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ADOPTION ON THE EVIDENCE OF THE PAPYRI

I

Papyrus sources about adoption are scarce and for the most part contain little information. Discovering data on this subject is mainly possible from terminological indications. For denoting adoption, usually basic terms like υιοθεσίχ, θέσις were in use and, for designating the adopted person, the term θετός.¹ Much less often terms based on ποιέομαι are used: UPZ 3 (Recto) and 4 (Verso) 164 B.C. (1.3.3: ποησαμένου μου αὐτὴν 1.4.5: τεκνοποήσασθαι 1.4.10 11: ἐπαησάμην αὐτὴν ἐξ ἄσυνου), and additionally Gnom. Id. 41 (II A.D.): υιοποιησῆται and P. Dura Europos 12 (225—250 A.D.): υιοποιήσετε κατὰ ἕν νόμον. This terminology (both θέσις and ποιέομαι) is undoubtedly of Greek origin² although in Egypt the term θέσις and its derivatives markedly predominated, while in Greek sources³ this term, compared with ποιήσις and its derivatives, appears very seldom. Also interesting is the fact that the papyrus sources mentioned above, containing expressions based on ποιέομαι, differ in character from the remaining sources using terms of the θέσις or υιοθεσία type. Whereas the latter terms occur in private law contracts or in statements made

¹ Cf. Taubenschlag, *Die patria potestas im Recht der Papyri, Opera Minora*, Warszawa, 1955 (cited henceforth as *Opera*), II, p. 263.

² Taubenschlag, *Opera* II, p. 263 n. 10; also Mitteis, *Adoptions—Urkunde v. Jahre 381 A. D.*, *AfP* 3, 1906, establishes (on p. 179) the Greek origin of the term υιοθεσία, while Wilcken, *Urkunden aus der Ptolemäerzeit* I, Berlin, 1927, p. 124, in his comment on UPZ 3 lines 4—5 believes the term ποησαμένου μου αὐτὴν to be a *terminus technicus* derived from Attic law.

³ Terms based on τίθημι (θέσθαι υἱόν, θεσις, υιοθεσία, θετός) are already found in earlier Greek sources (Plato, Herodotus, Isaeus, Euripides, Pindar)—cf. Liddell-Scott, *A Greek-English Lexicon*, Oxford, 1968, s.v. θετός, τίθημι B. 3.b, but terms based upon ποιέω (εἰσποιέω, εἰσποίησις, εἰσποιητός, ποιησιῶ, ποιητός) as well as terms denoting surrender for adoption: ἐκποιέω, εκποίησις, εκποιητός definitely preponderate. At times all these terms appear in combination with the definition of the person that is adopted or turned over for adoption (υἱόν, παῖδα, υιοποιέομαι, υιοποίησις)—note instances in Liddell-Scott, *op. cit.*, s.h.v., and moreover cf. Becker, *Platons Gesetze und das griechische Familienrecht*, München, 1932, p. 300, 311. Brindisi, *Famiglia attica*, Firenze, 1961, p. 35 n. 1; Bruck, *Die Schenkung auf den Todesfall im griechischen und römischen Recht*, I, Breslau, 1909, p. 65 n. 5; Harrison, *The Law of Athens: The Family and Property*, Oxford, 1968, p. 84; Lipsius, *Das Attische Recht und Rechtsverfahren* II, 2, Leipzig, 1912, pp. 508—510.

by private people,⁴ the terms above mentioned from Gnom. Id. 41 and P. Dura Europos 12 are from legal texts.⁵ It may be, that in this respect the terminology used officially failed to be fully in agreement with that commonly in use. On the other hand, UPZ 3 and 4 refer to Greek adoption⁶—in this manner confirming the terminological association of the adoption mentioned in papyri with Greek adoption.⁷

In documents going back to the Ptolemaic period⁸—apart from UPZ 3 and 4, of 164 B.C., from which nothing can be concluded about the essence and the form of the adoption mentioned there⁹—information about recording an adoption is found only in P. Col. Zen. 58 (248 B.C.).¹⁰

Nor do papyrological sources from the first three centuries of Roman rule supply any more specific data on the essence and form of adoption. What they bring are merely remarks about persons who were adopted—remarks made to explain other legal acts described in the documents.¹¹ The same is true of papyri containing private letters.¹² With these extremely meagre data as a basic one can only conclude

⁴ For instance with ἐπίκρισις cf. P. Oxy. 1266 (98 A.D.); PSI 732 (153–4 A.D.); PSI 457 (276 A.D.); P. Oxy 2186 (260 A.D.); cf. Montevicchi, *La papirologia*, Torino, 1973, pp. 181–183.

⁵ On Gnom. Id. cf. Uxkull-Gyllenband, *Der Gnomon des Idios Logos*, (BGU V), Berlin, 1934, p. 3 ff; Riccobono, *Il Gnomon dell Idios Logos*, Palermo, 1950, p. 5 ff; Seidl, *Rechtsgeschichte Ägyptens als römischer Provinz*, Sankt-Augustin, 1973 (further cit. RA), pp. 12–30 (incl. further lit.). P. Dura Europos 12 (225–250 A.D.) is derived from “the original city constitution” (*The Excavations at Dura Europos, Final Report V*, p. I, New Haven, 1959, p. 76); after Wenger, *Juristische Literaturübersicht III*, *AfP* 10 p. 130: „Wahrscheinlich als ein Stück des Grundgesetzes der Kolonie, sicher als ein königliches Gesetz“.

⁶ Seidl, *Ptolemäische Rechtsgeschichte*, Glückstadt, 1962, (further cit. PR), p. 183; Taubenschlag, *Die Geschichte der Rezeption des griechischen Privatrechts in Ägypten*, *Opera I*, p. 580 n° 42; Wilcken, UPZ, p. 124.

⁷ Wilcken, UPZ, p. 124.

⁸ On adoption in earlier periods of Egypt cf. S. Allam, *De l'adoption en Egypte pharaonique*, *Oriens Antiquus* XI, 4, 1974, pp. 277–295 (incl. further lit.); Seidl, *Ägyptische Rechtsgeschichte der Saiten- und Perserzeit*, Glückstadt, 1968, p. 54; 80.

⁹ C. Seidl, PR, p. 183; Taubenschlag, *Opera I*, p. 580 n. 42; Wilcken, UPZ, p. 124.

¹⁰ P. Col. Zen. 58, line 9: συγγραφὰς τῶν τεκνοθεσιῶν; Montevicchi, *op. cit.*, p. 203; Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri*, Warsaw, 1955 (further cit. Law), p. 134 n. 16; p. 295 n. 12. A mention of εἰς θέσιν also in P. Cairo Zen. 59745 (254–55 A.D.).

