Overcoming Legal Incapacities at Athens

Juridical Adaptations Facilitating the Business Activity of Slaves

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ABSTRACT

This chapter discusses (1) slaves’ independent operation of businesses at Athens, (2) the use of representatives, «agents», to permit enslaved businessmen to accomplish through third parties undertakings that were otherwise impossible, and (3) in the context of the history of «agency» law, Athenian legal adaptations that largely resolved commercial difficulties arising from limitations on the legal capacity of unfree businessmen.

The juridical acceptance of representatives – permitting businessmen lacking legal capacity to effectuate through third parties acts and practices that would otherwise have been legally impossible – constituted for Athens a remarkable innovation, responsive to the economic and social needs of fourth-century Attic enterprise. This Athenian adaptation should not, however, anachronistically be confused with legal mechanisms conceived hundreds of years later by Roman imperial practitioners and scholars, nor should it be juridically enmeshed with Anglo-American concepts of legal «agency» developed thousands of years later.
Scholars have long recognized the «leading role» of slaves in the commercial activity of fourth-century BCE Athens, at that time the preeminent entrepôt of the eastern Mediterranean.¹ Because traditional Athenian concepts of manliness (andreia) valorized only cultural, military and political pursuits, condemned all commerce as inherently servile, and insisted that farming alone provided a proper economic arena for the “free man” (anēr eleutheros), Athenian society was highly receptive to slave enterprise.² The Athenian institution of “slaves living independently” (douloi khōris oikountes) permitted unfree persons to conduct their own businesses, establish their own households, and sometimes even to own their own slaves – with little contact with, and most importantly, virtually without supervision from their owners.³ But only minimal academic attention has been directed to the paradox of an Athenian economy dependent on slave entrepreneurs operating within a legal system that supposedly deprived slaves of all legal capacity, a system absolutely closed to slave participation (except perhaps as witnesses through torture).⁴ Extensive evidence and multiple studies, however, have demonstrated that legal systems invariably develop mechanisms to close significant gaps that may arise between changed societal reality and traditional juridical principles.⁵ Athens was no exception. Some years ago, in Athenian Economy and Society: A Banking Perspective, I set forth briefly certain legal «adaptations» seemingly developed to accommodate commercial needs arising from the new reality of fourth-century Athenian businesses (ergasiai) operated by slaves with little if any involvement by their masters.⁶ These adaptations included recognition of slaves’ responsibility for


³ See COHEN 2000, 145-154; HERVAGAULT & MAC TOUX 1974; PEROTTI 1974; PARTSCH 1909, 135 ff. The overwhelming majority of scholars identify the khōris oikountes as slaves (KAMEN 2011, 44), but a few (most recently ZELNICK-ABRAMOVITZ 2005 and FISHER 2006 and 2008) believe that the term (depending on context) can refer to both present slaves (douloi) and freed slaves (apeleutheroi). Cf. KLEES 2000, 15-17.


⁶ On the transformation of Athenian economy and society between the late sixth and early fourth centuries BCE, see SCHAPS 2004, 111-123; 2008, 42-43; COHEN 1992, 3-25, 87.
their own business debts,\(^7\) court acceptance of slaves and free non-citizens as parties and witnesses in commercial litigation (in contravention of the general rules allowing access to *polis* courts only to citizens of the *polis*), and acceptance of mercantile «agency» as a mechanism to overcome remaining legal incapacities.\(^8\) I proceed to consider in detail the evidence confirming (1) slaves’ independent operation of businesses at Athens and (2) the use of representatives, «agents», to permit domestic slaves and free foreign businessmen to accomplish through third parties undertakings that were otherwise legally impossible. Finally, I will discuss, in the context of the history of «agency» law, the juridical significance of Athenian adaptations intended to overcome the legal incapacity of unfree businessmen.

