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RENTING SLAVES IN CLASSICAL ATHENS: ANATOMY OF A LEGAL FORM

Abstract: This article focuses on the legal forms organizing slave labour, and more specifically on the leasing of slaves in classical Athens, whose scale has been largely under-estimated by historians. The recruitment of rented slaves primarily took place in a clearly defined location, the sanctuary of the Anakeion. Leasing slaves had probably been subjected to taxation, and there may have existed a procedure to settle disputes connected to this legal transaction. One may finally reconstitute the form of such leasing-contracts by referring to a passage of Xenophon's *Poroi*.

Keywords: labour, slavery, leasing, liability, contract

In 1992, Alain Supiot, appointed by the European Commission, wrote a report on the harmonization of European rights regulating labour contracts. Curiously, this text began with a reference to Ancient Greece¹ – one which offered this legal expert a point of reference from which to analyse, in contrast to modernity, the whole series of legal systems structuring labour relations in Europe right up to the Industrial Revolution. Supiot based himself on the work of Jean-Pierre Vernant, when he focused on the “psychological aspects” of labour in Ancient Greece², and aimed to demonstrate that labour had never adopted the abstract form of a “homogeneous social function”. Labour as an abstract entity, as defined by Marx – something therefore likely to be counted, isolated, and possibly exchanged, basically work as a

¹ Supiot 1992: 1: « On ne peut comprendre la manière dont a été juridiquement conceptualisée la relation de travail salarié dans les pays membres de la Communauté sans se remettre rapidement en mémoire les formes préindustrielles d'organisation du travail. Les notions de travail et de relation de travail dans leur définition actuelle ne sont pas en effet immanentes et éternelles. Il semble bien que l'Antiquité grecque les ait ignorées. Dans la pensée grecque, le rapport de travail était conçu comme un lien personnel de dépendance, un rapport de service liant directement le travailleur et l'utilisateur ; il en résultait que le travail n'était jamais envisagé que sous son aspect concret, c'est-à-dire rapporté à l'objet qu'il s'agissait de fabriquer ou au service qu'il s'agissait de rendre. Voilà pourquoi ces tâches concrètes de production étaient jugées incompatibles avec l'idéal de liberté : l'homme libre était celui qui agissait pour son propre compte, et non pas pour satisfaire les besoins d'autrui. Cette manière de penser se retrouve en Europe jusqu'à la révolution industrielle ».

² Vernant 1965.

commodity, as expressed through our modern relationship to labour and employment – would never have been a category, or even an aspiration of Greek thought, whose conception was centred around the product itself, highlighting its user to the detriment of its producer³.

It is a well-known fact that what we understand by the term wage-labour did not exist as such in the Greek world. Even at the heart of the classical era, the term *misthos* retains “the sense of remuneration which is casual and honorific, without ever adopting the wholly regular and purely economic aspect of a modern salary”⁴. In the accounts of major building sites, it also appears that calculating remuneration for a task was accomplished most of the time according to the product created – the wide majority of workers were paid by the piece and taking working hours into account was extremely rare⁵.

Walking in the footsteps of Marx, for many years, Finley and other historians attributed the absence of such a conception of labour (as a general concept) to the slave mode of production in classical Antiquity⁶. They followed the words of Marx according to whom, for abstract work to emerge “the owner of money must meet in the market with the free labourer, free in the double sense, that as a free man he can dispose of his labour power as his own commodity, and that on the other hand he has no other commodity for sale, is short for everything necessary for the realisation of his labour power.”⁷ Basically, slavery would have prevented the emergence of labour as an abstract category.

I believe however that such a paradigm ignores the complexity of legal forms organizing slave labour, and especially the importance of one practice: the leasing of slaves. In a thought-provoking article, Yan Thomas insisted on its importance in Roman legal thought. The “detachment” of labour from the actual worker, explained Thomas, far from founding the relationship of capitalist production, was primarily thought out and elaborated at the very heart of Roman law structuring slavery. By conceptualizing the servile *operae* and their hiring, Roman jurists would finally have isolated and objectified labour in its abstract dimension⁸. This operation did in fact imply the dismembering of slave ownership, thus divided between rights over the actual person, in the hands of the slave owner, and over the slave’s labour, in the hands of the person hiring the slave. The latter did not hire the slave as one would benefit from an absolute transfer of property rights, but merely contracted the right to use slave labour – this right being subdivided into *usus* and *fructus* of slave

³ Vernant 1965: 43: « Dans ce système social et mental, l’homme “agit” quand il utilise les choses, non quand il les fabrique. L’idéal de l’homme libre, de l’homme actif, est d’être universellement usager, jamais producteur ».

⁴ Will 1975.

