

# The Organization of the Gortyn Law Code

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IT IS GENERALLY MAINTAINED that the great inscription of laws at Gortyn<sup>1</sup> is not a code in the strict sense of a comprehensive and systematic body of laws but is simply a collection of laws on various subjects rather haphazardly conjoined—a *satura legum*, as the editors of *IJG* (p.441) call it. Nevertheless, the collection is arguably a code in the more general sense of an authoritative publication of laws;<sup>2</sup> as I hope to show, moreover, we find in this Great Code (as it is often called) a certain organization of provisions into main sections devoted to various subjects and subsections within these. I agree with most scholars that the legislation of the Code is for the most part earlier than this particular publication,<sup>3</sup> and I shall suggest that the historical process by which laws were originally inscribed separately and then reinscribed on the Great Code accounts for and is revealed in this organization.

My case will be based on the punctuation of the inscription by means of asyndeton and gaps of one or two letter spaces. This method of punctuation is a relatively late (fifth-century) development in Gortynian inscriptions, and nowhere else is it used so extensively. In the earliest period the primary mark of punctuation is a vertical line dividing words and groups of words; occasionally a special *ligo* (⊗) is used to mark a new provision.<sup>4</sup> These vertical dividers apparently became less frequent<sup>5</sup> and are no longer found at Gortyn after

<sup>1</sup>The standard edition is M. GUARDUCCI, *I.Cret.* IV 72. Other editions hereafter referred to by the editor's name alone are by D. COMPARETTI in *MonAnt* 3 (1893) 93–242; R. Dareste, B. Haussoullier, Th. Reinach, *Inscriptions juridiques grecques* I 352–493 (hereafter '*IJG*'); F. BLASS, *SGDI* III 4991; C. D. BUCK, *The Greek Dialects* (Chicago 1955) no. 117; R. F. WILLETTS, *The Law Code of Gortyn* (Berlin 1967).

<sup>2</sup>See M. Lemosse, "Les lois de Gortyne et la notion de codification," *RIDA* III.4 (1957) 131–37.

<sup>3</sup>*E.g.* Willetts 8–9.

<sup>4</sup>For the dating of all Cretan inscriptions I rely on L. H. Jeffery, *The Local Scripts of Archaic Greece* (Oxford 1961) 309–16. The *ligo* is found on inscriptions from Dreros (*BCH* 61 [1937] 333–48 [Meiggs/Lewis 2]) and Lyttos (*I.Cret.* I xviii 5).

<sup>5</sup>One inscription (*I.Cret.* IV 13) has two lines of writing, the second presumably later than the first. The first line has eleven vertical dividers and the second has only three.

the earliest group of laws (*I.Cret.* I 1–40).<sup>6</sup> Asyndeton at the beginning of a new provision is found twice in an early inscription from Gortyn.<sup>7</sup> After *ca* 500 (*I.Cret.* IV 41–140) asyndeton (usually preceded by a gap) becomes common, as do gaps between provisions without asyndeton.<sup>8</sup> It may be no accident that these means of punctuation become common just as the Gortynians are beginning to collect groups of laws together. I shall argue, in fact, that this punctuation preserves a record of the historical development of these collections, as can most easily be seen on the Great Code.

## I. Asyndeton

All editors of the Code recognize that new sections are marked by asyndeton, normally preceded by a gap of one or (rarely) two spaces.<sup>9</sup> But in their discussions all editors to some extent ignore the guidance of asyndeton in dividing the Code into sections. Willetts (4), for example, speaks of asyndeton as marking either “a wholly new topic” or “a partially novel topic,” without specifying the nature of this distinction. I shall argue that every asyndeton marks the beginning of a new section and indicates that the provision or group of provisions it contains was originally enacted or assembled as a unit. In many cases these units were inscribed elsewhere and later reinscribed on the surviving inscription.<sup>10</sup>

Following the guide of asyndeton we may divide the Code into the following sections:

<sup>6</sup> An intermediate form of punctuation by means of a colon (:) is found only in one small fragment, *I.Cret.* IV 62, which together with 63 and 64 is dated *ca* 525–500. There are no gaps in these inscriptions.

<sup>7</sup> *I.Cret.* IV 14.g–p. In both cases the new provision may be unrelated to what precedes.

<sup>8</sup> *I.Cret.* II xii 15.6, with gaps before and after a single word, is unparalleled in early inscriptions.

<sup>9</sup> Only three instances of asyndeton introducing a new section are not preceded by a gap (3.37, 5.1, 8.30) and these may be the result of scribal error. Three other cases should be mentioned: the asyndeton in 6.1 is in fact preceded by a small gap at the end of 5.54, not noticed by most editors (compare the gap at the end of 5.34); in 6.55 I take τὸ ἐλευθέρῳ with the preceding sentence (so Blass); in 9.1 there is a break in the stone but it seems certain that there would have been a gap of at least one and perhaps two letters.

<sup>10</sup> For convenience I shall not discuss the possibility that one or more intermediate stages of reinscription may have occurred. Such an occurrence would not significantly affect my views. The oral transmission of laws at an earlier period, suggested by Willetts (*Aristocratic Society in Ancient Crete* [London 1955] 5–6), is extremely doubtful; even the earliest Cretan laws show no trace of oral composition.

