

De debito bis soluto

An edifying story on the administered oath

(BHG *Novum Auctarium* 1317n)*

by

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The rich tradition of *Apophthegmata Patrum* includes several tales whose edifying purpose extends beyond the boundaries of the life in the desert, yet directs rigorous criticism towards aspects of social life and worldly conduct. Remarkably, in these stories well-established practices both of private and public life in Roman society are rejected and repudiated as utterly contradicting the Gospels' teaching or not conforming to the ideals of a "genuinely Christian" behaviour. In other words, the relatively small impact of Christianity on the basic institutions of Roman Law does not imply that the Roman legal system was not met with the rigorist comments of the Fathers of the desert, who, in one way or another, were the representatives of a protest movement against the secularisation of the Church or her compromising attitude. In the story edited and discussed here, fierce criticism is reserved for the widely used practice of oath-taking, which, far from being legally and socially eradicated, continued to serve either as means of proof in law courts or as a formula for asserting an individual's veracity or loyalty out of court.¹

* I am much indebted to Professor Constantine Pitsakis for his comments and suggestions on this paper. I also thank Mr Pierre Augustin for discussing with me various aspects of the manuscript tradition of the text edited here.

¹ On the legal and cultural aspects of oath-taking in Roman antiquity, previously and afterwards, see J. PLESCIA, *The Oath and Perjury in Ancient Greece*, Tallahassee 1970; M. KASER, *Das römische Privatrecht. I: Das altrömische, das vorklassische und klassische Recht*, Munich ²1971, p. 25 ff.; 2: *Die nachklassischen Entwicklungen*, Munich 1959, ²1975, p. 384 ff.; L. WENGER, *Die Quellen des römischen Rechts*, Wien 1953, p. 322, 840–1; A. KREIDER, *Encyclopedia of Early Christianity*, New York-London ²1999, p. 823–824; S. N. TROIANOS, *Ἡ ἐκκλησιαστικὴ δικονομία μέχρι τοῦ θανάτου τοῦ Ἰουστινιανοῦ*, Athens 1964, p. 109–112; and H. SARADI, *Ὁ ὄρκος στὰ βυζαντινὰ συμβόλαια (9ος-15ος αἰ.)*, *Τόμος τιμητικὸς Κ. Ν. Τριανταφύλλου*, Patras 1990, p. 385–397 (with extensive bibliography).

The text edited here for the first time (*BHG Novum Auctarium* 1317n) is included in the long collection of *Apophthegmata patrum* classified by J. Cl. Guy in *la série des anonymes*.² In manuscripts it appears with no title or any distinction whatsoever. For the present edition it has been collated on the basis of seven manuscripts:³

Vaticanus gr. 1599 (= V), s. X, parchment, 285 x 210 mm., ff. 347, copied by at least three hands in single columns; our text occupies f. 208r-v.⁴

Coislinianus gr. 126 (= C), s. X-XI, parchment, 366 x 280 mm., two columns, ff. 353; our story occupies ff. 277v–278v.⁵ The part of the collection that covers ff. 158–246 of this manuscript was edited by F. Nau in subsequent volumes of the *Revue de l'Orient Chrétien*.⁶

Parisinus gr. 890 (= P), s. XI, parchment, 265 x 180 mm, single columns, ff. 293; our text occupies ff. 271v–272v.⁷

Sinaiticus gr. 448 (= S), *anno* 1004, parchment, 340 x 260 mm., ff. 340, copied by at least two hands in two columns; our story is preserved in ff. 248–249. According to its colophon (f. 340v), the manuscript was completed on Monday, 19 June, 6512 (= 1004), and was copied by “the humble and sinful” Leo.⁸ Notable in S is the consistent writing of iota adscript.

² J. CL. GUY, *Recherches sur la tradition grecque des Apophthegmata Patrum (Subsidia Hagiographica* 36), Brussels 1962, p. 59–123. On the classification and the complexity of the textual tradition of the *Apophthegmata Patrum* see also M. HINTERBERGER, *Probleme der Texterstellung der Apophthegmata Patrum*, *JÖB* 46 (1996), p. 25–43. A critical edition of the complete series is being prepared by CHIARA FARAGGIANA DI SARZANA; see *Apophthegmata Patrum: Some Crucial Points of their Textual Transmission and the Problem of a Critical Edition*, *Studia Patristica* XXIX, ed. E. LIVINGSTONE, Leuven 1997, p. 455–467.

³ I studied C, V, and A *in situ*, P, N, and B by means of photographic reproduction provided by the respective libraries and the Institut de Recherche et d'Histoire des Textes, in Paris. Finally, I studied S through a microfilm in the Centre of Sinaitic Studies in the Theology Faculty of Athens University; I would like to thank Prof. SP. KONTOYANNIS for providing me with all the necessary facilities.

⁴ C. GIANNELLI, *Codices Vaticani graeci. Codices 1485–1683*, Vatican 1950, p. 234–242.

⁵ B. DE MONTFAUCON, *Bibliotheca Coisliniana olim Segueriana*, Paris 1715, p. 200; R. DEVRESSE, *Bibliothèque nationale, Département des manuscrits. Catalogue des manuscrits grecs. II. Le fonds Coislin*, Paris 1945, p. 121; F. HALKIN, *Manuscrits grecs de Paris: Inventaire hagiographique (Subsidia Hagiographica* 44), Brussels 1968, p. 252–253; the *narratio debitum bis solutum* is listed in *ibid.*, p. 253, letter k.

