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WOMEN'S PROPERTY AT GORTYN

Abstract

In two earlier articles (Gagarin 2008, 2012) I argued first, that women could own property in their own right and could manage and dispose of it without the need of a “guardian” (*kyrios*), such as we find at Athens, that they could appear in court on their own as plaintiffs or defendants, and that they had more rights in choosing a husband than Athenian women. Second, we can infer from the wording of the laws at Gortyn that women’s rights in these respects had only recently been granted or had been expanded, and that resistance to these greater rights led to greater protection for women in the Gortyn Code. Third, the Code suggests, however, that despite these greater rights, most women probably continued to live fairly traditional lives, allowing men to manage their property as they always had. This paper defends these views against objections raised by Alberto Maffi in Maffi 2012 and in this same journal (*Dike* 15), as well as by two anonymous readers.

In due articoli precedenti (Gagarin 2008, 2012) ho sostenuto che le donne potevano essere proprietarie di beni, e potevano amministrarli e disporre di essi senza bisogno dell’intervento di un tutore (*kyrios*), quale troviamo invece ad Atene; che potevano stare in giudizio per proprio conto sia in veste di attore che di convenuto, e che avevano maggiore libertà di scegliersi un marito rispetto alle donne ateniesi. In secondo luogo possiamo desumere dal testo delle leggi di Gortina che i diritti delle donne riguardo a questi punti sono stati garantiti o addirittura accresciuti solo in tempi recenti, e che la resistenza a questo ampliamento dei loro diritti ha condotto a una protezione accentuata delle donne nel Codice di Gortina. In terzo luogo il Codice induce a ritenere che, nonostante questo accrescimento di diritti, la maggior parte delle donne probabilmente continuava a vivere secondo canoni tradizionali, consentendo agli uomini di amministrare i loro beni come era sempre avvenuto. Questo articolo ribadisce questi punti di vista contro le obiezioni sollevate da Alberto Maffi 2012 e in questo stesso numero della rivista (*Dike* 15), nonché da due anonimi revisori.

In May of 2012 the University of Sannio in Benevento held a conference celebrating the career of Eva Cantarella.¹ On this happy occasion Alberto Maffi and I both gave papers about women at Gortyn, which

1. I am grateful to the organizers, and especially Professor Aglaia McClintock, for the invitation to participate and the hospitality extended to me during my visit.

were published in a volume of *Index* (Gagarin 2012, Maffi 2012). These papers were written independently of each other, and after the meeting Alberto suggested that we carry on the discussion in the pages of this journal, in which a few years ago I had published my first close examination of women at Gortyn (Gagarin 2008).² To begin the discussion I wrote the following comments (**Part A**) about Maffi 2012, focusing specifically on the *matroia* (“beni materni” or “maternal estate”), the subject of his paper. I sent these comments to him, and he then wrote the response that follows these pages, addressing first, my 2008 paper, second, my 2012 paper, and third, the recent comments I sent him (**Part A**). I in turn have added a response to some of Maffi’s new points (**Part B**). In order not to confuse the issue, I have left my initial version of **A** (the version sent to Maffi) unchanged except for minor corrections.

Part A

Before beginning, let me make two methodological points. First, in interpreting the Gortyn laws, I begin with what the text says and try to understand it in itself. Then if necessary, I look to other laws from Gortyn, and occasionally to laws from other Cretan cities, for help. Only then, if necessary, do I take into consideration how Athenian law or Roman law (or some other system) may have treated a similar situation. A case in point is Maffi’s view that in most situations Gortynian women were subject to a guardianship arrangement (“tutela”) similar to that of Athenian women, even though the words “guardian” and “guardianship” (*kyrios*, *kyrieia*) never appear in any Gortynian law. To be sure, it is clear that a woman’s property was sometimes managed by a male relative, but nothing in the laws prohibits a woman from managing her own property or requires her to have a guardian. It is clear, moreover, that in some cases at least a woman could manage her property herself.³ Thus, if we confine ourselves to what the laws actually say, we cannot conclude that Gortynian women were subject to a guardianship.

My second general point is that the laws are selective in the topics they address and the specific rules they prescribe. The absence of some topic or rule from the Code should not automatically be taken

2. This paper was particularly inspired by, and indebted to Maffi’s work, especially Maffi 1997 and 2003.

3. In addition to the frequent mention in the laws that a woman should have “her own property” (*ta wa autas kremata*), the clearest evidence is a provision in the Gortyn Code which explicitly allows an heiress to handle a financial transaction by herself: “if someone owing money should leave behind an heiress, she, either herself or through her paternal and maternal relatives (ἢ αὐτὰν ἢ διὰ τὸν πάτροαυς καὶ τὸν μάτροαυς), is to mortgage or sell (property) etc.” (9.1-7). The argument that “herself” might mean that she has the help of her *kyrios* (Maffi 1997: 106; 2003: 192) cannot be correct, because a *kyrios* would always be one of her relatives, and the alternatives “either herself [sc. through her *kyrios*] or through a relative” would be the same.

to mean that the law did or did not require or allow something. For example, if the law explicitly allows a son to do something, it does not necessarily mean that a daughter could not do the same thing. Rather, it may mean only that problems have arisen or seem likely to arise with regard to sons acting in this way but not with regard to daughters, and this may in turn mean only that sons acted thus more often or more aggressively than daughters. Only if there is some good reason to expect daughters to be mentioned along with sons, can we conclude that their absence from the law is significant.