1. SLAVES’ INDEPENDENT OPERATION OF BUSINESSES AT ATHENS

While innumerable Athenian slaves undoubtedly toiled under harsh and exploitative conditions – at best performing routine and repetitive domestic and agricultural labor for the benefit of their masters – many *douloi* (albeit in all probability a small minority of the unfree inhabitants of Attica) were able to acquire skills,\(^9\) to obtain business knowledge,\(^10\) to develop valuable contacts\(^11\) – and to prosper, at the expense of free males in thrall to *andreia*. But the slaves’ very importance entailed for their owners financial danger and/or financial accommodation. Overseers and managers often had detailed knowledge of household finance and sometimes controlled substantial assets: the slave Moskhion, for example, enriched himself through his complete knowledge of Komôn’s household affairs (Dem. 48.14-15); another *doulos* (“slave”), Kittos,

\(^7\) For recent discussions on the legal implications of credit extended to unfree persons, see COHEN 2012; DIMOPOULOU 2012; MAFFI 2008; TALAMANCA 2008.

\(^8\) COHEN 1992, 90-101.

\(^9\) Xenophon contrasts the vocationally useless “liberal education” of free persons with slaves’ training in crafts or trades requiring knowledge and skill: ὁ μὲν τεχνίτας τρέφει, ἐγὼ δ᾿ ἐλευθερίως πεπαιδευμένους (*Mem. 2.7.4*).

\(^10\) Dem. 45.72 (on the business education of the great *trapezitês* Phormión who entered banking as a slave): ἐπειδὴ δ᾿ ὁ πατὴρ ὁ ἡμέτερος τραπεζίτης ὢν ἐκτήσατ᾿ αὐτὸν καὶ γράμματ᾿ ἐπαίδευσεν καὶ τὴν τέχνην ἐδίδαξεν.

\(^11\) See, for example, the relationship of the enslaved bank functionary Kittos with Menexenos and the son of Sopaios, resulting in a problematic advance of six talents to the latter duo (Isocr. 17.12). The possibility of purloined customers and independent business relationships is confirmed by Pasiôn’s insistence on a «noncompetition» covenant even in leasing his bank to Phormión, his own former slave and trusted assistant (μὴ ἐξεῖναι δὲ τραπεζίτευσαι χωρίς Φορμίωνι, ἐὰν μὴ πείσῃ τοὺς παίδας τοὺς Πασίωνος: Dem. 45.31). Cf. §34.
supposedly appropriated for himself and his confederates some 36,000 drachmas (Isocr. 17.11-12). To avoid the possibility of such losses (and for other reasons: COHEN 1998), masters sometimes chose to enter into arrangements under which slaves maintained their own households and operated their own businesses, while paying their owners fixed sums periodically (apophora). These douloi khôris oikountes often enjoyed – in the words of an Athenian observer – considerable prosperity, and some even “lived magnificently” (megaloprepôs). Thus, for example, the douloi Xenôn, Euphrôn, Euphraios and Kallistratos – while still enslaved – as principals operated the largest bank (trapeza) in Athens, that of Pasiôn. Only upon completion of the lease term did their owners “set them free” (eleutherous apheisan), “being quite satisfied” with how they (the owners) had been treated. During the ten years in which the leasing arrangement had been in force (Dem. 36.37), the slaves’ only involvement with their owners appears to have been annual payment of a sizeable fixed rental (an entire talent per year) in return for the slaves’ retention of the net income resulting from operation of the bank. Pasiôn himself – while still unfree – had played a major role in his owners’ bank (Dem. 36.43; cf. 46, 48), and thereafter in his own trapeza. In fact, bankers often sought to ensure continuation of their banks (trapezai) by providing, on their deaths, for marriage of their widows to their chief slaves to whom control of the banking business frequently devolved (Dem. 36.28-29). Phormiôn (who ultimately succeeded Pasiôn as Athens’ most important financier) – while still unfree – had been a partner in a maritime trading business. Similarly the slave Lampis was the owner/operator (nauklêros) of a substantial commercial vessel: he entered into contracts with free persons (Dem. 34.5-10), lent substantial sums to customers (Dem. 34.6), received repayment of large amounts on behalf of other lenders (Dem. 34.23, 31), even received the special exemption from taxes (ateleia) provided by Pairisadês of Bosporos on the export of grain to Athens, and provided a deposition in the arbitration proceedings relating to an Athenian legal action (Dem. 34.18-19). Likewise


