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THE DEATH OF THE SURETY[1]

One of the most charming narratives in the Odyssey is the story of the adultery of Arês and Aphroditê, their apprehension and detainment by Aphroditê's husband Hêphaistos, and the subsequent council of the gods, in which Poseidôn, the culprit's uncle, proposes to Hêphaistos to act as surety for the future payment of indemnity to him by Arês.[2] Narrating this episode in a public feast held by the Phaeacians in honor of Odysseus, the *aoidos* Dêmodokos does not need to explain to the audience what a surety is. That, for example, the surety was usually a close family member of the debtor/culprit and could be seized by the creditor until the defrayment of the debt, are two characteristics treated as self-evident both by the epic audience, that is by Odysseus and the Phaeacians, and by the audience of the Homeric epos. The Homeric epos does not contain many accounts of legal institutions, certainly not private-legal ones,[3] and the fact that it does give an account of the surety stresses the Greekness and commonness of this institution. Surety is as Greek as the *symposion*, the *xenia*, the athletic competition and the singing of the *aoidos* itself, all institutions reported *en detail* in the section of the epos narrating Odysseus' stay with the Phaeacians.

The same picture is conveyed by our second source, *BGU* XIV 2367 (late III CE, Alexandria). According to the prevailing view, this document records a section of the famous *Justizdiagramma* of Ptolemy II (ca. 273 BCE) that regulated the contents and diplomatic features of the Greek double document.[4] The fourth paragraph of this section enjoins the sealing of the document by the contracting parties. Among the parties who are required to attach their seals to the document we find the creditors, the debtors, the witnesses, as well as "our" sureties.[5] The law does

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[1] I would like to thank Professor Willy Clarysse and Professor Edward Harris for reading and commenting on this paper.

[2] Hom., *Od*. VIII, 343-358. Cf. Cantarella 1965, p. 52, 64; 1964; Herrmann 1990, p. 97-102; Partsch 1909, p. 9-23.

[3] Still useful, and exhaustive, is Bonner-Smith 1930, p. 1-56. Regular contracts are mentioned particularly in connection with the hiring of day-laborers. Cf., e.g., *Od*. XVIII, 357-360.

[4] J. Mélèze-Modrzejewski 1984, p. 1176-1178; Wolff 1982, p. 371.

[5] *BGU* XIV 2367.13-16 (late III BCE, Alexandria?): σφραγιζέσθωσαν δὲ οἵ τε δανείζοντες καὶ οἱ l[14] [δανειζό]|μενοι καὶ οἱ ἔνγυοι καὶ οἱ μάρτυρες · [λαβὼν δὲ] l[15] τὴν συγγραφήν εἷς τῶν ἐπι[γεγραμμένων (vel ἐπιγραφέντων) ἐπ' αὐτῆς] l[16] μαρτύρων κυρίαν φυλασσέτω [± 19]. Cf. Kaltsas 2001, p. 106 n. 42.

not introduce the sureties as a new element. It treats them as self-evident, regular contractual parties who are subject to the same rules as all the others.

A consideration of the loan documents themselves conveys at first sight a different picture: almost half of the third-century Greek contracts (18 of 38) do not report the appointment of a surety, yet when we weed out contracts recording loan in kind the picture changes. If the loan contract records the delivery of cash, especially if the loan is titled *daneion*, the appointment of a surety is a rule that would be departed from only if the creditor disposed of another, more effective type of security.[6]

The appointment of surety is documented, *expressis verbis*, in twenty-seven Greek third-century contracts. Twenty, already listed above (n. 6), record loans, but others also record leases, where the surety warrants the delivery of the rent by the lessee, and sales.[7] Usually the surety is documented twice in the contract. First he is

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[6] Surety is recorded in *BGU* X 1961 (213/2 BCE, Thôlthis): cash, *daneion*; 1964 = *SB* V 7569 = *P.Hamb.* II 190 (221-214 BCE, Thôlthis): cash, category lost; 1966 (246-221 BCE?, Oxyrhynchitês?); *CPR* XVIII 14; 16; 24 (all from 231/206 BCE, Theogonis); *P.Cair.Zen.* I 59001 = *PSI* IV 321 (partial) = *SB* III 6707 (partial) = *Sel.Pap*. I 66 (274/3 BCE, Pitôs, Oxyrhynchitês); II 59173 = *P.Iand.Zen*. 2 = *SB* III 6742 and 6742a (255 BCE, Philadelphia); *P.Köln.* V 218 (215/4 BCE, unknown provenance); *P.Petr*. III 55a (235/4 BCE, Crocodilopolis?): all the above recording cash, *daneion*; *P.Sorb.* 17 (257 BCE, Mermertha): seeds, *daneion*; *P.Tebt.* III 815 frag. 2^{v}.1.1-14: cash, *daneion*; frag. 2^{v}.1.15-22: grain, *daneion*; frag. 2^{v}.2.30-40; frag. 4^{r}.1.23-29 (all from 223/2 BCE, Tebtynis); *PSI* IV 389 (243 BCE, Philadelphia); *SB* XII 11058 = *P.Ross.Georg.* II 1+2 (244 BCE, Oxyrhynchos); 11059 (244 BCE, Oxyrhynchos): all the above recording cash, *daneion*; XIV 11660 = *P.Iand.Zen.* 3 (ca. 255 BCE, Philadelphia): cash, category lost; XVI 12812 (255 BCE, Philadelphia): wheat, *daneion*. No surety is recorded in: *BGU* VI 1274 (218/7 BCE, Takona): cash, *daneion*; 1275: olyra, *daneion*; 1277: olyra, no term; 1278: olyra, *daneion*; X 1969: wheat, *daneion*; XIV 2393 (all from 215/4 BCE, Oxyrhynchitês): olyra, *daneion*; 2395 (221 BCE, Takona): cash, *daneion*, *antichrêsis*; 2396 (213/2 BCE, Thôlthis): cash, *daneion*; *CPR* XVIII 18 (231/206 BCE, Theogonis): cash, *paramonê*; *P.Corn.* 2 (250/49 BCE, Philadelphia): cash, no term; *P.Hamb.* II 183 (251 BCE, Takona): grain, no term; *P.Hib.* I 85 = WChr 103 (261 BCE, Oxyrhynchitês?): seeds, no term; 86 (before 20.8.248 BCE, Oxyrhynchitês?): olyra, no term; 124 *descriptum*: olyra, no term; 125 *descritpum* (both of ca. 250 BCE, Oxyrhynchitês): olyra, category not stated in the edition; *P.Köln* V 220 (208/191 BCE, Arsinoitês): *apomoira*, no term; *P.Lond.* VII 1986 = *SB* X 10251 (252 BCE, Alexandria): cash, *daneion*; *P.Zen.Pestman* 20 = *P.Cair.Zen.* II 59257 (252 BCE, Arsinoitês): a special arrangement regarding a *daneion*.

[7] For sureties in the context of lease c.f., e.g., *P.Col.* III 54.1.19-24 = *SB* IV 7450 = *Sel.Pap.* I 39 (250 BCE?, Arsinoitês?): τὸ δὲ βλάβος ὃ ἂν καταβλάψωσι τὴν l[20] Ἀπολλωνίου πρόσοδον ἢ πρὸς τὸ ἐκφόριον καὶ τὰ δάνεια ὃ ἂν l[21] προσοφειλήσωσι ἀποτεισάτωσαν Ζήνωνι παραχρῆμα ἡμιόλιον. ἡ δὲ πρᾶξις ἔστω Ζήνωνι ἢ ἄλλωι ὑπὲρ αὐτοῦ l[22] πράσσοντι ἔκ τε αὐτῶν καὶ τῶν ἐγγύων καὶ τῶν ὑπαρχόντων αὐτοῖς πάντων l[23] καὶ ἐξ ἑνὸς καὶ ἐκ πάντων ὡς πρὸς βασιλικά. ἔγγυοι τῶν κατὰ τὴν συγγραφὴν l[24] εἰς ἔκτεισιν οἱ συγγεγραμμένοι ἀλλήλων καὶ Ἀμμώνιος Θέωνος

recorded in the *praxis* clause, according to which in most cases the creditor is allowed to exact the debt from the person and properties of the debtor and the surety alike.[8] The following clause (henceforth "the surety clause") establishes the identity of these sureties.[9] In five cases the name of the surety is lost, in four the debtors act as co-sureties.[10] If the surety is a third person, he is commonly a member of the debtor's family – his father, wife, brother or son – or shares the debtor's *patris*.[11]

Κυρηναῖος τῶν [ἐ]πέργων. Compare in general, Herrmann 1990, p. 111-112; Lipsius 1905-1915, p. 711.