⁶ See vols 12–14 (1907–1909) and 17–18 (1912–1913); also GUY, *op. cit.*, p. 16 and 63–88, on this story in particular p. 67, no 497.

⁷ HALKIN, *Manuscrits grecs de Paris...*, p. 84; and GUY, *op. cit.*, p. 89–91.

⁸ For this manuscript see V. GARDTHAUSEN, *Catalogus codicum graecorum Sinaiticorum*, Oxford 1886, p. 109; for a more detailed description of its content and colophon see GUY, *op. cit.*, p. 16–17 and 94–97.

Neapolitanus gr. II C 27 (= N), s. XII, parchment, 325 x 245 mm., ff. 306, two columns; our text occupies ff. 210v–211v. From a marginal note on f. 292 we are informed that N was copied διὰ χειρὸς Χριστοφόρου (?) ταπεινοῦ καὶ ἁμαρτωλοῦ.⁹ As in S, notable in N is the consistent writing of iota adscript.

Atheniensis gr. 504 (= A), s. XII, parchment, 255 x 195 mm., ff. 275; the manuscript, copied in single columns by three different hands, ends abruptly on f. 275v. Ff. 1–39 are copied on paper and date from the 14th c. Our text occupies ff. 195v–196v.¹⁰

Berolinensis Phill. 1624 (gr. 221) (= B), s. XIV, paper, 291 x 212 mm, ff. 283, copied in double columns. Our text occupies ff. 189–190.¹¹

As they stand today, the *Apophthegmata patrum* exhibit a great variety in terms of narrative structure and typology. In the introduction to his posthumously published *Collection systématique*, Jean-Claude Guy classified them in five different typological patterns.¹² According to his reconstruction, our story would correspond to the fourth type comprising accounts that hardly retain the character of *Apophthegmata*, being rather “longs récits qui ont eu sans doute leur existence autonome avant d’être intégrés tardivement dans des collections.”¹³ The story transmits the conversation between an Old Man and his disciple about a dispute that made a strong impression on the latter during his sojourn in Constantinople. The subject matter of the dispute between two rich men was a debt of 2,000 *nomismata*. This was certified by a note of the debtor’s father presented by the creditor, but the debtor retorted that the

⁹ The most recent and detailed presentation of this manuscript is by E. MIONI, *Catalogus codicum graecorum Bibliothecae Nationalis Neapolitanae*, vol. I, 1, Rome 1992, p. 196–201. It was thought that it originated from the region of Salento: A. JACOB, *Culture grecque et manuscrits en Terre d’Otrante, Atti del III Congresso Internazionale di Studi Salentini*, Lecce 1980, p. 57–58. However, in a recent communication Prof. André Jacob pointed out to me that any association of this manuscript with Salento is far from certain.

¹⁰ I. and A. SAKKELION, *Κατάλογος τῶν χειρογράφων τῆς Ἐθνικῆς Βιβλιοθήκης τῆς Ἑλλάδος*, Athens 1892, p. 100; FR. HALKIN, *Catalogue des manuscrits hagiographiques de la Bibliothèque nationale d’Athènes (Subsidia Hagiographica 66)*, Brussels 1983, p. 60–61; and GUY, *op. cit.*, p. 17–18 and 93–94.

¹¹ On this manuscript see W. STUEMUND/L. COHN, *Verzeichniss der griechischen Handschriften der königlichen Bibliothek zu Berlin*, I, Berlin 1890, p. 98; and W. BOUSSET, *Apophthegmata. Studien zur Geschichte des ältesten Mönchtums*, Tübingen 1923 (repr. 1969), p. 10–13.

¹² *Op. cit.*, p. 21.

¹³ *Les Apophthegmes des Pères. Collection systématique. Chapitres I-IX (SC 387)*, Paris 1993, p. 21–23.

debt had been repaid by his father who, however, had forgotten to claim the note back from his friend. Unable to reach an agreement, the two disputants ended taking oaths. The debtor, fearing that he would be regarded as a profiteer, should he swear that the debt had been paid by his father, opted for a seemingly judicious solution: either to swear that the debt of 2,000 *nomismata* had been repaid and hand them over once more or make the adverse party swear that the money was still owed to him without finally receiving anything back. Instead of approving the debtor's conciliatory attitude leading to a mutual cancelling of debts, the Old Man stated that human vanity lurked behind it and offered a more radical solution instead. The man in the story would have demonstrated his spiritual perfection only if, following the Gospels' teaching, he had not agreed to take an oath or even administer one, the more so since he was a rich man and knew that the debt had indeed been repaid; for, only an act fulfilled in good disposition would have pleased God.

