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## CODIFICATION, TRADITION, AND INNOVATION IN THE LAW CODE OF GORTYN

Since it was unearthed some 120 years ago, immense scholarly attention has been devoted to the study of the more than 600 lines of the so-called Law Code of Gortyn, particularly in terms of epigraphic, linguistic, and legal studies. The text has also been subject to discussions of social, political and economic nature. The present inquiry, however, confines itself to providing a contribution to the ongoing debate as to the Law Code's structure and organisation, and to the implications of the manner in which the legal provisions are organised and structured within the Code. This is encompassed by the question of codification, tradition, and innovation, which I shall deal with in two respects below. The first concerns the general layout of the text – in other words its coherence as well as the logic behind the order of the different laws. I shall argue that, although for our purpose it makes good sense to identify sections of related legislation, the order of the different laws is linked together in a natural and logic sequence, which reveals two interrelated issues: the process of organising the Code and the intended utility and applicability for its future users. The second respect in which I shall consider the question of codification, tradition, and innovation concerns the structure of the individual laws, and the extent to which these demonstrate traditional and innovative features. As will become clear, unsurprisingly the legislative efforts demonstrate many traditional features with regard to the layout. We can, however, observe innovative legal enterprises, some of which were in accordance with tra-

ditional perception and expression, whilst some directly constituted a breach in traditional norms and social custom.

Yet a few remarks on «code» and «codification» in relation to the Gortynian material are indispensable. For decades, scholars have discussed the extent to which the Law Code of Gortyn was actually a «code». Those who still define the text as a «code» see it as a comprehensible organisation of related legislation, rather than a «code» as such<sup>1</sup>. Others emphasise the plural: «the Gortynian laws»<sup>2</sup>. There is, nonetheless, a consensus with regard to one issue, namely the subject matter in the legislation that we find in the Law Code is treated in other Gortynian inscriptions and in particular also in texts of approximately the same date as the Law Code itself<sup>3</sup>. In other words, it is not vital whether we refer to the text as a «code» since we find related legislation within the remaining Gortynian epigraphic corpus, or we refer to the inscription as «the Gortynian laws». The interrelation of the subject matter in the legislation of the Law Code is evident in the same manner as in the so-called «Second Code». I do, however, sympathise with those who avoid the use of «code» altogether, except where it is a convenient «short-hand» term. In other words, I refer to the text as the Law Code of Gortyn for one reason only – that is convention. The issue of the application of «codification» has shifted from the discussion of referring to the Law Code of Gortyn as «code» towards the issue of whether individual sections of the Law Code of Gortyn may be labelled «codification» or not<sup>4</sup>. It is obvious that this is dependent upon how we define «codification». However, I agree that we may apply the term «codification» in the sense not as «making codes», but as «legislating in full» in terms of one single subject matter. Thus in what follows I shall apply this concept to a few of the sections of the Law Code. I also suggest that

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<sup>1</sup> *E.g.* Willetts (1967), p. 8; Gagarin (1982), p. 129; Nomima II, p. 3; Lévy (2000), p. 186.

<sup>2</sup> Lemosse (1957); Bile *e.g.* (1981), (1994), (1995). Davies (1996), pp. 33-56, argues in favour of a «decodification» as a response to the discussion of the Law Code as a «code» (in a modern sense). See Hölkeskamp (1992), (1999) for a thorough discussion and dismissal of the idea that early Greek Law was based in general «codifications» of law.

<sup>3</sup> See Guarducci (1950), especially, pp. 40-42.

<sup>4</sup> See *e.g.* H. & M. van Effenterre (2000), pp. 175-184.

we add a further criterion to the concept of «codification» in this respect. It is not sufficient to identify sections which seems to cover all possible situations if these evidently are developed over some period of time without any conscious attempt to «codify» whereas we should include other laws, which at the time for their enactment actually were meant as «codified». In sum, I suggest that we understand «codification» or «codified enactments» as «legislating in full with a conscious attempt to organise and delimit the subject matter in question».

### THE ORGANISATION OF THE CODE

How neatly the Code is elaborated with respect to its organisation has been emphasised in several more recent studies. There can be no doubt that a conscious mind was behind its internal organisation. The individual laws are separated by asyndeton and in most cases accompanied by the space equal to the size of a letter (sometimes two)<sup>5</sup>. M. Gagarin has most eloquently demonstrated the effect of this segregation of the individual laws by asyndeton. The result is 35 individual laws, and the Code is then subdivided as follows (cf. Gagarin [1982], p. 131): I.2-II.2, II.2-10, II.11-16, II.16-20, II.20-45, II.45-III.16, III.17-37, III.37-40, III.40-44, III.44-IV.8, IV.8-17, IV.18-23, IV.23-V.1, V.1-9, V.9-54, VI.1-2, VI.2-46, VI.46-55, VI.56-VII.10, VII.10-15, VII.15-VIII.30, VIII.30-IX.1, IX.1-24, IX.24-40, IX.40-43, IX.43-X.?, X.14-25, X.25-32, X.33-XI.23, XI.24-25, XI.26-31, XI.31-45, XI.46-55, XII.1-5, XII.6-19. I have not provided any headings for the present. The laws reappear below in my attempt of classification into the different categories of simple and elaborated single enactments,

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<sup>5</sup> There is no vacat in the following cases, where we find the text divided with the application of asyndeton: III.37, V.1 and 54, VIII.30. VI.56, does present a different problem, because it seem as if the mason made an error left unaltered. In four cases, a different solution had been chosen in order to separate one law from the next, namely in V.9, where a *folium* is applied instead of vacat and asyndeton, whereas in IX.24 and 43 we find a punctuation sign very similar to those found in older material from Crete, and final in X.25 where a *ligo* is applied for vacat and asyndeton. See further Gagarin (1982) for the organization on the basis of asyndeton. For the application of older punctuation signs, see Guarducci (1950), p. 125; Willetts (1967), p. 4; Jeffery (1990), p. 313.

and codified elaborated enactments. E. Lévy (2000), p. 196, has recently refuted this comprehension of the Code, arguing in favour of a division into three parts (*parties*) and seven sections (*chapitres*), which is further – so he claims – sustained by the remaining legislation so «Ces courts chapitres scandent ainsi l'ensemble du texte en 3 moments: les premiers chapitres (319 lignes), le chapitre sur la *patroiokos* (120 lignes) et le chapitre sur l'adoption (44 lignes), ce qui met en valeur le long chapitre sur la *patroiokos*». Whilst Lévy to some extent dismisses the guidance of *asyndeton* with or without *vacat*, *folium*, *palmula*, or other signs, he, nonetheless, retains some of those in his structuring of the code. Although I agree with some of his sections, I find it enlightening to retain the proposed division by *asyndeton* because as Lévy himself acknowledges these belong to the «prehistory» of the erection of the Code. Thus we are facing a tremendous effort on part of the Gortynians to organise their legislation logically and coherently within the Code. But another aspect is the product of years of subsequent enactment reflected within the Code. Not least, we have to bear in mind the practical application of the Code for those who were to use it in their daily lives. As it will become clear below, the sections we can identify can only be termed such because the Gortynians placed related legislation in a row and were hardly perceived as anything like «mini-codes». More likely, a Gortynian would know to look for provisions related to, for example, an heiress in the seventh to the ninth column of the Code (along with other possible places of publication we do not any longer have at hand?). Accordingly, we need to pay attention to the layout of the Code as well as to the many layers of subsequent legislation we find in the Code. In both respects we need the *asyndeton* (with or without *vacat*, *folium*, *palmula* or graphical markers) and the *vacat* without *asyndeton* in order to comprehend the legislative process, which is embedded in the issues of codification, tradition and innovation within the Code. Still, the division into sections is a fruitful tool for us when we discuss the different layers of legislation.

Thus, besides containing 35 individual laws, we can also identify sections of closely related legislation<sup>6</sup>. The first of these sections

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<sup>6</sup> This is an observation that had caused some previous editors of the Code to disregard the notion of *asyndeton* to some extent, see e.g. Guarducci (1950), p. 149; Wil-

consists of the four laws on sexual assaults (II.2-10, 11-16, 16-20, and 20-45). Another section is made up by the six laws related to estate settlement due to divorce or the death of one of the spouses (II.45-III.37), including two laws on exposure of children (IV.17-23). We then have a section on inheritance, which includes four laws, followed by three laws concerning the heiress (VII.15-VIII.30, VIII.30-IX.1, and IX.1-24). A fifth section contains all the supplementary legislation engraved by another mason <sup>7</sup>. In all cases but one (XI.26-31, On the duties of the judges) <sup>8</sup>, the supplementary legislation refers back to the previous legislation within the Code <sup>9</sup>.