8 The earliest formula is attested, for example, in *P.Cair.Zen.* I 59001.39-42 = *Sel.Pap.* I 66 (274/3 BCE, Pithôs): καὶ ἡ πρᾶ|[40][ξις ἔστω Διονυσίωι ἐκ] τῶν ὑπαρχόντων τῶν |[41] [Ἰσιδώρου καὶ τῶν τοῦ] ἐγγύου, πράσσοντι |[42] [τρόπον ὃν ἂν βούληται]ι Διονύσιος πρὸς βασι|[43][λικά, with the variant ὡς πρὸς βασιλικά attested as well [e.g. *P.Cair.Zen.* II 59182.10, 23]. In the late third and early second century BCE the routine formula, attested for example in *BGU* X 1961.10-12 (213/2 BCE, Thôlthis), is τὸ δὲ δάνειον ἡμιό[λιον καὶ ἡ πρᾶξις] |[11] [ἔστω] Θεοδώρωι παρὰ Μενωνίδους καὶ ἐκ τοῦ ἐγγύου πράσσοντι κατ[ὰ τὸ διά]|[12][γραμμα.] Commonest, in the second century BCE, is the clause as recorded in *PSI* XIII 1311.34-38 (136 BCE, Berenikis Thesmophorou), ἥ τε πρᾶξις ἔστω τῷ Θ]εοδώρῳ τῶν κατὰ τὴ[ν συγγραφὴν] |[35] [γεγραμμένων ἔκ τε τοῦ αὐτοῦ Σωσάν]δρου τ[οῦ] δεδανεισμέν[ου καὶ ἐκ τοῦ] |[36] [Πτολεμαίου τοῦ ἐγγύου πράσσοντί τε] ἐξ ἀμφοτέρων καὶ ἐξ [ἑνὸς καὶ] |[37] [ἑκάστου αὐτῶν καὶ ἐκ τῶν ὑπαρ]χόντων αὐτοῖς πάντων καὶ|[38][θάπερ ἐκ δίκης. Cf., primarily, Wolff 1970, p. 532-534. Compare Cantarella 1965, p. 30-37; Mélèze-Modrzejewski 1962, p. 79 n. 7; Rupprecht, 1965, p. 105.

9 *P.Cair.Zen.* I 59001.43-46 = *Sel.Pap.* I 66: ἔγγυος τοῦ δα]νείου Ἰσιδώρου καὶ τῶν |[44] [κατὰ τὴν συγγραφὴ]ν πάντων εἰς ἔκτεισ[ιν] |[45] [Διονυσίωι Δημήτ]ριος Δάμωνος Θρᾶιξ τῶν Λυκόφρον[ος] σύγκλη|[46]ρος [- - ἀρουρῶν τεσσ]αράκοντα. The surety clause in third-century BCE loan contracts: *BGU* X 1964.12-14; 1966.4-5; *CPR* XVIII 14.7-8; 16.7-10; 24.7-8; *P.Cair.Zen.* I 59001.16-19, 43-46; II 59173.16-20,40-44; *P.Köln.* V 218.13-14; *P.Petr.* III 55a.16-18; *P.Sorb.* 17.scr.int. 17-18, scr.ext. 18-20; *P.Tebt.* III 815 frag. 2^{v}.1.1-14 ll. 11-14; 2^{v}.1.15-22, l. 22; 2^{v}.2.30-40 ll. 36-39; 4^{r}.1.23-29 ll. 28-29; *PSI* IV 389.7-8; *SB* XII 11058.12; 11059.9-10; XIV 11660.3-4; XVI 12812.12 (sui generis: [ὁ δεῖνα ὑπὲρ] Ζήν[ωνος] πράσ[σων -ca.?-]). The clause is not preserved in *BGU* X 1961. Surety clause in third-century leases: *P.Cair.Zen.* III 59340.16-17 = *SB* III 6759 (247 BCE, Philadelphia); *P.Col.* III 54.1.23-24 = *SB* IV 7450 = *Sel.Pap.* I 39 (250 BCE?, Arsinoitês?); *P.Hamb.* I 24.18-19 = *Sel.Pap.* II 349 (223 BCE, Arsinoitês) (cultivation contract); *SB* VIII 9841.27-29 (247 BCE, Oxyrhynchos); XIV 11659.10-12 = *P.Iand.Zen.* 1 (ca. 256 BCE, Philadelphia). Also in sale contracts: *P.Hamb.* II 185.7-9 (ca. 245 BCE); 186.8-9 (mid III BCE, both from the Oxryhynchite nome).

10 The name of the surety is lost in *BGU* X 1961; 1966; *P.Tebt.* III.1 815, frag. 3^{v}.1.1-9; *SB* XII 11058; 11059. Co-sureties are recorded in *CPR* XVIII 24; *P.Col.* III 54 = *SB* IV 7450 = *Sel.Pap.* I 39, with one surety who is not a borrower; *P.Iand.Zen.* 1 = *P.Cair.Zen.* IV 59666 = *SB* XIV 11659, with one surety who is not a borrower; *P.Iand.Zen.* 3 = *SB* XIV 11660.

11 Wife as surety: *CPR* XVIII 16; *P.Petr.* III 55a; *P.Tebt.* III.1 815, frag. 2^{v}.1.1-14 and 15-22; *PSI* IV 389. Perhaps also in *BGU* VI 1280 and Herrmann 1990, p. 104; Partsch 1909, p. 140-142. Husband as surety: *P.Tebt.* III.1 815, frag. 4^{r}.1.23-29. Brother as surety (?): *CPR* XVIII 14 [surety and debtor share the same father's name]. Father or son as surety

In the second and first centuries BCE the surety clause appears in twenty-three documents.[12] Yet the identity of the surety now changes. While in seven documents we still observe the old pattern – a third person, frequently a family member, acting as a surety of the debtor[13] – in sixteen at least two debtors take the loan in common, are jointly obligated to return the loan on expiry and are jointly subject to *praxis* if they fail in this last obligation. In these contracts the debtors also act as each-other's sureties.[14] Diachronically, six of the seven contracts in which surety and debtor are different persons date to the period before 135 BCE,[15] while all the second-century documents in which the debtors appear as co-sureties are drafted after that date.[16] The earliest document of this group, *P.Dryton* 16 = *P.Lond.* III 613 descr.

(?): *BGU* X 1964; *P.Cair.Zen.* III 59340; *P.Col*. III 54; *P.Köln* V 218 [name of the surety is identical to that of the debtor's father, and may therefore be assumed to be that of his father or his son]. Same *patris* : *P.Sorb.* 17. Same domicile: *P.Cair.Zen.* II 59173.

12 Cf. below, n. 13 and 16.

13 Father or son: *BGU* XIV 2390 (160/59 BCE, Hêrakleopolitês); *SB* XXII 15240 (156 BCE, Ammonias, Arsinoitês). Wife: *P.Freib.* III 12b (172-162 BCE, unknown provenance); *P.Ryl.* IV 586 (99 BCE, Oxyrhynchos). No relation stated: *P.Grenf.* II 17 = *P.Lond.* III 668 = *MChr* 138 (136 BCE, Thebais); *PSI* XIII 1311 (136 BCE, Berenikis Thesmophorou). Lost: *P.Köln* VIII 350 (143 BCE?, Crocodilopolis, Arsinoitês).

