s Edict. Indeed, Mettius’s concern for property rights reminds one of Cicero’s contention that one of the prime responsibilities, if not raison d’être, of the state is the legal protection of property.⁶⁹⁶

One could easily multiply the examples of Prefects and other Roman officers balancing the fiscal demands of their offices against a sense of good government for its own sake. In this context, the question of motivations matters insofar as it helps us to identify and analyze what the state did with respect to contracting. The fact that the Roman government understood part of its mission, for whatever reasons, as the support of οἱ συναλλάσσοντες at the point of negotiation is of signal importance, since it forces us to look beyond the courts and the law to a host of other government agencies and instruments and their administrative functions, practices, and rules. The Prefects appear to have paid at least as much attention to the conditions that lead to the need for enforcement as to the provision of enforcement itself.⁶⁹⁷ Of course, since the world is not predictable, no matter how well informed one is about it, there will always be a need for credible third-party enforcement (cf. Chapt. 2). So, when it comes to asking what the state did with respect to contract enforcement, we need to interpret this widely, and consider both direct actions the state took when it came to adjudicating contract disputes and enforcing court decisions, and indirect actions which either

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⁶⁹⁶ E.g., De Off. 2.73, cf. 1.11-12, 1.53-55 (cf. Dyck 1996 ad loc.); Pro Caec. 70-75 (cf. Frier 1985). Cicero himself was a conscientious administrator, attentive to legal order when he was governor of Cilicia (at least in his own estimation: Ad Att. VI.1.15=SB 115).

⁶⁹⁷ Thus I think we need to go beyond the Realpolitik views of Wolff 1978: 178. There is, however, a distinction to be made here. The Romans are thus shown here to be interested in decreasing “ignorance” but not in correcting power differences created by basic socio-economic factors. Cf. Frier 1980: 186-87 and CJ 2.19.9 (a rescript revealing for its assumption—even insistence—on negotiation and the high bar it sets for “duress”).
enabled parties to make better, more secure contracts (e.g., because they had better
information about the other party) or to enforce them themselves.

However, before we turn to what the state did, I want to draw attention to one final
motivation. The attention paid to contract was not merely an expression of administrative,
ideological, or market interest; it also reflected a recognition that it was a revenue stream. The
grapheia were concessions licensed by the state,\textsuperscript{698} and other offices, like the katalogeion in
Alexandria, charged fees for a number of processes associated with contracting (e.g., 12 dr.
for dēmosiōsis). An enlightening record of these fees and taxes comes in PSI VI 688
(unknown, post 116), an account of what it cost to foreclose on a mortgage in the early second
century. The creditor added together with interest payments the fees he paid to avail himself
of official enforcement, including the costs of paper, correspondence, drafting, diastolika
(n393), payments to various officers and their hypēretai, and a special foreclosure tax (telos
embadieas), to arrive at a grand total of 189 dr., 1 ob., which he then passed on to the debtor.
From this account one gets a glimpse of the potential importance of such revenues to the
entire justice system, from local scribes and middling officers to the provincial administration
(cf. P.Oxy. XIV 1654 below).

Nor did this potential go unnoticed by the central government. In P.Oxy. XXXIV 2705
(Oxyrhynchos, ca. 225) we have a circular from Claudius Herennianus, the juridicus (who
was serving pro praefecto at the time), to the stratēgoi of the Heptanomia and the Arsinoite.
Herennianus attached documents relating to some proceedings before the archidikastēs (now

\textsuperscript{698} See, e.g., M.Chr. 183, an application for the grapheion-concession at Soknopaiou Nesos; cf. P.Mich. V,
introduction.
lost), which revealed the fact that contracts were not being “lawfully completed” in the *chôra*.

He therefore alerts the *stratêgoi* to the problem and charges them as follows (5-9):

> ὑμεῖς φρο[ν|τίσα]τε κατὰ τὰ δεδηλωμένα νομίμως τὰ συναλλάγματα συν-
> τελείσθαι — οὕτω γὰρ [.,.], [.] ἐσται τὰ συμβόλαια — καὶ τὸ
> ὀφείλόμενον ύπερ αὐτῶν τῇ
> λαμπροτάτῃ πόλει τῶν Ἀλεξάνδρεων ἀποδοθῆναι, μεν[ό]ντων μὲν τῶν
> ἐπὶ τοῖς

Take care in accordance with what had been made known (to you, i.e., in the attached documentation) that contracts be lawfully completed—for in this way they will be perfect (or valid?)—and that what is owed on their account be rendered to the most illustrious city of the Alexandrians, with the established penalties remaining in force against those who have trespassed previously, and like penal action of course reserved for those who disobey this warning in the future.

The penalties to which he is referring are unclear, though they may be those that the Prefects threatened (and levied) against all those who had duties to deposit documents in Alexandria, including *nomikoi, bibliophylakês*, and *stratêgoi*. What he means by “lawfully completed” is also obscure, but the best explanation is that the acting Prefect is referring to the official registration of cheirographs. There are two points of interest here: that parties—quite predictably—only “bought” as much official enforcement as they anticipated needing (cf.


700 E.g., *P.Oxy*. I 34v; *P.Oxy*. II 237.vii.27-43; *BGU* V 1210, § 100; *P.Oxy*. I 61 (Oxyrhynchos, 221), a bank diagraphē from a stratēgos paying a hefty fine for not depositing documents. See in general Burkhalter 1990. Holding *stratêgoi* to account is again symptomatic of Roman rule: cf. *M.Chr*. 91.ii.11-14.

701 Browne 1974.
P. Mil. Vogl. I 25, pp. 183ff.; and the uncompleted contracts in the Tebtynis grapheion); and second, the evident interest the Prefect had in “selling” them official enforcement. In this connection, we may also note that contracts not only represented a way to track property through registration, but also transactional choke-points at which the government could hold up parties until certain taxes, like the engkyklion, were paid. They were therefore both a revenue stream in themselves, as well as an enforcement mechanism for other revenue streams.

A systematic discussion of what the government did in supporting contract is hardly possible here, but we may get a reasonable sense of its breadth and depth from the following survey. Most examples come from cases involving contracts, but some come from other types of disputes. While in theory the type of dispute could affect the powers used (e.g., a succession versus a contract dispute), this has not been shown to be the case in practice, so far as I know. For the time being, then, it is worthwhile to establish the range of enforcement powers which we know the Roman government to have deployed. That said, two factors were important when it came to enforcement, the direct involvement of the state itself and a credible accusation of violence. The government (not unsurprisingly) showed greater force and vigor in pursuing public debts and obligations than private ones (cf. Articles 2 and 3 of the Edict of Tiberius Julius Alexander), and it was also more likely to intervene, or to

702 Cf. M. Chr. 213 [Oxyrhynchos, 72], with Mitteis’s discussion in AfP 1 (1901), pp. 193-99.

703 Cf. Taubenschlag 1951, which includes (rather indiscriminantly) Ptolemaic material.
intervene more forcefully, if it believed that there was an element of physical violence to the dispute.

1. **Policing self-help:** *Hypēretai* of various offices, but most often of the *stratēgos*, served summons, official orders for payment, and notices of intent to foreclose on parties.\(^{704}\) This process allowed for defendants or debtors to make counter-claims (*antirhēseis*). One’s claims, of course, did not fall to the ground if one proceeded without going through the state, but it was certainly frowned upon and potentially carried a sanction. In *P.Fam.Tebt. 37* (Antinoopolis, 167), for example, two brothers complain that creditor in the Arsinoite had seized one of their slaves “without the *stratēgos*” and were holding her until they were satisfied on a claim: βίπωσιν τοὺς ἰχθύς, ἅν καὶ μέχρι τούτου κατέχουσι, προφάσει | ξητήματος οὗ φασιν ἔχειν πρὸς τὸν ἔτερον ἡμῶν | ἀδελφὸν Φιλαντίνου τὸν καὶ Νειλάμωνα (12-15). The language here would be otiose unless there was some belief that officials took a dim view of this sort of self-help. Similarly, from *BGU VII 1573.8* (Philadelphia, 141) we understand that if the *praktores xenikōn* were instructed to proceed with foreclosure before an *antirhēsis* has been officially denied, this is done at the creditor’s risk. The state also adjudicated *ex post facto* claims of self-help, e.g., *P.Oxy. I 37*, a dispute by two parties, each of whom claimed to act in accordance with legitimate self-help in repossessing a child, while

\(^{704}\) See Strassi 1997 on the *hypēretai*. 
accusing the other of theft or kidnapping (see Ratzan forthcoming a); and *P.Flor.* I 61 (see p. 53).