The smoothness of how the content of the individual laws related to one another is astonishing: If we consider the total range of laws very few indeed do not seem to be logically situated. The Code commences with the law on illegal seizure (I.2-II.2), which takes up a whole column. The next to follow is the section on sexual assault, beginning with rape and ending with seduction. This is succeeded by a section dealing with estate settlement. The first law in this section happens to be on settlement in relation to divorce, and the logical connection seems clear. A husband might very well choose to divorce his seduced wife. It is emphasised in the law that the wife is entitled to a small compensation of five staters, if the husband were the cause (literally speaking) of the divorce (*i.e.* the divorce was not due to action on part of his wife?). The final law in the section on estate settlement proper, consists of the law on estate settlement between two members of the dependent population (the *woikees*). But we may also include the two laws that dealt with exposure of children born after the divorce of their parents. As children clearly belonged to their paternal *oikos* the logical sequence of laws to follow are the laws on inheritance (which include four different laws). The

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letts (1967), p. 34, and most recently Lévy (2000), whilst *e.g.* the authors of Nomima I and II, pp. 2-3, apply the divisions proposed by Gagarin (1982), p. 131.

<sup>7</sup> See Willetts (1967), p. 68.

<sup>8</sup> Possibly, we can link this law to IC IV 22B: *Prothesin met'aplodikazai met'apomlosai*. «A (legal) provision shall neither be reverted by judgement nor by oath». There are of course alternatives suggestions towards the understanding of *prothesis*. See *e.g.* Nomima II, nr. 84, where the three competing options are listed.

<sup>9</sup> XI.24-25 (cf. I.2-II.2), XI.31-45 (cf. IX.24-40), XI.46-55 (cf. II.45-III.16), XII.1-5 (cf. X.14-25), XII.6-19 (cf. VII.15-IX.24).

range of laws continues with a law on property management (VI.1-46), which is followed by three consecutive laws, which seem more inconsistently situated in the range of laws within the Code (as Maffi puts it – «tre norme *extra ordinem*», [1997], p. 14). These laws are VI.46-55, which although the interpretation remains tentative seem to deal with the case where a Gortynian citizen was taken captive while staying abroad. The issue of the law was the paying back of the ransom to the one who had ransomed the captive, because he was obliged to do so<sup>10</sup>. The second case is the law concerning children of a mixed marriage between a free woman (an *eleuthera*) and a man of dependent status (a *dolos*) (VI.56-VII.10). The third case is the law that stipulated the liability in connection to the actions of a man of dependent status after the conclusion of his sale (VII.10-15)<sup>11</sup>. Whilst the position of the first of the two laws, VI.46-55, and VI.56-VII.10 is explained fairly well as belonging within the sphere of family obligations and inheritance, the only link between the law of VII.10-15 and the former legislation is the appearance of a *dolos*. Thus, I suggest that we understand the position of this law as one of two inconsistencies within the otherwise carefully planned organisation of the laws within the Law Code (the second case is the law in X.25-32). The next section is on legislation relating to the heiress. The latter of the laws concerning the heiress regulates the case of an indebted inheritance (IX.1-24) and, therefore, the following several laws that all are concerned with financial obligations including *donationes mortis causa* from a husband to his wife, or a son to his mother (IX.24-40, IX.40-43, IX.43-X.14, X.14-25). The next law is the second of two inconsistencies, as far as I can see, namely X.25-32, which defines those persons that were inalienable. The placing of this particular law between the law that regulates *donationes mortis causa* and the law on adoption appears to be illogical, for it seems more reasonable that the adoption law succeeds that which denotes *donationes mortis causa*. The law on adoption makes up the final law in the original enactment (IX.33-X.23). The order of the supple-

<sup>10</sup> That is, I follow the reading proposed by Willetts (1967), p. 69 comm. *ad loc.*, see further Nomima I, nr. 13, pp. 64-67.

<sup>11</sup> It has been argued that this law superseded that of IC IV 41 VII, e.g. Koerner (1993), pp. 518-519; Davies (1996), pp. 46-47; see, however, Nomima II, nr. 66, pp. 244-245; Jakab (1989), pp. 535-544, and Kristensen (2004), p. 77.

mentary legislation following the initial legislation is obviously at random whilst the publication was a consequence of continuous subsequent enactment and, therefore, does not interfere with the initial layout of the text of the Code<sup>12</sup>.

If the Code is perceived as suggested above we are not, as Lévy suggests, facing several groups of «left-overs»<sup>13</sup>.

#### CLASSIFICATION OF THE INDIVIDUAL LAWS WITHIN THE CODE: SIMPLE AND ELABORATED SINGLE ENACTMENTS

How do we then decide what is new, and what is old within the Code? The layout of the individual laws may to some extent serve as a guideline. I suggest a segregation of the individual laws into three categories, namely «simple single enactments», «elaborated single enactments» and «elaborated codified enactments». Other «insignia», for example the amount of internal references, the phrasing of the employment of testimonies, as well as the size of the fines (though I find this a particularly doubtful criterion)<sup>14</sup>, and not least the statute

<sup>12</sup> Davies (1996), pp. 42-46, makes a case out of the supplementary legislation in XI-XII, but if the Code is perceived generally as a compilation of initial ad hoc legislation (and this may also be true even for insertions of «codified» nature), there is no need stressing its disintegrated nature.

<sup>13</sup> Lévy's categorisation is a combination of individual laws (his 1, 5 and 7) and sections of related legislation (his 2, 3, 4 and 6). I: protection des personnes (*i.e.* his 1) interdiction de saisie avant jugement et contestation de statut et propriété d'esclavage: I.2-II.2 + XI.24-25 and (2) délit sexuel: II.2-45. II: dévolution des biens (*i.e.* his 3) séparation du couple par divorce ou veuvage (II.45-IV.23), (4) héritage (IV.23-VI.2), and (5) maintien de la séparation des biens dans la famille (VI.2-46). III: personnes et biens (*i.e.* his 6) la *patroikokos* (VII.15-IX.24) and (7) l'adoption (X.33-XI.23).

<sup>14</sup> Although, prizes also in antiquity could be subject to fluctuations, it is quite evident that the sizes of fines within the Code were static for a simple reason; whenever damaged goods were at issue the fine was accompanied by the simple or double value of the property in question. While I do not agree with E. Lévy (1997) that we should understand the section on sexual assaults, II.2-45, as an entity beyond as a sheer collection of laws on assault, consequently I dismiss the suggestion that the differentiation in the sizes of the fines are explained as a sign of novelty. As it will become clear below, I regard *e.g.* the law on rape as belonging to the oldest layer in the Code. In this particular context the sizes of the fines are most logically explained as an emphasis on the difference in legal status amongst the different legal categories. See Davies

of non-retroactive force could also be included. I do, however, omit most of these for the present as I shall focus on matters more specifically relating to the structure of the legislation at hand.

The simple single enactments resemble the oldest archaic laws, where the law consists of a general ban against something (which is omitted in a range of cases), followed by a protasis (which defines the act of the perpetrator), and an apodosis (which states the punishment in question or basically the size of the fine). The cases of single simple enactments are quite evident, and do not need much commentary:

II.2-10 Rape on persons of different status

II.11-16<sup>15</sup> Rape of a *dola endothidia*

II.16-20<sup>16</sup> Seduction of an *eleuthera* in special circumstances

III.37-40 Special payments

III.40-44 Dissolution of a marriage between two persons of dependent status due to divorce or the death of one of the spouses.

IV.18-23<sup>17</sup> The right to a child born of an unmarried woman of dependent status.

VII.10-15 The responsibility concerning the act of a man of dependent status in relation to his sale.

IX.40-43 Son's surety while his father still is alive

X.25-32<sup>18</sup> The definition of inalienable persons

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(1996), pp. 40-42, with respect to the layout of the section on sexual assaults as «really rather a mess».

<sup>15</sup> This particular law could also have been perceived as elaborated. There is, however, only one issue in question (forcibly seduction), which was separated into two categories – whether the *dola* was a virgin or not. We do, nonetheless, find one procedural measure – her preference in oath, but lack any information about how this should take place.

