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# TABLE OF CONTENTS

# THE HEREDITARY RIGHTS OF THE EXTRAMARITAL CHILDREN IN LIGHT OF THE LAW OF PAPYRI*

Maria Nowak

## Introduction

My article aims to present the hereditary situation of extramarital children in Graeco-Roman Egypt, between the first and third centuries AD. I intend to discuss whether the legal status of *apator*, *chrematidzon metros*, etc.[1] was inferior to that of legitimate offspring. First I shall discuss the regulations concerning extramarital children present in jurisprudential sources, specifically the *Gnomon of Idios Logos*; second, I will examine papyri which provide information about the succession of illegitimate offspring.

### *Gnomon of Idios Logos*

One of the most important juridical sources regarding non-formal families and illegitimate children in the legal practice of Graeco-Roman Egypt is the *Gnomon of Idios Logos*,[2] (preserved in *BGU* V 1210, and very fragmentarily in *P. Oxy*. XLII 3014), a second-century document containing either abstracts of imperial *mandata* or a case-book of the proceedings

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1. For the terminology see A. Calderini, Apatores, *Aegyptus* 33, 1953, pp. 358–369; H. C. Youtie, ΑΠΑΤΟΡΕΣ: Law vs. Custom in Roman Egypt, in *Le monde grec* ; *pensée*, *littérature*, *histoire*, *documents* ; *Hommages à Claire Préaux*, J. Bingen, G. Cambier, G. Nachtergael (eds.), Brussels 1975, pp. 723–740; in Latin sources: B. Rawson, *Spurii* and the Roman view of illegitimacy, *Antichthon* 23, 1989, pp. 10–41, pp. 14–15.

2. The text was published as *BGU* V 1210 by W. Schubart in 1919. The edition was followed by the commentary by W. Uxkull-Gyllen (*BGU* V.2). The further editions: Th. Reinach, *Un code fiscal de* l'Égypte romaine: Le Gnomon de l'Idiologue, *NRHD* 43, 1919, pp. 583–636 (Greek text and translation) and *NRHD* 44, 1920, pp. 5–134 (commentary); *Jur. Pap*. 93; *FIRA* I 99 (partly); *Pap. Primer*[4] 54; S. Riccobono, *Gnomon dell'Idios Logos*, Palermo 1950 (Greek text, translation, commentary); J. Mélèze Modrzejewski, Gnomon de ideologue, in *Les lois des Romains*, P. F. Girard, F. Senn (eds.), Napoli 1977, pp. 12–49 (text and translation).

*Inheritance*, *Law and Religions in the Ancient and Mediaeval Worlds*, ed. by B. Caseau and S. R. Huebner (Centre de recherche d'Histoire et Civilisation de Byzance, Monographies 45), Paris 2014.

that took place before the *idios logos*, the official responsible for, among other things, *bona vacantia*, and a judge in succession disputes.[3] The 'prototype' of the *Gnomon* as a manual for the *idios logos* was created before the second century, probably during the reign of Augustus. It contains, among other things, information regarding personal status and the law of succession in Graeco-Roman Egypt. Among these norms, we find direct and indirect references to hereditary rights and *testamenti factio passiva* of children born out of wedlock. The rules concerning such children in the *Gnomon* are not systematized, but they may nonetheless be divided into three groups: children of mixed unions between non-Romans, illegitimate offspring of Romans, and the children of soldiers.

First, in paragraph 11 we are informed of a woman named Krenea, who could not inherit from her children, *BGU* V 1210, l. 44: ια. γυνὴ Κρηνέα τέκνον οὐ κληρ[ο]νομεῖ, '11. Krenea does not inherit from (her) child'. The rule is unclear and perhaps fragmentary; there is no clear suggestion as to whether the *Gnomon* refers to all her children — both legitimate and illegitimate — or only to the latter; and if so, we cannot be certain whether the rule applied to testamentary or intestate succession. The other sources do not supplement our knowledge in this matter. The next paragraph concerns children born of Krenea and a *xenos*, who are entitled to the succession after both of them, *BGU* V 1210, l. 45-46: ιβ. τὰ ἐκ Κρηνέας καὶ ξένου γενόμενα τέκνα τοὺς γονεῖς ἀμφοτέ[ρ]ους κληρονομεῖ, '12. children born of a woman from Kyrene and *xenos* inherit from both parents'. Again the meaning of the quoted passage is not obvious: the rule might express the hereditary privilege granted for the offspring of unions that were not formal marriages on account of the marital prohibition; or, rather, it might indirectly state that the union of these two groups of people living in Egypt could marry and produce legitimate offspring who could inherit from them. If the former interpretation is correct, then this would have been a privilege granted to the children born of informal unions. However, the interpretation of the above passage is not obvious, as the prohibition of marrying a person belonging to a different social group was not a rule; mixed marriages were casuistically regulated. For instance, evidence from papyri proves it is possible that a citizen of Ptolemais could marry an foreign woman and that, moreover, such a marriage would grant a wife citizenship;[4] a man from Naukratis, on the other hand, was not allowed to marry an Egyptian (*W. Chr.* 27 [Antinoopolis, after AD 161]). Marriages between Greeks and Jews were not numerous, but they did happen (*P. Ent.* 23 [Magdola, 218 B.C.]).[5]

Another paragraph referring to the hereditary rights of illegitimate children is the one which restricts *testament factio passiva* of Alexandrian wives; they could inherit via testament only one third of their husbands property, or as much as their common children (*BGU* V 1210, l. 29-32). The conclusion to be drawn from this passage is that only legitimate children of Alexandrians were protected in the succession after their fathers, for the advantage of the illegitimate ones is not even mentioned.

3. On *idios logos*, see R. Swarney, *The Ptolemaic and Roman idios logos*, Toronto 1970.

4. J. Mélèze Modrzejewski, Dryton le crétois et sa famille ou les mariages mixtes dans l'Égypte hellénistique, in H. van Effenterre (ed.), *Aux origines de l'Hellénisme. La Crète et la Grèce. Hommage à Henri van Effenterre*, présenté par le Centre G. Glotz, Paris 1984, pp. 353–377.

