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“..., but not more!”

## Female Inheritance in Cretan Gortyn

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*Egagomen de gynaika polykleron anthropon*, Odysseus bragged in one of his Cretan yarns: “And I took a wife from well-to-do people” (*Odyssey* 14.211). He had to do this, because his brothers (and possibly sisters) had cheated him out of his rights of succession: They had left for him nothing but “a miserable portion,” and so he had to look for a promising match. Once married, he equipped ships and hired companions – and it is quite obvious that he could do so, because his wife’s fortune had fallen into his hands. The fortune shifted within the family, and to Homer (or better: to Odysseus and his listener Eumaios) this was simply a matter of course, an action whose legality went unquestioned.<sup>1</sup>

Two or three centuries later, however, this would have been just unthinkable – at least if we take the female property rights in the great Cretan town of Gortyn as a typical example.<sup>2</sup> About the middle of the fifth century the Gortynians inscribed their so-called “Great Law Code,” a nearly totally preserved text in twelve columns, dealing in particular with the different questions of family law and thus spelling out the property rights of women in every imaginable detail. In this legislation the woman appears in very different roles indeed: as daughter, orphan, ward and guardian, as bride and wife, as mother and childless woman, as step-mother, divorced woman, widow, as a legal heir and testatrix and, finally, as an heiress in a strictly defined sense. In most of these roles she proved to be a problem for the legislator, a problem to which he devoted altogether about 360 lines – a little more than half – of the Law Code. But, however extensively he treated these matters, modern scholars have so far not been able to find anything like a *consensus* on some of the main questions. It remains unclear whether the legislator regarded female property rights as a self-contained entity to be treated as a whole, or if he only treated these rights in passing, changing them or perhaps leaving them unchanged. And even assuming that he did make changes in the rights of women, we cannot say whether it was in order to extend or to limit them. It is consequently far from clear, with what intentions he undertook whatever changes he may have made.

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<sup>1</sup> Cf. H. van Wees (this volume) and below n. 22.

<sup>2</sup> Paula Perlman 1992 denied that such a step could be taken. At a closer look, however, it seems to be methodologically sound; cf. Link 2002.

Therefore, our task will be to find out if the lawmaker extended the women's property rights, or if he, on the contrary, clipped them, or if he did not change them at all but simply tried to stabilize the old law by founding it on new terms. Each of these three interpretations has been defended during the past years. That is not astonishing because, as I shall try to show, there are convincing arguments for each of them. I shall elaborate on these arguments, join them together into one coherent picture, and try to explain this picture as a whole by working out the *ratio legis* – thereby also extracting what the lawmaker thought of “woman” as a legal subject and her property rights as a blessing or a threat to society as a whole.

Five paragraphs from the Great Law Code of Gortyn have to be taken into consideration; my translations follow those by Willetts quite closely:

**A.** 4,48–5,1: “If a father, while living, should wish to give to the married daughter,<sup>3</sup> let him give according to what is prescribed, but not more. Any (daughter) to whom he gave or pledged before shall have these things, but shall obtain nothing besides from the paternal property.” In this sentence “what is prescribed” refers to the basic rule from col. 4,31–43: “In case (the father) should die, the city houses and whatever there is in those houses in which a serf ...<sup>4</sup> does not reside, and the cattle, small and large, which do not belong to a serf, shall belong to the sons. But all the rest of the property shall be fairly divided and the sons, no matter how many, shall each receive two parts, while the daughters, no matter how many, shall each receive one part.”

**B.** 5,1–9: “Whatever woman has no property either by gift from father or brother or by pledge or by inheritance as (enacted?) when the Aithalian *startos*, Kyllos and his colleagues, formed the *kosmos*, such women are to obtain this; but there shall be no ground for action in previous cases.”

**C.** 6,9–25: “And the husband shall not sell or pledge the (possessions) of his wife, nor the son those of his mother. And if anyone should purchase or take on mortgage or accept a promise otherwise than is written in these writings, the property shall be in the power of the mother and the wife, and the one who sold or mortgaged or promised shall pay two-fold to the one who bought or accepted the mortgage or the promise and, if there be any other damage besides, the simple value; but in matters of previous date there shall be no ground for action.”

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<sup>3</sup> That is: “to the daughter (on the occasion of her being) married”, *opyioménai*, not, as one might be tempted to think by Willett's translation, “to the married daughter (in contrast to the daughter not yet married)”; cf. Gagarin 1994: 64 with n. 10.

<sup>4</sup> The serf was somehow specified, possibly in another way than scholars have thought of so far; cf. now van Effenterre 1997: 11–14. I do not, however, find H. and M. van Effenterre's proposal convincing. Had the serf whom the lawmaker thought of really been a “person living in the city for any services,” it would be quite difficult to explain the very next provision, according to which there were sheep and goats, which did not belong to a serf, to be inherited by the sons only. Who took care of these animals? I would therefore prefer to retain my former explanation, according to which these flocks were watched over by shepherds serving the owners of the flocks and living in public huts – huts, which (being public) could not be inherited. Furniture and equipment however, being privately owned, could, and so it was to be given to the sons only, together with the flocks; Link 1991: 107–8 and 118; *id.* 1994: 82 with n. 137. – Cf. also the cogent arguments which Maffi 1997 b: 440 has put forward against the new reading.

**D.** 9,7–17: “And if anyone should otherwise buy or take on mortgage the property of the heiress, the property shall be at the disposal of the heiress, and the seller or mortgagor, if he be convicted, shall pay double to the buyer or mortgagee, and if there is any other damage he shall pay the simple value in addition, since the inscription of this law; but there shall be no liability in matters of previous date.”

