Slave Witnesses in Antiphon 5.48

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Ant. 5.48 presents a well-known crux. The passage runs as follows:

καὶ τοὺς ὑδὲ τῶν δεσπότων ἐποκτείναντες, ἐὰν ἔτι αὐτοφόρως ληφθῶσαν, οὐδὲ ἀστεῖο ἀποκατάσκοιν ἐπὶ αὐτῶν τῶν προσηκότων, ἀλλὰ παραδώσασθαι αὐτοὺς τῇ ἀρχῇ κατὰ νόμους ὑμετέρους πατρίους. Εἴπερ γὰρ καὶ μαρτυρίων ἔξεστιν δοῦλων κατὰ τοῖς ἔλευσιν τοῦ φόνου, καὶ τῷ δεσπότῃ, ἃν δοκῇ ἐπεξελθεῖν ὑπὲρ τοῦ δοῦλου, καὶ ἡ ψυχὴ τίου δύναται τῷ δοῦλον ἐποκτείναντι καὶ τῷ ἐλευθέρῳ, εἰκὸς τοι θαυμάσαι περὶ αὐτοῦ ἢ, καὶ μηδὲν τοῦ ἀποδιδόμεναν αὐτῶν ἢ τῆς ἰμάς ὑφ᾽ ἰμάς ἀδίκως.

In a recent discussion, Michael Gagarin chose to endorse the traditional interpretation of the disputed clause, taking the dative δοῦλῳ with ἔξεστιν. The passage will then be rendered thus: ‘for, if it is permitted for a slave to testify against a free man about a killing ...’ (i.e., when a murder has been committed by a free man ...). Gagarin supports his position by adducing the syntactical parallelism of the clause that follows: καὶ τῷ δεσπότῃ, ἃν δοκῇ ἐπεξελθεῖν ὑπὲρ τοῦ δοῦλου ... 2 Parallelisms, however, are not always a reliable guide in the case of Antiphon, as Gagarin elsewhere notes. 3 Moreover, the traditional interpretation suggests that slaves were actually competent to appear in court as witnesses, a view that sits poorly with our general conception of Attic procedure, which (with an exception or two) otherwise restricted such competency to the citizenry. 4 For this reason, MacDowell and others would take δοῦλῳ as the

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2 For this standard use of ἔξεστι with dative and infinitive, see Ant. 5.13, 16, 90; 6.14, 18, 26, etc. (Of course, the dative need not be the subject to the infinitive; cf. 6.25 καὶ ἔξειψεν μὲν τοὺς ἐλευθέρους ὄρκοις καὶ πίστην ἀναγράψεως ... ἔξειψεν δὲ τοὺς δοῦλους ἐτέρας ἀνάγκασις κτλ.)
3 Gagarin (n. 1), 31, citing Ant. 1.28 ἀλλ᾽ ὡς μᾶλλον δύναται λαβραίοτατα καὶ ὡς ἀνθρώπων μηδένα εἶδένα.

Scripta Classica Israelica vol. XVIII 1999 pp. 21-24
indirect object of μαρτυρεῖν, and would translate “[a]nd if it is permissible ... to give evidence for [i.e., ‘in support of’] a slave against a free man of his [sc. the slave’s] being killed ...”.

Of course, Gagarin is correct. But he fails to cite the decisive evidence, which is Plato Laws 937AB, esp. A5-B1:

γιναικὶ δὲ ἔξεστιν ἔλεγθα μαρτυρεῖν καὶ συμμαχεῖν, εἰ δὲ τεταράκοντᾳ ἐτῃ ἡ γεγοναί τι, καὶ δίκην λαχάνειν, εἰ δὲ ἄνδρος ἤ, ἥξωτος δὲ ἄνδρος ἔξεστι μαρτυρεῖν μόνον, δύολη δὲ καὶ δύοιλῳ καὶ παιδὶ φίλῳ μόνον ἔξεστι μαρτυρεῖν καὶ συμμαχεῖν κτλ. 6


5 D. MacDowell, Athenian Homicide Law in the Age of the Orators, 1963, 103f.; Harrison (n. 4), 170 n. 3; M. Edwards and S. Usher, Greek Orators 1: Antiphon & Lysias, 1985, 90f. MacDowell claims that his interpretation of the clause is driven by a close consideration of the context, a claim that is subsequently echoed by Harrison and by Edwards. As MacDowell puts it (104): “The speaker is talking about the killing of a slave; he is saying that killing a slave is an offense for which a free man may be tried. Talk about evidence given by a slave would be quite irrelevant.” This argument is ambiguous. It is pointless to press the difference between the procedural terms, μαρτυρεῖν and ἐπεξεργαζόμενοι, for the contrasts contained in the passage obviously reside elsewhere (e.g., whether it is the murder of a slave or the murder of a free man that is at issue; the ‘prosecution’ of or for or by or with a slave against a free man in contrast with the prosecution by a master on behalf of his slave, etc.). On the other hand, if MacDowell objects that it is irrelevant to discuss actions taken by a slave against some free-status murderer, when the context is otherwise concerned largely with the murder of our slave (by some free-status culprit), then the argument is not cogent. The passage illustrates the claim that slaves have rights too – regardless of who killed whom. As such, it is not necessary that every clause refer to slaves as victims; cf., notably, 48 in it. οἱ δὲ οἱ τῶν δεσπότων δομητέρων; also τῇ ἐλέειμεν [sc. ἀποκτέων]. At any rate, it is clear enough that this entire matter is really driven more by a priori considerations, i.e., by a desire to avoid the awkward implications for Attic procedure thought to inhere in the traditional interpretation.

