

## THE GENESIS OF BYZANTINE BILINGUAL REPORTS OF PROCEEDINGS: A RESPONSE TO BERNHARD PALME

Bernard Palme's paper "die Genese der bilingualen Prozessprotokolle im byzantinischen Ägypten" focuses on one of the most intriguing and as yet (at least until recently) understudied types of documentary genres that have come down to us on papyri from Greco-Roman Egypt: proceedings of hearings by judges in Roman and Byzantine Egypt. The corpus of court proceedings (my own list consists of nearly 500 items) sheds light on innumerable issues relating to the administrative, social and even cultural history of Egypt.<sup>2</sup> The subject matter discussed in the hearings included property and hereditary rights, taxation, the liturgical system and many others.<sup>3</sup> The proceedings also address procedural issues, the different stages of the hearing, types of evidence admitted in court, and the delegation of the case to subordinate officials, thus forming an irreplaceable piece of evidence on the essence and working of the *cognitio extra ordinem* of the early and late Roman period in Egypt and throughout the empire.<sup>4</sup> The proceedings are, or at least should be, of interest to students of ancient texts and their key literary genres: the dialogue, which is applied as a literary medium in Greek poetry, philosophy and historiography, is also widely attested in court proceedings, in the section recording the interrogation of the litigants and the witnesses by the judge.<sup>5</sup> Yet unlike in the case of the above-mentioned examples, the dialogue in the proceedings is not fictional: the text of the proceedings is meant to convey the dialogue that took place between the judge and

<sup>1</sup> The present paper was composed in connection with the project *Synopsis: Data Processing and State Management in Roman Egypt (30 BCE–300 CE)* sponsored by the German-Israeli Foundation for Scientific Research and Development, conducted in collaboration with Professor Andrea Jördens of the University of Heidelberg. All dates reported are naturally CE. If the location of the court is not stated in the text, the provenance of the papyri reported below is that of the document's place of excavation.

<sup>2</sup> Cf. also B. Kelly, *Petitions, Litigation, and Social Control in Roman Egypt* (Oxford 2011) 368–380, and Palme, in this volume, n. 5.

<sup>3</sup> Cf., e.g., BGU I 15 col. 1 = WChr 393 = Sel.Pap. II 246 (194, Arsinoitēs): liturgies. BGU I 361 = MChr 92 = FIRA III 57 (184, Arsinoitēs): testamentary disposition. P.Fam.Tebt. 19 = SB VI 9252 (118, Arsinoitēs): credit-related. P.Rein. I 44 = MChr 82 (104, Hermopolis): property rights.

<sup>4</sup> Cf. M. Kaser, K. Hackl (ed.), *Das römische Zivilprozessrecht* (Munich 1996) 468–470.

<sup>5</sup> Cf., e.g., SB XXIV 16258 = BGU I 163 (108, Soknopaiou Nēsos) and Kelly (supra n. 2) 181–183.

the litigants during the litigation. We rarely get closer, in any ancient source, to hearing ‘real people’ conversing. At the same time, despite the great potential treasure for the study of these questions and many others to be gleaned from an exhaustive investigation of the proceedings, such an investigation has never, as far as I know, been undertaken. With Palme’s contribution, as well as with various research projects recently launched and colloquia recently held that focus on court proceedings and the administration of justice in the Roman empire,<sup>6</sup> we may anticipate much progress in the study of court proceedings in the very near future.

As for the time-frame, students of Roman Egypt mark different significant breaks in the history of the province: the Roman occupation, the reigns of Nero and Vespasian, the reorganization of the procuratorial offices by Hadrian, the municipal reform of Septimius Severus of 200 CE are some of the more significant ones. At the same time, hardly any of these changes surpasses in intensity and consequences the administrative reforms undertaken by the emperor Diocletian and his successors. Those reforms, which left their mark on almost all types of documentary genres, did so also in the case of the court proceedings.<sup>7</sup> As Palme demonstrates, the formal and most obvious manifestation of the change is the choice of the language. Court proceedings from earlier times are monolingual, that is Greek. Greek is also maintained after Diocletian, with one major exception: the title of the judge and his comments are now given in Latin, with or without a Greek translation. In addition, while in earlier times the court hearing was recorded alongside the remaining activity of the judging official in the chronological account of his daily activities, now it is recorded in an independent and separate file.<sup>8</sup>

Palme is also able to contextualize both aspects of the reform. As for the partial Latinization of the reports, Palme shows that Diocletian was introducing into Egypt with his reform what had already been a common practice in other Greek provinces for decades. This pattern, of Egypt catching up in what had already been a common practice in other provinces for decades and centuries, is exemplified in various other spheres of documentary activity: take consular dating for example, a practice already attested in documents from early second-century Arabia.<sup>9</sup> Palme also shows that the

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<sup>6</sup> R.Haensch, *Recht haben und Recht bekommen im Imperium Romanum. Das Gerichtswesen der römischen Kaiserzeit und seine dokumentarische Evidenz: Ausgewählte Beiträge einer Serie von drei Konferenzen an der Villa Vigoni in den Jahren 2010 bis 2012* (forthcoming). I thank Professor Haensch for discussing with me the forthcoming publication.