**E.** 12,1–5: “If a son has given to his mother or a husband to his wife in the way prescribed before these regulations, there shall be no liability; but henceforth gifts shall be made as here prescribed.” This is an afterthought, most probably referring to col. 10,14–17: “A son may give to a mother or a husband to a wife one hundred staters or less, but not more.”

The most popular interpretation among late nineteenth- and early twentieth-century German scholars was that the lawmaker tried to improve the women’s position with these rules<sup>5</sup> – an interpretation which, a generation ago, David M. Schaps took up again and which lately has been defended by Michael Gagarin.<sup>6</sup> They all refer mainly to the sources **B**, **C** and **D**. The sources **A** and **E**, however, simply do not fit in this picture, and so Gagarin suggested putting them aside altogether. This, he thinks, should be done in the case of **E** because this prescription does not say whether the husband’s or the son’s gifts could have been larger before (or if they had had to be smaller).<sup>7</sup> And source **A**, Gagarin thinks, *a limine* does not refer to gifts the father might have given to his daughter before this legislation: “Before”, he thinks, should not be taken to mean “before this legislation”, but simply “before he (*i.e.* the father) died”, that is: The lawmaker thought of donations *inter vivos*.<sup>8</sup> Therefore **A** obviously does not say anything about the women’s properties before this legislation.

This interpretation, however, is hardly convincing. It violates the text severely by tearing it apart, namely between sentence 1 and 2. Certainly sentence 2, taken by itself, could be perfectly translated as Gagarin has proposed. But there is also sentence 1 which has to be taken into account: the sentence saying that the father in question might wish to give to his daughter while living (which refers to the father, not the daughter who, just about to be married to her future husband, is safely assumed to be alive). This makes it perfectly clear that the lawmaker in fact thought of donations *inter vivos* (as Gagarin maintained), but this he stated in the first sentence already – and so we are left alone again with the “before” of sentence 2: How could any father “while living” have given any gifts to his daughter “before” (which in this constellation would mean: before living)? *Próththa*, “before” or “previously”, simply cannot refer to any time before the

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<sup>5</sup> Cf. *e.g.* Kohler/Ziebarth 1912: 63–4 and *passim*.

<sup>6</sup> Schaps 1979: 58–60; 87–8; Gagarin 1994: 61–71.

<sup>7</sup> *Ibid.* 68–9.

<sup>8</sup> Followed by Maffi 1997 a: 45.

father was living.<sup>9</sup> And so it must refer to the time before this legislation was valid (and it is in exactly this sense that the lawmaker used this term in **B** and **C**). So it is not possible simply to leave out **A**, as Gagarin suggest. Rather we must keep it in mind and somehow deal with the fact that there was a time before this legislation, when gifts from fathers to daughters could have been of another size than they were to be, once the code was established.

Looking at the context as a whole, we are led to the same conclusion: It is quite clear, that **A** and **B** are closely interconnected by the basic regulation they are both dependent upon.<sup>10</sup> This basic rule – I have added it as a supplement under **A** – says that (certain parts of the inheritance left aside) “all the rest of the property shall be fairly divided and the sons, no matter how many, shall each receive two parts, while the daughters, no matter how many, shall each receive one part.” Then, the lawmaker turns to the exceptions: firstly (= **A**) the rules for women who have already received gifts according to the former law, and secondly (= **B**) the rules for those who could have received gifts according to this former law, but so far have failed to do so – for whatever reasons. **A** and **B** are counterparts, simply two sides of the same thing, and as **B** undoubtedly refers to titles which stemmed from the time before this legislation, we can be very confident that **A** does so as well. Both regulations are concerned with the same question: Shall the new law, the basic rule, have retroactive force, or shall it not?

So, we can turn to **B** now and find out how this question is answered. “Whatever woman has no property”, it says, “either by gift from father or brother or by pledge or by inheritance as (enacted?) when the Aithalian *startos*, Kyillos and his colleagues, formed the *kosmos*, such women are to obtain this ...” – but what is “this”? Does “this” (as Gagarin and sometimes also Willetts<sup>11</sup> believe) denote the share of one part for every daughter compared to two parts for every son, the share the lawmaker enacted in the Great Code? Or does “this” mean the share women could claim according to the rules valid in the time of Kyillos and his colleagues?

There are several arguments that support the latter solution:

(1) the close parallel between **A** and **B**: As the daughter from **A** should keep what she once had received, because she was to be treated according to the old law in force when she was given these things, the daughter from **B** surely is meant to be treated accordingly – *i.e.* according to the old law, too.

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<sup>9</sup> The only alternative I can think of (though thereby violating the *proththa*) might be to suppose that the lawmaker repeated himself, saying exactly the same thing twice, as a paraphrase can show: A1) Should a father, while living, want to give something to his daughter, A2) let him give to her what share of the inheritance she can claim, but not more. B1) And should a daughter have received anything this way, B2) let her have this share in the inheritance, but not more. To judge from the rest of the code, however, the lawmaker was not in the habit of repeating himself, and certainly not for the sole purpose of presenting one and the same issue from each and every party’s point of view.

<sup>10</sup> Gagarin denies (and of course must deny) this connection: “In fact, the very next provision ... seems completely disconnected from 4.52–55”; *ibid.* 65.

<sup>11</sup> Willetts 1967: 22 a; more cautious, however, *ibid.* 21 a.

(2) The lawmaker restricted the group of women who should be treated according to “this” law very closely. Why should he have done so if “this” – what they were to receive – had not been an exception, but simply the norm, a gift in accordance with the rule valid from then on?

