

MARLENE PEINHOPF

University of Graz

ORCID: 0000-0002-3887-8017

marlene.peinhopf@uni-graz.at

On the Greek-philosophical impact on Labeo's definition of the *locatio conductio operis**

Sull'impatto del pensiero filosofico greco sulla definizione della *locatio conductio operis* di Labeone

Abstract

Roman law was influenced by Hellenistic concepts across the various periods of its development. This influence is reflected in the inclusion of Greek terms in the Latin texts of Roman jurists. The following article addresses Labeo's definition of *locatio conductio operis* and its interpretation in Romanist doctrine. The article explores Labeo's use of the terms ἀποτέλεσμα and ἔργον in his definition, offering a linguistic analysis of these lines that attends to the meaning of the Greek language usage. In conclusion, the significance of the Hellenistic influence here is grounded by reviewing some relevant aspects of Greek law and the circumstances under which Labeo wrote his text, which is cited in D. 50.16.5.1.

Nelle varie fasi del suo sviluppo, il diritto romano è stato particolarmente influenzato da concetti ellenistici. Questo fatto si riflette soprattutto nell'uso di termini greci nei testi latini dei giuristi romani. L'articolo tratta della definizione di Labeo di *locatio*

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conductio operis e della sua interpretazione nella dottrina romanistica. Sulla base di un'analisi linguistica e di una fonte non citata in precedenza in questo contesto, si cercherà di spiegare perché Labeo abbia utilizzato i termini ἀποτέλεσμα ed ἔργον a questo scopo. L'articolo si conclude con un breve sguardo al diritto greco e alle circostanze in cui Labeo scrisse il testo che è stato tramandato in D. 50.16.5.1.

Keywords: Roman law, Greco-Hellenistic law, *locatio conductio operis*, *apotelesma*, *ergon*, Labeo, Aristotle

Parole chiave: diritto romano, diritto greco-ellenistico, *locatio conductio operis*, *apotelesma*, *ergon*, Labeone, Aristotele

1. *Graeca* in Roman legal writings

The influence of 'Hellenistic' ideas and norm conceptions within Roman law is the subject of multiple topics of research, from work on the Greek-inspired composition of the XII Tables,¹ to studies of the infusion of Hellenistic concepts in late Roman law. But while the practice documented by Egyptian papyri indicates that a certain "Hellenization of the Roman law" had taken place as early as the time of Augustus,² a completely different picture is given by the legal sources.³ While we know of imperial constitutions that explicitly fought against the use of typical Greek institutions,⁴ there are legal sources that prove a willingness to adopt Greek-Hellenistic legal thinking into the official Roman imperial law.⁵

The Roman *iusperiti*, however, often used Greek terms to express themselves more precisely and comprehensibly. As regards the transmission of the *Digest*, in the *Vulgata* all Greek words and passages were de-

¹ Wenger 1953, 367 n. 94; Martini 1998, 409; Bretonne 2004, 79: "L'ispirazione greca delle XII Tavole è sicura", with specific examples in 80 n. 49. Cf. also the literature cited in Babusiaux 2014, 48 n. 72. More recently, however, there have been dissenting voices who suspect that there was an influence from southern Italy.

² Taubenschlag 1955, 46.

³ Martini 1998, 409.

⁴ A rescript of Diocletian C. 2.3.10 (the possibility to transfer property *nudis pactis*); a constitution of Constantine C. 8.46.6 (*apokeruxis*, a kind of expulsion of the children from the paternal *oikos*). The examples are taken from Martini 1998, 410, as well.

⁵ Kaser 1975, 9, who explains this adoption by the "Rücksicht auf die Bedürfnisse der nichtrömischen Reichsbevölkerung, die sich von der Gesetzgebung eine Regelung oder mindestens Beachtung ihrer einheimischen Rechtseinrichtungen und Rechtsvorstellungen erwarten durfte". Cf. *ibidem*, 8–10, with fundamental literature on the extremely vast topic of Hellenistic influence on Roman law.

leted or translated into Latin. The first to reinstate them was Alciatus. The later humanists made further efforts in this direction, but only the publication of the *Florentina*, the one manuscript containing Greek quotations, reveals the full extent of the original Greek quotations.⁶ Hans Erich Troje traces approximately sixty fragments in the *Digest* containing Greek expressions.⁷ Furthermore, a comprehensive list of *Graeca* is provided in Giovanni Bortolucci's *Index verborum Graecorum quae in Institutionibus et Digestis occurrunt*, dating from 1906, which cites more than a hundred texts containing Greek expressions.⁸