<sup>7</sup> Cf., in general, J. Lallemand, *L’administration civile de l’Égypte de l’avènement de Dioclétien à la création du diocèse (284–382). Contribution à l’étude des rapports entre L’Égypte et l’Empire à la fin du III<sup>e</sup> siècle et au IV<sup>e</sup> siècle* (Brussels 1964) 34–40 et passim.

<sup>8</sup> Palme, text accompanying notes 34–48. The recognition goes back to E.Bickermann’s seminal article, ‘*Testatio actorum*: Eine Untersuchung über antike Niederschrift “zu Protokoll”’, *Aegyptus* 13 (1933) 333–355 at 346–348.

<sup>9</sup> P.Yadin, pp. 27–28.

reform was not implemented across the board for all types of judges. It is restricted to high-ranking officials: the governor, *praesides*, the *rationalis*, and the *comites*, while proceedings of hearings held by officials ranking lower hold on to the earlier format. This is also the case with the second aspect of the reform, the shift from the documentation of the proceedings in the chronological account of his activities (*hypomnematismoi*) to a separate and independent document. The change here, which may take place in the case of high-ranking officials even before Diocletian, is not evident in the case of lower-ranking judges until later in the fourth century.

Palme discusses changes in particular in the outer framework of the document, not however in the account of the various stages of the hearing as manifested in the structure of the proceedings. In this respect, Palme argues that the sections evident in early Roman proceedings are also found in their fourth-century counterparts: the introductory clause, the body of the proceedings, the sentence and a concluding note by the scribe.<sup>10</sup> While this is certainly the case, when we look into the second section of the text, the body of the proceedings, fourth-century texts exhibit what seem, at least *prima facie*, to be a new element. The text opens with a detailed account, by the plaintiff, or his or her representative or advocate, of the contents of the plea. The text of the account is extremely long, sometimes taking almost the entire body of the document<sup>11</sup> and resembles in contents and formulation that of petitions to officials from Greco-Roman Egypt.<sup>12</sup> The account seems to be common in proceedings of cases heard by high-ranking officials, the governor of Egypt, the *praesides*, the

<sup>10</sup> Palme, text accompanying notes 52–57.

<sup>11</sup> Cf., e.g., *P.Ryl.* IV 654 = *ChLA* IV 255 (302–309 (?), Oxyrhynchitēs): [-ca.?-]ruσσ[. . . . .] Π[αν]ua[ρ]i(ous) [Tῶ]βι . ( . ) ] Oxurunchō | <sup>2</sup> Paulo [ε]x[.] c[ι]vitat[ε] Oxur[un]ch[i]tarum [A]polinar[i]us dix(it): | <sup>3</sup> [λινούφο]ς τὴν τέχνην ἐστίν, σύνδ[ικον] δὲ εἶναι δεῖ τοῦ τὴν ἐργασίαν πληροῦν<sup>4</sup>[τος· ἔσ]τιν γὰρ αὐτῷ συνεργὸς Παῦλο[ς] οὗτος μαθητὴς μὲν τυγχάνων (read τυγχάνων), εἰς | <sup>5</sup> [ἄσκησι]ν δὲ τῆς τέχνης ἀφ[ε]λκόμενος. οὗτοι δὲ καθ' ἑαυτοὺς ὥς οὐκ ὀλίγα | <sup>6</sup> [ταῖς δημ]οσίαις τυγχάνουσ[ε]ι χρεῖαις χρήσιμοι [ο] καὶ σὺ οὐμὸς δεσπότης συνί[ο]ιδας. τ[ῷ] γὰρ ἀναβολικῷ πλε[ο]ῖστα συντελοῦσ[ε]ιν καὶ ὅσαπερ ἀπὸ τούτων ἀπερ[ι]ḡ[α]σθῆνα<sup>7</sup>]. δεῖ. ἀλλ' οἱ οἰκόδομοι δικουσι (read δικαιοῦσι (?)) τῆς τοσαύτης ἐπειγούσης χρεῖας | <sup>9</sup> [ἀεὶ κατ' α]υτοὺς μόνον συνορᾶν. τὸν γὰρ δὲ βοηθούμενον οἰκ[ό]δομον | <sup>10</sup> [ποιῆσ]αι (?), cf. BL 4.75) σπουδᾶ[ς] ζουσ[ε]ιν λινούφον τυγχάνοντ' ἀπράγμονα τολμῶντες (read τολμῶντες) | <sup>11</sup> παρα[ν]ομώτατον (read παρανομώτατον). τῆς μὲν γὰρ τέχνης ἦν μεμάθηκεν ἀποσπῶσ[ε]ιν, | <sup>12</sup> ἑτέρα[v] δὲ τὴν τῶν οἰκοδόμων ἐκδ[ε]ιδάξαι βούλονται. ἐπὶ γυναικί (?), cf. BL 11.191) τῇ οἰκ[ε]ία | <sup>13</sup> φυλαχθῆναι δεῖ αὐτὸν [προσῆκε] | [ε]ἶναι μηδεμίαν ὑπὸ τῶν οἰκο[.]δῶμων π[α]σί<sup>14</sup>χοι βίαν. προνοεῖσθαι τούτου τὸν στρατηγὸν καὶ τὸν λογιστὴν ἀξ[ι]οῖ<sup>15</sup>. | <sup>15</sup> Maximianu[s] v(ir) p(erfectissimus) iuridicus Aeg(ypti) dix(it): | <sup>16</sup> ὁ λογιστὴς καὶ σ[τ]ρατηγὸς προνοήσονται εἰς τὰ ὑπ[ὸ] τοῦ[τ]ου κατηγορημένα εἰ τὴν | <sup>17</sup> τέχνην ἐκμημάθηκεν (read ἐκμεμάθηκεν) καὶ ἤδη ἐν ταύτῃ τῇ ἐργασίᾳ ἐστίν εἰς ἑτέραν μὴ | <sup>18</sup> μεταφέρεσθαι τέχνην.

