

Briseis in the Chora? The Mother's Role in the Marriage Documents from Greco-Roman Egypt

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The presence of the mother in some marriage contracts in Hellenistic and Roman Egypt raises the question of whether her presence implies that she has recovered a role that she had played in historical periods prior to the formation of the polis or whether, on the contrary, it is a characteristic of this period and, if the latter, the point is whether it is a revival of an ancient Greek institution, or rather an influence of local law. It is also possible that the disappearance of the regulations of the polis in the Greek emigration led women to develop their activities with greater freedom and that the presence of the mother in marriage contracts simply reflected her new role in Hellenistic society, regardless of whether there was a historical precedent for doing so.

"Fact is not truth, but a poet who willfully defies fact cannot achieve truth."
Robert Graves, *The White Goddess*

Introduction

I shall deal with a topic that has already attracted the attention of the German scholar Walter Erdmann many years ago. Since that time, however, this matter has been virtually ignored by the scholarship, with a few exceptions that have not dealt with the problem in depth. From two of the then known Hellenistic and Roman marriage contracts (P.Eleph. 1 =JPap. 18 and P.Oxy X 1270), Erdmann¹ concluded that the mother, unlike in classical Athens, played a significant part in the marriage contracts, nothing short of performing the delivery of the bride. This could happen, according to the documents, in the company of her husband or even on her own.

As we shall see, Erdmann aimed to relate the presence of mothers in marriage contracts to the survival of Greek law, specifically prior to the constitution of the polis. For this purpose, he resorts to two verses from the *Iliad* (XIX 290-291), which in the end, however, he himself considers insufficient to support his own thesis.

In my view, this topic at least should be revisited in light of new documents and especially of how scholarship has evolved since then. This concerns the nature of Hellenistic and Roman law in Egypt, the role of women in such a

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1. Walter Erdmann, "Die Rolle der Mutter bei der Verheiratung der Tochter nach griechischem Recht," *Zeitschrift der Savignys Stiftung (Rom. Abt.)* 59 (1939): 544-546.

context and the possibility that this intervention of the mother in marriage contracts reflects practices in the Greek world prior to the Hellenistic era.

Insofar as the above-mentioned documents are not usually discussed in the context of the role of the mother in Greek culture in general, and despite the fact that the literature on them is very vast, I think that some aspects of the problem can still be clarified. Moreover, Erdmann's article is relatively old, and even though it has been repeatedly cited, however I have not yet come across any truly well-founded criticism. For example, in his recent and interesting book on dowry and marriage arrangements, Uri Yiftach-Firanko still appears to generally accept Erdmann's hypothesis without further discussion. On the other hand, some of the factors that this scholar considers could in my opinion lead to some new insights.²

The topic we are dealing with here requires the treatment of different periods, which does not always help to make it easier to explain and develop. However, in my view the subject itself requires this complex approach, which forces us to travel back in time from Hellenistic and Roman Egypt through classical Athens to archaic Greece. I shall endeavour to correctly differentiate between these periods and explain the different contexts with which we are working.

The structure of this paper is as follows: I shall analyse the different mentions of the mother in the two documents cited by Erdmann. Then I shall discuss Erdmann's idea that the *Iliad* verses he cites may have to do with the active role of the mother in the ἔκδοσις of the daughter in the pre-polis period. To address the first question, we shall explain the differences between the Attic marriage as transmitted through the sources (mainly the orators) and the reality found in the documents of the Hellenistic and Roman periods. As far as the Homeric poems are concerned, I shall refer to Vernant's studies on marriage in the Archaic Period, in an aristocratic context in which the wife represents her husband's authority or sovereignty and where, moreover, the status of the married woman and concubine is very ambiguous in several cases.

The Documents:

The ἐγγύησις Disappears, but in Many Cases, the ἔκδοσις is Preserved

With regard to documents, in those days the research still aimed to find in Hellenistic marriage contracts the same realities as those in marriage according to Attic law. We know that in this legal system, a legitimate marriage was contracted by means of two procedures, the ἐγγύησις (not merely betrothal, but a requirement for validity³) and the ἔκδοσις, the giving of the wife to the husband by her father

2. Uri Yiftach-Firanko, *Marriage and Marital Arrangements. A History of the Greek Marriage Document in Egypt* (Munich: C. H. Beck, 2003), 48-52.

3. Alick R. W. Harrison, *The Law of Athens I* (Oxford: Oxford University Press, 1968), 9-12; Douglas M. MacDowell, *The Law in Classical Athens* (Ithaca (NY): Cornell University

or his *κύριος*. In Attic law we have many examples of *ἐγγύησις* as the power of the bride's father or *κύριος*. Significantly, the role of the bride was absolutely passive. Only her father and the husband-to-be expressed their will. Plato's text in *The Laws* (774e) where he empowers not exactly the mother, but the relatives on the mother's side to perform the *ἐγγύησις* is considered not to reflect the Athenian reality⁴. In classical Athens, on the other hand, *ἐγγύησις* was an inexcusable requirement in that, without it, marriage did not produce legitimate children who could become citizens (cf. e.g. Isaeus III. *de Pyrrhi hereditate* 39).

Although there is majority consensus regarding the non-existence of *ἐγγύησις* in the documents of the Graeco-Roman Egypt⁵, the initial approach, in Erdmann's time was still very much influenced by Attic law and therefore considered that some presence of *ἐγγύησις* -which he considers a 'national feature'- could be found in the documents of this period. However, as indicated above, not the slightest evidence of *ἐγγύησις* can be found in the documents.

Hans-Julius Wolff⁶ and Joseph Méléze-Modrzejewski⁷ are perhaps the two authors who have been best able to explain how the difference in contexts has affected the evolution of certain features concerning Greek marriage as a consequence of Greek emigration to Egypt. The controversial point is whether the re-adaptation of the institutions of the polis to an environment as different as Egypt, where the Greek settlers had lost the original context of their social life, also involved a revival of pre-polis institutions. Also important, of course, is whether this evolution can be explained without reference to the original Greek context, i.e., prior to the polis, or to external influences. In our case we can

Press, 1978), 84; Carlos Sánchez-Moreno Ellart, "Marriage (Greece and Rome)," in *Encyclopedia of Ancient History* (New York: Wiley-Blackwell, 2013), 4317-4318.

4. Plato, *leges* 774e: ἐγγύην δὲ εἶναι κυρίαν πατρὸς μὲν πρῶτον, δευτέραν πάππου, τρίτην δὲ ἀδελφῶν ὁμοπατρῶν, ἐὰν δὲ μηδὲ εἷς ἢ τούτων, τὴν πρὸς μητρὸς μετὰ τοῦτο εἶναι κυρίαν ὡσαύτως.

5. Yiftach-Firanko, (*Marriage and Marital Arrangements* 53, n. 54) is right where P.Cairo.Masp. I67092, ll.9-10 is concerned, since it is a late (553 AD) and ambiguous document: καὶ ὄρκον ἀποθέσθαι ἰ μοι τῇ εἰρημένῃ Εἰρήνῃ ὅτι λαμβάνω ἰ [σ]ε εἰς γυναικῆ{ν}. As regards P.Ent. 23, vid. Hans-Julius Wolff, *Written and Unwritten Marriages in Hellenistic and Postclassical Roman Law* (Haverford: Philological Monographs of the American Philological Association XL, 1939) 24-25 n. 86, and Edoardo Volterra "Intorno a P. Ent. 23," *Journal of Juristic Papyrology* 15 (1965): 21-28.