- (1) 1.2–2.2: Seizure of Persons (57 lines)
- (2) 2.2–10: Rape (8)
- (3) 2.11–16: Forcible Intercourse with a Slave (5)
- (4) 2.16–20: Attempted Seduction (4)
- (5) 2.20–45: Adultery (25)
- (6) 2.45–3.16: Divorce (26)
- (7) 3.17–37: Separation of Spouses (21)
- (8) 3.37–40: Special Payments to a Spouse (3)
- (9) 3.40–44: Separation of Slaves (4)
- (10) 3.44–4.8: Children of Divorced Women (19)
- (11) 4.8–17: Exposure of Children (9)
- (12) 4.18–23: Unwed Slave Mothers (5)
- (13) 4.23–5.1: Distribution of Property among Children (32)
- (14) 5.1–9: Non-retroactivity of Law on Gifts to Women (8)
- (15) 5.9–54: Inheritance and Division of the Estate (45)
- (16) 6.1–2: Gifts to a Daughter (1)
- (17) 6.2–46: Sale and Mortgage of Property (44)
- (18) 6.46–56: Ransom of Prisoners (10)
- (19) 6.56(?)–7.10: Marriage of Slave Men and Free Women (10)
- (20) 7.10–15: Liability of a Master for his Slave (5)
- (21) 7.15–8.30: Marriage or Remarriage of the Heiress (70)
- (22) 8.30–9.1: Further Provisions concerning Heiresses (26)
- (23) 9.1–24: Sale or Mortgage of Heiresses' Property (23)
- (24) 9.24–40: Liability of Heirs (16)
- (25) 9.40–43: The Son as Surety (3)
- (26) 9.43–10.?: Business Contracts (11+)
- (27) 10.?-25: Gifts of Males to Females (10+)
- (28) 10.25–32: Restrictions on the Sale of Slaves (7)
- (29) 10.33–11.23: Adoption (43)
- (30) 11.24–25: Amendment to Section 1 (1)
- (31) 11.26–31: The Duty of Judges (5)
- (32) 11.31–45: Amendment to Section 24 (14)
- (33) 11.46–55: Amendment to Section 6 (9)
- (34) 12.1–5: Amendment to Section 27 (4)
- (35) 12.6–19: Amendment to Section 22 (13)

Several of these divisions, indicated by asyndeton, are not recognized by one or more editors of the Code<sup>11</sup> and require a brief discussion.

The second column contains provisions on rape (2.2–10), forcible intercourse with a household slave woman (2.11–16), attempted seduction (2.16–20), and adultery (2.20–45). These sections are obviously related and are usually grouped together into one large section, but asyndeton indicates (in my view) that each was enacted sepa-

<sup>11</sup> I refer primarily to the divisions of Willetts (summarized on p.34) and Guarducci (summarized on p.149).

rately. Separate enactment is further indicated by the lack of integration of the provisions. For instance, the law against ‘forcible intercourse’ with a household slave woman is not a part of the more general law against rape; these provisions are placed next to each other but they use different terms for what was quite likely the same offense<sup>12</sup> and they set quite different conditions for determining the fine to be paid. Similarly, the law against attempted seduction, which follows, describes a set of circumstances for the offense different from those in the preceding and following sections, indicating that it too was originally a separate enactment.<sup>13</sup> Thus it is likely that all four of these sections were separate enactments and are so marked by initial asyndeton in each case.

The third column contains three instances where the beginning of a new section, marked by asyndeton, is recognized by Willetts but not by Guarducci: 3.16, 3.37 (where there is no gap), and 3.40. Though here too the provisions are related (they all treat the affairs of a husband and wife), they regulate quite different matters: divorce (2.45–3.16), the death of one spouse (3.17–37), *komistra* (probably payments from one spouse to another 3.37–40),<sup>14</sup> and the separation of slave couples (3.40–44). As in column two, the provisions on death and divorce, which are obviously related, are presented as separate matters with no attempt at integrating them into a coherent whole. And the provision concerning *komistra*, though it too concerns the financial affairs of a husband and wife, apparently does not refer to either divorce or death. Thus the initial asyndeton here too indicates that this provision was conceived as a separate section.

These three sections are followed by a brief one (3.40–44) concerning the separation of slave couples by divorce or death. In contrast to the preceding sections concerning free spouses, the separation of slaves is treated in a single integrated section. Since it is likely that disputes concerning property in the case of free persons came to the attention of lawmakers earlier than those concerning the property of slaves, it is plausible to see 3.40–44 as a separate later enactment.

<sup>12</sup> No one has plausibly suggested any difference between the acts of ‘rape’ (*κάρτει οἴπῃ*, 2.3) and ‘forcible intercourse’ (*κάρτει δαμάσαιτο*, 2.11–12).

<sup>13</sup> Willetts’ long note on this difficult provision (2.16–20) is helpful, but his claim that it forms “a logical bridge between the regulations about rape and those about adultery” is unconvincing. Neither the sequence of offenses (rape, attempted seduction, adultery) nor the fines (100, 10, 100 staters) reveals any logical sequence.

<sup>14</sup> The precise nature of *komistra* is not clear, but the purpose of restricting the amount of these payments is probably to protect the interests of the heirs of either spouse. Willetts’ view that they are payments for ‘portage’ is doubtful, since there seems to be no reason why a wife should pay for her husband’s portage.

Thus 2.45–3.44 consists of four separate sections, each of which is marked by initial asyndeton.