(3) Should “this” really have been a gift in accordance with the rules valid from then on – why should the lawmaker have made up this special provision at all? He had already said that women as such were to receive half a share compared to every brother’s share – so why should he tell us the same again, now considering the women from the time since Kyllos? This would obviously have been nonsense. – In other words: “This”, the share these women were to receive, was something else; it was not the share the lawmaker conceded to them from then on, and so – my last argument at this point –

(4) he kept in line with all his other regulations, none of which was to have retroactive force either.<sup>12</sup>

We may therefore conclude that **A** and **B** belong together, and they prove that the lawmaker changed the extent of gifts women could receive – whether as inheritance, or as dowry (which was essentially the same thing, because it was only her part of the inheritance that a father was allowed to give to his daughter on the occasion of her marriage). In future every daughter was to be given half the share every son could claim. However, what we have not been able to answer so far is the vexed question of whether this share was more than what women had been entitled to before, or if it was less – for the moment, all we know is that it was different.

More or less – this question has to be answered by an investigation of **E**, consisting of two parts: the basic rule (col. 10,14–17), according to which “a son may give to a mother or a husband to a wife one hundred staters or less, but not more”, and one of the several supplements from col. 11 and 12, here: col. 12,1–4: “If a son has given property to his mother or a husband to his wife as was written before these regulations, there shall be no liability; but henceforth gifts shall be made as here prescribed.”

This supplement is very conspicuous. First it makes clear that there had not merely been a custom but a law (moreover: a written law) concerning the gifts from husband or son to wife or mother before the Great Law Code was enacted – obviously this problem had vexed the lawmaker for quite some time already. And then: It is perfectly clear once again that the amount these gifts could add up to had been fixed in some other way or determined by a different limit, other than in the Great Law Code. But the question is still pending: more or less?

At this point Gagarin gives up: “Since we do not know the previous law concerning such gifts,” he writes, “we cannot know whether this provision ... allows larger gifts or smaller gifts than previously.”<sup>13</sup> In fact, however, I think we can. All we have to ask is whom the lawmaker, when formulating the Great Code, took into consideration as a plaintiff. Did he think of the woman, who, relying on the new Great Code, might try to ensure more for herself than she had been given

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<sup>12</sup> Cf. e.g. van Effenterre/Ruzé 1995 : 3: “La non-rétroactivité des lois est un principe admis ...”.

<sup>13</sup> Gagarin 1994: 68–9.

before? Or did he think of the man, who, insisting on the new Code, might want to take away from her parts of what had been conceded according to a more generous earlier law? Indeed, the answer is very easy: Since a woman had a claim to her part of the inheritance from her father and mother only, but no claim to any gift whatsoever from husband or son, it is unthinkable that she might see herself tempted to appeal to a law-court in cases concerning such gifts; she would always lose the case. The only one the lawmaker could consider as a plaintiff was the man – a son (for example) who might try to reclaim parts of a gift which his father had given to his step-mother and which was therefore lost to him forever. This was evidently the sort of case the lawmaker contemplated in col. 10,17–20: “And if he (*i.e.* the husband) should give more, the heirs are to keep the property if they wish, once they have handed over the money” – most probably the 100 *stater*s which their father would have been allowed to give her.<sup>14</sup>

In other words: Before the Great Law Code was enacted, sons and husbands in Gortyn could give presents to mothers and wives to a greater extent than after (= **E**). And as the question of such presents is very closely linked to (or rather: identified with) the question of female inheritances in **B**, the same is valid for this provision: **B** as well as **E** must have brought about a restriction rather than a liberalization. And, to conclude this line of thought: **B** being a restriction, **A**, which we have stated to be nothing but the other side of **B**, must have been such a restriction as well. Gagarin’s assertion that the lawmaker improved women’s situation in all the cases that are clear enough to judge is certainly wrong.

This error, however, does not at all vitiate his interpretations of the remaining stipulations **C** and **D**, the terms protecting the wife’s, the mother’s and the *patroiokos*’ property against encroachments by husband, son and anybody else. No one was “to purchase or take on mortgage or accept a promise” concerning her property. The most important point, as Gagarin rightly says, is this: The lawmaker explicitly stated in all these cases that there should be no legal ground for pursuing encroachments from former times. “... the legal redress provided by this law”, says Gagarin,<sup>15</sup> “will not be available in cases where a wife’s or mother’s property was sold or promised before this law was enacted. This must mean that women’s property is being given greater protection in the Code but this increased protection is not being granted retroactively.”<sup>16</sup> This interpretation is surely right. As David M. Schaps had already formulated in 1979, “This is not simply a rule against selling other people’s property – that could have been said in many fewer words; it is a law abolishing the economic power of the *kyrios*. ... The amnesty for their (*i.e.* the husbands’ or sons’) actions before the

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<sup>14</sup> Cf. also col. 6.44–46: “And, if he should marry another woman, the children are to be in control of the mother’s property.”

<sup>15</sup> *Ibid.* 68.