⁵ Feysel 2006: 402-418.

⁶ See for instance Burford 1993: 191-193.

⁷ Marx 1996 (1867): 179.

⁸ Thomas 1997.

labour. Temporarily removed from the master's *dominium*, but alienable in the name of *fructus*, labour was therefore isolated from a body which was to be protected as a property. Separating the actual body of the person accomplishing a task from its result, it therefore potentially catapulted labour into the category of "commercial commodities, freely alienable". Yan Thomas' proposal suggests that it is paradoxically within the very bond of slavery (and not labour relations between free men) that labour, as an independent object, became a commodity.

Whatever the actual case, his work encourages us to focus on a major phenomenon in Greek *poieis*: the renting of slaves. Let's take classical Athens. Slave labour was exploited in two ways. The first is direct exploitation – a slave works under the direct orders of his master or one of his *epitropoi*. This configuration belongs to the archetypical model of slavery, where the profits of slave labour is not separable from the property rights that dominated the slave as a whole. The second covered instances of indirect management – a master gets a regular income from the labour of his slave. This form of organisation took on an exceptional scope in classical Athens, to the extent that the Old Oligarch specifically condemned this practice, since citizens would therefore become the slaves of their own slaves (Ps.-Xenophon, *Athenaion Politeia* 1.11). The transformation of the slave from property into a producer of capital likely to provide regular income does in fact constitute a crucial turning point in the history of Athenian slavery. In fact, Max Weber remarked that slaves were no longer "a means of production from which profit could be acquired", but instead "functioned as a source of rents rather than labour"⁹. This indirect management of slaves took on two forms. A master could put one of his slaves at the head of a shop or workshop, in exchange for which, he was provided with a regular income (*apophora*)¹⁰, but he could also directly rent out a slave to another master for a certain amount of time in exchange for a *misthos*.

1. Leasing slaves in classical Athens: a large scale practice

I believe that the scope of this practice, namely the renting out of slaves, has been largely under-estimated by historians and before addressing the legal forms regulating this practice, I would like insist on its scale. When it has been possible to access the detailed contents of property involved in legal disputes, rented slaves often constituted a non-negligible part the assets concerned. The property of Kiron probably included five *andrapoda* hired out to other free men (Is. 8.35)¹¹. Aeschines explains that his opponent's father hired a dozen slaves for his workshop (Aesch. 1.97). The slaves Demosthenes put to work for several years in this workshop belonged to a certain Therippides (Dem. 27.18-20; Dem. 28.12). Beyond the mention of rented slaves in the Athenian workshops, two sectors, at least, relied

⁹ Weber 1976 (= 1924): 54.

¹⁰ See recently Ismard 2017.

¹¹ See the corrections from Edwards 2008: 117.

almost exclusively on the hiring of slaves, the mining exploitation of Laurion and the prostitution. The rights to exploiting the mines were granted by the *polis* and these rights took the form of concessions. The purchaser then rented slaves from Athenian masters to exploit them¹². A very large number of slaves were involved: whilst Nicias is said to have rented no less than 1000 slaves, Hipponicos and Philomenides allegedly put 600 and 300 of their slaves to work in these mines (Xen., *Poroi* 4.14-17; Plut., *Nicias* 4.2; And. 1.38; Dem. 37.4, 5, 26, 28; C. Nep., *Cimon* 1.3). S. Lauffer also estimated that 35 000 slaves worked in the Laurion mines in 340 B.C.¹³, a credible figure since Xenophon, in *Poroi*, suggests that the *polis* recruit three times as many slaves as there are citizens – so, between 60 and 90 000 slaves – to rent them out to mine operators (Xen., *Poroi* 4.17; see also Hyp. fr. 29 Jensen ed.).

Edward Cohen recently considered that the prostitution contract in classical Athens could offer a model of contractual relations formally exempt from any relationship of statutory subordination. His analysis belongs to what we may call a contractualist approach to the phenomenon, one which considers that what a prostitute has to sell is not the usage of their body as such, but sexual services – prostitution could therefore be structured by a labour contract like any other service. I am clearly in disagreement with this perspective: one cannot conceive of the commercial exploitation of sex in classic Athens outside of the institution of slavery, which defined its legal forms. While it is true that prostitution among free citizens was not the object of a formal ban on the part of the city-state, two laws punished it severely (see Aesch. 1.19-20, 28-32)¹⁴. Free citizens probably did sell the sexual usage of their bodies on occasion, but the vast majority of male and female prostitutes were slaves¹⁵.

However, prostitution provides us with a glimpse of a regular structure applied to the organisation of labour, one bringing together a pimp, a brothel owner and prostitutes, resting upon the principle of hiring slave labour (see Is. 6.19). This form of labour organisation seems by the way to resemble the overview we have of the

¹² See Lauffer 1979² and Faraguna 2006.