As it does not describe the dispute from start to finish, the story poses several problems of interpretation. In the first place, nowhere is it stated whether the dispute was held in court or outside of it. It has been noted that settlements out of court seem to have proliferated in Late Antiquity.¹⁴ The preference for private settlements over other options to solve disputes has been explained by the complexity of legal procedure and the fact that going to court was more costly and time-consuming.¹⁵ In the case in question an additional reason for this preference may have been the personal relationship in which the disputants seem to have been entwined. However, the expressions ἐπενεχθέντος αὐτῷ τοῦ ὄρκου (v. 32) or ἀντεπενέγκαι ὄρκον (v. 33–34) used in the text by the Old Man would suggest that this was rather a case of a civil trial where the oath was administered by both parties before a judge or an arbitrator. Yet, this being so, why did “the whole matter end up in an oath,” one of the “litigants” having the debit note in hand? In other words, why is the recourse to an oath needed when there is no absence of proof? Likewise, it is not completely clear why the alleged debtor would have been regarded as a profiteer once he swore that the debt had been repaid by his father. Moreover, why did his proposal attract admiration although it

¹⁴ A. ARTHUR SCHILLER, *The Courts Are No More*, *Studi Edoardo Volterra*, vol. I, Milan 1971, p. 469–502. On the different options for settling disputes see now J. D. HARRIES, *Resolving Disputes: The Frontiers of Law in Late Antiquity*, in: *Law, Society, and Authority in Late Antiquity*, ed. R. W. MATHISEN, Oxford 2001, p. 68–82.

¹⁵ See the analysis in TR. GAGOS/P. VAN MINNEN, *Settling a Dispute. Toward a Legal Anthropology of Late Antique Egypt*, Ann Arbor 1994, p. 40 ff.

came from the party who, from a legal point of view, was in a difficult position and rather looked like a play on legal procedure? Is it just because money is treated in a scornful way in the end, according to the point initially made by the Old Man's disciple (v. 6–7)? Finally, we are also left in the dark as to how the dispute might have been settled. Once both oaths had been officially taken by the two disputants, would the paying in double of the sum due or the return of the promissory receipt have followed in private? In total, this account, in many ways elliptic, cannot but leave us with several questions, especially regarding its legal aspects. This does not mean, however, that its treatment of oath-taking alone does not deserve a certain discussion.

A concise definition of the administered oath (*iusiurandum necessarium*), the focal point of the story under discussion, is provided by the paroemiographer Zenobius: “ἐπακτός ὄρκος· οὐκ ἐγχώριος, ἀλλ’ ὑπὸ ξένης ἐπηγμένος· ἢ ὄν ἕτερος ἐπάγει, οὐκ αὐθαίρετος” (cent. III, 80). Shorter is that of Apostolius: “ἐπακτός ὄρκος· ὄν ἕτερος ἐπάγει· οἷον βίαιος, οὐκ αὐθαίρετος” (cent. VII, 62). The definition is reproduced in the Souda in two entries: Ἐπακτός ὄρκος· ὁ μὴ αὐθαίρετος, ἀλλ’ ἐφ’ ὄν ἕτερος ἄγει. (E 1934) and Ἐπακτός ὄρκος· ὄν ἂν τις αὐτὸς ἐκὼν ἑαυτῷ ἐπάγεται, τοιούτων αἴρηται· ἄλλοι δὲ τοῦναντίον, ὁ ἀλλαχόθεν ἐπιφερόμενος, ἀλλ’ οὐκ αὐθαίρετος. ἔστι δὲ ὄρκου τρία εἶδη· ἀπάμοτος, κατώμοτος, ἐπακτός (E 1935).¹⁶

In Justinianic Law and the commentaries of Byzantine jurists *iusiurandum necessarium* is classified as one of the three types of oath, the other two being the *iusiurandum voluntarium*, given out of court, and *iudiciale*, imposed by a judge.¹⁷ *Iusiurandum necessarium* is the ultimate means of proof as it may be administered only in absence or lack of all other kinds of proof.¹⁸ It is contingent upon the volition of whom the burden of proof lies on and, once given by the adverse party, is binding on the judge. Yet, again, the latter may not permit this judicial means if any other kind of proof exists.¹⁹ As has been pointed out, *iusiurandum iudiciale* was *necessarium* once the oath had to be taken,

¹⁶ A. ADLER II, 329.

¹⁷ D. SIMON, *Untersuchungen zum justinianischen Zivilprozess*, Munich 1969, p. 315–348.

¹⁸ See e.g. H. R. LUG, Ein Bruchstück des Codex-Kommentars des Theodoros, *FM I* (1976), p. 15, C. 4.1.3: Ἐπὶ πασῶν τῶν ἀγαθῶν ὄρκον ἐπιφέρει ὁ δικαστής, φ’ δ’ ἂν θέλῃ τῶν δικαζομένων ἐν ἀπορίᾳ ἀποδείξαι.

¹⁹ See especially SIMON, *op. cit.*, p. 329–339; also P. GOUNARIDIS, Ὁρκος καὶ ἀφορισμός στὰ βυζαντινὰ δικαστήρια, *Symmeikta 7* (1987), p. 43–48, with a discussion and examples drawn especially from sources dating from the 11th c. and later.

and *iusiurandum necessarium* was *iudiciale* once it had to be approved by the judge.²⁰

Thus, in the single extant Byzantine corpus on jurisprudence, the eleventh-century *Peira* of Eustathios Romaios, we hear of a judge pronouncing that “ὁ αἰτηθεὶς ὄρκος χάραν οὐκ ἔχει” (69.2). However, in a contemporary case judged in South Italy which, in this aspect, reminds us of our story, the abbot Clemens was put to oath by a court comprising the *strategos* of Lucania and several abbots, despite the availability of documents of proof.²¹

Oaths on gods and emperors had a long history in church-state relations in the pagan Roman era. As has been pointed out, the oath’s condemnation in the Gospels and the negative disposition of the early Church Fathers resulted only “in the avoidance of ‘superfluous’ oaths, in the use of oath-like formulas, and the release of the higher clergy from having to swear oaths.”²² The pagan practice of swearing on the altar, whether it was performed on a legal occasion or under less solemn circumstances, had its impact on the daily life of Christians, who, in turn, would swear on the Holy Bible placed on the holy altar.²³ Oath-taking was particularly condemned as often leading to perjury.²⁴ Among other Christian Fathers, the whole approach irritated John Chrysostom and became a recurrent theme in his Homilies to the people of Antioch; in countless instances the latter were reproached for having an easy recourse to oaths.²⁵ Both

²⁰ SIMON, *op. cit.*, p. 316.

