

Marzena Wojtczak
Jakub Urbanik

‘WEAKER’ SEX AND ‘WEAKER’ DISPUTE RESOLUTION? WOMEN AND ARBITRATION IN LATE-ANTIQUE PAPYRI*

1. INTRODUCTION

WITH THIS STUDY WE WOULD LIKE TO CHALLENGE some platitudes regarding women and their visibility both ‘in’ and ‘out’ of court dispute resolution. Numerous anthropological studies on social control and legal order in indigenous or post-colonial communities draw attention to a recurrent tendency to resort to arbitration in legal controversies involving women. It has been observed that private methods of settlement involving a woman on at least one side are more likely to involve kin as the opposing party. These variables are usually explained by women’s greater inclination to conciliate, their concern for the stability of existing relationships, especially within the family, as well as by their social and legal standing. The question that arises is to what extent we can treat

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these findings as cross-culturally valid and therefore also verifiable for societies functioning in different temporal and geographical frameworks. Further, arbitration and alternative dispute resolution in general have always been seen as a factor contributing to legal pluralism, by presumption of its natural tendency to depart from the ‘official’ legal norms.

Lately, legal history, Roman law, and papyrology have been increasingly approached from the research perspective of socio-anthropological studies. Still this attitude has come around relatively late: the first inroads into papyrological analysis of dispute resolution process took place only in the 1990s and onwards, even if this type of research had been current already since the 1960s.¹ This may have been the reason for which the methodological reception has happened somewhat uncritically, with preference for the earlier views, and their stringent projection onto papyrological sources. In brief, there is a tendency to mould ancient material into the rigid categories of alternative dispute resolution (hereinafter ADR; we shall be using this abbreviation for the sake of brevity, even if it obfuscates the reality by implying it must be necessarily juxtaposed to the state or public dispute resolution) in the fashion distinguished by legal anthropology, and to explain the reasons for the choice of arbitration in late-antique Egypt through modern *topoi*.²

Some caution, however, may be required, as the presence of certain analogies in the source material does not always lead to unequivocal conclusions. With this in mind, we would like to offer a more restrained stance towards the seductive interpretations of legal anthropology and review the image of women in the process of private dispute resolution in

¹ See, e.g., D. W. HOBSON, ‘The impact of law in village life in Roman Egypt’, [in:] B. HALPERN & D. W. HOBSON (eds.), *Law, Politics and Society in the Ancient Mediterranean World*, Sheffield 1993, pp. 193–219; T. GAGOS & P. VAN MINNEN, *Settling a Dispute: Toward a Legal Anthropology of Late Antique Egypt* [= *New Texts from Ancient Cultures* 1], Ann Arbor 1994, esp. pp. 30–31; J. HARRIES, *Law and Empire in Late Antiquity*, Cambridge 1999, esp. pp. 172–175. More recently (with a critical approach towards earlier studies), see B. KELLY, *Petitions, Litigation and Social Control in Roman Egypt*, Oxford 2011.

² The latter can be observed in numerous studies on Roman law as well, for most recent, see W. BUCHWITZ, *Schiedsverfahrensrecht in Antike und Mittelalter: Eine historische Grundlegung* [= *Forschungen zur neueren Privatrechtsgeschichte* 35], Cologne 2020.

Byzantine Egypt. Do women in fact lean towards a more 'amicable', less intrusive, or even – in line with the terminology of power – 'weaker' conflict resolution methods? What role do the social relations linking the disputing parties play in the choice of settlement measure? Is arbitration always a preferred remedy compared to 'last resort' state jurisdiction?

2. LATE-ANTIQUÉ ARBITRATION

A quick overview of the late-antique Egyptian documentation reveals a curious circumstance: a relatively large number of sources seem to suggest a more frequent recourse to arbitration and other 'alternative' means over the official, 'state-controlled' procedures of conflict resolution. Scholars have frequently grappled with this enigma and taken a polemic stance with the firm and provocative position of Arthur Schiller, who over half a century ago argued that state 'courts [were] no more' in pre-conquest Egypt.³ Schiller's claim supposedly found support in the significant decline of attestations for the activity of state jurisdiction, especially protocols of court proceedings, well known for the earlier periods.

While it is not our aim to re-enter the *contra Schillerum* discussion,⁴ it is important for our topic insofar as it shows that we are dealing with a general trend that escapes simple gender divisions. In other words: the growing interest in mediation/arbitration (or at least in recording it) is as much about women as it is about men. We will have to bear this in mind when we

³ A. A. SCHILLER, 'The courts are no more', [in:] L. ARU *et alii* (eds.), *Studi in onore di Edoardo Volterra I*, Milan 1971, pp. 469–502.

⁴ Discussed and confronted by D. SIMON, 'Zur Zivilgerichtsbarkeit im spätbyzantinischen Ägypten', *Revue internationale des droits de l'antiquité* 18 (1971), pp. 623–657; later also J. URBANIK, 'Compromesso o processo? Alternativa risoluzione di conflitti e tutela dei diritti nella prassi della tarda antichità', [in:] *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Salerno, 14.–18. September 2005)*, Vienna 2007, pp. 377–400; B. PALME, 'Antwort auf Jakub Urbanik', [in:] *ibidem*, pp. 401–410; More recently on that: M. WOJTCZAK, *Arbitration and Settlement of Claims in Late Antiquity*, PhD dissertation, University of Warsaw 2016; as well as in Jakub Urbanik's paper given at the 43. Rechtshistorikertag, Universität Zürich (8–12 August 2022), currently prepared for publication.

come to juxtapose data from different periods portraying women's dispute activity and indicate their potential preferences in the solutions employed.

The attestations regarding private dispute resolution (both Greek and Coptic) consist of agreements to submit a dispute to arbitration, *kompromissa*, notarial deeds recording settlements of claims, *dialyseis* or *homologiai dialyseon*, as well as arbitration protocols and confirmations of the issued awards.⁵ These documents are largely drawn up in Greek (especially in the case of *kompromissa* and *dialyseis*), a feature notable for their possible future use. Yet the records of the reconciliation process (in the form of protocols or confirmations of decisions taken) are also executed in the vernacular Coptic. This bilingualism is an immanent feature of late-antique Egypt, where Greek is traditionally reserved for the official, public contact sphere, whereas Coptic is the language more commonly associated with the domain of private life.⁶ Thus, if the methods of private settlement – apparently alternative to the judiciary – are scrupulously recorded, and moreover recorded in the ‘public sphere’ Greek, we may speculate that parties were at least mindful of future proceedings before a state court.⁷

⁵ Claudia Kreuzsaler gives a detailed presentation of the document types, see C. KREUZSALER, ‘Die Beurkundung außergerichtlicher Streitbeilegung in den ägyptischen Papyri’, [in:] Ch. GASTGEBER (ed.), *Quellen zur byzantinischen Rechtspraxis: Aspekte der Textüberlieferung, Paläographie und Diplomatik. Akten des internationalen Symposiums, Wien 5.–7.II.2007* [= *Veröffentlichungen zur Byzanzforschung* 25; *Denkschriften der philosophisch-historischen Klasse* 413], Vienna 2010, pp. 17–26.

⁶ Recently on Coptic documents, see J.-L. FOURNET, *The Rise of Coptic: Egyptian versus Greek in Late Antiquity*, Princeton 2020.

⁷ See, e.g., SB VI 8988 (Apollonopolis, 647) in relation to the famous *P. Budge* = P. Col. inv. 600 = SB Kopt. I 36 (Apollonopolis, c. 647) that is a record of hearings before the ‘great men’ of the town aimed to put an end to a dispute concerning a house property. This case is a complex one and reveals a considerable entanglement of family ties, whose identification allows an exhaustive interpretation of events; see, e.g., A. A. SCHILLER, ‘The interrelation of Coptic and Greek papyri; P. BU and P. BM Inv. Nos. 2017 and 2018’, [in:] R. HABELT (ed.), *Studien zur Papyrologie und antiken Wirtschaftsgeschichte. Friedrich Oertel zum achtzigsten Geburtstag gewidmet*, Bonn 1964, pp. 107–119; IDEM, ‘The Budge Coptic papyrus of Columbia University and related Greek papyri of the British Museum’, [in:] *PapCongr.* X, pp. 193–200; IDEM, ‘The Budge papyrus of Columbia University’, *Journal of the American Research Center in Egypt* 7 (1968), pp. 79–112. A new edition and translation of the set of documents, together with legal commentary is currently being prepared by Sebastian Richter, Jakub Urbanik, & Marzena Wojtczak.

Turning to private methods did not necessarily preclude recourse to the public administration of justice at other stages of the conflict. One could even argue that the integration of private and public dispute resolution is most manifest in the preparation of a written settlement agreement. Benjamin Kelly duly notes that the effectiveness of arbitration is not only closely linked, but also guaranteed by the state and its courts.⁸ Identification of the reasons for the growing attractiveness of arbitration with the decline of the judiciary may be delusory. The potentially decreasing efficiency of the state administration of justice could play a role, yet, at the same time, we need to remember that arbitration falls within its framework, and not outside it. Thus, in the event of a breakdown of the state courts, arbitration could prove equally ineffective.⁹

Rarely do we have the documentation for the entire course of proceedings.¹⁰ In most cases we dispose of only one of the just-listed types of sources. This fact, since they differ in their scope and the data they offer about each dispute, affects our analysis in several ways. First, it is difficult to precisely state which types of documents were vital for due process and which were produced only occasionally according to the parties' wishes. Second, it affects the possibility of establishing patterns (if at all) distinctive for women. Third, it often makes our attempts to reconstruct the course of the entire controversy perforce flawed, since our knowledge is limited to a specific stage of the proceedings. In this last instance the most useful documents are the *dialyseis*, which usually give a rich account of the background to the dispute and the attempts made to resolve it.¹¹

⁸ See KELLY, *Petitions* (cit. n. 1), pp. 259–265, emphasising that arbitration is always functioning 'in the shadow of the law'.

⁹ Unless a mutually acceptable solution can be reached. But even then, there can be potential difficulties if coercive mechanisms are not in place.

¹⁰ Cf., e.g., the already mentioned arbitration-protocol, *P. Budge*, together with SB VI 8988, a *dialysis* concluded at the end of the proceedings; also CPR VI 7 (Heracleopolites, 1st half of 7th cent.) in relation to *P. Paramone* 17 (Heracleopolites, 1st half of 7th cent.).

¹¹ We have documents (not necessarily involving women) informing us that prior to conciliatory attempts a petition was issued to a state official or a provisional decision was already made, e.g. PSI VIII 951 (unknown provenance, 388); *P. Lips.* I 14 (Hermopolis, 391); *P. Haun.* III 57 (unknown provenance, 412–415); *P. Oxy.* XVI 1880 (Oxyrhynchus, 427); *P. Flor.*

One more thing should be pointed out here. Namely, *dialyseis* follow a standard documentary pattern of a waiver of claims used broadly in legal practice (thus, in its legal function *dialysis* resembles the Roman *transactio*). This means that not all documents presenting themselves as *dialyseis* are evidence of mediation/arbitration in the proper sense of the word. Often-times, we are dealing with attestations that papyrologists classify as divisions of inheritance or divorce agreements, in which the parties simply state that they have no outstanding claims against each other. However, looking at the legal understanding of the term 'alternative dispute resolution', it should be noted that it also includes less intrusive methods of reaching an agreement that do not necessarily require the participation of a third party, for example by way of negotiation. Hence, it also seemed necessary to include in our analysis situations in which a conflict was directly or indirectly implied by the context of the case, an exchange of 'many words' took place between the parties or a private settlement was reached between them.¹² Finally, as has also been pointed out in the liter-

III 311 (Hermopolis, 448); *PSI* X 1114 (Oxyrhynchus?, 454); *P. Princ.* II 82 + *SB* III 7033 (Lycopolis, 481).

¹² See, e.g., *SB* VIII 9763 (Hermopolis, 457–474), in which the wording of the document implies a dispute in the background, together with the statement that the parties 'extinguish (...) all seed of dispute' between themselves; *P. Lond.* III 1008 (Upper Egypt, 561), in which 'the agreement was made/reached between each other', although the state of document precludes the safe reconstruction of events; *P. Lond.* V 1717 (Antinoopolis, 560–573), where one of the parties states that on account of this case she has been 'exempted and reconciled' with the other party; *P. Herm.* 31 (Memnoneia, 6th cent.), where a 'friendly settlement' was made after 'every trace of a lawsuit has been extinguished'; *SB* I 6000 (unknown provenance, 6th cent.), in which the context indicates the controversy between a mother and her children regarding the inheritance after the children's father (the document states that an agreement has been reached between the daughter and the mother – the latter was to plead with the daughter about some of the solutions – then the brother/son is informed about the settlement); *SB* XXIV 15958 (Antaeopolites, 6th–7th cent.), in which one of the parties 'approves of everything that was mutually agreed'; *SB* I 2137 (Thebes, 6th–7th cent.), which mentions reaching a settlement after 'many pleas' have been made; *P. Par.* I 20 (Panopolis, 600), where it is stated that 'every seed of dispute has been extinguished'. The resolution of the controversy between the parties by negotiation also seems to be indicated by *P. Princ.* II 79 (Oxyrhynchus, 326), where three brothers decide to divide the inheritance between them and emphasise that they 'refrain from conflict with each other', as well as *P. Cair. Masp.* II 67156 (Antinoopolis, 570). In the case of,

ature, sometimes the appearance of 'friends', individuals of social esteem, or those holding public offices allows one to suspect some kind of their involvement, even if entirely informal, in the settlement process.¹³

Such a broad view lets us go beyond the anthropologically standard categories of private dispute resolution and point to some hybrid solutions present in late-antique legal practice. In this regard, it also becomes indispensable to consult letters and private petitions, which likewise point to a variety of methods for dealing with conflicts that fall outside the public path sanctioned by the state.¹⁴

3. WOMEN 'IN' AND 'OUT OF' COURTS: A PANORAMA

3.1. ADR: sources and women's roles

Women appear in the full array of sources documenting private dispute resolutions. Out of over 140 papyri identified as certainly relating to

e.g., *P. Petra* I 2 (Petra, 538) and III 29 (Petra, 582?–592) – which are mentioned further in this article, but do not involve women – the controversy can be deduced from the context of the cases described in the documents, as also suggested by the editors. In cases where there may nevertheless be some doubt whether we are dealing with ADR, the sigla of the papyri referred to are followed by a question mark.

¹³ As in, e.g., *P. Ness.* III 22 (Nessana, 566), where some of the division proceedings are carried out with the assistance of friends and relatives gathered on behalf of the parties; or *P. KRU* 37 (Thebes, 724), where it is unclear what kind of dispute resolution method was applied. The document only states that a settlement was reached between the parties. The status of witnesses to the agreement (e.g. *lashanes*), however, makes their passive role questionable. Moreover, the latter document clearly states that the parties 'went to law' with one another and brought their case before *lashanes*. It seems that during the proceedings (private or public) a settlement was reached with the involvement of the mentioned 'remedy agents'.

¹⁴ In addition to the typical dyadic and triadic dispute resolution strategies and disputing behaviours distinguished in anthropological and socio-legal sciences (such as, e.g., avoidance, coercion, negotiation, mediation, arbitration, or, finally, litigation), in the papyri we find variations that can be classified as, e.g., three-party negotiations, 'forced' mediation/arbitration, or 'open-ended' mediation/arbitration (for more, see WOJTCZAK, *Arbitration and Settlement of Claims* [cit. n. 4]).