<sup>16</sup> The only doubt one can raise to the placement of this law as «simple» for «elaborated» single enactment is the for modern scholars mysterious *ai apoponioi maitys*. It is, however, merely a qualification of the circumstances and does not count as elaborated procedural measures.

<sup>17</sup> There are in fact two conditional sentences in this law, the second case applies if the first cannot. It is, nonetheless, two single simple enactments without any indications of procedural measures.

<sup>18</sup> Despite the fact that the general prohibition contains quite many details as whom one could not purchase or taken as pledge legally, it is a simple single enactment – the protasis describes the act, the apodosis states that it is void if two witnesses testify to the matter.

Other laws were initially simple single enactments, but in the course of time they either became subject to supplementary legislative measures or possibly were made subject to revision. The former of these comprises several laws where we can use the application of *vacat*, *palmula* and *folium* as guideline for the process of enactment (*palmula* and *folium* were painted within a *vacat*, and the overall significance is the presence of *vacat*)<sup>19</sup>. Some cases of *vacat* are of course due to the surface of the stone, whilst others are used more as emphasis (*e.g.* we find *palmula* as the closure for each group of in testate heirs).

Initially, however, it will be fruitful to go through the individual laws that contain examples of *vacat*, *palmula* and *folium* between sentences, and in the course of doing so, discuss how these laws apply to the three categories stated above. We find *vacat* applied in the following laws:

I.2-II.2 On illegal seizure

II.20-45 On seduction

The section on estate settlement (II.45-IV.17):

II.45-III.16 On divorce

III.17-37 On the death of one of the spouses

III.44-IV.8 The right to a child born after the divorce of its parents

The section on inheritance (IV.23-VI.2):

IV.23-V.1 The distribution of the inheritance between children

V.9-54 The intestate heirs and rules for the division of the inheritance

VI.2-46 Sale and mortgage of family property

VI.56-VII.10 The mixed marriage

VII.10-15 The responsibility concerning the act of a man of dependent status in relation to his sale

The section on the heiress (VII.15-IX.24):

VII.15-VIII.30 The marriage of an heiress

VIII.30-IX.1 Subsequent provisions in relation to the heiress

IX.1-24 Sale and mortgage of property of an heiress

X.14-25 Legally valid gifts from men to women

X.33-XI.23 Adoption

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<sup>19</sup> Gagarin (1982), p. 138 n. 35, suggests that all examples of *vacat* possible were originally filled with painted signs with reference to Guarducci's remarks (IC IV, p. 125) that some painted signs were visible when the Code was initially discovered.

M. Gagarin (1982), in discussing these subdivisions, argued that most were explained by «historical circumstances», *i.e.* continuously adding supplements to the initial legislation, although he did only go into detail regarding I.2-II.2, II.45-III.16 (though sporadically), and III.17-37 as examples of those laws that were explained «historically»<sup>20</sup>. He further discusses two cases, which are not directly (II.20-45; the vacat of II.27 and II.31, respectively) explained by historical circumstances (V.9-28, vacat of V.13, V.17, V.22 and V.25). I shall return to these cases as I go along.

The first column of the Code encompasses only one law (which continues into the second line of the second column). Nevertheless, when we apply the vacat as guideline it is evident that we are facing several closely related topics incorporated into an entity, as most scholars acknowledge<sup>21</sup>. The first subsection, I.2-14, comprises a ban against seizure of the person about whom litigations are to take place. There is, however, a palmula in I.12, which equally well could be a relative contemporary addition or an indication of change in subject matter<sup>22</sup>. I.12-14 consists of one sentence (protasis and apodosis) in which the action of the judge is prescribed in case the perpetrator of I.2-12 claims his innocence. The initial part of the law I.2-12 has the shape of a general ban against seizure before initiation of legal actions, followed by a protasis with the offence and the apodosis with the fine and the prescribed judgement of release of the seized person. This is combined with a new protasis that com-

<sup>20</sup> Gagarin lists further the vacat of II.33, II.36, III.52, IV.48, IV.51, V.28, V.34, V.39, V.44, V.51, VI.9, VI.12, VI.25, VI.31, VII.4, VII.29, VII.35, VII.40, VII.50, VII.52, VIII.7, VIII.8, VIII.13, VIII.20, VIII.36, VIII.40, VIII.47, VIII.53, IX.18, X.20, X.37, X.39, XI.6, XI.19, and XII.9, as explained «on the basis of historical development» (1982), p. 141. As it will become clear, not all of these are most logically and best explained in this manner: *i.e.* II.33 (though see below), III.53, (possible VI.9), VII.29, VII.35, VII.40, VII.50, VII.52, VIII.7, VIII.8, VIII.13, VIII.20, IX.15 (*contra* his suggestion in 143n50), X.27.

<sup>21</sup> See, especially Gagarin (1982), pp. 138-140. He does, however, perceive I.12-49 as «a group of supplementary provisions», which may equally well had been issued independently from I.2-14 (as I regard I.12-14 as belonging to the first part of I.2-II.2). As to how the precise legal implication of this law is to be interpreted, see most recently Maffi (2002) discussing the suggestions of Thür in *Symposion XII* (1999). As will become clear I subscribe to the point of view presented by Maffi with regard to the understanding of the legal implications of I.2-II.2.

<sup>22</sup> *I.e.* similar to the punctuation sign, we find in Dreros «BCH» (1937) commencing the final line of the law.

prises the neglect of the judgement on the part of the convicted party, and an apodosis containing the additional fine for each exceeding day in relation to the initial judgement. A new sentence makes clear the power of the judge to decide for how long this illegal seizure had taken place. Whether or not, we regard the short insertion between a *palmula* and a *vacat* in I.12-14 as something belonging with the first subsection or as a rather contemporary addition, there is no doubt that in I.15 we have a shift in the focus of the text of law from the seizure before the litigations towards the content of the litigation. In other words, I.15-36 (or perhaps more correctly I.15-49) does not concern illegal seizure, but the legal status of the subject of the litigations and where he was a man of dependent status the ownership of him. The subsection is initially phrased as two independent provisions, a dispute about the legal status of a man currently in the possession of somebody else (I.15-18), and a dispute about the ownership of a man of dependent status (I.18-24). In both cases the procedure to settle the issue is described, particularly in the latter case for if someone testified to the fact that a free man was held illegally as a dependent labourer, the person was automatically to be released and regain his free status. These two independent cases are, nevertheless, combined in the remainder of the legislation, which concerns the release or transfer, respectively, if the holder of the disputed man lost his case. If he obeyed the judgement within the prescribed five days, nothing further would happen. If he disobeyed the judgement, new legal proceedings were to take place, where the judge would pronounce judgement in favour of the initial winning party. In addition to the descriptions of the fines in each case, we learn that there would be an upper limit for the size of the fines if paid within a year. Section I.36-49 clarifies the case where the subject of the dispute has taken sanctuary, and the procedure is stated along with a closure of the matter (within a year the defendant would be liable to the simple fines if he had not transferred the dependent labourer to his rightful owner). The final part of the quite extensive law of I.2-II.2 comprises three short additions, all of which are separated with *vacat*. I.49-51 concerns the case where one of the litigants died after the legal actions were commenced. I.51-56 states the procedure if one of the litigants was a *kosmos*, and finally we learn whom one could legally seize. Despite the fact that at first sight this law seems to be a coherent piece of legislation, it is evident on

closer inspection that what we have is apparently an older law on seizure, which at a point of time has been subject to further legislative measures. The addition of the subsection I.15-49 has a much more elaborated and refined layout than in the upper part I.2-14. In due course, a few further additions were needed to clarify matters relating to the litigants, as well as some cases which probably went before a judge where the subject of the dispute either was a free man working off his debt in debt bondage or had lost a case, but had not yet paid up his fine to his winning opponent. In short, we have a simple though elaborated enactment, which over time advanced into something quite different. It is one of the few cases where we could describe the legal measures as «codified legislation».