2. **Injunctions**: Officials could place injunctions of various sorts. The most interesting, and no doubt effective, were those issued by officers in response to petitions whereby other parties were forbidden from mortgaging or alienating land. This was accomplished simply by informing the *bibliothekai* not to approve any mortgage or sales applications. See Taubenschlag 1951:148-49 for examples.

3. **Arrests and summons**: The state summoned people to appear before it in certain legal actions, but Naphtali Lewis (1983: 193) and others have drawn attention to the fact that such orders were at times—perhaps often—ignored. This could, however, result in a default judgment being given, which, as the subsequent items on this list suggest, was valuable to the plaintiff. Often summons were sent through the local constabulary, many of which orders survive (see most recently Gagos and Sijpesteijn 1996 and *P.Oxy.* LXXIV, p. 133). The state did not generally compel people to appear, though occasionally soldiers or guard are sent to accompany the people summoned, e.g., *P.Oxy.* LXXIV 5005 (Oxyrhynchos, III/IV; see parallels in notes), but most attestations are third century or later (but see *SB* XXIV 16005 [Oxyrhynchite, II]), and might in any case represent instances in which there was an accusation of violence (though this need not rule out a contract dispute at the basis of the dispute in some cases).
4. **Bonding:** The state at times ordered people to put up a bond to assure appearance at court, often in response to specific requests of the other party (ικανόν, e.g., *M.Chr.* 89.34, 91.iii.8, 93.51; cf.*W.Chr.* 177).

5. **Investigating, taking inventories, and fact-checking:** Officers routinely ordered subordinates to conduct investigations on various points, and in some cases draw up inventories of property (*logothesia*; cf. Mitteis 1912: 31; Preisigke 1915 s.v. λογοθέτις). Courts and executive officers were obviously therefore better informed about the facts, but the papyri suggest that the investigation itself could be an unpleasant or potentially risky experience, and so something to be avoided if at all possible, e.g., *BGU* I 275 (Karanis, 215), in which a man makes a report to a centurion concerning an attempted theft “so that no investigation is made against me” (15-16: [π]ρὸς τὸ μηδέμιαν ἃ ζήτησιν πρὸς ἐμὲ εἶναι).

6. **Setting time limits:** Officers and courts set time-limits to various procedures and appearances, which were sensitive to the urgency of the matter, the distance the parties had to travel, and extenuating circumstances (e.g., the need to attend to the harvest).

   See Lintias 1999.

7. **Adjudicating:** Though it may go without saying, the Romans provided courts and tribunals of various sorts. There were a number of different possible venues, from
trials at the nome level before the stratēgos, to the Prefect’s conventus, to audiences before various types of magistrates and officers in Alexandria or one of the poleis (e.g., Antinoopolis). Interestingly, we see parties engaging in forum shopping (and perhaps legal arbitrage), particularly on the part of Antinoopolites (cf. BGU II 614, pp. 211ff.). Military officers were also sometimes selected as judges in cases and occasionally petitioned in the first instance.

8. **Recognizing ownership:** Though it may not seem like an enforcement measure, transferring ownership from one onoma to another was a valuable tool (see, e.g., BGU VII 1573.5-6 for such a transfer). In P.Ryl. II 176 (Hermopolis, 200-210), for instance, we have a bank diagraphē by which one party pays off a delinquent loan in order to recover eight arourai, which had been the security. The principal was 1,500 drachmai, and the creditor accepted 2,000 drachmai through the diagraphē in order cancel all claims and transfer the land back to the debtor. Though substantially more than the principal, the 500 drachmai apparently represented a compromise sum (as the text of the diagraphē clearly reveals, μεθ’ (ἄς [δραχμᾶς]) ἐχαρίσσατο [5]). Too little is known of the original terms or the length of delinquency to know how much was forgiven, much less why.\(^705\) One wonders to what extent the market price of the arourai represented an effective ceiling for debt claims, i.e., did the 2,000 dr. represent

\(^{705}\) Cf. P.Flōr. I 48 (Hermopolis, 222), in which a loan between family members is similarly modified and paid off via diagraphē after approximately 30 years. I find it intriguing that statements about forgiveness are included in these documents at all.
the price at which this debtor would simply walk away and buy a roughly equivalent lot of eight *arourai*? Of course, there were likely other idiosyncratic, non-market considerations at play (perhaps family), but clearly the state’s recognition of the transfer of ownership was instrumental in the recovery of the loan. Again, we may recall *PSI* VI 688 above, where the creditor invested 189 dr., 1 ob. in state enforcement in order to recover 4,587 dr. on 3,000 dr. in principal loaned three years previously (note also line 40, where 8 dr. are paid ὑπηρέτη μὲν ἐποχὴς ἐμβαδὼν, which I take to mean that the foreclosure (on a different mortgage?) is being cancelled since the loan is going to be paid or some deal reached).

9. **Beating:** Officers and courts could and did reinforce “civil” decisions with beatings, e.g., *P.Oxy.* IV 706 above, *P.Flor.* I 61, and most recently *P.Oxy.* LXXII 4960 (Oxyrhynchos, II), a letter in which the writer informs a priestly guild to which he belongs that all may now rejoice, since “on the sixth our case was heard and we won and Petseis was cudgeled while it was publically proclaimed: ‘Do not make trouble, but abide by what has been decided’.” (τῇ ἑτῇ διηκοτίσθη | σοθήμεν καὶ ἐνεκήσαμεν καὶ ἐξυλοκοπήθη Πέτσεις ἐπὶ | κηρυσσομένου “μὴ στασια . . . | ἀλλ’ ἐνμενε τοῖς κεκριμένοις.”
10. **Personal detention:** Officers could order debtors jailed to help force a settlement, e.g.,

*P.Fam.Tebt.* 19. 706

11. **Impounding and Sequestration:** By the same token, officers could order property held in escrow until the parties arrived at a solution. We have already seen this power on display in Art. 3 of the Edict of Tiberius Julius Alexander above. A particularly good example is found in *P.Oxy.* VIII 1102 (Oxyrhynchos, ca. 146), where a judge orders that the embargo of a party’s revenues should remain in place until he complies with his orders (18-22: Εὐδαίμονος διὰ τῶν παρεστῶ- | τῶν λέγοντος κατεσχήσατι αὐτοῦ τὰς προσόδους καὶ ἀξίωσαντος ἀπολυ- | θῆναι αὐτὰς, ὁ ἱερεὺς καὶ ὑπομυμματογράφος ἐπάν (l. ἐπεὶ ἄν) τὰ ὑπ’ ἐμοῦ κελευ- | σήν[τ]α γένηται... ἀπολυθή- | [σο]υ[τα]ι). We also have examples of officers sequestrating property during a trial, often termed μεσεχύμα, in order to force a settlement. 707

12. **Reclaiming and recovering private property:** Officers and underlings can occasionally be found performing police functions in confronting and forcing people to turn over property, e.g., *BGU* II 467 (Soknopaiou Nesos, ca. 176-79), in which we hear of a *stratēgos* sending out a *hypēretēs* in order to restore some camels to a women


707 See Taubenschlag 1951: 145-46
who claimed that her brother had taken them (12-14: ἐπέταξας ἑνα τῶν | περ[i] σε ὑπηρετῶν ἐπαναγκάσαι αὐτὸν | ἀπ[ο]καταστήσα[ί] μοι τοὺς καμήλους).

Sometimes we even find soldiers engaging in such services on behalf of private people. See, e.g., SB XIV 11585 (Philadelphia, 59): καὶ περὶ τῶν μυσθῶν τῶν ποιμένων, ἐλεγε ὁτι πέμπω στρατιώτη[ν . . .] | . . . παρατά, λέγει, ἵνα συλήσῃ | τὰ παραμεμένηκε τῶν ποιμένων. (8-11: “And about the shepherds’ wages, he said, “I am sending a soldier . . . immediately,” he says, “to seize such of the shepherds belongings as are still in place.”). 708 Cf. P.Oxy. XII 1588, P.Flor II 137, P.Flor. II 151, and M.Chr. 93.

13. Evicting, confiscating and selling foreclosed property: In P.Fam.Tebt. 29 the chrēmatistai in Alexandria approve a motion to foreclose and order the stratēgos and the praktōr xenikōn to sell the security for the creditor, who resides in Antinoopolis. There is no suggestion that the creditor or her agents played any personal role in the process or were even in the nome when the sale took place.