²¹ See A. GULLOU, *Saint-Nicolas de Donnoso (1031–1060/1061)*, Vatican City 1967, act no 3, p. 44ff, v. 11 ff.; cited by S. N. TROIANOS, Ἡ ἐκκλησιαστικὴ δικαιοδοσία μεταξύ 565 καὶ 1204, *EKEIEA* 13 (1966), p. 108 n. 12.

²² See L. BURGMANN, *ODB* p. 1509, s. v. oath; and R. M. GRANT, Sacrifices and Oaths As Required of Early Christians, *Kyriakon: Festschrift Johannes Quasten*, ed. R. GRANFIELD/J. JUNGSMANN, Münster 1970, I, p. 12–17.

²³ See the remarks and the examples cited by CH. PIETRI, Le serment du soldat chrétien. Les épisodes de la *militia Christi* sur les sarcophages, *Mélanges d’Archéologie et d’Histoire* 1962, 2, p. 649–664 (= *Christiana Respublica. Collection de l’École Française de Rome* 234, vol. II, Rome 1997, p. 1135–1150).

²⁴ See, for instance, J. F. KINDSTRAND, Florilegium e Basilio Magno ineditum, *Eranos* 83 (1995), p. 119, no. 17: Ὁ μὲν γὰρ εὐορκῶν, τυχὸν ἂν ποτε καὶ παρασφαλεῖ· ὁ δὲ μὴ ὁμνῶν, τὸν τῆς ἐπιορκίας κίνδυνον διαπέφυγε.

²⁵ *E.g.* Homily *ad populum Antiochenum* XV, 5: ἐπειδὴν ἴδω τινὰ πλησίον τῆς τραπέζης ταύτης ἐλθόντα, καὶ τὰς χεῖρας θέντα, καὶ τῶν εὐαγγελίων ἀνάμενον καὶ ὁμνῶντα (PG 49, col. 160); or, Homily IX in *Acta Apostolorum*: Ἐποίησαν συνθήκας πολλὰς οἱ περὶ τὸν Ἀβραάμ καὶ ἔσφαζαν θύματα, καὶ θυσίας ἀνήνεγκαν καὶ οὐδέπω ἦν ὄρκος. Πόθεν οὖν ἐπιστῆλθεν ὁ ὄρκος; Ὅτε τὰ κακὰ ἠυξήθη ὅτε πάντα ὁμοῦ ἄνω καὶ κάτω γέγονεν ὅτε πρὸς εἰδωλολατρείαν ἀπέκλιναν. . . ἀλλὰ τί λέγω περὶ τῶν ὄρκων τούτων ἀφεις τοὺς ἐπ’ ἀγορᾶς; Ἐκεῖ γὰρ οὐδὲν τοιοῦτον ἔχεις εἰπεῖν· ὑπὲρ γὰρ δέκα ὀβολῶν ὄρκοι γίνονται καὶ ἐπιορκίαι (PG 60, p. 82–83).

brave and strict, the attitude of John Chrysostom on oath-taking received particular praise in the *Pratum Spirituale*.²⁶

The hagiography of Late Antiquity, the period our story is set in, is replete with “negative” attestations of this practice. Thus, in the Life of Hypatios we hear of a stablehand who, apart from committing adultery, swore by the Gospels: “γυναῖκα ἔχων τὴν τοῦ ἐτέρου ἐμοίχευσεν καὶ μοιχεύσας ὤμοσεν ἐν τῷ εὐαγγελίῳ . . .”²⁷ St Eutychios, the sixth-century patriarch of Constantinople, healed a man from Komana who had been deprived of his eye-sight for a year. This had happened because, following an argument, he had been driven to court and put to oath; failing to consider it a serious matter he had committed the sin of perjury. He confessed his sin to the saint who entreated God to forgive “τὸ τῆς ἐπιorkίας τόλμημα.”²⁸ Likewise, in Palladios’ *Historia Lausiaca* swearing on the Gospels made an ascetic feel guilty, though this act had only occurred in a dream.²⁹ St George of Choziba († ca. 625) was praised for not having ever taken an oath: “ἐκτήσατο πολλὴν ἀκακίαν σφόδρα, ὄρκῳ μὴ χρῆσάμενος, ἐν τῷ σχήματι ἔχων ἀνθ’ ὄρκου τὸν λόγον τοῦτον τὸ ἀλλ’ ἢ κύρι . . .”³⁰ And the more renowned St Symeon the Stylite the Younger would also preach that: “καύχημα μοναχοῦ τὸ μὴ ὀμνύειν καθόλου, πλὴν τοῦ ἀκριβῶς ἢ τοῦ συγχώρησον.”³¹

All these references culled from the vast corpus of Late Antique hagiography do not imply that conflicting views on this very subject left this genre unaffected.³² In the Miracles of St Artemios it is the saint himself who appears to the hero of Mir. 18 in a dream and invites him to swear on the icon of St John the Baptist that he would not prosecute the thief of his clothes.³³ The well-known *vita* of John the Merciful by Leontios of

²⁶ See PG 87, col. 3069D, ch. 191.