5. J. Mélèze Modrzejewski, *Le droit grec après Alexandre*, Paris 2012, pp. 43–45; C. Fischer-Bovet, Ethnic identity and status: comparing Ptolemaic and Early Roman Egypt, in *Identity and identification in Antiquity* (forthcoming).

Paragraph 13 deals with the law on the status of children born of an *aste* — a woman who was a citizen of one of three (later one of four) cities in Egypt — and a *xenos*. In this case, the children follow the status of their father, that is the lower status, and do not inherit from their mother (*BGU* V 1210, l. 47-48: ιγ. τὰ ἐξ ἀστῆς καὶ ξένου γενόμενα τέκνα ξένα γείνεται καὶ οὐ κληρονομεῖ τὴν μητέρα, '13. children born of a citizen woman and *xenos* are born as *xenoi* and they do not inherit from their mother'). The children are here considered illegitimate, for a marriage between these two social groups was not legally recognised, at least not by the laws that applied to the citizens of Egyptian *poleis*.[6] However, we should not forget that a child born of such a union could be recognised as legitimate by its father's community.[7] We find a very similar decision in paragraph 38, where the hereditary rights of children born of the union of an *aste* and an Egyptian are concerned.

Furthermore the legal and hereditary situation of extramarital children of Roman citizens is discussed in the *Gnomon*.[8] One such example is a rule on incestuous unions, found in paragraph 23, which penalises such relations between Romans with the confiscation of their property,[9] *BGU* V 1210, l. 70-72: κγ. οὐκ ἐξὸν Ῥωμαίοις ἀδελφὰς γῆμαι οὐδὲ τηθίδας, ἀδελφῶν θυγατέρας συνκεχώρηται. Παρδαλᾶς μέντοι ἀδελφῶν συνελθόντων \τὰ ὑπάρχοντα/ ἀνέλαβεν, '23. It is not allowed for Romans to marry either their sisters or aunts, it is allowed to marry brothers' daughters. Pardalas confiscated properties of siblings who had intercourse'. The situation of children is not discussed directly, but the other sources provide the information that such offspring were considered illegitimate (G. 1.64), thus they were not their parents' heirs.[10] The consequences were even more significant, as the confiscation of parental property would have affected testamentary succession: parents whose property was confiscated could no bequeath it to their children.

In addition to the situation of children born of incestuous union between Romans (which are poorly attested in papyri[11]) the *Gnomon* regulates hereditary rights of children born of Romans and non-Romans who were not granted *conubium*, as well as the children of soldiers. There is no doubt that the latter (or at least most them) were illegitimate,

6. For instance, to become an Alexandrian one had to be the legitimate child of Alexandrian, P. M. Meyer, Papyrus Cattaoui, II. Kommentar, *Archiv* 3, 1906, pp. 67–105, p. 81. As Delia observed, it is impossible to state whether to produce legitimate offspring Alexandrian had to marry an Alexandrian woman or any *aste* of other Greek cities. D. Delia, *Alexandrian citizenship during the Roman principate* (= *American classical studies* 23), Atlanta 1991, p. 54.

7. This phenomenon was quite common in Greek world. The fact that men from one *polis* were privileged to take a wife of whatever origin did not necessarily mean that the union was recognized as a legitimate one in wife's community. D. Ogden, *Greek bastardy in the Classical and Hellenistic periods*, Oxford 1996, p. 290.

8. For the reasons for illegitimacy of Roman children see: Rawson, *Spurii* (quoted n. 1), p. 18.

9. This was not the unique penalty, since persons involved in incestuous unions were deported to the island as those guilty of adultery. Before Augustus the penalty was even more sever, since the offenders were punished with death. A. Berger, *Encyclopedic dictionary of Roman law*, Philadelphia 1955, *s.v. incestum*; J. F. Gardner, *Women in Roman law and society*, London 2012, p. 23.

10. On the other hand, the brother-sister marriages were accepted among non-Romans, J. Rowlandson, R. Takahashi, Brother-sister marriage and inheritance strategies in Greco-Roman Egypt, *Journal of Roman Studies* 99, 2009, pp. 104–139 (with further literature).

11. *I.a.* see the protocol of the prosecution in such a case before *praefectus Aegyptii*, *BGU* IV 1024 (Hermopolis Magna, AD 360).

for *conubium* was only given to soldiers after their service (G. 1.57); the children would thus have been excluded from intestate succession — at least from their Roman parent — as only marital children could be intestate heirs of their parents (G. 3.2). The prohibition of disposing *mortis causa* the property between Greeks and Romans (in certain periods it was possible by *fideicommissa*, that is a formless request addressed to an heir or any other person profiting from inheritance to do something to the advantage of the third person[12]) was the rule, expressed also in the *Gnomon*: *BGU* V 1210, l. 56-58: ιη. τὰ\ς/ κατὰ πίστιν γεινομένας κληρονομίας ὑπὸ Ἑλλήνω̣ν \εἰς/ ⟦ὑπὸ⟧ Ῥωμαίους ἢ ὑπὸ Ῥωμαίων \εἰς/ Ἕλληνας ὁ θεὸς Οὐεσπασιανὸς [ἀ]νέλαβεν, οἱ μέντοι τὰς πίστεις ἐξωμολογησάμενοι (*l.* ἐξομολογησάμενοι) τὸ ἥμισ[υ ε] ἰλήφασι. ‘18. Divus Vespasian confiscated inheritances left as trusts (made) by Greeks to Romans and by Romans for Greeks. Yet, those who confessed having accepted such trusts kept a half.’[13] Such a rule must have affected the hereditary rights of a significant number of illegitimate children with at least one Roman parent for, in such cases, the general rule was that children followed the lower status either according to *ius civile* or *lex Minicia*;[14] thus the principle quoted above would have applied to them.