ADR from the fourth to eighth centuries, around 50 record the involvement of women on either side of the ongoing dispute (Fig. 1).¹⁵

Roger Bagnall has argued that women's engagement in judicial or arbitration procedures in late antiquity usually came down to the position of

¹⁵ There are at least 142 papyri attesting to ADR. Among these, up to 56 cases attest to some type of women's involvement in the private settlement of claims. See *P. Berl. Möller* 1 = *SB* IV 7338 (Euergetis, 300); *PSI* VIII 951; *P. Oxy.* VI 903 (Oxyrhynchus, 4th cent.); *P. Lips.* I 43 (Lycopolis?, 4th cent.); *SB* VIII 9763; *SB* IV 7449 (Oxyrhynchus, 2nd half of 5th cent.); *P. Lond.* III 992 = *M. Chr.* 365 = *SP* I 61 = *FIRA* III 182 (Hermopolis, 504); *P. Mich.* XIII 659 + *P. Vat. Aphrod.* 17 (Antinoopolis, 527–547); *P. Vat. Aphrod.* 10 + *P. Mich. inv.* 6922 (Antinoopolis, 527–546/7); *P. Lond.* V 1717 (?); *P. Lond.* III 1008; *P. Lond.* V 1707 (Antinoopolis, 566; as well as *P. Cair. Masp.* II 67161 [Antinoopolis, 566]); *P. Ness.* III 22; *P. Lond.* V 1709 (Aphrodite, c. 566–568); *P. Lond.* V 1708 (Antinoopolis, 567/8); *P. Cair. Masp.* II 67156; *P. Münch.* I 1 (Syene, 574); *BGU* I 317 (Arsinoite, 580/1); *P. Münch.* I 7 + *P. Lond.* V 1860 (Antinoopolis, 583); *P. Münch.* I 6 (Syene?, 583; cf. also *P. Münch.* I 14 [Syene, 594]); *P. Lond.* V 1728 (Syene, 584); *P. Lond.* V 1731 (Syene, 585); *P. Oxy.* XVI 1839 (Oxyrhynchus, 6th cent.); *P. Herm.* 31; *SB* I 6000; *P. Erl.* 74 (Oxyrhynchus, 6th cent.); *P. Par.* I 20; *SB* XXIV 15899 = *SB* I 5266 (Arsinoites, 608); *P. Budge* (together with *SB* VI 8988); *P. Ness.* III 57 (Nessana, 689); *SB* XXIV 15958 (?); *SB* I 2137; *P. Grenf.* II 99a (unknown provenance, 6th–7th cent.); *ST* 181 (Elephantine, 6th/7th cent.); *BGU* I 103 (Pinarachthis?, Oxyrhynchites, 6th–7th cent.); *SPP* XX 212 (unknown provenance, 6th–7th cent.); *P. Dubl.* 24 (Heracleopolites, 7th cent.); *P. Heid.* VII 404 (Arsinoiton Polis, 629/30); *SPP* XX 243 = *SB* I 5278 (Arsinoiton Polis, 633? or 648?); *P. Apoll. Ano* 61 (Apollonopolis, 2nd half of 7th cent.); *O. Vind. Copt.* 258 (Theban region, 7th–8th cent.); *P. Lond.* IV 1611 (Aphrodite, 710); *P. KRU* 35 (Thebes, 719); *P. KRU* 36 (Thebes, 724); *P. KRU* 37; *P. KRU* 50 (Thebes, 724); *P. KRU* 44 (Thebes, 728); *P. KRU* 38 (Thebes, 738); *P. KRU* 45/46 (Thebes, 725/740); *CPR* IV 50 (Heracleopolites, 8th cent.).

There are some uncertainties regarding that count however. In the case of *P. Cair. Masp.* III 67295 (Aphrodite/Antinoopolis, 2nd half of 6th cent.), we are not sure whether it really concerns the ADR, as by part of the doctrine it is qualified as a petition concerning court proceedings. In the case of *SB* XXIV 16039 (Apollonopolis, 600–625), nothing can be ascertained apart from the fact that a woman appears in the ADR document. Similarly in *P. Lond.* II 456 (Arsinoites, 6th–7th cent.), a *compromissum* plausibly mentioning a woman, *P. Ryl. Copt.* 183 (unknown provenance, 7th–8th cent.), a *dialysis* mentioning a woman, and *BGU* I 314 (Heracleopolis, 630). In our material we deal both with women acting alone or together with someone (both men and women), as well as arguing against women and men. On the other hand, we have at least 65 documents showing only men active in the ADR process. In 21 instances we are uncertain in regard to the gender of the parties engaged in the controversy (mostly due to the state of the sources at hand, or when are we dealing with groups at dispute, e.g. residents of different villages, and it is not possible to determine the proportion of men alone without women, as in *P. Oxy.* XVI 1866 (Oxyrhynchus, 6th–7th cent.) and 1867 (7th cent.).

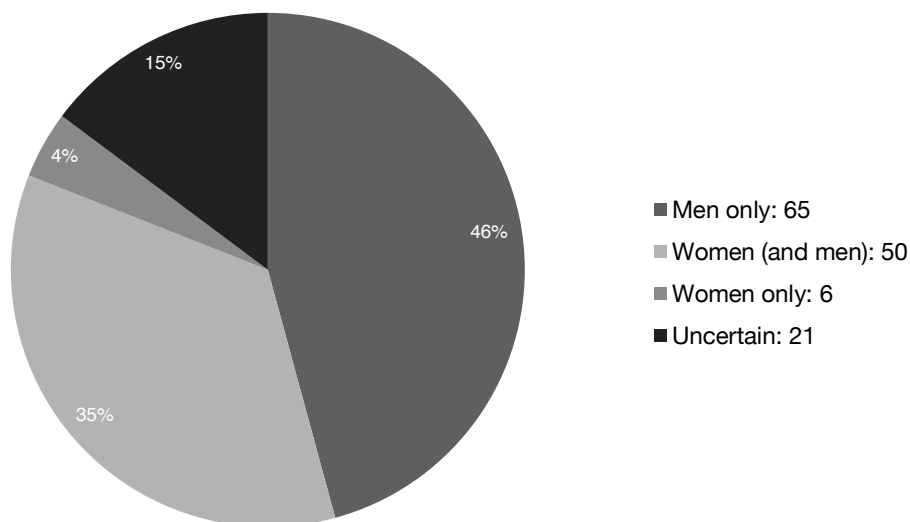


Fig. 1. Women and men as agents in ADR

the defendant.¹⁶ This statement needs contextualisation. For starters, it does not seem proper to rigidly define them as 'plaintiffs' and 'defendants': the traditional civil trial division of the party roles does not always match the reality of ADR. The mutual statements and claims submitted for consideration blur at times the obvious differentiation between the first claimant(s) burdened with proof, and their opponent(s) who present counter-arguments in defence. The nature of some of the texts makes it impossible to decide on which of these sides the female party appears.¹⁷ In some cases, too, the fragmentary preservation of the documents makes the identification of trial roles even harder. Further, contrary to Bagnall's assumption several sources point to women's initiative to legally settle the dispute.

¹⁶ See R. Bagnall, 'Women's petition in late antique Egypt', [in:] D. FEISSEL & J. GASCOU (eds.), *La pétition à Byzance. xx^e Congrès international des Études byzantines, 19–25 août 2001. Table ronde* [= Centre de recherche d'histoire et civilisation de Byzance. Monographies 14], Paris 2004, pp. 53–60, at 58–59.

¹⁷ Especially in the *kompromissa*, where both parties appear on an equal footing, e.g. SB XXIV 15899.

They record women-plaintiffs, and female claimants taking steps to select an arbiter and to guarantee the appearance of the other party at the proceedings. Such attempts are chiefly indirectly documented by, for instance, letters whereby a woman asks either a public official, a spiritual father, or yet another person of trust for the assistance in resolving a dispute.¹⁸

And so, in *SB IV 7449* a woman, Aurelia Nonna, complains to her spiritual father about an instance of physical assault committed by Alypios, her kin and a monk. The letter records a one-sided process opening, where Nonna presents her view on the case, asks the bishop to summon the monk and promises her acceptance of the arbiter's decision. A mirroring situation is found in a Coptic ostrakon probably dated after the Arab conquest, *O. Vind. Copt.* 258. This time, however, the spiritual father is approached by a woman, who explains her standpoint on the claims that were already put forward by her opponent in an earlier attempt at dispute resolution.¹⁹ The parties' consent to the proceedings is admittedly unanimous, although expressed separately by each of them at different stages, the initiating party in this case being a woman.

Even if some documents do not make it clear whether it was a woman who initiated the proceedings, they testify to her active role in the course of action. *P. Oxy.* VI 903, a plea of a maltreated wife, recounts, for instance, the early attempts to solve a conflict, seemingly upon the woman's initiative. This involved an oath taken by the cruel husband in front of elders²⁰ and 'his brethren' (ll. 15–16). The document describes the

¹⁸ E.g. *SB IV 7449*; *SPP XX 243*; *O. Vind. Copt.* 258.

¹⁹ The previous arbitration that took place between the parties is recalled in the document. In this first arbitration the arbiters were a priest and the great men of the village, cf. *O. Vind. Copt.* 258. On that, see also G. SCHMELZ, 'Clerics as arbiters in Christian Egypt', [in:] J. G. KEENAN, J. G. MANNING, & U. YIFTACH-FIRANKO (eds.), *Law and Legal Practice in Egypt from Alexander to the Arab Conquest*, Cambridge 2014, pp. 512–523, 520–521.

²⁰ This document has been traditionally interpreted as a 'plea of Christian woman' (cf. the standard description at <<https://papyri.info/ddbdp/p.oxy;6;903>> [accessed 11 November 2023], or D. MONSERATT, *Sex and Society in Graeco-Roman Egypt*, London 1996, pp. 99–100; hence these *episkopoi* have been taken to be the bishops. Yet the plural form used gives rise to some doubts: the presence of several bishops in Oxyrhynchus before whom the cruel husband swore to treat his wife better at the same time is problematic. It is also probably

history of a controversy between spouses filled with physical and psychological abuse and may have been fashioned by the woman as a sort of an affidavit in preparation of the next steps of the litigation (this time possibly to be held at a public forum; ll. 17–37).

In 21 out of approximately 50 papyri²¹ where we find women involved in ADR they act jointly with another person, usually a relative or a husband.²² Still they are neither always represented by them, nor do the

better to see in the oath-witnessing 'brethren' rather spiritual than blood kinship. Perhaps these two facts fit better in a Jewish than a Christian community). At any rate, the unusual format of the text (the page-setting is particularly careful, the hand almost book-like), the lack of the name of the pleader, or a usual address of the authority to whom such a plea would be directed, may suggest that we deal here with a semi-literary text, perhaps a rhetorical exercise. This, however, does not diminish the weight of this piece as our evidence. Quite the contrary, taking as literary/rhetorical *topos* a woman reaching out to the possible mediators/arbiters in order to fight for her rights, could suggest typicality of such situation in the real life. On the document, see further J. URBANIK, 'La repressione constantiniana dei divorzi: La libertà dei matrimoni trafitta con una forcina', [in:] *Fides. Humanitas. Ius. Studii in onore di Luigi Labruna VIII*, Naples 2007, pp. 5705–5726, at 5717, interpreting it in the context of the Constantine ban on unilateral divorce.

²¹ In total 56 cases. However, see n. 15 for reservations. Moreover, there are attestations where the story of dispute resolution with a woman is included only in the background of the events to which the document relates, as in, e.g., *P. Münch.* I 14.

²² E.g. *PSI VIII* 951: Aurelia Tapia acting together with her husband Aurelius L...; *P. Lond.* III 992: Flavius Bes and his wife Archontia act together against women's brothers; *P. Mich.* XIII 659 + *P. Vat. Aphrod.* 17: Aurelia Talus acting together with her husband; *P. Lond.* V 1709: Viktorine and Phoibammon, the plaintiffs; *P. Lond.* V 1708: Anastasia acting together with Maria; the latter, however, is not visible as a party in the document; it seems that Phoibammon and Anastasia are the main plaintiffs; *P. Münch.* I 1: Tsia together with two of her brothers and mother; *BGU* I 317: the son acting on behalf of Herais; *P. Herm.* 31: sisters together with their brothers; *SB* I 2137 (although the precise reconstruction of family ties is hindered); *P. Par.* I 20: Aurelia Tarsene, a widow, together with her brother; *P. Budge:* Thekla acting together with her husband Philemon; however, she appears to be added by the scribe to the document only at a later stage (cf. also *dialysis* for the same proceedings, *SB VI* 8988); *P. Apoll. Ano* 61: mother acts with her son; *P. KRU* 35: Abigaia joined by her husband; *P. KRU* 36: Abigaia joined by her brothers, father Samouel and her husband; on the other side: Elisabet, Abigaia's aunt acts with her husband Abraham; *P. KRU* 37: Elisabet with her second husband Abraham and her children from the second marriage; *P. KRU* 50: Tsherkah and Arsenios, children of the late Georgios and Abessa, acting together; *P. KRU* 44: sisters acting together with their husbands; although husbands seem to play here a more active role; *P. KRU* 38: Kyra together with her brother and their father Abraham.

women usually take the ‘back seat’ in the proceedings.²³ In some cases, the supporting parties consist of other women (often within a family).²⁴

Only in six instances is there unambiguous evidence for women being represented.²⁵ In three this role is taken by the spouse; in one, a professional agent was appointed. In *P. Cair. Masp.* II 67161 Aurelia Athanasia daughter of Kyros granted powers of attorney to the famous lawyer-poet of Aphrodite, Fl. Dioskoros, who, being the woman’s relative, was not a total stranger though. The matter arose in a family milieu: Athanasia wanted to sue her paternal uncle Theodoros son of Psoios over a half-share of her paternal inheritance. In the resulting *kompromisson* (*P. Lond.* V 1707)

The instances of clear legal representation have been included in the general count, but references to them are included separately below in n. 25 (6 instances, 3 of which can be classified in two ways, as some women act together with other persons, while others are legally represented). Cf. also the documents not included in this count and commented on later, *P. Cair. Masp.* II 67156: a widow and her daughter are settling their claims and accounts; women act on their own; the husband of the daughter is mentioned, but only as assenting and being in agreement with everything that she decides; *P. Ness.* III 57: Nonna likely acting on her own, only with the support of her mother; as well as *P. Oxy.* LXIII 4397: Oxyrhynchus, 545): Leontia is only supporting Flavius Apion in a settlement with the monastery of Apa Hierax.

²³ For this observation particularly prominent are *dialyseis*, which cite a wider context of the controversy and earlier attempts to resolve it (through private or public methods), as well as minutes of proceedings that depict the following stages of mediation/arbitration, e.g. *P. Berl. Möller* 1; *P. Lond.* V 1709 & 1731; *P. Cair. Masp.* II 67156; *P. Münch.* I 1; *BGU* I 317; *SB* I 6000; *P. KRU* 35, 36, 45/46, & 50; probably also *P. Dubl.* 24.

²⁴ E.g. *P. Lond.* V 1709: the defendants, Philadelphia, the younger half-sister of plaintiffs, and Amanias, their widowed stepmother; *P. Lond.* V 1708: Anastasia is acting together with Maria; however, the latter is not visible as an active party in the document; it rather seems that Phoibammon and Anastasia are the main plaintiffs; *P. Münch.* I 1: a sister together with two of her brothers and a mother; *BGU* I 317: (the daughter) of the blessed Georgios, together with her mother Heraidos/Herais; *P. Herm.* 31: women together with their brothers.