6. Hans-Julius Wolff, "Die Grundlagen des griechischen Eherechts," *Tijdschrift voor Rechtsgeschiedenis / Revue d'histoire du droit* 20 (1952): 1-181.

7. Joseph [Méléze-] Modrzejewski, "La structure juridique du mariage grec," in Edda Bresciani (Ed.) *Scritti in onore di Orsolina Montevicchi* (Bologna, 1981), 261-263, in Panayotis Dimakis (Ed.) *Symposion 1979, Vorträge zur griechischen und hellenistischen Rechtsgeschichte. Ágina, 3.-7. September 1979, 7-72* (Cologne/Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1983), 39-71.

secondarily admit that Greek origins might also have played some role, but what is most significant is the disappearance of the polis as a social framework.⁸

As widely known, when speaking of Hellenistic and specifically Ptolemaic law, two tendencies normally coexist: either to consider the institutions which in this law differ from Athenian law as ancient features of Greek law (of a common fund of Greek law, to be precise) which resurface, or to relate them to the environment in which the Greek immigrants found themselves. Often, and this is a defining aspect of Ptolemaic law, an institution that cannot easily be explained as the result of an evolution within a system is attributed to an alien influence.

Sometimes, the social and economic changes involved in the establishment and development of new communities may be supported by contact with other cultures already in the territory. At other times, changes in the socio-economic environment simply force the disappearance of certain institutions or their re-adaptation to new functions. In our case, we start from the institutions of the polis and the decisive role of citizenship and its transmission, the latter undoubtedly linked to marriage and specifically to *ἐγγύησις*. Greek autonomous poleis excepted, citizenship as such becomes less important in the Hellenistic kingdoms and specifically in Hellenistic and Roman Egypt. Given the importance that *ἐγγύησις* had in the polis environment to guarantee the transmission of citizenship, for obvious reasons this clause disappeared from the documentation of this period.⁹

In Attic marriages, it was also essential the act of *ἔκδοσις*, the "handing over" of the bride. In Classical Greece also *ἔκδοσις* typically took place between two men, the bride's father (or her *κύριος*) and, on the other hand, her prospective husband. The institution of *ἔκδοσις*, to sum up, meant the shifting of the legal power over the bride from her previous father or *κύριος* to her prospective husband.¹⁰

Unlike *ἐγγύησις*, however, the handing over of the bride, is preserved in many documents, but it is in this procedure that we see the novelty where, in some cases the bride's mother plays an active part in this procedure, sometimes in the company of her husband and sometimes on her own. The casuistry is diverse,

8. Yiftach-Firanko, "Law in Graeco-Roman Egypt," in Roger S. Bagnall (Ed.) *The Oxford Handbook of Papyrology* (Oxford: Oxford University Press, 2009), 541-560., esp. 543: "A whole range of institutions that are common in many Greek poleis—the engyysis as the act that creates the marriage, the daughter as heir, the various procedures connected with her marriage, and all the institutions and acts connected with the subunits of the polis (in Athens: deme, tribe, and phratry)—leave no trace in Greek papyri from Egypt (the autonomous poleis to some extent excepted)".

9. Of course, *ἐγγύησις* may have been preserved as a social rite in some cases, but, deprived of the great importance it had had. Otherwise, it would not be logical for it to disappear from the documents.

10. Wolff, "Eherecht und Familienverfassung in Athen," *Traditio* 2 (1944): 43-95, esp. 47; Modrzejewski, "La structure juridique du mariage grec," 49-51.

ranging from cases where the mother appears alone giving the bride away (P.Oxy II 372; P.Vind. Bosw 5; P.Oxy LIV 3370; P.Herver 69; P.Cair.Preis. 2+3; P.Oxy LIV 3770) to cases where both parents give their daughter in marriage (BGU IV 1100; P.Oxy XLIX 3491; BGU IV 1105).¹¹ Also, the bride was able to give herself in marriage (P.Giss. 2;¹² P.Oxy XLIX 3500; P.Dura 30), in the so-called *autoekdosis*. There are cases where it is the grandmother who participates in the giving of the bride (P.Oxy III 496).¹³

Accordingly, it should come as no surprise that, contrary to Erdmann, in the two documents we are about to discuss, *ἐγγύησις* is completely absent¹⁴, while *ἔκδοσις* is preserved to some degree. We say that the *ἔκδοσις* has been preserved to some extent because in the Egyptian context there is no reference to the bride being given in order to raise legitimate children, nor is the function of the father or paternal next of kin in the role of *κύριος* preserved at all.¹⁵ It is most probably a Panhellenic institution, although in the Egyptian context its original meaning has been weakened.¹⁶

In both cases, we shall cite only the fragments that affect the *ἔκδοσις* performed solely by the mother or with her intervention. Our first document, P.Eleph. 1, is very famous. This is considered the oldest Greek document of the Hellenistic period, since the reign with which it is dated is still that of Alexander IV, the son of Alexander the Great. This document, unsurprisingly, has been profusely discussed and commented upon by scholarship.¹⁷

11. The documents cited are not only marriage contracts, but also dowry receipts or petitions in which the mother's role in the bride's delivery is noted, vid. Yiftach-Firanko, *Marriage and Marital Arrangements*, 43-44.

12. P. Giss 2, ll.7-13 Olympias gives herself in marriage with her father acting as her own *κύριος*: Ὀλυ[μ]πιάς Διονυσίου Μα[κ]έτα μετὰ κυρίου τοῦ ἑαυτῆς πατρὸς Διονυσίου Μακεδόνοσ τῆσ δευτέ-|ρασ ἱππαρχίας ἑκατονταροῦρου Ἄνταίωι Ἀθηναίωι τῶν | Κινέου τῆσ δευ-τέρ[α]ς ἱππαρχίας ἑκάντοντ[α]ροῦρωι [εἶναι] γυναῖκα γαμετήν.

13. P. Oxy III 496 (=M.Chr. 287), ll.4-7. The interesting aspect of this document is that at the beginning only the father is named, and later the grandmother claims to have participated in the bride's delivery: καὶ ἡ | [τῆσ] γαμουμένησ μάμμη Θαισ Σαραπίωνοσ μη[τ]ρὸσ Ἡρακλού[το]σ ἀπὸ τῆσ αὐτῆσ | π[ό]λεωσ μετὰ κυρίου τοῦ ἑαυτῆ[σ] μὲν. ἑτέροῦ υἱοῦ τοῦ δὲ ἐκδότου γνησίου ἀδελφοῦ | Σαραπίωνοσ [Σα]ραπί[ω]νοσ [ό]μολογεῖ ἐν ἀγυι[ᾷ] τῆ αὐτῆ ἐγδοῦναι τὴν Θαιδ[α].

14. Wolff, "Grundlagen," 169: *ἐγγύησις* is totally absent from the documentation of this period.

15. Modrzejewski, "La structure juridique du mariage grec," 63; Yiftach-Firanko, "Judaean Desert Marriage Documents and Ekdosis," in Ranon Katzoff, and David Schappas (Eds.), *Law in the Documents of the Judaean Desert* (Leiden-Boston: Brill, 2005), 67-84, esp. 69-71.