In addition to these norms restricting the hereditary rights of illegitimate Roman children, in the text of the *Gnomon* there are also some norms granting them hereditary privileges. These rules, however, mostly concern children born to Roman soldiers. Paragraph 34 excludes the limitations of *testamenti factio passiva* in case of *testamentum militis*, allowing soldiers to make a will in whatever form and language they wished (which would be valid within one year after their discharge); more importantly, it allowed them to bequeath their property to whomever they wanted, but only if they could inherit, *BGU* V 1210, l. 96-98: λδ. τοῖς ἐν στρατείᾳ καὶ ἀπὸ στρατείας[15] οὖσι ϛυνκεχώρηται διατίθεσθα[ι] καὶ κατὰ Ῥωμαικὰς καὶ Ἑλληνικὰς διαθήκας καὶ χρῆσθαι οἷς βούλωνται ὀνόμασι, ἕκαστον δὲ τῷ ὁμοφύλῳ[16] καταλείπειν καὶ οἷς ἔξ[εσ]τ̣ι̣ν̣. ‘34. It was agreed that those in army and those after their military service can make a Roman will or a Greek will and to apply the words as they wish, it is allowed for them to bequeath (their property) to anyone of their rank’. The last part of the paragraph must relate to mostly soldiers’ children who were not Romans on

12. Of course, the succession *mortis causa* in any form was possible only between Roman citizens and the only exception to this rule (introduced by Augustus) was *fideicommissum*.

13. G. II 285. According to Gaius *peregrini* could acquire through *fideicommissa* until the time of Hadrian. *Gnomon*, on the other hand, mentions that trusts left to Greeks were confiscated from the time of Vespasian. There are two possible interpretations of these passages. Either it was Vespasian who introduced the confiscation of the property left to peregrines and Hadrian only maximized its effects, or Vespasian’s constitution concerned only the trusts between Romans and Greeks (not all peregrines). The prohibition is attested also by Pausanias (8.43.5).

14. For the status of children born of different mixed unions in Roman Egypt see: R. Bagnall, Egypt and *lex Minicia*, *Journal of Juristic Papyrology* 23, 1993, pp. 25–28, p. 27.

15. The expression ἀπὸ στρατείας was the subject of wide scholarly discussion. The problem is whether the rule expressed in *Gnomon* applied to both soldiers and veterans or to soldiers. It is highly probable, however, that it concerned solely soldiers. M. Amelotti, *Il testamento romano attraverso la prassi documentale. I: Le forme classiche di testamento*, Firenze 1966, pp. 83–89.

16. For the interpretation of this word see: R. Alston, *Soldier and society in Roman Egypt. A social history*, London 1995, p. 57.

account of being born to a woman who was not a citizen.[17] Such an interpretation of the above passage is supported by the Gaian text explaining that restrictions concerning *testamenti factio passiva* did not apply to *testamentum militis* (G. 2.110), and also by a constitution of Alexander Severus (C. 6.21.5).[18] It is worth noting that the rule discussed here would have softened the one concerning *fideicommissa*.

The next paragraph states that soldiers' natural children could inherit (together with collaterals) from them when no will was made. This decision is an abstract of Hadrian's edict, also attested in a copy preserved on papyrus (*BGU* I 140 = *Sel. Pap*. II 213 [AD 119, Alexandria?]). The law allowed children born to soldiers during their period of military service to ask for *bonorum possessio* from their fathers at the same class as testators' collaterals, that is *unde cognati*, the third group of persons who could request *bonorum possessio* from the deceased in *ius honorarium*. The same rule — albeit, with much less precision — is repeated in *P. Bad*. IV 72 (Ankyron, AD 117–118). The papyrus concerns two children, a son and a daughter, who inherited some property from their father, a legionary soldier; Fr. B ctr., ll. 21-23: ἔξεστι δὲ καὶ τοὺς [ἐν λεγεῶ]νι στρατευομένους κληρονομεῖσθαι ὑπὸ τέ[κνων], 'it is allowed for soldiers in legions to be inherited by their children.'[19] It does not explain what type of succession it refers to, thus we can only presume it is intestate succession; moreover, it mentions only the children of legionary soldiers, whereas the other two sources do not differentiate between military units. In practical terms, the edict recognised the blood relationship between fathers and their children with respect to hereditary rights, but natural children could only obtain possession of goods belonging to the inheritance if no marital children or agnatic relatives — that is, related through parental power — existed.[20] On the other hand, from the time of Julius Ursus, *praefectus Aegypti* (AD 79/80?), veterans' daughters who had been granted Roman citizenship were not entitled to succession from their Egyptian mothers, *BGU* V 1210, l. 140-141: νδ. θυγατρὶ μ[ι]σσικίου Ῥωμαίᾳ γεν[ομ]ένῃ Οὔρσος οὐκ [ἐπέτρε]ψε κληρον[ομ]ῆσαι τὴν μητέραν (*l.* μητέρα) Αἰγ[υπ]τίαν οὖσαν, '54. Ursus did not permit a veteran's daughter who became a Roman to inherit from her mother, being Egyptian'.

The above paragraphs do not provide a coherent picture of the hereditary situation of extramarital children in Egypt. In some cases, decisions preserved in the *Gnomon of Idios*

17. Children from veterans discharged from the *auxilia* and fleet (and the *equites singulares augusti*, but they do not appear in Egypt) received the Roman citizenship upon their fathers' discharge from the army (until AD 140, when auxiliary veterans were no longer granted the *civitas liberorum* privilege). S. E. Phang, *The marriage of Roman soldiers* (*13 B.C. — A.D. 235*): *law and family in the imperial army*, Leiden 2001, passim.

18. Ulpianus attributed the rule releasing soldiers' wills from all formal requirements to Trajan (D. 29.1.1 *pr*.). The same text is repeated perhaps in *P. Fay*. 10. Amelotti, *Il testamento romano* (quoted n. 15), pp. 82–83.