<sup>12</sup> Note in particular in the case of *P.Oxy.* LXIII 4381 = *ChLA* XLVII 1431 (375, Oxyrhynchos) the routine *captatio benevolentiae* (ll. 4–6), and the concluding act of appeal (ll. 8–10). Cf. also, in general, Kelly (supra n. 2) 173–174.

*rationalis* and the *comites*, that is the very officials whose reports become semi-Latinized with the reform of Diocletian.<sup>13</sup> This is not, on the other hand, the case in the extant proceedings of hearings held by a *logistēs*, nor in the one instance each in which the case is heard by a bishop, *hypomnematographoi*, a *stratēgos* and by a *defensor*.<sup>14</sup>

One could provide two, not necessarily mutually-contradictory, explanations for the incorporation of that account in fourth-century court proceedings. It cannot be ruled out that the reform of Diocletian involved some internal restructuring of the proceedings: such a restructuring left its mark, if not in the general division of the proceedings, than at least in the contents and style of the individual sections.<sup>15</sup> This interpretation is supported not only by the court proceedings themselves, but also by the emphasis, in late Roman legal sources, on the importance of that account for the introduction of a litigation,<sup>16</sup> as well as by seven additional contemporary documents that seem to contain the litigant's account as it is to be pleaded in court by his

<sup>13</sup> *P.Berl.Zill.* 4 = *ChLA* X 463 (ca. 350, Hermopolis) [*praeses Thebaidos*] ? ; *P.Harrauer* 46 = *ChLA* XLI 1188 + *SPP* XIV, p. 4 (332, Hermopolis) [*praeses Thebaidos* ?]; *P.Kramer* 11 = *SPP* I p. II (299, Antinoopolis (?)) [*praeses Thebaidos* ?]; *P.Lips.* I 33 = *MChr* 55 = *ChLA* XII 525 = *FIRA* III 175 (368, Hermopolis) [*praeses Thebaidos*]; *P.Lond.* III 971 p. 128 = *MChr* 95 (IV, unknown provenance) [uncertain]; *P.Oxy.* IX 1204.11–29 = *Sel. Pap.* II 294 (299, Oxyrhynchos) [*rationalis*]; *P.Oxy.* LXIII 4381 = *ChLA* XLVII 1431 (375, Oxyrhynchos) [*comes Aegypti*]; *P.Ryl.* IV 654 = *ChLA* IV 255 (302–309 (?), Oxyrhynchitēs) [*iuridicus*]; *P.Sakaon* 33 = *P.Ryl.* IV 653 = *ChLA* IV 254 (320 (?), Ptolemais Euergetis) [*praeses Aegypti Herculiae*]; *P.Sakaon* 34 = *P.Thead.* 13 = *ChLA* XLI 1204 (321 CE—Ptolemais Euergetis) [*praeses Aegypti Herculiae*]; *SB* XVIII 13769.7–23 = *ChLA* XLV 1337 (345–352 (?), Hermopolis) [governor] (?). In *SB* XIV 11615 = *P.Mich.* XX 812 (373, Oxyrhynchos or Pelusion) [*Praeses Augustamnicae*], the introductory formula is relatively short, and the text is Greek in its entirety. The introductory account is not applied in *P.Lips.* I 38 = *ChLA* XII 520 = *FIRA* III 174 = *MChr* 97 = *Jur.Pap.* 91 (390, Hermopolis) [*praeses Thebaidos*] and in *SB* XVI 12581 = *ChLA* XII 522 (310 (?), Arsinoitēs (?)) [*praeses* (?)], perhaps because the hearings focus on procedure rather than on matters of substance. It is also absent in *P.Abin.* 63 = *MChr* 96 = *P.Bour.* 20 (350, Alexandria) where the case is heard by a *iuridicus*.