16. Modrzejewski, "La structure juridique du mariage grec," 48.

17. Many are the problems raised by this document. We shall not deal here with the controversial question of whether the formulary corresponds to the island of Cos, the place of origin of the bride and groom, but that does not necessarily prove that it reproduces an earlier form. On this problem, vid. Claire Préaux, "Le statut de la femme à l'

P.Eleph. 1(=P.Meyer 18=Mitt. 283=Sel. Pap. 1)

Ἀλεξάνδρου τοῦ Ἀλεξάνδρου βασιλεύοντος ἔτει ἑβδόμῳ, Πτολεμαίου
σατραπεύοντος ἔτει τεσσαρε-
σκαίδεκάτῳ μηνὸς Δίου. συγγραφὴ συνοικισίας Ἡρακλείδου καὶ Δημητρίας.
λαμβάνει Ἡρακλείδης
Δημητρίαν Κώϊαν γυναῖκα γνησίαν παρὰ τοῦ πατρὸς Λεπτίνου Κώϊου καὶ τῆς
μητρὸς Φιλωτίδος ἐλεύθερος

"In the reign of Alexander, son of Alexander, in the seventh year, in the satrapship of Ptolemy, in the fourteenth year, in the month Dios. Marriage contract of Herakleides and Demetria. Herakleides (the Temnitian) takes as his lawful wife Demetria the Koan, a free man a free woman, from her father Leptines, Koan, and her mother Philotis, (Demetria).¹⁸"

A key element in this discussion is provided by Yiftach-Firanko in his recent work on marriage contracts: the relationship between the role played by the mother in the *ἔκδοσις* in this document and an interesting testament, P.Petr² I.25 (226-225 BC).

P.Petr² I.25 25-28:

ἐγδόςθω δ[ὲ Ἀρτε-]
μιδώ[ρα τὰς θυ]γατέρας Τετ[. .] καὶ Νικοῦν, διδοῦσα φερνὴν ἐκάστην ἦν ἄν.
[αὐτῆ] /
φαίνη[ται ἀπὸ τῶ]ν ὑπαρχόν[των.] ἐὰν δέ [τ]ι πάθηι [Ἀρ]τεμιδώρα πρὸ τοῦ
ἐ[γδεδόσθαι] / τὰς θυ[γατέρας

This will, badly preserved, is a significant example of the role of the mother in the *ἔκδοσις*, insofar as the testator foresees for two minor daughters that in the future their mother may give them away in marriage (πρὸ τοῦ ἐ[γδεδόσθαι] / τὰς θυ[γατέρας) and grant them their dowry. The important indication here it is that the mother was not in fact named as her daughter's guardian in the will, but the simple application of what was happening in Egypt at the time. Some thirty years have passed between P.Eleph 1 and P.Petr² I.25.¹⁹

époque hellénistique, principalement en Égypte," in *Recueils de la Société Jean Bodin pour l'histoire comparative des institutions XI* (Brussels: Éditions de la Librairie Encyclopédique, 1959), 127-175, esp. 147-150.

18. Translation by Arthur S. Hunt & Campbell C. Edgar, *Select Papyri. Private Documents I* (Cambridge -Mass.- Harvard University Press) 1.

19. Yiftach-Firanko (*Marriage and Marital Arrangements*, 43 and n. 12) is right that the mother's role does not depend on her being named as guardian in that will. The link between the mother's role in a future *ἔκδοσις* and her possible role as guardian is argued by Anne-Marie Verilhac, and Claude Vial, *Le mariage grec du VI^e siècle av. JC à l' époque d' Auguste* (Athens-Paris: Bulletin de Correspondance Hellénique Suppl. 32, 1998), 261.

The case of the other document is that of a mother giving her daughter in marriage and acting on her own, without the intervention of the *κύριος*, but with the assistance of a *συνεστῶς*, which was quite normal in the period subsequent to the *Constitutio Antoniniana*.²⁰

In P.Oxy X 1273, the bride, Aurelia Tausiris, is given in marriage by her mother Aurelia Thaesis; her *pherne* –we are not concerned on that point in detail now– is described as being composed of jewellery and clothing, to which monetary value is ascribed as a way to secure it in the case of divorce.

We are dealing with a late Roman document (AD 260), since it dates from after the *Constitutio Antoniniana*. P.Oxy X 1273, which, like most of those drawn up in this part of Egypt, is particularly conservative in its wording and consequently takes up the *ἔκδοσις* formula once again.

ἀγαθῆ τύχη. ἐξέδετο Αὐρηλία Θαῆσις Εὐδαίμονος μητρὸς Ἡρα-
ῖδος ἀπ' Ὀξυρύγχων πόλεως μετὰ συνεστῶτος Αὐρηλίου Θέωνος
τοῦ καὶ Νεπωτιανοῦ καὶ ὡς χρημα(τίζει) τὴν ἑαυτῆς θυγατέραν Αὐρηλίαν
Ταυσεῖριν πρὸς γάμον ἀνδρὶ Αὐρηλίῳ Ἀρσινόῳ Τρύφωνος μητρὸς Δη-
μητρίας ἀπὸ τῆς αὐτῆς πόλεως

"For good fortune Aurelia Thaësis daughter of Eudaemon and Heäis, of Oxyrhynchus, acting with the assistance of a *συνεστῶς*, Aurelius Theon also known as Nepotianus and however is styled, has given her daughter Aurelia Tausiris in marriage to the husband Aurelius Arsinoitis, son of Tryphon and Demetria, of the mentioned city."²¹

For reasons that Erdmann does not explain, he attributes this second document to the influence of Egyptian law and therefore does not take it into account in his thesis. It cannot be said, at least at first glance, that there is any evidence of an Egyptian legal background. In fact, the demotic documents published by Lüddeckens²² or Pestman (and the documents published so far, to the best of my knowledge), do not contain a situation comparable to that of a mother giving her daughter in marriage. Perhaps this is based on the fact that Egyptian women originally had fewer limitations in legal transactions, but today we know of other cases that prove what the editors, Grenfell and Hunt say, which

20. Ludwig Mitteis, *Grundzüge* II.1 Leipzig (Teubner) 1912 (repr. Hildesheim, Georg Olms Verlagsbuchhandlung) 252: "Seit dem dritten Jahrh. n. C. tritt statt des *κύριος* öfter ein *συνεστῶς* auf. Er erscheint öfter, wengleich nicht immer, dort, wo eine Frau kraft ihres *Jus liberorum* keinen *κύριος* braucht. Vielleicht ist in solchen Fällen die Gewohnheit einen männlichen Beistand zuzuziehen, der Grund für die Zuziehung eines *συνεστῶς* gewesen und dann der Ausdruck gelegentlich für den echten *κύριος* verwendet worden". Cf. e.g., P.Oxy VI 912.

21. Translation by Bernard P. Grenfell, and Arthur S. Hunt, *The Oxyrhynchus Papyri* X (London, 1914).

22. In general, on the status of women in pharaonic Egypt, vid. Erich Lüddeckens, *Ägyptische Eheverträge* (Wiesbaden: Otto Harrassowitz Verlag, 1960), 5-12.

is that we are dealing with a typically Greek contract. It also may have weighed on Erdmann's judgement that we are commenting upon a document from after AD 212 and that those who appear in it are *Aurelii*, but this does not lead us to think that we are dealing with Egyptian law.

Erdmann wondered why in P.Eleph. 1, and in some others, the mother played an active role in the *ἐκδοσίς*. Erdmann's approach is interesting because he is not overly radical in his assertions. He is critical, for example, of theories such as those of Bachofen and the maternal *potestas*, and for this reason he is not in favour of manipulating the facts to adapt them to a previous theory. On the other hand, Erdmann refers to Bachofen's work on several occasions and acknowledges some cases proposed by this author in which the role of women could be relevant.²³ Although he rejects Bachofen's main thesis, he refers to him several times.

Materna Potestas?