This is not an exhaustive list, and, as per above, we should include other measures that relate to clarifying rights and easing access to the courts. In this category, we could include:

708 Because of the numerous misspellings, I give the corrected text and translation of the ed. pr. of Youtie, ZPE 22 (1976).
14. **Improving record-keeping and access to professional notarial services:** The Romans expanded the *grapheion*-system, a clear policy decision linked to a general reorganization of the record-keeping system. See Wolff 1978: 9-29, but esp. 18-19. They also introduced several new record offices, including the *bibliothēkē egktēseōn* (Wolff 1978: 222-54) and three imperial archives in Alexandria (see Burkhalter 1990).

15. **Privileging documentation:** Roman courts recognized unwritten claims, but in keeping with their interest in record-keeping, they put a premium on written records of transactions. *P.Fay.* 21 (Theadelphia, 134), for example, contains a decree by the Prefect Mamertinus in which he extends a prior decree. The prior decree made receipts mandatory for all debts reduced to written contracts “because of the disputes which arose before me concerning them (i.e., the contracts)” (5-7: διὰ τὰς ἀμφισβήτησεις | τὰς ἐπ’ ἑμοῦ περὶ τούτων γενομέ- | ναι).

The success of these actions and investments in contract can be measured by a number of indices. First, along with the expansion of the *grapheia* there appears to have been an expansion in the use of written contracts. Far more types of transactions are attested in contracts than from the Ptolemaic period. Though this trend has to be defined against the record of survival and has, moreover, many contributing factors (e.g., the comparative order and stability achieved under Roman rule after the turbulent last decades of the Ptolemies), surely one of them was the increased access to competent notarial drafting and safekeeping at a reasonable price.
A related index is the experimental use of contracts. The transactional agreement
represented one way of recording new types of transactions (Sec. 5.4.2), but in the Roman
period we find all sorts of rights and responsibilities as the objects of written contracts. One
particularly interesting example is *W.Chr.* 84 (Nilopolis, 177), a petition to the *epistratēgos*
concerning a liturgical substitution for a priest.709 Priests had recently lost immunity from
liturgical duty, but the villagers of Nilopolis reacted by reaching an “accord” whereby they
agreed to take on the liturgies of their priests (10-12: καθά ἡξίωσαν οἱ ἀπὸ τῆς κω- | μὴς
ἀναδεξάμενοι ἐκ συνκαταθέσεως τὰς | λειτουργίας ἐπιβαλλούσας αὐτοῖς/ [αὐτῶν]
ἐκτελεῖν/). The villagers had presented this contract to a former *stratēgos* Potamon, who
had ratified it (19-20: τῶ (l. τῶ) ἐκ συνκαταθέσεως τῶν | ἀπὸ [τ]ῆς κώμης γενομένου (l. -
ῶ) ἐπὶ Ποτάμων | σтратηγήσαντος ύπομνηματισμοῦ (l. -ῶ)). This was, therefore, a
written contract, and we can parallel other written *synkatastheseis* in *P.Gen.* I 42 (Philadelphia,
224), an agreement between *presbyteroi* aimed ensuring that the weight of the liturgy was
borne equally, and *P.Mil.Vogl.* VI 264 (pp. 191f.). What is particularly interesting in the case
of *W.Chr.* 84, however, is the contractual solution the villagers found to the problem of the
liturgy, whereby they re-inscribed a traditional social prerogative removed by the provincial
administration into a contract. There is more to be said about this use of contract, but the point
here is the extent to which the administration was willing to accept a re-ordering of even state
responsibilities so long as the lines of responsibility were clear, and that contracting provided

709 See Thomas 1979: 132-34.
an acceptable way in which to do this (cf. the unacceptable contractual solution in *P. Oxy.* IV 706 above).

A third index is the professionalization of litigation. We not only see more advocates, but much more importantly we see the fruits of Roman record-keeping in the quality of legal research that emerges from the papyri. We have lists of rescripts and collections of decisions (e.g., *M. Chr.* 372), and we find them embedded in petitions and presented at trial (e.g., *P. Oxy.* II 237). This is a clear improvement over the Ptolemaic period. Again, we get a glimpse of the way such research was done—and the legal industry it supported—from an account, *P. Oxy.* XIV 1654 (Oxyrhynchos, ca. 150), which details expenses related to searching, pulling, and copying documents out of official archives over the course of 4 days. Roman record-keeping thus not only enabled parties to determine the quality of their rights and the relative legal strength of their cases, but also helped stabilize the law and make it more predictable by creating the possibility for precedent (cf. the lack of such a possibility in Athens, pp. 255f.).

Here, then, we see an instance in which Roman innovation helped to bring down transaction costs on the enforcement side of the equation: for a few *drachmai*, one knew whether or not it was worth pursuing or defending a case, and if so, how best to proceed.

Lastly, Napthali Lewis (1983: 190) and others have drawn attention to *P. Yale* 61, from which we know that Subatianus Aquila received precisely 1,804 petitions in two days while at his *conventus* in Arsinoe. This is a tremendous number, and if routine, then quite amazing, as it represents a submission a minute for the 10-hour workday of the *conventus*.

More amazing still, however, is the fact that these petitions were all processed and posted both in Alexandria and in the nome metropolis so that petitioners could see what had become of their petitions and make copies, thus saving them a trip to the capital. If overwhelmed—and nothing about Aquila’s edict suggests that it was—perhaps we should consider the Roman legal system a victim of its own success, choked with the petitions, cases, and contracts it encouraged and supported.

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APPENDIX I: “UNDER CONTRACT” IN ROMAN EGYPT

We have one attestation of a singular word meant to communicate the condition of being “under contract,” or ύποσύνγραφος (P.Ryl. II 128 [Euhemeria, post 30]):

Σεραπίωνι ἐπιστάτη φυλακ(ιτών)
παρὰ Ἀτρής τοῦ Μ.[ ...]-
tος ἐλαιουργοῦ τῶν ἐν

4 Εὐημερίᾳ τῆς Θεούστου
μερίδος Γαίου Ἰουλίου Αθην[ο]-
δώρου καὶ Τιβερίου Καλπ[ο]υρ-
vίου Τρύφωνος. ἢ παρ’ ἑμοί

8 οὐσα ύποσύνγραφος Σουήρις
Ἀροῦθιος παρεμβάλλου-
σα ἀλλότρια φρονήσασα
ἐνκαταλιποῦσα τὸ ἐλαι-

12 οὐργίου ἀπελλάγη ψοι-
χαγωγηθεῖσα (I. ψυχαγωγηθεῖσα) ὑπὸ τοῦ
πατρὸς αὐτῆς Ἀροῦθιο(ς)
ἐτὶ ἀπὸ τῆς ἱθ τοῦ Με-

16 χείρ τοῦ ἵ (ἔτους) Τιβερίου
Καίσαρος Σέβαστοϋ, μὴ στο-
χασαμένος (I. στοχασαμένου) ὃν ὀφείλει μοι
σὺν τῇ γυναικί αὐτοῦ

20 κατὰ παραμονήν, καὶ ἤρεν
ἐκ τῆς οἰκίας μου ἰμάτι-
ον ἄξιον ἄργυ(ρίου) (δραχμῶν) δ καὶ ἄς
ἐίχον εἰς διαγραφήν τοῦ

24 φόρου ἄργυ(ρίου) (δραχμάς) μ, βλάβ[ο]ς δέ
μοι ἐπηκ<ο> λουθησεν[ο] ὄκ ὀλι-
γον, διὸ ἀξιωάχθηναι
tοὺς ἐνκαλουμένους

26 ἐτὶ σὲ πρὸς τὴν ἐσομέ(υν)
ἐπέξεδο(ν), εὐτύχ(ει).

(Identifying description of plaintiff)
To Serapion, epístatēs phylakítōn, from Hatres son of M--, oil-maker to Gaius Julius Athenodoros and Tiberius Calpurnius Tryphon in Euhemeria of the Themistos division (of the Arsinoite nome).

Soueris daughter of Harsuthmis, who is under contract to remain with me as an olive-carrier,712 (but) (instead) considered things alien (to her responsibilities), has abandoned the olive-mill and fled, beguiled by her father Harsuthmis as long ago as the 19th of Mecheir of the 16th year of Tiberius Caesar Augustus, he having no regard for what he and his wife owe me according to the contract of paramonē. She also carried off from my house a cloak worth 4 silver drachmai and 40 silver drachmai which I was keeping for the payment of rent. I have thereby suffered no slight injury. Wherefore I ask that the accused persons be brought before you for the ensuing punishment. Farewell.713

The contract at the basis of this complaint is a formal one for paramonē, an employment contract for a form of indentured servitude, whereby one typically worked off a loan or a debt.714 The plaintiff Hatres has two claims. The first is that Soueris and her father Harsuthmis (who was almost certainly the legally responsible party, seemingly along with his wife, since they were the recipients of the loan, lines 17-20) breached the paramonē contract by her unilaterally leaving his service before the loan was repaid. In order to underscore Harsuthmis’s moral and legal responsibility, Hatres adds that the father had suborned his daughter to decamp. Second, Soueris is accused of “lifting” certain items from Hatres’ house when she left (cf. SB XIV 12084 above, pp. 398f.). As often, we are in no position to judge the merits of the claims, though from other similar contracts we might hazard a guess as to what the other side might have argued. For example, in considering the accusation of theft it is important to recall that such employment contracts in the imperial period varied quite widely

712 paremballousa: see P.Fay. 91 (Euhemeria, 99), a contract for such services.