²⁷ Callinicos, *Vie d’Hypatios*, ed. G. J. M. BARTELINK (*SC* 177), Paris 1971, ch. 28,11, p. 186.

²⁸ See *vita* of St Eutychios the patriarch (*BHG* 657), ed. C. LAGA, *Eustratii presbyteri vita Eutychii patriarchae* (*CCSG* 25), Turnhout-Leuven 1992, p. 53–54.

²⁹ *Historia Lausiaca* 38,6–7, ed. G. J. M. BARTELINK, Vicenza 1985, p. 196–198.

³⁰ See his *vita* - *BHG* 669, ed. C. HOUZE, *AB* 7 (1888), p. 119,5–6.

³¹ See ed. P. VAN DEN VEN, *La Vie ancienne de S. Syméon le Stylite le Jeune (521–592)* (*Subsidia Hagiographica* 32), vol. I, Brussels 1962, p. 23, § 27; translated by VAN DEN VEN, vol. II, Brussels 1971, p. 32: “la fierté du moine, c’est de ne faire aucun serment, sinon en toute vérité ou en demandant pardon.”

³² Further attestations on oath-taking from Late Antiquity and other periods were jumbled up by PH. KOUKOULES, *Βυζαντινῶν βίος καὶ πολιτισμός . . .*, vol. III, Athens 1949, p. 346–375.

³³ See ed. A. PAPAIOPOULOS-KERAMEUS, *Varia Graeca Sacra*, St Petersburg 1909, p. 21,16–20; English translation, in V. S. CRISAFULLI/J. W. NESBITT, *The Miracles of St. Artemios*, Leiden 1997, p. 116–117. This very story was recently commented on by P. SPECK, who con-

Neapolis, composed ca. 641–642, is a case in point. On the one hand, the author asserts that his material was obtained from trustworthy witnesses after having taken oaths (μεθ' ὄρκων ἐξηγουμένων); on the other hand, he underlines the saintly patriarch's abstention from oath-taking as his first and most praiseworthy achievement (ὅτι καθόλου ὤμοσεν).³⁴

By and large, a rigorist position on this matter was typical of monastic Fathers such as John the Ladder³⁵ or, later, John of Damascus.³⁶ In a similar vein, the "fatal repercussions" of oath-taking were also denounced in the Correspondence of Barsanouphios and John, the recluse ascetics in Gaza; to the question whether it would be better to observe an oath taken in a fit of anger or to repent and not fulfill it, the Old Man urged not to swear at all, in conformity with God's command.³⁷

Bearing the attitude of monastic Fathers in mind, it is no surprise that in a letter of Theodore the Studite (759–826) the empress Irene is congratulated on the abolishment of oath-taking. In this letter, dating from March-April 801, Irene is praised for introducing a law her male predecessors had previously not dared to: "ἦρθη ἐκ μέσου στραγγαλιὰ βιαίων καὶ ψυχοφθόρων ἀπαιτήματων λαθοῦσα τοὺς πρὸ σοῦ ἅπαντας, καίπερ τινὰς εὐσεβῶς βεβασιλευκότας; τοῦτο γὰρ σοὶ ἀπέκειτο. πέπανται ἐφομοσία, πολυορκία, μᾶλλον δὲ ψευδορκία ἐπὶ τε τῶν ἀπαιτούντων καὶ ἀπαιτούμενων, ἀμφοτέρων ἐντεῦθεν ὡς τὸ συμβὰν ἀπολλυμένων, τοῦ μὲν ὅτι ἀποκρύψειεν πειρωμένου, τοῦ δὲ ὅτι ὑπερπίασειεν καταπολυορκούντος."³⁸ Interestingly enough, Theodore identifies the sinful use of oath-taking with cases of obligation, as in the case of the edifying story in question. As a matter of fact, Irene's Novel declared oath-taking in principle to be abolished and every trial henceforth to be concluded with the testimony of witnesses alone. Apart from invoking the Gospels' and the Fathers' teaching, it considered oath-taking a Jewish practice

siders (in my view, unjustifiably) that the expression does not apply to the icon of St John but to the thief: *Der Eid beim Bild des Heiligen Johannes. Zu den Miracula Sancti Artemii*, Nummer 18, *JÖB* 51 (2001), p. 159–167.

³⁴ See ed. A.-J. FESTUGIÈRE, *Vie de Syméon le Fou et Vie de Jean de Chypre*, Paris 1974, p. 345–347.

³⁵ See S. Giovanni Climaco: *Scala paradisi*, ed. P. TREVISAN, Turin 1941, ch. 12, p. 325: "ἐπιορκία δὲ Θεοῦ ἄρνησις."

³⁶ *Sacra Parallela*, PG 96, col. 208 B-C: *περὶ ὄρκου*; *ibid.* col. 220C-221D.

³⁷ See *Barsanuphe et Jean de Gaza, Correspondance*, II, t. II, *texte critique* FR. NEYT et P. DE ANGELIS-DE NOAH, trad. L. REGNAULT, Paris 2001, p. 862–866 (letter no 615).