Turning now to Maffi's treatment of "beni materni," I begin by observing (as others have) that the word *matroia* is modeled on the more common Greek word *patroia* or "paternal estate." Maffi notes (91) that the Attic form is μητρῶα and that we find "the same situation at Athens (93), but in fact there is no Attic form of this word, for the obvious reason that the treatment of women's property was fundamentally different in Athens. In Crete,⁴ aside from one fragmentary occurrence of *matroia* at Phaistos (Di Vita and Cantarella 1978), *matroia* and *patroia* are found only at Gortyn; and wherever the context is clear, they always occur in the context of inheritance.⁵ The two terms appear together in two passages in the Code (4.44-5, 11.43-45), where it is strongly implied that they designate the same kind of property belonging to the mother or father respectively; *matroia* also occurs without *patroia* at 6.34 and 6.45.⁶

Maffi sets out his position at the beginning (91-93): *matroia* is a mother's estate and must thus be understood in context of the nuclear family and the mother's role in it, as both wife and mother. His study then proceeds systematically, examining first the ways a woman's patrimony could be constituted, then changes that might occur in this patrimony, and finally ways of transmitting it to others.⁷ I will generally follow this arrangement, though the three parts are obviously interconnected.

I

Maffi begins (94) by examining the first of several rules about misusing the property of other family members (6.2-9):

4. The two words also occur together in a later inscription from Tegea about exiles returning and claiming their property. I discuss this text briefly at the end of this paper.

5. The context is unclear in IC 4.20.4 (*matroia*), IC 4.21.5 (*patroia*), and in the one example at Phaistos (*matroia*), but in all of these inheritance is possible.

6. All references to passages in Cretan laws are to the Gortyn Code (IC 4.72) unless otherwise indicated.

7. Maffi speaks often of women's "patrimony" rather than her "property," thereby subtly reinforcing the idea that a woman's property must be understood in a familial context. He does not often use this language when speaking of men's property.

ἄς κ' ὁ πατέδ δόει, τῶν τῷ πα-
 τρός κρεμάτον παρ υἱέος
 με ὀνῆθθαι μεδὲ καταθίθ-
 εθθαι, ἄτι δέ κ' αὐτὸς πάσετ-
 αι ἔ ἀπολάκει ἀποδιδόθθο,
 αἶ κα λῆι μεδὲ τὸν πατέρα τὰ τῷ 5
 ν τέκνον ἄτι κ' αὐτοὶ πάσον-
 ται ἔ ἀπολάκοντι.

As long as the father is living, no one is to buy any of the father's property from a son or accept it as security, but whatever (the son) himself has acquired or inherited, let him sell it, if he wishes; nor is the father (to sell or pledge as security) his children's property, whatever they themselves have acquired or inherited.

As Maffi notes, the provision in 6.2-7 allows a son to sell property he has acquired or inherited but says nothing about a daughter being able to do this. He explains that this is because girls do not have any property that they can sell. But we should note that the next provision (6.7-9) prohibits a father from selling his children's property (*ta ton teknon*). This implies that all the children, including the daughters, could have property that could be sold. So we need to look again at Maffi's arguments that a daughter could not inherit or acquire property that was hers to sell.

The law makes clear (5-6) that sons could acquire or inherit property of their own. Let us consider inheritance first. How can a son have inherited property when his father is still alive, as he clearly is? Maffi's solution is that the verb *apolankanen* does not mean "inherit," as I have translated it, but rather "anticipate an inheritance" (Maffi 1997: 36-38): the son has not actually received this property, but anticipates receiving it as part of his inheritance. This is impossible: if the son has not yet received the property, then it still belongs to his father, and the law cannot in one clause prohibit a son from selling his father's property and then in the next clause allow him to sell it.⁸ *Apolankanen* must, in fact, mean inherit,⁹ and since the boy's father is still alive, it must refer to a distribution of property made by one parent while still alive, which is implicitly allowed in 4.27-31.¹⁰ It

8. The same is true of the father selling his son's property in 5.7-9, where the language is the same.

9. *Apolankanen* also occurs in 5.1, 5.4, 5.7, and 7.34. The first three all refer to a daughter's inheritance (which Maffi argues is not actually hers). I leave these aside because the fourth occurrence seems decisive. This comes in the long section containing rules for the marriage of an "heiress," specifically a rule providing that if either the heiress or the person designated to be her husband has not reached puberty, "she is to have (*eken*) the house, if there is one, and he is to receive (*apolankanen*) half of all the revenue from the estate" (7.31-35). It would make no sense for the law to say, "he is to anticipate receiving half of all the revenue," since he knows that when they eventually marry, the couple will receive all of the revenue. Clearly the law is giving each of them some part of the estate before they are married -- to her the house, to him half of the revenue.

10. The law at 4.27-31 says that the parents do not have to divide their property while they are alive, implying that they may divide it if they wish. If

cannot refer to property inherited from the boy's mother, since the father would still control this (see 6.31-46). Thus, the law can only mean that a son can dispose as he wishes of any property he has received as a distribution from one of his parents while the parent was still alive.

The law also refers to property the son has acquired. How would he acquire it? Maffi's first suggestion is booty from war. This is possible, though there is no mention of booty in any Gortynian law, and only rarely is there any mention of something military. The other means of acquiring property, Maffi suggests, was commercial activity, which a son could engage in because he can anticipate receiving an inheritance. Here too, it makes no sense to talk of his using an anticipated inheritance for commerce, but the son may well have used the inheritance he actually received as a partial distribution.

What about girls? Inheritance, according to the laws, was divided among all the children, so daughters would get a share along with the sons. Their share would be smaller, much smaller in some cases (depending on how much of the estate consisted of city houses), but they certainly received something. Maffi argues that any inheritance a girl received would not actually be hers to dispose of as she wished but rather would have the character of a nuptial gift, similar to an Athenian dowry, which could only be transmitted, eventually, to her children or other heirs. The evidence for this is that the law allows a father, if he wishes, to give his daughter a gift when she is getting married worth up to the amount of her share of inheritance, after which she is not to receive anything more (4.48-5.1). In essence, she can receive her inheritance when she is married. For Maffi, this gift would function like a dowry: nominally it might belong to the girl, but in fact it would go to her husband, who would manage it for her until it was eventually transmitted to her heirs.¹¹

The problems with this are first, the law says that a daughter's father may give a gift to *her* when she is getting married (*tai opuiomenai*, 4.49-50); it says nothing about her husband.¹² Clearly, the daughter herself receives the gift. Second, because the gift was voluntary, some daughters did not receive a gift but instead received their share of the inheritance when their father died. Here too, the law says explicitly

one of the heirs is fined, however, then a distribution should be given out to pay the fine.