713 Trans. adapted from ed. pr.

with respect to provisions for interest, payment schedule, wages, taxes, training, holiday, and work conditions. Several in fact stipulate for payment in the form of garments, and so it is not inconceivable that at least some of what Soueris took represented what she felt she was “owed.” Irrespective of her now unrecoverable view, it is noteworthy that Hatres did not color the “lifting” as “theft” per se, but set it in the context of her employment, or a contract dispute.

As mentioned above, hyposygraphos is a hapax in the Greek corpus, appearing nowhere else in the documentary or literary record. From this fact we might justly conclude that being “under contract” was not in itself a particularly salient cultural notion. That said, it is also a perfectly intelligible neologism, and indeed Hatres goes on to provide us with a sort of exegesis by telling us what he expected of a person who was “under contract.”

Unsurprisingly, Soueris was required to abide by the explicit terms of her (or her father’s) contract, among them the provision (in the parlance of paramonē) that she “remain beside him” (cf. 7: παρ’ ἐμοί) and not abandon (ekleipein) her workplace, the olive-mill.


717 ὑπό in composition with nouns was used to create names for offices or positions, e.g., ὑποβουκόλος, ὑπογέωργος, ὑπαρχατήκτων, ὑπηρέτης; cf. Preisigke, Wörterbuch, Abschnitt 8. The designation of “under” here denotes a power relation (cf. LSJ, ὑπό, F.1.3). We also see it at work in adjectives, though less often, to the same end, e.g., ὑπαρχως, ὑπόβακχος (“under the influence of Bacchos,” Philostratus, LSJ, s.v.), ὑπεύθυνος, ὑπήκοος, etc. The closest adjectival parallel is perhaps ὑπόκλητος, which appears in Ptolemaic papyri (see Preisigke, Wörterbuch, s.v.). Outside of Egypt, we have a close substantive parallel in Plutarch’s periphrastic version, see n565 above. There is a similarity in the views of Hatres and Plutarch with respect to the illiberality of being “under contract” (see below), but of course there is nothing of Plutarch’s elitist priggishness in Hatres.

718 Cf. P. Fay. 91 (Euhemeria, 99). Ekleipein is a standard term for abandonment by lessees; see Preisigke, Wörterbuch, s.v.
this, though, we see that Hatres had normative expectations not inscribed in the contract that were similarly disappointed. Thus he appears to have held Soueris accountable for what we might call a “good faith effort” to consider what was required of her under the contract. She, however, “took thought on things alien” to the contract, *phronēsasa allotria*.

*Allotria* here is not merely “other things,” but specifically things foreign, and so improper with respect to what is rightly one’s own, in this case her obligations under the contract. This phrase appears four other times, three times in connection with marriage, *P.Oxy*. II 282 (Oxyrhynchos, 29-37), *P.Bon*.21 (unknown, I), *P.Heid*.III 237 (Oxyrhyncha, 29/30), and once with regard to slavery, *P.Turner* 41 (Oxyrhynchos, 249/250). The first three constitute a unified group, all being petitions in which a complaint is lodged against a faithless spouse. *P.Oxy*. II 282 is the most complete and so best able to shed some light on what Hatres may have meant by this intriguing phrase:

4 Α[λε]ξάνδρωι στρατηγῷ  
παρὰ Τρύφωνος τοῦ Διο-
νυσίου τῶν ἀτ’ Ὁξυρῦγ-
[χ]ων π[ὸ]λεως. συνεβιό-
[σα] Δημ[η]τρο[ῦτι Ηρακλέ]-
δου, κα[ὶ] ἱ[γ]ὼ μὲν οὖν ἐ-
πεχοριγήσα ταύτῃ τὰ ἐ-
ζήσι καὶ ὑπὲρ δύναμιν.

8 ἢ δὲ ἀλλότρια φρονήσα-
σα τῆς κοινῆς συμβιω-
[σεως] κατὰ πέρ[α]ς ἐξῆ-

719 Kiessling, *Wörterbuch*, s.v. Cf. *BGU* II 531 (n367 above), *P.Dubl*.15 (p. 326f.), *P.Oxy*. VI 929 (Oxyrhynchos, late II-III), and esp. *PSI* XV 1554 (Oxyrhynchos, III), a letter in which the writer reports the response of a mutual acquaintance to one of the present recipient’s letters: ἄρκει, ἔαν μὴ σοι ἐνοχλῇ | ἵππει τούτοις: τόῦτο γὰρ ἀλλότριον ἐστιν. (“It’s enough for me if he doesn’t bother you about this matter, for its someone else’s (problem)”; cf. the suggestions of A. Papathomas, *ZPE* 172 [2010]: 211).
To Alexander, stratēgos, from Tryphon son of Dionysios of Oxyrhynchos city.

I married Demetrous daughter of Herakleides, and I for my part furnished her with the expected things, even beyond my means. She, however, taking thought of things foreign to our common life together finally left, and they carried off our property, a list of which is appended below. Therefore I ask you to have her led before you in order that she may receive what she deserves and return our property. I do and will retain my other (rights) with regard to the other matters I have with her. Farewell.

This petition is part of a fairly substantial archive of 43 documents relating to the family of Tryphon, a weaver from first-century Oxyrhynchos. Through this archive we know that

Tryphon was married twice, the first time to this Demetrous, who re-appears in a second petition accused of attacking Tryphon’s second wife Saraeus, who was pregnant at the time (SB X 10239). From P.Oxy. II 267, a loan contract, we learn that this second marriage to Saraeus was a so-called “unwritten marriage,” a term that has been a source of debate for most of the twentieth century. Although the meaning and implications of “unwritten marriage” are still not completely clear, the communis opinio now understands this loan contract to have

(Papyrus continues with the list of stolen items, which breaks off.)

720 I see no reason to interpret the first person plural in this petition as standing for the first person singular as many have done. The contrast of persons to me seems marked, even if potentially unintentional (cf. the revealing third plural in 12), with Tryphon still thinking in terms of their κοινὴ συμβίωσις.
served as a proxy for a formal wedding contract by virtue of the inclusion of terms specific to married life. 721 Recent scholarship on Oxyrhynchite marriages in the first century further suggests that Tryphon’s marriage-via-loan was in no way exceptional or the product of a new wariness after the debacle of his marriage to Demetrous (i.e., that he, “once bitten, twice shy,” entered into his second marriage as an unwritten one with a loan in order to have more flexibility, treating it as a “trial marriage” or “marriage lite”). 722

In the case of his first wife, however, we have no explicit indication of the sort of marriage Tryphon had, and nothing conclusive can be made of the phrase τὰ ἔξης in the petition above: his obligations to Demetrous might have “followed” on specific contractual obligations set out in a marriage contract or merely on those to which he had agreed in an “unwritten” marriage like his second. 723 Tryphon’s silence as to any contract here might suggest that there was none, but more significant for the present discussion is his assertion that he had lived up to the obligations of the institution of marriage itself, koine symbiōsis, not measuring his obligations by the terms of a written marriage contract. 724 Unfortunately, his

721 See Yiftach-Firanko 2003: 81-104 for the debate over “unwritten” and “written” marriage, and pp. 91-94 for a discussion of P.Oxy.II 267.


723 Compare P.Tebt. I 51.5-11 (113 BCE, Kerkeosiris), a petition to Menches the kōmogrammateus from one Petechon, a basilikos geōrgos: συνόντος μου [...], θωνει [...], τοι των ἀυτής [...], κατὰ συγγραφήνα [...]. Ἐγινεπταν τροφίτιν καὶ [...], χροήγγων πάντα [...], κατὰ δύναμιν τῶν [...], ἐπαρχόντων [...]. (“As I am living with [...]thonis, daughter of [...], from the same village in accordance with an Egyptian alimentary contract, and as I am providing her with everything that follows according to the ability of my resources [...]”) and P.Lond.III 1164 D; P.Iand. VII 145.9, P.Col. VIII 227, where the phrase refers back to contractual obligations, though not to those set out in marriage contracts.