³⁸ See ep. 7, 35–41, in *Theodori Studitae epistulae*, ed. G. FATOUROS, *CFHB, Series Berolinensis*, XXXI/1–2, Berlin-NewYork 1992, p. 25; for the date of this letter see *ibid.*, p. 149*-150*.

that had prevailed to that day so that disputes could be solved (τὰς στραγγαλιάς τῶν φιλονεικιῶν ... λύεσθαι). As the oath's probative value was suppressed, the Novel increased the number of witnesses required for concluding a contract.³⁹ N. Oikonomidès suggested that, like any Byzantine legal disposition, Irene's Novel authorized oath-taking only in the instances explicitly mentioned in its text while considering it inadmissible for all other cases.⁴⁰

Be that as it may, Irene's innovative attempt at challenging a deeply established practice was rather abortive. Judging from a number of related provisions in the collection of *Basilika*, in particular *lib. XXII tit. 5*, and later attestations in legal sources, the oath was restored as a legal means of proof. Commenting on the 94th canon of the Council in Trullo which excommunicated those taking pagan oaths (ὄρκους ἑλληνικούς), the twelfth-century canonists Zonaras and Balsamon stated: "πᾶς θεμιτὸς ὄρκος, ἐξ ἐπαγωγῆς ὁμοθείς, φυλάττεται."⁴¹

Apart from an indirect attestation of a Byzantine civil trial or, at least, a private dispute held in public, the *narratio debitum bis solutum* is suggestive in that it offers two different approaches to an ethical question. However, as often in the stories of the desert Fathers, edification is achieved by imprinting the audience not with the expected but with a paradoxical alternative. In our short tale the wisdom of the Old Man impresses with its anti-conformism: once again the system of mundane values, where oath-taking had its place, is totally rendered obsolete in favour of a much broader perspective.⁴²

Sigla

A = Atheniensis gr. 504	P = Parisinus gr. 890
B = Berolinensis Phill. 1624	S = Sinaiticus gr. 448
C = Coislinianus gr. 126	V = Vaticanus gr. 1599
N = Neapolitanus gr. II C 27	

³⁹ See ed. L. BURGMANN, *Die Novellen der Kaiserin Eirene, FM IV*, 1981, p. 16–25; commentary *ibid.*, p. 28–33.

⁴⁰ De l'impôt de distribution à l'impôt de quotité à propos du premier cadastre byzantin (7e-9e siècle), *ZRVI* 26 (1987), p. 15; and *idem, Fiscalité et exemption fiscale à Byzance*, Athens 1996, p. 33–34.

⁴¹ RH.-P. II, p. 528–529.

⁴² On the sayings and teachings of the Desert Fathers as they emerge from the relationship between the Old Man and his disciple see G. GOULD, *The Desert Fathers on Monastic Community*, Oxford 1993, p. 26–87.

Ἄδελφός διὰ χρόνου παρέβαλε γέροντι· καὶ φησὶ πρὸς αὐτὸν ὁ γέρων· «ποῦ
 ὑπῆρχες, τέκνον, τὸν τοσοῦτον χρόνον;» Ὁ δὲ λέγει· «ἐν Κωνσταντινουπό-
 λει, πάτερ, διὰ τινὰ χρεῖαν ἀναγκαίαν ἐμοί». Εἶπεν οὖν αὐτῷ ὁ γέρων· «καὶ
 5 τί σπουδαῖον ἐθεάσω ἢ ἀκήκοας ἐκεῖ;» Λέγει ὁ ἀδελφός· «σπουδαῖον μὲν
 σχεδὸν οὐδέν, εἰ γὰρ καὶ κομπά, ἀλλ' οὖν γήινα τὰ πολλὰ κατενόησα, ἐν δέ
 με κατέπληξεν· εἶδον γὰρ κοσμικοὺς πλείον ἢ ἐστὶν εἰπεῖν τῶν ἐν ἐρήμῳ
 διαγόντων περιφρονούντας χρημάτων». Λέγει ὁ γέρων· «πῶς; σαφήνισόν
 μοι τὸν λόγον». Ἀπεκρίθη ὁ ἀδελφός· «δύο τινὰς πλουσίους ἐώρακα καὶ ὁ
 10 εἷς τῷ ἑτέρῳ ἐνεκάλει λέγων ἐποφείλεσθαι παρ' αὐτοῦ δισχιλία νομίσματα
 καὶ προέφερε τὴν ὁμολογίαν τοῦ πατρὸς αὐτοῦ· ὁ δὲ ἔλεγεν, τὸ μὲν χρέος
 ἀποδεδόσθαι παρὰ τοῦ οἰκείου πατρὸς, τὴν δὲ ὁμολογίαν ἐναπομεῖναι κατὰ
 γνησιότητα φιλίας. Καὶ ὡς οὐκ ἐπειθον ἀλλήλους, ἔληξεν εἰς ὄρκον τὸ
 πρᾶγμα. Λέγει οὖν ὁ δῆθεν χρεωστῶν· «Ἐὰν ὁμώσω ὅτι κατεβλήθη παρὰ τοῦ
 πατρὸς μου τὸ χρέος, ἔχω νομισθῆναι ὡς αἰσχροκερδής. Ἄλλὰ μᾶλλον οὕτω
 15 γενέσθω· ἢ ὁμνύω ὅτι ἀπεδόθη σοι τὸ χρέος τῶν δισχιλίων νομισμάτων καὶ
 δίδωμί σοι αὐτὰ ἐκ δευτέρου ἢ ὁμοσον σὺ ὅτι ἐτι κεχρεώστησαι αὐτὰ καὶ
 μηδὲν λάβης παρ' ἐμοῦ, ἀλλὰ ἀνάδος μοι τὴν ὁμολογίαν.» Ἐθαύμασαν οὖν
 πάντες οἱ ἀκούσαντες τὴν τοσαύτην σύνεσιν τοῦ ἀνδρός. Λέγει οὖν ὁ
 γέρων· «καὶ σὺ νέος ὢν, τέκνον, εἰκότως ἐθαύμασας· ἐὰν γὰρ ἐπισκέψη τῷ
 20 βάθει τοῦ πράγματος, εὐρήσεις μηδὲν ὄν μέγα, ἀλλὰ μόνης κενοδοξίας καὶ
 ἀνθρωπαρεσκίας ὑπερβολῆν». Λέγει ὁ ἀδελφός· «πῶς, πάτερ, εἴ γε περι-
 εφρόνησε τῶν τοσοῦτων χρημάτων τῆς ἰδίας ὑπολήψεως ἐνεκεν;» Λέγει ὁ
 γέρων· «ὁ περιφρονῶν χρημάτων ὀφείλει καὶ τῆς σωτηρίας τοῦ πλησίον
 προνοεῖν κατὰ τὸ δυνατόν· τοῦ Κυρίου γὰρ καὶ Θεοῦ ἡμῶν ἡ ἐντολὴ τὰ
 25 ἀμφοτέρα κελεύει. Εἰ οὖν ἤδει ἀκριβῶς ὅτι καὶ κατεβάλετο ὁ πατὴρ αὐτοῦ
 τὸ χρέος, καὶ προέτεινεν ἵνα καὶ ὁμώση καὶ πάλιν ἐκ δευτέρου αὐτὸ
 καταβάλῃται, τί ἕτερον ἔπραττεν ἢ ὅτι παρεδειγμάτιζε τὸν ἀδελφὸν αὐτοῦ
 καὶ Θεῷ καὶ ἀνθρώποις ὡς ἄδικον καὶ αἰσχροκερδῆ, προφανῆ ἑαυτὸν δὲ