13 Dem. 36.13-14: ἐμίσθωσεν Ξένωνι καὶ Εὐφραῖῳ καὶ Εὐφραῖῳ καὶ Καλλιστράτῳ... τὰς παρακαταθήκας καὶ τὴν ἀπὸ τούτων ἐργασίαν ἐμισθώσαντο... καὶ ἐλευθέροις ἀφείσαν ὡς μεγάλ. εὖ πεπονθότες.

14 Dem. 36.57: τοσαῦτα γὰρ... χρήμαθ' ἤμιν ἀνεγνώσθη προσηυπορηκώς, ὡσ' οὐθ' οὗτος οὔτε ὁ λαός οὐδεὶς κέκτηται. Πιστεὶς μέντοι Φορμίωνι παρὰ τοῖς εἰδόθαι καὶ τοσοῦτον καὶ πολλὸ πλεύονον χρημάτων, δὴ ἢ καὶ αὐτός αὐτῷ καὶ ἤμιν χρήσιμός ἐστίν.

15 See Dem. 49.31, where Timothenês, active in overseas commerce, is characterized as Phormiôn’s koinovnôs at a time when Phormiôn was still a doulos.

Zênothemis, identified as a slave in Demosthenes 32, was actively engaged in maritime commerce and lending: allegedly the owner of a substantial commercial cargo, he litigated in his own name as a principal in the Athenian courts.\(^{17}\) (He is explicitly described as one of the \textit{khôris oikountes} residing at Athens with his wife and children [Dem. 34.37].) We also know, for further examples, of the charcoal-burner in Menander’s \textit{Epitrepones}, a slave who lives outside the city with his wife and provides his owner with a portion of his earnings (see lines 378-380); the slave Aristarkhos, a leather-worker who is listed on the Attic \textit{stelai} with an assortment of chattels that – in defiance of modern conceptualization – are described as belonging to the slave rather than to his master Adeimantos;\(^{18}\) a group of nine or ten unfree leather-workers, whose leader paid their owner three obols for himself per day, two for each of the other slaves, and kept any remaining revenues (Aesch. 1.97); a \textit{doulos} who operated his master’s business for a fixed payment and was free to retain any additional income after expenses (Milyas in Dem. 27); the slave in Hypereidès, Against Athênogenês who operated a perfume business with substantial financing but whose only contact with his master was to provide him with a monthly accounting;\(^{19}\) slaves operating their own businesses in the Agora and personally liable for legal transgressions without reference to their master (STROUD 1974: 181-182, lines 30-32); and numerous other slaves operating in similarly autonomous arrangements.\(^{20}\)

But a business system utilizing slave entrepreneurs would have foundered on the Athenian legal system which – in the absence of juridical adaptation – would have denied juridical capacity to all but Athenian male citizens (a small minority of the total population).\(^{21}\)

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\(^{17}\) Dem. 32.4: ὑπηρέτης Ἡγεστράτου. A Massilian, he borrowed money at Syracuse, claimed to have lent the funds against the security of maritime cargo, and litigated with other claimants to the collateral upon its arrival at Athens (32.9).

\(^{18}\) Stele 6.21, 31-46 (PRITCHETT, AMYX & PIPPIN 1953 = \textit{IG I^3} 426).

\(^{19}\) The considerable scale of the business is suggested by the colossal amount of debts incurred in its operation: five talents composed of both conventional (\textit{khrea}) and \textit{eranos} loans (Hyp. \textit{Ath.} 5.7, 14, \textit{Jensen} 19).