Switching to a foreign language in non-technical language use can indicate, on the one hand, an attempt to distance oneself from what is being stated. For example, the Emperor Augustus switched to Greek in his letters when he had something unpleasant to say to his addressee.⁹ On the other hand, the ability to use Greek within Latin texts was regarded as prestigious. Thus, Marcus Aurelius was complimented by his teacher Fronto for the way he distributed Greek quotations in his Latin writing.¹⁰

This two-sided understanding also applies to the intellectuals of the late Republic: they might use Greek terms when needed to cover a semantic field for which Latin did not offer an adequate expression; sometimes they tried to minimize the penetration of the foreign language by using various subtle techniques of assimilation.¹¹

The assumptions about why the jurists resorted to the *Graeca* are manifold: some think that the Greek expressions were intended for educated

⁶ Troje 1971, 12–18; Plisecka 2009, 63.

⁷ Troje 1971, *passim*.

⁸ Bortolucci 1906, *passim*. This index also contains documents from practice and imperial rescripts that were written in Greek and offers a list of quotations of classical Greek authors, such as Homer, Demosthenes and Plato.

⁹ Cugusi 1983, 85. See in the same chapter interesting remarks on the use of Greek in Cicero's letters: it seems to the author that "Cicerone ricorrendo al greco voglia riservarsi la possibilità di εἰρωνεύεσθαι, cioè di scherzare e insieme conservare un (sorridente) distacco da ciò che scrive", 84.

¹⁰ Wenskus 1995, 181.

¹¹ Schiavone 1971, 65, who in note 56 refers to the rejection of an uncontrolled use of Greekisms, cf. Cic. *or.* 49.164: "*Qua re bonitate potius nostrorum verborum utamur quam splendore Graecorum, nisi forte sic loqui paenitet. [...]*" and *de off.* 1.31.111: "*[...] Ut enim sermone eo debemus uti, qui innatus est nobis, ne, ut quidam, Graeca verba inculcantes iure optimo rideamur, sic in actiones omnemque vitam nullam discrepantiam conferre debemus*".

Romans, who were thus given a superior opportunity to understand the text. The Greek vocabulary offered the jurists a richer language than Latin alone, and thus they had a better chance of rendering certain meanings more precisely with Greek.¹² Others believe that some Greek words occur in the legal writings to point things out fully and perspicuously to those for whom these terms were more suitable, in other words, trying to reach Greek readers.¹³ Yet others suppose that the jurists used the Greek terms merely to boast and demonstrate their linguistic skill.¹⁴ Finally, some hold the view that for certain jurists, one might speak of real conceptual borrowings,¹⁵ not merely in the sense that the Greek terms and institutions were models for Roman law,¹⁶ but in the sense that an intrinsically Greek concept was inherent in the Greek word: something essential and untranslatable. The intent of the compilers of the *Digest of Justinian* was, however, different from that of the Roman jurists of the so-called classical period: it was not the educated Roman who was to be supported in better understanding, but the reader of Greek origin who obviously had a very good command of the Greek language, but not always of Latin.¹⁷

2. On D. 50.16.5.1

The jurist who refers to the *Graeca* in the *Digest* most frequently is Marcus Antistius Labeo. Each case of his use of Greek terms warrants attention and cannot be done away with “pensando a un innocuo gusto erudito”.¹⁸ Labeo’s famous passage about the concept of *synallagma* (Ulp. 11 *ed. D.* 50.16.19), which refers to the writings of Aristotle, is well examined.¹⁹ The fragment

¹² Marrone 1995, 173; Babusiaux 2014, *passim*, who underlines that most synonyms appear when explaining controversial issues and that the *iurisperiti* use the Greek terms in order to clarify and reinforce the factual argument, 57.

¹³ Bortolucci 1906, 356: “*nomina [...] iurisconsultorum [...], quibus aptiora ea verba essent*”. Plisecka 2009, 70 assumes that mainly the casuistic literature was addressed to a bilingual audience.

