

MARIA NOWAK

WAYS OF DESCRIBING ILLEGITIMATE CHILDREN VS. THEIR LEGAL SITUATION

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Introduction

The present paper aims to examine the names applied to illegitimate children in Roman Egypt between the first and third centuries, that is to provide descriptions of those children who appear in the papyri and to determine their chronology and provenance. More importantly, it will attempt the statement that bastardy in Egypt was a Roman concept influencing only soldiers' families, suggested by Herbert Youtie,¹ and to resolve the question of whether the terms used in papyri to indicate illegitimate children were legal and formal categories – as Myrto Malouta has proposed² – or whether they were used only to distinguish individuals.

Terminology

To begin, it will be useful to clarify the particular characteristics of an individual recognised as an extramarital child. The simplest explanation is that the extramarital child was someone whose parents were not married. While extramarital children did not constitute a particular social group, their legal relations with their parents and some of their rights were different from those recognised as legitimate offspring. This group comprised children born to Romans and non-Romans, soldiers and civilians.



The terms used to indicate someone of illegitimate origin can be divided into two categories: the first category includes the descriptions that were most frequently applied, while the second includes those which appear in the papyri occasionally.

Frequent descriptions

I. ἀπάτωρ: 'without father', 'fatherless'³

This term is attested in over 250 papyri according to *DDBDP*.⁴ It appears in the papyri in three variants:

1. ἀπάτωρ μητρός followed by matronymic in genitive;
2. ἀπάτωρ followed by matronymic in genitive;
3. ἀπάτωρ without matronymic.

The word could be written either in full or as an abbreviation consisting of the two or four first letters of the word, ἀπ() or ἀπατ(); sometimes it is abbreviated to a single *alpha* with a horizontal stroke above.⁵

* I am grateful to Tomasz Derda and Paul Schubert for their valuable suggestions as well as Jesse Simon for correcting my English. All remaining errors and inaccuracies are mine. – The present article is an effect of my research in the framework of a project financed by SCIEEX.

¹ H. C. Youtie, ΑΙΙΑΤΟΡΕΣ. Law vs. Custom in Roman Egypt, [in:] J. Bingen, G. Cambier, G. Nachtergaele (eds.), *Le monde grec: pensée, littérature, histoire, documents. Hommages à Claire Préaux*, Brussels 1975, pp. 723–740 (reprinted in: *Scripturae Posteriorae*, vol. I, Bonn 1981, pp. 17–35).

² Myrto Malouta, Fatherless and Formal Identification in Roman Egypt, [in:] Sabine R. Hübner, D. M. Ratzan (eds.), *Growing up Fatherless in Antiquity*, Cambridge 2009, pp. 120–138.

³ It served as a description of deities to whom no father was attributed, like Hephaestus; the other meaning is 'disowned by the father'. It could also describe someone whose father died. *TLG s.v. ἀπάτωρ; LSJ s.v. ἀπάτωρ*. – The term is not new, it is attested in earlier Greek literary sources (theological texts, tragedies, historical and philosophical works). A. Calderini, Apatores, *Aegyptus* 33 (1953), pp. 358–369, p. 359; Myrto Malouta, The Terminology of Fatherless in Roman Egypt: ἀπάτωρ and χρηματίζων μητρός, *PapCong.* XXIV, vol. 2, Helsinki 2007, pp. 615–623, p. 619.

⁴ See tab. 1 at <http://marianowak.bio.wpia.uw.edu.pl/files/2014/06/Appendix.pdf>. – The list was obtained through the *DDBDP* survey. The problem was already approached by Calderini, Youtie and Malouta, here the data has been updated. – See Calderini, Apatores (cit. n. 3), passim; Youtie, ΑΙΙΑΤΟΡΕΣ (cit. n. 1) and Malouta, The Terminology of Fatherless (cit. n. 3).


⁵ See *P. Giss. Bibl.* VI 49 v, col. 1, l. 15 and col. 4 l. 1.

II. Personal name followed by the word μήτηρ

Μήτηρ is written either in full in genitive (rarely ἐκ μητρός) or as a popular abbreviated form μη(), or less often as μητ() or μ(); it precedes a female name, also in genitive, that is ‘so-and-so son of so-and-so mother’. It is attested in more than 100 documents.⁶

Myrto Malouta did not recognise the above expression as a term indicating illegitimacy.⁷ However it is hardly plausible that instances in which the father was either not indicated or not identified were simply scribal omissions. In some documents such an explanation could be accepted, but if we look at the wider context the supposition cannot be correct. There are numerous examples demonstrating the intentional use of the term. It appears, for instance, in lists where other individuals are described with a name and patronymic; in this context, a description consisting of a personal name, the noun μήτηρ, and a female name could not be counted as a scribal mistake, for it differs significantly from other entries. Such examples are too numerous to allow us to assume that scribes wanted to write ‘so-and-so ἀπάτωρ μητρός so-and-so’ and merely omitted the word ἀπάτωρ.⁸ Furthermore, series of the documents of the same type, such as mummy labels, attest this description.⁹ The intentionality of the description is apparent if we compare it with the frequent description: name of a deceased in nominative followed by father’s name in genitive and μητρός preceding female name in genitive. Thus at least in the case of mummy labels the description based on the noun μήτηρ in genitive is a uniform practice.

III. χρηματίζων/χρηματίζουσα μητρός

This expression, present in over 60 texts,¹⁰ is rendered ‘officially named son/daughter of so-and-so mother’. It was frequently written in full but appears occasionally in abbreviated forms, of which the most popular is χρη() μητ() .¹¹ In contrast to the word ἀπάτωρ, the term χρηματίζων/χρηματίζουσα μητρός is specific to the language of papyri.¹²

IV. Personal name followed by sole matronymic¹³

Less frequent descriptions

The following expressions belong to this group:

- νόθος (attested only a few times, frequently in the context of the temple);¹⁴

⁶ See tab. 2 at <http://marianowak.bio.wpia.uw.edu.pl/files/2014/06/Appendix.pdf>.

⁷ Malouta, *Fatherless* (cit. n. 2), p. 121.

⁸ See *BGU* I 10, II 426, III 700, XI 2073, *CPR* I 33, XV 38, *P. Oxy.* XLIX 3492.

