

THE LEGAL TREATMENT OF SLAVES IN THE CITY OF GORTYN

Michael GAGARIN
University of Texas at Austin
gagarin@austin.utexas.edu

RESUMEN:

Este artículo revisa las menciones de esclavos y siervos en las leyes inscritas del siglo V a. C. en Gortina, una ciudad de Creta. Se sostiene que, aunque los esclavos en Gortina en muchos aspectos fueron considerados como propiedad, se les permitió acceder a ciertos derechos de propiedad y disfrutaron de algunas protecciones contra el maltrato. Igualmente, podían casarse y divorciarse legalmente e incluso podían contraer matrimonio con personas libres, siendo los hijos de estas uniones mixtas legalmente libres en algunas circunstancias.

PALABRAS CLAVE:

Gortina, esclavo, siervo, propiedad, matrimonio.

ABSTRACT:

This paper reviews all the mentions of slaves and serfs in the inscribed laws of fifth-century BCE Gortyn, a city in Crete. I argue that although slaves at Gortyn were treated as property in many respects, they were also allowed to own a certain amount of property and enjoyed certain protections against mistreatment. They could marry and divorce legally and they could even marry free persons, with the children of these mixed marriages being legally free in some circumstances.

KEYWORDS:

Gortyn, slave, serf, property, marriage.

Beginning in the sixth century BCE, the city of Gortyn on the island of Crete enacted a large number of laws which they inscribed on the (stone) walls of temples and other buildings or on free-standing walls or slabs in places easily accessible to the inhabitants of the city. Many of these inscriptions survive to this day, though many more do not. Among the survivors is a large wall with twelve columns of laws on various subjects known as the Great Code¹, which was inscribed around the middle of the fifth century BCE. Some of the laws in this Code and in several other slightly earlier inscriptions concern slaves, and although they are by no means systematic or complete, they allow us to create a partial picture of how slaves were treated in Gortyn at this time. In what follows, I will examine some of these laws and discuss their implications for the treatment of slaves. Because no other literary or artistic sources provide any information about life in Gortyn at this time, my discussion of the laws will necessarily involve some speculation².

The first point to note is that two kinds of unfree persons are mentioned in these laws, the *woikeus*, generally translated as a “serf,” and the *dolos*, which is the common Greek word for a slave. Serfs appear to be the remnants of an earlier population; they are closely connected to the land and appear to have more rights than ordinary slaves. It is often thought that they could only be sold together with the land to which they (in a sense) belonged, but we have no clear evidence about this.

Dolos applies narrowly to chattel slaves who are not serfs, but is also used more generally of all non-free persons. In particular, when the laws wish to distinguish a non-free person from a free person (*eleutheros*), as in the first column of the Code which concerns disputes about a person’s status, *dolos* is used in this sense of “non-free person,” and thus includes serfs as well as slaves. *Dolos* may, in fact, include serfs in most (perhaps even all) of its occurrences in the laws. *Woikeus*, on the other hand, appears usually to be confined to serfs, but there may have been other laws applying to slaves that were similar to some of the laws about serfs. I begin with laws concerning serfs.

The law on inheritance, which is clearly directed at families who possess a certain amount of property including land, prescribes that after the death of a parent the sons are to take possession immediately of certain houses and livestock, and adds that the rest of the property is to be divided later among the sons and daughters (with each son getting twice as big a share as each daughter). The

¹ This inscription is called a code for convenience, though it is not a code in the modern sense but rather an unsystematic collection of laws. About half of the laws of the Code concern family and inheritance.

² David M. Lewis, *Legal Knowledge in Gortyn. Debt Bondage and the Liability of Slaves in Gortynian Law*, in Clifford Ando, William P. Sullivan (eds.). *The Discovery of the Fact*, University of Michigan Press, Ann Arbor 2020, pp. 72-90, makes the same point.

law prescribes that the sons' initial inheritance is to be "the houses in the city and whatever is inside the houses, those in which a serf who lives in the country is not residing, and the livestock, small and large, that are not those of a serf" (72.4.32-37)³. In other words, if a serf, who normally would be living on the land, is living in a house in the city, he is allowed to stay there and keep all the furniture (though he probably does not own the house and its contents). And a serf is to keep the livestock that he owns. Thus a serf is allowed by law to own livestock and probably a house in the country and perhaps also a house in the city.

Another law concerning property addresses the question of a serf woman's property in a divorce or after the death of her spouse. This provision says, "If a serf woman is separated from her serf husband either while he is living or by his death, she is to have her own things, but if she should carry away anything else, it is a matter for trial" (72.3.40-44). The language here closely resembles that in the two preceding sections concerning the property of a free woman who is divorced (72.2.45-3.16) or widowed (72.3.17-40), which implies that the property of serf women was treated like the property of free women. The last clause, specifying a trial if there is a dispute, seems to suggest that serfs could be litigants in court. At least, it is hard to imagine that the property of serfs who are getting divorced would be of any interest to someone other than the couple who are getting divorced.