11. The last sentence in this passage (4.52-5.1) says, "any (daughter) to whom he gave or promised before is to have (*eken*) these things, but from the paternal estate she is not to receive (*apolankanen*) any other property. Even if one accepts Maffi's interpretation of the second verb as "anticipate an inheritance" (see above, n.7), the first verb (*eken*) certainly means she is to have the property in question.

12. Similarly, the speaks of a son giving "to his mother" (*matri*) and a husband giving "to his wife" (*gynaiki*), saying nothing about the involvement of another male relative (12.1-2, cf. 10.14-15).

that the daughter “receives” (*lankanen*) her inheritance (4.39-43, 4.47-48), just as her brothers do. It also says that all the children, sons and daughters, are to “have” (*eken*) or “receive” (*dialankanen*) their share (5.12-13, 5.50-51). Thus, the law is clear: the daughter’s share is given to her, not to her husband or brother.

In seeking a different interpretation of this evidence, Maffi argues (94-96) that the daughter might receive the gift or inheritance, but would immediately transmit it to her husband or (if she was not married) her brother. Only if a woman was widowed or divorced after her father has died, and went to her brother’s house, would Maffi consider her the owner of her inheritance. Thus, he argues, in most cases inheritance had a dotal function, just as a father’s gift did. As a result, the only significant difference from Athens is that at Gortyn the amount of the dotal gift is specified by law.

The one piece of evidence Maffi cites for his view of inheritance is from the section on adoption: “if the adopter has natural children, with the male (heirs) the adopted son will receive a share *in the same way as daughters from their brothers*” (10.48-52). For Maffi this shows that a daughter’s inheritance first went to her brothers and only later (when she was married) to her. But if that were the meaning of 10.48-52, then the adopted son would receive his share of the inheritance from the natural sons only when he was married. This seems highly unlikely. It is far more likely that when children received their inheritance, the brothers handled the distribution of the estate giving each sister her share; if there is an adopted son, they give him his share “in the same way.”

Other sorts of gifts are more difficult to fit into Maffi’s dotal schema. I leave aside a mother’s gift, which is not mentioned in the laws, though Maffi is probably correct to assume it was allowed (97). Husbands and sons, however, are explicitly allowed to give gifts (10.14-17, 12.1-5). A husband might give his bride a nuptial gift at the time of their wedding, but the other information the Code gives about a husband’s gift suggests a different motive. This is a provision in the passage that specifies what happens if one spouse dies (3.17-37). The passage begins, “if a man should die leaving children, if his wife wishes, she is to marry, having her own things and whatever her husband gives her (κᾶτι κ’ ὁ ἀνὲδ δῶι) according to what is written in the presence of three adult free witnesses” (17-20). Since similar lists of property a woman may keep, e.g. in a divorce (2.45-54), do not mention a husband’s gift, Maffi argues (98) that only in anticipation of his own death could a husband give his wife a gift, which might be a nuptial gift if she remarried.¹³ This is certainly possible, but one wonders in how many cases a husband did in fact anticipate his own death in time to arrange a gift in the presence of three witnesses. It is more likely

13. If she did not remarry, of course, it would not be nuptial gift, which is one reason Maffi prefers to see the gift as given in anticipation of death (*donatio mortis causa*). His other reason is that the verb *didomi* is absent in 3.17-20, but since the verb is in fact present in this passage (cited above), this must just be a careless error.

that a husband could give his wife a gift at any time, and she would keep this during a divorce, though he could dispute it if she claimed a gift that he had not given her. If he died, on the other hand, he would not be there to dispute a gift that his widow claimed he had given her, and so the law requires witnesses to confirm it.

A son's gift is more difficult for Maffi to explain (98-99). Neither a nuptial gift nor a gift in anticipation of (the son's) death seems likely, since only rarely would a mother marry when she had no father or brother to give her away and her son was of an age to do this, and it would be equally rare that a son predeceased his mother. Maffi seems never to consider the possibility that a person might give a gift for much more simple reasons -- as a mark of gratitude, for instance, or simply for pleasure. This might help explain the limits the law imposes on the amount of these gifts: these would protect the property of a man who -- so a legislator might think -- might be swayed too easily by his love for his wife or his fear of a dominating mother to give over large amounts of their property. For Maffi, gifts must always have been functional, and the function was usually dotal and was closely connected with the dotal function of inheritance.

Besides inheritance and gifts, there may have been other means for girls to acquire property. Maffi is undoubtedly correct that girls would not acquire war booty. He also argues that they would not be able to engage in commercial activity because they would have no income from work they did, such as weaving. This argument requires further examination. The Code first mentions weaving in the section on divorce (2.45-52):

<p>αἱ κ' ἀνὲρ [κ]αὶ γυνὰ διακρ[ι]νον[τ]αι, τὰ φᾶ ἀ- ὑτᾶς ἔκεν, ἅτι ἔκονσ' εἶε π- ἄρ τὸν ἀνδρα, καὶ τῷ καρπῷ τ- ἀνν ἐμίαν, αἱ κ' εἰ ἐς τῶν φῶ- ν αὐτᾶς κρεμάτων, κῶτι κ' ἐνυπάνει τὰν [ἐμίαν]ν ἅτι κ' εἰ, κτλ.</p>	<p>45 If a husband and wife are divorced, she is to have her own things, whatever she had when she came to her husband, and half of the produce, if there is any from her own property, and half of what she has woven, whatever it is, etc.</p> <p>50</p>
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In a divorce, the wife takes first "her own things," which she brought to the marriage. In addition she takes half of the produce from her own property, if there is any, and half of whatever she has woven. These categories seem straightforward and scholars have said little about them, but it is worth asking what they are and how the wife's share is determined. The produce is presumably agricultural produce from the land, and the qualification "if there is any" probably indicates that some girls came to a marriage with property that did not include land, though others must have had land.¹⁴