<sup>16</sup> Cf. also Dareste, in: DHR I 366: “La famille gortynienne forme une communauté apparente de biens; mais au fond les patrimoines de ses divers membres restent absolument distincts et aucun d’eux ne peut faire acte de disposition sur les biens d’un autre, même confiés à sa garde: tel est du moins le système de la nouvelle loi; son langage même indique que dans le droit antérieur il en étaient autrement et que les pouvoirs du père de famille y étaient plus étendus, plus semblables à ceux du *paterfamilias* romain.”

passing of this law can only mean that they had previously been prescribed as *kyrioi* at Gortyns as well (as, e.g., at Athens), and that they had been possessed of the right ... to sell, mortgage, or pledge the property of their wives and mothers without the women's consent. Under the terms of the new law, any such sale, mortgage, or pledge is invalid; the property alienated returns to the wife or mother, and the good-faith purchaser is doubly recompensed as the victim of fraud."<sup>17</sup>

In one point, however, Schaps' and Gagarin's opinions differ. Assessing the legal relationship between husband and wife, brother and sister or son and mother in the time before the Great Law Code, they disagree as to whether there existed a formal *kyrieia*, exercised by the man over the woman and her fortune, or not. Schaps assumes (just as e.g. Bücheler/Zitelmann did long ago<sup>18</sup>), that the lawmaker took the existence of such a *kyrieia* for granted, and that his aim was to abolish it for the future – at least as far as economic aspects were concerned.<sup>19</sup> Gagarin, however, obviously avoids the term *kyrieia* and confines himself to stating “that women's property is being given greater protection”, thus taking the woman's status – at least for the time before the Code was enacted – to be founded not on any fully developed legal idea of *kyrieia*, but rather on custom, perhaps even shifting from generation to generation or from household to household. This conception of a legal process developing step by step<sup>20</sup> is also quite old already; in 1912 e.g. Kohler/Ziebarth thought of only a “gewisses Verfügungsrecht des Mannes” to have been known in the time before this

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<sup>17</sup> Schaps 1979: 58–9; cf. also Sealey 1990: 78: “.. the code states a sanction and a prohibition against retroactive enforcement for the rules against alienating a woman's property but not for those against alienating that of a father or of his children. Presumably the protection of a woman's property was an innovation and needed an explicit sanction for enforcement”; cf. also Koerner 1993: 486; 509; 511 and *passim*. – Alberto Maffi recently tried to diminish the extent to which this innovation changed the former laws: Maffi 1994: 77–8.; *id.* 1997 a: 108–9. It is possible, in fact, that these new regulations did not alter everyday life very much. We may, suppose, for example (with Maffi), that also previously a husband had to recover his wife's property, should her relatives insist that he do so. But cases like this one, as we shall see, are not the point in question; and the fact that these laws as they stand basically improved women's conditions is incontestable; cf. also Link 1998: 227–9.

<sup>18</sup> The examples for a *kyrieia* of the *kadestai* (and that is: of male relatives) collected by Bücheler/Zitelmann 1885: 61–2 are not pertinent to their thesis, according to which “die Frau steht unter ihrem Schutz.” Either these examples prove the adult *kadestai's tutela* over the young daughter not yet married, or they prove that the *kadestai* should function as a kind of witnesses. Rightly, therefore, they write *ibid.* 117: “Ob der Mann die Verwaltung hat, ist nicht gesagt ...”.

<sup>19</sup> Schaps 1979: 58; 60: “Traces survive at Gortyn of the authority that was wielded in the rest of Greece by the *kyrios*.” “But the Gortynian example did not become general; elsewhere, the power of the *kyrios* was to survive ...” A variant of this idea is favoured by Maffi 1997 a: 109. He thinks that there existed a male *kyrieia* before as well as after the enactment of the Law Code. The lawmaker, he says, only restricted the *kyrios'* totally arbitrary power, but did not do away with it: “To ritengo quindi che l'innovazione introdotta dal CdG consista soltanto in una limitazione dei poteri arbitrari del *kyrios*.”

<sup>20</sup> We may take it as certain that this development proceeded step by step. Cf. above p. # *ad col.* 12.1–4.

code<sup>21</sup> – a “certain authority of disposal”, which most probably can be traced back to the rather fluid Homeric marriage-customs outlined in the beginning. On the one hand Odysseus’ alleged wife did not remain the mistress of her fortune; somehow at least parts of it shifted to his disposal. On the other hand, however, the Homeric man cannot be thought of as the natural *kyrios* of all the women living in his house, neither as a man nor even as a father. Neither could Telemachos, being an adult, exercise anything like a strictly legal *kyrieia* over his mother Penelope,<sup>22</sup> nor Ikarios as her father could raise any self-evident claim to remarry her to one of the suitors. On the contrary, the Homeric concept of a male *kyrieia* was so loose that it could even be stretched to the idea that an allegedly unmarried Penelope might choose her future husband in person. This, at least, is what Odysseus ordered her to do in case he should not reappear before Telemachos’ beard grew (*Odyssey* 18.266–70).<sup>23</sup>

In other words: The rule that the women should be the mistresses of their goods and chattels and that neither their husbands nor their sons were allowed to meddle with their fortunes does not necessarily have to be taken as an effort to abolish (or at least to restrict<sup>24</sup>) the husbands’, brothers’ or sons’ *kyrieia*. Rather we might think that such a *kyrieia* never existed in Crete<sup>25</sup> and that conceding the

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<sup>21</sup> Kohler/Ziebarth 1912: 70 n. 1. On the same lines Koerner 1993: 511, who held that “die Vermögenrechte der Familienmitglieder nicht so scharf unterschieden wurden ...”; cf. also Maffi 1994: 76–8 and Link 1998: 225–9; cf., however, also Maffi 1997 a: 52.