724 Cf. Wolff 1939: 67. Tryphon’s claim that he provided for her καὶ υπὲρ δύναμιν echoes some marriage contract language, cf., e.g., P.Oxy. XII 1473.11: ὅ δὲ γαμῷ καὶ ἐπιχορηγεῖτο τῇ γυναικὶ τὰ δέουσα κατὰ δύναμιν [Oxyrhynchos, 201]). Such language, of course, was merely the inscription of a norm in a legal document, cf. P.Tebt.
good faith attempt to abide by his marital obligations was reciprocated by a mind that wandered “outside” the bounds of their “common life together.” Demetrous, on the other hand, no doubt “carried off” what she had either loaned Tryphon (cf. the arrangements in P.Oxy. II.267) or what amounted to her dowry. Hatres apparently saw Soueris in a similar light, her mind as wandering improperly to things that were outside her moral and legal obligation to respect the terms of her contract, things which were, after a fashion, “none of her business,” while Soueris, like Demetrous, took what she likely thought of as “hers.”

The one non-marriage attestation of this phrase is further revealing. In P.Turner 41, Aur. Sarapias, a woman of high status, complains to the stratēgos of the Oxyrhynchite nome that a slave named Sarapion, whom she had inherited from her father, had run away. She had entrusted him with her estate, “thinking that he could do no wrong” because of his service to

I 51 (supra n723, particularly relevant given the Egyptian elements present in Tryphon’s loan-cum-marriage contract, P.Oxy. II 267, on which, see Gagos, Koenen, McNellen 1992). In none of the three petitions with the phrase phronein allotria relating to marriage is there any clear indication of a contract. In other words, this may be the rhetorical tack one took if one had no contract: one sues in such cases on the basis of the institution of marriage, not contract.

Incidentally, this was a charge that either partner could make: in P.Bon. 21, it is a woman who accuses her husband of thinking outside of marriage, and claims that he has not lived up to his obligation to support her.

There are, it would seem, two ways to construe allotria in this phrase in P.Ryl. II 128: allotria could either be used substantively and absolutely, i.e. “other people’s things,” (cf. PSI XV 1554 in n719), or there could be a suppressed genitive on analogy with the likes of P.Oxy. II 282, P.Heid.III 237, and P.Turner 41 (e.g., της παραμονῆς, cf. line 20). In any case, it is interesting that this phrase appears in connection with marriage and paramonē. For women, the latter sometimes resembled marriage, as it could involve their residing with their “employers” without well-defined responsibilities. For a case in which the service was perhaps expected to end in marriage see, e.g. P.Polit.Iud.7 (Herakleopolis, 134 BCE). It seems unlikely that this was the case in P.Ryl. II 128 since there was a primary job Soueris was expected to perform. We should therefore see the phrase as describing the negative of an ideal relationship to the idea of obligation, whether normative, like marriage, or legal, as in a paramonē contract.
her father. But this trust was misplaced, since he, “suborned somehow by others, took thought of things alien to the esteem and daily upkeep which I afforded him, and ran away on the sly, having stolen some items of ours,” which Sarapias goes on to enumerate before requesting that he (and perhaps those who suborned him) be pursued. The same basic elements recur in all these instances: trust on the basis of an obligation, whether contractual, marital, or familial (in the ancient sense), which, from the perspective of the “victims,” was exploited. Each of these institutions, contract, marriage, and slavery, thus afforded an opportunity for, and a vulnerability to, trust, as each of the victims complains of “theft” from right under their noses. The other recurring elements are “theft” and freedom. Far from “thinking about things foreign” to them, all of the unrepresented people on the other side of these disputes were thinking precisely on what was “theirs,” and asserting their ownership by removing it when they left.

The question of freedom is more complex. Soueris and Sarapion, of course, had very little juridical freedom. Soueris, at least, was free, but a woman and likely a minor, and therefore almost certainly not party to the very contract she was “under.” And yet, both Soueris and Sarapion exercised a sort of effective freedom in their respective acts of anachōrēsis. Interestingly, each apparently had to be “suborned” before fleeing. The words

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727 8-10: καὶ τοῦτων νομίσασα μηδὲν φαύλον τι δια- | πρά[ξ]ασθαι τῷ εἶναι μου πατρικὸν καὶ πε- | πιστεύσαι ὑπ´ ἐμοῦ τὰ ἡμέτερα.

728 10-15: οὗτος | οὐκ οἶδ᾽ ὡς ἐξ ἐπιτριβῆς τινῶν ἀλλό- | τρια φορνήσας τῆς παρεχομένης αὐτῷ | ὑπ´ ἐμοῦ τειμῆς καὶ χορηγίας τῶν ἀναγ- | καίως πρὸς διαίταν ψεφλόμενος τίνα | ἀπὸ τῶν ἡμετέρων ...

729 Cf. Ratzan forthcoming a for a study of contracts that dispose of the labor or bodies of third parties in the power of one of the principals.
used for this act of inducement are interesting. In the case of Sarapion, he was “incited” (11: ἐξ ἐπιτρεπῆς τινων) to forget what was properly his (i.e., the bond of gratitude he should have felt for his master’s esteem and care). Soueris, on the other hand, was “beguiled,” or had “her soul led away” (12-13: ψυχαγωγηθεῖσσα), by her father. In Ptolemaic and Roman papyri, this latter verb is reserved for the persuasion of slaves or captives to run away (cf. P.Hamb. I 91 [Herakleopolite, 167 BCE; see Clarysse 2002 for re-edition] and SB XXIV 16257 [Soknopaiou Nesos, 123]). It at once marks out Soueris as dependent, her paramonal status as hyposyngraphos approaching the subordination of slavery, as well as essentially free, for she is capable of, or susceptible to, persuasion. At root, however, psychagōgia was a magical notion of persuasion: these people, who are under the legal and social power of others, are thought of as having been robbed of their agency, paradoxically, in their ultimate exercise of free will. Indeed, their flight is presented as evidence of their having been compelled, as if by magic, to forget themselves and their station. This rhetoric argues for a depressed notion of the freedom of parties “under contract,” and it is surely significant that the one attestation we have refers to Soueris, who was not even properly a party to the contract. Even so, at the center of the claim that her will was no longer hers there remains the grudging recognition of a will.

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730 Cf. note on ἐπιτρεπῆ ad loc. in ed. pr.

In this connection, we could compare *hyposyngraphos*, the rarest of words, to one of its more common relatives, ὑπουργός. The concept embodied in hypourgos is one of “working under,” hence “serving” or “assisting.” In the papyri we thus find it in accounts of wages paid out to day-laborers called in to “assist” in various projects (ἐργάται ὑπουργοί vel sim.). Most labor of this sort was likely paid on a per diem basis not set by contract, although this is not necessarily the case, as we do have contracts that include provisions to render ὑπουργία. Indeed, it may be that some of the workers listed in our accounts had contracts, as, for example, in the case of P.Oxy. III 498 (Oxyrhynchos, II), a labor contract in which some stone-cutters promise to provide “assistance” to certain builders on a contingency basis for a set daily wage. In these attestations, however, one can detect no particular ethical content associated with being hypourgos akin to what we have seen invested in the idea of being hyposyngraphos. Partly this is because the relationship expressed is subjective, not objective, i.e., hypourgoi are “under-workers” not “under work,” while Soueris was “under contract,” not a “subcontractor.” The word therefore expresses a sort of social hierarchy, but not a particular relationship to the work itself. Yet is also differs because being under contract, or the obligation of a notionally free will, was an inherently moral disposition, as the previous chapters have shown.

732 Cf. LSJ s.v.

733 E.g., BGU III 699, O.Bodl. II 1755, O.Stras. 704-5, SB VI 9409 (Theadelphia, 252); cf. P.Oxy. XII 1414 (Oxyrhynchos, 271/272), a copy of senate minutes in which some linen weavers seek to modify their remuneration in part because of a spike in the wages they paid to their hypourgoi.