14. Maffi agrees that women at Gortyn could inherit land among other things (96-97). For my arguments on the subject see Gagarin 2010:24-25, to which add

If a woman did own land which yielded produce, how did she determine her share in a divorce? Did she take half of whatever produce happened to be in the house at the time, which might be a very different amount depending on when during the agricultural cycle the divorce took place? And if so, did the couple then divide each kind of produce -- grain, fruit, figs, etc. -- in half so that she could take her share of each? And because she could only take the produce from her own property, the family must have stored each kind of produce in two separate containers, one for the produce from her land and one for her husband's? If they stored all the produce from both lands together, it would be impossible to separate out half of the produce that had originally come from the woman's property. Finally, the task of carrying away the produce, which might amount to a very large quantity if the divorce occurred right after the harvest, could be quite difficult. All in all, it would be much easier to calculate the value of each product as it was harvested from each piece of land and then in a divorce allow the wife to take an amount of money equivalent to half the produce from her land.¹⁵ And the value could be calculated on an annual basis so that it made no difference what time of year the divorce took place.¹⁶

What about the items she had woven? These were not perishable and could be more easily divided than produce, but here too it makes more sense to think of the value than of the items themselves. Most of what she had woven was probably clothing, and this would have included clothes for her husband and herself, and for their children if there were any. In a divorce, she would have no use for her husband's or children's clothing, but if she took only what she had woven for herself, this would often be less than half the total, sometimes much less. It seems more likely, therefore, that she would take whatever she had woven for herself, and if this was less than half of the total amount she had woven (or more than half), she would then calculate the additional amount she would receive (or the amount she would have to return).

the provision in the Code concerning inheritance "if there should be no *kremata* but only a house" (4.46-48). Since anyone with a house would have to have some small items of property in addition to the house, it appears that *kremata* here designates primarily land.

15. There is evidence that the value of produce from land was sometimes calculated in another law from Gortyn (IC 4.43Ba, lines 7-9), which states that when a person has been given public land, "someone cannot accept a pledge on that land unless he calculates [lit. "measures"] the revenue it will produce (μηδ' ἐνεκυράδδεν αἰ μὴ ἐπι[μ]ετρ[ῆι] τὰν ἐπικαρπίαν). This suggests that there may have been standard values for different kinds of produce and even a standard calculation of the value of produce from a certain amount of land. The same may have been true for woven products.

16. The woman probably took half of the produce only from the year in which the divorce took place, not from all the years the couple were married, because if the couple were married for many years, the total value of the produce (most of which may have been consumed) might be larger than the total amount of property the household currently possessed.

All this evidence together shows that a girl whose inheritance included land would receive revenue from that property. She would also be able to weave items of value, which in some cases may have been sold to produce additional revenue. We do not have much evidence for markets for agricultural or woven products, but the clear evidence that money circulated at Gortyn at this time means that the sale of surplus goods was possible, whether or not formal markets existed for them.¹⁷ And this means that women, whether married or not, did have ways to acquire property besides inheritance and gifts from male relatives.

Finally, if daughters did have property of their own, why does the provision in 6.2-7 (cited above) allow a son to sell his property but say nothing of a daughter selling her property? For Maffi (94) this is an obvious indication that a daughter could not sell her property; I would argue, however, that in general the law addresses situations that occur frequently or that have caused or are likely to cause problems, and since girls were less likely to want to sell their property, the law did not bother to include them. Fathers, on the other hand, would be just as likely to try to sell a daughter's property as to sell a son's, so in 7-9, the law specifies "children," which presumably includes daughters.

In sum, Maffi concludes that all the property a woman received from gifts and inheritance came from members of her nuclear family and must be understood in this context. In almost all cases the property had a dotal function and was only nominally the woman's property, since it was managed by her husband or other relative and was to be transmitted at her death only to her children or other heirs. The laws, on the other hand, consistently speak of a girl *receiving* her inheritance, or *having* "her own property," and of a father, son, or husband giving a gift to his daughter, mother, or wife. No other male relative is mentioned in connection with either inheritance or a gift. This is completely different from the language Athenians use about the dowry, namely that a father first negotiates the amount of the dowry with his daughter's husband-to-be and then gives it to him, not to her. At Gortyn, by contrast, the law speaks of the woman herself receiving or having property (sometimes "her own property"), and we must accept that the law means what it says: the property is hers, she receives it, she keeps it, she has it. In short, she owns it. She may let someone else manage it for her, but it remains hers and if it is mismanaged, she regains control of it (6.9-31 -- see below). If she is married, half of the produce that comes from her property is also hers, as is half of whatever she weaves. Presumably, if she is not married, all of the produce is hers, as is any profit from her weaving. She can also acquire property by buying, selling, lending, and borrowing, just as men can.

Maffi addresses one last question about how the *matroia* are acquired -- whether or not slave women could acquire *matroia* (100-101).

17. We do know that there was a market for slaves at Gortyn, because a law regulated the sale of slaves in the agora (7.10-15).

The main evidence is a short passage about the separation of serf couples (3.40-44):

αἴ κ-
α φοικέος φοικέα κριθῆι δοῶ
ἔ ἀποθανόντος, τὰ φὰ αὐτᾶ-
ς ἔκεν· ἄλλο δ' αἴ τι πέροι, ἐνδ-
ικον ἔμεν. vac.

40 If a serf woman is separated from her serf husband either while he is living or by his death, she is to have her own things, but if she should carry away anything else, it is a matter for trial. vac.

The language here is remarkably similar to that used in addressing the divorce of a free couple (2.45-52, cited above), but there is no mention of produce or weaving, probably because regulations concerning slaves are generally more condensed than those concerning free people,¹⁸ as indeed this provision combines separation by divorce and death, which are treated separately for free persons.