Before discussing Erdmann's hypothesis, it is worth referring to Raphael Taubenschlag's explanation, because he believes that we are dealing with an institution specific to Hellenistic Egypt, but rooted in the oriental tradition of the Egyptian law. Taubenschlag, in fact, does not mention Bachofen's theories, and his thesis is not based on them, but rather (according to our own interpretation, since he is not clear about this point) on a supposedly oriental tradition that would be present in Egyptian culture and that would have influenced the Greek settlers.²⁴ It should be noted that this scholar was of the opinion that Ptolemaic law was a kind of blend of the Greek and Egyptian traditions, something that has now been called into question by most scholarship.²⁵

Within the peculiar working of Taubenschlag's method, his argumentation is as brilliant as it is ambiguous, because –apart from the thesis that Greek law was mixed with Egyptian law– he does not give a direct reason why he believes that there is a family power of what he calls *materna potestas*.

Taubenschlag limits himself to citing, with his usual mastery of the sources, various documents in which we can see how the mother not only can give her daughter in marriage, a power reserved to the father or the *κύριος* in Attic law, as is well known, but she is also allowed to decide on areas of power usually related

23. For example, Walter Erdmann, *Die Ehe im alten Griechenland* (Munich: C. H. Beck, 1934), 119, by commenting Meleager's story (Hom. *Il* IX 567-572.) he critically takes resort to Bachofen's theories.

24. Raphael Taubenschlag, "Die *materna potestas* im gräko-ägyptischen Recht," *Zeitschrift der Savigny Stiftung (Rom. Abt.)* 49 (1929): 115-128.

25. Sandra Luisa Lippert, *Einführung in die altägyptische Rechtsgeschichte* (Berlin: Lit-Verlag, 2008), 27.

to the powers of the *pater familias*, ranging from the exhibition of children to guardianship. To cite a few examples we shall refer to marriage documents where the mother appears alone or together with her husband (BGU IV 1100; 1105), but Taubenschlag also points to cases (and this is more interesting) where the bride is given herself in marriage (*autoekdosis*), in a significant case with her father acting as κύριος (P.Giess. 2; P.Freib. III 29, 1.6).

In order to argue his thesis, also according to his methodological approach, Taubenschlag cites sources from the Greek and Roman world as well as sources from other cultural spheres. Therefore, we do not know whether his position is clearly to defend that this characteristic of the mother's power is based on contact with the Egyptian tradition or whether it reproduces an ancient element of Greek culture prior to the polis. One case he mentions is interesting, although in our opinion it is not a good element of comparison to explain the documents in question. It is a Greek papyrus, but from the Byzantine period (6th century), P.Lond. V 1710, l. 12, where the mother acquires by "purchase" the bride for her son, a case of which Taubenschlag finds parallels in Assyrian and Neo-Babylonian law.²⁶ As stated above, the documents on which Taubenschlag bases his thesis belong to very different cultural spheres and, in my opinion, some of them come from times too distant to draw such conclusions.

As pointed out above, a further obstacle to Taubenschlag's thesis is that the Egyptian social milieu lacks the model that the first Greek immigrants to Egypt might have followed. A brief examination of the demotic documents does not suggest that the role played by the mother in the Ptolemaic marriage contracts in Greek is similar to the picture we find in the demotic texts. The aim of both kinds of documents was to guarantee the prospective husband's duty to maintain his wife and their future offspring. It is true that in the demotic material, the woman plays a relevant role, as it is she herself who agrees on the economic conditions of the marriage with her future husband, but the mother as such does not play any part in them.²⁷

In any case, the notion of the *mater familias* was strongly and rightly criticised by Arangio-Ruiz, who defines the power of the mother (normally a widow) not so much as a power proper of hers, but as a subsidiary and concurrent power

26. Taubenschlag, "Die *materna potestas*," 120.

27. Pieter Willem Pestman, *Marriage and Matrimonial Property* (Leiden: Brill, 1961), 24-45) distinguishes between two types of marriage documents: A) Woman's document and B) Sale document. This classification can be traced back to Wilhelm Spiegelberg's old work, "Demotische Miscellen," *Recueil de travaux relatifs à la philologie et archéologie égyptienne et assyrienne* 28 (1906): 187-204. On the Demotic marriage contracts in general, vid. Lippert, *Einführung in die altägyptische Rechtsgeschichte*, 166-170 and recently, Janet H. Johnson, "Women in Demotic (Documentary) Texts," in Mariam F. Ayad (Ed.) *Women in Ancient Egypt* (Cairo: The American University of Cairo Press, 2022), 331-350, esp. 331-335.

with that of the father.²⁸ In my opinion, Arangio-Ruiz's criticism clarifies the true nature of the mother's function in many documents, but I believe that the case of marriage contracts is not fully explained.

Can we detect in the Theory of *Materna Potestas* an Indirect Influence of Bachofen?

This question is very difficult to answer in each individual case, but on the other hand it is a matter of fact that Johann-Jakob Bachofen's *Das Mutterrecht* (Stuttgart, 1861) proved to be a book as much criticised as it was widely read and not always explicitly quoted, since in a way it was in the background of what these scholars affirmed when they gave relevance to the mother in various branches of law. As widely known, this is true not only in the field of law, but also in the whole of European culture at the time and following times, as evidenced by Bachofen's influence on scholars and artists such as Rilke, Kokoschka, Frobenius, or Graves, with whose quotation not in vain we have begun this article.²⁹

The fact that at that time - the late nineteenth and early twentieth century - the question arises as to whether women played a more important part in earlier stages and were subsequently relegated may be directly or indirectly related to Bachofen's thesis. The nature of Bachofen's thesis was, however, as ambiguous as paradoxical. On the one hand he believed in the possibility that women in a primitive society would have had a more prominent role, but on the other hand he considered matriarchy as a kind of primitive stage, a previous phase of barbarism that had to be overcome by a patriarchal system. The question is whether, in the same way that this scholar regarded certain myths as the survival of that primitive stage, other scholars influenced to a greater or lesser extent by him believed that certain important roles of women could be considered as resurgences of that stage.

The impact of *Das Mutterrecht* is thus sometimes subtle and difficult to prove. I have not been able to find a single quotation from Bachofen in Taubenschlag's large work. Erdmann, as we shall see, is critical of Bachofen's theses, but in some way bears his theories in mind.

28. Vincenzo Arangio-Ruiz, *Persone e famiglia nel diritto dei papiri* (Milan: Vita e pensiero, 1930), 45-46.

29. On Johann-Jakob Bachofen in general, and very briefly vid. Gerd Kleinheyer, and Jan Schröder, *Deutsche Juristen aus fünf Jahrhunderten* (Karlsruhe-Heidelberg: C.F. Müller, 1976), 319. Where is impact on the culture of his time and subsequent periods, vid. in general Hans-Jürgen Heinrichs (Ed.), *Materialien zu Bachofens 'Das Mutterrecht'* (Frankfurt am Main: Suhrkamp, 1975) and about his influence on legal scholarship, vid. Eva Cantarella, "J. J. Bachofen tra storia del diritto romano e scienze sociali," *Sociologia del Diritto* 9 (1982): 111-136.

We can sum up the matter by saying that Taubenschlag seems to be more influenced by the original substratum of the Semitic population (for example, by the fact that Egyptian women were subject to far fewer restrictions than Greek women³⁰) than by such theories, so that Bachofen's maternal power. It can be stated that if there is indeed any influence of Bachofen on Taubenschlag it would be merely superficial.

Erdmann's case is much more complicated. It does not seem the most suitable option to resort to a general theory, such as Bachofen's, that matriarchal power was a reality in a much earlier historical moment and to deduce from these corollaries, certain peculiarities of later law that are related to this matriarchal power when such a starting point cannot be substantiated with sufficient evidence. Nor does it seem sensible to deduce from certain features of women's power in a cultural sphere such as the Egyptian one that something resembling *mater familias* existed there.