734 E.g., BGU I 197 (Arsinoite, 17), P.Athen.14 (Philadelphia, 22), P.Mich.II 121 Recto III.5 (Tebtynis, 42), P.Gen.I 34 (Arsinoite, 156), P.Oxy.III 498 (Oxyrhynchos, II), and P.Col.VIII 232 (Oxyrhynchos, III).
We get our most revealing glimpse of the difference between the two words from an unlikely source, a portion of a magical love charm in which the male caster conjures a

*nekydaimōn* thus:

καὶ μὴ ἔάσῃς τὴν δείνα ἄλλου ἀνδρός πείραν λαβεῖν πρὸς ἡδονήν, μηδὲ ἰδίου ἄνδρός, εἰ μὴ ἔμοι μόνοι, τοῦ δείνα, ἀλλ’ ἐλκε τὴν δείνα, τῶν τριχῶν, τῶν σπλάγχνων, τῆς ψυχῆς πρὸς ἐμέ, τὸν δείνα, πάση ἡρα τοῦ αἰώνος, νυκτὸς καὶ ἡμέρας, μέχρι οὔ ἑλθῃ πρὸς ἐμέ, τὸν δείνα, καὶ ἀχώριστος μου μείνῃ ἢ δείνα. Ποίησον, κατάδησον εἰς τὸν ἄρα κρόνον τῆς ζωῆς μου καὶ συνανάγκασον τὴν δείνα ὑπουργὸν εἰναί μοι, τῷ δείνα, καὶ μὴ ἀποσκιρτάτω ἀπ’ ἐμοῦ ὡρανμίαν τοῦ αἰώνος. (*PGM IV.* 375-84)

And do not allow her [the caster’s female love-interest] to accept for pleasure the attempt of another man, not even that of her own husband, just that of mine, A; but drag her, B, by the hair, by the heart, by the soul, by the soul, by the soul, to me, A, at every hour of life, night and day, until she comes to me, A, and may she, B, remain inseparable from me. Do this, bind B for all the time of my life and help force her, B, to be *serviceable* to me, A, and let her not frolic away from me for even one hour of her life.  

The point of the spell, of course, is to bind the woman so tightly—moving from a grip on the body to one on the soul, the well of intention—in order to remove her freedom of action altogether, making her wholly into an instrument of the caster’s will and pleasure. In this way the victim will become perfectly “serviceable” or “subservient.” A person who is *ideally* *hypourgos* thus takes no thought as to how he or she might best be helpful or under what obligation he or she lies, but is merely the thoughtless extension of the person who is “over”

735 Trans. slightly adapted from Betz ed. 1986.

736 Cf. 353ff. On the use of ψυχῆ here see Betz ed. 1986: 339 (slang for female genitalia), cf. Faraone 1999: 50n48, 58n81, who leaves the word untranslated as he finds both meanings possible or perhaps intentional. Even if the slang meaning is ascendant, the imagery of total mastery is in no way impaired. In his discussion, Faraone never explicitly addresses what seems to be a problematic or contradictory conception of human autonomy in these spells, cf., e.g., the unlikely role of consent: 65-66, 80.
him or her. Being “under contract,” on the other hand, entails ethical and normative responsibilities precisely because one was, as we saw in the case of Soueris, still free to think outside the bounds of the contract, and so to disrespect the ties that should bind one to the particular ends to which one has agreed.

Lastly, although Hatres does not specifically describe Harsuthmis and his wife as *hyposyngraphoi*, they are clearly obligated in a wider sense as a party “under contract” with respect to the debt established by the contract, as we may see from Hatres’ claim that Harsuthmis μὴ στο- | χασαμένος ὡν ὅφειλε μοι | σὺν τῇ γυναικί αὐτοῦ | κατὰ παραμονήν. There is no such thing as a “stochazomai-clause.” The verb *stochazomai* and its negative *astochazomai* appear with regularity in letters and petitions in which the author wishes to comment on whether or not someone’s behavior has “measured up.” Typically, the comment is a complaint that someone has failed to “aim for what is right” (ἀστοχήσαντες τοῦ καλῶς ἔχοντος vel sim.).737 The often implicit standard applied is thus some basic popular morality, though it can sometimes be a particular or express standard, like “the sacred” or earthly authority.738 In Hatres’ case, the moral feeling he alludes to is the sense of obligation that should come with taking someone else’s money for a declared purpose, in this case in return for Soueris’s labor as per the terms of the contract, *kata paramonēn*. Harsuthmis’s “not respecting his debt” was therefore not an act whereby he breached an explicit provision, or engaged in one of those negative actions specifically proscribed as

737 E.g., *UPZ* I 6, 12, 16; *P.Tebt.* III.1 798; cf. *P.Ross. Georg.* III 2.

constituting breach; rather, it was his underlying attitude that precipitated his act of breach in “deluding” (psychayōgein) his daughter into abandoning her work. This attitude was one that reflected a disturbing disregard for a fundamental principle of justice on which this, and most other contracts, relied: to fail to recognize indebtedness in this mindset was tantamount to not recognizing the archetype of obligation. It was, in other words, an act of agnōmosynē.

As we saw in Chapter 4, a reputation for agnōmosynē often forestalled the possibility of entering into contractual relations, for an agnōmōn does not have the right relationship of respect vis-à-vis the other party. Over the course of the Roman period, this conception shifted from the person to the object, in some ways mirroring the shift in the notion of breach from the early intransitive days of parasyngraphein and kakotechnein, which ascribed motive to the parties, to parabainein, which focused on the transgression of the contract itself, though with a heavy, if implicit, ethical condemnation for the party in breach. The idea of hyposygraphos participates in this shift to a relationship with the contract itself, a movement reflected in the accretion of ethical content in increasingly subjective contracts, accompanied by a more defined notion of abstract obligation.

We also saw that it was agnōmosynē that ultimately drove parties to the authorities (Sec. 4.8). A correlative to hyposygraphos is found in the assertion of breach before the authorities that the other party has “turned its back” on the contract. For example, in P.Fay. 11 (115 BCE) we find:

βασιλίσσηι [ι Κλεοπάτραι και βασιλεῖ Πτολεμαιώι θεοίς]
Φιλομήτορ [σι Σωτῆ]ρσι χαίρειν]
Δημήτριος - ca. 16 -
κάτοικος [τῶν πε]ξῶν τῶν κ[ατο]ικούντων [ἐν Εὐ]-
ημερία τ[ῆς Θεμίσ]του μερίδος. [ἐν] τῷ Χοίαχ
υπη τοῦ γοριονος Ἐδάνεισα [Θεοτ]είμω Φιλέου
Πέρσας τῆς ἐπιγονος τῶν κατοικοῦντων ἐν
8 Θεαδελφεῖ[α] τῆς αὐτής μερίδος τοῦ Ἀρσινόιτου
πυρῶν ἄρ(τάβασ) [ζ ν], καὶ ἐν τῷ Μεχείρ μην τοῦ αὑ-
τούτους ἄ[λ]ας ἄρ(τάβασ) με, ἦμοιοι δὲ καὶ ἐν τῷ
Φαιορί [μην] τοῦ να (ἐτους) ἄλλας ἄρ(τάβασ) κε, τὰς δὲ
πάσας (πυρῶν) ἄρ(τάβασ) ος ζ, κατὰ συγγραφάς τρῖς, διὰ
μὲν μίας ζ., δι’ ἐτέρας με, δι’ ἕως ἐδη-
λῶθη ἄ[λ]ατε καὶ ποησαθαι μοι αὐτόν
τὴν ἀπόδοσιν τῶν προκειμένων ἄρ(ταβών) ος ζ ἐν τοῖς διὰ τῶν
συμβολαῖων[ν] ὀρισθείσιν χρόνοις ἢ ἐκτείσαι
μοι ἐκάστης [τῆς] ἄρ(τάβασ) χαλκοῦ (δραχμᾶς) Γ. τούτων δὲ ὄντων
καὶ τῶν τῆς ἀποδόσεως χρόνων διελημ-
θότων καὶ ἄλλων ἐπιγεγονότων πλεόνων
20 ὁ ἐνκαλούµενος πλεονάκις ἀποτηµένος
[ο]ὐχ ὑποµένει ἐκουσίως ἀποδίδοναι, κατα-
νοτιζόμενος τὸν κ[α]λῶς ἔχουν καὶ τὰς συναλ-
λάξεις. [δ]ιὸ τήν ἐπ’ ὑμᾶ[σ] καταφυγὴν πεπο-
θήµενοι δὲ εἶµαι ἀπὸ τοιαύτας μου τὴν ἐνευ-
ζευ ἐπὶ τὸν ἐπὶ τῶν τῶν ἄρτων χρηµατιο-
τὰς, ὡν εἰσα[γωγεύσ] ἐνοµενοι, ὅπως δια-
λέξαντες αὐτὴν εἰς κα[τά]στασιν καὶ ἀνα-
κελεύσανοι τοῦ Θέονα διὰ Δηµη-
τρίου λογ[υ]ευτοῦ κρίν[ω]σιν πραξθηµαί μοι
αὐτὸν τῇ ν ὑρισµέν[η]ν τειµὴν τῆς
ἂρ(τάβης) υγ( ) Γ (δραχµᾶς), τὰ συναγόµενα χαλ-
κοῦ (τάλαντα) λη (δραχµᾶς) Δφ, ἀκολούθως ταῖς
συγγραφαῖσ. τούτων δὲ γενοµένων
ἐξοµαι βεβοθηµενος
εὔτυχείτε.