There follow a number of provisions concerning children of single (unwed or divorced) women (3.44–4.23). Though there is asyndeton in two places in these provisions (4.8, 4.18), Willetts treats them all as one section (Guarducci divides it at 4.18). Here too, however, I think the asyndeton may be significant. The first section (3.44–4.8) states the procedure by which a divorced woman who bears a child is to give her former husband (or his master in the case of a slave) the choice of keeping the child; the second section (4.8–17) states the penalties for the unlawful exposure of a child by a divorced woman. The third section (4.18–23) gives the rules for ownership of the child of an unmarried slave woman, and is clearly separate from the first two. Though the second of these sections sets the penalties for violations of the rules set forth in the first section,<sup>15</sup> it may originally have been written as a separate section, since in addition to the asyndeton the section begins unusually with two words indicating the subject of the following provisions (*γυνὰ κερύονσα*). When such words precede the conditional term, this normally indicates the beginning of a new section.<sup>16</sup> Thus even though 4.8–17 was written in full awareness of the preceding section, it may have been enacted separately, providing sanctions for the regulations (without sanctions) which had already been enacted.<sup>17</sup>

The next problematic case<sup>18</sup> is the asyndeton (without a gap) in 5.1, where, after regulations specifying the distribution of property to sons and daughters, a provision is made limiting the retroactivity of provisions concerning gifts to women (5.1–9): a woman who had received no property as a gift, a dowry, or an inheritance from the time when *Kyllos* was *kosmos* was to obtain her due portion, but for women before this time there was no legal recourse (*i.e.*, women who had not received a proper share before this time could not now sue to obtain it).<sup>19</sup> To the extent that this provision limits the retro-

<sup>15</sup> *κατὰ τὰ ἐγγραμμένα* in 4.10–11 presumably refers to the regulations in 3.44–4.8.

<sup>16</sup> Words indicating the subject of the provision to follow also begin sections at 2.11, 3.37, 5.1, 6.1, and 9.30.

<sup>17</sup> For the distinction between a regulation and a sanction see my *Drakon and Early Athenian Homicide Law* (New Haven 1981) 81–82.

<sup>18</sup> At 4.27 Willetts and Guarducci punctuate with a full stop followed by asyndeton. Other editors mark only a half stop, which is clearly correct (see *infra* n.27).

<sup>19</sup> The interpretation of this section is disputed; I plan to consider it at length elsewhere. Willetts' interpretation seems motivated primarily by his general theory that women were more restricted by the provisions of the Great Code than they had been earlier. This theory seems to me dubious, though I cannot undertake to examine it here.

activity of the immediately preceding provisions, it might perhaps have been joined with them, but in fact it has a considerably wider scope, since it applies to gifts and dowries in addition to inheritance. Thus we should again follow the guidance of the asyndeton, which indicates that 5.1–9 was a separately enacted section<sup>20</sup> placed next to one of the set of regulations to which it refers.<sup>21</sup>

The last two problematic cases of asyndeton (8.30, 9.1) occur in what is usually considered one long section on the treatment of heiresses<sup>22</sup> (7.15–9.24). The initial section (7.15–8.30) contains a series of prescriptions for the marriage of an heiress, whether unmarried or already married. After asyndeton in 8.30<sup>23</sup> we find an assortment of different regulations pertaining to heiresses (8.30–9.1). Though these regulations must have been written with reference to those in 7.15–8.30, it is possible to see them as a later enactment. That there was no attempt to integrate the later rules into the earlier section is clear from the presence in the later section of the definition of the heiress (8.40–42), which would presumably be put at or near the beginning of an integrated section. Thus it is likely that here too the asyndeton indicates a separate enactment.

The regulations which follow the next asyndeton in 9.1 concern the management of the heiress' property, giving her a certain amount of control over it (9.1–24). These provisions have no direct connection with any of the preceding provisions, and they are also related to the provisions concerning the sale and mortgage of property in 6.2–46. They form a complete and coherent section in themselves, and there is every reason to see them as a separate enactment, as indicated by the asyndeton.

From this examination we may conclude that in all cases asyndeton provides a reasonable guide for the division of the Code into sepa-

<sup>20</sup> This section (5.1–9) was not necessarily enacted at the time of the inscription of the Code, since the provision for retroactivity would still have effect a number of years after its original enactment.

<sup>21</sup> Note also that this section begins with a word indicating its subject matter (see *supra* n.16).

<sup>22</sup> I use the traditional English translation 'heiress' even though it does not correspond precisely to the Greek *πατρῷκος*, literally 'the holder of the paternal estate'. At Gortyn a woman was an heiress only when she had no living father or brother (see 8.40–42).

<sup>23</sup> There is disagreement about the reading at 8.30. Comparetti cites Halbherr's statement that the N in ANEP seems to be a M (M) or a double N. Guarducci (followed by Willetts) says there is a fault in the stone between N and E. Examining the stone I found no fault in it but rather an apparent reduplication of the initial A (AANEP). The crossbars on both A's are faint, and thus AN could easily be read as a M. Emending AANEP to KANEP (= *καὶ ἀνέρ*) would remove the asyndeton.

rately enacted sections. Though the precise reasons for the separate enactments are unknown, they presumably reflect historical conditions. Provisions or groups of provisions were enacted as a need was perceived. In several cases I have suggested reasons for the later enactment of a section, and other sections could be similarly explained. The significant point, however, is that although separately enacted sections are sometimes placed next to related sections, their provisions are not integrated. In other words, the Gortynians do not appear to have undertaken any substantial revision of their laws when they reinscribed them on the Great Code.