¹¹ Numerous instances at Taubenschlag, *Opera II*, pp. 263–264, n. 10–14, as well as: Law, p. 134 n. 12–18, and moreover: P. Oslo 114 (I–II A.D.); PSI 732 (153 A.D.); SB 7535 (160 A.D.); P. Merton 118 (161 A.D.); P. Oxy. 2583 (II A.D.); P. Erl. 28 (II A.D.); P. Lips. 10 (240 A.D.); P. Oxy. 2186 (266 A.D.); PSI 1126 (III A.D.); cf. Montevicchi, *op. cit.*, p. 203 with her critical comment on the value as evidence of the adoption of Latin names in papyrus documents, indicated by Taubenschlag, *Law*, p. 135 n. 18.

¹² Modrzejewski, *Le droit de famille dans les lettres privées grecques d'Égypte*, *JJP* 9–10, p. 349 (documents from Karanis, II A.D.).

that at that time both men and women¹³ used to be adopted and by men as well as by women.¹⁴ However, documentary evidence that a given person has assumed a definite status in a family by adoption¹⁵ does not denote that this person's status was special in any respect compared with that of children of the family.¹⁶

Little information is also contributed by the so-called Gnomon of the Idios Logos (II cent. A.D.), where adoption is dealt with in § 41, which discusses the feasibility of a child abandoned in Egypt being adopted by the person who took charge of it. So vague is the purpose and form of this particular ruling¹⁷ that nothing is known about the manner and purpose of this sort of adoption. Nor does P. Dura Europos 12 supply, apart from the terminological discrepancy mentioned above, any information about conditions or form of adoption; yet it allows the statement that children legally adopted (*κατὰ τὸν νόμον*) were entitled to inherit from the adopting person even if he died intestate.

It was only among material from the IV century A.D. that two documents P. Oxy. 1206 (335 A.D. = FIRA III, No 16; Meyer, *Juristische Papyri* 10) and P. Lips. 28 (381 A.D. = Mitteis, *Chr.* No 364) were found to contain adoption contracts (*υἰοθεσία*) and brought some more plentiful research material; and this is why they became the principal objects of research.¹⁸

¹³ Cf. sources cited by Taubenschlag, *Opera* II, p. 263 n. 12 and 13 (*Law*, p. 134 n. 14 and 15); Wolff, *Hellenistisches Privatrecht*, ZSS 90, p. 68.

¹⁴ Cf. Taubenschlag, *Opera* II, p. 264 n. 13. From P. Oxy. 583 (description, 119–120 A.D.) it appears that a married woman adopted a son for herself. In P. Oxy. 504 (II A.D.) occurs (line 33): *θέσει μήτηρ*, but from lines 4–5 it is evident that, anyway, the woman did not adopt by herself: *θέσει θυγάτηρ Επικράτους καὶ τῆς τοῦτου γυναικὸς θαισοῦτος*.

¹⁵ For instance cf. P. Oxy. 504: *θέσει θυγάτηρ*; P. Oxy. 1266: *υἰὸν θεσει*. SB 7871: *ἀδελφόν.. οὐ τῆ φύσει*. Cf. also Modrzejewski, *op. cit.* JJP 9–10, p. 349. Most often the documents mention the name with the addition of *θέσει*, without any clear definition of status in the family.

¹⁶ A definite disclaimer can be seen in documents referring to *ἐπικρισίς*: *φύσει υἰόν..καὶ μή θέσει μηδὲ ὑπόβλητον* (cf. P. Oxy. 1266; 2186; PSI 453 and 732); Montevicchi, *op. cit.* p. 181; Taubenschlag, *Law*, p. 612.

¹⁷ Cf. the literature cited above in n. 5; moreover Wenger, *Juristische Literaturübersicht* X, *AfP* 15, pp. 151–158; Maroi, *Intorno all'adozione degli esposti nell'Egitto romano*, *Raccolta di scritti in onore di G. Lumbroso*, Milano, 1925, pp. 377–406. The fiscal, not the penal justification of the purpose of § 41 and § 107 Gnom. Id., suggested among other authors by Maroi, may also be looked for in combination with § 4 Gnom. Id.

¹⁸ The basic literature is: Mitteis, *op. cit.* *AfP* 3, pp. 173–183, as well as: *Neue Urkunden*, ZSS 33, p. 644; Taubenschlag, *Opera* II, p. 300 f., *idem*: *Die materna potestas im gräco-ägyptischen Recht*, *Opera* II, p. 327 f., *idem*: *Keilschriftrecht im Rechte der Papyri der römischen und byzantinischen Zeit*, *Opera* I, p. 468; Bergman, *Beiträge zum römischen Adoptionsrecht*, Lund, 1912, p. 20 f. (cf. Peters, ZSS 33, pp. 582–586); Kreller, *Erbrechtliche Untersuchungen auf Grund der graeco-ägyptischen Papyrusurkunden*, Leipzig, 1919, p. 157 (rev. San Nicolo, *ZvR* 39, p. 292); Kaser, *Das römische Privatrecht (RPR)*, II, München, 1959, pp. 148–149; Seidl, *RA*, p. 139; Wenger, *Die Quellen des römischen Rechts*, Wien, 1953, pp. 814–816, as well as recently H. J. Wolff, *Das Vulgarrechtsproblem und die Papyri*, ZSS 91, pp. 93–99,

The later papyri, P. Oxy. 1895 (554 A.D.) and SB I 5656 = P. Cairo Masp. III 67305 (568 A.D.) which are sometimes listed among the sources about adoption,¹⁹ reveal a different terminology. From P. Oxy. 1895, which the editor defines as "Alienation of a daughter",²⁰ and part of which runs ὁμολογῶ δεδωκέναι αὐτὴν ὑμῖν ἀπο τοῦ εἰς τὸν ἐξῆς ἅπαντα χρόνον εἰς θυγατέρα νομίμην, it must be concluded that the surrendered child was meant to become for all time the legal daughter of the adopting persons, who are acquiring the status of parents with regard to her: χώραν γονέων εἰς θυγατέρα. This expression clearly differs from those used when a child was sold or turned over as a pledge—terms indicating that the child fell into the position of a slave: so for instance, in P. Oxy. 1206 containing a ban on the sale of a child (εἰς δουλαγωγείαν ἄγειν), or in P. Iand. 62 (VI cent. A.D.), where the person accepting as a pledge the sister of a debtor is bound to render her all services proper to a slave (πᾶσαν δουλικήν.. χρεῖαν).²¹ Consequently, notwithstanding the lack of a terminology indicating adoption, the opinion that P. Oxy. 1895 concerns adoption seems justified.