The provision about divorced or widowed serf women is followed by a longer section on children born to unmarried women (72.3.44-4.23). It specifies that if a free woman who is divorced has a child, she must offer it first to her former husband to rear; she may only rear it herself if he has first declined to rear it (72.3.44-52). The rest of this section concerns serf women; it begins by requiring a divorced serf woman who has a child to offer it to the master of her ex-husband; if he declines to rear it, it then belongs to the woman's master. But, the law adds, if the woman remarries the same man within a year, then the child belongs to the husband's master. These provisions show that serfs with different masters could marry, though we do not know how common this was. After marriage, however, they would continue to belong to their original master even while they lived together⁴.

³ I refer to the Gortyn laws according to their numbering in the standard edition of the Greek texts (with a commentary in Latin), *Inscriptiones Creticae*, ed. Margherita Guarducci (Rome 1935-1950). Volume 4 (1950) contains all the inscriptions from Gortyn, and the Gortyn Code is no. 72. This number is followed by the column number (in this case 4) and then the line numbers. All these texts are now available with an English translation in *The Laws of Ancient Crete c. 650-400 BCE*, by Michael Gagarin and Paula Perlman (Oxford 2016). They are also available with a Spanish translation in Inès Calero Secall, *Las Leyes de Gortina*, Madrid: Ed. Clásicas, 1997; and with a French translation in Henri van Effenterre and Françoise Ruzé, *Nomima: recueil d'inscriptions politiques et juridiques de l'archaïsme grec*. 2 voll. Rome 1994-95.

⁴ There is a puzzling provision at the end of this section that I will not discuss, but I include it here for the record: "If an unmarried serf woman should be pregnant and give birth, the

These are all the laws at Gortyn that specifically concern serfs and not slaves; the rest all concern slaves, but most of these laws on slaves probably also applied to serfs. This is surely true in the first column of the Code which concerns disputes over status, either whether a person is free or slave (*eleutheros* or *dolos*) or to which of two masters a slave belongs (72.1.2-2.2). This section establishes the important principle underlying the rule of law, that in any such dispute there must be a trial before a person can seize someone he claims as his. One notable provision in this section provides that “if one party contends that he is a free person and the other that he is a slave, whichever ones testify that he is a free person are to prevail” (72.1.15-18).

This section also refers to the possibility that a slave might take refuge in a temple, and it is clear that he is protected there. An earlier law also states that slaves who take refuge in a temple are protected from being sold for a year (41.4.6-18)⁵. It appears that a main reason for slaves to seek refuge in a temple was to protect themselves from being sold or transferred to another master.

In addition to protection while in a temple, slaves were also given some general protection against mistreatment in an early law at Gortyn that reads: “if someone unjustly obtains a male or female slave as security or strips (him/her of clothing) or removes (his/her footwear), he shall pay half as much as is written for a free person and triple the value of the clothing and footwear, just as for a free person” (72.43AB⁶). It is not clear how someone might unjustly obtain a slave who was pledged as security, though presumably this did happen. But the law protected slaves against this and other mistreatment just as it protected free persons, and though a slave had only half the value of a free person, his clothing and footwear had the same value.

The lesser monetary value of a slave as compared to a free person is also made clear in the list of penalties for sexual offenses on the second column of the Code (72.2.2-45). This section begins, “If someone rapes a free man or woman, he will pay a hundred staters [= two hundred drachmas]. ... If a slave (rapes) a free man or woman, he will pay double. If a free man (rapes) a male or female serf, (he will pay) five drachmas. And if a serf (rapes) a male or female serf, five staters [= ten drachmas]”. These proportions remain the same throughout this section: if the victim is a free person the penalty is forty times greater than for the same offense committed against a slave, and if the offender

child is to be in the hands of the master of the father; but if the father is not alive, it is to be in the hands of the masters of the brothers” (72.4.18-23). Among the uncertainties are whose brothers are these and how do they come to have different masters.

⁵ The text of 41.4.6-18 refers to protection for a serf, but the same rules probably also applied to slaves who were not serfs.

⁶ The text of 72.43Ab is fragmentary and breaks off at this point. Presumably the mistreatment of free persons was regulated somewhere earlier in this inscription.

is a slave, the penalty is twice as much as for the same offense committed by a free person⁷.

One provision in this section applies only to an “indoor” or household slave woman (*endothidia dola*): “If someone should subdue by force⁸ a household slave woman, he will pay two staters [= four drachmas]; but if she has already had intercourse, (he will pay) one obol [= 1/6 drachma] during the day, but if at night, two obols. And the slave woman is to swear an oath” (72.2.11-16). This provision seems to recognize what is true in all slave societies, that a slave woman working in the house is likely to be used as a sex object by her master. It is possible that this law only protects the slave woman from being raped by men other than her master, but the language seems rather to be aimed at the master, who would be the one most likely to “subdue by force” his household slave women during the day or at night. If so, the woman could complain about the rape and be awarded the small fine (four drachmas); she would have to swear that the rape occurred and that she had been a virgin at the time (if such were the case), but she could then collect the small fine from her master.