¹⁴ Martini 2001, 140 (“solo a fini esibizionistici”), who gives as examples the equalisation of *novalis* and νέασις (Gai. 7 *ed. prov. D.* 50.16.30.2), *venenum* and φάρμακον (Gai. 4 *leg. XII tab. D.* 50.16.236 pr.), *puer* and παῖδιον (Paul. 2 *Sab. D.* 50.16.163).

¹⁵ Martini 2001, 141.

¹⁶ This is the point of view of Collinet 1952, 328: “les institutions grecques, les termes grecques restent pour eux [les romains] des modèles”.

¹⁷ Marrone 1995, 173.

¹⁸ Schiavone 1987, 166; see also *idem* 1971, 65.

¹⁹ See, for all, Biscardi 1983, *passim*, with references to historical opinions; for more

that shall be taken into consideration here—Paul. 2 *ed.* D. 50.16.5.1—is less clear.²⁰ It reads:

Opere locato conducto: his verbis Labeo significari ait id opus quod Graeci ἀποτέλεσμα vocant, non ἔργον, id est ex opere facto corpus aliquod perfectum.

Michael Crawford translates: “By hire of *opus* Labeo says that by these words is meant that *opus* which the Greeks call *apotelesma* not that which they call *ergon*, that is, some completed product of an executed *opus*”.²¹ So, Labeo defines the word *opus* by using two Greek words to distinguish its meaning.

On this occasion, the question of the unity or trichotomy of the Roman *locatio conductio* is not addressed.²² As for the *communis opinio*, the conventional subdivision into *locatio conductio rei*, *operarum* and *operis* was completely unknown to Roman legislation, both to the so-called classical legislation and to the legislation of Justinian; however, it is recognized that the Roman jurists were aware of a distinction between the different forms.²³ The problem has not yet been resolved by doctrine.

This article focuses on the *locatio conductio operis*, widely understood as a “consensual contract whereby one party (the *conductor*) promised to produce a certain effect or result by his work, for example, to build a house or to make a dress for a recompense to be paid by the other party (the *locator*)”.²⁴

Incidentally, these private contracts must be clearly distinguished from public leases, in which one of the parties is the state or some other public entity.²⁵ As far as public contracts are concerned, one party is constituted by the public entities as *locatores*, the other by the private concessionaires

recent literature, cf. Babusiaux 2014, 56–57.

²⁰ Babusiaux 2014, 49: “Welche Zielrichtung Labeos Differenzierung zwischen ἔργον und ἀποτέλεσμα verfolgt, ist bis in die jüngste Literatur umstritten”.

²¹ Mommsen, Krueger and Watson 1985, 934.

²² It was one of the main topics of Romanist studies of the last century and the literature is abundant; an excellent overview of the discussion can be found in Fiori 1999, 1–10, indicating the most important literature of the twentieth century. In this regard see also Mayer-Maly 1956, 15–20; Kaser 1960, *passim*; Du Plessis 2023, 2291–2292.

²³ Fiori 1999, 8.

²⁴ Schulz 1951, 542.

²⁵ Cf. Biscardi 1960, 411. In his conclusion, however, he emphasizes “un sorprendente parallelismo fra locazioni pubbliche e private”, *ibidem*, 438.

as *conductores* (or *redemptores, coloni*)—either as single persons or as a group of people associated with each other.²⁶

Returning to the passage in question, regarding the definition of the private contract, we may state first of all that this text has never been considered interpolated.²⁷ It is difficult to say with what intention Labeo provided the definition in question.²⁸ Lenel considers the hypothesis that the definition was given with regard to leases ordered by municipal magistrates (“wird man § 1 des Fragments [...] mit ziemlicher Wahrscheinlichkeit auf die Verdingungen von Bauten und sonstigen Unternehmungen seitens der Municipalmagistrate beziehen dürfen”).²⁹ He supposes that for the actions arising from these contracts—in the interests of the impartial administration of justice—only the *praetor* was competent.³⁰ In his *Palingenesia*, Lenel cites the fragment in question among excerpts from the commentary *ad edictum*,³¹ in the section *De vadimonio Romam faciundo*, among the *Labeonis loci incerti* (“*Labeo laudator non indicato libro*”) as well as in Paul’s commentary *ad edictum*.³²

²⁶ Biscardi 1960, 428.

²⁷ Martin 1989, 37.