\(^{20}\) In addition to the testimonia cited in the text, see, e.g., Andoc. 1.38; Telês fr. 4.b (pp. 46-47 Hense); Theophr. \textit{Char.} 30.15; [Xen.] \textit{Ath. Pol.} 1.10-11 (\textit{sans doute}: PEROTTI 1974, 55 n. 15); and the activities of slaves identified as \textit{μισθοφοροῦντα}, many of whom may have maintained their own \textit{oikoi} ([Xen.] \textit{Ath. Pol.} 1.17; Xen. \textit{Vect.} 4.14-15, 19, 23; Isae. 8.35; Dem. 53.21; Dem. 27.20-21; 28.12; Theophr. \textit{Char.} 30.17. [Dem.] 59.31, although preserved in Athenian context, \textit{stricto sensu} refers to a non-Athenian situation.

2. LEGAL ADAPTATIONS FACILITATING SLAVES’ BUSINESS ACTIVITY

Athenian laws did present substantial barriers to the functioning of businesses operated by slaves independently of their masters. Banking is instructive. In the Athenian *trapeza*, as in other fields, slaves worked at menial tasks and as middling functionaries – guarding collateral, serving as clerks, providing muscular labor. But, as we have seen, some slaves actually operated independent banking businesses (including the largest in Athens), merely providing their owners with a portion of their profits in the form of rental payments. However – since Athenian law did not recognize businesses as artificial persons («corporations») – legal incapacity would have denied unfree persons the power to perform a number of functions critical to independent operation of a *trapeza*. Legal adaptation surmounted such incapacity.

Because only Athenian citizens had the capacity to own land in Attica, a slave-banker would have been prevented by that proscription from foreclos-

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22 Numerous opportunities for self-employment of free persons in craft or trade (cf. Schaps 2004, 150-159) and the wide availability of remuneration for public pursuits ([Arist.] Ath. Pol. 49.4) left only slaves (and family members) as potential employees for the many Athenian businesses that needed the labor of individuals over a continuing period of time. «Nowhere in the sources do we hear of private establishments employing a staff of hired workers as their normal operation» (Finley 1981, 262-263 n. 6). At Kolonôs Agoraios, the site of Athens’ incipient version of a labor market, *douloi* constituted virtually all of those standing for hire: Pherekratês fr. 142 (K-A). See Fuks 1951, 171-173; Garlan 1980, 8-9; Biscardi 1989.

23 Demosthenes 49, detailing the functioning of the Bank of Pasiôn, illustrates the routine tasks performed by slaves. When funds are to be advanced on behalf of a prominent borrower, the bank owner (himself a former slave) orders the slave on duty to make the disbursement, and the slave proceeds to count out the funds and to write-up a memorandum detailing the relevant aspects of the transaction: ἐκέλευσε δοῦναι Φορμίωνα… χιλίας ἑπτακοσίας πεντήκοντα. Καὶ ἠρίθμησε τὸ ἀργύριον Φορμίων · καὶ ἐγράψατο μὲν ὀφείλοντα Τιμόθεον… υπόμνημα δ᾿ ἐγράψατο τὴν τε χρείαν εἰς ἣν ἐλήφθη τὸ ἀργύριον καὶ τὸ ὄνομα τοῦ λαβόντος (29-30). Deposits of valuable goods were received and disbursed by unfree persons: ὁ παῖς ταύτας τὰς φιάλας, οὐκ εἰδὼς ὅτι ἄλλοτραί ἦσαν, δίδωσι τῷ Αἰσχρίων τῷ ἀκολούθῳ τούτου (31). When collateral security is delivered to a bank, its receipt by slave (rather than free) employees is assumed: τίς ὁ παραλαβὼν τῶν οἰκετῶν τῶν ἠμετέρων; (51).

24 Even Thompson, who sees banks as «insignificant» in the Athenian economy, recognizes the significance of «the lendable deposits (and) private resources of a tycoon like Pasion» (1979, 240).