⁹ See: *SB* I 5379, 5533, 5536, 5552, III 6005, 7002, *T. Mom. Louvre* 344, 384, 410, 419, 681 DAHT 55033, 701, 821 DAHT 55137, 862 DAHT 55172, 1016, 1046, 1130 DAHT 55250, 1190 DAHT 55288.

¹⁰ See tab. 3 at <http://marianowak.bio.wpia.uw.edu.pl/files/2014/06/Appendix.pdf>.

¹¹ Other, less common variants are χρη() μητρός, χρημα() μητρός, χρηματίζουσα μητ()/μη(), χρηματίζ()/χρημα() μητ().

¹² Malouta, *The Terminology of Fatherless* (cit. n. 3), p. 620.

¹³ See the examples provided by Calderini, *Apatores* (cit. n. 3), p. 362 n. 3. – It would be difficult to provide statistics regarding the application of this description (if possible at all), for one would have to check all the documents containing any female name in the genitive. Taking into account that the number of published texts is about 80 000, such a task seems impossible. – The number estimated by Peter van Minnen, *The Future of Papyrology*, [in:] R. Bagnall (ed.), *The Oxford Handbook of Papyrology*, Oxford 2009, pp. 644–660, p. 645.

¹⁴ *BGU* X 1937 (provenance unknown, 3rd c. B.C.): a list of people related to a temple; *P. Count* 16 = *P. Petr.* III 59 (Arsinoite, 243–217 B.C.): tax list; *P. Tor. Amen.* 6 (Thebes, 119 B.C.): a sentence; *P. Tebt.* II 302 = *W. Chr.* 368 (Tebtynis, AD 71–72): petition to *praefectus Aegypti* concerning the rights to cultivate formerly temple land, but recently converted to crown land. All four examples appear in priestly context, but the meaning of the term is still unclear, despite the possible interpretations are various (νόθοι were suggested to signify children born as a result of temple prostitution, illegitimate offspring of priests, temple slaves, etc.). See W. Clarysse, Dorothy J. Thompson, *Counting the People in Hellenistic Egypt. Historical Studies*, vol. 2, Cambridge 2006, pp. 179–180. – The later four (two from Roman period, two from Byzantine one) attestations of the term are not related to temples: *PSI* XIII 1356 (Oxyrhynchos, 1st c. AD): here the editor recognised νόθος as a personal name; *SB* XVI 12334 (provenance unknown, 2nd c. AD): marital contract; *P. Cair. Masp.* II 67151 (Antinoopolis, AD 570): will; I 67097 V D = *FIRA* III 15 (Antinoopolis, AD 573): ἀποκήρυξις. In the above two 6th-century documents from Dioscoros’ archive the term

- *spurius*/σπούριος (attested fewer than ten times in the second and third centuries,¹⁵ but much more frequent in the doctrinal sources of Roman law);
- ὄθνεϊος (attested only once in *P. Catt. r.* col. 5, l. 9 = *BGU* 1 112 = *M. Chr.* 214 = *FIRA* III 102);
- ἐκ μὴ νομίμων γάμων;¹⁶
- *filius/filia naturalis*;¹⁷
- *ex incerto patre*.¹⁸

Cases of misuse?

A relatively significant number of individuals in papyri¹⁹ are described as either ἀπάτωρ or χρηματίζων μητρός, and one might thus imagine those expressions to be formal descriptions indicating legal and familial status.²⁰ Accepting this supposition, however, would imply further consequences. Indeed, if illegitimacy had been strictly a legal category and formal description, each individual of extramarital origin would have had to be described as either ἀπάτωρ or χρηματίζων μητρός and, by the same token, one not belonging to the category of illegitimate children could never be identified by one of these terms.

Nevertheless, a fair number of papyri present individuals in a way that would seem to run contrary to these rules. The most obvious examples are the cases in which persons who, we can state with certainty, could not have been born in wedlock are described by a patronymic. The most obvious example is a series of tax receipts from Ptolemais Euergetis, *P. Harr.* II 181–189. The tax-payer is Πασίων Διοσκόρου δούλου, ‘Pasion son of the slave Dioskoros’. Obviously, a slave’s child could not be legitimate, for slaves could not enter into a legal marriage necessary to produce legitimate children. A similar example is a declaration *P. Tebt.* II 322 (Ptolemais Euergetis, AD 189).²¹ The declarant – Achilleus son of Apollonios son of Lourios also called Apollonios – lists his wife as Ἡράκλειαν Κρονίωνος ἀπελευθέραν Διδύμου Ἡρώνας, ‘Herakleia daughter of Kronion, freedwoman of Didymos son of Heron’.²²

undoubtedly signifies ‘extramarital child’. Moreover, νόθος was commonly used for an illegitimate child in Greek translation of *Novellae* and *Basilica*. H. J. Wolff, *The Background of the Postclassical Legislation on Illegitimacy*, *Seminar* 3 (1945), pp. 21–45, p. 31.

¹⁵ *P. Select.* 14 (provenance unknown, 2nd c. AD): will; *SB* XXII 15704 (Karanis, AD 138): different documents; *SB* I 5217 (Theadelphia, AD 148): certification of ἐπίκρισις; *P. Wisc.* II 50 (provenance unknown, AD 165): *testatio* of the birth of an illegitimate child; *BGU* IV 1032 (Arsinoite, AD 173): ἐπίκρισις; *P. Mich.* III 169 = *FIRA* III 4 (Karanis, AD 175): birth certificate of illegitimate twins; *P. Oxy.* XII 1451 (Alexandria, AD 175): attestation of ἐπίκρισις, ed.: σπούριος written with a capital letter and understood as a personal name; *P. Petaus* 71 (Ptolemais Hermu, AD 185): list of officials, ed.: σπόρι(ος); *P. Flor.* I 5 (Ptolemais Euergetis, AD 244–245): census declaration, see R. Bagnall, *Notes on Egyptian Census Declarations*, I, *BASP* 27 (1990), pp. 1–14, p. 5; *SB* XX 14584 (Ptolemais Euergetis, AD 253): liturgy list.

¹⁶ *BGU* IV 1032 (Arsinoite nome, AD 173 or after).