¹³ Lauffer 1979²: 160-165.

¹⁴ On those two laws, see the remarks of Lanni 2010: 55-57.

¹⁵ Cohen 2016. An element central to this discussion may be found in Lysias' *Against Simon*. It's true that here, a contract (*synthêkê* or *symbolaion*) is mentioned, one between Theodotos and Simon. Yet Theodotos, qualified several times as a *pais*, is actually a slave, potentially submitted to *basanos*, in opposition to Cohen's assertions (see also the comments of Todd 2007: 280). Cohen especially defends the idea that a slave could claim their rights before a tribunal based upon a prostitution contract. Such a reading rests upon a misunderstanding, according to which there existed, in Athenian law, a legal procedure allowing slaves to assert their rights. But the fact that such a claim could be filed against a slave did not in any way signify the recognition of responsibility (see *infra*, *conclusion*). For a critical analysis of this contractualist approach of prostitution, on a very general level see Pateman 1988, and, about ancient Rome, Flemming 1999.

banking sector in this era, founded on a form of internal promotion via which a former slave could end up acquiring, whether freed or still enslaved, a relative form of autonomy under the control of a master who transferred the handling of part of his activities to others. The managers of the *porneia* were often, in effect, former *pornai*. From a legal point of view, the presence of a *kurios* nonetheless seems to have been the rule – Antigone ran her activities under the guidance of Athenogenes, as did Nicarete under that of Hippias ([Dem.] 59.18). Everything seems to indicate that the *kurioi* were basically the owners of the slaves exploited in the *porneia*. In all cases, prostitution was organised according to the model of a servile *misthōsis*. When Neaira worked in Corinth under the orders of Nicarete, “among her lovers were Xenoclide the poet and Hipparchus the actor, who had her on hire (μεμισθωμένοι)” ([Dem.] 59.26, 28), up until the moment when the last two men who hired her services, Timanoridas of Corinth and Eukrates of Lefkada, decided to purchase her, “to have full ownership of her as a slave (καθάπαξ αὐτῶν δούλην εἶναι)” ([Dem.] 59.29), before finally setting her free. The papyrus of Didymus also refers to situations of monthly rental (*kata ménan*) of prostitutes¹⁶. The Aristotelian *Athenaion Politeia* indicates that the practice of hiring *hetairai* for banquets was under the legal control of the *polis*, since the *astynomos* was to “be sure that the flute, lyre and cithara players not be rented for more than two drachmas” ([Arist.], *Athenaion Politeia* 50.2) and a speech by Hypereides refers to an *eisangelia* filed against two metics who would have rented their flute players “for more than the law permits” (Hyp. 4.3). Once again, we must imagine a hiring contract between a master and renter whose objective was control over the prostituted slave.

What is the role played by hired slaves among the workers in building sites of Attica? It is difficult to determine the legal frame of servile labour through documentation whose main object was to register payments made by magistrates¹⁷. During the construction of the Erechtheion, slaves generally worked by their master’s side, thus directly exploited by them. Certain cases nonetheless suggest specific acts of leasing, particularly when the slave worked without their master for a certain period of time¹⁸. The accounts of the sanctuary at Eleusis, in 329/328 include many workers qualified as *oikositōi*, and Kevin Clinton has suggested that they were slaves who were rented out and that their masters received a daily *misthos*

¹⁶ See Cuvigny éd. 2012, n° 382 (A. Büllow-Jacobsen), l. 10-12; n°390, l. 3-6. On the tax *hetairikon* in ptolemaic Egypt, Legras 1997: 262-263, based on a suggestion of U. Wilcken.

¹⁷ See Epstein 2013; see also Carusi in this volume.

¹⁸ See for instance Sôklês, slave of Axiopieithês, metic registered in Meliteus, working on the site in 409/408, but absent the following year as his own slave is still working, or Antidotos, slave of Glaucos, working far from his master (*IG I³ 476*, l. 202-203, l. 239; *IG I³ 476*, l. 210-211, l. 247).

for their work on the site¹⁹. We can assume that rented slaves must have contributed to regulating the supply and demand of unqualified labour. Alongside a free and mobile labour force, circulating according to demand, rented slaves were used by entrepreneurs who, faced with variations in demand, did not have the possibility of purchasing or supporting slaves.