²⁵ *P. Mich.* XIII 659 + *P. Vat. Aphrod.* 17: Apollos, Paulos, and Maria are represented by Viktor and Senouthes; *P. Vat. Aphrod.* 10 + *P. Mich.* inv. 6922: Aurelius Phoibammon and his wife Aurelia Anastasia alias Tekrompia are represented by Anastasia’s uncle, Apollos; *P. Lond.* V 1707: representation by Athanasia’s husband (cf. also *P. Cair. Masp.* II 67161); *P. Lond.* V 1708: Phoibammon, the husband of Anastasia, is legally representing her; however, there is no mention of any legal representation of Maria, who is also married; *P. Münch.* I 7 + *P. Lond.* V 1860: Pathermouthis acts on behalf of his wife Kako; *P. Budge*: Thekla and her son Mena are represented by Ioannes and Tsoker.

she was eventually represented by her husband Fl. Konon son of Epanakios. Dioskoros also undertook agency on behalf of his cousins, another Dioskoros and his sister Anastasia, obtaining imperial rescripts from the chancery in Constantinople (*P. Cairo Masp.* I 67027 & 67028 [Antinoopolis, c. 551]; yet the originals must have been earlier and fashioned in the capital). The matters regarded succession, but also devolution of the maternal property to the children of the first bed, a legal issue that Dioskoros most likely arbitrated himself sometime later between Phoibammon and Viktorine against their half-sister Amanias (*P. Lond.* V 1709).²⁶

As a matter of fact, these already rare cases could be reduced by one, since in *P. Münch.* I 7 + *P. Lond.* V 1860,²⁷ Pathermouthis represents his wife Kako in a settlement with their brother(-in-law) Ioannes, both because she is absent and because the dispute involves himself as well (the document forms a part of a dossier of the disputed succession after their father[-in-law] Iakobos). In another document regarding the same inheritance matter over a year later, *P. Lond.* V 1728, the same woman acts on her own, settling with her brother Ioannes.

Comparing these two instances involving the same litigants and practically the same matter shows that, depending on circumstances, a woman could opt for different forms of participation in the proceedings. *P. Lond.* V 1728 was drawn up after *P. Münch.* I 7 + *P. Lond.* V 1860 and refers to the

²⁶ See P. VAN MINNEN, 'Dioscorus and the law', [in:] A. A. MACDONALD, M. W. TWOMEY, G. J. REININK (eds.), *Learned Antiquity: Scholarship and Society in the Near East, the Greco-Roman World, and the Early Medieval* [= *Groningen Studies in Cultural Change* 5], Leuven 2003, pp. 115–135, and C. ZUCKERMAN, 'Les deux Dioscore d'Aphroditè ou les limites de la pétition', [in:] FEISSEL & GASCOU (eds.), *La pétition à Byzance* (cit. n. 16), pp. 75–92.

²⁷ Kako is represented by Pathermouthis in a dispute with the woman's brother Ioannes. The deed was drawn up in Antinoopolis, whereas the matters pertain to the famous Syenian family, and it is probably where Kako was. For more on the Pathermouthis and Kako archive, see, e.g., H. I. BELL, 'Syene papyri in the British Museum', *Klio* 13 (1913), pp. 160–174; J. J. FARBER & B. PORTEN, 'The Pathermouthis archive: A third look', *Bulletin of the American Society of Papyrologists* 23 (1986), pp. 81–98; J. J. FARBER, 'Family financial disputes in the Pathermouthis archive', *Bulletin of the American Society of Papyrologists* 27 (1990), pp. 111–122; J. URBANIK, 'Tapia's banquet hall and Eulogios' cell. Transfer of ownership as security for debit in late antiquity', [in:] P. DU PLESSIS (ed.), *New Frontiers: Law and Society in the Roman World*, Edinburgh 2013, pp. 151–174.

provisions adopted in an earlier settlement concluded by Ioannes with Pathermouthis. The relatively short time-gap between the agreements leads one to suspect that the controversy may have flared up again.

The law allows women to have intermediaries or representatives appointed for reasons of their *pudicitia*. Permission, however, is obviously not an order.²⁸ There are also instances when representation does not only involve women, but also men acting alongside them. In such cases the representing parties are other members of the family²⁹ as well as other entities with which the parties have social ties or who have an interest in the outcome of the proceedings.³⁰ It is also not at all uncommon for men to act through various proxies in their own cases, especially if they cannot be present during the proceedings or their interest requires representation.³¹

In most cases where there is no legal representation and where the woman is acting jointly with other individuals, it is not possible to say

²⁸ A woman's capacity to appear in her own cases in court was not restricted in any legal way (e.g. *Sent. Pauli* I 2.2). Only acting in place of others or taking legal action on behalf of third parties (as well as acting as a witness to certain legal acts, but not in court proceedings) was subject to limitations (e.g. D. 3.1.1.5; cf. also D. 50.17.2 pr; C. 2.12.4). Furthermore, women, just as men, could benefit from the legal representation. In the case of women, for the sake of their morality, there were even more far-reaching solutions provided, cf., e.g., C. 2.12.21. See J. BEAUCAMP, *Le statut de la femme à Byzance (4^e–7^e siècle)*, I: *Le droit impérial* [= *Travaux et mémoires du Centre de recherche d'histoire et civilisation de Byzance* 5], Paris 1990, pp. 35–45; also EADEM, *Femmes, patrimoines, normes à Byzance* [= *Bilans de recherche* 6], Paris 2010, pp. 32–33, as well as 267–268.

²⁹ E.g. *P. Vat. Aphrod.* 10 + *P. Mich. inv.* 6922; *P. Budge*.

³⁰ E.g. *P. Mich.* XIII 659 + *P. Vat. Aphrod.* 17, where children of Ioannes are represented by the presbyter Viktor son of Besarion and by Senouthes son of Apollos. For the reconstruction of social ties, see M. WOJTCZAK, 'Legal aspects of dispute resolution in late antiquity: The case of *P. Mich.* XIII 659', *Journal of Juristic Papyrology* 46 (2016), pp. 275–308, at 277–280.

³¹ E.g. *P. Giss.* I 104 (Hermopolis, 399): Aurelius Kyros son of Philammon is acting as curator for his deceased father; *P. Vindob. inv.* G 25933 (unknown provenance, 419): natural brothers Flavius Theoninos and Aurelius N.N. representing also the interest of their absent brother, Flavius Demetrios; *SB XXII* 15801 (Arsinoites, 419): two brothers are representing also the interest of their absent brother; *P. Lond.* III 992: Isakos acts on his own behalf as well as on the heirs of deceased brother Tyrannos; *SB XIV* 12194 = *SB I* 5258+5261+5263 (Arsinoites, 619–629 or after 641): Aurelius Neilammon, a deacon, is acting also on behalf of his brother-in-faith, Georgios, a reader.

with any certainty whether her role was less active than that of her male companions.³² In *P. Lond.* III 992, Flavius Bes and his wife Archontia conclude a *compromissum* with the woman's brothers promising to appear before chosen arbiters. There is no indication of either the object at dispute nor the parties' exact claims against each other. The character of the parties (i.e. the sister and her brothers as opposing parties) involved in the dispute might suggest inheritance. This hypothesis, however, in no way excludes a possible scenario in which Flavius Bes would be taking part in the proceedings in his own interest. As we do not know the details of the case, his presence cannot be reduced to merely intervening in his wife's case.³³

This overview undermines the thesis put forward by Joëlle Beaucamp. She assumes that women in late antiquity were usually represented by men, in the case of both regular litigation and ADR. Of the twenty-nine documents of legal practice she collected attesting to the participation of women in arbitration or court proceedings between the third and sixth centuries, about eighteen allowed the identification of a woman appearing in person or being directly involved at some stage of the proceedings, whereas eleven showed a woman acting through a proxy.³⁴ In the light of the attestations we have gathered, which are significantly more numerous for the fourth–sixth centuries than those analysed by Beaucamp, this trend no longer seems to be valid, at least for arbitration proceedings.³⁵

³² For attestations showing the equal footing where nothing indicates that the proceedings are carried out by men, see, e.g., *PSI* VIII 951; *P. Lond.* III 992; *P. Münch.* I 1; *P. Herm.* 31; *P. Par.* I 20; *SB* I 2137; *P. KRU* 36, 38, 44, & 50; cf. also *P. Mich.* XIII 659 + *P. Vat. Aphrod.* 17, in which Aurelia Talus acts with her husband, who plays the leading role, but the woman signs the contract on her own.

³³ Cf. for a different view BEAUCAMP, *Femmes, patrimoines, normes* (cit. n. 28), pp. 266–270 & 409–421.

³⁴ *Ibidem*, p. 267, with references to earlier J. BEAUCAMP, *Le statut de la femme à Byzance (4^e–7^e siècle)*, II: *Les pratiques sociales*, Paris 1992 [= *Travaux et mémoires du Centre de recherche d'histoire et civilisation de Byzance* 6], pp. 21–28 & 389–393. It should be stressed that the attestations collected by Beaucamp for the fifth and sixth centuries relate primarily to instances of ADR.

³⁵ The list of late-antique ADR documents was compiled by WOJTCZAK, *Arbitration and Settlement of Claims* (cit. n. 4). It supplements and revises the earlier lists prepared by GAGOS & VAN MINNEN, *Settling a Dispute* (cit. n. 1), pp. 121–127, and KREUZSALER, 'Die Beurkundung außergerichtlicher Streitbeilegung' (cit. n. 5), pp. 17–26. Coptic documents

Admittedly, there are circumstances when a woman takes a more withdrawn position, but the same role also falls to other men when numerous actors are present on the side of the defendants or plaintiffs.³⁶ Thus, no definitive conclusion can be drawn here.

Beaucamp further notes that when a woman is married, the husband usually undertakes some form of representation for her.³⁷ This trend is recognised by the scholar as a social norm also linked to the parallel legal solution adopted in the Justinian Code that dates to Constantine and grants the husband the right to take legal action on behalf of his wife, without a mandate (C. 2.12.21 pr., a. 315).³⁸ However, our sources regarding ADR are not at all clear-cut in this matter either.

Husbands do frequently appear in our documentation, yet it does not necessarily mean that they limit or protect their consorts. In some cases, the circumstances allow us to conclude that their presence is a guarantee

have been subject to examination by W. C. TILL, *Erbrechtliche Untersuchungen auf Grund der koptischen Urkunden*, Vienna 1954, pp. 14–27. Beaucamp also includes litigation and petitions in her study, the list of the latter being supplemented and revised by J. GASCOU & J.-L. FOURNET, ‘Liste des pétitions sur papyrus des v^e–vii^e siècles’, [in:] FEISSEL & GASCOU (eds.), *La pétition à Byzance* (cit. n. 16), pp. 141–196. Cf. also BAGNALL, ‘Women’s petition (cit. n. 16), pp. 53–60, esp. pp. 54–55 with fn. 10. Our interest here is mainly in ADR, the public proceedings are treated only as comparative material.

³⁶ See *P. Mich.* XIII 659 + *P. Vat. Aphrod.* 17; *P. Lond.* V 1708; cf. also *P. Vat. Aphrod.* 10 + *P. Mich.* inv. 6922; *P. KRU* 44.

³⁷ BEAUCAMP, *Femmes, patrimoines, normes* (cit. n. 28), pp. 269 & 409–421.

³⁸ C. 2.12.21 pr.: (*Imperator Constantinus*): *Maritus citra mandatum in rebus uxoris cum sollemni satisdatione et alia observatione intercedendi habeat liberam facultatem, ne feminae persequendae litis obtentu in contumeliam matronalis pudoris inreverenter inruant nec conventibus virorum vel iudiciis interesse cogantur. 1. Sin autem mandatum susceperit, licet maritus sit, id solum exsequi debet, quod procuratio emissa praescripserit. <Const. A. ad concilium prov. Africae. A 315 pp. IIII id. mart. hadrumeto Constantino A. IIII et Licinio IIII conss.>*, ‘A husband, (even) without mandate, should have full power of representation in his wife’s (judicial) affairs, (albeit) with the customary security bond and other formalities, so that women, under pretence of pursuing a lawsuit and in defiance of matronly modesty, do not boldly intrude, nor are compelled to attend assemblies of men or trials. 1. But if anyone takes up a mandate, even if he is her husband, he ought to do only that which the given procuratorship requires <Posted March 12, at Hadrumetum, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315)>’ (transl. after B. W. FRIER *et alii* [eds.], *The Codex of Justinian. A New Annotated Translation, with Parallel Latin and Greek Text*, Cambridge 2016, vol. I, p. 499).

to the other litigant that they would not try to undermine the settlement reached. Even if they did not have a legitimate claim to their wives' estate, because of the social convention they would expect to partake in the succession, and thus could likely be suspected of attempts to overthrow the compromise reached. This precisely seems to be the case in *P. Münch. I 1*, a settlement putting an end to a controversy over succession. On the one side we have two brothers, Viktor and Paeion, acting with their sister Tsia and mother Tlou, who supports the claim of her children. On the other side there is another brother, Iakobos, whom the siblings suspect to have been undeservedly favoured in the division of inheritance. Tsia is married to Hatres, who agrees with her in regard to the proceedings. This is the only mention of Tsia's spouse in the whole affair, he does not even appear in the list of parties' signatures to the agreement (which probably is due to his proximity to one of the parties).³⁹ Thus his appearance is hardly a kind of 'intervention' in the interests of his wife, as Beaucamp wanted to see it.⁴⁰ It has been suggested that the phrase expressing the husband's assent may imply that Hatres, acting as his wife's guardian, must have consented to the actions she undertook.⁴¹ This idea goes against all that we know of the end of compulsory guardianship of women, which occurred at least two centuries before.⁴² Nothing in our document, even if only as a style clause reproduced by the scribe, suggests a sudden re-emergence of *tutela mulierum*.⁴³ There is even no need to read the situation as Vincenzo Arango-Ruiz did, to indicate

³⁹ For a similar example of husband's assent, see *P. Cair. Masp. II 67156*, maybe also *SB XXIV 15958*.

⁴⁰ BEAUCAMP, *Femmes, patrimoines, normes* (cit. n. 28), p. 416. She does not rule out the husband's involvement at earlier stages, for which we find no evidence, however.

⁴¹ See the mention in B. PORTEN *et alii*, *The Elephantine Papyri in English, Three Millennia of Cross-Cultural Continuity and Change*, Leiden – New York – Cologne 1996, p. 470.

⁴² See, e.g., A. Arjava, *Women and Law in Late Antiquity*, Oxford 1996, pp. 116–117. Recently, in a paper delivered at the 76e session de la Société internationale Fernand De Visscher pour l'histoire des droits de l'antiquité, Antti Arjava has convincingly established this date to AD 320, interpreting anew *CTh 8.16.1*.

⁴³ See R. TAUBENSCHLAG, *The Law of Greco-Roman Egypt in the Light of the Papyri*, Warsaw 1955², pp. 170–178.

community of estates between the spouses.⁴⁴ And so Hatres' agreements warns off *pro futuro* any of his expectative claims. Similar function must be attributed to the settlement confirmation by Tlou, the mother of the siblings in dispute. The widow, like Hatres, could be expected to succeed any of her children and then to undermine the just reached compromise.

Precisely the same reasoning could be applied to explain the consent of husbands in the Coptic eighth-century dossier of Elisabet. In the earliest piece of the dossier, *P. KRU* 35, Elisabet settles with her niece Abigaia over the division of a house that most probably used to belong to their (grand-)father Epiphianos. Elisabet acts alone, Abigaia is accompanied by her consenting husband Daniel son of Komes. Abraham, Elisabet's second husband, instead only appears at the conclusive part of the document (actually after the statements of the witnesses), where together with his nephew-in-law he undertakes to pay for the renovations of a wall of the estate, the object of the settlement. In a dispute four years later concerning the whole estate of Elisabet's parents, *P. KRU* 36, and involving all children of her pre-deceased sister, Stephanos, Chareb, Abigaia, the husbands of both women provide their consent. The lack of Abraham's consent in the earlier deed could perhaps be explained by the fact that it is made predominantly in favour of his wife, and addressed to her. Elisabet obtains confirmation of her command over some parts of the house. One could imagine that a mirror document was made by Elisabet for her niece, and in this Abraham would have fully appeared. *P. KRU* 37 instead, even if formally addressed to Elisabet, settles over the rights and announces quit-claims of all the parties involved. It also informs that in the course of the dispute resolution⁴⁵ the couple provided an oath, by which the other party was fully satisfied, hence the appearance of Abraham is comprehensible and fits the pattern of providing greater security for his wife's opponents.