¹⁷ *Ch. L. A.* X 427 (provenance unknown, 2nd c. AD): will; *P. Diog.* 1 (Contrapollonopolis, AD 127): *testatio* of soldier’s child. – There are two attestations of the Greek counterpart of this Latin adjective in regard to children: φυσικός *P. Oxy.* XLIII 3136 (Oxyrhynchos, AD 292): an application to register a daughter, and *P. Oxy.* XLIV 3183 (Oxyrhynchos, AD 292): an application to register two sons. Interestingly, these documents were composed at the same place and almost at the same time (21 and 26 of July AD 292), it is, however, unclear whether the term is applied as a description of children born in a wedlock (as an opposition to adoptive children) or out of it. – The term appears rarely in doctrinal sources (see instances in Wolff, *The Background* [cit. n. 14], p. 31 n. 24) and as Wolff observed it is a translation from Latin.

¹⁸ *P. Mich.* III 169, *P. Wisc.* II 50. – For more Greek descriptions, however, unattested in papyri see Calderini, *Apatores* (cit. n. 3), p. 358.

¹⁹ According to Myrto Malouta around 590 persons in over 300 documents. Malouta, *Fatherless* (cit. n. 2), p. 122.

²⁰ Malouta, *Fatherless* (cit. n. 2), p. 120.

²¹ The document is also notable as a piece of evidence for brother-sister marriages in Egypt. Eutyches, son of declarant born of his first marriage, is married to Tapesouris, his half-sister born of his father’s second marriage. See the table presenting this family in April Pudsey, *Nuptiality and the Demographic Life Cycle of the Family in Roman Egypt*, [in:] Claire Holleran, April Pudsey (eds.), *Demography and the Graeco-Roman World. New Insights and Approaches*, Cambridge 2011, pp. 60–98, p. 92.

²² About this family see D. Montserrat, *Sex and Society in Graeco-Roman Egypt*, London–New York 1996, p. 98.

If such terms were indeed of formal character, the quoted passages would have to be considered erroneous, either due to a scribal mistake or to the ignorance of the rules for describing people. But a simpler explanation is also possible: the authors of these texts wanted to be precise, hence the patronymics were not used to indicate the legal status but, rather, to identify the individuals more accurately. We do not necessarily have to (and normally we would not) translate the phrase Πασίων Διοσκόρου as ‘Pasion legitimate son of Dioskoros’, but simply ‘Pasion son of Dioskoros’.

There are also examples in which slaves are described as ἀπάτωρες. One such document is *SB I 5124*, a workers’ list from second-century Tebtynis. One of the workers is Σαραπάμμων ἀπάτωρ δοῦλος Ζωΐλου, ‘Sarapammon, fatherless slave of Zoilos’.²³ Another example is *SB XVI 12334* (Philadelphia, 2nd c. AD), a marriage agreement listing the goods belonging to the various parties, among them a slave: [τὴν ὑπάρχουσσαν ἀ]ῦτῆ παιδίσκην δούλην νόθον Εὐθηνιαν, ‘the bastard slave Euthenia, who belongs to her’. If the term ‘illegitimate’ had been formal, either it would not have been used to describe a slave, or it would have appeared in the descriptions of all slaves in the papyri.²⁴ The above descriptions, as they stand, are for identification and may be translated respectively, ‘Sarapammon, slave of Zoilos, whose father we do not know’ and ‘the young slave Euthenia, whose father is unknown’. Such descriptions would have offered a way of specifying a particular individual and distinguishing between persons bearing the same name, rather than categorizing an individual formally. This assumption is further supported by the way that house-born slaves were described in census declarations: the name of the mother was often given, but not always.²⁵

From the world of the military, we possess a significant group of documents in which the presented familial status of the children is not the same as the legal status. These documents (which originate both from Egypt and elsewhere in the Empire) provide an even stronger case, for we know that soldiers were not allowed to marry and could not therefore have legitimate children. Thus, whenever the family of a soldier is mentioned (regardless of the context) we can be certain that it was not his legitimate family.²⁶ In other cases, by contrast, it can be very difficult – if possible at all – to determine whether a particular couple in a document had formed a marital union, since in most cases we lack precise information about the people who appear in the sources.²⁷

The first group of sources that mention the children of soldiers are inscriptions. For example, in *CIL III 3271* – a funerary stela from first-century Pannonia erected for the Roman decurion Tiberius Claudius Valerius – the soldier’s ‘wife’ and ‘daughter’, *coniux eius* and *filia*, appear as if they were his formal family, not his concubine and illegitimate daughter.²⁸ Other similar inscriptions are numerous; they come from various parts of the Empire, and they usually describe soldier’s consorts as ‘wives’ (this is also characteristic of military diplomas).²⁹

As Beryl Rawson observed, the presentation of children explicitly as illegitimate in the epigraphic sources is rather extraordinary. In the inscriptions, there are examples of children who must have been

²³ After Malouta, *Fatherless* (cit. n. 2), p. 124.

²⁴ One could expect this term to appear in deeds of sale of slaves, for this type of documents provides full description of slaves, but nothing concerning sold slaves’ ‘family status’ can be found in them. – See for instance *FIRA III 133 = BGU III 887 = M. Chr. 272 = C. Pap. Jud. III 490* (Pamphilia, AD 151), *P. Turner 22* (Pamphilia, AD 142), *FIRA III 134 = SB III 6304 = CPL 193* (Ravenna, AD 151), *FIRA III 132 = Ch. L. A. III 200 = CPL 120 = Jur. Pap. 37 = P. Lond. II 229*, s. XXI (Seleucia Pieria [Syria], AD 166), *P. Oxy. XLI 2951* (Oxyrhynchos, AD 267), *FIRA III 135 = BGU I 316 = M. Chr. 271* (Arsinoite, AD 359), *P. Kell. I 8* (Oasis Magna, AD 362). – For more examples of both Roman and non-Roman sales of slaves see J. A. Straus, *L’achat et la vente des esclaves dans l’Égypte romaine: Contribution papyrologique à l’étude de l’esclavage dans une province orientale de l’Empire romain*, Munich 2004.

²⁵ M. Depauw, *Do Mothers Matter? The Emergence of Metronymics in Early Roman Egypt*, [in:] T. V. Evans, D. D. Obbink (eds.), *The Language of the Papyri*, Oxford 2009, pp. 120–139, p. 125.