<sup>14</sup> Bishop: *P.Lips.* 43 = *MChr* 98 = *FIRA* III 183 (IV, Lykopolis (?)), and Lallemande (supra n. 7) 151–152. *Defensor*: *SB* XVI 12692 = *P.Col.* VII 175 = *SB* V 8246 (part.) = *FIRA* III 101 (part.) (339, Karanis). *Hypomnematographoi*: *P.Herm.* 18 (323, unknown provenance). *Logistēs*: *P.Oxy.* XVIII 2187 (304, Oxyrhynchos); LIV 3757 (325, Oxyrhynchos); 3758 I (325, Oxyrhynchos); 3758 III (325, Oxyrhynchos); 3759 (325, Oxyrhynchos); 3767 (329 or 330, Oxyrhynchos); 3775 col. II (342, Oxyrhynchos). *Stratēgos*: *P.Col.* X 285, col. 2 (315, Oxyrhynchitēs).

<sup>15</sup> Cf., in general, Kaser-Hackl (supra n. 4) 592–594.

<sup>16</sup> *CJ* 3.9.1 (202 CE, but perhaps interpolated): *Lis enim tunc videtur contestata, cum iudex per narrationem negotii causam audire coeperit*, and, e.g., P. Bonetti, 'La *litis contestatio* in uno scolio dei Basilici', in *Studi in onore di B. Biondi* (Milan 1965) 467–484.

advocate and eventually incorporated into the text of the proceedings itself.<sup>17</sup> But there is also another explanation, which may fit well with Palme's observations.

Let us start with earlier, that is second-century CE, texts: an introductory account by the plaintiff or his representatives is not an innovation of the fourth century CE. Among nearly 150 second-century court proceedings surveyed by me, such an account is incorporated in as many as thirty-seven cases.<sup>18</sup> *CPR* I 18 (124,

<sup>17</sup> *P.Col.* VII 174 (342 (?), Karanis); *CPR* VII 13 (III/IV, unknown provenance) ? ; *Lips.* I 41 = *MChr* 300 (late IV, Hermopolis); *P.Panop.* 31 = *SB* XII 11224 frag. B (ca. 329, Panopolis); *P.Sakaon* 35 = *P.Thead.* 16 (ca. 332 (?), Theadelphia); *SB* XII 10989 = *P.Princ.* III 119 (ca. 325, unknown provenance); *SB* XIV 11717 (mid IV, Hermopolis). The texts have been the focus of scholarly attention primarily due to a monogram in the shape of a slashed N which opens the account. One view, represented primarily by legal historians up to the 1970s, proposed the resolution *n(arratio)*, and studied the phenomenon in connection with role of the *narratio* in the postclassical *cognitio extra ordinem* as discussed by contemporary, and later legal sources. Cf., e.g., A.A. Schiller, Legal Commentary in N.Lewis, A.A. Schiller, 'Another 'narratio' document', in A. Watson (ed.), *Daube Noster. Essays in Legal History for David Daube* (Edinburgh 1974) 191–200. This view has later been discarded. A good overview is provided by N.Lewis, 'The symbol Ν', in *Festschrift zum 100-jährigen Bestehen der Papyrussammlung der österreichischen Nationalbibliothek (P.Rainer.Cent.)* (Vienna 1983) 121–126.