Be that as it may, can we consider “her own things” (*ta wa autas*) to be her *matroia*? Like many scholars, Maffi assumes that slaves did not truly own property; rather, all the property that slaves are said to have in fact belonged to their owners, in the same way as the Roman *peculium* -- property that was often treated as if it were the slave’s but that by law belonged to his master. Here at Gortyn, however, it is the law, not everyday speech, that states that the serf woman is to have “her own things.” The clear implication is that these are her property *de iure* not just *de facto*. If this is the case, it removes another difficulty facing Maffi, who has to assume that the law only addresses the separation of couples belonging to different owners. The law’s purpose, Maffi argues, is to ensure that when a serf woman returns to her master after a divorce or her husband’s death, she brings with her “her own things,” which for Maffi are actually her master’s things. In this way, the intent of this law is to allow the owner to reclaim his property.

But if this is what the law means, we must ask first, why does it not say explicitly that the serfs belong to different owners; second, why does it not speak of “her owner’s things” rather than “her own things”; and third, why does the law not direct the serf woman’s owner to claim his property rather than letting the serf woman claim it? If Maffi’s view is correct, a serf woman with children who is divorced or whose husband has died would have good reason *not* to take her things (which for Maffi are her owner’s things) with her but to leave them with her children or with her husband for the benefit of her children. The law, however, does not seem concerned about the possibility that she might take less than she owns, only that she might take more. It makes far more sense, therefore, to understand the law to mean what it says: when serfs are separated, regardless of whether

18. It is likely that slaves did not own land and thus did not have produce, but it seems unlikely that slave women did not weave anything.

they have the same or different owners, the woman is to take her own property with her.¹⁹

Whether a serf woman's own things would have been considered her *matroia* is impossible for us to know, just as we have no evidence regarding whether or how the property of serfs was inherited by their children.

II

Maffi next takes up the question, whether *matroia* could be freely disposed of, and if so, who was authorized to dispose of them (101-2). His answer is that the dotal function of *matroia* meant that they were inalienable; the law authorized only two exceptions, to pay a woman's debts and to allow her to give a small amount for *komistra* (see below).

The first exception is mentioned in 11.42-45: "the *patroia* are liable for debts incurred by the father, the *matroia* for those incurred by the mother" (ἀτέθειται δὲ ὑπὲρ μὲν τῷ [πα]τρὸς τὰ πατροῖα, ὑπέδ' δὲ τᾶς μητρὸς τὰ ματροῖα). This is the only provision in the Code that mentions the *matroia* being used to pay for something rather than being inherited, though the context (11.31-45) is still inheritance (see below). Maffi concludes that paying a woman's debts is the only legitimate use for *matroia*; but we certainly cannot presume such a degree of completeness in the Code that any matter not explicitly allowed was therefore prohibited. In fact, many other laws written around the same time as the Code have survived, most of them fragmentary, and we must assume that many others were written that have not survived. Moreover, we must understand the law in 11.42-45 in its context, as part of a larger set of laws concerning estates of parents who have incurred debts (11.31-45): if the heirs wish to inherit a parent's estate, they must pay any debts the parent incurred while alive; if they do not, then the estate will go to the creditors. The provision in question (42-45) prevents one parent's estate from being used to pay the debts of the other parent. Nowhere is there any hint that the *matroia* could only be used to pay for a woman's debts.

Other objections to Maffi's conclusion are first, if we infer that the *matroia* could be used for nothing other than paying debts, we must draw the same inference about the *patroia*, since the language of the law is identical concerning the two estates. And no one thinks that the father's property could not be used for anything other than paying his debts. Second, if a woman could do nothing with her *matroia* except pay an existing debt, she would never incur a debt in the first place, because she would have no property that she could dispose of

19. I leave out of consideration here the final clause cited above, that if there is a dispute over what the woman takes, "it is a matter for trial." The wording suggests that the trial would be between the woman and her (former) husband, just as for free persons (3.5-8), but for Maffi, "notwithstanding the wording of the Code" (101), the law means that the two owners will go to trial.

for any other purpose. It is clear, therefore, that to interpret 11.42-45 as restricting the use of *matroia* to the payment of debts, as Maffi does, makes no sense. Rather, a woman could dispose of her property as she wished, but if she died leaving debts, the law says that these must be paid from her *matroia*.

In resisting this conclusion, Maffi notes that a woman's father, husband, and son (and probably brothers too) are all prohibited from disposing of a woman's property (6.9-31). Maffi rejects the possibility that a woman could dispose of her property herself, observing (correctly) that "to prohibit a husband or son from disposing of the property of his wife or mother does not imply that the women in question could dispose of their own property" (202). However, the passage that introduces these prohibitions (6.2-9, cited and discussed above) suggests that the implication may be valid. 6.2-5 prohibit a son from disposing of his father's property, but no one thinks a father could not dispose of his own property. 6.7-9 then prohibit a father from disposing of his children's property, but this is preceded by 6.5-7, which explicitly allow a son to dispose of his own property. Clearly, laws prohibiting X from disposing of the property of Y do not mean that Y could not dispose of his own property. In fact, in 6.2-9 at least, Y certainly is allowed to dispose of his own property. Thus, prohibitions against a male relative disposing of a woman's property do not mean that she could not dispose of her property herself.²⁰

Part of the reason for Maffi's reluctance to accept this conclusion is that he thinks that a Gortynian woman could only act through a guardian, who would be a male relative, and since these are prohibited from acting, she herself would also be unable to act. But this assumption is unwarranted and unnecessary (see above n.3). Even if a woman did not need a guardian, however, Maffi insists that the "dotal function" of *matroia* imposed restrictions on the use of a woman's property so that it was not freely alienable.

The one exception he allows is for *komistra*, which is the subject of 3.37-40:

κόμιστρα αἴ κα λῆι δόμεν
 ἀνὲρ ἢ γυναῖκα, ἢ ἄρσεν ἢ θυγάτηρ
 α στατῆρανς ἢ δωδέκα στατ-
 ἔρον κρέος, πλίον δὲ μέ.