6 So E. Maetner, Antiphonis Orations XV, 1838, 224. For these regulations in Platonian law, see G.R. Morrow, Plato's Law of Slavery in its Relation to Greek Law, 1939, 77-89 (οι συμμαχοῦν, however, cf. E.B. England, The Laws of Plato, 1921, ad a5f.). Clearly, the stipulations of this passage contain innovations that do not reflect actual Attic procedure: see J.H. Lipsius, Das attische
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Either Plato is echoing the language of Ant. 5.48 — in which case, Laws 937A proves that Plato, at least, took δούλω with ἔξεστι; or, far more likely, both Plato and Antiphon independently reflect the language of some actual Attic code,7 in which case, once again, Laws 937A proves that the code (and, consequently, passages such as 5.48 that are, ex hypothesi, derived from it) would also have taken — in the eyes of Plato, at least — δούλω with ἔξειναι. Either way, the standard translation of Ant. 5.48 is thus secured.

We might try to emend our way out of the resulting difficulties. MacDowell thinks the traditional interpretation does not suit the context of the passage as a whole. But his own interpretation, which takes the clause to refer to the murder of a slave, creates logical difficulties of its own: in view of what follows (καὶ τῶν δεσπότων, ἀν δοκῇ, ἔπεξεξείων ὑπέρ τοῦ δούλου), it is redundant.8 What is actually needed, if one were to seek for balance and logical consistency, ought instead to be parallel to τῶν ἐλευθέρων [sc. ἀποκτείναντι].9 just as τῶν δεσπότων κτλ. parallels τῶν δούλου ἀποκτείνατι. Indeed, καὶ ἡ ψῆφος ἵνα δώσηται κτλ. (and note the resulting chiasmus) would then be explicative, not conjunctive. To achieve this effect, we would have to take κατὰ with the accusative (τῶν φόνων) rather than the genitive, as in Hdt. 2.3 κατὰ μὲν δὴ τήν τροφὴν τῶν παιδίων τοσαῦτα ἔλεγον, and take δοῦλῳ as a dativus incommodus.10 More elegantly, perhaps, we might emend the reading of the mss. to κατὰ τῶν φόνων τοῦ ἐλευθέρου. Slave witnesses will now have vanished conveniently. But even apart from the fact that such an emendation is strictly unnecessary and hard, once again, and for precisely the reasons stated above, it cannot be squared with Laws 937A. The passages are too close, both in language and in context (and, most likely, also in their historical origins), to be variously interpreted.11

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7 Recht und Rechtsverfahren unter Benützung des attischen Prozesses, 1905-15, 874 n. 32; also Morrow, 83.
8 This would, presumably, have been a homicide code; cf. 5.48 κατὰ τῶν ἐλευθέρων τῶν δούλων, with 937A8-B1 δοῦλον μόνον. The provision in question need not have been inscribed on IG i 104 (Drakon’s stele). There were, apparently, multiple copies of the homicide code scattered about the city, quite possibly containing some minor variations among them; see A. Tulin, Dike Phonou: The Right of Prosecution and Attic Homicide Procedure, 1996, 25n.e.
9 See above, n. 5
10 Cf. ὁ τῶν δεσπότων ἀποκτείναντι.
11 The translation would be: “if it is permissible to bear witness against a slave as regards the murder of a free man”. Needless to say, this idiom is unparalleled in Antiphon; see P.L. Van Cleef, Index Antiphonticus, 1895, s.v. κατά; also ἀδ καταγγέλοντι, καταμαρτυρέω, καταφεύξεσθαι, προκαταγγείλει, etc.
12 The addition of δοῦλη at 937A8 (see Morrow [n. 6], 89) is typical of Platonic egalitarianism (674A7f., 794B6, 936C8, etc.), though such contrasting ‘mobility’ is also a quirk of Platonic idiom (see, e.g., Rep. 395E3; on ‘mobility’ of
I do not know what evidentiary function slaves were supposed to play in homicide proceedings. In general, Attic law, and especially Attic homicide law, was largely concerned (even into the fourth century BC) only with its citizen body, while others – women, children, slaves, even metics and aliens – were relegated to the procedural margins. Indeed, competency also must be presumed to have been restricted, with an exception or two, to citizens of standing. Whatever “desperate attempts” are needed to reconcile these facts with “the traditional translation” of Ant. 5.48 may remain an open question. That this translation is correct, however, is shown conclusively by simple comparison with the relevant lines of Plato’s Laws. As such, it is Laws 937A that proves, in the current instance, to be decisive.

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12 See Tulin (n. 7), ch. 1 passim, esp. 17ff., also 30-32. For a similar bias in Plato’s homicide code, see E. Grace, ‘Status Distinctions in Plato’s Homicide Law’, VDI 1977.1, 71-81 (Russian, with English summary). In this, as in so many other features, Attic homicide law reveals its essentially archaic nature.

13 The language in quotation marks belongs to Harrison (n. 4), 1.170f. n. 3. For the most likely solution to the problem, see Bonner-Smith (n. 4), 2.223ff.