In SB I 5656, believed to concern adoption, one section (lines 6 to 10), contains an element in favour of this belief, i.e. the admission of a child to membership in a household, including board and lodging like that given to a child of the family: ἐν τάξει γηνησίων τέκνων.²² Among other elements worthy of note is the fact that the recipient also engages to teach the boy, whom he has accepted into his home, some trade or craft (ἐπιδιδάσκειν)—a duty that might imply that the above mentioned board and lodging is linked with some sort of schooling.²³ Striking also is the definition of the time for which the child is to remain in the family of the recipient (line 6) ἐφ'ὅν βούλει χρόνον: especially in the Byzantine period this expression appears usually in work contracts and land-leases indicating the agreement of the

¹⁹ Taubenschlag, *Opera* I, p. 469; *Law*, p. 136 n. 19; Seidl, *RA*, p. 139; Montevocchi, *op. cit.* p. 203.

²⁰ Cf. comment by editors Grenfell-Hunt-Bell, *The Oxyrhynchus Papyri*, XVI, London, 1924, p. 108.

²¹ Cf. De Francisci, *Il P. Jandanae 62, Aegyptus* 1, p. 81. In P. Oxy. 1895, on the other hand, the services to an adopted child are defined by the relation of the parents to their daughter: ὥστε ὑμᾶς χορηγοῦντας τὰ δεόντα χώραν γονέων εἰς θυγατέρα ἀποπληρῶσαι εἰς αὐτὴν...

²² The contract is defined differently: by the editor it was defined as a "Vertrag über Haushaltsgemeinschaft" (SB 5656) or as a "Contract d'apprentissage et de prise en pension" (P. Cairo Masp. III 67305). Cf. also Montevocchi, *op. cit.* p. 203 (propriamente un contratto di lavoro); Taubenschlag, *Law*, p. 136 n. 19 (*i.f.*).

²³ As in the case of διδασκαλικὰ cf. Hermann, *Vertragsinhalt und Rechtsnatur der ΔΙΔΑΣΚΑΛΙΚΑΙ*, *JJP* 11–12, 125 ff., who while not considering the acceptance of a pupil into the master's home to be a characteristic element of such contracts, still maintains (p. 126) that "der Fall der Aufnahme des Lehrhins in die Familie des Meisters dem gräko-ägyptischen Recht der römischen Epoche nicht fremd war". Cf. also Zambon, *ΔΙΔΑΣΚΑΛΙΚΑΙ*, *Aegyptus* 15, p. 51 f.

lessee that the lease is to last for a time agreed upon by the lessor.²⁴ This clause, better suited to the text of a contract about teaching some craft or trade, where the duration is not limited by a fixed date, stands in contrast to what is said in P. Oxy. 1895 (ἀπὸ τοῦ νῦν εἰς τὸν ἑξῆς ἅπαντα χρόνον..), expressing the surrender of the child for good. Finally, the very expression used for taking charge of the child ἐν τάξει γνησίων τέκνων is open to doubt, because in P. Oxy. 1206 and P. Lips. 28 the definition of the status of the adopted person is formulated differently: ἔχειν τοῦτον γνησίον υἱόν, indicating that this status refers exclusively to the adopted person. The expression used in SB I 5656, by its use of the plural—whereas the contract refers to only one person—rather suggests that the person admitted into the household is in fact going to have in some respects the same status as the real children of the parents; yet it does not define unmistakably that the person is going to be a γνήσιον τέκνον. Hence it seems that this expression really signifies relation within the recipient's family, not a change in the legal status of the child. Thus, in my opinion, an analysis of the elements of SB I 5656 fails to confirm the assumption that this contract concerned the adoption of a child.

Apart from the papyrological sources cited above, an essential though rather secondary part is played by sources from Roman law informing us that in the eastern provinces adoption was in use, and defining the Roman laws referring to this custom. To these sources belongs the text of Paulus D. 45,1,132 dealing with, among other topics, a contract the essence of which was the acceptance of a child with the guarantee of treating it like a son (*ut filium*). This agrees with the commitment mentioned in P. Oxy. 1206 and P. Lips. 28 about persons accepting a child and guaranteeing it the status ὡς γνήσιον υἱόν. The assumption that the contract discussed by Paulus was the υἰοθεσία known from papyri is indeed strengthened by the fact, that later in the text (D. 45,1,132) a comparison is given with *adoptio* performed legitime (... *si filium suum quis legitime in adoptionem dederit*). Most probably therefore the contract under discussion was made for the same purpose—to adopt a child—and was merely the provincial pattern (υἰοθεσία) of such a contract.²⁵ Similar is the case of Diocletian's rescripts issued during his travels over the eastern provinces (293–294 A.D.), from which legal problems which he must have met may be extracted dealing with, among other matters, the form of *adoptio* (C. 8,47,4; 4,19,13; 8,47,6) or of premises (C. 8,47,5). These data supplement the meagre sources illustrating

²⁴ Taubenschlag, *Law*, p. 362; 379 (sources in Nos. 20 and 21); Montevicchi, *op. cit.*, p. 216. This definition differs from others applied in definitions of a life-long contract, such as: ἐπὶ τὸν χρόνον τῆς ἡμῶν ζωῆς; ἐφ' ὅλον τοῦ χρόνον τῆς ζωῆς. Cf. Comfort, *Prolegomena to a Study of Late Byzantine Land-leases, Aegyptus* 13, pp. 589–609 and: *Late Byzantine Land-leases* ἘΦ' ὍΣΟΝ ΧΡΟΝΟΝ ΒΟΥΛΑΕΙ, *Aegyptus* 14, p. 82–83, who for these definitions distinguishes between “Land-leases at the lessor's pleasure” and “land-leases for life”.

²⁵ Bergman, *op. cit.* p. 21 f., Albertoni, *L'Apokeryxis*, Bologna, 1925, p. 91 f., Taubenschlag, *Opera* II, p. 300 n. 139; Wurm, *Apokeryxis — Abdicatio und Exxereditio*, München, 1972, p. 82 f.

the form of *adoptio* common in the eastern part of the Roman empire and especially in Egypt.