14 The joint action of the borrowers/sureties is now expressed (1) in the clause recording the loan, e.g., *P.Dion.* 23 = *P.Rein.* I 21 = *P.Ross.Georg*. II 7 (108 BCE, Hermopolis), ll. 2-9: ἐδάνεισεν l[3] Ἄδυμος Πτολεμαίο[υ] Μακεδὼν τῶν l[4] φερομένων ἐν Κλεοπάτραι κληρούχων l[5] Διονυσίωι Κεφαλᾶτο[ς] Πέρση[ι] τῆς ἐπιl[6]γ[ο]νῆ[ς] καὶ τῆ[ι] τ[ο]ύτ[ο]υ μητρὶ Σαραπιάδι l[7] Ἡλιοδώρου Π[ε]ρσίν[ι], μετὰ κυρίο[υ το]ῦ l[8] ἑαυτῆς υἱοῦ Διονυσίο[υ] τοῦ κα[ὶ] προγεγραμl[9]μέν[ο]υ, πυροῦ στε(ρεοῦ) [(ἀρτάβας)] ρν κτλ.; in the clause stipulating the return of the loan, *ibid*., ll. 11-14: τὸν δὲ] πυ[ρὸν καὶ] τὸν l[12] τόκ[ον ..... ἀποδό]l[13]τωσ[αν οἱ δεδανεισμένοι Ἀδύμωι] l[14] ἢ τοῖ[ς παρ' αὐτοῦ ἐν μηνὶ κτλ.]; in the clause dealing with the failure of the debtors to return the loan, *ibid*., ll. 19-22: ἐὰν [δὲ μ]ὴ ἀποδῶσι l[20] καθ [ὰ] γέγραπται, ἀποτει[σ]άτωσαν l[21] οἱ δεδανεισμένοι Ἀδύμωι ἢ τοῖς παρ' l[22] αὐτοῦ κτλ.; in the praxis clause, *ibid*., ll. 22-28: καὶ ἡ l[23] πρᾶξις ἔστω Ἀδύμωι καὶ τοῖς παρ' αὐτοῦ l[24] τῶν κατὰ τὴν συγγραφὴν ἔκ τε τῶν l[25] δεδανεισμένων, καὶ παρ' ἑνὸς καὶ παρ' ἀμφοτέρων καὶ παρ' l[26] ὁποτέρου οὗ ἐὰν l[27] αὐτῶν αἱρῆται, καὶ ἐκ τῶν ὑπαρχόντω(ν) l[28] αὐτοῖς πάντων καθ ἅπερ ἐγ δίκ[ης·]; as well as the clause naming the sureties, *ibid*., ll. 28-30: ἔγγυοι l[29] ἀλλήλων τοῦ πυροῦ ἢ τῆς γεγραμμένης τιμῆς l[30] εἰς ἔκτισιν αὐτοὶ οἱ καὶ δεδανεισμένοι.

15 Cf. above, n. 13.

16 *P.Amh.* II 50 = *Sel.Pap.* I 67 (106 BCE, Pathyris); *P.Dion*. 16 = *P.Rein.* I 16 (109 BCE); 23 = *P.Rein.* I 21 = *P.Ross.Georg.* II 7 (108 BCE, both of Akôris); 24 = *P.Rein.* I 32 + 33 (106 BCE); 25 = *P.Rein.* I 26 = *MChr* 164 (104 BCE); 27 = *P.Rein.* I 8 (113/2 BCE, all from Hermopolis); *P.Dryton.* 16 = *P.Lond.* III 613 *descr.* = *P.Grenf.* I 18 (131 BCE, Pathyris); 17 = *SB* XVI 12716 (129 BCE); 19 = *P.Grenf.* I 20 = *P.Lond.* III 616 descr. (127 BCE); 30 = *SB* XVI 12986 (131-113 BCE); *P.Grenf.* II 18 = *P.Lond.* III 655 descr. (127 BCE); 27 = *P.Lond.* III 661 descr. (103 BCE, all the above from the Pathyrite nome); *P.Ryl.* IV 587 (87 BCE, Tebtynis); *P.Tebt.* I 109 (93 BCE, Kerkeosiris); *SB* V 7532 (74 BCE, Nilopolis); VI 9612 (88/7 BCE?, Theogonis). The change was already noted by Segré 1924, p. 54-58.

= *P.Grenf.* I 18, was composed in Pathyris in 131 BCE, after which date just one Ptolemaic document does not follow the new pattern.[17] The same obtains for the following centuries. In the Roman period only rarely, and under special circumstances, is the person of the surety different from that of the debtor.[18] Co-surety among multiple borrowers is now the established rule.

The new state of affairs brings about a change in the structure of the document. The surety clause was introduced into the contract when the debtor and surety were still different persons, and was meant to report the latter's identity. But after 131 BCE, when the debtors became each other's sureties, the "surety clause" no longer conveyed any new information and was consequently, by the mid first century BCE, left out of the contract.[19] From now on the position of the parties as co-sureties was expressed in the clause recording the act of loan or in the *praxis* clause. The disappearance of the surety as an independent contractual person is also manifest in the related material. The period extending from the beginning of the third century to the 130s BCE yields as many as twenty-nine papyri – primarily petitions and letters – that shed light on the institution of the surety.[20] Then we

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[17] *P.Ryl* IV 586 (99 BCE, Oxyrhynchos).

[18] This is the case, for example, with nursling contracts, with the wet-nurse's husband acting as her surety. Cf., e.g., *CPG* I 15.3 = *P.Rein.* II 104 (25/6 CE, Oxyrhynchos) and *CPG* I, p. 20. Compare also, in the related material, *P.Oxy.* I 38 = *MChr* 58 (49/50 CE, Oxyrhynchos).

[19] Surety clauses after the reform in *P.Amh.* II 50.21-23; *P.Dion.* 16.29-31; 23.28-30; 24.27-29; 25.33-35; 27.24-26; *P.Dryton* 19.14-16; 30.9-10; *P.Grenf.* II 18.18-22; 27.19-21; *P.Hamb.* I 58.5-6 (*hypographê*) (83 BCE, unknown provenance); *P.Ryl.* IV 586.19-22; IV 587.19-20; *P.Tebt.* I 109.25-26; *SB* V 7532.19-20; XVI 12716.20-21.

[20] Laws: *BGU* XIV 2367 (III BCE, Alexandria); *P.Hal.* 1.24-78; *P.Hal.* 1.124-165 = *Sel.Pap.* II 201 (after 259 BCE, Apollônopolitês); *SB* VI 9225 (III BCE, unknown provenance). Letters: *P.Cair.Zenon* III 59310 = *SB* III 6755 (250 BCE, Alexandria?); 59367 = *SB* III 6768 (241 BCE, Philadelphia); 59454^{r} (after 246 BCE, Crocodilopolis or Philadelphia); IV 59640 (mid. III BCE, unknown provenance); *P.Hib.* I 41 (ca. 261 BCE, Oxyrhynchitês); *P.Sorb.* 10^{r} (268 BCE, Hêrakleopolitês or Oxyrhynchitês). Petitions: *P.Bingen* 35 (144-141 BCE—Arsinoitês); *P.Col.* IV 83 = *C.Pap.Hengstl* 41 (245/4 BCE, Philadelphia); *P.Coll.Youtie* I 12 (177 BCE, Crocodilopolis); *P.Dion.* 9 = *P.Rein.* I 7 = *MChr* 16 = *C.Ptol.Sklav.* I 17 (ca. 139 BCE, Hermopolitês); *P.Dion.* 12 = *P.Rein.* I 19 = *MChr* 27 (108 BCE, Hermopolitês); *P.Hels.* I 1 (194-180 BCE, Arsinoitês); *P.Mich.* I 57 (248 BCE, Arsinoitês); *P.Tebt.* III.1 777 (early II BCE, Tebtynis); *PSI* IV 384 (ca. 248 BCE, Philadelphia). Other key texts: *P.Eleph.* 8 (224/3 BCE, Apollônoplis?): *Gestellungsbürgschaft*; *P.Heid.* VIII 417 (190/89 BCE, Hêrakleopolis): payment of the debt by a surety. *P.Hib.* I 30d = *MChr* 20 = *Sel.Pap.* II 247 (282-274 BCE, Hêrakleopolitês): summon of a debtor; *P.Hib* I 92 = *MChr* 23 (264 BCE, Mouchinaryô, Oxyrhynchitês): *Gestellungsbürgschaft* for a debtor; *P.Mich.* I 85 (III BCE, Philadelphia): release from prison; *SB* III 6301 with *P.Grad.* 3 (226 BCE, Thmoineptis, Hêrakleopolitês): *Gestellungsbürgschaft*. Another key group consists of contracts in which sureties are appointed for farmers of state monopolies or services: *P.Cair.Zen.* 1 59137 = *SB* III 6729 (256 BCE, Philadelphia); *SB* XX 14429 = *SB* III 6095 (237 BCE);

witness an abrupt decline: references dating to the late Ptolemaic and Roman periods are considerably fewer, and seem to primarily relate to those types of surety that remained common after the reform.[21]