⁴⁴ V. ARANGIO-RUIZ (ed.), *Fontes iuris Romani anteiustiniani*, III: *Negotia*, Florence 1943² (repr. Florence 1969), no. 184, pp. 576–582, at p. 577.

⁴⁵ In this case, the officials act as initial 'remedy agents', however the capacity in which they undertake the case (i.e. public or private) is not clearly stated in the document. It appears that the parties reached a settlement in the course of the proceedings and in consequence concluded the *dialysis* as to the division of inheritance.

Women are also mentioned alongside their active husbands or, at times, are only added to the deeds at later stages. A telling example is provided by *P. Budge* which records a dispute between Philemon joined with his wife, Thekla, against the deacon Ioannes over a house that was mortgaged for the security of a loan contracted some years earlier by Ioannes's aunt with his current adversaries.⁴⁶ The record of the proceedings also covers a vast array of steps taken at earlier stages by the conflicting parties and the exchange of their written memoranda, and Thekla clearly took an active part in only some of them. Nevertheless, the scribe visibly adjusted the final version of the protocol, through cross-outs and corrections, where Philemon himself appeared by adding his wife, Thekla, and replacing 'I' with 'we' in the argumentative presented by the man. This may, of course, have been done to show that the husband represents the couple's common interest, but it also indicates the diligence of the parties in noting the spouses' common consent with regard to the solution reached. Especially since in the final settlement agreement, *SB VI 8988*, Thekla is already mentioned on a hand-in-hand basis with her husband, also when recalling the previous stages of dispute resolution process.

And yet, we find no mirroring 'consent' or 'agreement' expressed by a wife in the sources when a man acts alone in the case. Instead, if a woman is mentioned at all, it is to give her husband the power of attorney to act on her behalf. Perhaps some explanation for this tendency, especially in the view of analogous approvals given by other family members present in our documents, could be provided by a legal context that restricts women's ability to undertake legal representation on behalf of others.⁴⁷

⁴⁶ *P. Budge* is complemented by a Greek *dialysis* resulting from arbitration (*SB VI 8988*) as well as the Greek act of sale of the house, the object of the controversy (*SB VI 8987* [Oxyrhynchus, 644–645]).

⁴⁷ With an exception of a narrow range of cases where it is necessary for a woman to undertake action on behalf of her immediate family, cf. n. 28; for exceptions, see D. 3.3.41. Hence, in the case of a woman who does not have the capacity to represent the interests of others, it becomes relevant to obtain confirmation from those persons of the solution adopted or their waiver of claims. By contrast, when it is a man who acts on behalf of others, no additional consent would be needed (for in the legal representation itself, such consent is already included).

In a relatively small number of cases it is possible to state that the women involved in the proceedings take the back seat or are a part of a larger group in which it is difficult to determine their actual engagement or even attendance at the proceedings. It is usually clear from the wording of the document that the case is being led by a man (sometimes with someone else's support), who, importantly, represents the position of everyone on the same side.⁴⁸ An excellent example is provided by *P. Lond.* V 1708, which is an extensive and complex record of dispute proceedings over the division of property left by deceased parents between siblings. The defendant is Psates, the brother formerly in charge of his deceased parents' estate and taking care of his younger siblings, who are now suing him in order to render the accounts. Psates is probably supported by the younger brother Konstantinos, whereas the plaintiffs are two sisters, Anastasia and Maria, both married. In regard to the first woman, it is clearly stated that her husband, Phoibammon, is acting on her behalf. Maria, on the other hand, although married to another Phoibammon, seems only to join the first couple's claims together with her spouse. Phoibammon's active role can be explained by his own claims against Psates, who allegedly had promised to deliver a portion of the estate to Phoibammon before his marriage to Anastasia as a donation in lieu of a dowry.⁴⁹ In this light, Phoibammon is not only intervening in a case concerning his wife, but is also defending his own interest and demanding the enforcement of Psates' original commitment. We also learn from the doc-

⁴⁸ E.g. *PSI* VIII 951: Aurelia Tapia acting with her husband, who takes leading role in the proceedings; *P. Mich.* XIII 659 + *P. Vat. Aphrod.* 17: Aurelia Talus acting together with her husband, who takes the leading role, but the woman signs the agreement on her own; *P. Budge*: Thekla acting with her husband Philemon, no indication of the woman's active participation in the proceedings; *P. KRU* 44: a dispute between Maria daughter of late Theodoros, and her husband Petros, son of Pheu; as well as Maria's sister Sophia and Sophia's husband Phoibammon son of the late Georgios; women appear to be acting through their husbands. The examples of clear legal representation are not mentioned here, as then woman is acting 'through' another person and not simply withdrawing for whatever reasons from the proceedings leaving the floor to other persons on her side.

⁴⁹ To these claims, Psates was to present a counter-argument about their father's debt and the need for him to bear the debts and funeral costs, as well as the costs of bringing up his younger brothers.

ument about giving Maria in marriage and her claims in that respect. However, it seems that, apart from Anastasia, who acts through her husband, the other plaintiffs have no appointed representatives, or at least the surviving part of the document gives no indication of this. It is possible that they take part in the proceedings, but it is Phoibammon who assumes the leading role overshadowing not only his wife or her sister, but equally the latter's husband.⁵⁰

Whether or not such an arrangement was a widespread practice requires a check of whether the husbands regularly intervene on behalf of their spouses (and likewise, whether a male's absence would signify female litigant's unmarried status). Unfortunately, the sources fail to systematically record women's personal status. As noted above, references to marriage occur in principle when it makes sense from the point of view of the further content of the document, that is when a husband acts together with his wife,⁵¹ gives his consent to the pending proceedings,⁵² or when the woman takes action against her husband.⁵³ The assumption that a lack of mention of a woman's marital status must mean that she is unwed or is a widow is therefore unwarranted. Suffice it to recall here the example of Kako, whose family background we know very well thanks to numerous other documents. In *P. Lond.* V 1728 we find her acting in her own name and with no reference to her husband.⁵⁴

⁵⁰ We are dealing here with a far more nuanced situation than simple undertaking the legal representation of wives by their husbands. Otherwise, BEAUCAMP, *Femmes, patrimoines, normes* (cit. n. 28), p. 414.

⁵¹ Cf. n. 22.

⁵² Cf. n. 39. We have signalled that this may be strictly as a precautionary measure, rather than indicating a husband's 'intervention' or being a legal requirement for the validation of a woman's actions – in such a situation, it would be difficult to explain, moreover, the absence of similar provisions made for other women. Nor does anything in the legal sources allow for the adoption of such constraints on women's legal activity.

⁵³ See, e.g., *P. Oxy.* VI 903; *P. Ness.* III 57.

⁵⁴ In fact, Beaucamp herself as well as Bagnall, who undertakes a polemic against her theses, observe that accepting such a hypothesis would lead to a significant and 'difficult-to-explain' overrepresentation of unmarried women (including widows among them) in Byzantine papyri. See BEAUCAMP, *Femmes, patrimoines, normes* (cit. n. 28), pp. 417–420; BAGNALL, 'Women's petition' (cit. n. 16), pp. 57–58.

Furthermore, not every instance of a husband translates into his active role in the proceedings and consequently taking precedence over his wife. Mention of a woman being married could be also dependent on her husband's potential rights or interest in the given case. An example for the latter variant can be provided by *P. Berl. Möller* 1, an agreement made between Aurelia Didyme and Aurelia Herakleia regarding the amount of three thousand drachmae. Both women appear to act in their own name, without the involvement of their husbands, and there is certainly no mention of *mandatum* or any form of representation established on their behalf. And yet Didyme's husband Dioskourides appears to be present at the proceedings, as he is mentioned along with his wife as agreeing not to bring charges or accusations against Aurelia Herakleia and to conclude a settlement instead. Such consent seems to have a cautionary function aimed at ensuring the unanimity of the spouses and affirming the waiver of any potential claims by the husband as well, rather than being an expression of his intervention in wife's affairs.⁵⁵

In our corpus, there are at least twenty-five certain attestations in which women are acting on their own,⁵⁶ sometimes against other women too.⁵⁷

⁵⁵ Otherwise, BEAUCAMP, *Femmes, patrimoines, normes* (cit. n. 28), pp. 415–416.

⁵⁶ E.g. *P. Berl. Möller* 1; *P. Lips.* I 43; *SB* I 6000 (women act on their own; however, the son/brother is mentioned); *IV* 7449; *VIII* 9763; *XXIV* 15899; *XXIV* 15958 (?) (women appear to act on their own; however, uncertain role of Kosmmas); *P. Lond.* III 1008; *IV* 1611; *V* 1717 (?); *V* 1728; *V* 1731; *P. Ness.* III 22; *III* 57 (Nonna is acting on her own, only supported by her mother, instance of failed mediation); *P. Cair. Masp.* II 67156 (women appear to act on their own; however, there is a mention of the daughter's husband agreeing with all her undertakings); *BGU* I 103; *I* 317; *P. Münch.* I 6; *SPP* XX 212; *XX* 243; *P. Dubl.* 24; *P. Heid.* VII 404 (?); *O. Vind. Copt.* 258; *P. KRÜ* 45/46; *CPR* IV 50 (?).

Cf. also documents not included in the count here, *P. Münch.* I 14 (mentioning the earlier proceedings between Ioannes and Tapia), or *P. Erl.* 74, *P. Lond.* II 456, *SB* XXIV 16039, *BGU* I 314, *P. Ryl. Copt.* 183, which do not allow for a safe reconstruction of events; *P. Oxy.* VI 903 (an affidavit prepared by a woman in view of future proceedings; mentions of earlier attempts at dispute resolution). That leaves us (together with instances of *grammatbopoi* and 'assurances' issued in regard to the future proceedings, e.g. *P. Oxy.* XVI 1839; *ST* 181; *P. Grenf.* II 99a) with at least ten instances, in which the character of attestations prevents us from ascertaining whether a woman acted alone or not (if at all).

⁵⁷ E.g. *P. Berl. Möller* 1; *P. Cair. Masp.* II 67156 (although other parties also mentioned, i.e. further siblings who were also brought up by the mother); *P. Lond.* V 1731; *SB* I 2137 (here,

Although these instances are far rarer than men-only disputes,⁵⁸ women are clearly visible and active in the field of ADR. Who, then, are these independently-acting women? Is there anything special about them? What can we say about their status?

The papyri show women with different backgrounds, being either wives,⁵⁹ widows and divorcees,⁶⁰ but also nuns,⁶¹ and in at least thirteen cases the woman's personal status remains unclear.⁶²

Contra Beaucamp, widows in ADR do not make this group 'over-represented'.⁶³ Bagnall, in his study of late-antique petitions, warns that the decline in attestations for widows and unmarried women can be linked to the general decline after the fourth century in women's activity in disputes, compared with the earlier period, as he demonstrates based on data collected by Beaucamp for the litigation and arbitration, but supplemented by a list of petitions by Gascou and Fournet.⁶⁴ Bagnall also draws attention to the withdrawal of women into the sphere of inheritance and marital affairs, and notes that these observations should remain valid for

however, Rebekka is acting together with Mizael and Elisaïos); I 6000; XXIV 15958 (?); *P. KRU* 45/46.

⁵⁸ Based on WOJTCZAK, *Arbitration and Settlement of Claims* (cit. n. 4), we are faced with roughly 65 cases of private dispute resolution that involves only men. The instances, however, where we are dealing with uncertainties as to parties' gender amount to at least 21.

⁵⁹ E.g. the already mentioned *P. Lond.* V 1728; for women acting against their husbands, cf. n. 53.

⁶⁰ E.g. *P. Ness.* III 22; *P. Lond.* IV 1611; V 1709; V 1731; *P. Cair. Masp.* II 67156; *P. Münch.* I 6 (cf. later *P. Münch.* I 14); *SB* I 6000; *BGU* I 103; *P. Par.* I 20.

⁶¹ E.g. *P. Lips.* I 43; *SPP* XX 243.

⁶² E.g. *SB* IV 7449; VIII 9763; XXIV 15899; XXIV 15958 (?); *P. Lond.* III 1008; V 1717 (?); *BGU* I 317; *P. Oxy.* XVI 1839; *ST* 181; *SPP* XX 212; *P. Dubl.* 24; *O. Vind. Copt.* 258; *P. KRU* 45/46. The lack of information on the woman's status is often due to the omission by the scribe. This fact alone suggests that the marriage played no crucial role for any legal requirement for the wife to obtain her husband's permission for the activities undertaken or the issue of representation by the husband. Otherwise one would expect a much more far-reaching consistency. Needless to say, there are no legal provisions to support this state of affairs.

⁶³ One should note that BEAUCAMP, *Femmes, patrimoines, normes* (cit. n. 28), pp. 420–421, is aware of the shortcomings of her own argument.

⁶⁴ See BAGNALL, 'Women's petition' (cit. n. 16), p. 58.

ADR. Despite several reservations, he concludes ‘the court and arbitration cases (...) show few signs of women other than widows initiating actions on their own, by petition or any other means. Instead, they most always act through or in concert with male family members’.⁶⁵ In the light of new papyrological sources as well as the documents we have referred to so far, it becomes possible to further clarify this picture.

From what we have already observed, it is not only widows who start alternative dispute resolution,⁶⁶ neither do women act only as defendants,⁶⁷ and in a situation where they are part of a larger group, this does not automatically imply a lack or limited involvement on their part in the proceedings.⁶⁸ Moreover, the fact that if a woman is married she is most often assisted by her husband is precisely because the husband takes action on her behalf, acts with her, or agrees with her claims.

Further, the widows mentioned in our documents appear mostly in cases involving the division of late spouses’ estates with other family members.⁶⁹ In this context, the *topos* of ‘women’s weakness’ breaks through in the literature again, although, as Beaucamp notes, this argument essentially disappears from the papyri for the period between the fifth and seventh centuries.⁷⁰ Bagnall follows Beaucamp’s suggestion that the references to widowhood can perhaps be seen as a similar rhetorical move aimed at drawing attention to the woman urging the official to

⁶⁵ BAGNALL, ‘Women’s petition’ (cit. n. 16), p. 59.

⁶⁶ Or at least there is no mention of their widowhood in the document, see, e.g., *SB* IV 7449; *P. Lond.* V 1717 (?); V 1731; *P. Oxy.* XVI 1839; *P. Grenf.* II 99a; *SPP* XX 212; XX 243; *O. Vind. Copt.* 258; *P. KRU* 45/46; maybe also *P. KRU* 35 (although Abigaia’s husband, Daniel, agrees with his wife in all terms and does not take active role in the proceedings; similarly in *SB* XXIV 15958 [?]).

⁶⁷ Cf. n. 66 for women who start the proceedings; for active widows, see additionally, e.g., *P. Cair. Masp.* II 67156; *P. Münch.* I 6; plausibly also *SB* I 6000.

⁶⁸ See, e.g., *P. Lond.* III 992; V 1709; *P. Münch.* I 1; *P. Herm.* 31; *SB* I 2137; *P. Par.* I 20; *P. KRU* 36; 50.

⁶⁹ See, e.g., *P. Cair. Masp.* II 67156; *P. Münch.* I 6; *P. Lond.* V 1731; *SB* I 6000; *P. KRU* 37 (although here the woman already has another husband).

⁷⁰ And it is also still found later in other sources; see, e.g., BEAUCAMP, *Le statut de la femme à Byzance* II (cit. n. 34), pp. 45–49.

accommodate her needs. This idea is indeed compelling,⁷¹ but in the light of our evidence, it faces several difficulties.