25 Ustínova 2005, 178-179; Jones 1999, 12-13; Finley 1951 [1985], 275 n. 5. Associations, however, seem to have achieved a «responsabilité collective» (Ismard 2007, 81), a «quasi legal» status (Arnautoglou 2003, 119, 142).

26 A specific and special act of the Assembly (εκκλησία) was required to grant a non-Athenian the capacity to become the owner of Attic land, the so-called right of enkėsis. On such grants, and their rarity, see generally Pečirkà 1966; Steltzer 1971. A resolution of the Assembly (or other constituent body) also might grant a non-citizen the right to lease mines or agricultural land, or at least to share in the proceeds of new mines that might be delineated by that non-citizen. See SEG
ing on real property in Attica, a disabling incapacity in a land where horoi (mortgage stones) were pervasive – sprinkled over the landscape, attesting to loans secured by real-estate. But at Athens inability to foreclose on land and buildings would not have affected only “landed loans”: real estate was provided at Athens as security for a wide variety of credit extensions, giving the lender «recourse to that property in the event that the debtor defaults.» Maritime trade, for example, is known to have been financed through loans to persons who owned real estate at Athens or who provided as guarantors owners of such real property. In the sole surviving ancient contract for maritime financing, explicit provision is made for execution against the borrowers’ real property in the event of a deficiency (ekdeia) after sale of the underlying maritime collateral. Such maritime financing might properly be characterized as a loan with a right of collection “against land and dwellings” (epi gēi kai synoikiais). But this right of collection against real property would not have been available to a lender lacking the capacity to own real estate. Yet through the mechanism of a formalistic intermediate loan, the utilization of Athenian citizens as agents effectively permitted noncitizens operating banks to engage freely in real-estate lending. Thus when the noncitizen Phormiôn, on undertaking operation of a bank pursuant to a lease, wanted to be able

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28 SUNDAHL 2014, 223. For the Athenians, all loans were either “landed” (engeia) or “maritime” (nautika). Usage in Hellenistic Egypt confirms that this division between “landed” and “maritime” goods was perceived as an all-encompassing categorical partition. There the stereotypical Classical Greek phrase ἔγγαια καὶ ναυτικά was replaced by a new verbal formula permitting «plus brièvement la saisie de ‘tous les biens’ de la partie coupable, sans comporter de précision sur la nature de ces biens» (GAUTHIER 1980, 205).

29 See, for example, Pasiôn’s bank’s loans to Menexenos (Isocr. 17.12) whose family owned substantial real property and was deeply involved in the litigation over the assets of Dikaiogenês, a large estate consisting primarily of realty (Isae. 5.43), much of it subject to creditors (5.21).

30 In the maritime financing described at Dem. 33.7, for example, the bank of Hêrakleidês obtains the guarantee of the unnamed speaker who is clearly an Athenian citizen (HANSEN 1984, 82; ERXLEBEN 1974, 476). Since he was himself a financier, although self-described as committing only “moderate” assets to maritime trade (Dem. 33.4), his ownership of at least his own residence seems likely. Dem. 32.29 also envisions the possible involvement of citizen guarantors in maritime-finance disputes.

31 Preserved at Dem. 35.10-14. Despite early attacks by SCHUCHT (1892; 1919, 1120 ff.), this document is now generally accepted as genuine. See BRESSON 2008, 67-71; LANNI 2006, 156, n. 41; PURPURA 1987, 203 ff.