All this does not mean, of course, that the institution of the surety vanished completely. The "guarantee of appearance" (*Gestellungsbürgschaft*) – the pledge made towards a state official and later also to a prominent individual to produce a third person for discharging assigned duties[22] – is well documented throughout, from the Ptolemaic to the Byzantine periods, and so is the institution of the mutual surety undertaken by the debtors in common.[23] What does seem to become rare is the person of the surety as a party different from that of the debtor in contracts among private persons. The present paper aims at providing a tentative explanation for this change.

We first ask what triggered the change. The interest of the state in the shape, contents and preservation methods of legal documents is manifested in a variety of decrees from the Ptolemaic and Roman periods such as the above-mentioned *BGU* XIV 2367.[24] Yet frequently the text of the decree did not come down to us and its existence can only be deduced from a sudden change in the contents or shape of the document, the very phenomenon discussed in this paper. I have already dealt with one such a change in the early Roman *cheirographon*, in *Symposion 2007*, and with another in the shape of the double document in an article published in *ArchPF* four years ago.[25]

Originally, double documents were drafted in two identical versions, a sealed one, *scriptura interior*, at the top, and an open one, *scriptura exterior*, beneath it. The document was also composed privately, i.e. without the direct involvement of a state organ in its drafting. Yet all this changed, almost overnight. The double

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14430 = *SB* III 6094 (230 BCE, both from Thôlthis); *WChr* 110 = *P.Petr.* 3 57a et al. (204/3 BCE, Arsinoitês): declaration of surety for the collector of the *apomoira* tax.

21 Cf., e.g., *P.Oxy.* I 38 = *MChr* 58 (49 CE, Oxyrhynchos): nursling contract; *P.Oxy.* XIV 1683 (late IV CE, Oxyrhynchos): regular surety (?); *SB* VI 9192 (314/5 CE, Arsinoitês): *Gestellungsbürgschaft*. Relating sources are discussed by H-A. Rupprecht in his comments on this paper.

22 Cf., e.g., *PSI* XIII 1329 = *SB* V 8952 (212/3 CE, Oxyrhynchos) and Cantarella 1965, p. 49 n. 7, p. 65; Palme 2003, with list of documents in p. 531 n. 1. I thank Professor Palme for discussing with me this important group of documents. His monograph on the subject is forthcoming.

23 Cantarella 1965, p. 108-114; Kaser 1971, p. 665.

24 This is the case in particular with regard to Demotic legal documentation: cf. *P.Par.* 65 = *UPZ* I p. 596 = *Sel.Pap.* II 415 (145 BCE, Memphis); *P.Ryl.* IV 572 (II BCE, Arsinoitês?); *P.Tor.Choiach.* 12.4.14 = *P.Tor.* 1 = *MChr* 31 = *Jur.Pap.* 80 = *UPZ* II 162 (117 BCE, Thebes), but also with regard to the scheme to be submitted to the Greek *dikastêria* in the *chora*: *P.Hamb.* II 186 (mid III BCE, Oxyrhynchitês). Cf. Wolff 1978, p. 36-40.

25 Yiftach-Firanko 2008a; 2008b. Cf. also Wolff 1970, p. 533.

document became subject to *anagraphê*, a registration in a state *grapheion*, and the full version of the text in the *scriptura interior* was replaced by a short abstract relating the terms of the contract as recorded in the *grapheion*'s files. What makes the reform in the double document especially pertinent to our present discussion is its date: roughly around 130 BCE, that is the very period in which we were able to pinpoint earlier a change in the person of the surety. We may thus reach the following conclusion: around 130 BCE, legal documents, double documents in particular, underwent at least two changes. One related to the shape of the document. The other, discussed here, to its contents. The same perpetrator, then, who brought about the "death of the surety" also "killed the double document".

The causes of this "murder" should be sought, of course, in the period preceding the change. As already shown, some evidence is provided by the documents that give evidence of the creation of the debt and the appointment of the surety. These contracts record the contractual obligations of the debtor, not of the surety. The surety appears in the clause recording his appointment and in the *praxis* clause, which exposes him alongside the debtor to execution in the case of non-payment. But the document does not elaborate on the exact nature of this *praxis*, nor how it differs from that to be directed against the debtor.[26] To study this difference we need to address the related material: petitions, letters, summons and other sources relating to the institution of the surety in the third and second centuries BCE.

Most sureties stem from the debtor's closest family circle or belong to the same ethnic group.[27] They are usually appointed informally, simply by attending the act of contracting and giving their probably tacit consent to their appointment.[28] We do not hear of the surety until the contract comes to an end and the debtor fails to return the debt. When this comes about, the creditor can apply the *praxis* against both debtor and surety.[29] But would both alternatives be always, and under all circumstances, equally viable? One source, the letter *P.Cair.Zenon* III 59454[r] (after 246 BCE, Crocodilopolis or Philadelphia), addresses precisely this question. Nikanôr, a subordinate of the chief *oikonomos*, acting in the present case as a *praktôr*, aims at exacting a debt owed to the Royal treasury by Hippokratês by virtue Hippokratês' position as a farmer of the *apomiora*.[30] Nikanôr does so, *inter alia*, by addressing the surety. Hippokratês' reaction as it appears in this letter is "Do not disturb the surety

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[26] Cf. *supra* n. 8.

[27] Husband: *P.Col.* IV 83. Wife: *P.Hels.* I 1. Brother: *P.Hib.* I 92 [the debtor is Timoklês son of Simos and one of the sureties is Mnasôn son of Simos]; *P.Mich.* I 57; 85. Co-patriot (Jew): *P.Heid.* VIII 417. Kinship can not be established with certainty in *P.Cair.Zenon* III 59310; 59367; 59454[r]; *P.Hib.* I 41; *SB* XX 14430. Non-relative: *P.Cair.Zenon* IV 59640.

[28] Compare Cantarella 1965, p. 49-50; Herrmann 1990, p. 100, 104-105; Kaltsas 2001, p. 211; Partsch 1909, p. 146-148.

[29] Cf., for the wording of the formula, *supra* n. 8.

[30] *P.Cair.Zen*. III p. 177. Cf. also Cantarella 1965, p. 55-67; Segré 1929, p. 9-10.

on my account. Try to assault *me*, to carry *me* off, if you can. For I will try to help myself".[31] We should not build too much on this passage or any of Hippokratês' assertions in this letter, all clearly meant to insult, irritate and provoke Nikanôr,[32] especially due to the fact that at stake is a debt to the state, not among private persons. Still, Hippokratês does seem to allude to a principle also documented in other related sources: the surety is turned to if the debtor has run away, or he is likely to abscond. Under any other circumstances addressing the debtor, and the debtor alone, is the conventional strategy.[33]

This principle is well illustrated by *P.Hib.* I 30d = *MChr* 20 = *Sel.Pap.* II 247 (282-274 BCE, Hêrakleopolis). In this document, an unnamed creditor summons the soldier Perdikkas to the court of the *dikastêrion*. The author of the summon gave Perdikkas a loan of 700 drachms, later extended by 50 % after Perdikkas' failure to return the money on time.[34] As is common in third-century loans, the contract also documented the appointment of a surety, a certain Antigonos. Yet when Perdikkas failed to return the loan on time it was he and not Antigonos who was repeatedly turned to and was eventually summoned to court by the creditor.[35] *P.Hib.* I 30d also

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[31] Ll. 8-9: ἕνεκεν δ ἐμοῦ, ὅπως τὸν ἔγγυον μηδ ἐν[οχλῆις], l[9] ἐμὲ δὲ, ἐάνπερ δύνηι, καὶ ὕβριζε καὶ ἀπάγε. πειράσομαι γὰρ ἐμαυτῶ[ι βοηθῆσαι]. Cf., however, the conflicting assertion in the same letter, ll. 2-4: εἰ [δὲ καὶ οἴει] l[3] τὸ μὴ ὄν, ἐξ ἐμοῦ δεῖν εἶναι τὴν πρᾶξιν τῶν Ἀ (δραχμῶν) καὶ οὐχὶ ἐκ το[ῦ ἐγγύου (?)], l[4] οὔπω δήπου σε ἔδει εἰς ἀλλοτρίαν οἰκίαν κτλ.