First, the rhetorical aspect of 'poor widows' loses some of its force if we realise that the people the widows are most often up against are their children or step-children, with whom the women are arguing over the division of their deceased husbands' estate. Secondly, the skilfulness with which women handle these matters, and the kind of asset division involved, leaves no doubt that we are not dealing with individuals who actually require the assistance of law or who show a tendency to play the 'victim' card.⁷² The women that we come across run their own affairs smoothly, can afford a number of lengthy disputes, and are capable to ensure favourable solutions for themselves: suffice it to recall the extraordinary case of Aurelia Tapia, perhaps one of the most litigious women in late antiquity.

The mention of widowhood may also explain the woman's involvement in a controversy with members of her husband's family, and also occurs in relation to women who later decided to devote themselves to faith. This apparent dispute activity of widows even leads Beaucamp to claim that widowhood must have brought certain independence for the woman and that we can observe a shift in gradual strengthening of the widow's legal position compared to other unmarried or married women. The tenability of the latter is unquestionable, but its potential efficacy remains rather narrow.

Widowhood may have indeed have had practical value but only for those women who belonged to the propertied classes, as rightly pointed out by Bagnall.⁷³ The documents available to us therefore seem to distort the full picture, as we only see a fraction of cases involving women who are not only in position to act independently and effectively in their cases,

⁷¹ Especially as it is part of a long rhetorical tradition, on which remarks also BEAUCAMP, *Le statut de la femme à Byzance* II (cit. n. 34), pp. 33–35 (with further reference to sources).

⁷² See BAGNALL, 'Women's petition' (cit. n. 16), p. 57. In the earlier period, mentions of widows in petitions occur much less frequently, when one compares late antiquity and the fourth century (where widows in petitions occur only four times). Thus, the central role of 'widowhood' features only in later texts.

⁷³ See BAGNALL, 'Women's petition' (cit. n. 16), pp. 59–60, as well as in the latter's review of Beaucamp's book: R. S. BAGNALL, 'Women, law, and social realities in late antiquity: A review article', *Bulletin of the American Society of Papyrologists* 32 (1995), pp. 65–86, at 82.

but above all to afford litigation.⁷⁴ With regard to the less financially fortunate women the reality was certainly much closer to the rhetorical *topos* of widowhood, where the latter state often simply meant financial tragedy. Sometimes we even see echoes of the challenges such women had to face in our sources. A revealing story showing the consequences of losing a husband and having to support children is found in the background of the controversy presented in *P. Budge*. The reason behind the arbitration proceedings between deacon Ioannes and Philemon is an earlier loan of one solidus taken out by the former's aunt against a mortgage on a house. The woman was unable to repay the loan on time and, therefore, in light of the agreement (*hypothèque-praxis*) concluded with Philemon and Thekla, she was to transfer the ownership of the house securing the debt to the creditors. The controversy that unfolded between Ioannes (acting as heir and formerly proxy for his aunt, also named Thekla) and Philemon concerned the repayment of the loan, the rights to the disputed house, the issue of paying a 'fair price' (*dikaia time*), and some further issues between the parties.⁷⁵

What is indisputable – and this time in line with Beaucamp's observations – is that women, by and large, do not assume legal representation in our sources and act primarily in their own interests. One would almost like to say that the picture of legal practice in Byzantine Egypt remains fundamentally coherent with Roman law provisions in this area, which limits women's capacity both to exercise legal representation and to vouch for the debts of others.⁷⁶ The latter, however, can be as much a con-

⁷⁴ The pursuit of any dispute, be it through public or private methods, entailed certain financial resources. On the costs of the proceedings, see R. HAENSCH, 'From free to fee? Judicial fees and other litigation costs during the High Empire and late antiquity', [in:] D. KEHOE, D. M. RATZAN, & U. YIFTACH (eds.) *Law and Transaction Costs in the Ancient Economy*, Ann Arbor 2015, pp. 253–272. Thus, we do not find in our sources people who, for this reason, would be excluded from the visible involvement in the machinery of justice. It is worth noting, however, that while the financial argument may more often than not take on the face of a woman impoverished after the death of her husband, it can also be non-discriminatory and affect other groups in the same way, including men. See, e.g., *SB VI* 8988, which mentions the costs of litigation as a reason for resorting to arbitration.

⁷⁵ For more, see SCHILLER, 'The Budge Coptic papyrus' (cit. n. 7), pp. 79–112.

⁷⁶ See BEAUCAMP, *Femmes, patrimoines, normes* (cit. n. 28), pp. 25–26 Cf. also n. 28, 120, & 123.

sequence of strict compliance by the practitioners as it can result from the law's reflection of parallel social norms. But here, too, we come across some exceptions that admittedly do not go beyond the scope of the immediate family in terms of the support or substitution provided by the woman.

In *P. Oxy.* LXIII 4397, a settlement between the monastery of Apa Hierax and the representative of the house of Apiones, Flavius Apion II, the latter acts with the support of his mother, Leontia, who, at least judging from the context, appears to take on the role of a *curatrix*.⁷⁷ We come across several other cases where a mother is acting together with her children or endorsing their claims.⁷⁸ We also encounter rarer examples where descendants become involved in the proceedings, representing their parents or taking various actions on their behalf, including evidentiary actions. For instance, in *P. Oxy.* VI 893 = *M. Chr.* 99 (Oxyrhynchus, later 6th–7th cent.) a certain Marinos, the plaintiff, is declared to have the right of imposing upon Markos, who is acting through his daughter Sophia, a formal affidavit that in consequence would release Markos from further proceedings. If, however, Marinos declined to conduct an investigation by means of the offered affidavit, he would be debarred from taking other steps in the matter. In this context, it is also worth noting that women – as a rule – can neither appear as witnesses to legal acts nor in

⁷⁷ On the legal aspects of this document, see J. URBANIK, 'P. Oxy. LXIII 4397: The monastery comes first or pious reasons before earthly securities', [in:] A. BOUD'HORS *et alii*, *Monastic Estates in Late Antique and Early Islamic Egypt. Ostraca, Papyri, and Essays in Memory of Sarah Clackson* [= *American Studies in Papyrology* 46], Cincinnati, OH 2009, pp. 225–235. The classical Roman law as well as imperial legislation excluded in principle the possibility for women to act as tutors or curators, see, e.g., D. 26.1.18 as well as C. 5.35.1; cf. further D. 50.17.73 pr.; D. 26.4.1.1, 26.4.3.4, 26.4.10 pr, ⚡ 27.7.1 pr. In regard to curatorship, see D. 26.5.21 pr. On that see also BEAUCAMP, *Le statut de la femme à Byzance* I (cit. n. 28), pp. 46–48. A change is only brought about by post-classical law, which, while maintaining the general prohibition, allows in certain circumstances for a woman (e.g. who is a widow) to act as tutor to her children (see, e.g., *CTh* 3.17.4 pr. = C. 5.35.2 pr.; *Nov.* 118.5; for more on this, see BEAUCAMP, *Le statut de la femme à Byzance* I (cit. n. 28), pp. 325–330. For legal practice, see EADEM, *Le statut de la femme à Byzance* II (cit. n. 34), pp. 172–191.

⁷⁸ E.g. *P. Lond.* V 1709; *P. Münch.* I 1; *BGU* I 317; *SB* I 6000; *P. Ness.* III 57; *P. Apoll. Ano* 61; *P. KRU* 37.

the documents recording them (also in accord with Roman law, which excludes the testimony of women in certain acts, such as wills).⁷⁹ However, they can testify quite freely in disputes.⁸⁰

3.2. Women against whom? The impact of the subject matter

Having discussed *with* whom women act in ADR, let us now move to the issue of whom they act *against*. Again, we encounter here a relatively broad spectrum of people, but in the vast majority of cases it is the family (Fig. 2). In roughly nine cases, the woman's opponents are her children or the children of her (ex-/deceased) husband.⁸¹ In at least two documents, women act against their husbands or seek divorce (whereby one has to also keep in mind that, technically, the deed documenting divorce by mutual consent is fundamentally a quit-claim, and thus it denotes itself a *dialysis*; none of these texts mention any mediation between the parties, yet it cannot be excluded).⁸² The most numerous group – seventeen attestations – regards women's siblings and half-siblings.⁸³ Occasionally, we find disputes involving the woman's extended family on the mother's or

⁷⁹ See, e.g., D. 28.1.20.6; Inst. II 10.6.

⁸⁰ See D. 20.5.18. Also BEAUCAMP, *Le statut de la femme à Byzance* II (cit. n. 34), pp. 28–31; as well as EADEM, *Le statut de la femme à Byzance* I (cit. n. 28), p. 45.

⁸¹ E.g. *P. Lond.* V 1709; V 1731; *P. Cair. Masp.* II 67156; *P. Münch.* I 1; *BGU* I 317; *P. Münch.* I 6 (cf. also later *P. Münch.* I 14); *SB* I 6000; *P. Heid.* VII 404; *P. KRU* 37.

⁸² E.g. *P. Oxy.* VI 903; *P. Ness.* III 57.

⁸³ E.g. *P. Lond.* III 992; III 1008; V 1708; V 1728; *P. Münch.* I 7 + *P. Lond.* V 1860; *P. Herm.* 31; *SB* XXIV 15958 (?); *P. Par.* I 20; *P. Dubl.* 24; *P. KRU* 38; 44; 45/46; but also some of the attestations mentioned already above, namely *P. Lond.* V 1709: Viktorine and Phoibammon vs. Philadelphia, their younger half-sister, and Amanias, their widowed stepmother; *P. Münch.* I 1: Viktor and Paeion and their sister Tsia together with their mother Tlou vs. their brother Iakobos; *BGU* I 317: a sister joined by her mother vs. the brother; *SB* I 6000: a sister settles her claims with her mother and brother; the latter does not take, however, an active part in the document; the mother is settling the accounts with her children; *P. KRU* 37: Kyra is acting on the side of her mother, Elizabet vs. her half-brother and the plaintiff, Georgios.

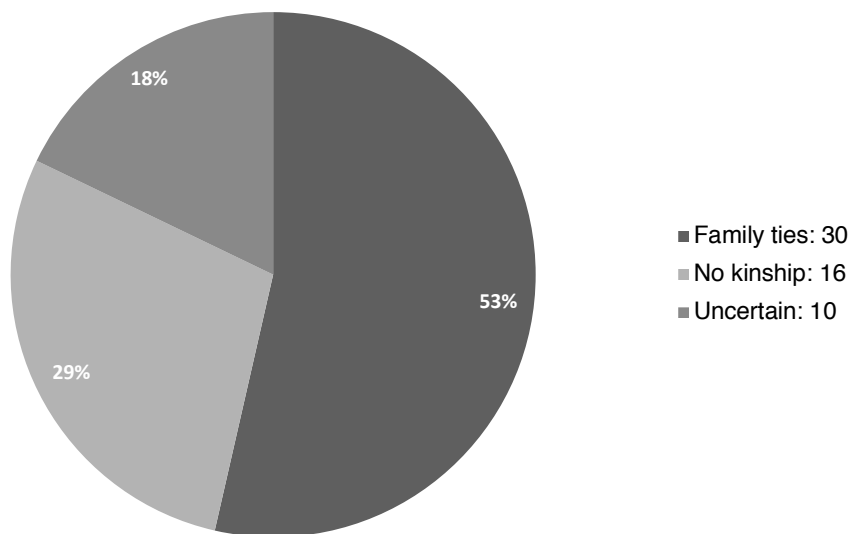


Fig. 2. Kinship in ADR documentation involving women

father's side – usually uncles.⁸⁴ Less frequently, women are in dispute with people from outside their kin, but with whom they (or their husbands) had a previous legal or social relationship.⁸⁵

One must then ask: why this prevalence of family cases? At first glance, it may seem that these data confirm the thesis we have sought to verify in this article. Namely, women who aim to maintain their relationships opt for ADR instead of the regular route of the administration of justice in family-related cases. Here, however, another observation immediately comes to mind: in proceedings involving family members, men are also, if not equally, present.

In approximately 42 out of at least 115 cases of all ADR attestations that allow to identify complainant-respondent pairs, we are dealing with

⁸⁴ E.g. *P. Lond.* V 1707 (cf. also *P. Cair. Masp.* II 67161); *P. KRU* 35.

⁸⁵ E.g. *PSI VIII* 951; *SB VIII* 9763; *P. Mich.* XIII 659 + *P. Vat. Aphrod.* 17; *P. Lond.* V 1717 (?); *P. Budge*, together with *SB VI* 8988.

kinship ties between litigants.⁸⁶ Clearly, some of the kin links may not have been directly reflected in the documents and an exhaustive prosopographical analysis is not always possible. The distribution of the private dispute resolution involving kin (42 cases) and those that do not (c. 73 cases) may suggest that there is room for another distinguishing factor within the social relations linking the parties at dispute. And yet, within these 73 attestations there are also cases in which the specific relations between the disputants are unknown or defy safe classification. A majority of the settlements involving kin – up to 32 out of total 42 – concern the closest family, that is siblings, parents, and children.⁸⁷ In this group, at least six cases relate to conflicts between parents and children,⁸⁸ whereas in 20 the dispute takes place among siblings (occasionally accompanied by one of their parents, usually a step-parent of the other party).⁸⁹ In six further cases, the conflicting siblings are accompanied by their spouses,⁹⁰ and in two situations we are dealing with a controversy between spouses themselves.⁹¹ The remaining eight disputes engage more distant relatives.⁹²

⁸⁶ In the majority of cases (30 instances) we find women, but we also have disputes involving men only (12 cases); see WOJTCZAK, *Arbitration and Settlement of Claims* (cit. n. 4).

⁸⁷ *P. Princ.* II 79; *P. Lond.* III 992; III 1008; V 1708; V 1709; V 1728; V 1731; *P. Ness.* III 22; *P. Cair. Masp.* II 67156; III 67313 (Aphrodite/Antinoopolis, 6th cent.); III 67353 R (Antinoopolis, 569), in relation to *P. Cair. Masp.* II 67176 R + *P. Alex. inv.* 689 (Antinoopolis, 569); *P. Münch.* I 1; I 6; I 14; *P. Münch.* I 7 + *P. Lond.* V 1860; *BGU* I 103; I 317; *SB* I 6000; XXIV 15958 (?); *P. Herm.* 31; *P. Iand.* III 41 (Oxyrhynchus, 2nd half of 6th cent.); *P. Oxy.* I 131 (Oxyrhynchus, 6th-7th cent.); *P. Par.* I 20; *P. Heid.* VII 404; *P. Dubl.* 24; *P. KRU* 37; 38; 42 (Thebes, 725/6); 44; 45/46; maybe also *SB* XXIV 15957 (Oxyrhynchites, 6th cent.), which mentions 'our' mother.

⁸⁸ *P. Cair. Masp.* II 67156; *P. Münch.* I 6; *P. Lond.* V 1731; *SB* I 6000; *P. Heid.* VII 404; *P. KRU* 37.

⁸⁹ *P. Princ.* II 79; *P. Lond.* III 1008; V 1709; V 1728; *P. Ness.* III 22; *P. Cair. Masp.* III 67313; III 67353 R, in relation to *P. Cair. Masp.* II 67176 R + *P. Alex. inv.* 689; *P. Münch.* I 1; *BGU* I 317; *P. Herm.* 31; *P. Iand.* III 41; *SB* XXIV 15958 (?); *P. Oxy.* I 131; *P. Dubl.* 24; *P. Par.* I 20; *P. KRU* 38; 42; 45/46; maybe also *SB* XXIV 15957.

⁹⁰ *P. Lond.* III 992; V 1708; *P. Münch.* I 7 + *P. Lond.* V 1860; *P. Münch.* I 14; *BGU* I 103; *P. KRU* 44.

⁹¹ *P. Oxy.* VI 903; *P. Ness.* III 57.