32 Dem. 35.12: καί ἕαν τι ἐλλειπή τοῦ ἀργυρίου, ὃ δὲ γενέσθαι τοῖς δανείσαις κατὰ τὴν συγγραφίν, παρὰ Αρτέμιων καὶ Ἀπόλλοδορο ς ἦσσον ἡ πράξες τοὺς δανείσαις καὶ ἐκ τῶν τούτων ἀπάντων, καὶ ἐγγείων καὶ ναυτικῶν, πανταχοῦ ὅπου ἃν ὅσι.
to execute on those loans which the bank had extended “against land and dwellings” (epi gêi kai synoikiais), he arranged for the bank owner, his former master, to retain nominal ownership of these receivables, in form as a debtor of the bank, so that “he might be able to execute” against such real property.\footnote{Dem. 36.6: οἶός τ᾿ ἔσοιτο εἰσπράττειν ὅσα Πασίων ἐπὶ γῇ καὶ συνοικίαις δεδανεικὼς ἦν.}

Similarly, only citizens could provide a bond for dealings with polis authorities – a potentially lucrative area of profit for banks. Yet when Pasiôn wanted to employ bank funds to provide a bond of seven talents for a client (Isocr. 17.42-43), neither the bank (not a cognizable «person» for legal purposes) nor he himself (since not a citizen) could effectuate the bail directly. But the problem was surmountable by agency: the banker utilized the citizen Arkhestratos to accomplish the pledge, and the court accepted this representation.\footnote{Isocr. 17.43: Πασίων δ᾿ Ἀρχέστρατόν μοι τὸν ἀπὸ τῆς τραπέζης ἑπτὰ ταλάντων ἐγγυητὴν παρέσχεν. On the requirement that providers of bonds be citizens, see \textsc{whitehead} 1977, 93; \textsc{gauthier} 1972, 139-140.}

Contractual arrangements with slave businessmen would have had meaning (because legally enforceable) only if slaves could be parties to commercial litigation. In general, however, in the absence of special arrangements (such as those arising from interstate treaty or connected with residence rights obtained by foreigners), the Hellenic cities allowed access to their courts only to their own citizens.\footnote{See \textsc{Cohen} 1973, 59-62; \textsc{Gernet} [1938] 1955, 181-182; \textsc{Gauthier} 1972, 149-156. Even the right to reside at Athens may have been granted initially through a procedure in which the foreigner did not directly participate: \textsc{Levy} 1987, 60.} But in mercantile matters there is significant evidence that the Athenian courts substantially disregarded incapacity because of personal status – and allowed slaves full court access, as parties and as witnesses. This acceptance is best attested in the important “commercial maritime” cases and courts (dikai emporikai), where «standing» was accorded without regard to the personal status of litigants.\footnote{\textsc{Cohen} 1973, 69-74, 121; \textsc{Gernet} [1938] 1955, 159-164; \textsc{Mckechnie} 1989, 185. Specifically regarding douloi, \textsc{Garlan} notes: «Surtout à partir du IVe siècle, il fallut enfin adapter empiriquement ses capacités juridiques aux fonctions économiques qui lui étaient confiées» (1982, 55). Cf. \textsc{Paoli} [1930] 1974, 106-109.} In the case of slaves, this represented a unique accommodation, for (with the exception of testimony in cases of murder, perhaps only against the alleged murderer of their master) slaves were otherwise absolutely deprived of the right even to be witnesses in legal proceedings.\footnote{See above n. 4.} “Commercial maritime” disputes, however, were not the only cases encompassed in the special procedural category of “monthly cases” (dikai emmênoi). “Banking cases” (dikai trapezitikai) are also denominated by Aristotle as among these “monthly cases” (Ath. Pol. 52.2). Although little is known with certainty as
to the nature of “banking cases”, there is no reason to assume criteria of standing or evidence substantially different from those of the «allied sphere» (HARRISON 1968-1971, I, 176) of commercial maritime cases. Strikingly, the clearest example of a slave having the right to testify and participate in an Athenian court, that of Lampis the nauklēros in Demosthenes 34, involves a doulos who provided credit to a borrower who was the recipient of a number of other loans – some of which may have been provided by bankers. And Pankleôn, engaged in commercial pursuits in a fuller’s shop, seeks to avoid a court action (Lys. 23) on the grounds that he is a Plataian, only to be met by the plaintiff’s introduction of evidence that he is in fact a slave. Of course, the plaintiff’s presentation of proofs of servitude would justify pendency of the case only if slaves actually could be parties to business-oriented lawsuits.