Although he may have implicitly taken Bachofen's theories into account in a very vague manner, Erdmann's proposed solution is based on the first of the two above-mentioned documents and reaches a conclusion that is partly acceptable and partly rejectable. It is acceptable in that for P.Eleph. 1 he does not resort to the Egyptian context to explain the role of the mother; it is rejectable because in the case of P.Oxy X 1273 he does not rely on it, since he considers this document Egyptian in nature.

It should be noted that Erdmann's thesis is part of a controversy that existed in the 1920s and 1930s about the possibility that in Attic law (and in Greek law before the polis) there was a type of marriage in which the spouses were on an equal footing. It is obvious that in Ptolemaic Egypt the structures of the polis that formed the marriage by *ἐγγύησις* and *ἐκδοσις* disappear, but it is disputable whether there are real precedents for this situation or whether it is simply the result of a natural evolution due to the changing social and political context.³¹

For Erdmann, in ancient Greek law (although he does not refer precisely to Greek law prior to the constitution of the polis, he is implicitly referring to it) the mother would have the function of giving the daughter in marriage together with the father. He makes this assertion by carefully distinguishing between those parts of the wedding ritual, which we know from various literary sources and, I

30. Roger S. Bagnall, *Egypt in Late Antiquity* (Princeton: Princeton University Press, 1993), 188-189.

31. Wolff, "Marriage, Law and Family Organization in Ancient Athens," 47. The institution of *ἐγγύησις* is based on marriage by purchase and implies the submission of the wife to her husband, although in Athens a woman's ties to her own family were not entirely extinguished. Of course, the conception of marriage by purchase must be very much relativised today, vid. Rudolf Köstler, "ΕΑΝΑ, Ein Beitrag zum homerischen Eherecht," in *Homerisches Recht* (Vienna: Österreichischer Bundesverlag für Unterreicht, Wissenschaft und Kunst, 1950), 49-64.

daresay, from pottery in some specific features,³² and -on the other hand- the legal institutions.

32. On the presence of the mother in Athenian pottery from the classical period, vid. Amy C. Smith, "The Politics of Weddings at Athens: An Iconographic Assessment," *Leeds International Classical Studies* 4 (2005): 1-32, esp. 4-6. As Amy C. Smith observes, just as Athenian vases are generally associated with the symposium, the images related to wedding ceremonies are placed in the context of a genre of their own, a genre that is confined to a specific period. I have outlined (Sánchez-Moreno Ellart, s. v. 'Marriage - Greece and Rome- 4317) the value of pottery to discover some features of marriage ceremonies that are not clearly reflected in the texts, but it is always necessary to have written sources to interpret pottery drawings. These do, however, provide important information that literary sources sometimes fail to develop. Although it is necessary to refer to this material, it is hard to draw valid conclusions from it for the history of law. In other words, it cannot be concluded that the mother was involved from the point of view of the law only because she played a significant role in the ceremonies. It is a different matter whether her involvement in the ceremonies might reflect a legal participation in the past as well. However, as Smith ("The Politics of Wedding," 18-26) points out pottery in Athens also reflects the city's involvement in the private sphere. Some of the divinities depicted symbolise virtues of both the private sphere and civic life. Peitho, for example "bridges the private world of the bride to the public world of the polis" (19). The allusion to civic virtues could distort the original meaning of the ceremonies and might make it more difficult to use these images to deduce from the ritual that appears in these images the role of the mother of the bride in marriage in a pre-polis period. The images that correspond to the mother's intervention in the ceremonies are very impressive. For example, the figures depicting the bride's mother in the wedding procession carrying torches are well known, and in this case, we have also literary evidence (*Eur. Iph. Aul.* 732-734), without which, it would not be easy to define the figures' relationship to the bride. On this point, vid. John Oakley, and Rebecca H. Sinos, *The Wedding in Ancient Athens* (Madison, 1993), 26. To sum up, it is sometimes difficult the identification of the bride's mother in the Athenian pottery (Sian Lewis, *The Athenian Woman: An Iconographic Handbook* (London: Routledge, 2002), 26; 42), but this source offers information of scenes of the maternal family, e.g. mothers preparing daughters for marriage festivals not reflected or not clearly reflected in the texts. I insist on the idea that the images on the pottery are essentially very difficult to interpret for many reasons: As Rebecca H. Sinos ("Wedding Connections in Greek and Roman Art," in Jeffrey Beneker, and Georgia Tsouvala (Eds.) *The Discourse of Marriage in the Greco-Roman World* (Madison: University of Wisconsin Press, 2020), 20-67) points out, the mystery cults elements are also present in the pottery paintings and the associations with mystery cult (Dionysian and Eleusinian figures) make interpretation even more difficult. As Sinos observes, in general, black-figure technique vase painting was mainly focused on the wedding procession, but the red-figure technique expanded the repertory to include a wider range of scenes, including those related to the mystery cults. The problem of identifying the figures and their relation to the mystery cults is dealt with in detail by Sinos, "The Ultimate Prize: An Orphic Image of Victory," in Heather L. Reid, John Serrati, and Tim Sorg (Eds.) *Conflict and Competition: Agon in Western Greece* (Sioux City (Iowa): Parnassos Press, 2020), 1-30.



Fig. 4861. — Scène de loutrophorie.

Figure 1. Red-Figure Loutrophoros by the Washing Painter

Source: Athens, National Museum 1453 = CC1225 (c.450-400 BC); Oakley/Sinos *The Wedding* 58-59 and fig. 4.

Figure 1 represents the mother of the bride with torches. A grown woman stands in front of and facing the procession of women (led by a boy playing the pipes); The woman who awaits the procession is likely the bride's mother; she holds a torch in each hand. The image is available in Maxime Collignon s. v. "Matrimonium-Γάμος," in Charles-Victor Daremberg, and Edmon Saglio (Eds.) *Dictionnaire des antiquités grecques et romaines* III.2 (Paris: Hachette, 1904), 1639-1634, esp. 1649 fig. 4861.



Figure 2. *Amphoriskos* by Heimarme Painter
Source: Berlin-Staatliche Antikensammlung 30036 (c. 430-420 BC).

Considering Figure 2, the difficulty of characterising the images in Attic pottery concerning wedding rituals is outlined by the scenes related to the mystery cults. This is why we have pointed out that this material is difficult to decipher, and even more so if we want to look for a legal scope to the presence of the mother in the ceremonies. In principle, the role of the mother seems to be linked to religious motives, and those examples in which the mystery cults appear seem to emphasise this. Any scene that shows the bride sitting in a woman's lap, unless an inscription shows it is an exceptional occasion (as is the case on this *amphoriskos* featuring Helen and Paris), portrays her in the lap of her mother. The pose echoes that of Demeter and Persephone in a statuette found at Eleusis; very likely that statuette was modelled after a scene in the pediment of the temple at Eleusis, which of course features the goddesses of that sanctuary (vid. Sinos, "The Ultimate Prize," 21-24. Helen is seated not on Leda's lap, but on Aphrodite's. If this were a normal wedding, according to the pattern seen on Athenian vases we would see the bride sitting on her mother's lap. Aphrodite's name is still partially visible above her. The image is available in Adolf Furtwaengler, and Karl Reichhold, *Griechische Vasenmalerei. Auswahl Hervorragender Vasenbilder* (Munich: F. Bruckmann, 1932).