²⁶ The ban was introduced probably under the reign of Augustus in the form of a *mandatum*. See Sara E. Phang, *The Marriage of Roman Soldiers (13 B.C.–A.D. 235). Law and Family in the Imperial Army*, Leiden–Boston–Cologne 2001, pp. 114–133. It perhaps terminated AD 197 (the date known thanks to Herodian [3.8.5]). See Phang, *Marriage*, pp. 86–113.

²⁷ See Beryl Rawson, *Roman Concubinage and Other de facto Marriages*, *TAPhA* 104 (1974), pp. 297–305, *passim*.

²⁸ After B. Campbell, *The Roman Army, 31 BC–AD 337. A Sourcebook*, London 1994.

²⁹ B. Campbell, *The Marriage of Roman Soldiers*, *JRS* 68 (1978), pp. 153–166.

extramarital, either because the status of their parents would have precluded a legal marriage,³⁰ or simply because they took the mother's *nomen*;³¹ this status, however, was rarely indicated and, when it was, it was usually by the terms *spurii* or *naturales*.³² Of course, one could argue that inscriptions should not be used as an argument supporting the statement that the terms signifying 'illegitimacy' were not formal descriptions, because they are not official documents and do not even bear legal meaning.

Official documents

There are, on the other hand, official documents and legal texts which illustrate that the terms signifying legitimacy and illegitimacy, rather than being strict and formal, were in fact somewhat flexible. One such example is a first-century copy preserved on tablets of a privilege, granted by Domitian (*W. Chr.* 463), granting Roman citizenship and fiscal immunities to veterans, their parents, wives, future wives and children. However, while the women with whom soldiers had formed *de facto* marriages could become wives after military retirement, existing children from those unions could not become legitimate.³³ There is no reason to assume that the privilege applied only to marital children but, in the document, no formal distinction between the two groups of children (marital and extramarital) is visible, for they are simply called *liberi*.³⁴

One could argue that the tablets discussed above do not contain any special terminology concerning illegitimacy, because they are only a copy of a privilege issued for the entire Empire, while the formal description of extramarital offspring applied only to Egypt. However, such an argument would be invalid, since there are plenty of official documents issued in Egypt that contain neither of the supposed formal descriptions of illegitimate children, as *SB I 5217* and *P. Oxy. XII 1451*. Both are documents related to ἐπίκρισις. Furthermore, they concern extramarital children born of Roman mothers, who confirm that their children were born out of wedlock³⁵ so that they could obtain Roman citizenship for them. Yet in neither document does the term ἀπάτωρ or χρηματίζων μητρός appear; the term applied in both cases is σπούριος, a term taken directly from Latin, probably through the form applied in the composition of deeds. If we agree that a formal description of extramarital offspring did exist in Egypt, we would have to accept this third term: σπούριος. If that was the case, did ἀπάτωρ and χρηματίζων μητρός apply only to non-Romans, while σπούριος was used solely within the milieu of Roman citizens? Or were the three terms interchangeable? The former statement is hardly acceptable, for such a distinction is not traceable in sources. If, on the other hand, we accept the latter supposition, we would have to add all the terms listed at the beginning of this article to the list of formal descriptions of 'fatherless'. However, this solution is equally unacceptable, since there are also documents discussing extramarital children that attest none of those words.

One such document is the *Papyrus Cattaoui recto*. The papyrus is a copy of proceedings where illegitimacy was the central problem and which took place before an Egyptian official in charge of affirming people's status.³⁶ It consistently states that the children born to soldiers during their service could not be

³⁰ Because both or one of the parents were slaves at the time when their child was born. Beryl Rawson, *Family Life among the Lower Classes at Rome in the First Two Centuries of the Empire*, *CPh* 61.2 (1966), pp. 71–83, passim.

³¹ Rawson, *Family Life among the Lower Classes* (cit. n. 30), p. 74.

³² Beryl Rawson, *Spurii and Roman Views of Illegitimacy*, *Antichthon* 23 (1989), pp. 10–41, pp. 15, 29–37.

³³ *Legitimatío per subsequens matrimonium*, which is the situation when an illegitimate child became legitimate through subsequent marriage of its parents, was introduced only just by Constantine. His constitution was not preserved, yet the text may be restored thanks to Zeno's constitution (C. 5.27.5 pr.). M. Niziołek, *Legal Effects of Concubinage in Reference to Concubine's Offspring in the Light of Imperial Legislation of the Period of Dominate*, Kraków 1980, pp. 25–26.

³⁴ Perhaps if the privilege had not concerned children born during military service, it would have been explicitly stated, since the majority of soldiers' children must have been born during their employment, which normally took over twenty years and started at a relatively young age. – Legions and *auxilia*: 25 years, fleet: 26–28 years. Phang, *Marriage* (cit. n. 26), p. 164.

³⁵ Fathers are not specified, but mothers declared their children as born 'of illegitimate marriage', ἐκ μὴ νομίμων γάμων. Phang, *Marriage* (cit. n. 26), p. 43.

³⁶ The cases quoted in *P. Catt. r.* were decided by either prefect of Egypt during his *conventus* (cases 2, 4–6) or his *iudex datus* (case 3) or στρατηγός (case 1) or ἴδιος λόγος (case 7). Phang, *Marriage* (cit. n. 26), p. 25.

counted as legitimate marital children, for the laws forbade it; however none of the phrases found so frequently in the papyri appear even once in this document.

One of the cases preserved in *P. Catt. r.* concerns a son of Isidoros *alias* Martialis, an auxiliary soldier, and Chrotis, an Alexandrian woman. His mother appealed to the prefect for him to be recognised as a legitimate child of his father, so that he did not have to pay the tax on inheritance (case 5: *P. Catt. r.* col. IV, ll. 1–15).³⁷ The prefect refused her request, explaining his decision in the following way: οὐκ ἐδύνατο Μαρτιά[λιος] στρατευόμενος νόμιμον υἰὸν ἔχειν, ‘Martialis, being a soldier, was not allowed to have a legitimate son’. No positive and formal description of ‘extramarital child’ is present, although we could accept the term νόμιμος υἰός as a synonym of ‘legitimate son’, hence a negative description. It is worth noting that, in contrast to the edict of Domitian discussed above, the boy was not a Roman citizen.