<sup>22</sup> Cf. Wickert-Micknat 1988: 89: “Mit der Heirat gewinnt die Frau die Regentschaft im Hause, wird Despoina. ... (So) ist Penelope unabhängig, schaltet im gesamten Oikos nach eigenem Ermessen. Dabei tritt freilich ein Problem zutage ..., eine Art von Generationenkonflikt. Zwischen Telemachos und Penelope gibt es Spannungen, weil die Mutter das ganze Hauswesen allein regiert, der herangewachsene Sohn danach drängt, den männlichen Anteil selbständig zu verwalten. ... Aus den Spannungen auf eine Abhängigkeit der Mutter vom Sohn, die etwa gar rechtlich begründet wäre, zu schließen, besteht kein Anlaß. Im Gegenteil, Penelope läßt keineswegs zu, daß der Sohn in ihre Kompetenzen eingreift und den weiblichen Bediensteten Befehle gibt.” In other words, there were differences as to differently gendered spheres of life, but there existed no legal *kyrieia* the man could exercise over the woman.

<sup>23</sup> Lacey 1966: 63 supposed that the reason for Penelope’s relative freedom was the uncertainty as to whether her husband was dead or alive, but quite obviously Odysseus, when telling her what to do, was anticipating a possible death in battle amongst his comrades, not – as it actually happened – an endless solitary wandering with no one knowing if he was dead or alive. Moreover there is a parallel case, that of Nausikaa, who could also be thought to be choosing her husband herself: *Odyssey* 6.276–84.

<sup>24</sup> Cf. above n. #19 [#Maffi].

<sup>25</sup> The only real *tutela* that can be proven is the father’s *kyrieia* over the children, not the man’s *kyrieia* over the woman; cf. Link 1994: 53–55 and below #n. 27; but cf. already Wolff 1952: 160: “Es scheint an einer *Kyrieia* des Ehemanns zu fehlen.” The idea of a complete *kyrieia* exercised over the children by the father only, not by the mother as well (cf. also the parallel case in col. 11.18–9: a man may adopt, a woman may not), has recently been challenged by Maffi 1997 a: 51 (without argument) and *ibid.* 35 as well as *id.* 1997 b: 467. The objection he raises is correct in itself: both col. 3.44–9 and col. 4.8–11 are exceptional insofar as they regulate the divorce, not the marriage. Nevertheless, as they claim that a divorced woman had to bring any child that might still be born to her from her marriage to her former husband in order to let him decide what he wanted to do with the baby, and as it simply cannot be perceived how this right might have been added to



women full rights of disposal was simply one of several possible ways to establish fixed rules in an area not yet legally structured.<sup>26</sup>

So, the picture we have to explain is two-sided: on the one hand, the lawmaker diminished the extent to which a woman could be given property, thus worsening her position, while on the other hand he improved it by restraining the husband or son from meddling with it. Why did he do that?

The first point illustrated by this two-sidedness, I believe, is that the lawmaker did not think of the women's position as a self-contained entity to be treated as a whole and to be developed in one and the same direction only. He rather decided from case to case what measure was suitable. We can even say, I think, that he never looked at these things from the woman's point of view at all: He never explained what a woman was allowed to do; all he ruled was what a man was not. That is not to say, however, that he lacked an overall point of view – he surely had one; but he was not concerned with women's economic rights as such.<sup>27</sup>

It is more likely that his concern was for an institution at the heart of Cretan societies: the so-called *andreia*, the 'eating and drinking groups', distantly comparable to the Spartan *syssitia*, where all citizens met every evening in their single *hetairiai* for supper, feasting, discussing, educating the younger boys, celebrating social pre-eminence and so on. I think the crucial point is the system by which these *andreia* were maintained. Two descriptions are known, one from Aristotle, taking into account the Cretan towns as a whole, and the other one from Dosiadas, particularly concerned with the Cretan town of Lyttos. The important point – which is stated more or less elaborately – is the same in both these texts:

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the usual rights a father had merely by reason of being divorced, these rules do in fact prove that under normal conditions the *pater familias* was the only one to decide what to do with the children born to him.

<sup>26</sup> This can also be shown by col. 9.1–17: Actually it goes without saying that claims a creditor could raise should be satisfied, even if the inheritance was entered upon by an heiress. And it must have been just as natural that the rest of the heiress' fortune should not be meddled with – apart from any questions of *kyrieia*. Nevertheless the lawmaker ruled that even in such a case the law should not have any retroactive force – a hint that conditions had been less ordered and more fluid prior to his legislation. (The same background seems to be implied in col. 6.7–9 and 24–5, although it is not really clear in this case if lines 24–5 can be taken to refer not only to the ultimately preceding lines 9–24, but also to 7–9.)

<sup>27</sup> It must be said, however, that it was mere lack of interest in the woman's *kyrieia* as such which induced the lawmaker to deal only with the limits of a man's *kyrieia*. Thus, his silence on this point cannot be taken to prove the absence of any woman's *kyrieia*, as Maffi 1997 a: 109; cf. *id.* 1997 b: 467, tried to show. On the contrary: Col. 9.3–5 states explicitly that a woman – an heiress in this case – was allowed (and, certain circumstances given, might even be forced) to sell some of her fortune off in person, and col. 3.1–5 presupposes this as well: As only the divorced woman herself will have been able to give back whatever she could have filched, it was most probably also she herself who had to pay the fine prescribed. Moreover she could also take legally binding oaths in her own name: col. 3.6–9; 11.46–50.

“Now the Cretan arrangements for the public messes”, says Aristotle,<sup>28</sup> “are better than the Spartan; for at Sparta every citizen per head pays a fixed sum ...; but in Crete the system is more communal, for from all the crops and cattle grown,<sup>29</sup> from the citizens’ as well as the serfs’ rates, one part is assigned for the worship of the gods and the maintenance of the public services, and the other for the public mess-tables, so that all the citizens are maintained from common funds ...” So, according to Aristotle, there were two differences between the Spartan and the Cretan system: In the Cretan system a large part of the contributions derived from public funds, which was not the case at Sparta, while the Cretan private tributes were settled in a different manner than those of the Spartans, which were always the same per head.