II

The form commonly followed was undoubtedly the written contract used at private law, conforming with custom in the hellenistic world of settling legal matters in writing. For adoption this form of procedure is confirmed in P. Col. Zen. 58 (line 9: συγγραφὰς τῶν...τεκνοθεσιῶν) and—much later—in P. Oxy. 1206 and P. Lips. 28, as well as in P. Oxy. 1895. Performance of adoption in the eastern provinces by written contract has been confirmed by Diocletian's rescripts (especially C. 8, 47, 4; 290 A.D.),²⁶ in which he made an attempt on this sort of procedure by insisting upon the pattern obligatory under the Roman law then in force. This shows that other forms besides that of contract existed under Roman law, *arrogatio* carried out by an imperial rescript, and *adoptio*, carried out by means of a formal procedure in front of a state official, open to and, under the *Constitutio Antoniniana*, intended for the inhabitants of the provinces also.²⁷ The official person authorized to perform a formal adoption was the *praeses provinciae* or a judge deputized by him.²⁸ For Egypt the authority of the *iuridicus Alexandriae* is also attested: D. 1, 20, 1: *Adoptare quis apud iuridicum potest, quia data est ei legisactio*. Admittedly it is not known which *iuridicus* Ulpian²⁹ had in mind; at any rate, however, in the Byzantine period this text could only have meant *iuridicus Alexandriae*. This is definitely confirmed by Basilica: B. 6, 24, 1: παρὰ τῷ δικαιοδότη Ἀλεξανδρείας καὶ υἰοθεσία γίνεται....³⁰

However, the question of adoption mentioned in Gnom. Id. 41, dealing with the adoption of an abandoned child, remains a mystery. This ruling goes back to the second century A.D., hence before the *Constitutio Antoniniana*, and establishes the possibility of this kind of child being adopted by an Egyptian. This means that here the rulings about Roman adoption are not in force; yet about the form of an Egyptian adoption of this period nothing definite is known. In comments on § 42

²⁶ Cf. also C. 4, 19, 13 and 14 (293 A.D.) and earlier D. 45, 1, 132.

²⁷ Cf. C. 8, 47, 6 (293 A.D.). A reflection of rulings relevant to the pattern to be applied for *arrogatio* and *adoptio* can be found in L 52 of the Syr. Rom. Lawbook, but putting stress upon the legal act being set down in writing—cf. Bruns-Sachau, *Syrisch-römisches Rechtsbuch aus dem fünften Jahrhundert*, Leipzig, 1888, p. 221 ff., Selb, *Zur Bedeutung des Syrisch-römischen Rechtsbuches*, München, 1964, p. 180 and p. 189 (regarding L 58).

²⁸ C. 8, 47, 4; Syr. Rom. L 52; cf. Bruns-Sachau, *op. cit.* p. 223 f., Bergman, *op. cit.* p. 25.

²⁹ Cf. the clearly expressed D. 1, 20, 2: *Iuridico, qui Alexandriae agit...* with the generally cited: *apud iuridicum* in D. 1, 20, 1—suggesting an Italian *iuridicus* in the latter quotation. Cf. Simshäuser, *IURIDICI und Munizipalgerichtsbarkeit in Italien*, München, 1973, p. 28 n. 8; 244. Cf. also Wlassak, *Zum römischen Provinzialprozess*, Wien, 1919, p. 61 n. 9.

³⁰ Palmieri, *Legis actio in alcune fonti giuridiche, Synteleia Arancio-Ruiz I*, Napoli, 1964, p. 524; Simshäuser, *op. cit.*, p. 26 n. 8; 244.

Gnom. Id. no separate place has been assigned to this problem; there is only a vague mention of a „volksrechtliche Form”.³¹ Also suggested for this case is an *adoptio mortis causa*, because of the connection of this paragraph with succession.³² In the face of the lack of source data the question whether a separate legal form existed for the adoption of abandoned children and whether and how the forms in general use could be applied, must continue to remain open.

III

Most of the information available about the form and its essence is supplied by P. Oxy. 1206 and P. Lips. 28.

The contracting parties were Aurelius Horion son of Horion (P. Oxy. 1206) and Silbanos son of Petesios (P. Lips. 28), as adopting parties, and Aurelius Herakles son of Harasis with his wife Isarion (P. Oxy. 1206) and Aurelia Teeus daughter of Thaeasis (P. Lips. 28), as parties surrendering the adoptees.³³ The way of referring to the persons surrendering the adoptees in P. Oxy. 1206—*Αὐρήλιοι Ἡρακλῆς Ἀράσιος...καὶ ἡ συνοῦσα γυνὴ Ἀσάριον Ἀγαθωνος* (as well what is said later: *ὁμολογοῦμεν ἡμεῖς μὲν ὅ τε Ἡρακλῆς καὶ ἡ γυνὴ Εἰσάριον*) shows an interesting equation of the position of the husband and wife who jointly represent one party to the contract. This is remarkable inasmuch, as in sources dealing with adoption, and even in other contracts referring to surrendering a child into somebody else's care (*διδασκαλικά, συγγυραφαὶ ἱροφίτιδες*)³⁴, one rarely finds analogous cases. As a rule only one person is involved and it is a woman (a mother); she also appears in such contracts *μετὰ κυρίου*, even if she acts together with her husband who then play the role of her *κύριος*.³⁵ The sources mentioning a joint action of both parents

³¹ Cf. Uxkull-Gyllenband, *op. cit.* p. 56 (volksrechtlicher Vertrag); Meyer *Zum sogenannten Gnomon des Idioslogos (aus E. Seckels Nachlass)*, Berlin, 1928, p. 32 (volksrechtliche Form). Attention is called to difficulties in determining the form of such adoption by Wenger, *op. cit.*, *AfP* 15, p. 157.

³² Cf. Maroi, *op. cit.* p. 381. This sort of adoption would serve to evade the ruling of § 41 Gnom. Id. However, no source evidence is on hand to support a hypothesis about this form of adoption.

³³ Those adopted, among whom are Patermuthion, who is about 2 years old, and Paesis (P. Lips. 28), who is about 10, do not appear in the role of parties. In P. Lips. 28 Aurelius Proous, the son of Koulos, appears upon the request of the illiterate Aurelia Teeus; moreover, here we find an annotation by one Philosarapis, in whose presence the contract is supposed to have been signed—on this matter cf. Mitteis, *op. cit.*, *AfP* 3, p. 174 f., Wenger, *Die Stellvertretung im Rechte der Papyri*, Leipzig, 1906, p. 83 n. 1.

³⁴ Cf. sources given by Zambon, *op. cit.*, *Aegyptus* 15, pp. 3-66; Hermann, *op. cit.*, *JJP* 11-12, p. 119-139; Adams, *Paramone und verwandte Texte*, Berlin, 1964, pp. 114-165; Hermann, *Die Ammenverträge in den gräko-ägyptischen Papyri*, *ZSS* 76, p. 490-499; Hengstl, *Private Arbeitsverhältnisse freier Personen in den hellenistischen Papyri*, Bonn, 1972, p. 61 f., 83 f.