Another sector could have resorted to the renting of slaves, the civic navy. It is now admitted that the participation of slaves in the Athenian triremes was a common phenomenon²⁰. At first glance, this practice could seem akin to hiring out slaves. The problems posed by the mobilization of those slaves were similar to the rented slaves: who was liable in case a slave died or ran away? Who received the *misthos*?²¹

2. The Economy of Leasing Slaves

The development of leasing slaves is part of the evolutions of the economy of Attica in the Vth century. The aristotelian author of the *Economics* distinguishes three types of *prosodoi*, deriving from the land, the *ktēmata* of the *oikos* and moneyed funds. The slave, who is “most necessary, best and most profitable to the domestic economy (ἀναγκασιότατον τὸ βέλτιστον καὶ οἰκονομικώτατον)” ([Arist.], *Oeconomicus* 1344a) of all commodities²², belongs to the second category. Here, the author is not only referring to the benefit the master can get from the labour of his slave, but also to all rent permitted by the optimization of a commodity, represented by the slaves themselves, within a property-based economy centred around rental income. More generally, the development of leasing slaves was typical of the economy of Attica which began, over the course of the Vth century, to distinguish fixed from active assets, as we see in particular with accounts of the treasures of local sanctuaries (Rhamnous or Ikarion)²³. Slaves were profitable not only because of the fruits of their labour, but also as a source of active capital which, due to the

¹⁹ See *IE* (= K. Clinton, *Eleusis. The Inscriptions on Stone*) 177, l. 28, l. 29, l. 32, l. 33, l. 46, l. 62, l. 173, l. 222, l. 240; *IE* 177, l. 28, l. 32-33, l. 45, l. 60 with Clinton 2008, vol. II: 184.

²⁰ See Graham 1992 and Hunt 1998. Some historians even suggested to interpret that way the link established by Ps.-Xenophon, *Athenaion Politeia* 1.10-11, between the Athenian thalassocracy and the system of the *apophora* would refer to the rent provided to the masters for the leasing of their slaves to the Athenian float (which seems to me disputable): see Jordan 1969: 204-205.

²¹ *IG* I³ 1032 offers the best case to explore the problem. This inscription is a fragmentary list of four triremes of 200 men, from the end of fifth-century. The last of those four triremes should register 93 *therapontes*, sailing without their own masters. On historical event which is the background of this record and its function (obituary ? honorific inscription ? mobilization list ?), see Funke 1983, Hunt 1998, Robertson 2008 and Bakewell 2008.

²² [Aristotle], *Oeconomicus*, 1344a.

²³ See Ismard 2010: 294-300.

actual act of hiring, produced income. The slave was therefore divided between the fixed capital it represented and the profit his hiring generated.

Some individuals could earn a great fortune from the leasing of slaves, as suggested by a fragmentary speech by Hypereides (Hyp. 1.1-2)²⁴. The situation is complex, as it involves three characters. Though Dionysios rents slaves out from Ariston, these slaves belonged to Theomnestus. Theomnestus was therefore described as the owner of numerous slaves that he hired out and he gets a considerable profit from this practice. Part of the revenue derived from the leasing of these slaves could be transferred to the person who allowed their acquisition to take place: Ariston. It is exaggerated to consider that this fact proves the existence of a class of slave labour entrepreneurs in the classical city, yet this passage proves that benefits procured by hiring slaves were perfectly assimilated by a part of the Athenian elite. This is also the reason why Xenophon, in the *Poroi*, believes that the *polis* could ultimately hire public slaves which it would have acquired with a view to exploiting the mines of Laurion: what mattered was applying a practice of private origin which had become central to Athenian economic life, to generate profit for the city-state within a public structure²⁵.

3. A Road to Freedom?

To what extent did this structuring of slave labour provide a degree of autonomy to some slaves? This idea has been put forward by historians of slavery in the Americas. They considered that the renting of slaves made inroads into the insularity of the master-slave relationship by bringing into play a twofold domination, one permanent, that of the owner, the other temporary, that of the hirer, and that *de facto*, this “fragmented ownership”²⁶ offered spaces of emancipation to slaves likely to play one master against the other²⁷. The Athenian life of private associations probably constitutes the best meter of observation to put this hypothesis to the test. In this respect, four dedicatory inscriptions discovered in Sounion, and dating back to the middle of the IVth century, come to mind. One of them is presented as emanating from a group of Eranists made up of eleven members, who worshipped