The same papyrus contains the answer to a petition addressed by the soldier Longinus, a Roman citizen, for his sons to be recognised as his legitimate children (case 4: col. III, ll. 11–22). The official judgment was negative, saying: [ἐπεὶ σεσ]ή[μα]νται οἱ παῖδες ὡς ἐκ Ῥωμαίας [γεγενημέ]νοι, σὺ αὐτοὺς καὶ θ[έ]λει[ς] ἐξ ἐπι[κρίσεως νομί]μου καταλείπειν, νόμιμον δὲ πατέρα αὐτῶν ποιεῖν οὐ δύνομα[ι]. ‘Although the children are identified as born of a Roman woman and you want them to be declared as (your) legal (offspring) in *epikrasis*, I cannot make you their legitimate father.’ In both cases the description of illegitimacy is based only on the opposition to legitimacy; illegitimate sons are described as those who are not legitimate.

In case 6 (col. IV, l. 16–col. V, l. 26), the *praefectus Aegypti*, trying a case of sons born to an Alexandrian woman and a soldier Octavius Valens, describes illegitimacy with the adjective ὀθνεῖος, ‘strange, foreign’, an expression that is not attested in the papyri except for this document, col. V, ll. 8–10: ὁ παῖς [ο]ὔτος γεγέννηται τῷ Οὐάλεντι στρατευομένῳ ἐ[ν] σπείρῃ: ὀθνεῖος αὐτοῦ ἐστίν, ‘this boy was born to Valens while he served in a cohort, he [i.e. the boy] is foreign to him’.

Another important source that may shed some light on the terminology of illegitimacy is the *Gnomon of the Idios Logos*.³⁸ The rules preserved in this volume are paraphrased laws, and the text itself served as a ‘manual for officials’; thus, if an official terminology indicating the formal status of extramarital children existed, we would expect it to appear in the *Gnomon*. However, in all the passages discussing illegitimate children – either begotten by parents of different *status civitatis* or born to soldiers (§ 13, 35, 38, 39, 46, 47, 50, 54, 57) – they are simply named τέκνα. One of the important passages is § 35, which expresses the rule introduced in favour of soldiers’ children by the emperor Hadrian, who granted the privilege to request *bonorum possessio* after their fathers in the class *unde cognati*, *BGU V* 1210, ll. 99–100: λῆ. τοὺς στρατευομένους καὶ ἀδιαθέτους τελευτῶντας ἐξὸν τέκνοι[ς] καὶ συγγενέσι κληρονομεῖν, ὅταν τοῦ αὐτοῦ γένους ὧσι οἱ μετερχ[ό]μενοι. ‘35. Children and relatives are allowed to inherit after soldiers who died without a will whenever they follow the kin of deceased.’ More importantly, the preserved Greek copy of this law³⁹ (*BGU I* 140 = *M. Chr.* 373 = *Sel. Pap.* II 213 [Alexandria, AD 119]) does not include any of the descriptions discussed, but simply refers to the children of soldiers as οἱ τῷ [τ]ῆς στρατε[ί]ας χρόνῳ ἀναλ[η]μφθέντες⁴⁰, ‘those begotten during the time of military service’.

Legal papyri

The third group of sources are legal documents on papyrus and tablets. The most prominent example is the Roman will composed for the legionary soldier Antonius Silvanus, *FIRA III* 47 (Alexandria, AD 142). In it, the testator not only describes his obviously illegitimate son simply as *filius meus*, but also behaves as *pater*

³⁷ P. M. Meyer, Papyrus Cattaoui, II. Kommentar, *Archiv* 3 (1906), pp. 67–105, p. 81.

³⁸ 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:] P. F. Girard, F. Senn (eds.), *Les lois des Romains*, Napoli 1977, pp. 12–49 (text and translation).

³⁹ Phang, *Marriage* (cit. n. 26), p. 39.

⁴⁰ On the meaning of the verb see A. Berger, *Miscellanea papyrologica*, *JJurP* 1 (1946), pp. 13–40, pp. 28–33.

familias by appointing a guardian for him. If there was no information on the military status of the testator, one could easily interpret this document as the will of a *pater familias* appointing his son heir.

In *P. Oxy.* LV 3798, a second-century acknowledgment of a loan repayment from Oxyrhynchos, the children (perhaps Roman)⁴¹ of Artemis and the veteran Gaius Veturius Gemellus, born during his service, are presented as follows: Γάϊος [Ούετούριος] Γέμε[λλος καὶ Λου]κία Οὐε[τουρία] ἢ καὶ Θερμ[οσύθ]ι[ον] ἄμφότεροι Γ[αί]ου Οὐετουρίου Γεμέλλου οὐετραν[οῦ], ‘Gaius Veturius Gemellos and Lucia Veturia also called Thermouthion, both (children) of Gaius Veturius Gemellus, veteran’. Again, there is no trace of any formal description of illegitimacy or any other indication of their status. One could argue that these documents do not deal with the problem of illegitimacy, thus such a description would be unnecessary or irrelevant. However, if illegitimacy was a formal category, it should appear in documents of any type, especially ones in which the status of the children was relevant for their hereditary rights⁴² and consequently their ability to accept the debt.

Moreover, the category does not appear in documents that are specifically concerned with the problem of illegitimacy, namely in the *testationes* composed to attest that a child was born to a certain father for the purpose of future citizenship.⁴³ It is important to note that these documents – including *P. Mich.* VII 436, *BGU* VII 1690 = *FIRA* III 5, *testationes* made by auxiliary soldiers⁴⁴ – openly explain that the children could not be registered as legitimate, for the *leges Aelia Sentia et Papia Poppea* forbade it.⁴⁵ But again no term for illegitimacy is used. The exception is *P. Diog.* 1, a *testatio* made by the auxiliary soldier Marcus Lucretius Clemens: *M(arcus) Lucretius Clemens (...) testatus est (...) naturalem sibi filium in militia natum esse Serenum ex Octauiia Tamusta*, where the son is described with the adjective *naturalis*. In *P. Mich.* III 169, a Latin *professio* from second-century Karanis, a Roman woman Sempronia Gemella registered the birth of twins and described them as *ex inc[ert]o patre ... natos masculinos g[e]minos sp(urios) f(ilios)*.⁴⁶

Moreover, the legal and jurisprudential sources did not apply a uniform terminology to illegitimate children.⁴⁷ The frequent terms *spurius*, *filius/filia naturalis*, *vulgo concepti/quaesiti*, *sine patre filii*, and often simply *filius*, *filia*, *liberi* with no adjective at all, were used. Before Constantine, the listed terms were applied to all illegitimate children, regardless of whether they were begotten in the course of long-term relationship or through random intercourse. The expression *liberi naturales*, for instance – which denoted children born in concubinage in Constantinian and post-Constantinian legal sources⁴⁸ – before Constantine served indiscriminately as a description of both marital and extramarital children.⁴⁹ The same conclusion may be drawn regarding the term *spurius*, which was applied indiscriminately to all extramarital children: we can find it in inscriptions describing children born of concubinage,⁵⁰ as well as in Gaius referring to children born of incestuous relationships (G. 1.64).