On the other hand, although the language of this section implies that the offender himself will pay the specified fine, scholars have doubted that a slave who raped a free person could have paid a fine of two hundred staters [= four hundred drachmas], which is the largest fine imposed for any offense in the Gortyn laws. And another law in the Code makes clear a master’s liability for offenses committed by his slave: “If someone has bought a slave from the agora (market-place) and has not terminated (the purchase) within sixty days, if (the slave) has done wrong to anyone before or after (the purchase), litigation is to be conducted against the one who has acquired him” (72.7.10-15). The master’s liability is also clear in an earlier law concerning an indentured slave, that is a slave who is temporarily on loan to another person to satisfy a liability, such as to pay a debt. In that case, “If an indentured male or female slave wrongs (someone), in that he does wrong on the orders of his current master, the case is to be brought against the current master, but in that he himself (does wrong) on his own, the case is to be brought against his old master and not his current master” (47.1-8).

It seems, then, that in most cases a slave’s master handled the litigation on behalf of the slave and collected or paid any resulting fines. However, for relatively small matters, such as the divorce of serfs (see above), it seems more likely that the slaves themselves participated as litigants. And it is possible that the slaves themselves could litigate in rape and adultery cases where the fines

⁷ For unknown reasons both “slave” and “serf” are used in this section but the penalties are the same whichever term is used for the offender or victim. See Gagarin and Perlman 2016 (above, n.3), p. 82, where a table makes these proportions clear.

⁸ It is not clear what difference if any there was between “rape” (*kartei oipein*) and “subdue by force” (*kartei damazein*).

were ten drachmas or less. Thus a slave could perhaps bring suit for rape against another slave, and a household slave woman could sue her master for relatively small fine prescribed if she was subdued by force⁹. But this is just speculation, and in the end we have no firm basis for determining in which situations slaves may have been allowed or required to be the litigants in their own cases.

Finally, we should note that a section of laws in the code concerns the children of marriages between a slave and a free woman¹⁰: “[If the slave] goes to a free woman and marries her, their children are to be free, but if the free woman (goes to) the slave, their children are to be slaves. And if free and slave children are born from the same mother, when the mother dies, if there is property, the free children are to have it; but if there should be no free children, her relatives are to inherit it” (72.6.56-7.10)¹¹. Such an officially recognized marriage between a slave and a free person is, to my knowledge, unique in slave societies, and yet the Greek verb here translated as “marries” (*opuiein*) is exactly the same verb as is used in the rest of the Code for marriage between free persons (see, e. g., 72.7.30), and also for marriage between slaves (e. g., 72.3.54-55)¹².

The focus of these laws on mixed marriages is on the status of the children of these marriages. We may speculate that the arrangements specified probably reflect the social situation in such cases. If a woman marries a slave and they live together in her (or her family’s) house, the marriage is probably approved by her family and the children would then be accepted and treated as free, whereas if she goes and lives with the slave, she may have been rejected by her family and any children born in such a situation would be treated as slaves. And in some cases the couple may have lived first in one house and then later in the other, resulting in both free and slave children.

As I noted at the beginning, the laws examined above are the only evidence for the lives of slaves at Gortyn. They provide a rough outline but leave us in

⁹ This may be another reason to think that the provision concerning the household slave woman envisions her master as the offender, not someone else, since if someone else subdues the woman by force, the master would have little motive to bring suit for the tiny fine of one obol, and the woman herself might have difficulty procedurally bringing suit against someone who is not her master.

¹⁰ This section begins at the end of column 6 where the words “of the free man” are visible. Then comes a stretch of illegible letters which I (like most editors) assume must have included the words “if the slave,” which are required to complete the sense of the sentence that follows. We can only speculate about what the other missing letters might have been.

¹¹ No law survives concerning marriage between a free man and a slave woman, but it is hard to imagine that such marriages were not also allowed. Perhaps such a law was not necessary, since it was assumed that the couple would live in the man’s house and that their children would be free.

¹² Note too that the verb used for the separation of serfs by divorce or death (*krinō*) in 72.3.41 (discussed above) is also used for the divorce of a free woman in 72.11.46, though other verbs are also used for divorce of free persons elsewhere in the Code.

the dark about much of the detail. Still, it seems that some overall conclusions are possible. Slaves at Gortyn were clearly still chattel, subject in many ways to the whims of their owners, but they did have some protections against mistreatment and also had opportunities that are uncommon in other slave societies. They could own property that was recognized as theirs, they could be legally married (and divorced) on their own¹³, and they could even marry a free person. Serfs evidently had even greater rights and protections than free persons. They seem to have been able to own livestock and they could live in houses that were theirs and could not be taken from them. Serfs could be sold, but perhaps only together with the land to which they were attached. But whether these privileges made the everyday lives of slaves at Gortyn better overall than those of slaves in other slave societies is something we cannot judge.

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¹³ There is no hint of any requirement that a master's permission was necessary for either of these actions.