The workings of the Cretan system are described in detail by Dosiadas, at least for the town of Lyttos. “The Lyttians”, he says (FGrHist. 458 F 2 [= *Athen.* 4.143a–b]), “pool their goods for the common mess in this way: everybody carries up (*anaphérei*) a tithe of his crops to his club, as well as the income from the state which the magistrates of the city divide among the households of all the citizens.”

Quite obviously this system was a rather archaic one, as can be seen from the division of the public funds. Dividing public income amongst all the citizens had been a common practice, for example, amongst the Siphnians who, at the time of Polycrates exploited the gold and silver mines on their island and divided the revenues amongst themselves year after year (*Hdt.* 3.57) – of course with the citizens’ intention of keeping their shares, rather than passing them on. In the Cretan towns, however, the same archaic practice had been developed further and connected with the public *andreia*, resulting in the citizens’ duty to take these public revenues plus 10 % of their private yields to their clubs – which at the same time had the advantage that the single households, not the city, had to take care of the stores; nothing is ever said about central storing-rooms in our sources. Therefore, without doubt, this system had its own advantages.

On the other hand, however, the system might easily be undermined, for example, if a substantial number of citizens tended to hide their crops before the tithe had been levied. I very much suppose that the *karpodaistai*, the “fruit-dividers” we know from another Gortynian law, represent the city’s response to such challenges: These officials, the “fruit-dividers”, were to carry away the fruits they found hidden or undivided, and those who had hidden the fruits were each to pay an additional amount, and moreover suffer the penalties written elsewhere:<sup>30</sup> The city reacted sharply against the egoism of some of its individual citizens.

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<sup>28</sup> Pol. 1272a 12–21; the translation follows the one given in the Loeb Classical Library as far as possible; variations have been justified in Link 1991: 118–22.

<sup>29</sup> My emphasis.

<sup>30</sup> SGDI 4993 (= Koerner 1993: 152); cf. Link 1998: 231 n. 53. A new interpretation has been presented by van Effenterre/Ruzé 1995: 13–4. They obviously think the *karpodaistai* should divide the fruits into those parts which the serfs had to give to their masters and those which they were allowed to keep for themselves. In this case, however, the penalties prescribed would have been directed against the serf. This law would thus contradict all the others we have, according to which penalties incurred by a serf had to be paid by his master; cf. Link 1994: 36–7.

This observation leads us back to the questions of female property and inheritance rights. If we relate Dosiadas' description of the financing of the *andreia* to what we have inferred from the different regulations for female inheritance and gift-giving, the lawmaker's intention becomes quite clear. Dosiadas' words are plain and distinct: "Everybody carries up a tithe of his crops to his club" – "everybody", that means, of course, "everybody (partaking in the *andreia*, the men's meals)", in short: "every man".<sup>31</sup> According to this quite archaic system, women neither took part in the meals, nor did they contribute anything (which must have placed a continuing burden on the society). But things tended to become worse, if men – fathers, husbands, and sons, and most likely the well-to-do among them – took recourse to the (not illegal, but somehow antisocial) tactic of giving dowries, presents and other gifts to the women living in their households. This must have been all the more tempting as they could not only save the rate of 10 % of their revenues (already a significant advantage). Moreover they could keep control over these resources. Being able to dispose freely of the women's properties they handled them as their own, even if legally they were not (or, not any longer, since they had been given away). In short, the question as to how much property a woman should own, and the question as to whether she should really own it in her own right or if her husband or her son might feel himself allowed to meddle with it – these were the two crucial points where interests would clash. The lawmaker had to solve these questions if he wanted to avoid the disintegration of the crucial social institution of the *andreia*.

This, I think, is the background against which the changes of female property rights in Gortyn's Great Law Code should be interpreted. I argue that the changes were nothing more than two steps in the same direction. First, by diminishing the amount a woman could inherit and by curtailing the gifts she could receive from husband or son, the lawmaker narrowed the field where the misuse of her property rights had been flourishing. Well-to-do women, probably in substantial numbers, must have been most disturbing for him, so he took precautions against the excessive donations that underlay their wealth. "... but not more" was his rallying cry whenever he considered the question of how much property a woman should own.<sup>32</sup> No matter how much – in any case "... not more!"

His second step was to establish full and free female property rights. Up to that point, men had been able to transfer their goods and chattels to mother, wife, and daughter without losing them *de facto*; from this legislation on, however, they lost whatever they gave away. The *ratio legis* is clear: the lawmaker made heads of households think twice before giving up their properties to the women in their households. Would it not be more advantageous for them to keep the goods as well as 90% of the revenues?

As we may suppose that the lawmaker did not abolish a male *kyrieia* in existence up to then, but only founded a certain legal basis for customs that had been more

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<sup>31</sup> Only the one who presided over each of the *andreia* was a woman; women as such were excluded; cf. Link 1994: 19–21.