In his book on marriage in ancient Greece Erdmann devotes a few pages to the marriage ritual.³³ The mother, for example, has a place in the ceremony together with her relatives. In some other literary sources, which we have tested, and which Erdmann does not cite this is also clear.³⁴ However, as Erdmann himself states, this does not imply a legal obligation, but simply a social fact reflected in the rite and without any real legal value in that moment. What Erdmann possibly wants to suggest is that the presence of the mother in wedding ceremonies could be a vestige of other historical periods in which she should have played a more relevant role with repercussions in the field of law, but for this it is difficult to find direct evidence.

In other words, both literary sources and pottery convey an image in which the mother plays a role closely linked to religion and very ancient traditions. However, whether this role was in the past relevant to law and whether it was a survival of a historical moment in which the mother played a more relevant role than she did in classical Athens is something difficult to deal with the sources we have.

33. Erdmann, *Die Ehe im alten Griechenland* 256-260. For information on wedding rituals throughout the Greek world, vid. Amy C. Smith, "Marriage," in *Thesaurus Cultus et Rituum Antiquorum (ThesCRA)* VI (Los Angeles: The J. Paul Getty Museum Publications, 2011), 83-94. Katia Margariti, "The Greek Wedding Outside Athens and Sparta," *Études Classiques* 88 (2017): 319-335.

34. Cf. e.g., Eur. *Iph. Aul.* 607-610.

The ἔκδοσις as a Way of Unifying Formularies

However, we do not want to overlook a criticism of Erdmann's commentary on P.Eleph. 1, at least in one essential aspect: he argues against all evidence that ἐγγύησις is still present in this document. For him, it is clear that this feature remained, which he calls a "national" one, but we, on the basis of the formulas handed down to us by the sources, cannot affirm the same. It is self-evident, on the other hand, -as we have pointed out- that the ἔκδοσις-clause is explicitly maintained. Moreover, it is not possible to conclude that ἔκδοσις was essential for a legitimate marriage to exist. We know (and this feature is common to the Egyptian population³⁵) that cohabitation by itself was sufficient and that this feature can already be observed in the Greek world before the migration to Egypt. An example of this in the Ptolemaic Egypt can be seen in BGU IV 1050, where the bride simply comes together with her bridegroom.³⁶

We must, therefore, distinguish between the social reality, where ἔκδοσις was no longer a requirement for the legitimacy of marriage, as it was in Athens, and the reality of the documents, where, in contrast to ἐγγύησις, it is still present. In this sense, the presence of ἔκδοσις in the documents seems to be merely instrumental.

We shall not go into the question of whether ἔκδοσις took place in practice or not. Wolff argued that it no longer took place in practice and that the norm was cohabitation, which could already be done in the Classical period, but in such a way that citizenship rights were not transferred.³⁷ In a context outside the polis this exclusion of citizen rights becomes irrelevant, and, therefore, marriage by mere consensus and cohabitation, without formal requirements, was widespread.

In fact, the ἔκδοσις, as Méléze-Modrzejewski rightly claims, was a way of unifying the marriage formularies.³⁸ It is the main clause, which is accompanied by the dowry inventory as well as the so-called moral clauses, i.e., those referring to the conduct of the prospective spouses. These formularies remain for a long time: until the 1st century BC the use of this form is widespread; in some places, it survives until the 3rd century.

Wolff points out how what typifies Greek marriage in Egypt is the passage of the woman from the paternal home to the husband's home, and the ἔκδοσις clearly expresses this reality, although in the Hellenistic world, the disappearance of the *oikos* has greatly relativised this original framework. In other words, the

35. Pestman, *Marriage and Matrimonial Property*, 50-51.

36. Cohabitation is a sign of marriage: Judith E. Grubbs, *Women and Law*, 122. On the questionable identification between the Egyptian legal tradition and the *agraphos gamos*, vid. Yiftach-Firanko, 55-56.

37. Wolff, *Written and Unwritten Marriages*, 51-58. Of the Greek origin, vid. esp. 49-50.

38. Modrzejewski, "La structure juridique du mariage grec," 68: This scholar relates *ekdosis* to the so-called *Zweckverfügung* in Greek law, according to Wolff's theory.

disappearance of the *oikos* as conceived in Attic law renders the role of the father or *κύριος* in the delivery of the bride meaningless, and therefore the mother may be added to this function or replace the father if he is no longer alive. Even the *ἔκδοσις* can be omitted in practice, but if a marriage contract is drawn up, it appears as a style clause at least until the 3rd. BC.³⁹

Erdmann Goes Back to the So-Called 'Homeric Law': Is This an Appropriate Approach to the Problem?

Homeric law is somewhat vague, since in the Homeric poems, legal institutions from very different periods overlap. But how does Erdmann justify that *ἔκδοσις* is performed by both parents and that this is a specifically Greek feature? Erdmann refers to this very concept of Homeric law without openly mentioning it and relates P.Eleph. 1 to a passage from the *Iliad* in which Briseis speaks of her dead husband, to whom she was given by her father and mother. For Erdmann, who is not explicit about this either, we are dealing with a kind of vestige of ancient Greek law before the constitution of the polis.

Il. XIX 291-292

ἄνδρα μὲν ᾧ μ' ἔδοσάν τε πατήρ καὶ πότνια μήτηρ
εἶδον πρὸ πτόλιος δεδαιγμένον ὀξεί χαλκῷ.

"I saw the husband, to whom my father and my honoured mother married me, lie there, dead, by our city wall, thorn by the sharp bronze."⁴⁰

This comparison, however, does not seem very appropriate, and not precisely because Briseis was a Trojan woman, since the poem knows no such ethnic differences.⁴¹ The Greek/barbarian distinction was coined much later: it can be dated to the 5th century AD, as a result of the struggle against Persia.⁴²

39. Wolff, *Written and Unwritten Marriages*, 17. Wolff points out that the *ἔκδοσις*-clause is only preserved in Oxyrhynchus from the 3rd century AD onwards, but the bias of the sources in this regard must be taken into account, vid Bagnall, "Archaeological Work on Hellenistic and Roman Egypt 1995-2000," *American Journal of Archaeology* 105 (2001): 227-243. Bagnall outlines that we should bear in mind that excavations in Oxyrhynchus force us to include only documents filed in the capital of the nomos. Hence the sample of the Oxyrhynchites is limited (as opposed to the sample of the Arsinoites) to the metropolis.

40. The translation is my own.

41. Nicholas Richardson, *The Iliad: A Commentary VI (Books 21-24)* (Cambridge: Cambridge University Press, 1993), 16: "It is very noticeable (...) how relatively slight and debatable are the differentiating marks which might distinguish the Greeks from their eastern enemies, the Trojans and their allies. The main distinction on the human level is

The comparison is, in my view, difficult to establish because the contexts are highly different, and above all, because it is widely known that the information that the Homeric poems give us about marriage belong to different periods, and these are not always easy to identify. The world of *Iliad* gives a picture of marriage in wartime, of the liaisons that arise for the benefit of the heroes and of the women abducted by them, but always, or mostly, in a confusing way.

As well known, Briseis' lament, like Andromache's (*Il.* XXII), is an example of how women war captives lamented their bitter fate.⁴³ By echoing Andromache's words, Briseis remembers that her husband died in the war, but she points out that she was given to him in marriage both by her father and mother.⁴⁴

Anyway, Erdmann is unclear in his analysis, in that he refers to the mother's role in the wedding courtship and, at the same time, points out that in some moment in the past the mother's consent was relevant, reflecting her role in wedding ceremonies.