The structure revealed by asyndeton on the one hand confirms the traditional view that the Code is not a systematic and comprehensive set of laws; on the other hand, however, it reveals a greater organization of provisions than is sometimes acknowledged. After the regulations about seizure of persons in the first column, the next eight columns (2.2–9.40) regulate in succession the general areas of offenses against women, relations between spouses, children, familial property, and inheritance. Only three short provisions in 6.46–7.15 interrupt the general continuity of this part of the Code. Four more brief provisions (9.40–10.32) in no particular order form the end of the main body of the Code. They are followed by supplementary provisions (10.33–12.19), many of which are amendments to the main text. Thus about two-thirds of the main body of the Code consists of regulations about the family and its property, and some attempt was clearly made to group together related sections.

A similar organization is observable on other legal inscriptions at Gortyn.<sup>24</sup> Though in many cases the inscriptions are too fragmentary to allow for certainty, asyndeton (usually preceded by a gap)<sup>25</sup> seems always to mark a new section, sometimes apparently related to what precedes (41.II.16, 41.III.7, 77.B.4, 77.B.10) and sometimes apparently not (14.g–p, 42.B.9, 46.B.6, 75.C.3, 76.B.7).<sup>26</sup> As far as we can

<sup>24</sup> I include in this survey all the inscriptions in *I.Cret.* IV 1–140.

<sup>25</sup> In two cases in one early inscription (14.g–p.1–2) asyndeton is not preceded by a gap. This inscription contains numerous inconsistencies in punctuation (a dividing mark at the second asyndeton but not the first), syntax (variation between nominative and accusative in two places), and use of elision (in line 1), and I would hesitate to draw any conclusions from it.

<sup>26</sup> I do not include in this list three cases where Guarducci's text has an asyndeton. One inscription (47) begins . . . κατακείμενος. αὶ κ' ἀδικήσει δόλος κτλ. It is more likely, however, that κατακείμενος is part of the conditional clause (modifying δόλος). The law clearly concerns a slave "given as a pledge," and since the top of the inscription is apparently preserved, κατακείμενος is likely to be the first word in the law (preceded by a gap or perhaps by ὁ). The reason for beginning the law with this parti-

tell, the use of asyndeton on these early inscriptions is consistent with what we have observed on the Great Code.<sup>27</sup>

The early inscriptions from Gortyn also give us a glimpse of the development of the manner of inscribing laws. Several contain more than one line of retrograde script and these have been plausibly explained by Jeffery as separate inscriptions each beginning from the right rather than a continuous retrograde text.<sup>28</sup> *I.Cret.* IV 1, for example, has five lines of writing, each of which appears to be in a separate hand, suggesting that each line probably contained a separately inscribed (and separately enacted) law. Presumably each new law began with asyndeton. When the Gortynians later made the important change from extremely long lines of writing to the more convenient form of columns,<sup>29</sup> separately enacted laws could be inscribed in a separate column or, if in the same column, separated by a space. Several inscriptions show an empty space below the written text, and one stone (*I.Cret.* IV 43) is particularly interesting for its organization of separate provisions. The inscription is in two columns of different widths, each containing two sections separated from each other by an empty space. Each of the four sections concerns a different subject: the rental of a threshing floor (Aa), the treatment of a slave (Ab), the use of a public orchard (Ba), and the use of water

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ciple is to indicate immediately its subject matter (see *supra* n.16). In the second case (42.B.3) asyndeton occurs at the beginning of a rather long space (19 letters) in which the original text was erased and a new text inscribed. Since this provision seems to follow the preceding one closely, I suspect it may originally have contained a connecting particle, which had to be omitted when a corrected text was inscribed in the limited space of the erasure. In the third case (78.3–4) Guarducci's restorations seem too long for the gap and may well be wrong. Other restorations could easily include a connecting particle.

<sup>27</sup> In addition there are perhaps four examples of a special kind of asyndeton, where a general introductory statement or proclamation is followed by a more specific provision introduced by asyndeton. For example, 43.Ba begins with the declaration, "the city has given the orchard (or vineyard) in Keskora and in Pala for planting" (1–3), and there follow, with asyndeton (but no gap), two provisions (3–9) regulating the use of these fields. Here and in three other examples (41.I.5, 78.1, 80.1), where an initial statement is followed by more specific regulations, one might reasonably punctuate with a half stop (equivalent to our colon) rather than a full stop. A similar situation obtains in 4.27 of the Great Code, where an initial statement of the parents' authority (4.23–27) is followed by regulations for the division of their property. These regulations begin with asyndeton (without a gap), but some editors (*IJG*, Comparetti, Blass) do not punctuate with a full stop.

<sup>28</sup> Jeffery (*supra* n.4) 312.

<sup>29</sup> We need not explain this change as influenced by the columns of writing on papyrus, as Guarducci (p.87) does. The proliferation of laws would in itself soon force the Gortynians to realize the greater convenience of columns.



from a public stream (Bb). The first two of these (Aa, Ab) have references to other laws which must have been inscribed elsewhere, perhaps on a nearby stone. The other two (Ba, Bb) seem to be self-contained provisions, and the fact that each begins with the common invocation *θωί* confirms that they were enacted separately. Clearly these are four separately enacted laws, brought together primarily because there was room on the stone, though the two laws in column B may have been thought of as related in content. Had the occasion arisen, each law might have been reinscribed elsewhere with other provisions.

Other laws were gathered together and reinscribed in groups, as on the Great Code. Each section was reinscribed as it originally began, without any connecting particle and separated from the preceding section by a small gap. A number of Gortynian inscriptions show traces of earlier writing, and though we cannot be certain that the earlier inscriptions were all laws, it is likely that they were.<sup>30</sup> These earlier traces indicate that the stones were erased, presumably at the time when the laws on them were reinscribed elsewhere. On some stones (*e.g.* *I.Cret.* IV 47) it is immediately evident that the writing surface is indented, presumably because an earlier inscription has been erased.