<sup>18</sup> *BGU* I 82 (185, Arsinoitēs) [*archiereus*]; 136 = *MChr* 86 (135, unknown provenance) [*archidikastēs*]; 347 col. II (171, Arsinoitēs) [*archiereus*]; III 969 (139, Arsinoitēs) [delegation]; XI 2058 (164, Alexandria) [*praefectus Aegypti*]; XIII 2216 (156, Soknopaiou Nēsos) [*archiereus*] ?; *MChr* 372 col. 1, l. 14–col. 3, l. 10 (117, Coptos) [delegation]; *CPR* I 18 = *SPP* XX 4 = *MChr* 84 = *Jur.Pap.* 89 (124, Ptolemais Euergetis) [*praefectus alae*]; *P.Cair.Preis.* 1 = *P.Fay.* 203 descr. (after 148, Arsinoitēs) [not clear]; *P.Fam.Tebt.* 15.131–146 (109, Arsinoitēs) [*stratēgos*]; 19 = *SB* VI 9252 (118, Arsinoitēs) [*stratēgos*]; 24 with partial copy in *SB* IV 7404 (124, Arsinoitēs) [*stratēgos*]; *P.Fouad* I 23 (145, Alexandria (?) ) [*praefectus Aegypti* (?)]; *P.Mich.* VI 365 (194, Karanis) [*epistratēgos*]; *P.Mil.Vogl.* I 25 col. 2–col. 4 l. 17 (126/7, Arsinoitēs) [*stratēgos*]; col. 4 l. 15–col. 5, l. 20 (127, Arsinoitēs) [*archidikastēs*]; 27 col. 3 (129, Tebtynis) [*stratēgos*]; II 98.4–24 (138/9 (?), Tebtynis) [*praefectus Aegypti*]; 98.25–64 (after 138/9, Tebtynis) [*eklogistēs*]; *P.Münch.* III 67.4–12 (110 or 129, Arsinoitēs) [unknown]; *P.Oslo* II 17 = *Pap.Choix* 7 (136, Prosōpitēs) [*stratēgos*]; III 81 (197, Arsinoitēs) [*stratēgos*]; *P.Oxy.* I 40 = *Pap.Choix* 16 = *Sel.Pap.* II 245 (143, Oxyrhynchos) [*praefectus Aegypti*]; II 237.7.19–29 (128, unknown provenance) [*praefectus Aegypti*]; XXII 2340.1–24 (192, Alexandria) [unknown]; XLII 3016 = *ChLA* XLVII 1418 (148, Oxyrhynchos) [*praefectus Aegypti*]; *P.Phil.* 3 (123, Arsinoitēs) [*stratēgos*]; *P.Ross.Georg.* II 24 (157–159, Memphitēs) [*stratēgos*]; *P.Tebt.* II 287 = *WChr* 251 (161–167, Tebtynis) [*iuridicus* (?)], *praefectus Aegypti* (?); *PSI* IV 281<sup>r</sup>.41–48 (118, Oxyrhynchos) [*epistratēgos*]; *SB* V 7558.12–41 = *FIRA* III 30 = *Sel.Pap.* II 260 (148, Karanis) [*epistratēgos*]; V 7601 frag. c col. II (135 CE—Hērakleopolitēs) [*stratēgos*]; XIV 12139 col. 2–col. 4, l. 14 (146, Xoïs) [delegation]; col. 4 l. 15–col. 5, l. 20 (146, Alexandria (?)) [*archidikastēs*]; XVI 12555 = *BGU* 245 (1–9, 24–32) = *P.Alex.* 5 (ll. 10–23) = *BGU* XI 2071 (ll. 10–23) (138–144, Alexandria) [*iuridicus*]; XXIV 16258 = *BGU* I 163, with a second copy in *SB* XXIV 16257 col. 2 (108, Arsinoitēs) [*stratēgos*]; *SPP* XXII 51 (153, Soknopaiou Nēsos) [*archiereus*].

Ptolemais Euergetis) provides a good example: the representative of the plaintiff gives succinctly and lucidly the key elements of his client's argument, which is then followed by a reply by the antagonist, and then eventually also by the ruling.<sup>19</sup> In this particular case the exposition is much shorter than in the fourth-century counterparts, apparently indicating some form of processing and abbreviation vis-à-vis the speech as delivered in court, abbreviation that is evident in other parts of the text as well,<sup>20</sup> though other contemporary court proceedings seem to exhibit a more detailed account.<sup>21</sup> Yet the main difference between the second-century material and that of the fourth-century lies in the accumulation of second-century cases in which the detailed introductory account, or other elements that are regularly inserted into the text of the proceedings, are omitted or drastically abbreviated. This is the situation in as many as fifty cases in all. Among these fifty cases, the proceedings stem from all possible courts, even from the office of the emperor itself.<sup>22</sup>