[32] Note in particular the concluding paragraph (ll. 10-13): πλὴν γνώριζε ἄτοπος ὢν καὶ ὅσωι ἄν τίς σου ἐπιμέληται [± 10] l[11] τοσούτωι μᾶλλον ἐπεμβαίνεις. καὶ τοῦτο οὐκ ἐγὼ μόνος λέγω, ἀλ[λὰ πάντες] l[12] οἱ ἐν τῆι πόλει· οὕτω πασίφιλος εἶ. l[13] ἔρρ[ωσο]. (ἔτους) [- -].

[33] The surety is turned to in the absence of the debtor (*P.Cair.Zenon* III 59310.2; III 59367.3; *PSI* IV 384.4-5) or if the debtor is likely to abscond (*P.Hib.* I 41; *P.Mich.* I 57; 85). Compare, on Athens, Partsch 1909, p. 188. On the question of the so-called *beneficium excussionis* cf. Cantarella 1965, p. 62-63; Herrmann 1990, p. 106; Partsch 1909, p. 184. *Contra* Segré 1924, p. 51; 1929, p. 9-11.

[34] The addition of the ἡμιόλιον as a penalty in the case of non-payment is well-attested in Ptolemaic loan contracts. Cf., e.g., *P.Cair.Zen.* I 59001.11-16 = *Sel.Pap.* I 66 (274/3 BCE, Pithôs): ἐὰν δὲ μὴ l[12] ἀποδῶι ἐν τῶι γεγραμμένωι χρόνωι, ἀποτει l[13]σάτω τὸ δάνειον ἡμιόλιον, καὶ ἡ πρᾶξις ἔστω l[14] Διονυσίωι ἐκ τῶν ὑπαρχόντων τῶν Ἰσιδώρου l[15] καὶ τῶν τοῦ ἐγγύου, πράσσοντι τρόπον ὃν l[16] ἂν βούληται Διονύσιος πρὸς βασιλικά. Cf. Rupprecht 1965, p. 94-96.

[35] *P.Hib.* I 30 ll. 13-27: [± 13 τῶν Ἀλε]ξάνδρο[υ] δεκαl[14][νικὸς Πε]ρδίκκαι Μακεδό[ν]ι τῶν Ἀλεξάνδρ[ο]υ. l[15] [δηλῶ σο]ι ὅτι ὀφείλων μοι κατὰ συνγραφὴν l[16] [(δραχμὰς) . . ῶ]ν ἔγγυός ἐστιν Ἀντίγονος Λιμναίου l[17] [ταύτας] ἀπαιτούμενος ὑπό μου πολλάκις οὐκ ἀl[18][ποδίδ]ωις οὔτε τῶι πράκτορι ἠβούλου ἐξομοl[19][λογήσ]ασθαι, διὸ δικάζομαί σοι τοῦ ἀρχαίου l[20] [καὶ τόκο]υ (δραχμῶν) Ἀν. τίμημα τῆς δίκης (δραχμαὶ) Ἀν. l[21] [κλήτορες .]καφυσιος Κῶιος τῶν Ἀλεξάνδρου ἰδιώl[22][της . . . . .]λαος Μένωνος Θρᾶιξ τῆς ἐπιγονῆς. l[23] [- -] l[24] [ἔτους . . ἐφ' ἱε]ρέως Φιλίσκου τοῦ Σπουδαίου μηνὸς l[25] [. . . . . .]ου ιδ. ἡ δίκη σοι ἀναγραφήσετ[α]ι ἐν l[26] [τῶι ἐν Ἡρ]ακλέους πόλει δικαστηρίωι [ἐ]νώπιον l[27] [. . . . . ἔ]κπλωι. (2nd hand) δὶ Ἐπιμένους. Cf. also Wolff 1970, p. 530.

casts light on the *praxis* as applied against the debtor. The creditor first repeatedly (πολλάκις) and probably informally asked Perdikkas to settle the debt. When Perdikkas failed to comply, the creditor took a second step, asking the debtor to acknowledge his debt before the *praktôr*.[36] As this did not work either, the creditor's last resort was to summon Perdikkas to court, where he, the creditor, would have to provide evidence of the existence of the debt. In the course of this procedure the debtor could make use of several remedies. He could claim that the terms of the contract were illegal,[37] ask that the procedure be halted on account of his special personal status, as for example, that of a *basilikos geôrgos*,[38] and naturally also deny the allegations of the creditor in court.

How did the *praxis* against the surety differ from the above procedure? Two documents, *P.Mich.* I 57 (248 BCE, Arsinoitês) and *P.Hib.* I 92 = *MChr* 23 (264 BCE, Hibeh), cast light on this question. In the former document, once the debt was not returned on time the creditors made the surety draw up a *symbolon* by which he committed himself to bring the debtor to trial within five days or else pay the claimed amount of money (τὸ αἰτούμενον) himself.[39] The text of such a *symbolon* is preserved in *P.Hib.* I 92 = *MChr* 23:[40] Timoklês son of Simos received from Apollônios an amount of 300 drachms. After Timoklês failed to return this capital as well as the interest to the amount of another one hundred drachms, he was summoned to a hearing before the *stratêgos*. On the occasion of the summon, the creditor Apollônios placed Timoklês on bail ({ἐγ}ένεγύησεν αὐτόν) for his attendance of the hearing, and Mnasôn son of Simos and a certain Hêgemôn, acting

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[36] In later times before the ξενικῶν πράκτωρ. Cf. Kaltsas 2001, p. 203-207; Płodzień 1951, p. 222; Préaux 1955.

[37] Cf., e.g., *P.Col.* IV 83 (245/4 BCE, Philadelphia) l. 15-16.

[38] Cf., e.g., *P.Dion.* 12.16-19 = *P.Rein.* I 19 = *MChr* 27 (108 BCE, Hermopolitês): ἀξιῶ, l[17] ἐὰν φαίνηται, συντάξαι γράψαι Ἀγαθονίκωι κ[αὶ] Ἐπιμάχ[ω]ι τοῖς τ[ῶ]ν ξενικῶν πράκτορσι, ἐὰν l[18] ὁ ἐνκαλούμενος ἐπιχείρῃ κατεγγυᾶν με αὐτοῖς, μὴ παραλαμβάνειν με μέχρι τοῦ ἀπὸ τῆς l[19] κατασπορᾶς γενόμενόν με συστήσασθαι πρ[ὸ]ς αὐτὸν τὸν περὶ ἁπάντων λόγον·

[39] *P.Mich.* I 57.3-5: Αλκέτου δὲ τοῦ ἀδελφοῦ σε ἐγγυησαμένου ἐl[4]νοχληθέντος αὐτοῦ τε καὶ τῶν φίλων κατὰ σύμβολον παρέξεσθαι εἰς κρίσιν ἐν ἡμέραις πέντε ἢ ἀποτίσειν l[5] τὸ ἐπικαλούμενον. This is a universal feature of the surety, as has been repeatedly emphasized. Cf., e.g., Herrmann 1990, p. 105, 112-117; Segré 1929, p. 6; Partsch 1909, e.g. p. 209-215.