One other method of inscribing new laws is shown in the provisions added at the end of the Great Code (10.33–12.19). With one exception each of these begins on a new line, leaving a large gap at the end of the preceding line but no space between lines.<sup>31</sup> The first of these, in the same hand as the rest of the Code,<sup>32</sup> concerns adoption and was probably inscribed soon after the main body of the Code. The remaining provisions were added later. Except for this section and one on the duty of judges (11.26–31), which refers generally to the whole Code, each supplementary provision is clearly an amendment to a particular section of the Code. Presumably these amendments were inscribed here as they were enacted.

<sup>30</sup> The letters discernable in *I.Cret.* IV 48, for example, probably form part of a law or decree; see Guarducci *ad loc.*

<sup>31</sup> Note that several of these added sections begin from the left (11.26, 11.46, 12.6). This is contrary to the normal Cretan practice that *boustrophedon* inscriptions begin from the right, but the fact that *I.Cret.* IV 43.Bb also begins from the left indicates that in the fifth century this rule did not apply consistently to new laws inscribed after a previously inscribed law.

<sup>32</sup> According to Guarducci 10.33–11.23 are in the same hand as the main body of the Code but 11.24–12.19 are in a different hand. I treat these all as later additions because of the large gap in 10.32.

## II. Gaps Within Sections

In addition to the division of the Great Code into sections by means of asyndeton, there are a large number of gaps (about fifty) not followed by asyndeton. Most of these mark subsections within the main sections and enable us, I shall argue, to see the internal organization of a section, which in many cases may have been determined by historical circumstances. Willetts (4) maintains that “a *vacat* occurs elsewhere without asyndeton, presumably where the engraver preferred a smoother surface.” This explanation is impossible, first because it is highly unlikely that so many rough spots would coincide with the beginning of a sentence when fewer than ten gaps (caused by a rough surface) occur in the middle of a sentence,<sup>33</sup> and second because an inspection of the stone shows that in almost all the gaps occurring at the beginning of a sentence the surface is smooth. It seems likely, then, that the gaps within sections have some significance.<sup>34</sup>

In the first section of the Code concerning the illegal seizure of another person, the first ten lines (1.2–12) state the basic rule (no one is to be seized before a trial), the penalty for its violation (a set of fines), and the method for determining the fine (the judge is to decide on oath). These are the most general provisions concerning the seizure of persons and this subsection is marked off from the following provisions by a gap.<sup>35</sup> The next subsection (1.12–49) contains more specific provisions regulating various situations that might arise in implementing the general law: the seizure is denied and there are no witnesses; witnesses disagree whether the seized man is a slave or free; two parties dispute the possession of a slave; the loser in a dispute refuses to release the seized person; after the trial a slave flees to a temple rather than going to the winner of the dispute.<sup>36</sup>

<sup>33</sup> The following gaps appear to have been caused by the rough surface of the stone: 1.43, 1.44, 6.16, 6.42, 9.28 (or this may be an erasure), and perhaps 3.26, 5.42 (in a large lacuna), 7.2 (see *infra* n.44), and 12.9 (where some editors supply two letters to fill the gap).

<sup>34</sup> The widespread use of gaps in a continuous text is, as far as I know, unique to Gortyn. Elsewhere gaps are rare, except in a few specific places, such as (on occasion) to separate part or all of the preamble from the main body of a decree.

<sup>35</sup> Here and in a few other places a gap is filled with a painted *palmula*, which has no significance for our discussion. Traces of paint are randomly preserved both in gaps and in the lettering (*e.g.* at the top of columns five and six), and some painted signs (*e.g.* at 6.9) which could be seen when the inscription was first discovered have since disappeared (see Guarducci p.125). It is possible that all the gaps were originally filled with painted signs.

<sup>36</sup> I take 1.46–49 to refer to the case where a slave flees to a temple. The loser of the case must recover the slave and deliver him up within a year or else pay the single fines.

These provisions form the second subsection, which is followed by three separate provisions each preceded by a gap: the first concerns the possibility that a seized person may die during a trial (1.49–51),<sup>37</sup> the second concerns disputes in which one party is a *kosmos* (1.51–55), and the third allows the seizure of two special categories of persons (1.56–2.2).

The gaps within the first section of the Code reveal the following organization: first the most general provisions concerning the seizure of persons, then a group of supplementary provisions, and finally three separate additional provisions. It is possible that all the provisions in this section were enacted at the same time and that the gaps simply punctuate the section, but a historical origin seems more likely. The order of the subsections suggests a historical progression in that a self-contained group of basic provisions comes first and these provisions seem to reflect an early stage of written law, when the city was becoming strong enough to ask its citizens to submit their disputes to the legal process rather than using force or traditional means of self-help. Later, certain situations not covered by the basic law would arise: a man might seize someone and then claim that he had always possessed him, or a man might refuse to release a person even after a trial, and stiffer fines would then be necessary.<sup>38</sup> Experience with such situations would lead to the enactment of a group of supplementary provisions. Finally, at an even later period three more provisions relating to the law were separately enacted. The entire set of provisions was then reinscribed together on the Great Code.

