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1.8 The law of Coptic legal documents

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As early as the late nineteenth century, soon after the first Coptic papyri had been discovered and edited, legal historians started trying to categorize the kind of law underlying the legal practice as attested by these new pieces of evidence. At that time the issue was shaped and focused by the binary perspective of Ludwig Mitteis' (1891) seminal work on *Reichsrecht* versus *Volksrecht* in the eastern provinces of the Roman empire. Mitteis had argued that in contrast to the linguistically as well as culturally largely Romanized western provinces, in the eastern part of the Roman empire substantial remains of native legal thought and practice had resisted the reception of Roman law and even survived the most efficacious impacts of it, including the *Constitutio Antoniniana* of AD 212, and the introduction of Justinian's code and novels in the sixth century (cf. Steinwenter 1952; Wolff 1956; Taubenschlag 1930 and 1940/41). Mitteis' methodological innovation was to treat the broad historical evidence for deviations from Roman legal norms no longer as secondary sorts of vulgarized, sunken bits of originally Roman law, but as traces of a substratum, actually pointing to pre-Roman legal traditions. During the whole twentieth century, the question whether or not the Coptic legal documents were conveying pre-Roman, "Demotic" or "Egyptian," law remained a debated matter. Two leading contemporary historians of the law, the Austrian Arthur Steinwenter of the University of Linz and the American A. Arthur Schiller of Columbia University, even acquired some knowledge of Coptic in order to treat the issue *a fontibus*.

The evidence for an inner, legal continuity of Egyptian law was often seen in close connection with the possibility of proving an external, linguistic continuity of schemes, clauses, and phrases between Demotic

and Coptic legal documents. While earlier assumptions as to the transmission of parts of the Demotic legal language in Coptic documents could not be proved (Richter 2002b: 37–57), there could be some instances of pre-Roman Egyptian law that might have been transmitted in changed clothes, as it were, first by Greek and later by Coptic documents. But in many cases it is almost impossible to distinguish vertical, diachronic connections (continuity) from horizontal, synchronic relationships (coherence). For example, the donation of boys to the Upper Egyptian monastery of Phoibammôn near the town of Djême evidenced by more than twenty mid- to late eighth-century Coptic documents has often been related to earlier priestly practices in Egypt, particularly evidenced by the Demotic dossier of self-dedication documents in favor of certain gods and temples.[64] Nevertheless, as has been shown recently, the practice of child donation attested in that Coptic dossier had a broad Byzantine background, including also the western medieval European institution of the *oblatio puerorum* "conveyance of boys" (cf. Papaconstantinou 2002a and 2002b; Richter 2005). Or, to quote another example, the tendency to avoid lawsuits at courts by forming settlements with the aid of arbitrators as attested by late Roman and Byzantine Greek and eighth-century Coptic *dialysis* documents has been thought by some scholars an Egyptian peculiarity (Schiller 1932: 252; Allam 1985, 1991, 1994a), while Gagos and van Minnen (1994) treated the Greek *dialysis* dossier in terms of merely synchronic conditions, namely kinship and social relationships, asking under a quasi-ethnographic perspective, "how [did people] manipulate laws, rules, customs, and principles to get the best deal they could – without unduly damaging the relationships that existed between them?" (p. 37), and giving reasonable explanations without any particularly Egyptian implications (on arbitration outside of the courts, cf. also **10.4** and **10.5** below). Fields of law that have always been considered conservative strongholds of native legal customs and manners are the laws of family, marriage, and marital property; but the latter in particular are scarcely attested by Coptic documents.

Arthur Schiller, who tended to a maximalist estimation for the continuity of Egyptian law in the Coptic papyri, used to speak about "Coptic law." This term, implying a virtually independent, or at least, distinguished legal tradition evidenced by Coptic texts, was challenged by Arthur Steinwenter, who replaced it by the term and concept of "the law of Coptic documents" (cf. Schiller 1938: 360–64, Wenger 1939: 281–82, and Steinwenter 1955: 1–3). Although himself far from denying the possibility of legal continuity,

[64] See Schiller (1931: 212 and 1932: 252), Thissen (1986), Richter (2002b: 136–42).

in doubtful cases Steinwenter preferred to look for Byzantine sources of law, and often did so successfully. His term "the law of Coptic legal documents" is therefore chosen in the heading of the present section.

Still, the overwhelming impression of a largely Romanized law underlying the legal relations of the people of Byzantine and early Islamic Egypt may be a good deal shaped by a merely philological perspective looking through the lens of written records. In the case of sales and leases, for example, we have to admit that the vast majority of legal events might have happened simply unrecorded (cf. introductions to **6.6** and **7.4**). Not only does the form of putting a legal matter have some influence on that matter, but already the parties' choice of a certain way of managing, or a certain scheme of recording, their legal and business affairs does imply their favor for the legal implications and consequences connected with this particular way. Thus reliance on these formally drafted documents may simply lead to a sort of self-fulfilling prophecy.