Or put another way, Erdmann, at first sight means that the mother in the past played some role in the wedding by giving away the daughter, that her consent was required, and that in later developments (in the law of the polis, a fact he does not explicitly mention), it lost its significance.⁴⁵ The ceremony, then,

not between Greeks and foreigners, but between different levels of society, rulers and ruled".

42. Edith Hall, *Inventing the Barbarian. Greek Self-Definition Through Tragedy* (Oxford: Oxford Classical Monographs, 1989), 50. On the family in Homer, vid. Cynthia B. Patterson, *The Family in Greek History* (Cambridge (Mass.): Harvard University Press, 1998), 44-89.

43. On the connections between Briseis and Andromache Oliver Taplin, *Homeric Soundings, -The Shaping of the Iliad* (Oxford: Clarendon Press, 1992), 84-86; Casey Dué, *Homeric Variations on a Lament by Briseis* (Oxford-New York: Rowman & Littlefield Publisher Inc., 2002), 72.

44. The commentaries to which we have referred do not deal with the problem at hand. Mark W. Edwards, *The Iliad. A Commentary V* (Cambridge: Cambridge University Press, 1991), 269-271) simply points out that the tradition that Briseis's husband was Munes, king of Lurnessos or that Achilles ever married her are questions raised only by the scholia. Regarding Marinna Coray's commentary (*Homer's Iliad Book 19. Bael. Commentary* (Berlin-Boston: Walter de Gruyter, 2016), 134-136), it insists on these questions and, on the other hand explains that the title *πότνια* is conceived for goddesses and prominent women, cf. for instance *Il.* VI 429. The scholar also points out that there are parallels with the fate of Andromache and highlights the influence of Homer in his treatment of this story in Greek tragedy, vid. Dué, *The Captive Woman's Lament in Greek Tragedy* (Austin: University of Texas Press, 2006), 52-55; *Homeric Variations on a Lament by Briseis*, 10-14.

45. But as can be seen, Erdmann is ambiguous: it is not clear whether he means that the mother's consent is legally binding when at the same time he says that it may be required by custom in certain contexts, cf. Erdmann, "Die Rolle der Mutter," 545: "Auch hier wird also die Mutter neben dem Vater genannt und es heißt von beiden gemeinsam, daß sie ihre Tochter einem Manne zur Frau gegeben hätten, d.h. also doch wohl nicht

would indicate a different past, to which Homer seems to allude.⁴⁶ Also, in this context, marriage as a religious ceremony is not easily distinguishable from its legal effects.

We shall not now address the problem of which epoch the Homeric poems reflect. As we have previously pointed out, it is obvious that elements from the Mycenaean period can be found in them, but also from a much later period. From an anthropological point of view, it is also an indisputable fact that if we discover some features that lead us to think of matrilocality, they coexist with many others indicating that patrilocality was the norm. Bachofen's ideas, purified of their ideological charge, have been developed in our days by some scholars, such as Kaarle Hirvonen⁴⁷ and Sarah B. Pomeroy,⁴⁸ but they do not offer inconclusive evidence to elucidate whether in Homer it can be said that the mother played a relevant role in the creation of her daughter's marriage –considered as a legal matter– or whether, on the contrary, her function was limited to rites and ceremonies, as was the case in Athens at a much later date.

To sum up, the Homeric poems are not a sufficiently reliable source, since we cannot really date the normally contradictory information they provide. The debate in this case is about whether there are any traces of matrilocality

anderes, als daß die Brautmutter der Verfügung des Vaters zumindestens zugestimmt hat, wenn auch diese Zustimmung nicht als notwendige Voraussetzung zur rechtsgültigen Eheschließung aufzufassen ist, vielmehr nur als von Brauch und Sitte bisweilen erfordert erschein".

46. On the other hand, we are dealing with a typical example of patrilocal marriage: S. B. Pomeroy, *Goddesses, Whores, Wives and Slaves* (London: Random House, 1975), 23 "Marriage by capture was a variant of patrilocal marriage. For instance, Briseis was enslaved during the Trojan War and became the property of Achilles. He referred to her as his 'bedmate' but she was led to expect to celebrate a ceremony of legal marriage with him when the couple returned to Achilles' home in Greece" (Horn. *Il.* IX. 336; 9. 340-43. 663-65; XIX. 295-99). On this point, vid. Richard M. Krill, "Achilles' War Prize," *Classical Bulletin* 47 (1971): 9-94; Marco Fantuzzi, *Achilles in Love: Intertextual Studies* (Oxford: Oxford University Press, 2012), 118-120.

47. Kaarle Hirvonen, *Matriarchal Survivals and Certain Trends in Homer's Female Characters* (Helsinki: Suomalainen tiedeakatemia, 1968), 193-195. This author considers that the Homeric poems have many traces of matriarchy in the female characters, as many of the heroes' lineages began with women and established a solidarity of women according to their place of origin, and the reference figure always being their brother, and not their husband. This is not always the case, but these traces are evident and significant. Ivana Savalli, *La donna nella società della Grecia antica* (Bologna: Patron, 1983), 38-41, deals with this problem in a more nuanced way, but she attributes many elements of doubtful dating to the Mycenaean period.

48. Pomeroy, "Andromaque: un exemple méconnu de matriarcat," *Revue des Études Grecques* 88 (1975): 16-19; "A Classical Scholar Perspective on Matriarchy," in Berenice A. Carroll (Ed.) *Liberating Women's History* (Chicago: University of Illinois Press, 1976), 217-223.

remaining in Homer, and this question has already been raised by Bachofen himself.

The Real Starting Point is Perhaps Not So Much the So-Called Homeric Law as the Social and Political Reality Prior to the Constitution of the Polis

We have already made it clear that according to scholarship, the Homeric poems do not correspond to a particular model of society, but rather to various periods of Greek history. In that sense, Erdmann's thesis is, in my opinion, superficial, because he wants to look for Greek "national" features in Homer, when in Homer we can find a fact and its opposite, e.g., matrilinearity and patrilinearity. On the other hand, however, Erdmann is right in a certain sense, because in the historical moments before the polis the social order is based more on the way aristocratic families acted with regard to their alliances, than on the political community.

In this context, Jean-Pierre Vernant's analysis is still relevant today:⁴⁹ Vernant was able to discover that alongside the marriage required by the *ἐγγύησις* to guarantee the birth of citizen children in Athens, there remained traces of other forms of marriage and cohabitation, even if they were deprived of the right of citizenship for descendants. If, as Vernant points out, the status of the married woman and the concubine in the 5th century BC can be defined as fluctuating and imprecise, the same can be affirmed, even more emphatically, in the Homeric poems, and precisely in the case of Briseis.⁵⁰

An example of this type of union in the Homeric poems can be seen in the woman who is conquered by arms. Briseis is a case of this type and, as Vernant points out, she herself, after evoking her husband, to whom she was given by her father and mother, affirms that Patroclus told her that Achilles was going to make her his lawful wife (*κουριδίης ἀλόχου*), a term used by Agamemnon to refer to his wife Clytemnestra (*Il. I. 114*).⁵¹ Achilles himself had already used this term to refer to Briseis (*Il. IX 336*).

In other words, what by our standards or even those of a 5th century Athenian might be a concubine (*pallake*) in the conception of the Homeric heroes is close to the legitimate wife (*damar*). In this case, the role of the mother is not recorded because the cause that legitimises the marriage is having conquered Briseis by arms, but in the first case the presence of the mother in the *ἔκδοσις* may

49. Jean-Pierre Vernant, "Le mariage en Grèce archaïque," *La Parola del Passato* 28 (1973): 31-79=*Mythe et société en Grèce ancienne* (Paris: Maspero, 1974), 57-82.