<sup>19</sup> *CPR* XVIII 18.5–15 = *SPP* XX 4 = *MChr* 84 = *Jur.Pap.* 89: π[αρ]ό[ν]τος Κλανδίου Ἀρ[τεμ]ιδόρου νομικοῦ Ἀφροδείσιος Ἀπολλω[ν]ίου πρὸς Ἀμώνιον Ἀ[π]ίωνος τοῦ Ἀ[φ]ροδείσιου διὰ Σωτηρί[ου] ῥήτορος εἰπόντος [σ]υνελθόντα ἑαυτὸν ἀγράφως Σαραποῦτι | <sup>8</sup> τιγὶ ἐσχηκέναι ἐξ αὐ[τ]ῆς Ὀριγένην ὃς ἐτελεύτησεν καὶ | <sup>9</sup> ἄλλους· τοῦ νόμου καλοῦντος τοὺς πατέρας ἐπ[ὶ] τὰς κληρονομίας | <sup>10</sup> τῶν ἐξ ἀγράφων παίδων τὸν ἀντίδ[ι]κον θέλειν κατὰ δια[κ]ήκην κληρονόμον [ εἰν ] εἶ[ν]αι τοῦ Ὀριγένους, οὐκ ἔχοντος ἐκεῖ<sup>12</sup>νου ἀπὸ τῶν νόμων ἐξουσίαν περιόντος πατρὸς εἰς ἄλλον τινὰ | <sup>13</sup> γράφειν δ[ια]θήκην, παραξίου [π]αρ[α]νόμο[υ] οὔσης [τ]ῆς εἰς τὸν ἀντί<sup>14</sup>δικον δι[α]θήκης ἀντιποιεῖσθ[αι] τῶν ὑπὸ τοῦ υἱοῦ καταλειφθέν<sup>15</sup>των·

<sup>20</sup> The piece of evidence brought forward by the antagonists to corroborate their case, a will written seven months before the present trial, is not quoted in full. Instead the scribe records (ll. 21–22) its date formula only.

<sup>21</sup> Cf., in particular, *P.Fam.Tebt.* 24 (124, Arsinoitēs), and R.A. Coles, *Reports of proceedings in papyri* (Papyrologica Bruxellensia 4) (Brussels 1966) 17–18.

<sup>22</sup> *BGU* I 15 col. 1 = *WChr* 393 = *Sel.Pap.* II 246 (194, Arsinoitēs) [*epistratēgos*]; 19 = *MChr* 85 (135, Arsinoitēs) [delegation]; 168.20–24 = *MChr* 121 (169, Arsinoitēs) [*basilikos grammateus*, filling in for the *stratēgos*]; 288.14–23 (144–147 CE, Arsinoitēs) [*praefectus Aegypti*]; II 587 (141, Arsinoitēs) [unknown]; IV 1085.11–15 (165, unknown) [unknown]; *MChr* 372 col. 1, ll. 5–13 = *BGU* I 114 = *FIRA* III 19 = *Jur.Pap.* 22 a (117, Alexandria?) [*praefectus Aegypti*]; col. 3, ll. 10–22 (114, Alexandria?) [*praefectus Aegypti*]; col. 4, ll. 1–15 (115, Alexandria?) [*praefectus Aegypti*]; col. 4.16–col. 5 passim (142, Alexandria?) [*praefectus Aegypti*]; col. 6 (135, Alexandria?) [*idios logos*]; *P.Amh.* II 64.1–9 (107, Hermopolis) [*praefectus Aegypti*]; *P.Bacch.* 20 = *SB* VI 9329 (171, Bacchias) [*archiereus*]; *P.Bingen* 78 (late II, Oxyrhynchos) [*stratēgos* ?]; *P.Bon.* 16 (II–III, Unknown) [unknown]; *P.Fam.Tebt.* 42.9–32 (180, Antinoopolis) [*praefectus Aegypti*]; *P.Harr.* I 67.5–12 (ca. 150, Unknown) [*praefectus Aegypti*]; *P.Lips.* II 147 (189, Antinoopolis (?)) [*epistratēgos*]; *P.Oslo* II 17 = *Pap.Choix* 7 (136, Prosōpitēs) [*stratēgos*]; *P.Oxy.* II 237.7.29–38 (133, unknown provenance) [*epistratēgos*]; II 237.7.39–8.2 (87, unknown provenance) [*iuridicus*]; II 237.8.18–21 (151, unknown provenance) [*praefectus Aegypti*]; VIII 1102 (ca. 146, Oxyrhynchos) [*hypomnematographos*]; XVII 2111.1–12 (ca. 135, Oxyrhynchos) [*praefectus Aegypti*]; 2111.13–19 (ca. 135, Oxyrhynchos) [*praefectus Aegypti*]; 2111.20–50 (ca. 135, Oxyrhynchos) [*praefectus Aegypti*]; XLII 3015.6–12 (109, Oxyrhynchos); 3015.13–27