³⁵ Cf. regarding *διδασκαλικά* the source analysis of Zambon, *op. cit.*, *Aegyptus* 15, p. 25 regarding *Ammenverträge*; Adams, *op. cit.* p. 153 f., Hermann, *op. cit.*, *ZSS* 76, p. 492.

relinquishing a child by a contract are extremely scarce: apart from P. Oxy. 1206 a note to this effect can be found in P. Mich. II 123 R. lines 32–33 (42 A.D.); however, this is merely short note in the records mentioning a contract signed with a wet-nurse (Ammenvertrag) from which the part played by the husband cannot be deduced. Also dubious is P. Mert. III 118 (81–82 A.D.), a very fragmentary document in which a husband and wife make an agreement with a wet-nurse about her taking care of a foundling child to be brought up as a slave.³⁶ Much later, in P. Oxy. 1895 of 554 A.D., a married couple appear as the party accepting a child. It seems open to doubt, whether it is admissible on the basis of these rather scarce data—especially compared with sources showing women acting *μετὰ κυρίου*—to conclude that both parents had the right to dispose of a child, or that equal rights were vested in husband and wife. More readily acceptable seems the assumption that the joint appearance of a husband and wife as one party to a contract, found in the sources cited, especially in P. Oxy. 1206, rather reflects their real participation in preparing the contract and that, legally, action in this case by the man (the child's father) would have been sufficient.³⁷

Astonishing also is the role played by the grandmother of a child surrendered by her for adoption (P. Lips. 28). From this document it appears, that the deceased father of the child before his death asked his brother Silbanos to take care of the child as if it were his own (... ἔδοξεν δέ τὸν ἀδελφοῦ αὐτοῦ Σιλβανὸν κατ' εὐσέβειαν τοῦτον τὸν παῖδα ἔχειν καθ' υἱοθεσίαν πρὸς τὸ δύνασθαι ἀνατρέφεσθαι εὐγενῶς καὶ γνησιῶς ...) a situation implying that the grandmother offering the child for adoption (*υἱοθεσία*) was acting upon the request (authorization) of the child's father.³⁸ But here Wolff³⁹ voices the opinion that, under the conditions described in P. Lips. 28, Silbanos as the uncle of the child was probably the legal guardian of his nephew and therefore unable either to adopt the child or to declare himself the grandmother's *κύριος*, and that this is the reason why she had to act herself, merely depending upon the assistance of Aurelius Proous. However, Wolff himself admits some doubt whether, in case of a dispute, an arrangement of this sort would have been consented to by a Roman official. In this way Wolff partly endorses the doubt raised by Taubenschlag about the true role played by

³⁶ A wet-nurse's husband appears as her *κύριος*—Hengstl, *op. cit.* p. 63 n. 23.

³⁷ Taubenschlag, *Opera* II, p. 327 (Law, p. 151 n. 7) believed that in P. Oxy. 1206 the child's mother also carries into effect her authority over her child resulting from *materna potestas*, but that, being married, she can do it only with her husband's consent. Wolff, *op. cit.*, ZSS 90, p. 68, admitting for Egypt a mother's right to decide her child's future, stresses the fact that: "Fraglich ist nur, ob alle diese faktisch ausgeübten Befugnisse wirklich der herrschenden Rechtsüberzeugung entsprachen".

³⁸ This is the opinion of Mitteis, *op. cit.*, *AfP* 3, p. 184. A different one is held by Wenger, *Papyrusurkunde*, *AfP* 3, p. 559, according to whom the grandmother appeared „auf Grund eines Ubereinkommens der beiden Kontrahenten".

³⁹ Wolff, *op. cit.*, ZSS 91, p. 98 n. 140.

the child's grandmother in this υιοθεσία.⁴⁰ The reference to the father's request mentioned in P. Lips. 28 and the status of Silbanos, who probably acted as the child's guardian, suggest that in this particular case the grandmother was following an agreement between the parties involved—an opinion admitting, however, that at that period—supposing the child's parents had meanwhile died—she had herself the right to take over legal authority with regard to her grandchild. That during the period under discussion a progress in the emancipation of women has taken place is also confirmed by P. Oxy. 1895 where a widowed mother surrenders her child for adoption.⁴¹

IV

In their main declarations both documents (P. Oxy. 1206 and P. Lips. 28) are in agreement; nor do the detailed instructions found in these contracts introduce any essential differences that might result in dissimilar appraisals of their character and legal value. Disparities must rather be ascribed to differences in the factual circumstances under which υιοθεσία took place, and to the higher or lower degree of attention paid by the parties to the formulation of the contract, especially regarding the definition of the most favourable position of the child surrendered for adoption.

According to the texts of the contracts under discussion, surrender of the child takes place εἰς (πρὸς) υιοθεσίαν, a fact which the adopting party confirms by the assurance that they take over the child εἰς υιοθεσίαν. Thus there can be no doubt that in both instances both parties are fully conscious of the character of the contract agreed upon.

The child's position, as promised by the adopting party in accordance with the purpose of υιοθεσία, is defined similarly in both cases: with regard to the adopting party the child acquires the legal status of a lawful, legitimate child (γνήσιον υἱόν).⁴² P. Oxy. 1895 has the same sense: εἰς θυγατέρα νομίμην and (for defining the role of the parents): χώραν γονεων εἰς θυγατέρα. To this is added an explicit assurance about the child's right to inherit from the adopting person—P. Oxy. 1206, line 9–10: πρὸς τό μένειν αὐτῷ τὸ ἀπὸ τῆς διαδοχῆς τῆς κληρονομίας μου δίκαια, cf. line 22; P. Lips. 28, lines 21–22: εἶναι ἑαυτὸν καὶ τῶν ἐμῶν πραγμάτων κληρονόμον υιοθετηθέντα μου. P. Lips. 28 even contains the recognition of the right of

⁴⁰ Taubenschlag, *Opera* II, p. 325 n. 8.

⁴¹ On the possibility of independent action by women without κύριος in an earlier period, and on the gradually progressing tendency (under hellenistic influence) to broaden women's rights in caring for their child cf., among other authors, Taubenschlag, *La compétence du KYPIOΣ dans le droit greco-egyptien*, *Opera* II, pp. 356–358; Kaser, *RPR* II, p. 162–163; Modrzejewski, *La règle du droit dans l'Égypte romaine*, *Proceedings of the Twelfth International Congress of Papyrology*, Toronto, 1970, pp. 361–365; Wolff, *op. cit.*, *ZSS* 90, p. 67–68.