19. The most interesting problem in this document is the civil status of legionary soldiers' children, which will not be discussed here. S. Waebens, *P. Bad*. IV 72 and the inheritance problems of soldiers' illegitimate children in Roman Egypt (forthcoming).

20. Such legal situation could encourage some people to safeguard their children rights. This is the case of a Latin contract between Demetria and Gaius Valerius Gemellus (*FIRA* III 20 = *Ch.L.A*. 295 = *P. Mich*. VII 442 [Cezarea, 2nd c. AD]). The document states that Demetria was Gemellus' wife before his military service and their common children were born during this marriage, that is before their father's military service. Phang, *The marriage* (quoted n. 17), pp. 47–49.

*Logos* are also known from other legal sources; this is mostly the case for those paragraphs that concern Romans or their children. Much more complicated are the passages which do not deal with Romans, but rather with the non-Roman inhabitants of Egypt. These parts of the text also raise questions regarding the nature of the regulations, specifically whether these rules were introduced by the Romans, or if they were promulgated during the Ptolemaic period and merely adopted by the Romans. The former interpretation would suggest that Roman rulers were interested in the illegitimacy and hereditary rights of their subjects, regardless of whether or not they were Roman citizens.[21] The paragraphs might reflect the judgments given as a result of legal proceedings that took place before different *idioi logoi;* it is, however, certain that we are not dealing with the official text of laws, and thus the *paragraphoi* cannot be interpreted in isolation from the documents of legal practice which might explain the rules expressed in the *Gnomon*.

## Papyri

The information presented in the *Gnomon* may be supplemented with evidence from papyri, especially testaments mentioning extramarital children. These might help to determine the rights and abilities of such children in terms of succession, as well as their real situation in legal practice. The most important question is whether parents were unrestricted in appointing their illegitimate children heirs and leaving them legacies. Sources concerning the testamentary succession of illegitimate children of both Romans and non-Roman inhabitants of Roman Egypt are few; however, they may help us to determine not only the hereditary situation of extramarital children, but also the scale of testamentary freedom in the legal practice of Roman Egypt.

## The limits of testamentary freedom — non-Roman wills to the advantage of extramarital children

The testamentary rules concerning non-Romans are not obvious. Before examining attestations of extramarital children succeeding their parents in the papyri, questions concerning the limits of testamentary freedom must first be addressed. One document expressing a principle of testamentary freedom is a protocol of dispute which took place before Blesius Marianus, prefect of *Cohors I Flavia Cilicum equitata*, acting as *iudex datus* (*M. Chr*. 84 = *SPP* XX 4 = *CPR* I 18 = *Jur. Pap*. 89 [Ptolemais Euergetis, AD 124]).[22] The parties of the dispute are the testator's father and the testamentary heir. The father wanted to revise his son's will, arguing that children born of *agraphoi gamoi* were not allowed to make a will if their

21. The opposite opinion, Rawson, *Spurii* (quoted n. 1), p. 12.

22. H. J. Wolff, *Written and unwritten marriages in Hellenistic and postclassical Roman law*, Pennsylvania 1939, pp. 60–61; J. Crook, *Legal advocacy in the Roman world*, London 1995, pp. 74–75; U. Yiftach-Firanko, *Marriage and marital arrangements: A history of the Greek marriage document in Egypt, 4th Century BCE — 4th Century CE* [= *Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte* 93], München 2003, pp. 82–91.

father was still alive. In such a case the father was an heir. However, his opponent claimed that the will was valid, for 'the law of Egyptians'[23] allowed one to dispose of their property in whatever way he wanted, as long as the will was composed properly.[24]

> *M. Chr*. 84, l. 15-20: [κ]αὶ τοῦ Ἀμμωνί[ου διὰ] Μαρκιανοῦ ῥήτορος ἀποκριναμένου τὸ[ν] τῶν Αἰγυπτίων νόμον διδόναι ἐξουσίαν πᾶσι τοῖς διατιθεμένοις καταλείπειν [ο]ἷς βούλο[ντ]αι τὰ ἴδια, ἑαυτὸν μέντοι ἀνεψιὸν ὄντα τοῦ τετελ[ε]υτηκότ[ο]ς καταλ[ε]λεῖφθαι σὺν ἑτέρῳ υἱῷ τοῦ ἀντιδίκου κλ[ηρ]ονόμον [κ]αὶ τὴν δι[α]θήκην πλήρη ἔχειν τὸν τῶν μαρ[τύ]ρων ἀρι[θμό]ν.
>
> Ammonios said via Marcianus, rhetor, that the law of Egyptians allows those making a will to leave their own (things) as they wish; him being the cousin of the one who passed away and another son of the adversary were appointed heirs and the number of testamentary witnesses is complete.

It seems quite plausible that the testamentary freedom was indeed the rule among the non-Roman population of Roman Egypt; nevertheless there were a few exceptions. One of them is suggested in the document quoted above, as the father of the testator claimed that sons born of *agraphos gamos* were not entitled to make wills during their fathers' lifetime. Exceptions to testamentary freedom appear also in the *Gnomon of Idios Logos* (cf. paragraphs 5, 6, 10, 14, 15, 112). However, the most intriguing question is whether the inhabitants of Roman Egypt made wills to the advantage of their extramarital children freely, or if they were restricted in this respect.

The former seems to be the case in a second-century will composed for a woman, Taarpaesis *alias* Isidora (*P. Köln* II 100 [Oxyrhynchos, AD 133]). The text is well preserved and detailed. The testatrix appears to be a relatively wealthy woman, for she possesses at least two houses and more than ten *arourai* of land.[25] She appointed her three children, Ptolemaios, Berenike and Isidora (also called Apollonarion) heirs, and they are described with the words: τοὺς τρεῖς χρηματίζοντας μητρὸς ἐμοῦ, 'officially known as my children', which means that the children were of a father who was not Taarpaesis' husband.[26] We have no information concerning any other offspring of the testatrix, thus we may assume that the illegitimate children were her only progeny.[27] Moreover, the testament was properly opened and executed,

23. On the term, J. Mélèze Modrzejewski, La loi des Égyptiens: le droit grec dans l'Egypte romaine, dans *Proceedings of the XVIII International Congress of Papyrology*, Athens 1988, pp. 383–399.