If a husband or wife wish to
 give something for *komistra*,
 (it should be) either clothing
 or twelve staters or (some-
 40 thing) of the value of twelve
 staters, but not more.

This law follows a group of laws concerning the division of property after the death of one spouse, and many scholars have thus understood *komistra* (a word that is otherwise unknown) to mean something connected with burial (Maffi 1997: 63-64). Whatever the word means, the law is clearly intended to limit the expense. It is not intended to pro-

20. For more detailed comments on 6.2-46 see Gagarin 2008: 12-16

vide an exception to the rule that a woman's property is inalienable, since in that case there would be no reason to mention the husband's gift and the law would only mention the woman. In fact, by limiting the amount a wife can give for *komistra*, the law implies that she, like her husband, can give money for other purposes without limitation.

III

Maffi next examines the inheritance of *matroia*, which follows the same rules as the inheritance of *patroia* (4.43-46, 5.9-54), leading him to conclude (102) that both estates could contain the same types of property. I would agree. He then turns to rules specific to the *matroia* in 6.31-46: if a woman dies leaving children, her husband manages her *matroia*, but he cannot sell any of her property or use it as security without the consent of the adult children. This is a reasonable protection of the children, who will eventually inherit the *matroia*. Maffi then suggests that any proceeds from a sale or a loan backed by the security of the *matroia* would probably go to the father. I think it more likely that the proceeds would be added to the *matroia*, but since the children will eventually inherit their father's estate, perhaps it would not matter very much whether the proceeds remained part of the *matroia* or went to the father, where they would become part of his *patroia*, which the children would eventually inherit.

Because the *matroia* will probably not actually be distributed to the children until the father's death (in accordance with 6.31-46), a daughter may have long since been married, and Maffi acknowledges (103) that the share of the *matroia* that she would receive at that time would not be tied to any "dotal function" but would be her "personal property." He does not pursue the implications of this, but his words ("personal property") imply that the daughter could do whatever she wanted with this particular property.

Maffi then observes that if a husband dies before his wife, the law only addresses cases where she leaves to marry or return home (3.17-31); presumably he thinks that her *matroia* would in that case be managed by her new husband or her relatives at home. However, the law also implicitly allows the widow to stay with her children in which case, according to Maffi, the children will manage her *matroia* according to the rule in 6.9-12. But this law, which prohibits a son from misusing his mother's property does not require him to manage it, nor does it prohibit her from doing so. And if the children are very young, of course, they will not be able to manage her *matroia*. Maffi's solution is that the *patroia* of the deceased father would be managed by one of his relatives -- possibly, but nothing in the law prevents his widow from managing the *patroia*; this relative, according to Maffi, would then also be the widow's guardian, though it is not clear who would manage the *matroia*. In the end Maffi admits that this problem does not exist for those who think a Gortynian woman could manage her own property without the need for a *kyrios*. In fact, this is only one of the many issues concerning the *matroia* at Gortyn that are needlessly

complicated and confused by the assumption that women needed a guardian like the Athenian *kyrios*.

Maffi then (103-4) briefly mentions two more cases in which the *matroia* appear not to have a dotal function, when a woman decides to rear a son (why not a daughter?) born after she is divorced (3.44-52), and when a woman has children while married to and living with a slave (6.56-7.10). In neither case is there any difficulty if we assume that the woman herself could manage any property she possessed, whatever its source, and that it would be inherited by her children or other relatives when she died.

Maffi next takes up the very difficult case of adoption (10.33-11.23), concerning which the law focuses primarily on the inheritance that the adopted son will receive from his adopting father (10.39-11.10); it says nothing about his inheriting anything from his natural mother or his adoptive mother. Nonetheless, Maffi asks whether an adopted son would inherit from either of these, and then speculates about several hypothetical situations. Would an adopted son whose adoptive mother dies be able to give his adoptive father permission to sell her property (see 6.31-36)? If the husbands of the natural and the adoptive mothers die leaving her an heiress, if the two mothers have only one son between them, which mother is treated as having a child and thus being under no compulsion to marry (according to 8-30-36)?

These hypothetical questions arise because Maffi assumes that at Gortyn, as at Athens (see Isaeus 7.25), an adopted son preserved ties to his natural mother. There is no evidence, however, that this was the rule at Gortyn, and a short clause that Maffi omits (11.5-6) suggests that he did not. 11.5-6 follows regulations that allow the adopted son to inherit a share of the estate from his adoptive father even if there are also natural children. The law also allows the adopted son not to receive the inheritance in this case, but then states (11.5-6), “the adopted son is not to receive more.”²¹ It is uncertain just what this means,²² but the most likely interpretation, in my view, is that it means the adopted son is not to receive anything from other sources, namely his natural parents, and thus that unless the adoption is renounced (11.10-17), the adopted son does not have ties to his natural parents, at least not as regards inheritance. The responses I would give, therefore, to Maffi’s questions are first that yes, the adopted son is able to give permission

21. πλίιι δὲ τὸν ἀνπαντὸμ μὲ ἐπικορέν. The reason Maffi does not consider this clause is because, as he has argued in an earlier work (1997: 81), he thinks *epikoren* does not mean “receive,” as most other scholars understand it, but has its more common (Attic) sense “concede.” In his view, the provision prohibits the adopted son from “conceding” (i.e. giving) one of the adopter’s daughters a larger amount than she is supposed to receive when she is married (see 5.1-9). But there would be no reason to use the verb “concede” instead of “give,” which is used of gifts everywhere else in the Code.