⁴¹ For the discussion on the children’s status see the commentary of the editor, J. R. Rea: *P. Oxy.* LV, pp. 79–80.

⁴² See the editor’s commentary.

⁴³ See C. Sánchez-Moreno Ellart, ὑπομνήματα ἐπιγεννήσεως: the Greco-Egyptian Birth Returns in Roman Egypt and the Case of *P. Petaus* 1–2, *Archive* 56.1 (2010), pp. 91–129, p. 113.

⁴⁴ On birth returns see Sánchez-Moreno Ellart, ὑπομνήματα ἐπιγεννήσεως (cit. n. 43); *id.*, Notes on Some New Issues Concerning the Birth Certificates of Roman Citizens, *JJurP* 34 (2004), pp. 107–120.

⁴⁵ Phang, *Marriage* (cit. n. 26), p. 119.

⁴⁶ The father might have been either Sempronia’s tutor or her neighbour Socrates, a tax collector. Phang, *Marriage* (cit. n. 26), p. 42 (with further literature).

⁴⁷ Rawson, *Spurii* (cit. n. 32), p. 18.

⁴⁸ Probably starting from Constantine’s constitution on *legitimatō per subsequens matrimonium*, which has not survived. See M. Niziołek, Meaning of the Phrase *liberi naturales* in Roman Law Sources up to Constantine’s Reign, *RIDA* 22 (1975), pp. 317–344, p. 317 n. 2 (with further literature).

⁴⁹ Marian Niziołek identified the phrase as a description of children born: 1. in wedlock; 2. by a slave; 3. in concubinage; 4. of extramarital cohabitation both in general meaning and as opposed to those born in lawful wedlock (*ibid.*).

⁵⁰ Rawson, *Family Life among the Lower Classes* (cit. n. 30), p. 73.

Territorial range of terms

The terms used as descriptions of extramarital children appear to be local, as noticed by Wilhelm Crönert in 1905.⁵¹ Myrto Malouta rightly observed that only a few papyri attesting the word ἀπάτωρ come from outside the Arsinoite nome.⁵² The few that originate elsewhere come from at least five different places,⁵³ but their number is still very small compared to the number of papyri attesting the term (around 250) from the Arsinoite nome.⁵⁴ These few documents, however, do not disprove the observation concerning the local character of the descriptions; rather, they support the supposition that the phrases discussed above were onomastic habits, and not a formal description. Even after moving to a different nome, a person described as ἀπάτωρ in the Arsinoite nome would have kept his description/nickname, which helped to distinguish him from other people of the same name.

The phrase χρηματίζων μητρός, on the other hand, seems to occur exclusively within the Oxyrhynchite nome.⁵⁵ The description consisting of μητρός written in genitive and a female name also in genitive is attested in different places in Egypt, although the most significant number comes from the Arsinoite nome.⁵⁶ The same can be said of the less-frequent descriptions – where the Arsinoite nome is again dominant – however they are too few in number to allow for a statistical approach. The evidence of local onomastic habits (ἀπάτωρ and χρηματίζων μητρός) with regard to illegitimacy demonstrates that the terms could not be formal, otherwise they would have been the same all over Egypt or, at very least, they would have been applied indiscriminately within official documents.

Chronological range of terms

The application of these terms is also limited almost exclusively to the second and third centuries. The earliest attestation of the word ἀπάτωρ in papyri comes from *P. Lond.* II 256 d, dated to AD 11,⁵⁷ but this is an exception, as first-century documents attesting this expression are very few. As the graph illustrates, over 70% of the documents containing this term are second-century papyri (fig. 1); if the term only became popular a full century after the beginning of Roman rule in Egypt, it can hardly be attributed to the influence of Roman laws on bastardy.⁵⁸ The second largest number of documents are the texts written in the third century, that is after the ban on the marriage of soldiers had been abolished; this would seem quite clearly to contradict Youtie's statement that the terms applied only to the offspring of soldiers and veterans (fig. 1). The term is confirmed only twice after the third century: once in the fourth century (*P. NYU* I 12 [Arsinoite, AD 336–337]: tax list) and once in the sixth (*P. Ryl.* IV 714 [Hermopolites ?, 6th c. AD]: account). Thus, the term must have fallen out of use at some point in the third century.

A similar conclusion can be drawn for the term χρηματίζων μητρός: while only a few documents are dated to the first century AD, the majority was produced in the second century. But the second-century papyri do not outnumber those from the third century as significantly as in the case of those containing

⁵¹ W. Crönert, *Zur Kritik der Papyrustexte*, *SPP* IV, Leipzig 1905, p. 94.

⁵² Malouta, *The Terminology of Fatherless* (cit. n. 3), p. 617.

⁵³ Memphite nome: *BGU* XI 2019, *SB* XII 11011; Mendesian/Hermopolite nome: *P. Ryl.* II 220, *P. Thmouis* I 1.159; Ibite nome: *P. Iand.* VII 1421; Prosopite nome: *P. Lond.* II 324 = *W. Chr.* 208; and from Dura Europos: *P. Dura* 51 (collected by Malouta, *The Terminology of Fatherless* [cit. n. 3]); plus perhaps Elephantine: *O. Bodl.* II 872, *O. Eleph. DAIK* I 47, *O. Eleph. DAIK* 72. Among those three examples from Elephantine only the last one is quite certain, for the word ἀπάτωρ was written in full, while in the two former cases it was abbreviated probably to the first letter; editions: (ἀπάτωρ).

⁵⁴ This big number of attestations might be caused by the huge number of tax lists from the region which are the type of the document often applying this description.