24. That is at *agoranomos*, *BGU* V 1210, l. 33-34: Δ[ι]αθῆκαι, ὅσα μὴ κατὰ δημοσίους χρηματισμοὺς γείνωνται, ἄκυροί εἰσι, 'the wills which were not composed as public documents, are void'. M. Nowak, Dryton's wills reconsidered, *Revue Internationale des droits de l'antiquité* 59, pp. 241–251.

25. According to Alan Bowman five *arourai* were enough to feed an average family: A. Bowman, *Egypt after the pharaos. 332 BC—AD 642*, London 1986, p. 238.

26. The term χρηματίζων μητρός is characteristic for the Oxyrhynchite nome and it signifies the one 'officially named as a son of...', that is illegitimate son of a woman whose name appeared in genitive after the expression. Ogden, *Greek bastardy* (quoted n. 7), p. 335. Daughters could be described with the same term, but their number is much lower. M. Malouta, Fatherless and formal identification in Roman Egypt, in S. R. Hübner, D. M. Ratzan (eds.), *Growing Up Fatherless in Antiquity*, Cambridge 2009, pp. 120–138, p. 124.

27. According to Youtie these children were common children of the testatrix and her partner also appearing in the will as the beneficiary of some bequeaths. Such a conclusion is based on the onomastic grounds. Youtie, ΑΠΑΤΟΡΕΣ (quoted n. 1), p. 727.

for the document is the official copy confirmed by the witnesses' signatures during the opening of the will;[28] thus the provisions to the advantage of testatrix' extramarital children would have been put into effect.

Perhaps a similar example is *PSI* XII 1263 (Oxyrhynchos, AD 166–167), a copy of a will composed for a woman named Sintheus. As in the above-mentioned case of Taarpaesis, Sintheus also appoints her sons heirs. Here as well, the sons appear with no indication of their father's name. They are described only as 'her sons': καταλείπω κληρον[όμους] τοὺς υἱούς μου Σαραπίωνα καὶ [Διογένην], 'I appoint as my heirs Sarapion and [Diogenes], my sons'. The sons were named after their maternal grandfather and great-grandfather, which might suggest their extramarital status. Again, the extramarital status of these children (if they really were such) had little effect on their ability to inherit *via* their mother's will, at least when no legitimate children were involved. This will also probably took effect, for it is a copy.[29] If there were any difficulties in bequeathing to the advantage of these illegitimate children (or in the limitations of testamentary freedom) they are not visible.

We find a slightly different approach in a first-century will composed for Soeris, probably an Egyptian woman, from Oxyrhynchos (*P. Oxy*. I 104 [Oxyrhynchos, AD 96]). The testatrix appoints her son, Areotos, heir; he is also described as: χρηματίζων μητρὸς ἐμαυτῆς τῆς Σοήριος, 'officially known as Soeris' children'. In contrast to the previous document, however, this one explicitly informs us that, at the moment when the will was composed, the testatrix had a husband (who was not Areotos' father)[30] and a daughter born of this marriage. She bequeathed some minor legacies to them, but the son was appointed as the main successor.

The rights of the testatrix' husband were safeguarded by bequeathing him the right to dwell in — and also to rent to a third party — the house left to the heir; moreover, the son, being the heir, was obliged to pay back a debt that his mother owed to her husband in accordance with a secure-deed made through a bank. The heir was also bound to pay a legacy to his step-sister, born of the testatrix' husband; the woman was granted the right of dwelling in the same house in the event of her divorce, but the privilege was restricted only to the right of dwelling. Unfortunately, there is no secure method to determine the reasons for these provisions; we cannot be sure if they were the result of laws forcing testators to respect the rights of the members of their formal families, or if they arose from some other circumstances which we do not know, for example a marital agreement securing the hereditary rights of the spouse and marital offspring.

In order to understand the situation more clearly, we need to look at marital agreements from both the Hellenistic and Roman periods,[31] which can provide additional information. A significant number of these contracts contain provisions concerning the succession of common offspring in the event of the death of either spouse. In many cases these contracts aimed to safeguard the hereditary rights of future or already born marital children, as in the following examples.

28. M. Nowak, The function of witnesses in the wills from late antique Egypt, dans P. Schubert (ed.), *Actes du 26e Congrès international de papyrology, Genève, 16-21 août 2010*, Genève 2012, pp. 573–580, p. 575.

29. The commentary to *PSI* XII 1263.

30. Youtie, ΑΠΑΤΟΡΕΣ (quoted n. 1), p. 725.

31. For the full list of such contracts see: Yiftach-Firanko, *Marriage* (quoted n. 22).

*P. Gen*. I 21 (Arsinoites, 2nd c. BC): ἐὰν δέ τις αὐτῷν ἀνθρώπινόν τι πάθῃ καὶ τελευτήσ[ηι], ἔστω τὰ καταλεπόμενα ὑπάρχοντα τοῦ ζῶντος αὐτῶν καὶ τῶν τέκνων τῶν ἐσομένων αὐτοῖς ἐξ ἀ[λ]λήλων.

If one of them [spouses] suffers human fate and dies, the remaining estate shall belong to the surviving spouse and their future children.

*P. Oxy*. III 496, l. 10-11 (Oxyrhynchos, AD 127): ἐὰν δ[ὲ] . . . . . η τινα τῶν γαμούντω [ν τελευτῆσαι -ca.?- ἐχέτω ὁ γαμῶν] τὴν κατὰ τῶν ἑαυτοῦ ἐξου[σί]αν ᾗ ἐὰν αἱρῆται ἐπιτελε[ῖ]ν καὶ οἷς ἐὰν βούλη[ται] μερίζε[ιν], ἐὰν δὲ μηδὲν [ἐ]πιτελέσῃ εἶναι καὶ αὐτὰ μετὰ τελευτὴν αὐτοῦ τῶν ἐξ ἀλλή[λ]ων [τ]έκνω[ν].