1 φησὶν VP 2 τὸν τοσ. χρ. ὑπερήρχες P, τοσ. χρ. ὑπερήρχες B 3 οὖν om. C 4 ἀκήκοας ἢ
 ἐθεάσω C | post λέγει add. αὐτῷ S 5 κομπά CPA 6 post με add. πάτερ VPSB |
 πλείον εἰ P, πλείον εἰ ἐστὶν B 7 post λέγει add. οὖν C 8 μου C 9 νομίσματα: No No V
 10 προεκόμιζε N | ἔλεγε S | χρέως hic et semper C 11 ἀποδεδόσθη A, ἀποδιδόσθαι P
 12 ἐπιθον C 13 ὁμώσω P, ὁμώσω B 14 χρέως P | νομισθῆναι ἔχω P | οὕτως B
 15 χρέως P 16 ὁμοσον PB | ἐτι om. PSB | κεχρεώστησε A, -ται C 17 ἐμοί B |
 ἀπόδος P | οὖν om. C 18 ἀκούοντες C 19 νέος A, νεώτερος B | τέκνον om. S |
 ἐπισκώψεις V, ἐπικώψεις A | τὸ βάθος S 20 ante μηδὲν add. τὸ SN 21 ἀνθρω-
 παρεσκίας C | ὑπερβολῆν P | ante πῶς add. καὶ B | εἴ γε om. B 22 τῶν om. B |
 τῶν τοσοῦτων om. P 22-23 τῆς ἰδίας - χρημάτων om. C 22 ἐνεκεν S 24 προνοεῖσθαι SN
 | ante Κυρίου transp. γὰρ CA | ἢ om. PB 25 κελεύει CV, περιέχει SN, om. PB |
 εἶδη B | καὶ om. PSAB | κατεβάλλετο A 26 χρέως P | post ἵνα om. καὶ C | ὁμώση
 P, ὁμώσει B 27 καταβάλῃται, supra lineam inser. λ V 28 προφανῆ N, om. P

A brother came across an Old Man after a lapse of time; and the Old Man asked him: "where have you been, my child, all this time?" And he said: "in Constantinople, my father, on certain business necessary <for me>." The Old Man said to him: "and what of importance did you hear or see there?" The brother said: "almost nothing important, I <only> realised that, although they were boastful, most things were of this earth; one thing, however, did surprise me. I saw people of the world looking down on money more than those living in the Desert." The Old Man then said to him: "how can that be true? Make yourself clear!" The brother answered: "I saw two rich men, of whom the one was bringing a charge of a debt of two thousand *nomismata* against the other; he thus brought forth the agreement made with the latter's father. The other man said that the debt had been paid back by his father and that the agreement still existed, according to the sincerity of their friendship; and as the one did not convince the other, the whole matter ended up in an oath." The pretending debtor then said: "if I swear that the debt was paid back by my father, I may be regarded as sordidly greedy of gain; so, rather, let this happen: either I swear that your debt of two thousand *nomismata* was returned to you and I shall give it back to you a second time, or you swear that this money is still owed to you and you shall take nothing back from me, also yielding me back the agreement." Everybody then, hearing this, admired the great sagacity of that man. The Old Man said then: "it was natural for you to be impressed, since you are young; however, if you consider the matter in depth, you will find nothing great, but only an excess of vainglory and the pleasing of men." The brother said: "how can that be, my father, if he overlooked so great an amount of money, for the sake of his good reputation?" The Old man said: "whoever overlooks money, he should also take care of the salvation of his neighbour, to the best of his ability; for it is our Lord God that commands both these things. If he knew precisely that his father had paid back his debt and put forward that he take the oath and pay it for a second time, what else did he do than present, on the one hand, his brother as unjust and greedy of gain before God and the people, and to declare, on the other