The law on seduction comprises several cases of the usage of *vacat*, in II.27, II.31, II.33, and in II.36. The first *vacat* in II.27 separates the case of a *dolos* seduction of a *dola* from the other cases. If this *vacat* served any particular purpose one might expect that it should have been placed before *proweipato* in the following line. In other words, since a *dolos* was thought to be in a position to seduce an *eleuthera* why should he not have been thought capable of doing so with respect to a *dola* in the first place <sup>23</sup>? We may of course compare to the separation with *vacat* in III.44-IV.8 (see below) where the part concerning an *eleuthera* was separated from the case of a *woikea* with a *vacat*. The *vacat* in II.31 is obviously applied in this manner. In II.28-31, the proclamation of the capture of the seducer of free status and the time limit for his ransom is described. In II.32-33, it is the case of a seducer of dependent status (*i.e.* it only states what is different – the proclamation is to be made to his *pastas* instead of his relatives, and the required number of witnesses is two instead of three). The subsequent *vacat* in II.33 may equally well be interpreted as commencing a new addition as it may have formed part of the original layout. It explains what to do if no ransom took place: If this were the case, the captors were free to make their own decision regarding the fate of their captive. The case seems, nevertheless, different for the last case of *vacat* in the law of seduction (II.36-45), in which the procedure is prescribed, if the captive claims

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<sup>23</sup> I am not convinced that II.27-28 was a later insertion incorporated in the course of organising the text of the Code; *contra* Gagarin (1982), p. 142.

his innocence. Here we face an elaborate statement with regard to the required witnesses in all of the possible cases, although there is also a slight inconsistency in relation to the categories of legal status applied above since the man of dependent status is no longer called a *dolos* (cf. II.25, 27 and 32), but a *woikeus* (cf. II.42)<sup>24</sup>. In short, I believe that we at least have two parts of subsequent issued legislation (II.20-36 and II.36-45, respectively), and possible three, despite the lack of *vacat* in front of *proweipato*. Compared to the law on rape (II.2-10), which is almost identical to the first part of the law on seduction, namely II.20-28, the law on seduction contains a detailed section on procedure in the remainder of the text. If we are to see this as significant, it should be that II.28 sqq. were later additions, though written into the context because no *asyndeton* is applied. All of these subsections are combined and they refer to the same subject matter: seduction and the subsequent recovering of the fine/compensation in question.

The rather detailed law on the divorce between a free man and a free woman contains one case of *vacat*, which clearly signifies a later supplement (in III.12), namely if a stranger (*i.e.* someone not related to the husband, for example the woman's brother) participates in the divorcee's theft of some of her previous husbands possessions<sup>25</sup>. Despite the fact that we have a rather elaborated legislation at hand, it does only treat one single issue – the divorce and, therefore, the estate settlement. The law on divorce dictates which items the women were to receive. In addition, it also prescribes the amount of the compensation if the husband was the «cause» (and the subsequent actions of the judge if the husband refused his responsibility). Finally, it prescribes measures to be taken if the husband claimed that his former wife was taking items that did not belong to her, and the subsequent procedure for her oath of denial if she plead her innocence. The latter issue was further dealt with in the supplementary legislation in XI.46-55.

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<sup>24</sup> That is to say, I take *dolos* and *woikeus* as signifying the same legal status, see e.g. Finley (1960), pp. 165-189; Link (2001), pp. 87-112; Kristensen (2004), (2005), pp. 51-53, 128; *contra* e.g. Lévy (1997). Taking *dolos* and *woikeus* as signifying the same legal status does not, however, alter his good observation on the Law Code's elliptic nature, see Lévy (2000), pp. 199-203.

<sup>25</sup> As is already suggested in Gagarin (1982), p. 140.

The law in III.17-37 (on the death of one of the spouses) comprises three possible situations, which are similarly phrased. There are two examples of *vacat*, and these divide the first situation from the second, and the second from the third. In this law there is no doubt that the whole text was created in one row, and that the application of *vacat* was to facilitate usage of the law in practice<sup>26</sup>. The law begins with *ai aner apothanoi tekna katalipon*, but in the sentence following the first *vacat*, we find that it was not necessary to explain the circumstances and we, therefore, can read *ai de ka ateknon katalipei*<sup>27</sup>. The same goes for the third case in which the sentence after *vacat* begins *ai de gyna ateknos apothanoi*. The subject is this time explicitly mentioned because we now continue with the case of the death of the wife. While there never were any mutual inheritance rights involving husbands and wives, this law covers all three cases. The first situation concerns the descendents of the husband. The second and third situations concern the collaterals of the deceased (whether husband or wife). The purpose of the law envisaged female property in these three situations. We are not told, however, what was the content of *endikon emen*. In other words, would the same rather detailed procedure we know of from the two laws related to divorce for example be applied (the more detailed description of XI.46-55 is of course younger than this particular law)? Thus, the law describes the wife's share, but only comprises very few procedural details, namely the prescribed number of witness in case the husband chose to leave something to his wife.

In III.44-IV.7 (the right to a child born after the divorce of its parents), we find one example of *vacat*, which divides the case of a free child from the case of a child of dependent status. The first as well as the last lines of III.44-49 and III.52-IV.3, are almost verbatim if the legal circumstances are taken into consideration (*o aner* vs. *o pastas to andros*, and *tos kadestans kai tos maityrans*, *ai epeleusan* vs. *ton epeleusanta kai tos maityrans*). Otherwise the difference is delimited to the reverse order of verb and subject in III-52-53 compared to III.44-45. There is, however, no reason to consider this as anything other than one coherent law on the issue of a child born from a divorced mother.

<sup>26</sup> *I.e.* contra Gagarin (1982), pp. 140-141.

<sup>27</sup> *I.e.* the elliptic nature of the Law Code, see Lévy (2000), pp. 199-203.

The differences between the two laws concern the legal statuses involved and, therefore, it was important to add in the case of a *woikea* that the child would belong to the husband's *pastas* if the parents remarried within a year. If the same happened in the case of a free child (*i.e.* the parents remarried) the guardianship for the child was established once and for all. Either the father had accepted the child or the mother had chosen to raise it on her own. If the latter was the case, it seems rather unlikely that the parents would remarry. The law governed in detail the procedures when a child was born after its parents were divorced. There were two main issues in questions: the protection of a man's right to his offspring, and the legal elimination of any subsequent claims towards the mother or the *pastas* of the mother by providing the preference in oath to those who brought the child forth and the witnesses (three and two, respectively).

In VI.56-VII.10, the text, which is divided into two by a palmula, consists of a section that prescribes the legal status of the potential offspring in the mixed marriage, which is determined according to where the couple lived. This short section does in a sense stand alone. After the palmula, there follows a closely related issue: the establishment of who was to inherit from a free woman, married to a husband of dependent status. It is not entirely unequivocal whether we have an initial piece of legislation on the status of the offspring from a mixed marriage, which subsequently demanded a supplement from the heirs to the property of the free woman. There is no *asyndeton*, but the two parts of the law seem to be not as fully integrated as is the case of III.17-37. In principle, we are facing two separate, though very closely connected, single enactments.

The law in X.14-25, which concerns legally valid gifts from men to women who otherwise were not entitled to inherit (*i.e.* wives and mothers), contains one case of a *vacat*. The first part of the text prescribes the upper limit for such a *donatio mortis causa*, and subsequently what would be the rights of the legal heirs, if the gift exceeded the limit of 100 staters (namely to keep the exceeding amount). The beginning of the preserved text states the general permission of granting such women gifts from the estate. After this we can see a well-known manner of phrasing, namely a *protasis* where the potential offence is stated, and an *apodosis* in which the consequence is stated (in this case, not a punishment, but the permission

for the heirs to keep what went beyond the sum of 100 staters). After the vacat, there follows what could be a perhaps rather contemporary addition to the first part of the preserved text of the law. This addition keeps the same simple structure, though with a double protasis – the first contains the general course of action, in that it describes a donator in an economic fragile situation. The second describes the condition for the relation between gift and fine (*i.e.* if the rest of the property for a convicted person did not cover the fine), and finally, the apodosis then states that the gift would be void. In sum, we are facing two related pieces of legislation, and it seems very likely that these were issued in a sequence over time. The first makes it valid within limit to grant women otherwise not entitled to inherit a safety measure for the future (for instance if the son was about to engage in warfare activities, or the husband was taken ill and feared he might not get well again). It is quite easy to imagine how some men saw an opportunity in this law to «conceal» some parts of the property if they were engaged in legal litigations, which they suspected might not turn out in their favour. Thus, a new legislative measure was needed prescribing that it was no longer possible to earmark some part of the property in order to avoid that this part of the estate could be subject to execution for fines or compensations. These two parts of the law do, nonetheless, appear as two closely related, though independently issued, single simple enactments.