50. Jean-Pierre Vernant, foreword to Marcel Detienne, *Les jactances d' Adonis* (Paris: Gallimard, 1972), XIX.

51. Vernant, "Le mariage," 64-65.

have to do with the prestige of the maternal family, which in an aristocratic society gives her greater relevance than in democratic Athens, where women are even more relegated to private life.

According to Vernant, there are elements in the myth where in the framework of an aristocratic society, and still detached from the polis, the importance of the wife, and of the mother, is noticeably more significant than in later periods. This makes sense when the wife could be socially on the same level as the husband or even belong to a more powerful family with which the husband has established an alliance. Such are the cases of the goddess Hera (Eur. *Iph Aul.* 900) and Penelope (*Od.* II. 43). In both cases, they act as mistresses of the house and as representatives of royal power. It is a question of linking the woman to the husband's power by her function and, in Vernant's words, of perpetuating and transmitting sovereignty.⁵²

To sum up, there are some grounds for thinking that in the Homeric poems and in the period before the constitution of the polis there were models of cohabitation that were partly preserved in the polis but devoid of the most remarkable effect in such a context: the generation of legitimate children who would become citizens. Naturally, those forms of cohabitation constituted an obstacle to access to citizenship, but on the other hand, their existence may suggest earlier times when such forms would not have been disapproved of. For example, in Hellenistic and Roman Egypt –as we have already pointed out above – *autoekdosis* was well regarded, while the case we know of in classical Athens, in a Menander's play,⁵³ is that of a courtesan. The disappearance of the polis context may have led to a return to ancient forms of marriage and cohabitation, but the disappearance of the polis may also have made it easier for women of significant wealth to be included in the marriage contract once the role of the husband or *κύριος* had declined, without conjuring up any historical precedent.

52. The role of the mother in aristocratic society can be seen several times in the Homeric poems, e.g., *Od.* XIX 413-466, where Telemachus' respectful relationship with his mother's family, whom he visits, can be appreciated, vid. Évelyne Scheid-Tissinier, "Le mariage homérique et ses logiques," *Anabases* 22 (2015): 49-62, esp. 60.

53. Men. *Penkeir.* 130-131; 238-249. The same can be said of Herodotus, who links *autoekdosis* with prostitution (*Herod.* I 93), vid. Modrzejewski, "La structure juridique du mariage grec," 57.

Different Solutions, not all of them Mutually Exclusive

At this point we must consider the possibilities of explaining why the mother appears in documents from Hellenistic and Roman Egypt, sometimes alone, in a position she never occupied in the Attic *ἔκδοσις*.

- a) We can interpret this as a feature of ancient Greek law, eliminated by the law of the polis, and which reappeared when the Greeks settled in Egypt. This possibility cannot be ruled out entirely, but we lack sufficient evidence. We have cases of women self-delivering in Attic sources, specifically in Menander, for example, but these are courtesans. In the literary sources we have no examples of mothers participating in *ἔκδοσις*, other than those that can be dated to Hellenistic and Roman times (e.g., Xen. Ephes. V.1.6; Aristaen. II.8.2).
- b) We can think that the simple adaptation to Egypt of people of different Greek origins and who no longer had the law of their poleis led to a readaptation of institutions on the basis of the common background of Hellenic law, for the same reasons that institutions such as *ἐγγύησις* and *epiclerate* disappeared. This explanation is in fact compatible with the previous one, insofar as the revival of an ancient institution would seem to be brought about by the dismantling of the law of the polis that had abrogated it.
- c) We can simply assume that there was no resurgence (regardless of whether or not there was a historical background to the mother's participation in the *ἔκδοσις*) but simply readaptation. In this sense, let us recall Claude Mossé's studies,⁵⁴ in which she detailed several cases under Attic law (some of them very famous, such as the widow of Pasion, the banker, an Athenian citizen but originally a Phoenician slave) in which women with important patrimony appeared. It is normal that this *de facto* reality made its way into a society where such restrictions did not exist. The *ἔκδοσις* being the formal part of the contract and the dowry (to which we have not paid attention here) the most important part, it seems reasonable that a mother who contributes money and goods to the dowry appears giving her daughter in a marriage contract. This seems to coincide with the fact that anyone, man or woman, who has participated in the provision of the dowry, is designated as *ekdotes* or *ekdotis*, whether or not he or she took part in the act of giving the bride.⁵⁵ What is decisive is that whoever contributes financially to the daughter's

54. Claude Mossé, *La femme dans la Grèce antique* (Paris: A. Michel, 1983), 55-65.

55. Yiftach-Firanko *Marriage and Marital Arrangements*, 42.

endowment is also named in the *ἔκδοσις* clause or later, since the *ἔκδοσις* -clause has lost its former meaning. The patrimonial contribution has become the most important element and the *ἔκδοσις* as such is preserved in a way that is far removed from its original function in the polis. Marriage documents include it in connection with the dowry.

P.Oxy III 496, pointed out above, is a very significant case. Yiftach-Firanko disputes that the grandmother acts properly in giving the granddaughter in marriage, when at the beginning of the document it is the father (in the *ἔκδοσις* -clause) who performs the procedure.⁵⁶ In reality, this issue is secondary, as the grandmother claims that she has given the granddaughter away, without questioning that the father has done so. The fact that the formulary is objective, and the grandmother's intervention is subjective does not seem to us to be significant. The use of the usual formulary was modified to include the grandmother, who contributes a slave to the dowry. Such is the link between the giving of the bride and the giving of the dowry that the original function of the *ἔκδοσις* is further distorted.

In other words, in the context of Hellenistic and Roman Egypt, the bonds represented by the polis disappear and marriage became no longer a matter for the future husband and his father-in-law to decide on the daughter's consent. The regulation in question, *ἐγγύησις*, was in Athens closely related to the value placed on citizenship. To the extent that a citizen married the daughter of another citizen, the citizenship of his children was assured. All these considerations, however, became pointless in Egypt, where the Greek settlers are free to dispense with these constraints imposed by the framework of the polis.

It is at this point that we see the correspondence between the preservation of *ἔκδοσις*, but in a perhaps denaturalised form, for the father no longer acts as a symbol of the *oikos*, but –here in P.Eleph.1 is the case– as a father and sometimes joining his consent with that of the mother.⁵⁷

Conclusion

The question of whether there was a marriage before the time of the constitution of the polis, in which the woman decided for herself on the same footing as her future husband, must be related to the aristocratic society that appears in Homer, with the enormous limitations in handling this material that we have previously pointed out. In the context of Hellenic Egypt, the *ἔκδοσις* is limited to being a clause in the marriage contract, in which the main problems dealt with are of an economic nature.

56. Yiftach-Firanko, *Marriage and Marital Arrangements*, 42 and n. 10.

57. MacDowell, "The *oikos* in Athenian Law," *Classical Quarterly* 39 (1989): 10-21.

There is nothing to suggest that the schemas we can derive from Attic law are of any use to us in understanding this new reality. Nor do the vague references to previous periods (Homeric, Dark Age) allow us to construct a hypothesis with a sufficient basis. Erdmann himself neither makes a clear statement on the possibility that the role of the mother in the marriage contract means the revival of an earlier situation, nor does he clearly refer to the framework of the polis in order to assess this possibility.

In an environment where the limitations that the polis had set for women could no longer be applied, the question is: who actually provided the daughter's dowry or at least contributed to it? Since it was the mother who partly provided it, it is not surprising that she appears in the ἔκδοσις that the documents of this period include, but with a highly different function.

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