But either husband or wife should chance to die, the husband shall have power over his own property to make any further provisions he pleases and to divide it among whom he will; but if he makes no further provisions the property shall after his death belong to their children. (tr. *P. Oxy*. III)

The clauses in these different papyri vary, but they appear in many documents of this type from both the Hellenistic and Roman periods.[32] Normally, if a provision becomes an element of a contract, there is a reason for this. The appearance of such contractual provisions suggests that the parties involved wanted to secure the succession of their common marital children. This leads to the conclusion that illegitimate children would inherit from their parents together with the legitimate offspring, unless they were excluded contractually.[33]

The above supposition is also supported by the fact that a number of marital agreements prohibit extramarital offspring, as in the oldest dated Greek text from Egypt.

*P. Eleph*. 1, l. 8-9 (Elephantine, 310 B.C): μὴ ἐξέστω δὲ Ἡρακλείδηι γυναῖκα ἄλλην ἐπεισάγεσθαι ἐφ' ὕβρει δημητρίας **μηδὲ τεκνοποιεῖσθαι ἐξ ἄλλης γυναικὸς μηδὲ** κακοτεχνεῖν μηδὲν παρευρέσει μηδεμιᾶι Ἡρακλείδην εἰς Δημητρίαν.

Let it not be permitted to Herakleides to bring in another woman as an outrage to Demetria, nor to have children by another woman, nor to deal deceitfully in any way on any pretense, Herakleides against Demetria' (tr. *P. Eleph*.)

The contract states that if the husband is not obedient to its terms, he should pay his newly married wife double the amount of the dowry. *P. Eleph*. 1 is not a unique example of such a provision, and we find it in a few documents composed between the fourth and first centuries B.C.[34] If we keep in mind the previously discussed contractual decision concerning

32. I.e. *CPR* I 28 (Ptolemais Euergetis, AD 110), *BGU* I 183 (Sokopaiu Nesos, AD 83), *BGU* I 251 (Sokopaiu Nesos, AD 81), *BGU* I 252 (Ptolemais Euergetis, AD 98), *BGU* IV 1098 (Alexandria, 19-15 BC), *P. Freib*. III 26 (Philadelphia, 178 B.C.), *P. Freib*. III 29 (Philadelphia, 178 B.C.), *P. Freib*. III 30 (Philadelphia, 179-178 B.C.), *P. IFAO* III 5 (Oxyrhynchites, 2nd c. AD), *P. Mich*. V 343 (Tebtynis, AD 54-55), *SB* XVI 12334 (Philadelphia, 2nd c. AD), *SB* XXIV 16256 (Arsinoites, AD 117-118), *P. Oxy*. III 497 (Oxyrhynchos, 2nd c. AD).

33. Ogden, *Greek bastardy* (quoted n. 7), pp. 340–341.

34. *SB* XII 11053 (Tholtis, 267 B.C.), *P. Freib*. III 30 (Philadelphia, 179-178 B.C.), *P. Giss*. 29 (Krokodilopolis, 173 B.C.), *P. Tebt*. III.2 974 (Tebtynis, 2nd c. B.C.), *Tebt*. I 104 (Kerkeosiris, 92 B.C.).

marital children's succession, the prohibition of extramarital children fits perfectly with the supposition that such children were not excluded from the succession after their parents.

A Hellenistic testament written in Pathyris in the second-century B.C. (*SB* XVIII 13168 [Pathyris, 123 B.C.]) proves that extramarital children (if not excluded contractually) could have some hereditary rights. The testator, Pachnubis, leaves his property to his wife, Ταθώτηι Ἁρυώτου Περσίνῃ ἣ σύ[νειμι] γυναικὶ κατὰ νόμους, 'Tathotis daughter of Haruotes, the Persian, my wife wedded according to the laws', while his two sons born of another woman, τοῖς ἐμοῖς υἱοῖς τοῖς ἐξ ἐμοῦ καὶ ἄλλης γυνα[ικός], receive only one bed and one mattress. There are two facts worth mentioning. First, we cannot be certain whether the sons were illegitimate or not (although such a supposition is supported by the strong distinction between the wife — who is described as the one married according to law — and the boys' mother, called simply 'the other woman'). Second, the meaning of the disposition for the sons is very unclear, for there are no exact parallels; one possible interpretations is that the testator wanted to leave his entire property to his wife, but he had duties towards his sons.

The *Legal Code from Hermopolis West* casts further light on the hereditary rights of illegitimate children in Graeco-Roman Egypt. This is the casebook of Egyptian law, a manual used by judges to decide cases, perhaps originating from the eighth century B.C. The text, as it has been preserved, was composed in the third century B.C; we possess both the Demotic version of the Code and its Greek translation. The latest Greek copy comes from Oxyrhynchos in the second-century AD (*P. Oxy*. XLVI 3285).[35] The text contains information on different legal matters, *inter alia*, on succession. In this respect we do not find any differentiation between legitimate and extramarital offspring[36] (the only child whose position was better than others' was the oldest son, no matter whether legitimate or not).

In such a context it is worth recalling the well-known passage by Diodorus, who claimed that there was no concept of bastardy among the Egyptians, with the only exception of priestly families, whose offspring was produced with one wife only (Diod. 1.80.3-4).[37] It is also important to note the Demotic contracts — composed both before and after Alexander — which, much like the Greek marital agreements, safeguarded the hereditary rights of common future and/or already existing children. Through such contracts, husbands could exclude from succession all other children born to them.[38]

From all of the documents quoted above, we may assemble the following picture. When Greeks started settling in Egypt, they probably met with the Egyptian custom that included illegitimate children in intestate succession equally with legitimate ones (if there was, in fact, any differentiation at all). The situation was further complicated by the fact that the new settlers came from a variety of places where the problem of hereditary rights was approached

35. G. Mattha, G. R. Hughes, *The Demotic legal code of Hermopolis West*, Cairo 1975; S. L. Lippert, Codex Hermopolis, in R. Bagnall et alii ed., *The Encyclopedia of Ancient History*, Oxford 2012.