As it had become clear above a number of laws within the Code demonstrate a more elaborate concept, despite the fact that we still are facing single enactment (*i.e.* only one particularly issue is at stake). This category includes the far majority of the laws of the Code, and I shall sum them up as follows:

II.20-45 Seduction of women of different legal statuses (although the beginning of the law belongs to the category of simple single enactments)

II.45-III.16 Divorce between two persons of free status

III.44-IV.8 The right to a child born after the divorce of its parents

IV.8-17 Exposure of a child born after the end of a marriage, for a child of free and dependent status

VI.46-55 Ransom for a captive Gortynian

IX.24-40 The obligations and agreements of a deceased man

IX.43-X.? Agreements of commerce

The laws in the section of supplementary legislation (XI.34-XII.19) almost exclusively belong within this category, and so we may add the following laws to our list:

- XI.26-31 The duties of the judges
- XI.31-45 Supplement to the obligations and agreements of a deceased man (cf. IX.24-40)
- XI.46-55 Supplement to the law on divorce (cf. II.45-III.16)
- XII.6-19 Supplement to the legislation concerning the heiress (cf. VII.15-IX.24)

Two of the laws within the supplementary section are, nonetheless, so limited in nature that they qualify as «simple», resembling those in the first of my categories.

- XI.24-25 Supplement to the law on illegal seizure (cf. I.2-II.2)
- XII.1-5 Supplement to the law concerning legally valid gifts from men to women (cf. X.14-25)

Besides these laws qualifying as «elaborated single enactments», in principle some laws are still «simple single enactments», although they cover more than one single issue. This is so, because they initially belonged within this category, and the further legislation that subsequently was added also belonged within this category and, therefore, we should add to the list of «simple single enactments» the following laws:

- III.17-37 On the death of one of the spouses
- VI.56-VII.10 The mixed marriage
- X.14-25 Legally valid gifts from men to women

## CODIFYING ATTEMPTS? ELABORATED SINGLE OR CODIFIED ENACTMENTS

A few laws qualify for more than the label of «elaborated single enactments». In other words some of the laws of the Code have a «codified nature». H. and M. van Effenterre (2000) proposed that we should consider a small part of the Cretan archaic laws as codifica-

tions, and pointed to three cases, that is, from the Code I.2-II.2 (on illegal seizure) and VII.15-IX.24 (the section on the heiress). The latter case (IC I x 2 from Eltynia) I shall omit for the present <sup>28</sup>. The first case (I.2-II.2) may reasonably be regarded as a «codified elaborated enactment» in its present form according to the definition stated above because what seems to have been a shorter initial legislation was enlarged considerably by a rather elaborated middle section. Yet this may also be held to be true for a certain number of other laws within the Code, although that does not qualify as «codified enactment». I.2-II.2 would not do so either, if it were not for the final lines I.56-II.2, which prescribe whom one could seize legally. In other words, the law begins with the statement that it is illegal to seize a man whom one intends to litigate (I.2-14), and ends with the exemption from the general ban in I.56-II.2. This demonstrates a conscious effort to make the law (despite its development over time) into a separate entity treating the implication of seizure of a disputed individual in full. The most thoroughly revised parts of the Code concern probably the first column (I.2-II.2). This revision, however, did not necessarily occur at the same time as the erection of the inscription (because the most eloquent part is the middle I.15-49, as discussed above, and we find three minor subsequent supplements).

Inheritance in particular was an issue throughout the Code, and it is within the different sections, which broadly speaking concerned matters relating to inheritance, that we shall find the most revised part of the Code. Likewise, also under the headings of inheritance we can further detect a number of codifying attempts. Female inheritance rights became statutory either prior to or at the time as the erection of the Code and, therefore, other laws relating to inheritance needed revision <sup>29</sup>. Four laws are directly concerned with intestate inheritance, namely IV.23-V.1, V.1-9, V.9-54 and VI.1-2. Three of these seem to be contemporary, and may in fact constitute legisla-

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<sup>28</sup> I discuss this case in the book I am currently working on («Legal Communication in Ancient Crete»).

<sup>29</sup> See Kristensen (1994), p. 7. I cannot but agree with Maffi (2003), p. 186: «Dunque non si può nemmeno dire se, in generale, la condizione della donna sia migliorata o peggiorata in seguito all'emanazione del CdG [il Codice di Gortina]; per alcune donne sì, per altre no», in response to Link's perception of a deterioration of women's conditions (cf. Link [1994], pp. 83-96).

tion enacted simultaneously with the decision to erect the Code, whilst the remainder of these – V.9-54 – is older. V.1-9 requires special attention. This law shows that from the time of its enactment (*i.e.* in the year when Kyllos from the Aithaleis-tribe was the eponymous cosmos), women had statutory inheritance rights. The law prescribes that those women who did not have a dowry or a pledge of a dowry prior to this law by either their father or their brother were entitled to their share of the inheritance (*i.e.* as we learn in IV.37-43 half a son's share of *ta d'alla kremata panta*). Women who had received more than the prescribed portion of the paternal inheritance (whereas the law concerns bestowing on part of either father or brother, evidently the issue is not in the first place whatever maternal inheritance the *oikos* would have contained) were explicitly not subject to retroactive measures. In other words, if a woman prior to the law enactment had received more as dowry than her prescribed share as in IV.37-43, she was to keep what she had received. Besides the VIII.20-30 concerning a woman who becomes an heiress and in that potential capacity was betrothed (most likely to another of the *epiballontes opuien* than the first groom-elect in row)<sup>30</sup>, a brother is nowhere within the Code acting in relation to either marrying off or bestowing a dowry upon his sister. Obviously, this is so because subsequently only a father could provide dowries, whilst dowry was no longer at issue when he died because in that case it was a statutory share of the paternal inheritance (as it was of the inheritance from the mother).

It is obvious that the size of a woman's share of the inheritance needed to be defined. This is done in IV.23-V.1 which also includes a provision relating to the definition of *kyrieia* within the *oikos*. Yet this law comprises, despite its elaborative nature, only two cases of *vacat*, which we find in IV.48 and 51. The first of these introduces the statement that a father was allowed to bestow a dowry upon a daughter according to the existing regulations (which we can learn in IV.31-48, and below in V.1-9). The other case IV.51 sqq. proclaims that previous bestowed dowries are not subject to retroactive force even though the amount would exceed the prescribed share of the

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<sup>30</sup> See Maffi (1987), (1997), pp. 94-98.

paternal inheritance<sup>31</sup>. The law in IV.23-V.1 to some extent ties together loose ends from the existing inheritance law. It is evident that how a paternal (and maternal) inheritance, subsequent to the introduction of statutory female inheritance rights was to be divided, needs clarification. The issue of management seems, contrary to this, to have been a matter of dispute, which needed a solution. This was hardly innovative, but was included simply to settle once and for all the status of the different properties within the paternal *oikos*, and the extent to which children (*i.e.* sons) had any claims towards their father's estate prior to his death. Thus I do not believe in any major changes in the Gortynian *kyrieia*-relations<sup>32</sup>. In fact, because women were now provided with rights of inheritance, it became logical to legislate in order to keep the status quo of estate managements – in case anyone would question the fact. Yet, the law on intestate inheritance V.9-54, which describes the order of succession amongst the heirs, was obviously a product of development over time. Four smaller enactments were added either simultaneously with or subsequently to the enactment of the initial law. The law on intestate succession describes five groups of heirs. Each group is separated from the next by the application of *vacat* with a *palmula*<sup>33</sup>. The first

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<sup>31</sup> It has been discussed whether a father could bestow a dowry upon his daughter from the maternal property. This is not likely, although the father had control over the management of the different properties in the *oikos*, but he did not in fact hold the right to dispose of the mother's property. If we consider property from a deceased mother, it would not be an actual case of dowry, but inheritance, whether or not the daughter did receive this property *de facto* until her actual wedding. The father did also manage property of his children while they were minors and, although the law only is explicit about sons (referred to as becoming *dromees*), I believe that the case of daughters was included as well. That is, in the sense that the father ceased to control their maternal property when they married where property was transferred to their new *oikoi* as dowry.

<sup>32</sup> See Kristensen (1994), pp. 5-26. I refrain from going into detail for the present as how to interpret the more complicated situations *e.g.* VI.35-36; *ai ka me ta tekna epainesei dromees iontes*. I shall, however, return to this in a future paper, shortly.