²⁴ Hypereides, 1, 1-2: Ἀρίστωνος δὲ ἀνδράποδα εἶχεν ἐν τοῖς ἔργοις· καὶ ταῦτα αὐτὸς ὑμῖν ἐμαρτύρησεν ἐπὶ τοῦ δικαστηρίου, ὅτ' ἦν τούτῳ ὁ ἀγὼν πρὸς Ἀ[ρχε]στρατίδην. Τοιοῦτο γὰρ ἐστὶ τὸ Ἀρίστ[ωνος] τουτουὶ πρᾶγμα: [οὐ]τος προσκαλεῖται μὲν περιῶν πάντας ἀνθρώπους, τῶν δ' ὅσοι μὲν ἂν μὴ διδῶσιν αὐτῷ ἀργύριον, κρίνει καὶ κατηγορεῖ, ὅπ[όσοι] δ' ἂν ἐθέλωσιν [ἀπο]τίνειν, ἀφήσιν, τὸ δ' ἀργύριον Θεο[μνή]στῳ δίδωσιν: ἐκεῖνος δὲ λαμβάνων ἀνδράποδα ἀγοράζει, καὶ παρέχει ὥσπερ τοῖς λησταῖς ἐπισιτισμόν, καὶ δίδωσι τούτῳ ὑπὲρ ἐκάστου τοῦ ἀνδραπόδου ὀβολὸν τῆς ἡμέρας, ὅπως ἂν ἧ ἀθάνατος συκοφάντης.

²⁵ See Ismard 2017b.

²⁶ Gross 2000: 33. This wording seems to me problematic, because on a legal point of view, the property does not seem fragmented.

²⁷ See for instance Martin 2004: 190.

Herakles or Men²⁸. The onomastics suggest that part (if not all) of these men had a servile status (with all the cautiousness this kind of generalization requires). Several of these names are also to be found on three dedicatory inscriptions dating back to the same era and discovered in the same place²⁹. The mention of the term *eranistai* is no coincidence as it seems to indicate the existence of financial solidarity between group members, and the representation of the *philia* that connected them. These inscriptions bear witness to non-negligible forms of autonomy and are probably connected to the exercise of labour under the form of hiring, removing them from the power of the masters.

4. A Market for Renting Slaves?

Yet the most interesting point to observe, in this respect, concerns the legal framework binding the leasing of slaves. The recruitment of rented slaves primarily took place in a clearly defined location, the sanctuary of the Anakeion situated on the Northern slopes of the Acropolis, close to the archaic Theseion. According to the lexicographic tradition, the Anakeion was the “sanctuary of the Dioscuri, where, at that time, the hiring of slaves took place” (I. Bekker *Anecdota Graecae*, I, 212: Ἀνάκειον: Διοσκούρων ἱερόν, οὐ νῦν οἱ μισθοφοροῦντες δούλοι ἐστᾶσιν). It was therefore up to the twin figures that were the Dioscuri to welcome these slaves shared between two masters. The hiring of slaves and recruitment of free men for temporary activities were situated in two highly different locations, one far removed from the other. In the Anakeion, situated close to the Theseion, on the Northern slopes of the Acropolis, anyone could come and hire slaves for a determined amount of time³⁰. To the West of the Agora, in the Deme of Colonus, one could also find a specific place that named the *misthōterion*: all free men could come and sell their labour force there, for a day or a month³¹. The division, into two specific places, of labour supplies which in practice probably constituted a single (embryonic) labour market, is significant in itself. Whereas, from the point of view of those doing the hiring, these two groups of workers formed but one body, the variations of price in these two markets were probably correlated; their distance, within the Athenian urban landscape acted as proof of their statutory division.

Moreover, the role played by the renting of slaves in the training of servile labour force is a crucial issue in Athenian economic life but about which our information is scarce. Apprenticeship contracts involving slaves are well attested by the papyrological documentation of Ptolemaic Egypt. It is often stipulated that the

²⁸ IG II² 2940 (with SEG 42, 152) - Kadous, Manes, Attas, Maes, Sosias, Tibeios.

²⁹ IG II² 2937, IG II² 2938 et SEG 54, 236. See Lauffer 1979: 177-192.

³⁰ On the location of the Anakeion, near the old Agora, see Luce 1998: 12.

³¹ See Fuks 1951. Souda, *kolōnetas*, mention that *Kolōnetai* are « those who receive a *misthos*, because they gather around the *Kolonos*, near the agora ». Some places are known outside of Athens: see in Paros the location to regulate conflicts between employers and *misthōtoi*: IG XII 5, 129, l. 16-20 (IInd cent. BC).

trainer will pay wages as long as he benefits from the work of the slave apprentice. The latter received remuneration, which obviously belonged to the master, and his work was subject to taxation. One may wonder whether renting was not one of the legal ways by which a master came to have his slave trained for a given period with another master, in a workshop or on a farm, before taking possession of the slave.

5. Leasing Slaves: a taxed transaction

Leasing slaves was probably also subjected to taxation. Prostitution was the object of a special tax, the *pornikon telos*, which was in the hands of the *pornotelônai* (Pollux 7.202; Aesch. 1.119). However, one does not quite know how this tax was collected. Must one imagine, like Edward Cohen, that the *Boulê* made a list of all the prostitutes in order to collect tax on their income? Or, following Léopold Migeotte, should we interpret this as “exploitation rights collected from brothel owners”³²? We could also conceive that this tax collection concerned the act of hiring the slaves who were in fact *pornai*.