<sup>37</sup> Willetts argues that 1.49–51 (“if he dies during the trial, he is to pay the single fine”) concerns the death of a litigant; but if this were so, it would mean that the litigant who dies would automatically lose his case. This seems unlikely, since the man’s heirs, who might at least temporarily inherit the disputed person, ought to be allowed to continue the case. Also, on Willett’s interpretation, nothing is said of the disputed person: would he automatically go to the other litigant if one litigant died? Again, this seems unlikely. If the provision refers to the death of the disputed person, however, whether slave or free, its purpose might be to prevent someone who was likely to lose the case from simply killing the disputed person, thereby rendering the case moot and avoiding any fine. Guarducci takes the provision to apply only to the death of a slave, but if the law contained such a restriction, for which I can see no reason, it would surely have to be made clear in the text.

<sup>38</sup> I do not see how the provision in 1.35–39 could possibly reduce the fine to one-third after a year had passed, as some have argued. This would simply encourage someone not to release a person until a year had passed. If, moreover, as seems likely, the winner of a case received the fine directly, he could at any time accept a smaller payment and declare the matter ended. The only meaningful interpretation of the provision is that it increases the fine after a year, either tripling it or (less likely) adding three categories of fines together (so Willetts).

It could be argued that this same organization into subsections containing first the most general provisions and then more specific provisions is as likely to be found in a set of laws enacted at one time as in a set of laws enacted over a period of time, but such a view cannot account for the separation of the last three provisions from one another. If each of these was a separate enactment, however, the gaps are easily explicable. A historical development thus seems more likely. Amendments were attached to the original provisions and their separate origin was indicated even after reinscription by the continued presence of a gap between them.<sup>39</sup>

In most of the remaining sections of the Code a similar historical development can plausibly explain the division into subsections. The section on divorce, for example, contains provisions specifying the property a wife may keep and the penalty for her taking too much (2.45–3.12). After a gap there is added a provision specifying a fine for anyone who helps a woman take more property than she is allowed (3.12–16). A historical explanation is extremely plausible here.

The divisions in the next section on the death of a husband or wife, though somewhat differently organized, may also have a historical explanation. First comes the case of a husband dying with children (3.17–24), then (after a gap) a husband without children (3.24–31), and finally (after another gap) a wife without children (3.31–37).<sup>40</sup> The organization of these subsections is different from that of the first column, but it is possible that here too each subsection was enacted as the need was perceived. The first case (the death of a husband with children) may have been the most likely to occasion disputes over property (between the children and their mother, especially if she remarries), and these provisions would thus be the earliest. That these provisions were originally enacted as a response to disputes arising in such cases is suggested by the fact that the prescribed remedy is that the matter shall be decided by a court. Later, disputes arose in the case of a husband dying childless and then in the case of a wife dying childless, and provisions were enacted to cover these. Provisions for the case of a wife dying with children

<sup>39</sup> If the separate provisions were originally inscribed without a connecting particle at the beginning, as is the case in the amendments to the Code, the scribe would add a particle at the beginning of each subsection. But it may have been more common in the early period to put a particle at the beginning of an amendment. The evidence of the earliest law from Dreros (see *supra* n.4) indicates that an amendment could be added beginning on a new line and separated by a punctuation mark, and yet contain a connecting particle, and this practice may at times have been followed at Gortyn.

<sup>40</sup> The case of a wife who dies with children is treated elsewhere (4.43–46, 6.31–36).

were not included here as they should have been if the whole section had been conceived as a unit, since these had meanwhile been enacted in connection with other sections (*supra* n.40). This whole section could have been written in a more systematic form, but the actual wording suggests the gradual accumulation of separately enacted provisions rather than a single enactment or revision. The absence of asyndeton after the gaps within the sections, however, indicates that the later enactments were considered direct amendments to the earlier provisions rather than a separate section.<sup>41</sup>

Similar patterns, similarly explicable on the basis of a historical development, also occur in the sections on adultery (gaps at 2.33, 2.36),<sup>42</sup> the children of divorced women (at 3.52), the distribution of property among children (at 4.48, 4.51), inheritance (at 5.28, 5.34, 5.39, 5.44, 5.51),<sup>43</sup> selling or mortgaging property (at 6.9, 6.12, 6.25, 6.31), the marriage of a slave and a free woman (at 7.4),<sup>44</sup> the marriage of an heiress (at 7.29, 7.35, 7.40, 7.50, 7.52, 8.7, 8.8, 8.13, 8.20),<sup>45</sup> further regulations concerning the heiress (at 8.36, 8.40,<sup>46</sup> 8.47, 8.53), selling or mortgaging the property of an heiress (at 9.18),<sup>47</sup> gifts (at 10.20), adoption (at 10.37, 10.39, 11.6, 11.19), and the affairs of a young heiress (at 12.9).

Besides these gaps, which may be explained on historical grounds, two other passages require fuller discussion. In the section on adultery (2.20–45) the first two gaps (at 2.27, 2.31) seem at first glance to be out of place. The passage reads as follows:

If someone is caught in adultery with a free woman in her father's or brother's or husband's house, he shall pay one hundred staters; and if in another's house, fifty; and if with the wife of an *apetairos*,

<sup>41</sup> Obviously there is a fine line between the case of these separately enacted subsections and that of the separate but related sections (indicated by initial asyndeton), which we examined above. To what extent this distinction was consciously noted by the Gortynians is difficult to tell.

<sup>42</sup> For the gaps at 2.27 and 2.31 see *infra*.

<sup>43</sup> For the gaps in 5.13–25 see *infra*.

<sup>44</sup> At 7.2 there is a space before *αὶ δέ* in which the stone is very rough. The roughness may have been the cause of the empty space, in which case the gap has no significance for our purpose, or an original letter may have been erased at this point.