<sup>33</sup> According to Gagarin (1982, p. 143) «it seems more likely [than each of these provisions was enacted separately] that the gaps were inserted here in order to indicate the organisation of these provisions, which may have been enacted all at once or over a period of time». I do not think that we need to be that cautious – these gaps were obviously a facilitating measure for the users of the text. As a matter of fact, these cases of *vacat*/*folium* are not as exceptional as Gagarin believes, *e.g.* we find numerous

comprises descendents in three generations (children, grandchildren, and great-grandchildren). The second consists of male collaterals and their descendents in two generations (*i.e.* brother(s), children and grandchildren), whilst the third consists of female collaterals and their descendents in two generations (*i.e.* sisters(s), children and grandchildren). The fourth group (*epiballontes tas woikias* – «the extended family-circle») comprises more remote relatives (of common origin), probably those who could justify relations to a common ancestor, *i.e.* testator's great grandfather. Those of the *klaros* made up the fifth group, of which competing interpretations exist<sup>34</sup>. It is, nonetheless, evidence for an attempt of «legislating in full», leaving no loose ends behind. From this particular law we cannot decide whether or not women were given inheritance rights. One feature speaks for its comparative old age: male collaterals had preference over female, and this suggests in fact that women initially were not considered as heirs in their own right under normal circumstances<sup>35</sup>. However, precisely because the children were termed *tekna*, this law would not have needed any revision due to the novelty of female inheritance rights. Yet the law comprises another issue. Not only was it important to define who were to inherit in a given situation, it was also important to settle cases between competing heirs. Subsequent to the *vacat* in V.28, a section follows describing the authority of a judge to rule in favour of those heirs who wanted to divide the property against those heirs that would not. The content of the judge's interference was the transfer of control of the disputed property to the heirs who consented to the division of the inheritance.

There then follows another section ending with a *vacat* in V.39. There we learn the consequences of illegally taking any of the undi-

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cases in the legislation on the heiress, which in view function as punctuation-markers and, therefore, do not served as indication for subsequent layers of legislation, see below.

<sup>34</sup> I shall for the present refrain from discussing this particular group of heirs. However, K.-J. Hölkeskamp (1992) has a point when he suggests that this group was so vaguely described because it probably never was applied. If there was anything to inherit, heirs could be quite innovative in their attempt to justify relation to the deceased, which an analogy to the rather bizarre fourth speech of Isaeus can demonstrate (the arrival to Pireus of an urn with the ashes of a Nikostratos accompanied by two talents).

<sup>35</sup> See Kristensen (1994), p. 7.

vided inheritance, parallel (though not expressed verbatim) to the possibility of a stranger helping a divorcee to some of her former husband's belongings in III.12-16. However, we are not told in that case how the amount of stolen property was determined, although this also may have been decided by the judge on oath. The next section ending with *vacat* in V.44 relates specifically to the actual division of property, explicating the different categories of moveables. This is followed by another provision specifically relating to the division of inheritance with a *palmula* in V.51 (where it is stated that if the heirs could not reach any kind of agreement as to the division, they were to sell the disputed items) and the subsequent lines after *palmula* (V.51-54) states the requirement of witnesses who were to be present at the actual division (three or more witnesses who were *dromees eleutheroi*). It is possible that V.28-51 was enacted as one coherent sequence. On the other hand, it may equally well have developed over time. However, the supplementary nature of these different sections subdivided by the application of *vacat* does speak for a continuously range of enactment though most likely very close in time to one another. One can imagine that it was soon necessary to enact a ban against illegal removal of disputed parts of an inheritance, which again required clarification of the judge's interference with respect to moveable property. This perhaps caused even more dispute and, therefore, the law advised the sale of the disputed property. But whether or not this imaginative development holds true, the law was neatly ended by the requirement for the presence of witnesses whenever the division took place (in V.51-54) and, consequently, the section V.28-54 came eventually to form an entity.

If for a moment we disregard the other laws in relation to inheritance, the law of V.9-54 qualifies for the category of «codified elaborated enactments». We can observe a genuine attempt to legislate in full – *i.e.* the line of succession and an addition on how to settle disputes among heirs. The small law of VI.1-2 is evidently a later addition (probably added at the time for the inscription of the Code), which despite the application of *asyndeton*, refers directly back to the previous sentence – *kata ta auta* refers of course to the presence of *maityrans dromeans eleutheron triins e plians* in V.52-54<sup>36</sup>. I

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<sup>36</sup> See *e.g.* Willetts (1967), *comm. ad loc.*

shall, nonetheless, argue that we find a pattern in how the Code came about. The law on sale and mortgage of family property follows the laws on inheritance proper, VI.2-46. Before we discuss this, we need to examine the structure of the legislation relating to the Gortynian heiress – the other candidate for H. & M. van Effenterre's (2000) label of codification.

The legislation on the heiress amounts to four – three in a row, and the fourth in the supplementary legislation, which is the last law within the Code. The two laws in VII.15-VIII.30 and VIII.30-IX.1 concern the marriage of an heiress. Although the use of *vacat* is frequent, this is in most cases best explained in terms of legibility than as indication for sequences of enactment. Folium in VII.29 ends the definition of who qualified as groom-elect (*epiballon opuien*). *Vacat* in VII.35, VII.40 (in which case a folium is recorded), VII.50, VII.52, VIII.7, VIII.13, VIII.20 and VIII.27<sup>37</sup> all refer to separate situations in which marriage is prevented and the consequences this had for status of the property (whether the heiress was to remain in possession of the entire property, share it with the groom-elect or provide him with maintenance for a period of time, *i.e.* until the marriage could take place). The logical sequence suggests a single coherent enactment (VII.15-VIII.30) related to the marriage of an heiress. The different situations where marriage could not take place are quite similar in their layout beginning with whatever circumstance prevents the marriage of the heiress and the groom-elect from taking place followed by the immediate consequences<sup>38</sup>. The *vacat* in VIII.7 and the folium in VIII.8 enclosed the emphasis that the heiress was to

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<sup>37</sup> Gagarin (1982), p. 141 n. 45, suggests that there was a *vacat* here where the stone now is destroyed, but he find this *vacat* odd, if it were not for a roughness of the edge of the stone. However, if this *vacat* is not explained by 'historical development', but as a legibility measure there is no problem with a *vacat* here. I cannot follow the line of argument presented in Davies (1996), p. 44 – 'Hence the provision VIII.47 says in effect though not specifically that (b) [as the second option of rules governing who was to administer the property of a minor heiress] if there are no father's brothers, then the girl herself is in charge as beneficial owner, brought up by her mother, but that (c) is she has no mother, then her mother's brother inherits and becomes groom elect'. In fact, the maternal relatives (who could be the brothers of the mother) were to administer the property until the heiress was of age. They were never to inherit from the heiress or her father.

<sup>38</sup> See *e.g.* the list provided by Lévy (2000), pp. 191-192.

divide the property with «him» who was probably the rejected groom-elect of VII.52-55. Contrary to VII.15-VIII.30, the next law on the heiress qualifies more as a compilation of different supplementary provisions, which at some point were engraved as one law. Despite the application of *vacat*, these are, nonetheless, not separated by *asyndeton*. There are three cases of *vacat* (VIII.36, VIII.47, and VIII.53) and these concerns quite different circumstances. The first VIII.30-36 concerns the widowed heiress – the case in which she had children as well as the case where she did not have any. The second (VIII.36-47) concerns basically what we may term «loose ends»<sup>39</sup>. It comprises the situation where the groom-elect is absent from Gortyn (and how to proceed), the definitions of an heiress (we can imagine that this matter raised many disputes prior to this provision)<sup>40</sup>, and finally it is stated that the heiress' paternal relatives were to manage her property while she was a minor, and she was to receive half the income. The section following immediately after modifies the former statement, namely that the heiress herself was to manage the property if no paternal relatives existed, and she was to be raised by her mother (or subsidiary to her mother by her maternal relatives). We may, however, compare the position of the first law on the heiress (VII.15-VIII.30) to that of the law on intestate succession. In both cases, we are clearly facing an attempt to legislate in full with respect to the intestate succession as well as of the marriage of an heiress, and in the course of time further legislative measures were needed. We cannot argue that the entire legislation on the heiress qualifies as «codified» enactment, but there can be no doubt that VII.15-VIII.30 does.

Before returning to the discussion on VI.2-46 and IX.1-24, the final case to be considered is the extensive law on adoption within the Code. The separation by *vacat* makes up five sections<sup>41</sup>. The first

<sup>39</sup> Gagarin (1982), p. 141 n. 46, suggest that a vertical incision here indicates that the mason omitted the *vacat* and, therefore, apply a vertical stroke to make up for his mistake. I am not aware that any other pays any attention to this stroke on the stone, which does not quite resemble those known from the Archaic material; there could without problems have been a *vacat* here, but it remains conjecture.