[40] *P.Hib.* I 92.8-22: ἔγγυοι l[9] Τιμοκλέους τοῦ Σίμου Θραικὸς τῆς ἐπιγονῆς l[10] Μνάσων Σίμ[ου] Θρᾳὶξ τῆς ἐπιγονῆς Ηγέl[11][μων . . .]ιμου Κρ[ὴ]ς τῆς ἐπιγονῆς ἐφ' ὧι παl[12][ραδ]ώσ[ονται αὐ]τὸν ἐν [Ἡρακ]λέους πόλει ἐπὶ l[13] Κρισ[ίππου - -] τοῦ [σ]τ[ρ]ατηγ[ο]ῦ ἕως γνώσεως περὶ τῆς l[14] δίκης ἣς {ἐγ}ένεγύησεν αὐτὸν Ἀπολλώνιος l[15] κατὰ συγγρα[φὴ]ν πρὸς τὸ ἀρχαῖον δραl[16]χμὰς τριακοσίας καὶ τόκον δραχμὰς l[17] ἑκατόν. ἐὰν δὲ μὴ παραδῶνται κατὰ l[18] τὰ γεγραμμένα ἀποτεισάτωσαν τὰς τεl[19]τρακοσίας δραχμὰς καὶ τὰ ἐπιδέκατα κ[α]ὶ l[20] τ[ὰ] γινόμενα, καὶ ἡ πρᾶξις ἔ[σ]τω [Ἀπο]λλῶν[ίωι] l[21] ἢ ἄλλωι τῶν [Κρ]ισίππου [ἢ το]ῦ πράκτοl[22][ρ]ος ὑπηρετῶν κατὰ τὸ [διάγραμ]μα.

as Timoklês' sureties, assumed the obligation to produce Timoklês to the hearing [ll. 11-12], or else to pay themselves the principal, the interests, the ἐπιδέκατα "and the other charges" [ll. 17-20]. The *praxis* would be applied both by Apollônios the creditor and by the employess at the offices of the *stratêgos* and the *praktôr*, by this period already termed *praktôr xenikôn*.[41] A variety of means could then be taken to exact the debt from the surety: in *P.Mich.* I 57 it is the seizure of the surety's crops,[42] but sometimes the surety is incarcerated until he pays off the fine or produces the debtor.[43]

One such case is that recorded in *P.Heid.* VIII 417 (190/89 BCE, Hêrakleopolis). Isidôros took from Arsakês a loan of twenty-four wheat artabs, later extended by an *hêmiolion*. When the debt was not returned on time Arsakês turned against Isidôros' surety Theodotos. Applying his *praxis* as recorded, presumably, in the loan contract itself as well as in a *symbolon* of the type incorporated in *P.Hib.* I 92 = *MChr* 23, Arsakês seized Theodotos and handed him over to the *praktoreion* where Theodotos remained since. Only after Theodotos acknowledged that he owed the money (ἐξωμολογήσατο ὀφείλειν, ll. 23-24), did Arsakês issue a new document – the text of the Heidelberg papyrus – authorizing the *praktôr*'s assistant to free Theodotos.[44]

The above discussion reveals an intrinsic shortcoming in the position of the surety and may account for his ultimate abrogation as an independent contractual person in routine loans. When the loan was not returned on time the creditor had two

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[41] *Contra*, in general, Weiss 1923, p. 516.

[42] *P.Mich.* I 57.9-11: γίνωσκε οὖν ἐντυχόντος Δημέου Φανίαι κατὰ l[10] Ἀλκέτου ὅτι ἐγδεξάμενος Θεόφιλον κατὰ σύμβολον παρέξεσθαι κρινόμενον οὐ παρέχεται καὶ Φανίου γεγραφότος Επηράτωι l[11] κατασχεῖν τὰ γενήματα Ἀλκέτου ἕως ἂν παραγενόμενος ἐπὶ τοῦ ἀριθμοῦ διακούσηι.

[43] Cf. Segré 1929, p. 10; Kaltsas 2001, p. 216-217.

[44] *P.Heid.* VIII 417.19-32: ὁμολογεῖ Ἀρσάκης Μακεδὼν τῶν Ἀντιμάχου ὀγδοηκονl[20][τ]άρο[υ]ρ̣[ος Ἰσιδ]ώρωι Σωσίου Συρακοσίωι τῆς ἐπιγονῆς, ὑπηρέτηι Νικοστράτου πράκτορος ξενικῶν, ἀπέχειν l[21] πα[ρὰ Θ]ε̣ο̣δότου τοῦ Ἴωνος Ἰουδαίου τῆς ἐπιγονῆς χαλκοῦ νομίσματος δραχμὰς μυρίας ὀκτακοσίας l[22] [τ]ιμ̣[ὴν] πυρῶν ἀρταβῶν τριάκοντα ἕξ, τὴν ἐγγύην ἣν ἐνεγυήσατο Θεόδοτος Γλαύκωνα Ἀνδρονίκου l[23] Ἰουδ[αῖ]ον τῆς ἐπιγονῆς κατὰ συγγραφὴν ἧς συγγραφοφύλαξ Ν.κταῖος - <u>πρὸς ἃς καὶ παρ[α]δοθεὶς ὑπ' αὐτοῦ l[24] Θεόδοτος ἐξωμολογήσατο ὀφείλειν</u> - καὶ <u>συντεταχέναι</u> αὐτῶι διέσθαι Θεόδοτον [ἐκ] τοῦ πρακτορείου l[25] καὶ ουθὲν ἐγκαλεῖ Ἀρσάκης Ἰσιδώρωι οὐδὲ Θεοδότωι περὶ τοῦ χαλκοῦ τούτου οὗ ἀπέχει [καὶ παρα]l[26]δεξάσθω Ἀρσάκης Θεοδ[ότ]ωι διαγραφὴν διὰ τῆς ἐν Ἡρακλέους πόλει βασιλικῆς τρα[πέζης ἐν] l[27] ἡμέραις πέντ[ε], ἀφ' ἧς ἂν [αὐ]τῶι προείπη‹ι› Ἰσίδ[ωρος ἢ] αὐτὸς Θεόδοτος, ὁμολογῶν ἀ[πέχ]ε[ιν πα]ρ[ὰ] l[28] Θεοδότου τὸν προειρη[μένον χ]αλκόν. ἐὰν δὲ μὴ [παραδέ]χηται ἢ ἐπέλθηι Ἀρσάκης ἢ ἄλλ[ος ὑ]πὲρ l[29] αὐτοῦ ἐπ' Ἰσίδωρον ἢ ἐπὶ Θεόδοτον ἢ τοὺς παρ' α[ὐτῶν ἐγ]καλῶν ἢ εἰσπράσσων περί τινος τῶν προγ[ε]l[30]γραμμένων παρευρ[έσε]ι ἡιτινοῦν ἥ τε ἔφοδ[ος αὐτωι ἄκυρος ἔσ]τω καὶ προσαποτ[ε]ισάτω Ἀρσάκη[ς] l[31] Ἰσιδώρωι ἡμιολίους τ[ὰς τ]ε̣ μυρίας ὀκτακο[σ]ίας δρα[χμ]ὰς ἃς ἀπέχει καὶ τὸ βλάβος.

options. He could either turn against the debtor, in which case the creditor would eventually, following the intricate procedure outlined in *P.Hib.* I 30d, have to come to court and prove the existence of the debt. But the creditor could also proceed against the surety. He would appeal to the office of the *praktôr*, or the office of the *stratêgos*, whose employees would exact from the surety a *symbolon* recording his pledge to produce the debtor to court on time. If the surety did not keep his pledge he would be compelled to pay a fine.

The fine would be at least equal to the amount of the debt, but technically it would be a different, completely unrelated legal entity.[45] Consequently, in charging the surety for the fine the creditor would not have to prove the existence of the debt. All that he would have to show is that the debtor did not show up in court on time. This was a gold mine for sagacious creditors: they would not sue the debtor, await the trial and prove the tenability of their claims. Instead, they would simply await the debtor's absence and then turn against the surety. If they happened to have ties at the local *praktoreion*, all the better. The surety, taken off guard, would be given very little time to find the debtor – in the case of *P.Mich.* I 57 just five days – and would then see his assets taken away or even be thrown into jail, as was presumably the case in *P.Heid.* VIII 417.