Yet there remained a barrier to slaves’ participation in court proceedings: a fundamental Athenian legal principle that a party to an action must personally present his case in court. Since many slaves did not speak Greek as their native language, linguistic ineptitude would often have prevented them from competently representing themselves in litigation, effectively depriving them of access to juridical process. Here too, Athenian law adapted to the needs of commerce and allowed slaves and former slaves (and even free non-Greeks) to be represented by speakers fluent in Greek. Thus the banker (and ex-slave) Phormiôn, whose Greek was poor, was permitted to use Demosthenes to speak for him in an important commercial matter in which he was a defendant. In Demosthenes 34, where the slave Lampis, a ship-owner and financier, is prominently involved as a principal (see above), with the court’s acquiescence the plaintiff receives forensic support from at least one, and possibly two “friends.” In another commercial maritime case, Demosthenes 56,
the court permits Dareios to speak on behalf of Pamphilos who was unable to present his own case (Blass 1893, 584).

Agents were employed sometimes merely for the principal’s convenience.\textsuperscript{44} Stephanos was dispatched to represent a banker’s interests at Byzantion (Dem. 45.64), and the money-lending Dêmôn sent Aristophôn to Kephallênia to resolve a commercial maritime dispute (Dem. 32.10-12). Timotheos «appointed Philondas as his agent to sail to Macedon» (Moreno 2007, 281) to handle a timber transaction (Dem. 49.26). But because Athenian law sharply restricted the rights and privileges of even free non-citizens, slave businessmen would have had frequent need of «representatives» or «agents» in the conduct of their businesses. Thus Pasión is attested as retaining the citizen Agyrrhios of Kollytos as a confidential representative in litigational matters (Isocr. 17.31 ff.). Phormiôn, before obtaining his freedom, used the citizen Timosthenês in the conduct of his maritime operations (above, n. 15). During his early years of banking activity, before obtaining citizenship, perhaps while still a slave,\textsuperscript{45} Pasión utilized the citizen Pythôdoros “to do and say all things” for him.\textsuperscript{46} Similarly, the son of Sopaios (a plutocratic and free, but foreign businessman visiting Athens) used the citizen Menexenos, scion of one of the «wealthiest and most distinguished» Athenian families (Davies 1971, 145), to overcome various legal incapacities: Menexenos deals with the provision of surety required of non-citizens in the polemarch’s court (Isocr. 17.12, 14) and appears to have represented this foreigner generally in legal and business matters.\textsuperscript{47}

3. LEGAL SIGNIFICANCE OF ATHENIAN JURIDICAL ADAPTATIONS

This free use of representatives – permitting businessmen lacking juridical capacity to effectuate through third parties acts and practices that would otherwise have been legally impossible – constituted for Athens a remarkable legal innovation, responsive to the economic and social needs of fourth-century

\textsuperscript{44} A number of individuals carried out tasks with which their principals did not wish to be openly connected. See Löfberg 1917, 48-59.

\textsuperscript{45} Pasión played an important role in the banking business of his masters (Dem. 36.43, 48). Jones (1956, 186) has even suggested that Pasión, while still a slave, was entirely responsible for the operation of the bank. Although it is always assumed that he was manumitted prior to the events described in Isocr. 17 (cf. Davies 1971, 429-430), in fact we do not know when he obtained his freedom.

\textsuperscript{46} Isocr. 17.33: ὑπὲρ Πασίωνος ἅπαντα λέγει καὶ πράττει.