36. P. W. Pestman, *Marriage and matrimonial property in ancient Egypt: A contribution to establishing the legal position of the woman*, Leiden 1961, p. 48; Ogden, *Greek bastardy* (quoted n. 7), p. 331.

37. Calderini, Apatores (quoted n. 1), p. 359; Youtie, ΑΠΑΤΟΡΕΣ (quoted n. 1), p. 732, Ogden, *Greek bastardy* (quoted n. 7), p. 330.

38. Pestman, *Marriage* (quoted n. 36), p. 48.

in different ways.[39] Thus, the easiest way to safeguard the rights of children begotten during marriage was the contractual one. The existence of such contractual provisions up to the Roman period suggests that neither Ptolemies nor Romans introduced the general rule prohibiting either testamentary or intestate succession — or both — of illegitimate children. It seems that hereditary rights of children were restricted only by the decisions of their parents.

## Soldiers' children

We must also ask whether the rules concerning soldiers' children expressed in the *Gnomon* are visible in the legal practice of Roman Egypt. As I have demonstrated in the first part of this article, soldiers were free to appoint whoever they wanted as an heir. This rule is confirmed also in *P. Cattaoui recto* (*BGU* I 114 = *FIRA* III 19 b, col. IV, l. 1-15 [Alexandria?, AD 114–142]).[40] An Alexandrian woman, Chrotis, described her son as having been born to her from the union with an Alexandrian citizen, Isidoros, who became a soldier serving in *auxilia*. Her claim, however, is not clear; Meyer thought that she wanted her son not to pay a tax on the inheritance, and for this she wanted him to be recognized as a legitimate child of his father.[41] It is obvious that the boy was appointed heir by his father in the will composed during his military service; the official decided that the boy could not be recognised as a legitimate child of his father, for the military laws forbade this, but κληρονόμον δὲ αὐτὸν ἔγραψεν νομί[μως], 'he appointed him heir lawfully'. Moreover, Meyer has suggested that Isidoros was already a Roman when he composed his will;[42] if this is correct, the document would be an example of testamentary succession between a Roman and a non-Roman in practice (the exception mentioned in the *Gnomon of Idios Logos*, paragraph 34).

A unique text of a Roman will preserved almost entirely on wax tablets (*FIRA* III 47 [Alexandria, AD 142]) provides further information.[43] Antonius Silvanus, the testator and *eques alae primae Thracum Mauretanae*, appointed his son the sole heir. His son, Marcus Antonius Satrianus, was certainly an extramarital child, for his mother Antonia Thermutha was not (and could not be) the testator's wife, since he was a soldier. However, the text does not specify the legal bonds between the father and his son; Antonius Silvanus even behaves as if the boy was his legitimate son, since not only does he leave him the inheritance, but also appoints him a tutor.[44] The most intriguing question is whether or not Silvanus' son and heir

39. For instance, in Athens after 'Pericles' law', illegitimate children were excluded completely from succession after their parents, while in Tegeia they were granted the inheritance if there was no marital offspring (H. J. Wolff, Marriage law and family organization in ancient Athens, *Traditio* 2, 1944, pp. 43–95, pp. 69, 89), while the inscriptions from Gortyn do not even contain a term for the bastardy (Ogden, *Greek bastardy* [quoted n. 7], p. 264).

40. Meyer, Papyrus Cattaoui (quoted n. 6), pp. 80–83.

41. Meyer, Papyrus Cattaoui (quoted n. 6), p. 81.

42. Meyer, Papyrus Cattaoui (quoted n. 6), p. 81.

43. What is interesting is the fact that testator being a soldier made his will according to rules governing the regular testament, so it is highly probable that he wanted to have a will valid not only during his military service but also after his *missio*. Amelotti, *Il testamento romano* (quoted n. 15), p. 86.

44. The similar example is to be found in Drusilla's dossier (the full list of documents belonging to this dossier see: P. Schubert, *P. Gen.* I 74 et le process de Drusilla, *ZPE* 130, 2000, pp. 211–217, pp. 215–217).

would have been considered a Roman. Dieter Liebs has suggested that Antonia Thermoutha might be a Roman (her *nomen* suggests so)[45] and that the son born of her would have followed his mother's status. According to Liebs, this supposition is justified by the fact that the son was appointed heir in a will composed to be valid also after the father's military service.[46] This is, however, only speculation, for we know that the boy could have acquired citizenship together with his father,[47] thus even if the will was composed in order to serve its purpose also after Silvanus' military discharge, it would have obtained such an effect. And, as illustrated in the previous example, if Silvanus had died during his service, the fact that his son was not a Roman would not prevent testamentary succession. Unfortunately, we cannot be sure whether Silvanus' will took effect, for it is preserved as an original; thus these questions must remain unanswered.

A different example is the famous will of a Roman veteran, Gaius Longinus Castor, who appointed his two slave-women, Marcella and Kleopatra, his heirs, freeing them at the same time. He subsequently distributed his property *via* legacies among the sons of these women (either slaves or already manumitted); he also appoints them as his heirs in case of the death of the heirs in the first degree. Moreover, he manumits his slave-girl leaving her a legacy too. According to James Keenan, these slave-women were Gaius Longinus Castor's concubines, and their children were his offspring.[48] Contrary to the examples discussed above, the will was composed not for a soldier, but for a regular Roman citizen (albeit a veteran). Another difference is that neither the concubines nor the children were explicitly described as such.[49] Gaius Longinus Castor tried to hide this fact in his will by introducing his family as a group of slave men and women. By contrast, another second century Latin will written for a Roman citizen, Caius Hostilius Clemens (*Ch*.L.A X 427 [provenance unknown, 2nd c. AD]) contains *heredis institutio* appointing *liberii mei naturales*,[50] that is, it names the testator's illegitimate children as heirs. However, the papyrus is poorly preserved and the context remains unknown. There are two conclusions that may be drawn from these papyri. First, the illegitimate children appear in their fathers wills, and the fathers do not

She was married to a Roman soldier who died leaving a will in which he left his estate to his children as well as he appointed tutors for them (*M. Chr*. 88, l. 24-27 [Arsinoites, AD 128-129]).