⁴² P. Oxy. 1206 line 21: καὶ ἀπογράψομαι αὐτὸν εἰς ἑμαυτοῦ γνήσιον υἱόν... P. Lips. 28, lines 15–16: εἶδеси πρὸς τὸ εἶναι σου υἱόν γνήσιον καὶ πρωτότοκον ὡς ἐξ ἰδίου αἵματος γεννηθέντα σοὶ... cf. also lines 17–18.

primogeniture in the matter of inheritance (πρωτότοκος).⁴³ Granting the child taken over by υιοθεσία the same status as a legitimate child, including the promise that he is entitled to inherit from the adopting person, implies that both parties had this inheritance in mind on the same basis as was vested in the legitimate children. Hence, in a controversy about the legal character of these provisions one should endorse the view⁴⁴ that these provisions do not constitute a contract about inheritance⁴⁵ but merely establish the fact that in consequence of υιοθεσία the adopted child is entitled to inherit from the adopting person even if he dies intestate.⁴⁶

When a child possessing property of his own is adopted by υιοθεσία, the contract customarily contained pertinent declarations about the legal powers and obligations of both the adopting party and the adopted child. This is shown by P. Lips. 28 where the adopted Paesis is surrendered together with what he owns by inheritance from his deceased parents in the way of land, buildings and variety of household goods. The lack of this sort of declaration in P. Oxy. 1206 is ascribed to the facts that the adopted Patermouthion is a child of two years old, and that this child probably did not own any property of his own,—the more so since his parents were still alive.⁴⁷ The adopting party (Silbanos) accepts in trusteeship the property mentioned in the contract (P. Lips. 28); he promises to take care of it and to turn it over to Paesis after he comes of age (line 20): φυλάξει και ἀποκαταστήσει αὐτῷ ἡλικία γενομένῳ μετὰ καλῆς πίστεως.⁴⁸ Here the lack of a mention of a possible authority of the adopting person over the property of the adopted child, as well as the limit set to the period of this authority up to the time of the child's coming of age, are clearly in agreement with the local law (Volksrecht) concept of the relation between parents and children and with a limitation of this authority over the children up to the time they reach a definite age.⁴⁹

Apart from the generally expressed statement that the adopting person promises the adopted child the status of a legitimate child of his own, the contracts specify definite obligations with regard to the child. In P. Lips. 28 the adopting persons

⁴³ This is probably a reminder of the ancient Egyptian law assigning definite rights of inheritance to the first-born; Kreller, *op. cit.* p. 152; Seidl, *RA*, p. 139 n. 275; Wolff, *op. cit.*, ZSS 91, p. 97.

⁴⁴ Wolff, *loc. cit.*, Mitteis, *op. cit.*, *AFP* 3, p. 181 regarding P. Lips. 28, although in Grundz. II 1 p. 275 he looks upon this sort of a contract as a „Zieh- und Erbvertrag“.

⁴⁵ Cf. Kreller, *op. cit.*, p. 237 (here also San Nicoló, *ZvRW* 39, p. 292); Taubenschlag, *Law*, p. 210; Kaser, *RPR* II, p. 341.

⁴⁶ Regarding the hellenistic systems of inheritance when no will exists, under which adopted children inherit on the same terms as real children, cf. P. Dura Europos 12; Wolff, *op. cit.*, ZSS 90, p. 73 f.

⁴⁷ Wolff, *op. cit.*, ZSS 91, p. 96.

⁴⁸ „Zur treuhänderischen Verwaltung“ — Wolff, *op. cit.*, ZSS 91, p. 96. Cf. also Mitteis, *op. cit.*, *AFP* 3, p. 181.

⁴⁹ Cf. Arangio-Ruiz, *FIRA* III, p. 38; Mitteis, *op. cit.*, *AFP* 3, p. 180; Taubenschlag, *Opera* II, p. 301 ff; 316.

agree to take proper care of the adopted child Paesis in regard to food and clothing, while in P. Oxy. 1206 Horion engages himself not to forsake or sell the child he has taken care of.

It would seem that in both cases the declarations are identical, expressing the solicitude of those surrendering their child to ensure suitable living conditions in the home of the adopting person; this is particularly in evidence in P. Oxy. 1206—undoubtedly in view of a difference in the facts of the case. Silbanos (P. Lips. 28) is the uncle of the adopted Paesis and carries out the request of his deceased brother; here kinship bonds ensure that he will not act in an unseemly way towards his adopted nephew. Different is the case in P. Oxy. 1206 where Patermouthion is turned over to a stranger; this fact might have prompted his parents, in their care for their child, to demand from Horion a definite assurance that he would neither forsake nor sell the adopted child.⁵⁰ The topic raised in P. Oxy. 1206 about forsaking or selling a child is nothing unusual in this part of the Roman empire. Diocletian's rescript C. 8,46,6 (288 A.D.), forbidding the practice of the hellenistic *apokeryxis*, is definite proof that this practice was in use in the eastern provinces.⁵¹ It is this rescript that with regard to adopted children is emphatically supplemented by P. Oxy. 1206 and D. 45,1,132.⁵² P. Oxy. 1206 happens to be one of the proofs that children, adopted children too, could be sold.⁵³

P. Oxy. 1206 as well as the later P. Oxy. 1895 also contain the restriction that those who surrender a child for adoption shall not be entitled at a later date to deprive the adopting party of the child.⁵⁴ The insertion of this reservation results probably from the real circumstances: as Aurelia Herais (P. Oxy. 1895) explains, poverty was the reason why she had to surrender her daughter for adoption. At the same time she agreed that, should she want to take the child back in defiance of the agreement, she would pay back to the adopting party the cost of having kept the child. This shows that the child's mother anticipated the possibility that her material conditions might improve and that she would be able to take back the child she had had to relinquish under pressure of poverty. A similar situation of duress may

⁵⁰ Cf. the question raised in D. 45, 1, 132, whether in the case of liability for abandoning a child (*si ... domo eum propulerit*) it might be of importance that the forsaken child was "*filius an alumnus vel cognatus agentis*". This remark may also be proof of the care by parents or relatives about the fate of a child surrendered for adoption.

⁵¹ C. 8, 46, 6: *Abdicatio, quae Graeco more ad alienandos liberos usurpabatur et apoceryxis dicebatur, Romanis legibus non comprobatur*. About *apokeryxis* cf. Wurm, *op. cit.*, pp. 79–86 (incl. further lit.), according to whom: *Mit der Begriff mos ist hier das Volksrecht gemeint* (p. 80).

⁵² Wurm, *op. cit.*, pp. 82–86; cf. also Selb, *op. cit.* pp. 86–89 (regarding L. 58 cf. also Wurm pp. 90–92).

⁵³ Taubenschlag, *Opera* II, p. 306; Mayer-Maly, *Das Notverkaufsrecht des Hausvaters*, ZSS 75, pp. 143–144.

⁵⁴ P. Oxy. 1206, line 12–14: ὡσπερ οὐδὲ καὶ ἡμῖν τῷ τε Ἡρακλείῳ καὶ τῇ γυναικὶ Εἰσαρίν ἐξέσται τὸν παῖδα ἀποσπᾶν ἀπὸ σοῦ τοῦ Ωρίωνος διὰ τὸ ἀπαχαπλῶς εἰς υἱοθεσίαν ἐκδεδωκέναι... cf. also P. Oxy. 1895, line 11.

also have existed in the life of Herakles and Isarion (P. Oxy. 1206) who surrendered their child for adoption. An improvement in their situation might make them want to take back their child, and account is taken of this by [the adopting party's demand for a definite declaration in the contract.