To Queen Kleopatra and King Ptolemy, gods Philometores Soteres, greeting
from Demetrios son of ..., settler of the foot-soldiers settled at Euhemeria in
the Themistos division (of the Arsinoite nome). In the month of Choiak of the
50th year I lent to Theotimos son of Phileas, Persian of the Epigone, one of the
settlers at Theadelphia of the same division of the Arsinoite (nome), [7.5] art.
of wheat, and in the month of Mecheir of the same year another 45 art., and
likewise in the month of Phaophi of the 51st year another 25 art., making in all
77.5 art. of wheat, in accordance with three syngraphai, the first for 7.5, the
second for 45, whereby it was provided among other stipulations that he should
make repayment to me of the aforesaid 77.5 art. within the periods fixed by the
contracts (symbolaia) or pay me for each artaba 3000 drachmai of copper.
Though this was the case, and though the periods fixed for repayment have
passed, and still further periods elapsed, the accused, despite frequent demands
made of him, refuses to pay voluntarily, turning his back on what is right and the agreements (synallaxeis). I have therefore taken refuge with you and entreat you to send my petition to the local chēmatistai, whose president is Dositheus, that they may select it for trial, and having summoned Theon [i.e., Theotimos] through Demetrios the collector to appear, that they may give judgment for him to be made to pay me the price fixed for each artaba … 3000 dr., making a total of 38 talents, 4500 drachmai of copper, in accordance with the syngraphai. If these things come about, I shall have obtained redress.

Farewell. 739

The substance of the complaint is clear: Theotimos “refuses” to repay the loans “voluntarily,” thus effectively forcing Demetrios to “take refuge” with the authorities in order to defend his rights under the contracts. In so refusing, Theotimos is said to have “turned his back on what is right and the contracts.” We of course have no idea why Theotimos “refused” to pay, nor for that matter why Demetrios kept loaning him wheat over the course of nearly a year (the first loan being in December-January of 121-120 BCE and the last in October 120) and waited at least two, likely three, years before turning to the authorities. 740 Whatever the particular circumstances, breach here is couched in terms of freedom and volition, or rather abuses of freedom and perversity of will: his actions are characterized as obstinate and contemptuous repudiation.

739 Trans. adapted from ed. pr.

740 If we imagine the last loan as made for the 120/119 sowing season, it was likely due sometime in Pauni or Epeiph (June or July) 119, or it might possibly have been made payable a year later in Oct. 119. Since the petition clearly dates to sometime shortly after the death of Euergetes II (Physkon), it was probably submitted sometime shortly after the third anniversary of the original due date.
All of the attestations of *katanōtizein* appear in the context of Ptolemaic disputes.\(^{741}\) In *SB VI* 9108 (Aphroditopolite, 173-169 BCE), a petition by a royal farmer to the *archisōmatophylax* Noumenis, the plaintiff protests that a woman from whom he had bought a piece of property has refused to register the contract of sale, ratifying the transfer. She therefore has “turned her back on what is right” (12-15: ἡ προγεγραμμένη | οὐχ ὑπομένει[ε]! κατα- | γράψαι μοι κατανωτζο- | μένη τὸ καλῶς ἔχον). A few decades later we have another petition in *P.Tebt. III.2* 952 (Tebtynis, ca. 145/144 BCE), this time from a certain Apollonios to Antipatros the superintendent of the *syntaxis*. Apollonios claims that he had gotten a judgment against his debtor Zopyros and served him notice, whereupon Zopyros promised to repay (21-22: ταξαμένου | ἀποδώσει[υ] μοι).\(^{742}\) But then he reneged, “having turned his back, he has not repaid the wheat right away (23-5: κατα- | νωτιζόμενος οὐ[κ ή]θέως τὸν πυ(ρ)ο | ἀποδέδωκε). Contracting meant making promises that one was obliged to keep, part of the general moral code, τὸ καλῶς ἔχον, as distinguished from the “rights” that are established by law or contract (τὰ δίκαια or τὰ νόμιμα). The same entities that were expected to live up to “the right” in keeping their contracts were of course capable of devising evil against them (*kakotechnia*), and even freely repudiating both what is right and the institution of contract (*P.Fay. 11.21-23*).\(^{743}\) And it is the institution to which Demetrios, or

\(^{741}\) I have not been able to determine the precise manner in which it is used in *BGU VI* 1296, a private letter of unknown provenance from the turn of the third century BCE.

\(^{742}\) The petition says that “Meleager” promised, but this is likely a mistake for Zopyros, with the scribe substituting the patronymic for the principal (cf. *P.Polit.Iud. 9* above, pp. 338ff.).

\(^{743}\) Cf. the phrase *hekontes syn graphesthai*, pp. 303ff. above.
more likely his scribe, is referring in his declaration of Theotimos’s moral bankruptcy, opting for the word *synallaxis* in this instance instead of *syngraphē* or *symbolaion*. The other two words for contract were more concrete, often used of the documents themselves, whereas *synallaxis* was never so used.⁷⁴⁴ Here, paired with *to kalōs echon*, contract is invoked in its essence, the binding of mutual obligation. In this sense, it is contract as such that is held up as the object of Theotimos’s supposed contempt, and not Demetrios personally.

The fact that Demetrios could conceive of Theotimos as spurning a contract instead of merely the party, and expected the authorities to find this compelling, is significant. As we saw at the end of Chapter 4, the moral vocabulary of contracting was part and parcel of the claim to be entitled to the legal enforcement of contracts. The point of departure for a contract suit was often the injustice born of *agnōmosynē*, or the turning of one’s back on what was right, a repudiation of the other party or the debt one owed or both. The fundamental morality and economic purpose of contract both demanded that the other party be free enough to abide “under contract,” even at the risk that she might “turn her back on it.”

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⁷⁴⁴ Cf. pp. 336f.
APPENDIX II: A CONTRACT CASE FROM PTOLEMAIC EGYPT

As seen in Dem. 56 (Sec. 5.2), breach of contract could suggest a dangerously tyrannical character in the ideological and political context of democratic Athens, an act that could be portrayed as characteristic of the sort of man who would in other circumstances presume to usurp the legislative authority of the dēmos itself. It is instructive to compare this to the rhetoric employed in *P.Tor.Amen.* 6-8 (Thebes, 119-116 BCE), a series of trial documents about a mutual agreement between two *paraschitai*, or embalmers, Amenothes and Peteneophotes (on this contract, see Sec. 5.4.2, pp. 300ff.). The particulars of the division and dispute, i.e. who had what rights to which clients and who poached on whose territory, are irrelevant here, since we are interested in the way in which the two parties characterize breach.

*P.Tor.Amen.* 6 contains a judgment in favor of Amenothes from November of 119 against Peteneophotes for breach of the *koinē homologia* they had drafted in July of the same year. Amenothes had accused Peteneophotes of collecting certain fees contrary to the agreement, pretending to rights he did not have under the division. The tribunal, presided over by Ptolemaios, one of the “King’s friends” and *epistatēs* of the Perithebas, had the contract read out and upon determining that Peteneophotes had no cogent defense, concurred with Amenothes, commanding Peteneophotes to “not attempt to do anything similar (in the future), but rather to abide by the terms to which they had mutually and willingly agreed” (17-18: μηθὲν ἔτ[ι] τοιοῦτο ἐπιχειρεῖν διαπράσσεσθαι, | ἐμμένειν δ’ ἐν οἷς ἐκόν[τες] πρὸς ἑαυτοὺς
Sometime later, Petenephotes struck back, charging that Amenothes had breached the contract by collecting corpses to which he had no right, asserting that “the accused, thinking himself altogether superior to what is right (and) having transgressed the contents of the agreement ...” (*P.Tor.Amen.* 7, sometime between 119-117, lines 16-18: ὅ δ’ ἐγκαλούμενος παραπέρτερος | ἡγησάμενος τοῦ καλῶς ἔχοντος | παραβὰς τά τε τῆς ὀμολογίας). While we may be certain that the contract itself described breach with the verb *parasyngraphein*, the charges of breach in both *P.Tor.Amen.* 6 and 7 are made with *parabainein* (6.14, 7.18), showing the extent to which the popular conception of breach was already on the point of overtaking the strictly legal language of breach. Indeed, the latent moral valence of transgression is of a piece with the subsequent highly charged and morally explicit petition of Petenephotes, *P.Tor.Amen.* 8.