⁹² *SB* I 2137; IV 7449; XXII 15768 (Oasis Mikra, 364); *P. Lond.* V 1707; *P. KRU* 35; 36; plausibly also *P. Petra* I 2 and III 29.

Such preponderance of disputes between close relatives is understandable considering the subject matter of these proceedings, that is inheritance (at least 26 cases out of 42 disputes engaging family members).⁹³ This type of dispute is also the most frequently attested to in the ADR corpus in general (see **Fig. 3** for data on the objects at stake in controversies involving women).⁹⁴ This trend is reflected in the documents sample relating to women, as it so happens that most of the cases of private dispute resolution with their involvement also concern matters of inheritance (approximately 21 cases)⁹⁵ or the division of property or other dues stemming from various family affairs (6 cases).⁹⁶ There is clearly a thematic correlation between the object at dispute and the social relations of the parties involved here given most succession controversies involve family members. However, the above-mentioned conflicts are hardly the domain of women. Men just as often – or even more often – resorted to ADR in such cases. What can also be observed is that just as the area of women's activity overlaps with that of men in matters of inheritance and other family and marital disputes, it is significantly lower in the case of other types of conflicts. For instance, we come

⁹³ *P. Princ.* II 79; *SB* XXII 15768; XXIV 15957; *P. Petra* I 2 (?); *P. Lond.* V 1707–1709; V 1728; V 1731; *P. Ness.* III 22; *P. Cair. Masp.* II 67156; III 67313; *P. Münch.* I 1; I 6; I 14; *P. Münch.* I 7 + *P. Lond.* V 1860; *P. Herm.* 31; *P. Oxy.* I 131; *BGU* I 103; *P. Par.* I 20; *P. KRU* 35–38; 44; 45/46. Out of 42 family disputes in only seven cases we do not know what is the subject of controversy.

⁹⁴ Of 142 cases of ADR, approximately 90 allow for the identification or classification of the object at dispute. Of these, at least 32 concern inheritance. For 59, the object at dispute is either completely unknown or the information available is vague. The other most common objects of dispute in the corpus are debts (e.g. stemming from loans, deposits, rendering accounts, securities, tax duties) and estates (mostly landed property and buildings or their shares). We also come across disputes over movables, neighbour affairs and – interestingly – cases which under Roman law should be exempt from arbitration, that is instances of abuse, violence, theft, diverse crimes.

⁹⁵ *P. Lips.* I 43; *P. Lond.* III 1008 (?); V 1707–1709; V 1728; *P. Ness.* III 22; *P. Münch.* I 1; I 6 (cf. also *P. Münch.* I 14, which mentions previous proceedings between Tapia and Ioannes); *P. Münch.* I 7 + *P. Lond.* V 1860; *P. Herm.* 31; *SB* I 6000; XXIV 16039; *P. Par.* I 20; *P. KRU* 35–38; 44; 45/46; *P. Dubl.* 24. Two more documents relate to inheritance indirectly through the settling of accounts with children after the death of the father: *P. Cair. Masp.* II 67156 and *P. Lond.* V 1731; these are also mentioned in n. 96 as divisions related to family affairs.

⁹⁶ *P. Lond.* III 992; V 1731; *P. Cair. Masp.* II 67156; *SB* I 2137; XXIV 15958 (?); *P. Ness.* III 57.

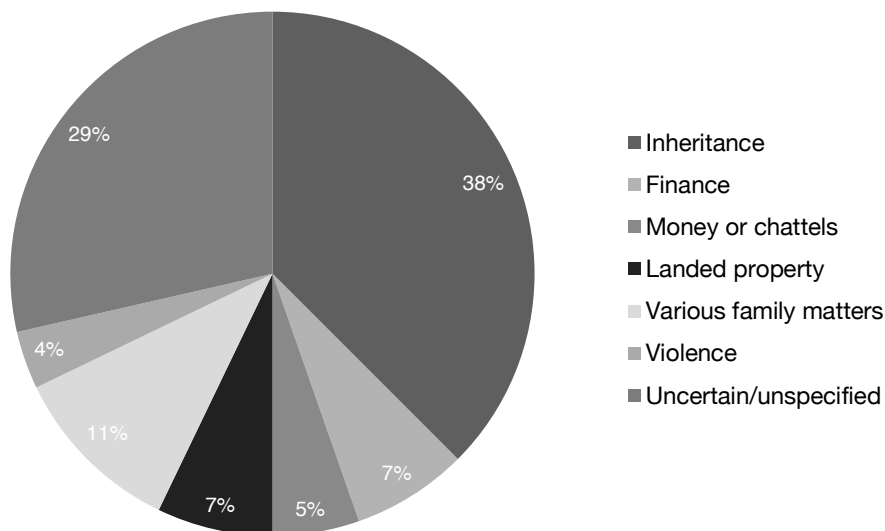


Fig. 3. Objects of ADR involving women

across just four controversies involving women over the rights towards landed property and their infringements.⁹⁷ Further, in at least four cases parties are in disagreement regarding various loans, at times with established securities.⁹⁸ We have also a few instances of violence against women,⁹⁹ as well as cases in which the subject matter of the dispute remains unclear,¹⁰⁰ or there is only a generic reference pointing to money or other movables as the subject matter of the dispute.¹⁰¹

⁹⁷ In some, they act with men: *P. Mich.* XIII 659 + *P. Vat. Aphrod.* 17; *P. Vat. Aphrod.* 10 + *P. Mich. inv.* 6922; *P. KRU* 50; *O. Vind. Copt.* 258.

⁹⁸ *P. Berl. Möller* 1; *PSI VIII* 951; *P. Lond.* V 1717 (?); *P. Budge*, in relation to *SB VI* 8988.

⁹⁹ In at least two cases, namely *P. Oxy.* VI 903 and *SB IV* 7449; the former, however, concerns abuses committed by the husband.

¹⁰⁰ This is either because the information is not given in the text or the document is badly preserved, e.g. *P. Oxy.* XVI 1839; *P. Erl.* 74; *P. Grenf.* II 99a; *ST* 181; *BGU I* 103; *SB XXIV* 15899; *SPP XX* 212; *XX* 243; *P. Heid.* VII 404; *P. Apoll. Ano* 61; *CPR IV* 50.

¹⁰¹ In at least three cases, namely *SB VIII* 9763 (mention of certain movables), *BGU I* 317, and *P. Lond.* IV 1611 (exoneration of a woman from wrongful possession of money).

Can we, then, risk a thesis that family ties were a determining factor in the choice of private, more 'amicable' methods over the judicial path? Are women more likely to use regular courts in disputes not involving close family? In order to state whether negotiations or mediation/arbitration are preferred (especially in certain types of cases) and whether women are more comfortable with these methods it is necessary to contrast the picture that emerges from ADR with the remaining evidence attesting to public dispute resolution.¹⁰²

3.3. Women in petitions?

Joëlle Beaucamp argued for a high level of consistency in women's legal standing in Byzantine Egypt for the entire period from the third to the seventh century.¹⁰³ A similar conclusion was reached by Antti Arjava, who analysed the scope of women's public appearances and roles within the same time span.¹⁰⁴ And yet – as pointed out by Roger Bagnall, who persuasively challenged the view of homogeneity in women's legal competences for the whole late-antique period – out of 117 late-antique petitions gathered by Jean Gascou and Jean-Luc Fournet, only 13 (in our view 12) come from women.¹⁰⁵ This stands in a striking contrast to the data from

¹⁰² It should be stressed here that the focus of this study is on ADR. As far as the state judiciary is concerned, we are drawing on previous research.

¹⁰³ At least based on a picture emerging from papyrological sources that pertain to realities of women's activity in late-antique society; see BEAUCAMP, *Le statut de la femme à Byzance* II (cit. n. 34), *passim*.

¹⁰⁴ See A. ARJAVA, *Woman and Law* (cit. n. 42), p. 246.

¹⁰⁵ *ChLA* XI 469 (Hermopolites?, 2nd half of 4th cent.); *P. Oxy.* L 3581 (Oxyrhynchus, 4th–5th cent.); *PSI* IX 1075 (Oxyrhynchus, 458); *P. Oxy.* LXIII 4393 (Oxyrhynchus, 465–498?); *P. Köln.* IV 191 (unknown provenance, 5th–6th cent.); *BGU* II 670 (Hermonthis, c. 539–570); *SB* VI 9239 (unknown provenance, 548); *P. Cair. Masp.* I 67092 (Aphrodite, 553); *P. Cair. Masp.* I 67006 R (Aphrodite, c. 567); *P. Cair. Masp.* I 67005 (Aphrodite, c. 568); *P. Haun.* III 53 (unknown provenance, 6th cent.); *P. Münch.* III 79 (unknown provenance, 6th–7th cent.); cf. FOURNET & GASCOU, 'Liste des pétitions' (cit. n. 35), pp. 141–196, who clarify but also complement the list prepared by BEAUCAMP, *Le statut de la femme à Byzance* II (cit. n. 34), pp.

the earlier period, from the accession of Diocletian to the end of the fourth century. For the years between 283 and 346, the number of petitions addressed by women amounts to 38, whereas already in the years 347–400, it diminishes to mere eight. Finally, there are around six petitions dated to the fourth century. Bagnall argues that these numbers are hardly accidental:¹⁰⁶ as there is no general decline in overall numbers of petitions at a later date (that is after 400; unlike, for example, the court records mentioned above), the smaller amount of attestations regarding women cannot be caused by the fluctuation of available sources.¹⁰⁷ Women's petitions for this time – as noted by Bagnall – are mostly limited to matrimonial issues, which contrasts the earlier attestations of women litigating in a wide variety of business affairs evidenced as addressees of imperial rescripts.¹⁰⁸

394–400, who dealt generally with requests coming from women. Fournet and Gascon mention also *SB IV* 7449 in this list, which in our view, however, is an example of ADR. For this reason, we have omitted this document from the overall count, with the result that we are talking about 117 petitions, including 12 when the petitioners are women.

¹⁰⁶ See BAGNALL, 'Women's petition' (cit. n. 16), pp. 54–55 with n. 10. For the period 283–400, Bagnall points to 52 petitions, whereas after the fourth century, the number diminishes to only 13 (according to Fournet and Gascon's list). Although, as has been rightly observed by the anonymous peer-reviewer of this article, the difference between the period 283–346 and the 347–400 lies rather in a general drop of the number of petitions for this later period than of woman's petitions themselves. As shown by Bagnall, this earlier period brings 128 petitions of which 38 are by women, while the later period records only 34 petitions, eight of which are by women. Thus, in percentage terms, it is difficult to speak of a 'large drop' in the female presence in petitions. Rather, we may be dealing with a consequence of the distribution of sources. This, however, does not change the fact that the period after 400 (up to 641) seems to confirm Bagnall's proposal, for although we note a certain decrease in the total number of petitions, it is not very significant. By contrast, the incidence rate for women definitely falls (to a rough 11%).

¹⁰⁷ BAGNALL, 'Women's petition' (cit. n. 16), p. 55.

¹⁰⁸ *Ibidem*, pp. 56–60, esp. 59–60, where Bagnall also discloses plausible reasons for such state of affairs (arguing that in late antiquity mainly literate and propertied women were prone to litigate, whereas in earlier periods petitions came from a wider cultural and social range). In general on the visibility of women in petitions and rescripts in the earlier periods and their propensity to take part in litigation, see, e.g., S. CORCORAN, *The Empire of the Tetrarchs. Imperial Pronouncements and Government AD 284–324*, Oxford 1996, pp. 105–107.

The numbers may not, though, be as low: a significant proportion of these petitions have been preserved fragmentarily. This often makes it impossible to identify the petitioners or to determine the subject of the matter. The list of petitions collected by Gascoü and Fournet, even if in need of an update, could be an object of some observations in this regard (and in particular to the earlier analyses carried out on its basis).

Out of 117 petition in total, in at least 26 cases we are unable to safely classify the genders,¹⁰⁹ whereas men are clearly identifiable in as many as 73 examples.¹¹⁰ Bagnall, however, inexplicably lumps together petitions coming from men and those that are uncertain (making it up to 105 cases). Women also appear in the surviving petitions: not only in marital cases or post-divorce property divisions,¹¹¹ but, just as in the case of attestations

¹⁰⁹ *P. Harr.* I 133 descr. (unknown provenance, 366); *P. Erl.* 34 descr. (unknown provenance, 4th–5th cent.); *P. Vindob. Tandem* 6 (Heracleopolites?, 428); *P. Erl.* 36 (unknown provenance, 5th cent.); *P. Strash.* VIII 716 (unknown provenance, 5th cent.); *SB XX* 15172 (Oxyrhynchites, 400–525); *P. Wash. Univ.* I 21 (Oxyrhynchus, 5th–6th cent.); *SB XX* 15090 (Oxyrhynchus?, 543); *P. Cair. Masp.* I 67019 R descr. (Aphrodite/Antinoopolis?, 548–549); *P. Cair. Masp.* I 67017 (Aphrodite/Antinoopolis?, c. 567–568?); *P. Cair. Masp.* I 67020 (Aphrodite?, c. 566–573); *P. Cair. Masp.* II 67205 (Aphrodite/Antinoopolis?, 566–573); *P. Lond.* V 1675 (Antinoopolis, 566–573); *P. Cair. Masp.* I 67011 (Aphrodite/Antinoopolis?, 6th cent.); *P. Cair. Masp.* I 67012 (Aphrodite/Antinoopolis?, 6th cent.); *P. Cair. Masp.* I 67013 (Aphrodite/Antinoopolis?, 6th cent.); *P. Cair. Masp.* I 67015 (Aphrodite/Antinoopolis?, 6th cent.); *P. Cair. Masp.* I 67016 (Aphrodite/Antinoopolis?, 6th cent.); *P. Cair. Masp.* III 67336 descr. (Aphrodite?, 6th cent.); *P. Cair. Masp.* III 67348 descr. (Aphrodite/Antinoopolis?, 6th cent.); *PSI VII* 800 (unknown provenance, 6th cent.); *SB VI* 8994 (unknown provenance, 6th cent.); *P. Oxy.* XVI 1944 (Oxyrhynchus, 6th–7th cent.); *P. Lond.* II 396, p. xxxvi descr. (unknown provenance, 7th cent.); as well as *P. Mert.* I 43 v^o (Oxyrhynchus?, 5th cent.) and *P. Oxy.* VI 904 (Oxyrhynchus, 2nd half of 5th cent.), although in the latter cases the petitioner is probably a man.

¹¹⁰ Cf. FOURNET & GASCOÜ, 'Liste des pétitions' (cit. n. 35), pp. 141–196. Additionally, one should also take into account six instances of collective entities, in which there are undoubtedly men, but the presence of women cannot be excluded: *SPP X* 111 (Arsinoites, 5th–6th cent.); *P. Cair. Masp.* III 67283 (Aphrodite, 547); *P. Cair. Masp.* III 67354 (Aphrodite, 547); *P. Cair. Masp.* I 67002 (Aphrodite/Antinoopolis?, 567); *P. Cair. Masp.* I 67009 (Aphrodite/Antinoopolis?, c. 567–570); *P. Lond.* V 1674 (Antinoopolis, c. 570).

¹¹¹ These petitions include cases regarding the reimbursement of a dowry, broken marriage promises, further marriage disputes, and divorces: e.g. *ChLA XI* 469; *PSI IX* 1075; *P. Cair. Masp.* I 67092.

concerning private dispute resolution, they also take part in controversies over other proprietary issues,¹¹² taxes and other dues,¹¹³ as well as various abuses and instances of violence.¹¹⁴

For what it is worth, in the case of only 12 documents, the variable of the status of women remains in principle consistent with Bagnall's observations. We encounter unmarried and married women alike, as well as divorcees,¹¹⁵ but there is a visible predominance of widows.¹¹⁶ At the same time these documents provide data chiefly about the petitioner: and on this has been the focus of earlier research. And yet, sometimes they reveal women against whom the petitions have been directed – at times also by women.¹¹⁷ The same observation as in the case of ADR documentation would be in place here: a woman-defendant or a woman acting within a claimant group is not per se any more passive than male agents. There is no reason to expect Abigaia who settles on her own with Elisabet in *P. KRU* 35 to be more active than when she acts together with her brother in *P. KRU* 36. By comparison, when there are men-only claimant groups or men are represented by other men,¹¹⁸ one never expects them to be 'weaker': this shows how our prejudice

¹¹² E.g. *BGU* II 670.