22. Willetts takes it to mean that the adopted son is not to receive more than the females, but this would be superfluous (so Koerner 1993: 552) since the law has just specified that he receives an equal share.

to his adoptive father, and second that the adoptive mother but not the natural mother is treated as having a child.²³

IV

In his final section Maffi examines an inscription from Tegea containing an edict (*diagramma*) of Alexander with provisions for the return of exiles in 324.²⁴ Two passages in the edict, lines 4-9 and 48-57, contain rules about the returning exiles recovering their *patroia* or *matroia*, and about women who remained in Tegea or returned earlier keeping possession of whatever *patroia* or *matroia* they had. These raise many difficult issues concerning the ownership of *patroia* and *matroia*, which Maffi treats at some length. Because his conclusions are necessarily somewhat speculative, and because it does not appear that the rules concerning *patroia* and *matroia* at Tegea in 324 were similar to those at Gortyn more than a century earlier,²⁵ I leave this document out of consideration here, noting only Maffi's general conclusions, that the edict illustrates how the law regulated the *matroia* both within the family and in the larger context of the community, and that it reveals the continuity of *matroia* and *patroia* over time. He also suggests that the privileged role of the *matroia* may be a feature of the Doric family structure. I would say that all these conclusions are problematic, but this would take me too far from the subject of this paper, the property of women at Gortyn.

Part B

The following response to Maffi's response concentrates on new points that he makes or new ideas his comments have inspired in me. I begin with some general considerations.

Maffi accuses me of following the general principle that "whatever is not prohibited by the law is allowed," but he himself seems to follow the principle that "whatever is not allowed by the law is prohibited." My interpretation of the laws from Gortyn is based on three premises: first, although some sections of the Code (and perhaps of other Gortynian laws) are relatively comprehensive and well organized (most notably 1.2-2.2 on status and ownership disputes, and 10.33-11.23 on adoption), the "Code" as a whole (a term I use for convenience) is neither systematic nor comprehensive. Most provisions address specific situations, probably because they were creating conflict or uncertainty, and we must always ask what is the purpose of any law we seek to understand. Second, I believe that the laws at Gortyn try to provide

23. I will pass over Maffi's speculations (105-6) about a further problem not directly addressed by the Code, concerning the adopted son re-entering his natural family; as far as I can see, this has nothing to do with women's property.

24. SIG 360; *IPArk* 5 (Thür and Taeuber 1994: 51-70); Heisserer 1980: 204-29.

25. It appears from lines 4-9, for example, that women only possessed property if they were unmarried and had no brothers.

rational, practical solutions to the issues they address and do not impose unreasonable burdens on people for no good reason.

Third, I try to understand the meaning of specific provisions without the sort of preconceptions about the socio-economic position of Greek women in general that clearly govern Maffi's interpretations of specific provisions. He makes this clear in sections 1-2, where he presents the subject in terms of Doric or Attic models for Greek women; apparently he does not think it possible that Gortynian women conformed to neither model. Here I note merely the simple fact that the word *matroia* ("beni materni") occurs only in Crete in the archaic and classical periods and only in Arcadian Tegea in the Hellenistic period. This suggests that women at Gortyn may not have conformed to either an Attic or a Doric model. At the very least, we should begin with an open mind on this.

Now some specific issues. Numbers at the beginning of a paragraph refer to the numbers in Maffi's response.

8, 15, 41, 43, 44. The regulations in 6.2-12 prohibit one person from selling property (and other transactions) that belongs to another person; more specifically, a husband or son cannot sell his wife's or mother's property (6.9-12). Maffi further believes that Gortynian women could not themselves sell their own property. The only exception made by the law is in order to pay a debt (9.1-7, 11.31-45). But the assumption that Gortynian women themselves cannot sell their own property has no basis in the law. It cannot be supported by the law prohibiting a son from selling his mother's property because the same law also prohibits a son from selling his father's property (6.2-5) and Maffi agrees that a father can sell his own property. Maffi argues that when the law allows the sale of a woman's property to pay a debt, it implies that sale is prohibited for any other purpose. But both of the laws allowing sale to pay a debt (9.1-7, 11.31-45) have the clear purpose of providing for the payment of any debt left behind by someone who has died. The second passage has the additional purpose of preventing the estate of one parent from being used to pay the debts of the other. Therefore it mentions both the paternal estate and the maternal estate in connection with paying the debts of a deceased. The provision certainly does not imply that the paternal property could not be sold for any purpose except to pay a debt; nor does it imply this about the maternal property. Thus neither passage implies anything about the sale of a woman's property in general, and if anything, the second passage in particular implies that women, like men, could normally sell their own property.

Consider, moreover, what would happen if Maffi is correct that women could not sell their own property. We know that women incurred debts (11.31-45). How did this happen? Presumably a woman borrowed money. Could she sell property to repay the debt while she was alive? If she could not, no one would ever lend a woman money because he would know that he would probably have to wait until she died in order to be repaid. If, on the other hand, a living woman could

sell property to pay a debt, then she could sell her property whenever she wished. She would first have to borrow money from someone (perhaps the buyer) and then she could sell the property in order to repay the debt. In practice, then, she could sell any property she wished, though the process would be a bit complex. But it seems far more likely that the law in 6.9-12, prohibiting a husband/son from selling his wife's/mother's property, takes for granted that the woman may sell the property herself if she wishes.

10, 11. I admit that the details of the suit that is the subject of 6.12-31 (and the similar suit in 9.7-24) are uncertain, but Maffi and I agree that the woman who owns the property is the plaintiff. I think she sues her husband, the seller, Maffi thinks she sues the buyer. Whichever is correct, the woman is clearly bringing suit on her own without the participation of a *kyrios*, because her husband, who would be her *kyrios* in the system Maffi envisions, would not want her suit to succeed.²⁶ That women could appear as litigants in court on their own is supported by other evidence (e.g., the laws on divorce in 2.45-3.16), though in all such cases Maffi can always, if he wishes, summon other hypothetical relatives (never mentioned in the laws) to represent her. In my view, however, a woman's ability to litigate in court by herself is completely consistent with her owning "her own" property by herself, without a *kyrios*.