The circumstance that a person who surrendered a child for adoption, might after all want to take the child back, might be interpreted as proof that the child surrendered by υιοθεσία did not lose contact with his true family.⁵⁵ Still, this is doubtful in view of the formulation adopted in the documents, stating that the surrender of the child is complete (ἀπαξαπλῶς—P. Oxy. 1206) and for good (νῦν εἰς τὸν ἐξῆς ἄπαντα χρόνον—P. Oxy. 1895). Yet it seems justifiable to observe⁵⁶ that statements of this sort reveal a less binding treatment of a υιοθεσία contract by both parties than appears to be the rule under the precisely formulated rigidity of *patria potestas* in the Roman adoption laws.

V

The above analytical study of the available documents about υιοθεσία reveals that their essential elements was the adjudication to the adopted child of the same status as that of child of the family, including the resulting right to inherit. This adjudication, compared with which all further declarations about the definite duties of the parties with regard to food, clothing, property etc. are details, is convincing proof that these contracts were not mere "Zieh- und Erbverträge", but represented a genuine adoption.⁵⁷ However, there is no agreed view of υιοθεσία: in the contracts he discusses, Taubenschlag sees "volksrechtliche Adoptionsverträge",⁵⁸ whereas, in contrast, Wolff is inclined to treat the papyri discussed above as evidence of the Roman vulgar law.⁵⁹ In view of this disparity in opinions, a renewed analytical investigation of the elements expressed by υιοθεσία is indispensable, especially from the viewpoint of hellenistic and Roman legal conceptions.

To start with, there seems to be no doubt, that the contracts under discussion in no way comply with the rulings of Roman law concerning the form of *adoptio* (this form would have been appropriate for P. Oxy. 1206) or of *arrogatio* (for P. Lips. 28 and P. Oxy. 1895). Moreover, these contracts not only fail to conform, but contradict outright the legal ban on performing adoption in just this manner (C. 8,47,4),⁶⁰

⁵⁵ Taubenschlag, *Opera* II, p. 328 n. 22.

⁵⁶ Seidl, *RA*, p. 139 on P. Oxy. 1895.

⁵⁷ So Taubenschlag, *Opera* II, p. 301; 320 (opposing Mitteis), also Wolff, *op. cit.*, *ZSS* 91, p. 94 and 99; Kaser, *RPR* II, p. 149.

⁵⁸ Taubenschlag, *loc. cit.*, Kaser, *loc. cit.* (Diese Verhältnis ist zwar volksrechtlich eine Adoption...)

⁵⁹ Wolff, *op. cit.*, *ZSS* 91, p. 93; 99 (...unsere Papyri ... auch als Zeugnisse für römisches Vulgarrecht anzusprechen sind).

⁶⁰ Cf. also C., 19, 13 and 14. Nor have the rulings about *arrogatio* of a person under age been heeded (C. 8, 47, 2) — Mitteis, *op. cit.*, *AFP* 3, p. 177; Taubenschlag, *Opera* II,

and therefore they could not possibly have been acknowledged as *adoptio* by the Roman law then officially in force.⁶¹ Still, obviously these contracts were treated by both the parties concerned and by the notary as effective adoptions.⁶² This shows that in spite of legislation, the practice continued. The continued use of this form shows the necessity of clearly distinguishing between *adoptio* according to Roman law and *υιοθεσία* as practised in Egypt. At the same time the mention found in P. Col. Zen. 58 (248 C.C.) of συγγραφάς τῶν.. τεκνοθεσιῶν (cd. II), as well as terminological similarities (Item I) imply, that the origin of the contractual, written form of *υιοθεσία* should be looked for in hellenistic law.⁶³

As far as the essence of this matter is concerned, the first question is that of the acquisition of a father's authority as the purpose and the consequence of adoption—a topic non mentioned at all in *υιοθεσία*. This omission, strongly stressed in the literature⁶⁴ deserves certainly a more penetrating treatment than the mere statement that, unlike the Roman *adoptio*, neither P. Oxy. 1206 nor P. Lips. 28 makes any mention of the acquisition of a father's authority by the adopting person. Moreover, it is remarkable that in both documents first place is given to the rights of the child and the obligations of the adopting person towards the child, while the rights of the adopting person, resulting from *υιοθεσία* are not mentioned at all. This conforms with the local law (Volksrecht) conception of the relations of parents to their children, expressing the care they owe to their child.⁶⁵ Also characteristic of these relations—contrasting with the effect of Roman *patria potestas*—is the affirmation of the legal title of the adopted child to property ownership, and the limit set to the

p. 300; Wenger, *Quellen*, p. 814 n. 895. As to P. Oxy. 1895 cf. Seidl, *RA*, p. 139; Taubenschlag, *Opera* II, p. 327 n. 21.

⁶¹ Cf. also D. 45, 1, 132 and the distinction made by Paulus between the contract presented to him and an adoption lawfully performed. For granting to a contract of *υιοθεσία* the character of a formal Roman *adoptio* must have been irrelevant the clause stipulating *καὶ ἐπερωτηθεὶς ὁμολόγησα*, which had anyway at that time already lost its real significance. Cf. Simon, *Studien zur Praxis der Stipulationsklausel*, München, 1964, p. 89 (rec. Amelotti, *Iura* XVI, 2, p. 241); Taubenschlag, *Law*, p. 396.

⁶² P. Lips. 28 contains a notary's annotation. Meyer, *op. cit.*, p. 22 believes that. P. Oxy. 1206 also belongs to *tabulae per tabellionem confectae*. Cf. also Wolff, *op. cit.*, ZSS 91, p. 95 (doch wohl von Behörden und Gerichten als wirksam behandelt wurde).

⁶³ Mitteis, *op. cit.*, *AfP* 3, p. 179 is of the opinion that the term *υιοθεσία* implies a Greek origin of this form of adoption. Nor does Wolff pay any heed to terminological congruities or to P. Col. Zen. 58; he stresses the lack of relevant sources (*op. cit.* ZSS 91, p. 95) and mentions—in view of the data given above probably with an excessive emphasis—that „mit den uns bekannten Adoptionsformen altgriechischer Rechte ... hat die nicht mehr gemein als mit der Arrogation und Adoption des klassischen römischen Rechts“.

⁶⁴ Among other authors cf. Bonfante, *Corso* I, Roma 1925, p. 26; Mitteis, *op. cit.*, *AfP* 3, p. 180 f., Wolff, *op. cit.*, ZSS 91, p. 95 f., Wenger *Quellen*, p. 814; Lewald, ZSS 33, p. 634.