<sup>45</sup> At 8.27 there must have been a gap where the stone is now destroyed. If the gap was intended to divide the sentence beginning in 8.27 from the preceding one, it would be an odd place for one, since the two provisions are very closely linked. But the gap may have been caused by the roughness at the edge of the stone at this point.

<sup>46</sup> In 8.40 a vertical incision just before the beginning of a new sentence must indicate that the scribe forgot to leave the required gap, later noticed his mistake, and then used the by now obsolete dividing mark to indicate where a gap should have been left (*cf. infra* n.48).

<sup>47</sup> For the gap at 9.15 see *infra* n.50.

ten; and if a slave with a free woman, he shall pay double. [gap] (2.27) And if a slave (with the wife, sister, or daughter) of a slave, five. And the captor is to proclaim before three witnesses to the relatives of the man caught in the house that they should ransom him within five days. [gap] (2.31) And in the case of a slave, (they should proclaim) to his master before two witnesses. [gap] (2.33) And if he is not ransomed, the captors may do with him as they please.

The last of these gaps can be understood as indicating that the subsequent provision was a later enactment, but the first two gaps in this passage seem odd. One might expect all the rules stating fines to be inscribed together without a gap, but separated by a gap from the following two rules concerning the proclamation before witnesses, which should not be separated from each other. The existing gaps are explicable, however, if we assume that all the rules stating fines except the last one (a slave in adultery with a slave) were originally followed directly by the rule concerning a proclamation before three witnesses. At a later time a pair of regulations was enacted concerning the fine to be assessed and the proclamation to be made in the case of a slave's adultery. When all these provisions were reinscribed on the Great Code, the later two were not simply added on but were integrated into the earlier rules, the provision for a fine following the other such provisions and the rule about a proclamation following the other similar rule. Gaps were left before both these insertions as an indication of their separate origin. No gap was left before the first provision for a proclamation because this rule was originally attached directly to the group of rules preceding it. Such an explanation is, of course, speculative, but it seems the most plausible way of accounting for this apparently anomalous situation.

The other difficult passage is found in the regulations for inheritance. Here the first five provisions (5.9–28) are all separated by gaps (at 5.13, 5.17,<sup>48</sup> 5.22, 5.25). The first states that children, grandchildren, and great-grandchildren are to inherit. The next provisions state successively who should inherit if none of the preceding relatives exists: after the direct descendants come the brothers and their descendants, the sisters and their descendants, other relatives, and finally household members. It is not impossible that each of these provisions was enacted separately,<sup>49</sup> but in view of the systematic

<sup>48</sup> At 5.17 there is no gap, but a *palmula* is painted in between the two sentences. This *palmula*, which is occasionally painted in a gap (see *supra* n.35), must indicate that the scribe intended to leave a gap at this point (*cf. supra* n.46).

<sup>49</sup> In this case the *μέv* in 5.10 would not have been part of the original law.

nature of the rules, it seems more likely that the gaps were inserted here in order to indicate the organization of these provisions, which may have been enacted all at once or over a period of time. This is the one passage in the Code that does not lend itself to a historical explanation of the gaps within sections; it is also the most systematic section of the entire Code.

Taking all this evidence together,<sup>50</sup> we find that the vast majority of gaps within sections of the Code lend themselves readily to a historical explanation. Certainly the gaps were intentionally placed in specific places and not inserted at random, since the scribe felt it necessary twice<sup>51</sup> to indicate the erroneous omission of a gap.<sup>52</sup> And the lack of systematic organization (in most cases) of the provisions separated by gaps makes it likely that they were the product of a historical process rather than of a single enactment.

Two patterns have been noted. The more common one, which is found in the first section, is that of a general rule or set of rules followed by more specific provisions, either grouped together or singly.<sup>53</sup> The second pattern, which we noted in the section on the death of a spouse (3.17–37), is that of provisions on one matter followed by provisions on a separate but closely related matter.<sup>54</sup> The patterns are not always clearly distinguishable,<sup>55</sup> and some longer sections offer a combination of the two.<sup>56</sup> One section (5.9–54), discussed above, seems to fit neither pattern, strengthening our suspicion that the gaps in this section may have some special significance.<sup>57</sup>

Despite their fragmentary nature, the evidence of the other legal inscriptions from Gortyn seems consistent with this interpretation of the gaps within sections of the Great Code. In the earliest inscriptions

<sup>50</sup> In addition to these gaps between sentences there are three gaps within sentences. One of these (9.15) occurs in regulations for mortgaging an heiress' property and immediately precedes a clause indicating the non-retroactivity of these regulations. Here a historical explanation is possible, since this clause may well have been added after the preceding provisions had been written. The other two gaps (at 1.16 after  $\xi\mu\epsilon\nu$  and 3.32 after  $\alpha\pi\omicron\theta\acute{\alpha}\nu\omicron\iota$ ) are puzzling; both are fairly long (about  $2\frac{1}{2}$  letters) and occur at the end of clauses. I can offer no good explanation for either.

<sup>51</sup> At 5.17, 8.40 (see *supra* nn.46, 48).

<sup>52</sup> Of course other errors of omission (or commission) may have been left uncorrected.

<sup>53</sup> This pattern also occurs in 4.23–5.1, 9.1–24, 10.?-25, 10.33–11.23.

<sup>54</sup> This pattern also occurs in 3.44–4.8.

<sup>55</sup> 6.56–7.10 and 12.6–19 could be said to display either of these patterns.

<sup>56</sup> 6.2–46, 7.15–8.30, 8.30–9.1.