¹¹³ E.g. *P. Oxy.* LXIII 4393; *P. Cair. Masp.* 67006 R.

¹¹⁴ E.g. *P. Oxy.* L 3581 (although a woman accuses her husband, from whom she divorces); *SB* VI 9239; *P. Cair. Masp.* I 67005.

¹¹⁵ E.g. *ChLA* XI 469; *P. Oxy.* L 3581.

¹¹⁶ E.g. *P. Köln.* IV 191; *BGU* II 670; *P. Cair. Masp.* I 67005; I 67006 R.

¹¹⁷ *P. Rain. Cent.* 91 (unknown provenance, 419): accused of *hybris*; *P. Rain. Cent.* 99 r^o (Hermopolites, 451): sued with Dioskoros and others; *P. Köln.* IV 191: Manna sued by a widow; *PSI* VIII 876 (Oxyrhynchus, 5th–6th cent.): sued by a neighbour; *P. Oxy.* XVI 1884 (Oxyrhynchus, 504); *P. Cair. Masp.* I 67091 (Aphrodite, 528): sued together with a man; *BGU* II 670: the opposite party is also a woman; *PSI* VII 790 (Oxyrhynchus, 546): sued by a brother; *P. Cair. Masp.* I 67092: the opposite party is also a woman, the would-be daughter-in-law; the mother is sued together with her son; *BGU* III 798 (Arsinoites, 575–625); *SB* XVI 12584 (unknown provenance, 6th cent.): sued by a young spouse; *P. Cair. Masp.* III 67295, cols. i–ii: but uncertain whether these are documents prepared for ADR; *CPR* XIV 48 (Heracleopolis?, 625).

¹¹⁸ In *P. Lond.* V 1676 (Antinoopolis, 566–573; no. 59 in Gascoü & Fournet's list) a husband gets involved in the affairs of his father-in-law against *scrinarius* Petros, who has pressed for the appropriation of the dowry and other proprieties belonging to the father-in-law in lieu of the fiscal dues (even though the dowry is mentioned the wife neither takes part in

plays a role in the interpretation of the sources. Finally, the analysed petitions do not indicate that women are represented by their husbands (though their widowhood could explain this phenomenon).

Finally, there are examples of petitions whose addressees are women. Of course, these are neither frequent nor do they pertain to public dispute resolution. Rather these are exceptional situations of searching for the assistance of women of unprecedented status – among them, even Empress Theodora herself.¹¹⁹

It is highly unlikely that a woman could act not only as a *iudex* but even as an *arbiter* under the classical Roman law.¹²⁰ And yet it is with the reign of Justinian that a clear shutdown of discussion is made in regard to the latter issue – women are then explicitly forbidden to accept the function of an arbiter. The emperor tells them to keep away from all types of judicial affairs since those are not the functions that their nature designed them (C. 2.55.6, a. 531). The law mentions women of the highest reputation and patronesses for the cases among their freed(wo)men. Justinian hardly would have introduced such a law without a real-life stimulus. This restriction alone shows that the possibility of a woman serving as an *arbiter* was not inconceivable, and the implementation of such a law is intended to curb possible ambitions in this area by referencing yet again to women's *pudicitia*.¹²¹

It goes without saying that women were free to participate actively as parties both 'in' courts and as well as 'out' of them, even if less so than

the proceedings nor is represented by her husband); see also *P. Oxy.* XVI 1885 (Oxyrhynchus, 509; no. 73 in Gascoû Fournet's list), in which a certain son of Theophilos acts in the interest of Sourous, who was physically abused by another person.

¹¹⁹ For Theodora, see, e.g., *P. Cair. Masp.* III 67283; for another example of a petition directed to a woman whom the petitioners identifying themselves as 'slaves' (or serfs?) address as 'lady', see *BGU* III 798.

¹²⁰ Roman law barred women from public offices and excluded the possibility of appointing them as judges, as well as representing others in courts; see, e.g., D. 50.17.2, 5.1.12.2, 3.1.1.5.

¹²¹ Although additional complications would arise in light of Justinian's reforms to bring the figure of a judge and arbiter closer together; see, e.g., C. 2.3.29.2 & 2.58.2.4; 3.1.14 & 3.1.16. Hence, perhaps, the decision to clearly resolve the issue of women's exclusion from these functions, as is the case in the judiciary.

men.¹²² The only actual constraints within the framework of Roman law may have resulted from the prohibition of intercession. These limitations were in accordance with *SC Velleianum*, which forbade women to provide collateral for the debts of others.¹²³ Admittedly, at times women appear to take a back seat in conflicts involving them, but this tendency is equally visible (and in no way dominant) in both private and public proceedings.

To the account of women in petitions, one can also add attestations classified by Beaucamp that show women's participation in court proceedings (mainly during the fourth century).¹²⁴ The subject matter here is succession, various family and matrimonial issues, division of property, but also contracts and related debts, as well as tax and public dues.¹²⁵

¹²² Strictly theoretically, *auctoritas tutoris* was required for the effectiveness of a formal act such as stipulation, which could secure *compromissum*, but we know very well that such authorisation, at least since the time of Gaius, was nothing more than a 'rubber-stamp', whereas in late-antique legal practice women have long acted without guardians. Cf., e.g., *Tit. Ulp.* 11.27. See also G. 1.190.

¹²³ Regarding limitations of *SC Velleianum* in general, cf. D. 16.1.1–32. See also D. 3.1.1.5. Cf. O. LENEL, *Das Edictum Perpetuum. Ein Versuch Seiner Wiederherstellung*, Pamplona 2008, p. 287 (Tit. XVIII §105). In line with these provisions, a woman could not be bounded by a *compromissum* undertaken on behalf of someone else, as such agreement would be considered void (D. 4.8.32.2).

¹²⁴ BEAUCAMP, *Le statut de la femme à Byzance* II (cit. n. 34), pp. 389–393. As already mentioned, attestations of judicial activity undergo a sharp decline in the following period. In the list of attestations, Beaucamp puts together sources relating to arbitration and the court activity. For the fifth and sixth centuries, the exclusion from the list of ADR documents leaves only five (plus one that is seen as a petition by Fournet and Gascoü, but we consider it as possible ADR, namely *P. Cair. Masp.* III 67295, cols. i–ii).

¹²⁵ The anonymous peer-reviewer of this article has pointed out that it would also be worthwhile to include at some length the private petitions discussed and collected in J. GASCOÜ, 'Les pétitions privées', [in:] FEISSEL & GASCOÜ (eds.), *La pétition à Byzance* (cit. n. 16), pp. 93–103. These have already been included in our analysis, and even some of them (when involving women) are cited in the article. However, a word of clarification is indeed due as to our approach. As already pointed out in the introduction, ADR in anthropological terms goes beyond the strict framework of the documents we are dealing with in late-antique Egypt. The sources allow us to observe not only the range of different methods of dispute resolution, but also the wealth of documentary patterns used by the parties. Petitions addressed to private entities (such as, e.g., landowners of large estates) can both fall within the boundaries of private dispute resolution (where the party/ies choose to address a request for mediation/arbi-

Even if these adjustments to the views hitherto perpetuated on ever-weaker female engagement in all types of litigations have somewhat mitigated them, their core stands. Women do indeed fade away from the sources documenting dispute resolution. Those who remain visible are not symptomatic either: Aurelia Tapia, Kako, the women from the milieu of Dioskoros, Elisabet are not average breadwinners. They have the means, some quite significant: Tapia would need to divide with her children no less than 100 solidi of her late husband's estate. Even if they are themselves most probably illiterate, they belong to the culturally-advantaged echelons of society: among the witnesses of Elisabet's last will, *P. KRU 68* (Thebes, 723?), there are four clergymen; clergy, too – among them one *begoumenos* – and *lasbanes* testify the settlements of claims from her dossier. It appears there is no better explanation of this process than the most obvious and well-known one: a gradual diminution of female autonomy in the legal, social, and cultural spheres happening from the late antiquity onwards. This must have resulted, among other thing, in a very limited access to – especially landed – property, and lesser (if at all) participation in successions, the usual object of disputes solved through ADR. Women never enjoyed equal footing with men in the legal and social spheres, something reflected in their less frequent presence in the sources documenting legal activities; now this imbalance was far greater, relegating them even further from the documentation.

4. BETWEEN LOVE AND LAW: ANTHROPOLOGICAL DISCOURSE IN THE PAPYRI

In light of the above, we shall now confront certain paradigmatic assumptions present in scholarship. Legal anthropology itself often warns against

tration to a private entity) and instances of 'forced' mediation/arbitration, when the issue of social, or economic subordination in certain dependency structures makes this forum seem most appropriate for the parties to resolve their controversy. Undoubtedly, thanks are due to the reviewer for bringing this issue to our attention, as it has prompted us to present in the introduction the broader methodological context adopted in our research. For exhaustive analysis of this topic, taking into account the full spectrum of forums and dispute resolution patterns in late-antique Egypt, see WOJTCZAK, *Arbitration and Settlement of Claims* (cit. n. 4).

automaticity and draws attention to the risk of false dichotomies in the analytical process.

Simon Roberts, while discussing private and public dispute resolution, rejected division into two extreme categories which he calls 'love' and 'law'.¹²⁶ Obviously it is tempting to perceive settlements reached through negotiations, mediations, or even arbitration as more intent on maintaining a good relationship between the parties. In the light of late-antique evidence, however, these assumptions prove often false. Most of all, the absence of state involvement in no way guarantees the exclusion of coercion or threats during the private dispute processing.¹²⁷ A settlement reached through private means of dispute resolution can be every bit as much the effect of power, social or economic submission of one party onto the other as in the case of state jurisdiction. Accordingly, it could have the same destructive effect for the disputant's relationship. In fact state jurisdiction in its fundamental principle tends precisely to make the position of the parties more equal, not less. This appears to be exactly the reason why the parties address the court to obtain justice.¹²⁸ Naturally, the practice often diverges from the ideal assumptions. The latter should not, however, be taken as a general basis for the functioning of public administration of justice.

Even though various studies notoriously advocate for the vision of pacific societies and aversion to the legal solutions, as noticed by Bruce Frier,¹²⁹ the term 'amicable' in no way can be claimed as indispensable to private mechanisms of dispute resolution. Still, the echoes of the rigorous division between formalistic, coercive judiciary and conciliatory methods

¹²⁶ S. ROBERTS, *Order and Dispute: An Introduction to Legal Anthropology*, New York 1979, pp. 14–15, 19. This has been also pointed out in reference to Roman Egypt by KELLY, *Petitions* (cit. n. 1), pp. 245–246.

¹²⁷ KELLY, *Petitions* (cit. n. 1), p. 246.

¹²⁸ The reason underlying the origin of the administration of justice seems to be exactly the imbalance of power and the desire to amend for its abuses in the social and legal relations.

¹²⁹ See B. W. FRIER, 'A new papyrology?', *Bulletin of the American Society of Papyrologists* 26 (1989), pp. 217–226, at 225 n. 27; R. S. BAGNALL, *Reading Papyri, Writing Ancient History*, London – New York 1995, p. 60.

giving a better chance of preserving the social relationship are quite visible in later papyrological literature. According to Deborah Hobson, a party may pass through several stages in the course of dispute resolution yet there is a clear progression 'from the informal to formal' methods. She states: 'it becomes immediately apparent that the petitions which we have do not constitute the disputing process itself, but rather represent the final stage of that process, where all other possible remedies have been exhausted'.¹³⁰ Following this reasoning, the disputes should have a long history of failed resolution attempts before reaching adjudication. Only rarely, however, can this be proven for the papyrological evidence.¹³¹ The idea of invariable progression in one established direction through different methods of dispute resolution is not unequivocally followed in legal anthropology itself, which discerns and discusses many other disputing patterns within different (also contemporary) societies. The latter insists on the fact that the parties to a dispute, regardless of their relations, can simultaneously pursue various scenarios for settling a dispute.¹³² A similar picture appears to emerge from the papyrological sources.¹³³

Traianos Gagos and Peter van Minnen place their focus on two factors in particular. On the one hand, there is the object at dispute (that is in anthropological discourse the 'scarce resources'), on the other hand – currently discussed – there are the parties' relation (that is the 'social relations', perceived as eventual constraint on implementation of more 'radical' solutions).¹³⁴ In their opinion, the choice of action depends on how the two factors correlate with each other. At first glance, this seems perfectly understandable since, as mentioned before, both factors have

¹³⁰ HOBSON, 'The impact of law' (cit. n. 1), p. 200.

¹³¹ To the contrary, disputes can be bouncing back and forth between different methods of dispute resolution.

¹³² Also on that KELLY, *Petitions* (cit. n. 1), pp. 267–268.

¹³³ E.g. in *P. Lond.* V 1709, ll. 80–95, where the parties before submitting their case to private dispute resolution had already gone to the state justice (i.e. *ekdikos* of Siout).

¹³⁴ GAGOS & VAN MINNEN, *Settling a Dispute* (cit. n. 1), p. 37 with n. 79. Similar observations for a different society are presented by J. L. COMAROFF & S. ROBERTS, *Rules and Processes: The Cultural Logic of Dispute in an African Context*, Chicago 1981, pp. 115–117.

been considered in anthropological studies as influencing the disputing behaviours. In a situation in which scarce resources form the basis of a dispute, individuals may rank the resource higher than they rank the social ties that exist between them and may be willing to sacrifice the relationship for the sake of gaining access or exclusive use of the resource.¹³⁵ Hence the disputants in every such case are expected to rank their priorities between the control over scarce or vital resources and the social ties.¹³⁶

For the realities of late-antique Egypt, a grave mistake lies in yet another assumption imported from socio-legal studies, but closely related to the previous issue. Namely, that there is a permanent competition (in any system of administration of justice) between two crucial forces: one is the stereotypical conviction of the efficiency of public dispute resolution mechanisms in reinforcement of party's rights, the other is the illusory 'amicability' of the private dispute resolution methods that enables the relationship between litigants to be salvaged.¹³⁷

In the light of the above, however, the assumption of 'amicability' of ADR may be easily questioned.¹³⁸ It is neither necessarily voluntary (and this aspect goes hand in hand with the possible friendliness of this type of dispute resolution): suffice it to recall the phenomenon of *gram-*

¹³⁵ Cf. O. J. STARR & B. YNGVESSON, 'Scarcity and disputing: Zeroing-in on compromise decisions', *American Ethnologist* 2/3 (1975), pp. 553–566. According to legal anthropology, disputes over scarce resources can override the traditional ideas of obligation, support, and alliances within kin-lineages.

¹³⁶ Cf. L. NADER & H. F. TODD, 'Introduction', [in:] IIDEM (eds.), *The Disputing Process: Law in Ten Societies*, New York 1978, p. 18.

¹³⁷ That reflects, in fact, a modern approach and shape of ADR. GAGOS & VAN MINNEN, *Settling a Dispute* (cit. n. 1), pp. 44–45, state that parties at dispute have to decide 'whether their goal is to get what they think they deserve and to run the risk of losing it all' (when using public dispute resolution methods), or 'whether they should salvage their ties with one another as much as possible' (when using private dispute resolution). Most recently on this: BUCHWITZ, *Schiedsverfahrensrecht* (cit. n. 2), together with a critical review by M. WOJTCZAK in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung* 139/1 (2022), pp. 430–453.