30. In my articles I have several times made the point that although in my view Gortynian women owned and could administer their own property by themselves, it seems that they often allowed men to administer it for them, a situation that can be paralleled in many Western countries in the recent past, and even today. Maffi responds that if the legislator had wanted to introduce norms favoring the autonomy of women, he would have made this explicit. Since the law is silent on this point, Maffi concludes that the "traditional customs and practices" remained in effect. He further argues that from 6.9-31 we can deduce the principle that a woman's property was always administered by a male relative. To all this I would respond first, that the legislator's purpose in 6.9-31 is to protect women's property from misuse by men so that his silence on other matters is not troubling; second, that Maffi assumes that the traditional customs and practices at Gortyn were those we know from Athens (and perhaps Sparta), though there is no reason in my view to assume this; and third, that 6.9-31 prohibit misuse of a woman's property by men but give no support to the conclusion that men always (or even usually) administered a woman's property.

30, 45. Maffi recognizes that the law explicitly allows a wife (and a husband) to give *komistra* (whatever this is) up to the value of 12 staters. In his view this is another exception (in addition to paying a debt) to the rule that a woman cannot dispose of her own prop-

26. This is obvious if the husband is the defendant, but even if the buyer is the defendant, the husband would want not his wife's suit to succeed, as this would amount to convicting the husband of violating the law.

erty. However, if a woman was prohibited by law from disposing of her property, then the law in 3.37-40 would have to say “a woman may give *komistra* but not more than 12 staters.” But this is not what the law says. As written (“If the husband or the wife wish to give *komistra*, . . .”), it treats both spouses equally, and its purpose is clearly to limit the amount of *komistra* for both spouses. It assumes that a woman can dispose of her property just as it assumes that her husband can. In neither case is the law allowing something that might otherwise be prohibited.

31, 32. In my earlier papers I cite the law in 9.1-7 as the clearest proof that a woman could administer property herself. The law addresses the matter of paying the debts of the deceased when his only survivor is an heiress. It states that the heiress “either herself (*autan*) or through her paternal and maternal relatives” is to sell or mortgage property in order to pay the debt. My view remains that the first alternative means that the heiress would sell the property all by herself without the help of relatives; Maffi’s view is that selling the property “herself” would require the participation of a *kyrios*. I have responded that since the *kyrios* would almost certainly be a relative, there would be no reason for the lawgiver to say “either herself (that is through her *kyrios* who is a relative) or through her relatives.”

Maffi now suggests that reason for the alternatives given in the law is that the first would apply to heiresses after puberty and the second to heiresses before puberty. This seems to me quite plausible, and if true, it lends further support to my view, because the only plausible reason for distinguishing between the heiress before and after puberty is that before puberty she is too young to manage such transactions by herself, whereas after puberty she is able to do so. If we accept Maffi’s view that the heiress would have a *kyrios* both before and after puberty, her age would make no difference and the law would have no reason to make this distinction. It would simply read, “the heiress is to sell or mortgage property.” It might add “through her *kyrios*” or “through her relatives” if this were thought to be necessary, but there would be no reason at all to distinguish between pre- and post-puberty. Maffi argues that the criteria for choosing a *kyrios* were different pre- and post-puberty, but so what? If the heiress needed a *kyrios* in order to sell property, it would make no difference how this *kyrios* was selected. Thus I continue to understand “herself” as meaning by herself, without help, and I accept Maffi’s suggestion that she probably would act alone after puberty but her relatives would act for her before puberty.

37. Maffi seeks to explain the limitation on gifts from a son to his mother as protecting a third party, either the heirs or the creditors of the donor. The son’s heirs, however, would eventually inherit from his mother (their grandmother in most cases) and thus would not need such protection. As for creditors, the law, which imposes a limit of 100 staters of these gifts, would not serve to protect creditors in many cases. A poor son could give all the money he had (which would be less

than 100 staters) to his mother to avoid paying a creditor, and a rich son could easily give much more than this and still pay all his creditors. Thus I continue to think that a son gave money to his mother just because he wanted to, probably in most cases because she was living by herself and needed the money.

38, 39. I have argued that in a divorce, when a wife took with her half of the produce from her property and half of what she wove, she would often take an amount of money equivalent to this rather than the actual produce and woven products. Maffi thinks she took the actual goods. Even if he is correct, surely there would be times when the produce or the woven products would be more than the woman herself needed; the woven products in particular would sometimes include clothing she had woven for her children or husband that would be of no use to her. If Maffi is also correct in thinking that women could not sell their property (except to pay debts), then a woman would be required to take goods with her that were of no use to her and that she could not dispose of. I cannot believe that the legislator created such a situation.

42. The law in 3.40-44 says that in a divorce or after her husband's death a serf woman "is to have her own things (τὰ ἑἰς αὐτῆς ἕκην)," but if she carries away more than this, it is a matter for trial. Maffi argues that the serf woman's "own property" is actually her master's property and that the law, which he thinks applies only to serf couples with different masters, ensures that the woman's master recovers his property. I continue to think that "her own things" is an unlikely way to refer to the property of a woman's master. I also note that on Maffi's interpretation the law does not, in fact, protect the woman's master, because there is no provision for a trial if, for whatever reason, the serf woman takes less than "her own things" or even takes nothing at all with her. The law only provides for a trial if she takes more than her own things.

48. I end by noting Maffi's concluding sentence because I think it makes clear the difference between his approach and mine. "Therefore, I continue to believe, beyond any disagreement about the literal interpretation of single provisions of the laws, that the criteria on the basis of which the judicial condition of Gortynian women should be understood ought not to be too distant from a socio-economic picture that includes many elements common to other areas of Greece at this time." For me, this statement shows once more that Maffi's view of women at Gortyn is guided by a picture of women elsewhere in Greece, especially in Athens, and that he interprets individual provisions of the law in such a way as to conform to this picture, even if this results in improbable understandings of the meaning of the Greek and irrational or impractical legislation. I prefer to start with the text of the laws and understand this as best I can, regardless of whether it fits any preconceived picture of women in other parts of Greece.

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