45. However, not even the possession of *tria nomina* could be a proof of Roman citizenship, for there is plenty of examples proving that not only Romans had them. A. Mécsy, Die Namen der Diplomempfänger, dans W. Eck, H. Wolff (eds.), *Heer und Integrationspolitik*, Köln, Wien 1986, pp. 437–466.

46. D. Liebs, Das Testament des Antonius Silvanus, römischer Kavallerist in Alexandria bei Ägypten, aus dem Jahr 142 n. Chr., dans K. Märker (ed.), *Festschrift für Weddig Fricke zum 70. Geburtstag*, Freiburg 2000, pp. 113–128, p. 121.

47. See n. 18.

48. J. G. Keenan, The will of Gaius Longinus Castor, *Bulletin of the American Society of Papyrologists* 31 (1994), pp. 101–107.

49. Keenan, The will of Gaius (quoted n. 48), p. 105.

50. However, this adjective could mean biological children as opposed to adopted ones. Rawson, *Spurii* (quoted n. 1), p. 14. On the other hand, there are a fair number of Latin papyri proving that the description *liber naturalis* was applied to extramarital children. One of those is *P. Diog*. 1 (Contrapollonospolis Magna, AD 127), *testatio* composed for an auxiliary soldier, Marcus Lucretius Clemens. He declared his son born of Octavia Tamusta, l. 11-13: *ut possit post honestam missionem suam ad epicrisin suam adprobare filium suum naturalem esse*, 'in order to be able to prove (after his honorable discharge) in *epikrisis* that his son is his natural son'.

seem to be restricted in bequeathing to the advantage of their children, even if those children were not Romans. Second, in legal documents the parents could either describe these children as legitimate offspring, or they could skip underling the blood relationship altogether; thus it is not an easy task to trace extramarital offspring in papyri.

## Intestate succession

The positive assumption concerning the rights of extramarital children on the grounds of succession and the relevance of blood bonds in Graeco-Roman Egypt is supported also by sources related to non-testamentary succession. In *PSI* XV 1532 (Oxyrhynchos, AD 100–117) a man declared his property which he had inherited from his brother — who is explicitly described as χρηματιζων μητρὸς τῆς αὐτῆς. The man, related to his brother through illegitimacy, was his sole heir. Also *P. Oxy*. LV 3798 (Oxyrhynchos, AD 144) proves the succession rights of a non-formal family. The document confirms a return of loan: Gaius Veturius Gemellus and Lucia Veturia alias Thermouthion, children of a veteran and Artemis, acknowledged that they received repayment, with interest, of three hundred drachmae that were lent to Agathus Daemon by their mother. The mother died intestate and the declarants were her only heirs. There can be no doubt that children were born during their father's service, that is before he received *ius conubii* towards their mother. Despite this fact, they were their mother's legitimate heirs. An even more intriguing problem is *status civitatis* of the two heirs. According to the editors, it is possible that they were not Roman citizens, for their father, an auxiliary soldier, was discharged after AD 140, when Antoninus Pius deprived auxiliary veterans of the privilege of receiving the citizenship for children born during their service; however, the exact date of Gaius Veturius Gemellus' (the father's) discharge is unknown.[51] The supposition seems correct, for Romans could not inherit after peregrines. Moreover, they did not have any hereditary rights towards their mothers estates until *sc*. *Orphitianum* (AD 178).[52] Thus the papyrus offers further evidence that, in local legal practice, children (illegitimate or not) were entitled to succession after their parents.

One final text confirming the hereditary rights of extramarital children is *P. Diog*. 18 (Philadelphia, AD 225), a petition requesting the nomination of a tutor. The children in question were the sons of one woman, but each of them had a different father and one was declared *apator*. Moreover, all three sons were non-testamentary heirs of their mother, hence, once again, the status of the children did not affect their rights. Because the document was composed after the *constitutio Antoniniana*, there could be no doubt that it concerned the succession between Romans. It was written after *sc*. *Orphitianum* which granted *bonorum possessio unde legitimi* (excluding all other persons belonging to this class) to all children, no matter whether they were marital or extramarital, D. 38.17.1.2: *Sed et vulgo quaesiti admittuntur ad matris legitimam hereditatem*, 'But also illegitimate children are admitted to the intestate succession after their mother.'[53]

51. For the discussion on the children's status see the commentary *P. Oxy*. LV 3798: *P. Oxy*. LV, pp. 79–80.
52. *P. Oxy*. LV, p. 80.
53. See also *P.S*. 4.10.1; I. 3.4.3.

## Conclusions

Ultimately, the surviving documents are too few to offer a complete picture of the situation of extramarital children with regard to succession in Graeco-Roman Egypt, but some details may nevertheless be inferred. First, it is more than plausible that non-Roman testators who had no marital children and/or spouses could freely bequeath to the advantage of their extramarital offspring, unless it was excluded by contractual provisions. The marital agreements suggest an interesting conclusion: perhaps, at least in the Hellenistic period, illegitimate children were entitled to succession after their parents equally with the legitimate ones; however, this could vary depending on the social group. Second, we can observe that extramarital children played an important role in the wills of women and Roman soldiers. This may also have been the case regarding non-testamentary succession, where illegitimate children were entitled to succession after their mothers and fathers who served in the Roman army. We do not find many documents composed by regular Roman men openly bequeathing something to the advantage of their natural children.