<sup>57</sup> This section (5.9–54) has a significantly higher concentration of gaps than any other. 20% of the lines in this section have a gap (9 out of 45) compared with less than 10% (39 out of 419) of the lines in the other sections which have gaps and about 8% (48 out of 606) of the lines in the entire Code.

(*I.Cret.* IV 1–40) gaps do not occur except at the end of a line, probably because each separately enacted provision was inscribed on a new line beginning from the right. In the inscriptions of the later period (41–140) there are many gaps followed by a connective (normally δέ), and in almost all cases a close connection between the provisions on either side of it is either likely or (in the absence of a clear context) possible.<sup>58</sup> Consider, for example, 47, which, if not complete (see *supra* n.26), at least preserves a full and clear context. The first ten lines contain provisions concerning a slave who commits an offense while mortgaged to another man. After a gap there follow provisions concerning an injury to or the death or disappearance of a slave mortgaged to another man (lines 10–33). The pattern here is similar to that in 3.17–37 of the Great Code and can be similarly explained on historical grounds.

Only in one other inscription are the gaps puzzling: *I.Cret.* IV 80, which contains various regulations concerning relations between Gortyn and the Rhizenians. The presence of three gaps in fifteen lines<sup>59</sup> seems to indicate the accumulation of separately enacted provisions, and the extremely diverse content of the regulations supports this view. One gap occurs in the middle of a sentence (11–12):<sup>60</sup> “If (certain officials) do not exact (the fine), the elders who exact them shall be immune (from prosecution); [gap] the things written, but not others.”<sup>61</sup> The words after the gap indicate that the immunity is granted only as long as they exact “the things written,” and it is possible that the main provision was first enacted by itself and that the restricting phrase was enacted later, perhaps after someone had misused his immunity. On the other hand, it is also possible (and *prima facie* perhaps more likely) that this treaty was a single enactment and that the gaps in it are simply anomalous.<sup>62</sup>

With few exceptions, therefore, the evidence of the gaps presents a consistent picture, which is most easily accounted for by a historical hypothesis. The Gortynians in the sixth and fifth centuries enacted, inscribed, and reinscribed a large number of different laws, and it is

<sup>58</sup> Gaps (without asyndeton) occur in 41, 42, 45, 47, 80, 83, 84, and 91. I would reject the gap postulated by Guarducci in her restoration at 81.22.

<sup>59</sup> There is a fourth gap before the asyndeton in line 1; see *supra* n.27.

<sup>60</sup> Cf. 9.15 of the Great Code (*supra* n.50).

<sup>61</sup> αἱ δέ κα μὲν πράδδοντι, τὸν πρειγίστον τούτον πράδδοντας ἄπατον ἔμην [vac.] τὰ ἐγραμμέν', ἄλλα δὲ μὲν.

<sup>62</sup> There is no parallel for the first gap in line 12. The other two gaps (lines 4, 12) coincide with distinct changes in subject matter. Though the original stone does not survive, Halbherr's drawing (*AJA* 1 [1897] 206) does not suggest any physical reason for the gaps.



reasonable to understand the organization of these laws as at least partly determined by this activity. Once enacted, laws were frequently amended, but the amendments were added to the end of the earlier laws; even when reinscribing laws and amendments, the Gortynians rarely attempted to integrate the provisions into a more coherent whole.

### III. Conclusion

I have presented this examination of certain details of the organization of the Great Code in the hope that it may help us see more clearly the nature of Gortynian laws. From at least the early sixth century the Gortynians enacted many laws on a variety of matters, particularly concerning the family and property. Laws appear to have been enacted as the need arose, *i.e.*, as disputes concerning specific matters needed to be settled. After a period of time the Gortynians reinscribed many of these laws in more compact columns, and at the same time reorganized them to some extent. They still adhered closely to the wording of the original laws and only rarely did they alter groups of provisions to make them more systematic or orderly, though they did bring amendments together with earlier provisions into large sections and made an effort to assemble together related sections.

This historical process suggests an attitude toward law somewhat different from our own. The Gortynians did not systematically revise their laws, perhaps out of a more respectful attitude toward earlier laws. That they did reinscribe and occasionally reorganize their laws, however, indicates that they understood some of the difficulties created by the mere accumulation of separately enacted provisions and saw the need for greater order. But modern scholars must beware of expecting too systematic a presentation of, say, marriage laws at Gortyn.

A similar warning holds true for Athenian law<sup>63</sup> and probably for the rest of Greek law as well.<sup>64</sup> When Athens in the last decade of the fifth century entrusted the republication of the city's laws to a

<sup>63</sup> Cf. Gagarin (*supra* n.17) 21–29.

<sup>64</sup> Even modern law is not so systematic as is sometimes thought. The Constitution of the State of Texas, for example, is now burdened by scores of amendments added over the course of more than a century, many of them obsolete; and yet it has resisted numerous attempts (most recently in 1974) at systematic revision, perhaps in part from a fear of change which the Gortynians would well have understood.

body headed by Nicomachus, the result was not a revision of the laws but the gathering together and sorting out of a large number of separately enacted and in some cases widely scattered provisions.<sup>65</sup> Like the Gortynians the Athenians sought to give greater order to their laws, but they refrained from a systematic revision of individual laws. As a result the laws of both cities may show less consistency than some scholars seem to expect. It is vital for our understanding of Greek law that we be aware of the historical circumstances which produced the laws in the form in which they have survived for us. The details of the Great Code discussed above have, I hope, shed a small ray of light on the workings of this historical process.<sup>66</sup>

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<sup>65</sup> See R. S. Stroud, *Drakon's Law on Homicide* (Berkeley 1968), esp. 24–25.

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