⁵⁵ Malouta, *The Terminology of Fatherless* (cit. n. 3), pp. 617–619. See tab. 3 at <http://marianowak.bio.wpia.uw.edu.pl/files/2014/06/Appendix.pdf>.

⁵⁶ At least 46 documents, and one must remember that a relatively big number of papyri is of undetermined provenance. See tab. 2 at <http://marianowak.bio.wpia.uw.edu.pl/files/2014/06/Appendix.pdf>.

⁵⁷ Malouta, *The Terminology of Fatherless* (cit. n. 3), p. 615.

⁵⁸ See Rawson, *Spurii* (cit. n. 32).

the word ἀπάτωρ (fig. 1). To the best of my knowledge, the phrase χρηματίζων μητρός is not attested after AD 300.

A similar observation can be made with regard to the word μητρός followed by the female name in genitive. Over 50% of the documents containing this description are dated to the second and early-third centuries AD, and about 25% to the third century. Only a few documents are dated either to the late-third and fourth centuries, but the dating of the majority of those is based solely on palaeographic grounds.⁵⁹

The observations concerning the chronology and provenance of documents attesting the use of the expressions ἀπάτωρ and χρηματίζων μητρός are not, however, fully credible, for they reflect general tendencies of the papyrological documentation. The papyri from the second century are the most numerous and among them most come from the Arsinoite nome, a tendency that is visible in our data too.⁶⁰ Analogous explanation can be applied to chronological disproportions between nomes. While attestations of the word ἀπάτωρ from the second century exceed significantly those from the third century, the difference in the usage of the phrase χρηματίζων μητρός is not so significant (fig. 1). This could be explained in terms of the established chronological range of the papyri from the Arsinoite and Oxyrhynchite nome: the former are dated mostly to the second century and the latter to the third century.⁶¹

Yet if we take under consideration only precisely dated papyri the conclusion is slightly different: most documents attesting the word ἀπάτωρ were composed between AD 180 and 189. The second biggest group comes from the 160's and the third from 150's (fig. 1), while the biggest number of papyri from the Arsinoite nome are dated to the years 151–160.⁶²

Types of documents attesting the use of the terms

The term ἀπάτωρ appears mostly in various lists, as well as census or tax declarations and receipts, while χρηματίζων μητρός is present mostly in legal papyri (fig. 2). Furthermore, both terms were applied to avoid confusion between different individuals bearing identical names. In lists, receipts and declarations – that is, in documents which are either repetitive and/or produced in the thousands or those containing many entries – the terms signifying ‘extramarital child’ served to distinguish one person from the other. They are, in this case, the equivalents of patronymics, applied so as not to confuse one Diogenes with another.

Moreover, these terms are almost untraceable in private documents such as letters, which is understandable given that the addressee would have known the sender, and it is rather unlikely that he would mistake him for someone else if the additional description was not added. The same may be said of other private documents, such as household accounts. This supposition is supported by the results of Mark Depauw's investigation into the use of the matronymic; the majority of instances in which the mothers' name is added to personal identification in the second half of the first century are also found in documents related to the census and taxes.⁶³

Conclusions

The conclusions from this article concerning the descriptions of people of extramarital status are supported by what we know about their social status in Roman Egypt (and in the Empire in general). It is demonstrated in many papyri that they were not socially stigmatized, as Herbert Youtie rightly stated.⁶⁴ There is a significant group of papyri containing *mortis causa* dispositions made for them by both fathers and mothers (soldiers' families: *BGU I 326*, *P. Lugd. Bat. XIII 14*, *FIRA III 47*, *BGU VII 1662*⁶⁵; others: *P. Köln II 100*,

⁵⁹ See <http://marianowak.bio.wpia.uw.edu.pl/files/2014/06/Appendix.pdf>.

⁶⁰ W. Habermann, Zur chronologischen Verteilung der papyrologischen Zeugnisse, *ZPE* 122 (1998), pp. 144–160, Abb. 8.

⁶¹ Habermann, Zur chronologischen Verteilung (cit. n. 60), Abb. 3.

⁶² Habermann, Zur chronologischen Verteilung (cit. n. 60), Abb. 6a.

⁶³ Depauw, Do Mothers Matter? (cit. n. 25), p. 132.

⁶⁴ Youtie, ΑΠΑΤΟΡΕΣ (cit. n. 1).

⁶⁵ Phang, *Marriage* (cit. n. 26), pp. 218–221.

PSI XII 1263, *P. Oxy.* I 104). The freedom (limited only by the rights of *sui heredes*) to appoint extramarital children as heirs was underlined in the legal texts (D. 28.6.45, *P. Catt. r.*). Moreover, *S.C. Orphitianum* allowed Roman extramarital children to apply for *bonorum possessio* (in the class *unde liberi*) after their Roman mothers.⁶⁶ Hadrian granted soldiers' children⁶⁷ the right to apply for *bonorum possessio* after their fathers (*BGU* I 140) and legitimate succession within informal families is attested in various documents (*PSI* XV 1532, *P. Oxy.* LV 3798, *P. Diog.* 18).

Furthermore, some informal families functioned as if they were formal ones; in many documents (and inscriptions) there is nothing to suggest the illegitimate origin of children, even if it may be inferred from the surrounding circumstances. Such an example is the will of Antonius Silvanus discussed earlier (*FIRA* III 47), in which the testator not only avoided any description of illegitimacy with regard to his son, but also acted as *pater familias* in appointing a tutor for him. Interestingly, this is not a unique example of such an act; in Drusilla's dossier, her husband – who was a soldier – appointed a tutor for their common children in his will (*M. Chr.* 88, ll. 24–27 [Arsinoite, AD 128–129]). Both texts come from the early second century, while a father could appoint a tutor for his children (only if he provided them with some gifts *inter vivos* or later *mortis causa*) from the third century at the earliest.⁶⁸

Another example is *P. Catt. r.*, also discussed above. In case 4, the children of Longinus shared his *nomen* – Longinus Apolinarius and Longinus Pomponius – while, in case 6, Octavian Valens was not only disappointed, but also surprised by the prefect's negative decision to his request. This can be explained in social terms, since those children existed as their parents' recognised offspring regardless of whether or not they were described as illegitimate. These examples are surely not unique, but they are perhaps in the minority, for in the majority of cases, when one is not openly described as an illegitimate child, there is no method by which his or her status may be determined, especially not in the lists, receipts and declarations; thus, it would be impossible to present any statistics concerning the number of extramarital children in Roman Egypt.