¹³⁸ As it already happened in legal anthropology, see ROBERTS, *Order and Dispute* (cit. n. 126), pp. 14–15, 19.

matophoroi described by Federico Morelli.¹³⁹ These letter-bearers, in some cases also women,¹⁴⁰ bring a written order from a higher authority to the addressee to settle their controversy.

At the same time, the assumption on the efficacy of state jurisdiction imparts a logical contradiction in regard to another concurrent hypothesis put forward for late antiquity. As noted at the beginning of this article, various scholars have observed that, in the context of a drastic decline in the number of the sources, the dispute 'proceedings' in the sixth and seventh centuries were less intensive than earlier and this could have led to placing private dispute resolution in the spotlight as a tempting 'alternative'.¹⁴¹ Additionally, the growing number of ADR attestations in the papyrological evidence has been explained by the deteriorating condition of state jurisdiction (especially given the almost total lack of court protocols after Justinian).¹⁴² If so, the intellectual construct of dispute resolution functioning in the shadow of two clashing forces (i.e. the desire to

¹³⁹ F. MORELLI, 'Grammatephoroi e vie della giustizia nell'Egitto tardo antico', [in:] E. CANTARELLA (ed.), *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (Salerno, 14.–18. September 2005), Vienna 2007, pp. 351–371.

¹⁴⁰ E.g. *P. Oxy.* XVI 1839; *BGU* I 103; *SPP* XX 212; XX 243; *P. Apoll. Ano* 61.

¹⁴¹ See SCHILLER, 'The courts are no more' (cit. n. 3), p. 471: 'the state of litigation was absent and private arbitration paramount for the settlement of civil disputes': and p. 502: 'factual disappearance of the courts in Egypt'. Prior to Schiller, the disappearance of bilingual protocols was discussed by E. SEIDL, 'Die Jurisprudenz ägyptischer Provinzialrichter byzantinischer Zeit', [in:] W. KUNKEL & H. J. WOLFF (eds.), *Festschrift für Ernst Rabel*, II: *Geschichte der antiken Rechte und allgemeine Rechtslehre*, Tübingen 1954, pp. 235–261. In a more general manner: HARRIES, *Law and Empire* (cit. n. 1), pp. 173–174; U. ZILLETI, *Studi sul processo civile giustiniano*, Milan 1965, pp. 235–279, who draws attention to one of the goals of Justinian's jurisdiction in regard of arbitration, namely relieving of the state courts. The awareness of the latter allows to fully understand the conceptual frames of an alleged dichotomy between the relationship among the parties at dispute and the control over scarce resources and their role in shaping the disputing process.

¹⁴² See SCHILLER, 'The courts are no more' (cit. n. 3), pp. 469–502. GAGOS & VAN MINNEN, *Settling a Dispute* (cit. n. 1), pp. 40–46, name other plausible reasons for this practice, for instance the fact that going to court was procedurally complicated, costly, and time-consuming. They also suggest that Egyptians in the Byzantine period favoured an approach based on personal relationships to solve problems between members of their communities, especially within their families.

get the best result and the desire to maintain the relationship) that determine the choice between private settlements and public forms of dispute processing simply does not stand trial.¹⁴³ If the state jurisdiction was, as claimed, actually inefficient or scarce, then turning to it cannot have been a more warranted way for the reinforcement of rights. Thus, locating the relations between the parties and control over scarce resources as two contradicting factors governing the choice between private and public remedy agents makes in this particular context little argumentative sense. Both of these factors are certainly important for the disputing process itself and the patterns of parties' behaviours, but they do not necessarily offer a simple explanation for turning to private dispute resolution.¹⁴⁴

The latter becomes even clearer if we turn our attention to the most frequently-attested disputes among family members (i.e. in the circle of those supposedly most interested in saving the relationship). These include inheritances and divisions of assets, which most of all involve resources that are indeed considered as 'scarce', such as house or landed property.¹⁴⁵ Moreover, even in the course of the same controversy, the par-

¹⁴³ Cf. PALME, 'Antwort auf Jakob Urbanik' (cit. n. 4), pp. 408–409, who points out that the absence of state court in the Byzantine period has not been proven and cannot serve as the reason behind the popularity of arbitration. Cf. URBANIK, 'Compromesso o processo?' (cit. n. 4), p. 398, who, however, suggests that in some situations arbitration could be simply more effective than the standard court procedure. Cf. also B. PALME, 'Law and courts in late antique Egypt', [in:] B. STIRKS (ed.), *Aspects of Law in Late Antiquity. Dedicated to A.M. Honoré on the Occasion of the Sixtieth Year of His Teaching in Oxford*, Oxford 2008, pp. 55–76, at 71–72, who points at the necessity for the effectiveness of arbitration to rely, in the end, on the constant existence of state courts. Also on that: SIMON, 'Zur Zivilgerichtsbarkeit' (cit. n. 4), pp. 624–625.

¹⁴⁴ If one, however, accepts the assumption that due to its 'amicability' ADR was more frequently chosen by family members, as they wanted to maintain the relationship between the parties, then how should one explain the alleged growth of attestations of ADR for this period only? It cannot be the case that family ties were less important before, when the attestations for ADR are much less profound and the protocols of court proceedings abundant. Even this proves that our sources do not easily conform to anthropological narratives and require a more critical approach.

¹⁴⁵ The transmission of property in late antiquity occurs to a large degree within family in event of death of one of its members. On that, see, e.g., GAGOS & VAN MINNEN, *Settling*

ties often decide on different ways of resolving it, moving smoothly from private to public methods and vice versa.¹⁴⁶ Papyri also show that the parties at times turned to public officials for mediation/arbitration or engaged them in some other way based on settlement's provisions.¹⁴⁷ For both men and women, the trends in disputing behaviours are similar, with no single dominant one that can be characteristic for the choice of private or public dispute resolution. Adding to this, we observe that both ADR and court proceedings can lead to equally ineffective solutions. Constantin Zuckerman has already shown persuasively that obtaining a favourable decision did not always mean successful enforcement, but sometimes must have involved additional financial expenses.¹⁴⁸

While considering potential reasons for the growing popularity of arbitration in late antiquity, one variable in particular is constantly missing from the picture (or is at best only seen as a consequence, not as a driving force of the outlined phenomenon).

a Dispute (cit. n. 1), p. 38; J. J. FABER, 'Family financial disputes in the Pathermouthis archive', *Bulletin of the American Society of Papyrologists* 27 (1991), pp. 111–122; cf. *P. Princ.* II 79; *P. Lond.* III 1008; V 1728; V 1731; *P. Münch.* I 1; I 7; I 14; *P. Herm.* 31; *P. Par.* I 20.

¹⁴⁶ Good examples can be found in the archive of Pathermouthis and Kako that comprises of more than 50 papyri currently in London and Munich collections. Some dozen documents concern conflicts over inheritance that were dealt with the employment of both private and public dispute resolution strategies.

¹⁴⁷ E.g. *P. Sijp.* 11 b (?) (Kellis, Oasis Magna, 350–351); *SB XIV* 12194 (?); *P. Prag.* I 49 (?) (Arsinoiton Polis, 628 or 643); *SB I* 5681 (Arsinoite, 654 or 669); *P. KRU* 51 (Thebes, 724); *P. KRU* 37 (?); *P. CLT* 5 (Thebes, 711); *P. KRU* 50; *P. KRU* 42; *P. KRU* 44. Thus, the state functionaries were called upon to settle a conflict, just not in their official capacity, but as conciliators or arbiters accepted by both parties. It is plausible that the officials were more eagerly associated with impartiality and state authority. It is perfectly imaginable that their decisions were expected to be met with greater obedience and could have seemed less violable to the parties. After all, some of the approached individuals could have been appropriate for the resolution of a case as public 'remedy agents'. In that sense we could be dealing with a mirror effect, where the private dispute resolution in a way reflects the expectations implemented by the law and state jurisdiction (cf. KELLY, *Petitions* [cit. n. 1], pp. 259–260). Thus, it seems that even if the parties never undertake the public proceedings to enforce their rights, the judicial system still influences the way in which they go about settling their disputes.

¹⁴⁸ ZUCKERMAN, 'Les deux Dioscore d'Aphrodité' (cit. n. 26), pp. 75–92.

5. WHY ARBITRATION?

In the wake of research on ADR papyri, Bernhard Palme has raised the question of the representativeness of the evidence at hand and cautioned against the assumption that state jurisdiction may have been overtaken by private methods, especially in view of sources indirectly indicating the activity of public jurisdiction for this period (such as *tabellio*-documents, petitions, and evidence attesting to the procedure *per libelli*).¹⁴⁹ Further, Claudia Kreuzsaler has argued that the source material shows the development of notarial documentation of out-of-court dispute resolution in Egypt but does not necessarily attest to the growing popularity of such methods. What, then, could have caused such prominence of private dispute resolution methods in late-antique papyri?

We believe that the real game-changer is the favourable legal context, and not its apparent para-legitimate outcome. It is through the reforms of Justinian that arbitration/mediation is promoted to a 'semi-official' way of conflict resolution and is recognised as being a part of the public system of administration of justice.¹⁵⁰

The changes introduced in 529 concern predominantly the granting of legal recognition to a *compromissum* secured only by parties' oaths (i.e. *compromissum iuratum*; C. 2.55.4.1–3, a. 529). Moreover, should the parties agree to comply with a solution already reached with the assistance of a third party through *subscriptio* (C. 2.55.4.6), this solution will be considered effective. These laws allowed for a direct enforcement of arbitral award (C. 2.55.4.4).

The following year brought another constitution, this time concerning the parties' simple arbitration agreement (i.e. neither secured with an oath nor with a penalty provided in the event of breach; C. 2.55.5 pr.–1, a. 530). In the case of such an informal agreement, Justinian decided that if the parties later accept the rendered award (either in a written form or by a silent consent), then an executory claim (*actio in factum*) shall also be

¹⁴⁹ PALME, 'Antwort auf Jakub Urbanik' (cit. n. 4), pp. 401–410.

¹⁵⁰ See ZILLETI, *Studi sul processo civile* (cit. n. 141), p. 265.

granted accordingly. However, neither claim nor *exceptio* will be given, if one of the parties submits *attestatio* against the arbiter's decision (C. 2.55.5.2), that is if the parties disagree with the solution and thus rebut the presumption of the 'silent' acceptance of the award.

Admittedly, it did not take long for Justinian to revoke some of these reforms. Namely, *Nov.* 82.11 from 539 abolished the *compromissum iuratum* and reaffirmed the function of *poena compromissa* as a main legal measure for guaranteeing legal effectiveness to arbitration agreement (in line with the retained solutions adopted for the classical *compromissum*; C. 2.55.4.5). It should be noted, however, that granting direct enforcement where the *sententia arbitri* was subsequently confirmed by the parties has been upheld (C. 2.55.4.6 & 2.55.5).

In assessing the origins of Justinian's reforms, attention should certainly be drawn to the legal practice of the eastern provinces. The solution adopted in the constitutions regarding parties' confirmation of decision rendered reflects the deeds of settlement of claims (*dialyseis*) already known from papyri and used as a convenient device in the event of dispute resolution and in other situations when the parties decided to waive their claims for the future. Justinian takes this documentary practice and grants it a broader legal effectiveness (not as a mere settlement of claims but as an arbitration allowing for direct enforcement through *actio in factum*). In this way, he simultaneously promotes the said practice and stimulates its further development.¹⁵¹

In this context, and partly in line with concerns already expressed by Kreuzsaler, the impression of the growing popularity of private methods may be falsified by the increasing evidence. It is not that arbitration has suddenly become more amicable, more flexible, or significantly cheaper

¹⁵¹ The imperial reforms make the concept of arbitration broader: no longer is it only the proceedings resulting from earlier *compromissum* that obtain this legal classification, but also do all cases in which the parties later acknowledged – by subscription or tacit acceptance – the solution reached in a conciliation involving a third party (i.e. also mediation). This brings us to another issue, namely the validity of strict distinction between mediation and arbitration in Justinianic law. These reservations have been already expressed by WOJTCZAK, review of BUCHWITZ, *Schiedsverfahrensrecht* (cit. n. 137), pp. 430–453.

(especially given the rising costs of enforcement) compared to earlier epochs. Rather, something else must have happened that caused people not only to turn to private dispute resolution (perhaps even more often than before), but, above all, to start scrupulously documenting this fact. There can be no coincidence between the reforms introduced by Justinian and the increasing attestations of arbitration/mediation in practice. Justinian's 'publicisation' of arbitration runs alongside the laws concerning *audientia episcopalis* and Jewish courts, which are all aimed at relieving the burden of the state judiciary. Although the regular court proceedings in the sixth and seventh centuries might not have been as intensive as in earlier periods, this should not be understood as a total downfall of the state jurisdiction. The appearance of new procedures to solve disputes in addition to the old ones could, as a consequence, decrease the popularity of traditional court proceedings and lead to changes concerning documentary practices. Both men and women adapted to these changes, showing that the law has found its way into the minds of its users. The parties continued to use all available mechanisms to resolve disputes according to their specific needs, with women doing so perhaps less frequently than men and arguably acting in a narrower range of cases than previously.

For late antiquity, both before the Arab conquest and soon after it, 'private' or 'amicable' dispute resolution is thus not noticeably weaker than 'public' or 'official' methods.¹⁵² Women do not appear in them

¹⁵² The practice of alternative dispute resolution seems to continue after the Arab conquest of Egypt in 640s without significant changes to the shape and type of documentation produced (however, with gradual but clearly visible changes in the languages used). See, e.g., P. SIJPESTEIJN, 'Establishing local elite authority in Egypt through arbitration and mediation', [in:] H.-L. HAGEMANN & S. HEIDEMANN (eds.), *Transregional and Regional Elites – Connecting the Early Islamic Empire*, Berlin – Boston, MA 2020, pp. 387–406. Most interestingly, research on early Islamic arbitration seems to confirm that mediation/arbitration need not at all be seen as a form of justice parallel to state courts. Somewhat in line with reforms introduced by Justinian, in the first centuries of Islam, arbitration was also incorporated into the general system of conflict resolution in the form of a lower court. On the latter, see M. TILLIER, 'Arbitrage et conciliation aux premiers siècles de l'Islam: théories, pratiques et usages sociaux', *Revue des mondes musulmans et de la Méditerranée* 140 (2016), pp. 27–52.

because of the 'weakness' of their sex, instead simply because they are the available means to solve disputes they face, just as much as men, topically never weak, would turn to them, to solve their legal issues. The difference is in the proportions, which we have tried explaining by the on-going tendency to limit women ever more, a tendency that would only be overturned, in apt words of Arjava, in post-Victorian Europe.¹⁵³

Marzena Wojtczak

University of Warsaw
Faculty of Law and Administration
Chair of Roman Law
and the Law of Antiquity
Krakowskie Przedmieście 26/28
00-927 Warsaw
POLAND

Humboldt Research Fellow
Freie Universität
Ägyptologisches Seminar
Fabeckstraße 23-25
14195 Berlin
GERMANY

e-mail: *m.e.wojtczak@wpia.uw.edu.pl*

Jakub Urbanik

University of Warsaw
Faculty of Law and Administration
Chair of Roman Law
and the Law of Antiquity
Krakowskie Przedmieście 26/28
00-927 Warsaw
POLAND

Westfälische Wilhelms-Universität
Käte Hamburger Kolleg Einheit
und Vielfalt im Recht
Servatiplatz 9
48143 Münster
GERMANY

e-mail: *kuba@adm.uw.edu.pl*

¹⁵³ ARJAVA, *Woman and Law* (cit. n. 42), p. 265. See already B. Russel, *Marriage and Morals*, New York 1929, p. 60.