<sup>32</sup> Col. 3.40; 4.51; 10.16–7; and probably also 10.7; varied and extended also in 3.22–4; 30–1; 43–4.

fluid before, we also can (and should) try to put this Cretan development into a wider context. As it happens, some of the main Cretan structures concerning the women's legal status can be found elsewhere as well, most prominently at Sparta. In spite of a lamentable lack of sources, Stephen Hodkinson has shown (this volume) that at Sparta daughters also received part of the inheritance, and that they were entitled to these parts even when there were brothers to succeed to the family estate. Their share amounted to half the share of a son, and this share was all they could claim, there being no real dowry in addition; the dowry a daughter might be given materially consisted of her inheritance. In short, all these fundamental features were the same in Crete and at Sparta.<sup>33</sup> Here, at Sparta, however, this legal situation cannot have been the result of the lawmaker's concern for the men's meals. As each and every Spartan citizen had to deliver not a *quota* of his income, but a fixed *quantum* to his *syssition*,<sup>34</sup> there was no need to worry about how much of his property a Spartiate might give to the women of his household, as this would not at all affect the size of his contributions. So the striking similarity of the Cretan and the Spartan institutions must have deeper roots.

These can perhaps be found in Homeric marriage-customs or rather the change these customs went through during the archaic centuries. According to Hans van Wees: "It seems better to accept that in early Greece marriages entailed neither dowry, not bridewealth, but an anthropologically quite common exchange of gifts between the families involved, called *hedna* in Greek. Livestock and other gifts pass from the groom and his family to the bride's family, while in return a wide variety of other gifts presented by the bride and her relatives pass into the hands of the groom's father while the couple live in the husband's parental home ... and eventually into the groom's hands when he inherits or establishes his own household."<sup>35</sup> And these "presents contributed by friends and relatives (are) some for the bride personally, some for her husband, others for the common use of the new household."<sup>36</sup> So, in Homeric times marriage was accompanied by a wide variety of gift-giving.<sup>37</sup> Nearly all the parties involved gave something to someone: friends and relatives, the bride's and the bridegroom's parents and finally the bridegroom himself gave presents; the bride's parents and relatives, the bridegroom's parents, the bridegroom and finally the bride herself were more or less showered with them. The size of these presents varied greatly, according to the donor's fortune, his and the donee's social status, and so on.<sup>38</sup> In other words, the relationship may in fact have been often unequal, as van Wees shows, with the

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<sup>33</sup> Hodkinson (this volume).

<sup>34</sup> Aristot. pol. 1271a 35; cf. also 1272a 13–5.

<sup>35</sup> This volume. Cf. also Lacey 1966: 56–7.

<sup>36</sup> H. van Wees, *ibid.*

<sup>37</sup> Wagner-Hasel 1988: 41–6; 50–2.

<sup>38</sup> H. van Wees, *ibid.*; R. Westbrook, this volume.

bride's relatives usually receiving more than anyone else.<sup>39</sup> But surely this was no one-sided transfer of property from the male into the female hand, since gifts were exchanged between both the families involved, not between both the sexes.

This variegated gift-giving, however, vanished during archaic times: In late archaic and classical times "marriage-related gift-giving is all one-way: the bride's family is expected to display generosity and above all to present a substantial 'dowry', for which they receive no return and which is therefore called *proix*, 'free gift'."<sup>40</sup> In other words: The marriage-related transfer of property between families became – at least potentially – a one-sided transfer of property between sexes, i.e. a transfer of property from the father to the daughter.

In the long run this must have been a most uncomfortable development for the male family-members and, maybe, the (male) citizenry – even if it lacked the special Cretan flavor of endangering the *andreia*. In principle there were two ways to counteract it: Either the property-rights a woman might gain could be minimized in quality by putting her in charge of a *kyrios*, or the size to which her fortune might amount could be restricted. At Athens the first way was apparently chosen: the amount of the dowry was never restricted there, and in fact the bride's father gave it to his daughter, not his son-in-law,<sup>41</sup> but the lawmaker did not allow the daughter to inherit anything (thus also curtailing every claim she might raise), and neither did he allow her to do anything with the fortune her father had given as a dowry: This was solely her husband's right.<sup>42</sup> The exact counterpart can be found in Crete and at Sparta, where the dowry as such, as a real present, was abolished, its place being taken by the daughter's share in the inheritance, and the amount of this inheritance was restricted to one part only in contrast to two parts for every son.<sup>43</sup> In Crete (or at least at Gortyn), in fact, the lawmaker went even further and excluded quite a number of assets from the daughters' shares.<sup>44</sup> Thus, I think, he helped to frame the background which enabled him, on the other hand, to concede them full proprietary rights<sup>45</sup> – a measure obviously meant to

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<sup>39</sup> H. van Wees, *ibid.* In the case outlined, however – Odysseus' marriage to a well-to-do woman – things must have been the other way round.

<sup>40</sup> *Ibid.*; cf. also Harrison 1968: 45-6. This becomes very clear on Crete, because there the habit of giving presents in any amount a donor desired and could afford shifted from marriage to the widespread pederastic relationships; cf. Link 1999: 14-6. In these cases, however, there was no flow of presents from a man to a woman, but exclusively from a man and elder citizen to another man and future citizen.

<sup>41</sup> As can be seen from his obligation to hand it over in case of divorce or his wife's childless death; cf. MacDowell 1978: 87-8; Harrison 1968: 55-7.

<sup>42</sup> MacDowell, *ibid.*; Harrison 1968: 48-9; 52-3.

<sup>43</sup> Cf. above n. #37.

<sup>44</sup> Col. 4.31-7: "And in the case that (the father) should die, the city houses and whatever there is in those houses in which a serf living in the country does not reside, and the cattle, small and large, which do not belong to a serf, shall belong to the sons."