<sup>40</sup> Davies (1996), p. 40, states this a rare example of a definition within the Greek material. This Lévy (2000), p. 194, refers to in the attempt of proving that we do not have a definition after all, but his argument is far from convincing.

<sup>41</sup> See, however, Nomima, pp. 142-145, no. 40, as well as Maffi (1997), pp. 75-85, (2003), pp. 201-204.

of these, X.33-36, contains two statements: a permission to adopt whomever one likes, and how to conduct the actual process of adoption (in terms of making the act valid and public)<sup>42</sup>. The next very short section (which, in fact, does not qualify as a section at all), X.37-39, emphasizes the adopter's obligations in respect to the actual process of making the adoption, namely the prescribed offering to contribute in his *etaireia*. This, of course, tells us that the opportunity to adopt (or at least this law on adoption was concerned) only considered potential adopters of citizen status. So X.33-39 makes up a separate entity regarding how to make an adoption. The next section, X.39-XI.7, comprises the provisions on inheritance. This covers several situations. The first (the most obvious situation) where the adoptee was the sole heir and beneficiary with an obligation to act as a biological legitimate son. If the adoptee refused to undertake these obligations, the estate passed on to those who otherwise would have inherited from the line of succession of intestate heirs as described in V.9-28. The second situation refers to biological legitimate sons of the deceased adopter (and possible also daughters). In that case, the adoptee was treated in the law as a daughter, and no special obligations were attached to his role as adoptee. This is also true for the final of the three situations described in the law – the case where only daughters existed. The adoptee would then receive his portion on equal terms with the daughters, but was not considered as the «male» heir and, therefore, he was not admitted to a share extended to more than a daughter's share. What do we make of this? In relation to the innovative character of the Code, this is clearly something belonging to the very recent part of the Code: female heirs were acknowledged beyond the status of heiresses (and we may of course speculate if the daughters without a biological legitimate brother were regarded heiresses after all, despite the presence of an adoptee). In the broader picture, the content of the adoption law also demonstrates that adoption did not only have the purpose of securing a male heir in the absence of a son. The next sec-

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<sup>42</sup> Even though the issue of whom one may adopt has received tremendous consideration with suggestions ranging from only tribes members qualifying to that everybody did, I shall not revive that discussion for present, but merely add that a broad perception of *opo ka til lei* is compatible with the underlying social structure of the society of the Code (*contra* Maffi [2003]).

tion, XI.7-19, contains a range of provisions with a clear supplementary nature, i.e. they are not really interrelated. The first proves a close connection to the previous subject (in X.39-XI.7) – inheritance – an adoptee needs children of his own to retain the acquired property within his line of succession. The next, however, concerns the annulment of the adoption, XI.10-14 (with an almost verbatim description of how this should take place compared to the declaration of an adoption in X. 34-36), and in addition to this, where to pay the compensation of ten staters, which the *mnamon* of the *ksenios kosmos* then would give to the abandoned adoptee. Finally, there is the ambiguous statement *gyna de me ampaineththo med'anebos*. For the sake of my argument it does not matter whether we take this to mean that a woman and a minor were not to adopt or could not be adopted<sup>43</sup>. We can observe a cluster of different supplementary statements, which actually could have constituted a contemporary addition to the above-enacted law on adoption. It may have been contemporary to the process of organising the Code itself. The same could be the case of XI.19-23, which underlines the breach with previous law by the newly enacted part on inheritance within the adoption law in respect both to the inheritance right of an adoptee and the subsequent transmission of an inheritance from an adoptee to his heirs (that is – if this or these heir(s) were not his legitimate children). In other words, this new enactment did not have retroactive force. At least part of the adoption law had been subject to revision as a consequence of the introduction of statutory female inheritance rights. The beginning of the law X.33-XI.23 may quite possibly have been older legislation, though nothing decisive is detectable due to its shortness. The way in which the annulment is described is not decisive in any respect, because as we shall see with regard to the comparison between VI.12-24, VI. 37-44, and IX.17-15, the almost verbatim sequences are most likely to be the product of the very process of turning speech (law proposals) into writing (law), namely by quoting from memory, whenever analogous cases were at hand. When it comes to classification of this legislation into one of the categories, it is difficult to argue for a codified nature of the adoption law, at least as initially planned as such. Its character is

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<sup>43</sup> See for a most recent discussion Maffi (2003).

more like those I have labelled as elaborated single enactments (though we have quite a few in this case) than those I have called codified elaborated enactments. Consequently, I choose to classify the adoption law within the category of elaborated single enactments<sup>44</sup>.

#### FURTHER COMMENTARY ON THE ORIGINS OF THE STRUCTURE AND LEGISLATION OF THE CODE

As I stated above, a closer look on the interrelation of VI.2-46 and IX.1-24 as well as their individual relation to V.9-54 and VII.15-VIII.30, respectively, may additionally illustrate the process of how the individual laws were formulated as to the general organisation of the Code. VI.2-46 and IX.1-24, which both regulates property management, share a very similar vocabulary, though not phrased entirely verbatim. VI.2-46 contains four cases of *folium/vacat*, in VI.9, 12, 25 and 31. There is nothing decisive with regard to VI.9, which may equally well constitute the transition between the initially law and subsequent legislation, as it is a *folium* inserted for the benefit of legibility. The first part VI.1-9 stipulates that it was not allowed for the father to alienate property belonging to his sons, nor sons that of their father (though sons were allowed freely to dispose of property they themselves had acquired). VI.9-12 comprises a similar statement extending these limitations on the disposal rights of wife's and mother's property, respectively. The following section VI.12-25 does not necessarily make up a separate enacted entity with respect to the previous part of the law even though it is possible that it did. The content is the violation of the limits imposed on the disposal rights

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<sup>44</sup> *Contra* Davies who asserts (1996), p. 40: «... this really is a codification: a general principle is enunciated, whether enabling or prohibitory (here enabling), a cross-reference to existing law is inserted, and the likely circumstances arising from its application are envisaged and systematically provided for – altogether a model of a modern major general law». If we are to perceive this as a codification much more would indeed qualify. The reference to other written legislation (*aiper tois gnesiois egrattai*) is actual the only feature that supports such an idea, whilst the nature of the remainder of the text, as I have demonstrated above, does not.

of non-mature members of the *oikos*. I shall return to this below. VI.25-31 comprises possible an (very contemporary?) addition to VI.12-25, namely the procedural measures taken, if the defendant refuted the allegation that he was not entitled to dispose of the property in question. The remainder of this law, VI.2-46 (*i.e.* VI.31-46) is obviously an insertion added in the course of time, whilst the *tekna* without significant problems could have been incorporated in the previous legislation, and furthermore VI.31-36 does in fact elaborate what is already stated in VI.7-9. The section VI. 12-25 comprises a specification of non-retroactivity, unlike VI.31-46, which, whilst the issue was not a breach on previous custom, does not.

IX.1-24 contains two cases of *vacat* IX.15 and 18. The first of these seems not to be significant; whilst it only separates the statement that the provisions are to be followed and that the law had non-retroactive force. The second case of *vacat* introduces, nonetheless, a provision almost identical to VI.25-31 and may, therefore, either work as a legibility measure or as an indication that something had been added, that is to say entirely comparable to *vacat* in VI.25.

IX.1-24 is subdivided by *vacat* in IX.15 and IX.18. The first part stipulates that the heiress of an indebted estate is either in person (*i.e.* the right to act in her own right is emphasised) or through her material relatives to sell or mortgage property in order to settle the debt. The law also concerns the measures to be taken if anyone disposes illegally of heiress-property. The intersection of IX.15-18 underlines that these rules are to be followed and are not subject to retroactive force. However, there is no *asyndeton* in IX.15, which in my view supports the way in which this law came about in practice – and I shall return to this shortly. The remainder of the section concerns the situation where the implicated male claims his rights to the disputed property.