This practice of taxing rented slaves was not unknown to Athenians. Xenophon (*Poroi* 4.25) refers to such a tax collected before the war of Decelea which concerned slaves:

“Ὅτι δὲ δέξεται πολλαπλάσια τούτων μαρτυρήσαιεν ἂν μοι εἴ τινες ἔτι εἰσὶ τῶν μεμνημένων ὅσον τὸ τέλος ἠύρισκε τῶν ἀνδραπόδων πρὸ τῶν ἐν Δεκελείᾳ. Ὅσον τὸ τέλος εὔρισκε τῶν ἀνδραπόδων πρὸ τῶν ἐν Δεκελείᾳ.

But the city will receive far more than that, as anyone will testify who is old enough to remember how much the charge for slave labour brought in before the trouble at Decelea.

Unlike Gauthier and Descat, I think that this tax did not apply to the selling of slaves, but rather their hiring for the exploitation of mines at Laurion³³. It is in fact in this way that one may interpret the situation described by Xenophon, on Sosias, who paid Nicias one obol per day per slave and *atelê*, that is to say without any tax deduction (Xen., *Poroi* 4.14). In fact, there are also a few traces of this system outside of Athens, possibly in IVth century Teos³⁴ and also in IInd century Cos. A long Coan inscription actually mentions several farms which were taxed, and in particular farm labourers in vineyards as well as slave women (ἀμπελοστα<τ>εύντων καὶ τῶν γυναικείων σωμάτων)³⁵. Vreeken considered this to be a taxation concerning agricultural workers and he supposed, because of the

³² Cohen 2000; Migeotte 2014: 245.

³³ *Contra* Gauthier 1976: 157 and Andreau-Descat 2009: 67-68; see also Pleket 1980: 194-195.

³⁴ *SEG* 26, 1305, l. 6-8.

³⁵ *IG* XII, 4, 293, l. 8-9.

mention of γυναικεία σωματά, that they were slaves³⁶. The mention of the professional activity of the slaves concerned suggests that it really is their work that this tax applied to. It is highly probable that it concerned the hiring of these slaves.

6. A Legal Procedure: the *dikai andrapodôn*

There also may have existed a specific procedure to settle disputes connected to the hiring of slaves. Amongst the *dikai emmenoi*, the aristotelian *Athenaion Politeia* mentions the existence of *dikai andrapodôn* ([Arist.] *Athenaion Politeia* 52.2). A fragment of a speech by Dinarchus, which has been given the title Λυσικλείδη κατὰ Δάου ὑπὲρ ἀνδραπόδων may have been the account of such a dispute (Din. fragt. 73, ed. N. Conomis–Teubner; see also the frgt. 52). Lipsius considered that here, disputes concerning slave ownership were settled³⁷. Yet there is little reason to imagine any procedures besides the existing ones regarding the *andrapodistai* aiming to protect the ownership of slaves³⁸. The focus of this procedure may become clearer in relation to the *dikai hupozugión*, mentioned subsequently. I would suggest that there existed only one case concerning *andrapoda* as well as *hupozugia*. Slaves and cattle used for heavy duty work were connected by the fact that they were frequently leased and it is in this way that they are associated by the Old Oligarch (Ps.-Xen., *Athenaion Politeia* 1.18). In this case, it could more explicitly be a question of a case concerning conflict relative to leasing slaves or cattle.

7. The Leasing Contract

One may finally reconstitute the form taken by such contracts by, once again, referring to a passage of Xenophon's *Poroi*. The latter speaks of the following event:

Νικίας ποτὲ ὁ Νικηράτου ἐκτήσατο ἐν τοῖς ἀργυρεῖοις χιλίους ἀνθρώπους, οὓς ἐκεῖνος Σωσία τῷ Θρακί ἐξέμισθωσεν, ἐφ' ᾧ ὀβολὸν μὲν ἀτελῆ ἐκάστου τῆς ἡμέρας ἀποδιδόναι, τὸν δ' ἀριθμὸν ἴσους ἀεὶ παρέχειν.

Nicias son of Niceratus, once owned a thousand men in the mines, and let them out to Sosias the Thracian, on condition that Sosias paid him an obol a day per slave atelê and filled all vacancies as they occurred.

In its very wording, Xenophon's proposal is probably inspired by a common formulaic model thanks to which hiring contracts were secured. Adolf Wilhelm, then Claire Préaux, suggested a link between this passage and contracts of the papyrological documentation which were applied to leasing herds with the clause

³⁶ Vreeken 1953: 62.