\textsuperscript{47} Cf. Isocr. 17.9: βουλόμενος εἰδέναι σαφῶς τὸ πράγμα προσπέμπω Φιλόμηλον αὐτῷ καὶ Μενέξενον; 12: λέγει... ὡς ἐγὼ καὶ Μενέξενος... ἐξ τάλαντ᾽ ἀργυρίου λάβωμεν παρ᾽ αὐτοῦ.
Attic enterprise. This Athenian adaptation should not, however, anachronistically be confused with legal mechanisms conceived hundreds of years later by Roman imperial practitioners and scholars, nor should it be juridically enmeshed with Anglo-American concepts of «agency» developed thousands of years later. Such metachronism permeates a recent essay by Edward Harris who searches in vain for the Greek word for «business agent»:48 Since slaves operating businesses independently at Athens could incur debt for which they (and not their masters) were personally responsible (COHEN 2012), and could directly enter into legally enforceable contracts, *douloi* at Athens had no need for the type of artificial and highly complex «agent» ultimately created by the modern Common Law system in which «B, authorized by A, may go through a transaction on behalf of A, with C, with the result that all the effects of the transaction, all the rights and liabilities created by it, will take effect between A and C, B having no concern whatever with them and acting merely as a conduit pipe».49 Nor should we expect to find in Athens the modernistic «business manager» that Harris purports to identify at Rome.50 Similarly, we should not search for the «mandate» and «commercial agency» conceptualizations adopted in modern times by jurisdictions that have «received» the Civil Law – adaptations intended to ameliorate the absence in Roman Law of the Anglo-American conception of «agency», a relatively recent Common Law innovation intended to expedite the conduct of commerce in the modern world.51 But Athenian law, precisely because it had not developed rigorous systems of juridical requirements for the creation of obligations,52 was able

48 HARRIS 2013, 107. Harris even attempts proleptically to inflict on the Athenians a contractual system analogous to the «elaborate classification of contracts» ultimately devised by Roman Law (HARRIS 2013, 105).

49 BUCKLAND & MCNAIR 1965, 217.

50 Even Harris recognizes that these alleged «business managers» were «not agents in the modern sense» (2013, 106). Harris, however, erroneously asserts that «the *actio insititia* permitted free business managers to carry out various transactions» (2013, 106 n. 9). In fact, «most of the ancient evidence suggests that, in the early history of the *actio insititia*, only dependent people (slaves and persons-in-power) could be appointed as business managers… (at all times) the overwhelming majority of business managers were slaves» (AUBERT 1994, 417). On the Roman *gestores* and *institores*, slave businessmen often operating largely independently of their masters, see MAFFI 2008, 206-207; PETRucci 2002, 105-114, 118-127; CERAMI, DI PORTO & PETRucci 2002.

51 See NORTH 1997; HOLMES & SYMEONIDES 1999. Roman law, however, even in antiquity struggled to produce adaptations to meet through representational innovations the business requirements of a far-flung empire with considerable overseas commerce. The *praetor* introduced various *actiones* – alien to Roman conceptualization but essential to commerce – viz. the *actio de peculio*, the *actio insititia*, and the *actio exercitoria*. See *Dig.* 14.1.3 and 7; 14.3.5.11; 14.3.13 pr.). Cf. MICELLI 2001, 205 ff. and n. 38; WACKE 1994; PUGLIESE 1957.

52 «The basis of Athenian contractual commitment was agreement» (DIMOPOULOU 2014, 265). In concurrence: AVILES 2011, 26-27; PHILLIPS 2009, 105. For the fullest documentation of this
easily to give legal effect through representatives even to commitments that might not be undertaken directly by principals – provided that the representatives themselves had the capacity to effectuate those undertakings. A person whom another has appointed (synistê: Dem. 49.26) in Athenian context to perform a task may in English, for reasons of clarity, be denominated an «agent», but that term must be understood in Athenian context – not as an analogue to the homonymous «free agent» of 21st-century sports or the «talent agent» of 21st-century Bollywood – or any other «agent» of an alien system.

paradigm see GAGLIARDI 2014. Some scholars believe that such consensual arrangements were legally binding only if buttressed by the presence of witnesses or by the swearing of oaths: see THÜR 2013.
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