It is quite possible that the first occurrence of the very similar expressions we find in the sections VI.12-24, 37-44, and IX.7-15 has served as a model for the remaining two (compare *allai d'egrattai ai tade ta grammata egrattai* in VI. 14-16 to *allai* in VI.37 and in IX.8, respectively – in case of IX.1-15 *allai* is, nonetheless, specified below as *ai tade ta grammata egrattai ton de protha me endikon emen* in IX.15-17 – quite verbatim and as if it simply was forgotten further up in the text!). In the protasis of each of the three paragraphs the differences are limited to the place of the subject and adverbial (which

however as noted above is quite elaborated expressed in the first instance)<sup>45</sup>. The first part of the three apodosises is identical – though of course the implicated persons are different. However, whereas IX.7-15 follows VI.12-24 quite closely – in fact, the difference comprises two additions in IX.13 (*ai ka nikathei*; *i.e.* if he had lost his case) and IX.15 (*epikatastasei*, ‘he shall pay in addition’), which are implicit in both VI.12-25, and in VI.37-44. The case of VI.37-44 retains the indefinite expression *ton apodomen e ton kata-thenta katastasai* for *o de apodomenos e katathens (e epispensans) katastasei* from the previous construction of the accusative with the infinitive (*ta men kremata ... emen*). The order of the subject and object in the dative is further reversed within VI.37-44, compared to the two other cases. VI.25-29 and IX.18-20 are phrased entirely verbatim, but for three matters; *antimolos* appears without the article in IX.17; the infinitive *emen* precedes the genitives, whilst in IX.20 the genitive precedes the infinitive; and finally, and most noticeable – the main verb is in the subjunctive in VI.26, but in the optative in IX.19-20. The obvious explanation is found as to how the second text was created. It was clearly formulated by someone memorising the content of the first issued law, though not as a verbatim memorising, but – as he *thought* he remembered the text of the law. The procedural measures are, however, slightly different. In the first case (VI.29-31) we learn that litigations are to take place for the relevant judge, though in IX.21 another step is apparently inserted, *i.e.* the judge is to decide under oath, and only if this judgement should be in favour of the contesting party would the case be subject to proper litigations.

If we return to the general theme for this paper, both of these laws VI.2-46 and IX.1-24 functioned as independently issued legislation governing property management, but closely related to two other extensive laws, namely V.9-54 on intestate inheritance, and VII.15-VIII.30 on the marriage of the heiress, respectively. It seems logical to suppose that the enactment of the first (VI.2-46) brought about the idea for the enactment of the latter (IX.1-24). The introduc-

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<sup>45</sup> The omission of *epispensaito* in VI.37-44 and in IX.7-15 is accounted for by the context, in which these provisions worked: only in the first case would it have been an obvious choice for the perpetrator to pledge the property in question in terms of a promise of a dowry to a daughter. For a discussion of the legal implications of these two laws see Maffi (1997), pp. 105-116.

tion of statutory female inheritance rights did, however, create a need for precision of property management, although some of this legislation may have preceded this novelty in the sphere of family law. The two laws discussed above, do, nonetheless, have the nature of adjustments in a supplementary fashion and do not meet the conditions of «codified elaborated enactments», albeit they clearly are «elaborated single enactments».

## CONCLUSIONS

In this paper, I have addressed the issue of the Law Code's structure and organisation in two respects: the first relating to the general layout of the text, and the second concerning the structure of the individual laws. The Law Code demonstrates a logic order in the sequence of laws as far as it concerns the initially engraved part of the inscription (I.1-XI.23). This part of the Law Code encompasses 29 individual laws. Amongst these only two laws did not fit into this otherwise careful planning of the text of the Code (VII.10-15 on the responsibility concerning the act of a man of dependent status in relation to his sale and X.25-32 the definition of inalienable persons). Contrary to the initial part of the Code (I.1-XI.23) the supplementary part (XI.24-XII.19) does not demonstrate any logic whatsoever. The order of the laws within the supplementary part of the Code came about as continuous subsequent law enactments and, therefore, is engraved completely at random. We may, nonetheless, (as far as I.2-XI.23 is concerned) refer to the Law Code as a legal thematic coherent inscription.

Introducing the categories of «single simple, simple elaborated, and codified elaborated enactments», I have provided some suggestions to how we should understand the structure and the organisation of the Law Code. The category of «simple single enactments» encompasses a ban (which is omitted in a number of cases), a protasis (stating the offence), and an apodosis (stipulating the fine or compensation in question). In this category I have also included those laws, which also contain a single procedural measure (which could be the requirement of a witness as in II.16-20 concerning the seduction of an *eleuthera* in special circumstances). The category of

«single elaborated enactments» comprises the more complex laws, which stipulate series of procedural measures and/or exceptions or qualifications attached to either victim or perpetrator. It is not, however, laws that aimed at legislating in full with a conscious attempt to organise and delimit the subject matter in question. This is only the case for a very limited number of laws, which I have classified as «codified elaborated enactments».

Throughout the paper I have used the *vacat* (*folium* or *palmula*) as guideline for this classification. It became, however, also clear that *vacat* and so on in a number of cases were not an indicator for the continuous adding of new layers of legislation. It served a different purpose, namely as a legibility measure for the benefit of the future users, as for example in the law on the marriage of the heiress, VII.15-VIII.30 (that is *vacat* in VII.35, 40, 50, 52; VIII.7, 13, 20 and 27). Even more unequivocal is the use of *vacat* (with *folium* as it is in this case) within the first part of the law on intestate inheritance. Each of the five groups of heirs is separated from the next with the insertion of *vacat* with *folium* (V.13, 17, 2 and 25, whilst *vacat* in V.28 also indicates the addition of new legislation).

Despite the fact that we can never know if any of the legislation of the Code is in fact as young as the erection of the Code itself, many parts of the Code testify to continuing adaptation of existing legislation. This is evident from the extent parts containing widespread use of *vacat* (whether a *palmula* or a *folium* had been acknowledged at some point). But in trying to decide how many layers of legislations exist, we are facing an impossible task, although we may point to some tendencies as I have demonstrated above. It is obvious that many laws belonging to the category of «single simple enactments» in all probability are of considerable age compared to the youngest layer within the Code. However, it is quite obvious that this category also embraced recent legislative measures, since for example XI.24-25 and XII.1-5 belong to this category. Concerning the internal chronology, we learn in the latter of these laws (XII.1-5) that the prescribed limit of 100 staters needed to be reinforced, and that gifts exceeding this 100 staters limit prior to the first law (X.14-25) were not subject to retroactive force and, therefore, there can only be decades separating the enactments of these laws at most. Some of the laws belonging within the category of «simple single enactments» were subject to supplementary measures over time.

Some, however, retained the initial structure, since the addition also was a «single simple enactment» as for example VI.56-VII.10 (on the mixed marriage). The structure of other laws was transformed into «single elaborated enactments» as was the case of II.20-45 (on seduction).

The laws belonging to the category of «codified elaborated enactments» do not, contrary to what could have been expected, belong to the most recent layer of legislation, that is to say those laws that initially were envisaged as such were probably enacted prior to the introduction of statutory female inheritance rights where we find a statute of non-retroactive force, in V.8-9, as we do in IV.52-V.1 in the law on the distribution of inheritance between children, and in relation to laws of adjustments to this new situation (in VI.24-25, IX.16-17, XI.19-23 and XII.2-4). This does not, however, signify their considerable age and if I were to suggest their date of origin, I believe we will find that these were issued within the fifth century B.C. Yet we can detect another codifying attempt consisting in a conscious effort of bringing older legislation into the shape of a «codified enactment» as we observed in the case of I.2-II.2 (on illegal seizure), which may have happened during the same period when the two other cases of «codified elaborated enactment» were issued, *i.e.* (the order of intestate heirs) V.9-28 (with V.28-54 following the same pattern as I.2-II.2 and, therefore, V.9-54 in total as codified) and VII.15-VIII.30 (on the marriage of the heiress). None of the oldest layer of legislation is in my view among those laws found in the group of elaborated single enactments (with the exceptions noted above).

Finally, did the Gortynians legislators have in mind that the Law Code should function as a «code»? Obviously not, although we can detect several attempts to «legislate in full with a conscious attempt to organise and delimit the subject in question» – but this relates to *individual* laws within the Code. As far as the Law Code is concerned, the layout of the Code suggests that older legislation had to be incorporated into the newly enacted legislation (assuming that not all of the legislation of the Code predates its creation). We can only guess as to the reasons why this was done in such an elaborate way, *i.e.* the organisation of new and old within the Code. It seems evident that some of the individual laws underwent several phases of editing and adding of supplements, as others remained untouched from the time of their introduction, since they proved sufficient. In

relation to the general layout of the Law Code, this served the purpose of utility and not only for its logical sequence of the individual law, but also because of its internal references (which I have only dealt with only sporadically), its vocabulary and similarity in expressions and phrasings<sup>46</sup>.

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