<sup>45</sup> Only when division of the family's fortune amongst the children was at issue did the father decide on his own, thus also dividing his wife's property (col. 4.23-7). Obviously the lawmaker

serve the paramount interest to rescue the *andreia*. It is not clear if this question – shall a woman have full proprietary rights or shall she not? – was at all legally settled where (as at Sparta) such overriding interests were missing.<sup>46</sup> I think, however, that our Athenian authors, anyway fascinated by the (alleged) Spartan women’s freedom,<sup>47</sup> would have mentioned such a female *kyrieia* if only they had known of it.

One last point remains to be considered, more or less as an afterthought: Amongst all the houses a citizen of a Cretan town might own, there was one of very special importance: the so-called “house in town”.<sup>48</sup> This house was something particular, as can be deduced from a regulation the lawmaker connected with the idea that there might be no property at all, only a house in town<sup>49</sup> – obviously this house was the last thing a poor family would sell off. The importance of the “house in town” becomes clear elsewhere: “As long as the groom-elect or the heiress is too young to marry” says one of the numerous provisions for the daughter without father or brother, “the heiress is to have the house, if there is one, and the groom-elect is to obtain half the revenue from everything.”<sup>50</sup> Though it is far from being stated explicitly, somehow “the house” (which has to be taken to mean the house in town) seems to be connected with revenues, somehow it seems to be their source: Since the house in town was the last thing a poor family would sell off, and since the lawmaker considered “the house (in town), provided there is one”, he obviously thought of quite a poor heiress, an heiress possessing nothing but this house. Nevertheless he stated that the revenues

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thought this decision to be a matter of the father’s *kyrieia* over his children rather than of *kyrieia* over the woman; cf. Link 1994: 53–5, following Bücheler/Zitelmann 1885: 115–6: “Die Mitgiftbestellung geschieht durch den Hausvorstand der Frau, also ihren Vater, eventuell ihren Bruder.” (Cf., however, also *ibid.* 11: “Ein gewisses Verfügungsrecht behält die Frau zweifellos, denn sie kann ihr Vermögen ... unter ihre Kinder vertheilen ...”) Maffi 1997: 35 vigorously defends his view that the mother divided her own fortune among the children in person. To me the parallel rules **A** and **B**, however, seem pertinent – rules that exclude (implicitly) any presents given by the mother by describing (explicitly) the presents given by father and brother only, for the past as well as for the future.

<sup>46</sup> Cf. Hodkinson (this volume) with n.8. Rather inconsistently Cartledge 1981: 99–100 argues that there existed no male *kyrieia* on Crete, but that it did exist in Sparta. On the one hand, the allegedly decisive fact that the father gave his unmarried daughter into marriage holds true for both societies. This is what Xen. Lak. Pol. 9.5 implies for Sparta, but it is just as well implied in the Gortynian rules concerning the dowry, so there is no apparent difference between these cities on this point. In any case, this argument is actually a red herring, since it proves only that there existed paternal *kyrieia* over unmarried daughters. This *kyrieia*, however, has to be taken as part of the father’s *kyrieia* over all his children, sons and daughters alike: cf. already *Iliad* 9.394–7 (Peles being anticipated to give his son into marriage); cf. also col. 4.23–5 (“The father shall be in control of the children”). So there is no proof whatsoever for a man’s *kyrieia* over the woman, *i.e.* above all, the husband’s *kyrieia* over his wife.

<sup>47</sup> Cf. *e.g.* Harvey 1994: 40–1; Millender 1999: 356ff.

<sup>48</sup> Col. 4.32; 8.1–2.

<sup>49</sup> Col. 4.46–8.

<sup>50</sup> Col. 7.29–35.

were to be divided. What revenues? – In this case, too, I think, Dosiadas' description leads us to the right answer: "Everybody carries up a tithe of his crops to his club," he says, "as well as the income from the state which the magistrates of the city divide among the households of all the citizens." This last part offers the clue: The public income was divided among the citizens' households, *i.e.* the houses in town. For that reason, the Law Code connected city houses and income; these were the revenues which, in the case mentioned above, had to be divided between the groom-elect and the heiress, the daughter without father or brother.<sup>51</sup>

But she, the heiress, was the only woman who could claim such a house in town. Regarding other, more usual, circumstances the lawmaker ruled something very different: "In the case, (the father) should die," he stated, "the city houses ... shall belong to the sons. But all the rest of the property shall be fairly divided."<sup>52</sup> In other words: Under normal circumstances daughters were totally excluded from inheriting a house in town as well as from receiving any of the public revenues "which the magistrates of the city divide amongst the households of all the citizens."<sup>53</sup> This development, I think, was also a new one. Here those parts of the inheritance which should not fall to a daughter were enumerated one by one, whereas those to which she was entitled were simply called "all the rest." And against the background of "all this rest" the house in town was included amongst the enumerated holdings.

The lawmaker was not really interested in women's property rights as such, nor is there evidence of a clear plan to improve or to restrict them. But he had to take notice of them when they threatened to impinge upon the common welfare by draining the source of the citizens' community, the *andreia*. His reaction was twofold (thus illuminating once again his fundamental lack of interest in a legal female position as such). He made her sole mistress of her own goods and chattels, he restricted the amount to which she might amass these, and he excluded her as far as possible from the channels through which the public revenues flowed.

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<sup>51</sup> Cf. Link 1994, 94–96.

<sup>52</sup> Col. 4.31–9.

<sup>53</sup> Gschnitzer 1976: 78 thinks that the daughter was excluded from the house in town because after her father's death she would usually live in her husband's (or brother's) house anyway. But the question where she might live was not the point the lawmaker made: He conceded or denied the house in town according to her wealth, not according to her home. See my forthcoming article "Zur frühgriechischen *kyrieia*" in *ZSS* 121 (2004).

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