ἀνεκήρυτε καὶ πλουσιώτατον καὶ ἀφιλοχρήματον; Ὅπερ οὐκ ἔστι τοσοῦτον
 30 ἀκτημοσύνης ἀρετῆ ὅσον κενοδοξίας, ἢ, τό γε ἀληθέστερον εἶπειν, φθόνου
 καὶ ὀργῆς ὑποτύπωσις». Λέγει οὖν ὁ ἀδελφός· «τί οὖν ἔδει αὐτὸν ποιῆσαι,
 ἐπενεχθέντος αὐτῷ τοῦ ὄρκου παρὰ τοῦ λέγοντος κεχρεωστῆσθαι;» Ἄπε-
 κρίθη ὁ γέρων· «εἰ ἦν τέλειος, οὔτε ὁμόσαι ὄφειλεν οὔτε ἀντεπενέγκαι
 ὄρκον, μάλιστα καὶ πλούσιος ὢν καὶ εἰδῶς ἀκριβῶς ὅτι κατεβλήθη τὸ
 35 χρέος». Λέγει ὁ ἀδελφός· «οὐκοῦν ἀνάγκη δοῦναι αὐτὸν τὰ νομίσματα;»
 Λέγει ὁ πατήρ· «καὶ πόσῳ κάλλιον ἦν ζημιωθῆναι αὐτὸν διὰ τὸ ἐκφυγεῖν
 ὄρκον καὶ κερδήσαι τὴν ἀμοιβὴν παρὰ Θεοῦ προσδοκᾶν, ἤπερ διὰ κενοδο-
 ξίαν καὶ τὸ δεῖξαι τοῖς ἀνθρώποις ὅτι ἄδικός ἐστιν ὁ ἄγων αὐτὸν εἰς ὄρκον·
 40 τοῦτο γὰρ φθόνου ἔστι καὶ μισαλληλίας. Ὡστε οὖν πρόσεχε, τέκνον, ὡς
 ἐκεῖνα μόνα εἰσὶν ἀποδεκτὰ παρὰ τῷ Θεῷ τὰ καλῶ σκοπῶ γινόμενα καὶ
 θεοφιλεῖ λογισμῶ». Καὶ ὠφεληθεὶς ὁ ἀδελφός ἀνεχώρησεν.

39 φθόνου – μισαλληλίας; cf. Mt 24,10; Tt 3.3

29 ante πλουσιώτατον om. καὶ P | ἀφιλοχρηματώτατον S, ἀφιλοχρημώτατον N | ἔστιν P
 30 ἀρετῆ A 31 ante ὁ om. οὖν PB | ποιῆσαι A 32 παρὰ – κεχρεωστῆσθαι om. SN |
 κεχρεωστεῖσθαι P, κεχρεώστησθαι V 33 οὔτε ὁμόσαι B, οὐδὲ ὁμόσαι P | ὄφειλε PC |
 οὔτε ἀντεπενεγκεῖν SNB, οὐτ' ὑπενέγκαι V 34 post ὄρκον add. ὅτι C | ante πλούσιος
 om. καὶ P | τὸ om. B 35 οὐκ οὖν VB 36 πόσον B 37 κερδήσαι A | ante τὴν add.
 ἀγάπην καὶ B | ante θεοῦ add. τοῦ SN | εἴπερ VAB 38 δόξαι SN | ante ὄρκον add.
 τὸν C 39 ἔστιν C 40 μόνον V | ἀπόδεκτα PN | παρὰ om. V | παρὰ θεῷ PB
 41 θεοφελεῖ V, θεοφιλεῖ A, θεοφιλεῖ P 41 post λογισμῶ add. μελετώμενα SN

himself as clear <of accusation> and indeed very rich and contemptuous of money? This is not so much the virtue of self-chosen poverty as it is vainglory, or, to be more precise, an expression of envy and anger.”⁴³ Then the brother said: “what should he have done when the oath was administered to him by the one who said he deserved the debt?” The Old Man answered: “if he was a perfect man, he ought neither to have taken the oath nor to have administered the oath, the more so since he was a rich man and precisely knew that the debt was repaid.” The brother said: “was it not therefore necessary for him to give the *nomismata*?” The father said: “and how better would it have been to suffer some damage for avoiding the oath and for expecting to earn God’s reward at the same time, than <to suffer damage> because of his vainglory and aim at demonstrating to the people that he who had led him to the oath was unjust; for, this is typical of envy and hate for each other.”⁴⁴ Bear, therefore, in mind, my child, that acceptable to God are only those things that are done with the purpose of good and with keeping in mind what beseems God.” Being thus edified, the brother went away.