In this last petition (at least in the extant dossier), filed sometime in the autumn of 116, Petenephotes submitted a finely detailed complaint against Petenephotes. The petition begins by reprising the contents of the contract in what appears to be a *verbatim* copy (5-39), before moving on to a litany of offenses (40-84). The second part may itself be divided into halves, with the first containing a catalog of specific instances of breach (40-64), and the second a broadside against Amenothes for one instance in particular, the body-snatching of Herieus, an eminent personage to whom Petenephotes lay claim under the contract (65-84). These last 20 lines are worth quoting in full:

ο Αμενωθης πολλωι μαλλον επερρω-

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745 See *P.Tor.Amen.*, p. 64 note e for the apparently reflexive use of ἡγεισθαι here.
Although throughout this dispute we see the recurrence of many of the themes discussed above, in particular the repeated appeal to “what is right” (τὸ καλῶς ἔχων), what is particularly striking about this passage is the political rhetoric ranged against Amenothes. The “violent contest” in which he is engaged with Petenephotes is evidence of a character transported by autokrasia and apostasis. This version of authadia (cf. ὑπὲρ ἑαυτὸν ἐπίτιμα | φρονῶν) culminates in the vision of Amenothes arrogating to himself such exousia—a word
that here refers to the resources he now commands after having cared for Herieus, but whose overtones of power seem unescapable—that he feels utterly unfettered by the rules of morality, the contract, and even the king. Pestman has suggested that the hapax ἄβασιλευσία was meant as a comment on Amenothes’ alleged disregard for the Fiskalmult, payable to the king (cf. 8.17). Wilcken, on the other hand, read it in a political sense, understanding Petenephotes to mean that “wenn kein König ist, kann jeder das Recht beugen; Amenothes beträgt sich, als wenn es keinen König, den Schützer des Rechts, gäbe” (UPZ II 196, p. 212). Pestman is right to connect the particular disdain for the Fiskalmul to the charge of abasileusia, as one follows on the other in short order, but surely wrong to limit the resonance of the charge to just the penalty. It is, rather, the peak of the crescendo that started some 20 lines earlier, the final unmasking of an autokrasia that recognizes no power above itself, not even that of the king’s justice in his own court.

If we compare this to the rhetoric in Dem. 56, we discover an interesting set of similarities and differences. In both there is a political discourse of contract that links respect for a private ordering to respect for the public order generally. The difference, of course, is that the ideology of order is radically different in each case, democratic in the one, royal in the other. Whereas in Demosthenes’ Athens the ultimate charge was harboring tyrannical aspirations, here in Ptolemaic Egypt it is the revelation of revolutionary tendencies. Again, there is a discourse of freedom in both situations. In Dem. 56, the emphasis is on the freedom of parties to agree on terms, and for the need to hold them accountable to that freedom, and in particular the plaintiff to the penalties to which he had freely agreed. Though the judges in P.Tor.Amen. 6.18 command Petenephotes to abide by the contract he freely arranged with
Amenothes, there is no such emphasis on freedom of contract here as there is in Dem. 56. As Pestman notes, the judges as merely quoting the contract back to Petenephotes (P.Tor.Amen., p. 59; cf. 8.38), and there is no special value attached to ἐκόντες there. Instead, the argument of freedom in these petitions is entirely about transgressive and anarchic freedom, not the freedom of contract and responsibility. The charge of abasileusia is thus a claim that Amenothes is too free for a monarchy, ruled by nothing other than his own interest.

746 Cf. 303ff. on the phrase ἕκοντες σύγγραψαντο in Ptolemaic contracts.
## APPENDIX III: Attestations of Parasyngraphein in Papyri until 300 CE

<table>
<thead>
<tr>
<th>Document</th>
<th>Date</th>
<th>Prov.</th>
<th>Doc. Type</th>
<th>Contract</th>
<th>Transaction</th>
<th>Form</th>
<th>Parabainein?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 P.Enteux</td>
<td>59</td>
<td>222 BCE Magdola</td>
<td>petition</td>
<td>protocol?</td>
<td>lease</td>
<td>pres. inf.</td>
<td></td>
</tr>
<tr>
<td>2 P.Petr.</td>
<td>II</td>
<td>47</td>
<td>contract</td>
<td>homology</td>
<td>loan</td>
<td>aor. subj.</td>
<td></td>
</tr>
<tr>
<td>3 P.Mich.</td>
<td>III</td>
<td>182</td>
<td>contract</td>
<td>homology</td>
<td>3-way payment scheme covering lease and mortgage</td>
<td>pres. part.</td>
<td></td>
</tr>
<tr>
<td>4 SB</td>
<td>XIV</td>
<td>11969</td>
<td>170-116 Tamauis (Arsinoite)</td>
<td>contract</td>
<td>?</td>
<td>?</td>
<td>?</td>
</tr>
<tr>
<td>5 SB</td>
<td>III</td>
<td>7188</td>
<td>154 Arsinoite</td>
<td>contract</td>
<td>protocol</td>
<td>lease</td>
<td>pres. imp. and pres. subj.</td>
</tr>
<tr>
<td>6 P.Koeln</td>
<td>IX</td>
<td>366</td>
<td>132 Arsinoite</td>
<td>contract</td>
<td>homology</td>
<td>loan cancellation</td>
<td>pres. part.</td>
</tr>
<tr>
<td>7 P.Tor.Amen</td>
<td>6</td>
<td>119 Thebes</td>
<td>trial transcript</td>
<td>homology</td>
<td>agreement</td>
<td>pres. part.</td>
<td>Y</td>
</tr>
<tr>
<td>8 P.Tor.Amen</td>
<td>7</td>
<td>119-117 Thebes</td>
<td>petition</td>
<td>homology</td>
<td>agreement</td>
<td>pres. part.</td>
<td>Y</td>
</tr>
<tr>
<td>9 P.Tor.Amen</td>
<td>8</td>
<td>116 Thebes</td>
<td>petition</td>
<td>homology</td>
<td>agreement</td>
<td>pres. inf., pres. part., and aor. subj.</td>
<td></td>
</tr>
<tr>
<td>10 P.Lond</td>
<td>III</td>
<td>880</td>
<td>113 Pathyris</td>
<td>contract</td>
<td>homology</td>
<td>division</td>
<td>pres. part.</td>
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<tr>
<td>11 P.Tebt.</td>
<td>I</td>
<td>105</td>
<td>contract</td>
<td>syggraphē homology</td>
<td>lease</td>
<td>pres. subj.</td>
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<tr>
<td>12</td>
<td><em>P. Tebt.</em></td>
<td>I</td>
<td>106</td>
<td>101</td>
<td>Kerkeosiris</td>
<td>contract</td>
<td>6-witness syggraphē homology lease pres. subj.</td>
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<tr>
<td>13</td>
<td><em>UPZ</em></td>
<td>I</td>
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<td>89</td>
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<td>6-witness syggraphē protocol loan pres. inf.</td>
</tr>
<tr>
<td>14</td>
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<td>VI</td>
<td>8974</td>
<td>100-76</td>
<td>Busiris</td>
<td>contract</td>
<td>6-witness sygographē marriage pres. inf.? (plausibly restored, but could be <em>parabainein</em>)</td>
</tr>
<tr>
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<td><em>BGU</em></td>
<td>VIII</td>
<td>1732</td>
<td>80-30</td>
<td>Herakleopolis</td>
<td>contract</td>
<td>homology cession pres. part.</td>
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<td>VIII</td>
<td>1733</td>
<td>80-30</td>
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<td>VIII</td>
<td>1740</td>
<td>80-30</td>
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<td>homology cession fut. inf. ?</td>
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<td><em>P. Oxy.</em></td>
<td>XLIX</td>
<td>3482</td>
<td>73</td>
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<td>contract</td>
<td>homology cession fut. inf. <em>Y</em></td>
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<td>VIII</td>
<td>1738</td>
<td>72</td>
<td>Herakleopolis</td>
<td>oath</td>
<td>homology cession fut. inf. <em>Y</em></td>
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<tr>
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<td>XX</td>
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<td>VIII</td>
<td>1731</td>
<td>68/67</td>
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<td>1644</td>
<td>63/62</td>
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<td>contract</td>
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<td>X</td>
<td>1098</td>
<td>51</td>
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<td>25</td>
<td><em>C. Pap. Gr.</em></td>
<td>I</td>
<td>3</td>
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<td><em>synchōrēsis</em> wetnursing pres. part. <em>Y</em></td>
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<td>13</td>
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