A further light on the problematic position of the surety is cast by *P.Mich.* I 57, already discussed above. The document reports the following events: Theophilos drew up a contract in favor of Dêmeas, recording a loan of 200 drachms that he took from Dêmeas and from the *synergion* ("association"). After Theophilos failed to return the loan on time and the amount of the debt was extended by an *hêmiolion*, the creditor approached Alketas, Theophilos' surety,[46] compelling him to record in a *symbolon* his obligation to present Theophilos to court within five days or else to pay the debt himself, but then Theophilos got cold feet. He left the village, going down the river.

At this stage Dêmeas had two options: to proceed against the absconded Theophilos and his property on account of the loan contract or against the present Alketas on account of the *symbolon*. He decided on the latter option, which is not surprising. Dêmeas appealed to Phanias, the γραμματεὺς τῶν ἱππέων, who upon his request ordered the seizure of Alketas' crops. Dêmeas was now about to sue Alketas for the entire debt, and Alketas on his part could not do a thing: the evidence provided by the *symbolon* was undisputable – Theophilos did not show up in court! – and he could not raise any objections relating to the existence of the original debt. This matter was not examined in the present procedure at all.

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[45] Compare also, for the Roman procedure of the *legis actiones*, the institution of the *vas.* Cf. Kaser-Hackl 1996, p. 68-69.

[46] The text (l. 3: καὶ Αλκέτου δὲ τοῦ ἀδελφοῦ σε ἐγγυησαμένου), does not indicate when the surety was appointed, with the act of contracting, or on the occasion of the suit, as assumed by the editors (*P.Mich.* I, p. 130).

The only person who could put forward arguments on substantive grounds was Theophilos, the absconded debtor. So as a last resort Lysanias, Alketas' brother, wrote to Theophilos a desperate letter, enumerating several means that Theophilos was, and still is capable of applying: had Theophilos not run away, he could have come to court with arguments "that would have made your adversaries wail" (l. 7), and he can still appeal to higher instances, asking to halt the execution on substantive grounds (ll. 7-9). Lysanias also stressed that such measures should be taken by Theophilos, and Theophilos alone. "It was not suitable", he says, "that we write [the appeals]" (οὐ γὰρ ἐπιτήδειον ἦν ἡμᾶς γράφειν).[47] If Theophilos does not undertake any of these actions, Alketas will not be able to avoid the execution on his own person and property.

But why should Theophilos rescue Alketas? As already mentioned, most sureties came from within the debtor's closest family, or community, a group that was assumed to be able to exert control over the debtor's activity and to secure his adherence to the terms of the contract.[48] By deciding to leave, the debtor would afflict economic loss, perhaps ruin, on a close family member, and we may assume that he would not be a welcome guest in the next family event, so the debtor would think twice before taking this extreme step. Yet in the case of *P.Mich.* I 57 the debtor decided to leave notwithstanding all these considerations.

Each absconding debtor had his own individual reasons for leaving. In *P.Mich.* I 57, poor Theophilos was apparently so stressed by the upcoming trial that he ran away. But the cases discussed here may point to another, perhaps more profound change in the structure of Greek society in Egypt. In the Greek world, the act of contracting was public, involving not only the parties but also other community members.[49] This was also the case at first in Egypt,[50] but in the course of time these communal elements lost their earlier weight, and eventually disappeared completely,[51] perhaps because the old communal order was no longer as effective or

[47] *P.Mich.* I 57.7-9: ἐδώκαμεν γὰρ ἄν σοι ὑποθέσεις δι ὧν οἱ ἀντίδικοι ἂν οἴμωζον. ἔτι οὖν καὶ νῦν l[8] εἰ μὲν δύνῃ αὐτὸς ἀπὸ σαυτοῦ ἀπομεριμνήσας ἐντυχεῖν· οὐ γὰρ ἐπιτήδειον ἦν ἡμᾶς γράφειν, ἀκηκόαμεν δὲ l[9] καὶ δυνατόν σε πορίσαι προστάγματα εἰς τ[ὸ] τιμωρηθῆναι αὐτούς.

[48] Cf. *supra* n. 11, 13, 27.

[49] I refer in particular to the institutions of witnesses, the βεβαιωτής in title conveyances on land, the woman's *kyrios*, and the surety itself.

[50] Thus, for example, in the loan contract *P.Cair.Zenon* II 59173 = *P.Iand.Zen.* 2 (255 BCE, Philadelphia), the contract involves one lender, eight borrowers, eight sureties and six witnesses, that is a total of no less than 23 persons.

[51] In second-century BCE sale certificates from Pathyris the vendor also functions as βεβαιωτής (cf., e.g., *BGU* III 999, col. I, ll. 9-11 [99 BCE, Pathyris]). In the same period, witnesses still attend the act of the composition of double documents, but they are no longer summoned to court if the transaction results in a dispute. The only witness who is summoned is the keeper of the document, the *syngraphophylax* (cf., e.g., *P.Heid.* VIII 414 [after 2.10.184 BCE, Hêrakleopolis]). Eventually, by the beginning of the Roman

available as it was in earlier times. In the case of the surety, instances like that manifested in *P.Mich.* I 57 and the assumingly consequent eradication of the surety as an independent legal person may signal a new, individualized, society, in which the family ceased to exert coercive powers over its members as effectively as before.[52]

Let us now turn to the reform. The early Ptolemaic source material exhibits state interest in regulating *praxis.* Thus, among the forty-four documentary papyri of the Ptolemaic period that record the term διάγραμμα outside the *praxis* clause, as many as sixteen relate, directly or indirectly, to the issue of enforcement. While some of these documents mention, in general terms, "*praxis* according to the *diagramma*",[53] others relate more specifically to provisions of the *diagramma* regulating sale, foreclosure and redemption of pledged property,[54] while a third group of documents focuses on the detainment of the person of the debtor.[55]

It is not likely that the state aimed at prohibiting detainment for private debts entirely. A handful of contemporary petitions and other related papyri recording long detainments, including the very sources discussed in this paper, may prove quite the opposite.[56] But the source material in our possession does seem to point to

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period, witnesses survive as in institution in wills, but not in other types of Greek legal documents.

[52] All this does not mean that the family seized to function, in the later Ptolemaic period, as a *de facto* economic unit. The very high proportion of contracts in which family members act as co-vendors, or co-borrowers, in contracts of the early Roman period shows quite the opposite. Cf., e.g., *P.Corn.* 6 (17 CE, Oxyrhyncha). The same picture is conveyed by a variety of rules recorded in early Roman sources curbing a person's liberty to alienate his assets to the detriment of his family members, or even without their explicit consent. Cf. Yiftach-Firanko 2009, p. 550-552. In the early Roman period family solidarity was based on legal precepts and not on socially established conventions.

[53] *P.Enteux*. 63.9 (224-217 BCE, Magdôla); *P.Hal*. 1.7.163 (after 259 BCE, Apollônopolitês); *P.Mil.* II 29.8-10 = *SB* VI 9520 (II BCE, Lykopolis).

[54] *BGU* XIV 2376 (35 BCE, Hêrakleopolis); *P.Col.inv.* 480 in particular ll. 15-29 = *Sel.Pap.* II 205 = *C.Ptol.Sklav.* I 5 (198/7 BCE, Arsinoitês); *P.Eleph.* 27a.18-23 (223 BCE, Apollônopolitês); *P.Enteux.* 14.3-4 (222 BCE, Magdôla); 15.12-13 = *P.Lille* II 31 (218 BCE, Magdôla); 16.6-9 (221 BCE, Karanis?); *P.Tebt.* III.1 817.19-20 = *SB* I 4232 = *CPJ* I 23 (182 BCE, Crocodilopolis); III.2 970.16-19 = *C.Ptol.Sklav*. I 26 (early II BCE, Crocodilopolis).