How can we explain these fifty cases? As stated by Palme, in the early Roman period the proceedings were recorded in the *hypomnematismoi* of the different officials, yet as far as I know none of the second-century protocols that have come down to us stems from the *hypomnematismoi* themselves.<sup>23</sup> In all cases we are dealing with copies, made mostly by private persons. The level of detail and the sections copied vary: the text sometimes encompasses the entire hearing, sometimes just the verdict, and most frequently something in between. This variety can best be explained if we assume that the copyists of the reports were at liberty to take from the *Vorlage* only those elements that would best serve their case and leave out the rest. Sometimes, but by no means always, the text omitted is replaced by the formula μετ' ἄλλα, μετ' ἕτερα, ἐκ τῶν ῥηθέντων *vel sim*.<sup>24</sup> And, in general, an omission may be assumed in all cases in which the details of the individual case can no longer be reconstructed with ease.<sup>25</sup> My assumption is that an introductory account, by the

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(107–112, Oxyrhynchos) [*praefectus Aegypti*]; *P.Rein.* I 44 = *MChr* 82 (104, Hermopolis (?)) [delegation]; *P.Ryl.* II 75.1.1–12 = *Sel.Pap.* II 259 (150, unknown provenance) [*praefectus Aegypti*]; 75.1.13–20 (150, unknown provenance) [*praefectus Aegypti*]; 75.2 (174, unknown provenance) [*praefectus Aegypti*]; 77.32–47 (192, Hermopolis) [*stratēgos*]; *P.Stras.* III 146 = *SB* V 8261 (156–159, Arsinoitēs) [*praefectus Aegypti*]; *P.Tebt.* II 286 = *MChr* 83 = *FIRA* III 100 (131, Tebtynis) [emperor]; *PSI* IV 281<sup>r</sup>.23–25 (107–112, Oxyrhynchos) [*praefectus Aegypti*]; 281<sup>r</sup>.39–41 (107–112, Oxyrhynchos) [*praefectus Aegypti*]; *PSI* X 1100 = *Sel.Pap.* II 143 (161, Arsinoitēs) [*epistratēgos*]; *SB* VI 9016 col. 1.1–5 (Koptos, 160) [*archiereus*]; 9050 = *P.Amh.* II 65 col. 1 (100, unknown) [*praefectus Aegypti*]; 9050 col. 2.11–col. 3.8 (112, Naukratis) [*praefectus Aegypti*]; 9050 col. 3.10–col. 4 passim (105, Memphis) [*praefectus Aegypti*]; 9315 = *P.Wisc.* II 81 (143, unknown provenance) [*praefectus Aegypti*]; XII 10967.19–28 (155 CE, Memphis) [*praefectus Aegypti*]; 10967.29–37 (150 CE, unknown provenance); XIV 11379 (156, Tebtynis) [*praefectus Aegypti*]; 12087 = *P.Oslo* II 18 Frag. A l. 18 – Frag. B passim (152, Arsinoitēs) [*stratēgos*]; XIV 12139 col. 1 (155, unknown provenance) [*praefectus Aegypti*]; XVI 12749 = *P.Stras.* IV 179 (partially) (176–179, Arsinoitēs) [*praefectus Aegypti*]; XXII 15782.11–15 (150/1, unknown provenance) [*praefectus Aegypti*].

<sup>23</sup> A view shared by Coles (supra n. 21) 17, 36.

<sup>24</sup> Cf., e.g., *P.Oxy.* XLII 3015.6–12 (109, Oxyrhynchos): (ἐτους) ιβ θεοῦ Τραιανοῦ Παχὼν ιγ. Ἀρειος καὶ Σαραπίων | <sup>7</sup> ἀμφοτέροι Πτολεμαίου πρὸς Ἀθηνόδωρον καὶ | <sup>8</sup> Ἀπολλώνιον· ἐκ τῶν ῥηθέντων· Σουλ(πίκιος) | <sup>9</sup> Σίμιλις πυθόμενος Ἀρτεμιδώρου τοῦ ἐξη<sup>10</sup>γουμένου το[ῦς] νόμους περὶ τοῦ πράγματος | <sup>11</sup> καὶ συνλαλήσας τοῖς συμ[β]ούλοις ἔφη· Αἰγύ<sup>12</sup>[π]τιος εἶχεν ἐξουσίαν καθὼς βούλεται διαθέσθαι, and in the same document, ll. 13–15 (117–112, Oxyrhynchos): <sup>13</sup> [(ἐτους) . . .] θεοῦ Τρα[ι]αν[ο]ῦ Τῷβι κ ἐπὶ τῶν κατὰ Τρύφωνα | <sup>14</sup> [πρὸς] Διδ[ . . . . .] μεθ' ἕ[τερα]· Σουλ[πίκιος] Σίμιλις | <sup>15</sup> [συν]αλή[σας] κτλ.