³⁷ Lipsius 1905-1915: 640 n.14; Harrison 1971: 22 n.10; Rhodes 1981: 586 consider that the procedure must address the damages caused by slaves and cattle, but why would only draught animals (and not sheeps and goats) be mentioned ?

³⁸ On the procedure against *andrapodistai*, see Scafuro 1997.

athanatos. The expression meant that they had to be returned in exactly the same numbers, “the owner of the herd therefore turned properties which were essentially perishable into immutable capital”³⁹. The rights of the owner therefore survived the destruction of the rented properties by imposing on the renter the replacement of goods in case of loss or destruction. Here, the person hiring had to return the slaves in identical numbers, and potentially replace any slave that had died.

8. Leasing Things and leasing Men

One must nonetheless determine to what extent this practice was conceptualized in Athenian law during the classical period. To address Yan Thomas’ hypothesis, I would start off by saying that the term *misthōsis* designates just as much the hiring of objects as of labour, and it is in vain that one may search for a conceptualisation of this leasing expressed as a form of labour separate from the body of the actual slave. But a famous law mentioned in Hypereides and supposedly from the Solonian era, could have defined the respective liability of the person renting the slave out and actual renter:

Ὅπως εἰδῶς ὅτι πολλὰ ὄναϊ γίνονται ἐν τῇ πόλει, ἔθηκε νόμον δίκαιον, ὡς παρὰ πάντων ὁμολογεῖται, τὰς ζημίας ἄς ἂν ἐργάσωνται οἱ οἰκέται καὶ τὰ ἀδικήματα διαλύειν τὸν δεσπότην παρ’ ᾧ ἂν ἐργάσωνται οἱ οἰκέται.

Knowing that many sales are transacted in the polis, he laid down a law – whose fairness is universally acknowledged – to the effect that ‘crimes committed by slaves, and expenses they incur, shall be the responsibility of the master for whom the slaves are working. [when they committed said act] (Hyp. 3.22)⁴⁰.

This law, which probably concerned slave labour, notably in the case of co-ownership, could also set the liability of the master in the context of rented slaves. In this case, the who had rented the slave was responsible for actions he committed. The lease was planned out according to a system of transfer, admittedly temporary, yet complete, of the rentor’s liability.

One final question still needs to be examined. One must not confuse, of course, labour accomplished on one’s own behalf and that performed on behalf of someone else. Leasing remained a transaction between two free men concerning a slave. But the hypothesis of direct work on another’s behalf, on the part of slaves hiring themselves voluntarily for the benefit of another master, has been put forward, mainly on the basis of one text. In *Against Nicostratus*, the orator presents the work that two slaves of Arethousios allegedly accomplished in the following terms:

³⁹ Préaux 1966: 161; see also Christophilopoulos 1950.

⁴⁰ On the wording of the law, see Whitehead 2000: 323-325 (I borrow the translation); see also Phillips 2009: 113.

Τὸν μὲν γὰρ Κέρδωνα ἐκ μικροῦ παιδαρίου ἐξεθρέψατο: καὶ ὡς ἦν Ἄρεθουσίου, τούτων ὑμῖν τοὺς εἰδότας μάρτυρας παρέξομαι.[Μάρτυρες] Παρ' οἷς τοίνυν ἠργάσατο πάποτε, ὡς τοὺς μισθοὺς Ἄρεθούσιος ἐκομίζετο ὑπὲρ αὐτοῦ, καὶ δίκας ἐλάμβανε καὶ ἐδίδου, ὅποτε κακόν τι ἐργάσαιτο, ὡς δεσπότης ὢν, τούτων ὑμῖν τοὺς εἰδότας μάρτυρας παρέξομαι.

He has raised Kerdon since his earliest childhood: I will produce witnesses for you proving he belongs to Arethousios. [Witnesses] He worked for such and such; Arethousios perceived misthos on his behalf; defended him and was responsible in the event of a misdemeanour, acting as a master, I shall produce witnesses who know all of this (Dem. 53.19-20).

Then he adds:

Ἔτι τοίνυν καὶ ἐκ τῶνδε γνώσεσθε, ὦ ἄνδρες δικασταί, ὅτι εἰσὶν Ἄρεθουσίου οἱ ἄνθρωποι. Ὅποτε γὰρ οἱ ἄνθρωποι οὗτοι ἢ ὀπώραν πρίαίντο ἢ θέρος μισθοῖντο ἐκθερίσαι ἢ ἄλλο τι τῶν περὶ γεωργίαν ἔργων ἀναίροῖντο, Ἄρεθούσιος ἦν ὁ ὀνοούμενος καὶ μισθούμενος ὑπὲρ αὐτῶν.