As long as being an illegitimate child was not a stigma, description of this status could appear in the papyri. Even if the legal situation of these children was worse than that of the legitimate ones, it was still not bad, since their parents were free to make testamentary dispositions to their benefit, and the tendency of granting this group more hereditary rights in the first two centuries of the Principate is clearly visible (*S.C. Orphitianum* and Hadrian's privilege for soldiers' children).

Their situation changed drastically in the time of Constantine, who introduced different categories of illegitimate children: children born of concubine described as *fili naturales*⁶⁹ and others. The former group was privileged in respect to the latter, for the children born to concubines could be made legitimate. It was the same emperor who initiated a series of legal restrictions concerning their rights, including the limitation (and in some cases even prohibition) of property that might be given to them by their relatives.⁷⁰ The fact that 'fatherless' descriptions disappeared from papyri at more or less the same time is not a coincidence. As soon as being a bastard became a stigma, the words stating such a status began to disappear from quotidian documents. The question that remains is, whether the stigma came with Constantine or whether he merely codified the existing situation.

Maria Nowak, Institute of the History of Law, University of Warsaw, Krakowskie Przedmieście 26/28, 00927 Warsaw – m.nowak@wpia.uw.edu.pl

⁶⁶ D. 38.17.1.2, *P.S.* 4.10.1; I. 3.4.3.

⁶⁷ Campbell, *The Marriage* (cit. n. 29), p. 158.

⁶⁸ In D. 26.3.7. pr. ascribed to Hermogenian, considered as an interpolation by some students of Roman law, see Niziołek, *Legal Effects of Concubinage* (cit. n. 33), p. 63. Such a right is well attested in constitutions issued at the time of Justinian, C. 5.29.4; *Nov.* 89. – These are not the unique examples of soldiers' wills to benefit of their children. See Phang, *Marriage* (cit. n. 26), pp. 119–121.

⁶⁹ However, not all children born of concubine belonged to this category, for some other requirements concerning the relationship between the parents had to be fulfilled. See Niziołek, *Legal Effects of Concubinage* (cit. n. 33), p. 24.

⁷⁰ See Niziołek, *Legal Effects of Concubinage* (cit. n. 33), *passim*.

Fig. 1. The time range for the precisely dated attestations of the terms

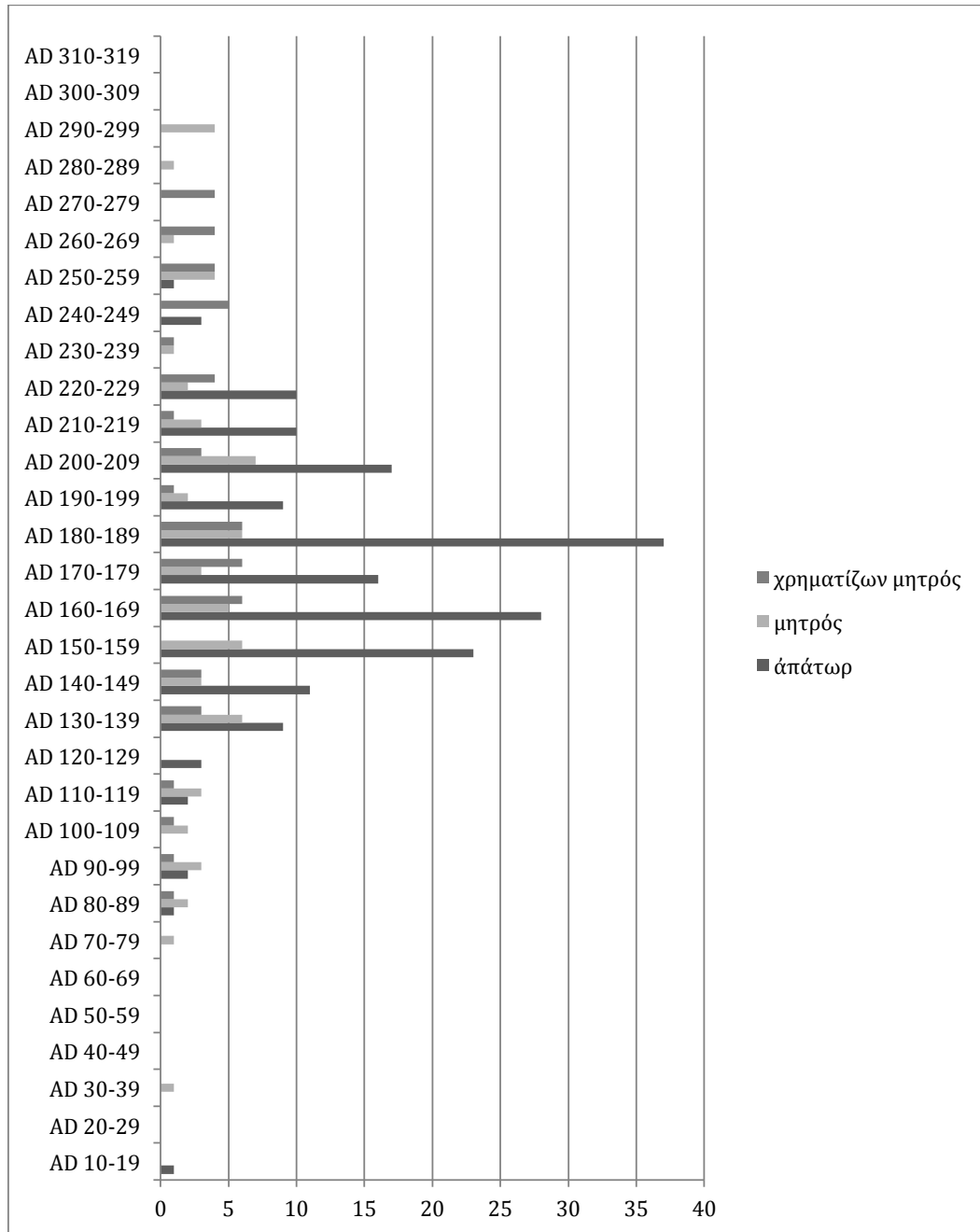


Fig. 2. Types of documents attesting employments of the terms