<sup>25</sup> Note, for example, *P.Amh.* II 64 (107, Hermopolis): δεκάτου ἔτους Τραιανοῦ Καίσαρος τοῦ κυρίου Φαμενῶθ λ. | <sup>2</sup> ἀναγνωσθέντος περὶ δαπάνης εἰς τὸ ἐκ καινῆς κατασκευαζόμενον | <sup>3</sup> βαλανεῖον καὶ τὴν πλατεῖαν τάλαντα δέκα ἔξ , κα[ὶ] προσειπόντος | <sup>4</sup> Ἡρακλείδου στρατηγοῦ καὶ ἄλλα μετοξὺ (sic!) δεδα[π]ανῆσθαι, Οὐίβιος | <sup>5</sup> Μάξιμος· προσεκρίθη τῇ πόλει παρὰ Θέωνος πεν[τ]ήκοντα τάλαντα | <sup>6</sup> καὶ ἐκ τῶν τῆς γυμνασιαρχίδος ἄλλα δοκῶ μοι εἶκοσι . ἐκ τῶν προσ[κ]ριθέν[αν] τῇ

plaintiff or his representatives, was always incorporated into the proceedings, that is the original text of the proceedings as produced at the judge's bureau, and if the introductory clause has not come down to us (as was the case with the above mentioned fifty cases) the blame is with the copyist, who deemed its introduction immaterial for his personal purposes.<sup>26</sup> What is especially interesting is that the aforesaid compilation was undertaken regardless of the identity or rank of the judge. Be it the emperor, the governor, or the *iridicus*, the copyists showed no hesitation in omitting any parts of the *Vorlage* they wished.

Let us now return to the fourth century: the accumulation of cases in which the proceedings open with a detailed account by the plaintiff of his plea, may point to a real, substantial change in the structure of court proceedings in late antiquity. I do not dismiss this explanation. But the explanation I am going to present here is different, and perhaps more methodologically intriguing for the student of any documentary material that is used as evidence for any practical purpose, be it in the *dikastēria* of fourth-century BCE Athens or the courts of the Roman officials in fourth-century CE Egypt.<sup>27</sup> When a litigant wishes to present a text in a court of law, be it for example, a law, would it be sufficient to quote the absolute minimum that will warrant the authenticity of the cited passage, or is he required to bring forward the entire text? In second-century CE Egypt, I suspect, the former was the case. The text needed to give the identity of the official from whose proceedings the text was taken, and the accurate date, but then the copyist was perfectly free to add just the elements conducive to his case.

What changed in the fourth century was that now, at least according to the evidence discussed by Palme and by myself, one was inclined to bring forward the whole thing *verbatim*, so it seems.<sup>28</sup> Does this change derive from particular circumstances, relating to the preservation methods or terms of applicability of the particular genre? This is not unlikely. One should note that by bringing forward a selection the copyist may tend to distort, advertently or not, the contents of the original. Citing the entire text would certainly solve this problem. Or perhaps the change in the proceedings is symptomatic and indicative of a more profound change in the attitude towards *Vorlage*, and if so, is the change evident in other spheres of intellectual activity?<sup>29</sup> All these questions I am naturally not able to answer. Be that

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πόλει ἀποκαταστ[αθ]ήτω. Ἡρ[α]κλείδης· τίνος καὶ | <sup>8</sup> τίνος ὑπαρχόντων; Οὐίβιος Μάξιμο[ς]· ἔχε[ι] ἐν τοῖς ὑπομνηματισμοῖς μου.

<sup>26</sup> R.Haensch, 'Typisch römisch? Die Gerichtsprotokolle der in Aegyptus und den übrigen östlichen Reichsprovinzen tätigen Vertreter Roms. Das Zeugnis von Papyri und Inschriften', in H. Börm, N. Ehrhardt, J. Wiesehöfer (eds.), *Monumentum et instrumentum inscriptum : beschriftete Objekte aus Kaiserzeit und Spätantike als historische Zeugnisse : Festschrift für Peter Weiss zum 65. Geburtstag* (Stuttgart 2008) 117–126 at 124.

<sup>27</sup> Cf., e.g., M.Gagarin, 'Abuse is in the Eye of the Beholder', (forthcoming). I thank Professor Gagarin for allowing me to consult the text before its publication.

<sup>28</sup> Bickermann (supra n. 8) 346–347, Coles (supra n.21) 24.

<sup>29</sup> This question is also discussed by Haensch (supra n. 26) 124 with n. 43.

as it may, in the case of court proceedings of high-ranking officials in Roman Egypt, what seems at first sight to be a profound transformation of their structure may in fact derive from changing conventions regarding their quotation, and transmission by second-hand users. With this, not entirely insignificant observation, I end my response.

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