There is still for you, judges, another means of knowing that these men belong to Arethousios: whenever the slaves bought the fruits of a harvest or contracted to harvest a crop or took up some other agricultural work, it was Arethousios who negotiated the purchase or arranged for their hire (Dem. 53.21; transl. V. Bers)⁴¹.

If we are to believe the speaker, there is no doubt that the slaves in question often worked for other free men, but that Arethousios was always designated as their master. In that sense, at first glance, we seem to be faced with a form of hiring. But the employment of the middle voice (*misthoomai*) is intriguing, and seems to open two possible interpretations: firstly, one may understand that the slaves had hired themselves, and then been faced with a form of labour at another's expense achieved upon the initiative of a slave. In other words, this leasing would no longer be a leasing of things (*louage de choses*), as stated by Gernet⁴². However, we can also assume that employing the middle voice, always used in a transitive and non-reflexive form when it comes to the Demosthenian corpus, aimed to indicate that the slaves hired themselves but acted on behalf of someone else, their own master⁴³. The

⁴¹ Dem. 53. 20-21.

⁴² Gernet 1950: 160: « L'esclave est un intermédiaire, il n'est pas un simple instrument: de la part du maître, il ne s'agit plus d'un louage de choses » ; see also Harrison 1971: 175 n.1.

⁴³ Kazakevitch 2008: 379. See also Perrotti 1976: 185 and Valente 2012: 88.

demonstrative logic of the orator seems to indicate that this second alternative is closer to the truth. The purchase and act of leasing are placed at the same level, both performed by a slave on behalf of his master – this seems to make more sense than attributing the act of purchase to the hiring of one's own body. Whatever the solution, the point consists in asserting that the responsibility for the acts committed by these slaves was attributed to Arethousios.

9. Conclusion

Labour of free men and free labour (as a concept) made up two completely different realities in ancient Greece, on that we all agree. Several studies have shown that a large part of the work accomplished by those benefitting from the status of free citizens relied on the exercise of legal constraints. Debt servitude (which existed in classical Athens), like the work of freedmen executed alongside their former masters, represented forms of bond labour that one could not assimilate to slavery⁴⁴. Considered from the vantage point of slavery, the legal forms structuring slave labour are no less diverse if one thinks of the indirect forms of slave management. The legal organisation of labour in the classical city-state could therefore be seen as a *continuum* of forms of constraint encompassing the majority of workers beyond the distinction between free men and slaves.

Though the renting of slaves could offer actual spaces of autonomy to some of them, leasing was regarded as a temporary transfer of the essential share of property rights (and liability they implied). From a legal point of view, one could not see the recognition, even embryonic, of responsibility attributed to the slave, or even a distinction, as expressed by Roman jurists, between leasing slaves as commodities and leasing their labour.

It is a somewhat parallel question, here, but I would conclude by briefly touching upon the way I conceive the highly disputed issue (especially in the *Symposion*) of the liability more or less limited of the master⁴⁵. I do not think that slaves themselves had the slightest responsibility within the legal framework. Athenian law did allow a citizen to file a case against a slave, but this accusation was only the preliminary phase of a process which ultimately targeted the master, the person fully responsible for the slave. In *Against Pantenetus*, the orator explicitly indicates the necessity of disassociating the two actions – one could not directly attribute the actions of a slave to his master, even if the latter was the only party responsible (Dem. 37.51). The identification of the agent of a specific action is crucial in this respect, and this is actually the reason why, in Hypereides 3 (*Against Athenogenes*) the debt contracted by Midas was done so in his name, and not in that of his master Athenogenes. That is also the reason why there must have existed

⁴⁴ See for instance Zurbach 2014.

⁴⁵ See specially Maffi 2008, Cohen 2012, Dimopoulou 2012. For a more developed argumentation, see Ismard 2019.

some public documents registering slaves as property⁴⁶. The procedure distinguished two agents but conferred the liability to only one of them, the master - exactly as in the procedure described in the famous *Papyrus de Lille*, from the Alexandria of the end of IVth cent. B.C., there is a clear distinction between the *epiklêsis*, or the imputation, to the slave, and the *praxis*, or the execution, to the master⁴⁷. By separating the responsibility for an action from the identity of the individual who executed this action, the procedure deferred the manifestation of responsibility. But one cannot detect the recognition of any legal personality concerning a slave, even limited. The slave merely constitutes, within the procedure, the focus of allocating an action – and in that sense, he was an *actor* of the law without being a person – but his master was the only party held responsible.

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⁴⁶ See Ismard 2019.

⁴⁷ *Pap. Lille* I, 29, (1) l. 28-33 = Scholl 1990, 1, l. 28-33.

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