⁶⁵ Taubenschlag, *Opera* II, p. 299; 301 (volksrechtliche väterliche Vormundschaft); Arangio-Ruiz, *Storia del diritto romano*, Napoli 1957, p. 333 (funzione protettiva).

period for which the adopting party may manage the child's property until it comes of age (P. Lips. 28, col. IV). Significant also for the evaluation of υιοθεσία in terms of paternal authority is the comment of Paulus (D. 45,1,132) about emancipating and disheriting an adopted person. He states explicitly that "...haec enim pater circa filium solet facere: igitur non aliter eum quam at filium observasset". This assertion, consistent with the meaning of Roman *patria potestas*, is at variance with the obligation agreed to by Horion (P. Oxy. 1206) not to forsake the child—a stipulation clearly reflecting the practice of *apokeryxis* well known in the hellenistic world. Also in contrast to Roman adoption granting full authority over an adopted or arrogated person, stands the proviso that the adopting party cannot be deprived of the child. Significant moreover is the statement made by Paulus (D. 45,1,132) that, with regard to a contract clearly differing from a legitimately performed *adoptio*, any reflections about *emancipatio* and *exhereditatio* are futile because of the absence of relations between the child and the adopting person (...in eo autem qui non adoptavit...non prospicio: an et hic exigimus exheredationem vel emancipationem, res in extraneo ineptas?). This dissociation of a contract performed by υιοθεσία from problems connected with the application of Roman *patria potestas* seems to be fully confirmed by the formulation given in P. Oxy. 1208 (291 A.D.) and 1268 (3rd cent. A.D.), because both documents contain the statement that the father does enjoy paternal authority in the sense of Roman law.⁶⁶ This emphasis may be evidence of some remoteness felt by the contracting parties from the Roman concept of *patria potestas*, especially in view of the fact that these documents are really departing from this Roman law.⁶⁷ Furthermore, the lack of this—manifestly feasible—sort of provision in P. Oxy. 1206 may prove, that to the parties concerned this provision was meaningless and therefore dispensable. Also essential for the relation between υιοθεσία and *patria potestas* is the possibility revealed in papyri that children could be surrendered for adoption by women and adopted by women.⁶⁸

From the above reflections the conclusion can be drawn that there is no connection between the contracts here discussed, i.e. υιοθεσία and the Roman *patria potestas*, with the proviso however, that the former contain clearly expressed elements

⁶⁶ P. Oxy. 1208, line 6: πατὴρ τοῦ καὶ ἔχοντος αὐτὸν ὑπὸ τῇ χειρὶ κατὰ τοὺς Ῥωμαίων νόμους. P. Oxy. 1268, line 9: τοῦ πατὴρ ἔχοντος αὐτὴν ὑπὸ τῇ χειρὶ κατὰ τοὺς Ῥωμαίων νόμους.

⁶⁷ In P. Oxy. 1268 the child (*filius familias* in this version) has his own home, while in P. Oxy. 1208 the child is granted his title to *bona materna*. Cf. Taubenschlag, *Opera* II, p. 314, with the editor's comment cited in footnote 180, in which he stresses this divergence of opinions as proof that in Egypt the Roman *patria potestas* was treated in a rather careless manner. Cf. also Arangio-Ruiz, *Storia*, p. 333 and *FIRA* III, p. 38; Meyer, *op. cit.* p. 22.

⁶⁸ P. Oxy. 1895; P. Lips. 28; P. Oxy. 583 (119–120 A.D.); also C. 8, 47, 5 is directed against his tendency in the eastern provinces. Cf. Taubenschlag, *Opera* II, p. 324 n. 6; Modrzejewski, *La règle ...*, p. 365; Lewald, *ZSS* 33, p. 634 n. 2.

characteristic of the interrelation between parents and children, in accordance with legal notions observed locally, constituting what is called *Volksrecht*⁶⁹.

The case is similar in the field of inheritance: according to the Roman inheritance system (D. 45,1,132) υιοθεσία, because not acknowledged as an adoption performed in a legitimate way, failed to grant to the adopted person the right of inheritance. On the other hand, all sources reporting the practice of υιοθεσία, among them P. Oxy. 1206 and P. Lips. 28 (close on 50 years apart), contain evidence that υιοθεσία was an institution of enduring vitality and that it gave rise to important consequences, including the right of inheritance. These facts reveal an effective preservation of institutions of local law—convincing proof of which is the status of primogeniture granted to an adopted child, as seen in P. Lips. 28.

In consequence it appears that, as to form and meaning, υιοθεσία has no place in the concept of Roman law; that, on the contrary, the elements of the formulation and the essence of υιοθεσία clearly reflect concepts drawn from local laws, and that here lies the source of its formulation. These legal disparities can in no way be eliminated by the practical arguments raised by Wolff⁷⁰. the practice of υιοθεσία within the confines of the Roman empire and of the rule of Roman law, or the analogy of its functions with Roman *adoptio*. These facts need by no means indicate an equality in legal structure—the more so that, notwithstanding the lack of comprehensive evidence of hellenistic standards or of the tenets of Egyptian adoption⁷¹ the available sources do contain elements clearly illustrating legal disparities between adoption practiced in the provinces, i.e. υιοθεσία, and Roman *adoptio*. Hence it seems that Wolff's assertion that υιοθεσία is part of a law defined by him as "ein dem Geiste nach der Sphäre des römischen Vulgarrechts zuzurechnendes Provinzialrecht" requires to be altered into a contrary version; that one should rather speak of "ein dem Geiste nach der Sphäre des Volksrechts zuzurechnendes Provinzialrecht", this version corroborating Taubenschlag's assertion that υιοθεσία signifies "die volkrechtliche Adoption".

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⁶⁹ A further problem extending into more general problems of authority in the family known from papyrus evidence, is the question how far υιοθεσία is used as a *terminus technicus* for defining legal relations within a family and for eliminating the necessity of specifying their particular elements, just as in the sources of Roman law terms like: *adoptio*, *filius adoptivus* etc. do not require any more precise wording to express that by this act (by *adoptio*) a paternal authority has been acquired. Worthy of note also is the analogy seen between the formulation of the position of a child taken charge of by υιοθεσία as a υἱὸν γνήσιον and the vindication of the adopted child as "*filius meum esse*" as expressed in Roman *adoptio sensu stricto*.

⁷⁰ Wolff, *op. cit.*, ZSS 91, pp. 97–99.

⁷¹ Yet Wolff is justified, *op. cit.*, ZSS 91, pp. 91–95 in pointing out that the Old-Babylonian influence which Taubenschlag (*Opera* I, p. 468 f.) claims to have discerned, should be repudiated.