[55] *P.Hib.* I 34; 73; *P.Petr.* III 36^{v} (a) = *MChr* 5 (218 BCE, Arsinoitês); *P.Petr.* III 25 = *MChr* 30 (218 CE, Arsinoitês). Cf. Mélèze-Modrzejewski 1962, p. 80 n. 4, 82 n. 4. Cf. also Préaux 1939, p. 541-542. Generally important is *P.Lille* I 29 = *MChr* 369 = *C.Ptol.Sklav*. I 1 = *Jur.Pap*. 71 (III BCE, Ghoran) containing Alexandrian (?) regulations on execution with some reference to the pertaining *diagramma*. Cf., in general, Mélèze-Modrzejewski 1962, p. 82-85; Wolff 2002, p. 51 n. 67.

[56] Cf., in particular, *P.Col.* IV 83 (245/4 BCE, Philadelphia) l. 16: τὸν ἐλεύθερον εἱρξας ἔχει δι' αὐτοῦ. Compare also *P.Cair.Zenon* III 59310.7 = *SB* III 6755 (250 BCE, Alexandria); *P.Coll.Youtie* I 12 (177 BCE, Crocodilopolis); *P.Mich.* I 85 (mid III BCE,

some effort of regulating the terms of the detainment, a regulation that manifests itself also in the terms of the *praxis* against the person of the surety.

It is evident that the creditor was allowed, in case of non-payment, to apply the *praxis* against the surety, but he was not expected to simply detain him. The debtor was first summoned to court, and on that occasion the surety was supposed to submit a *symbolon* stating that he shall produce the debtor within due time or else pay the debt himself.[57] If the surety did not produce the debtor on time, he was made subject to *praxis* by the creditor and by state officials alike.

Yet as far as the creditor was concerned, the *praxis* did not imply that he could personally detain the surety. Such a detainment takes place, rather, in the *praktoreion*, the public prison.[58] This measure naturally checked the capacity of the creditor to abuse the *praxis*, yet the competences of the creditor were still quite extensive. In *P.Heid.* VIII 417 the surety is not released from jail until the creditor has authorized this release by acknowledging the recovery of the debt. Our sources do not indicate if there was any means of compelling the creditor to issue such an acknowledgement. In addition, as already stated above, in the case of the surety the creditor did not have to base his claims on substantive grounds, i.e. on the existence of thes debt. All that he had to prove was that the surety did not meet his obligation to produce the debtor on time.

This procedural shortcoming, I argue, was confronted by the measures taken around 130 BCE. The best way to solve the problem was to eradicate the procedural oddity that caused it, i.e. the very existence of the surety as an independent contractual person and the special *praxis* applied against him. But the Ptolemaic legislator was a conservative reformist. He would not simply repeal existing institutions, especially not as old and established ones as the surety. Instead, the legislator would take measure to dispel the earlier shortcomings of these institutions.[59] The was, I argue, also the case with the surety: with some isolated exceptions, in the late Ptolemaic and Roman periods a loan contract was not concluded by one family member as debtor and the others as sureties, but by all

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Philadelphia); *P.Tebt.* III.1 777 (early II CE, Tebtynis). Different view is expressed by Mélèze-Modrzejewski 1962, p. 85.

[57] That the same measure could be taken by persons without the title of surety is shown by *P.Mich.* I 71= *SB* IV 7446 (246-222 BCE, Arsinoitês).

[58] For an interesting parallel, cf. Polyb., 38, 11, 10, regarding the Achaean league, and Weiss 1923, p. 514 n. 56.

[59] This is the case with the institution of witnesses, the *scriptura interior* of the double document, a person's identification by his *patris* and *genos*, and the very Greco-Egyptian dichotomy, all elements that go back to the legislation of Ptolemy II Philadelphos, but are only kept in the later second century as formal requirements, without serving the needs for which they were created. So far I have dealt with this phenomenon in four papers. Cf. Yiftach-Firanko 2008a; 2008b; forth. a; forth. b.

family members as joint debtors and co-sureties.[60] The procedural outcome of this reform was that all family members could, and should be sued on substantive grounds, i.e. on account of the loan contract, not of the *habeas corpus* stipulation.

That the new measure was successfully applied is shown by Ptolemaic loan documents postdating 135 BCE: all but one record mutual surety.[61] A stronger, and perhaps less circular argument for the success of the reform is the scarcity in later periods of material relating to measures taken against sureties by private creditors. Thus, for example, among the many dozens guarantees of appearance from later periods there is not a single parallel I know of to a *symbolon* of the type of *P.Hib.* I 92 = *MChr* 23, i.e. a document by which the surety assumes the obligation to produce the debtor to court and exposes himself to penalty and *praxis* by the creditor and the execution organs should the debtor fail to appear.[62]

I would like to end this paper with a historiographic note. The most extensive monograph on the Greek surety hitherto published was authored in 1909 by Joseph Partsch. According to Partsch, in the prehistory of Greek law the surety functioned as a kind living pawn, to be detained, enslaved or killed by the creditor in case of non-payment. In a second stage, which is depicted in the passage from the eighth book of the Odyssey mentioned at the beginning of this paper, the surety could escape his detention by the creditor by paying off the debt or compensation, which is exactly what Poseidôn proposes to do in the Homeric episode.[63] But then, in Athens, the nature of the surety was transformed. The surety became a second debtor, who was obligated to return to the creditor the debt increased by compensation for resulting damages. The key difference was that the remedies to be applied against the surety were those deriving from the δίκη ἐγγύης and not, e.g., from the δίκη χρέως.[64]

Partsch intended to compose a second part of the same monograph, dedicated to the papyrological evidence. Such a study was never published, but the first extant volume does contain some references to the institution of the surety, as it is manifest

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[60] For example, almost one third of all the loans recorded in documents from first and second-century CE Arsinoitês are taken by several family members in common. Cf. Yiftach-Firanko 2010, p. 173 n. 9.

[61] Cf. *supra* n. 17.

[62] The practice of warranting another person's attendance of a court of law, *inter alia* in connection with private suits, is still attested in later documentation. Cf, in particular, *P.Harr.* I 65 (342 CE, Oxyrhynchos) and *SB* I 4658 (later VII CE, Arsinoitôn Polis). Cf. further, Palme 2003, p. 548-551.

[63] Partsch 1909, e.g. p. 16.

[64] Partsch 1909, p. 207: "*Mit der δίκη ἐγγύης konnte man den Schadenersatz verfolgen, den man durch Ausbleiben der garantierten Vorlegung hatte*". Cf. also Harris 2006, p. 151; Lipsius 1905-1915, p. 712-714. On actions against the debtor, cf. Lipsius 1905-1915, p. 725-729.

in Egypt.[65] In one passage, concluding his description of the institution of surety in Athens, Partsch states: "*Der alte Rechtszustand, nach welchem die Leistung des Bürgen Freikauf aus der Haftung ist, war vergessen. Aber die Bedeutung dieser Erscheinung ist doch nicht zu überschätzen. Sie ist in Attika das Ergebnis einer seltenen Höhe der Kulturentwicklung, welche die Person des Freien über die Rolle des Eviktionsobjekts hinaushebt. Und diese Höhe der Entwicklung ist nur im Privatrecht erreicht: im Strafrecht, im Staatsrecht, im Verwaltungsrecht gilt der alte Rechtszustand der Haftung der Person. Außerhalb Attikas ist das Haftungsrecht auch im Privatrecht vielfach lebendig geblieben. In Heraclea am Siris, Gortyn, im makedonischen Recht des Ptolemäerreichs leistet der Bürge noch, um nicht mit seiner Person zu verfallen. Er ist dort wirklich noch Hafter*".[66]

The result reached here are in complete accordance with Partsch's statement. The only substantial difference between *der alte Zustand*, as depicted in the Homeric epos, and that evident in Egypt, is that here the creditor is not expected to detain the surety in person, but to entrust this task to the *praktôr* (later with the *xenikôn praktôr*) and his employees. How did the old system, we ask, evident in the Homeric epos, come down to Egypt? Why did not the Ptolemies adopt the more advanced Athenian concept, if this concept was indeed as advanced as perceived by Partsch? These questions require further investigation.

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[65] In Sethe 1920, esp. p. 565-578, Partsch focuses on the Demotic material, but assumes, in this sphere too the corporal liability ("*Haftung mit dem Leibe*", p. 572) of the surety. Compare also a short summary in Lippert 2008, p. 105-106.

[66] Partsch 1909, p. 200.

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