²⁸ In fact, we cannot know for sure if the text in its original version was meant as a definition. It might be put forward that Labeo intended to analyse the Greek terminology used in the transactions of his time in order to examine which terms corresponded to the Roman equivalent. By doing so he might have tried to avoid confusion about the nature of the contract as a result of the fact that a language other than Latin was used. In any case, we know that contracts in Greek were widespread throughout the Roman territory (see, e.g., Gai. 3.134: “[...] *chirografis et syngrafis* [...]”). But on the one hand the contents of these contracts do not necessarily have to reflect the law of the writings of the Roman *iurisperiti* (cf. Du Plessis 2023, 2293–2294, especially n. 24 with further literature), and on the other we know of Labeo’s predilection for *definitiones* (see *infra*, V.), which seems to argue for the hypothesis that the original text was meant as a definition.

²⁹ Lenel 1881, 43.

³⁰ *Ibidem*.

³¹ As far as the question of *praetoris urbani aut peregrini* is concerned, see Pernice 1873, 55–59. However that may be, the majority of Labeo’s quotations in the *Digest* is taken from his books *ad edictum*, see *ibidem*, 55.

³² Lenel 1889, 503 (Labeo 10), 556 (Labeo 384) and 968 (Paulus 105).

It is difficult to say why the *definiendum* is put in the ablative: *opere locato conducto*. As suggested by an anonymous reviewer, whom I wish to thank for the input, two hypotheses might be proposed: It could be a commentary in the form of a gloss or it might be the analysis of a term that is used in the ablative case in a legal formula (in the edict or in a formulary clause of a contract). Cannata 2014, 385 reads the words as

It cannot be said for sure in which context Paul quotes Labeo's definition.³³ In the *principium* of D. 50.16.5 he discusses the term *res*, but without quoting Labeo. The text of D. 50.16.5.1 follows without any transition. It has been suggested that Paul did not want to explain the contents of a *locatio conductio*, but that he intended just to clarify the meaning of a term recurring in legal language, or that he simply did not want to indicate the contents of the obligation arising from a *locatio conductio*, but wanted to highlight its effect, its result.³⁴ In any case, while the circumstances around the composition of the fragment, as well as the context of its quotation, remain uncertain, it can be said that no one has ever doubted that Labeo is its author.³⁵ The Justinianic compilers then included it in the title 50.16 *de verborum significatione* of the *Digest*.³⁶ In his article on this title, Marrone categorizes the relevant passage in the chapter "Intenti pratici: l'impiego di parole greche e il riferimento a talune peculiarità della lingua latina". In other words, he assumes that the compilers included the passage to appeal to readers stemming from the Greek-speaking world.³⁷

The history of the text's interpretation is noteworthy in its number of conflicting variations. In the beginning, in the *littera Bononiensis*, the fragment's opening was read as *opere legato conducto*, so glossators and commentators had singled out in the testimony a sense of a burden on the heir to directly or indirectly realize an *opus* and concluded that the heir or the *conductor operis* appointed by him could be considered to be discharged only when the *opus* was *perfectum*.³⁸ On the basis of the *auctoritas* of the

ablativus absolutus, but does not attach any further importance to this fact: "Labeone spiegava la locuzione *opus locatum conductum* che egli (o magari Paolo) leggeva evidentemente in un contesto nel quale essa compariva all'ablativo assoluto. Ma ciò non ha alcuna importanza." Scholars who commented on the passage, like Doneau, Cujas or Pothier, did not refer to the ablative (cf. Wubbe 1982, 248–249 with notes; Fiori 1999, 156 n. 90–94).

³³ Wubbe 1982, 243 n. 11.

³⁴ Pinna Parpaglia 1983, 148–149. Marrone 1995, 179 points out that the texts included in D. 50.16 were usually taken from specific contexts, and in this way a definition sometimes takes on a very general meaning it did not have at the beginning.

³⁵ Amirante 1959, 78. The only one who always refers to Paul in this context is Pinna Parpaglia 1983, 148–155. Incidentally, half of the texts in the *Digest* dealing with the notion of *opus locatum* were written by Labeo, cf. Amirante 1959, 79.

³⁶ This is an extensive title, comprising 246 fragments, 56 of which consist of several paragraphs: a total of 345 texts, see Marrone 1995, 169.

³⁷ Marrone 1995, 173–175.

³⁸ Fiori 1999, 155. The only exception seems to be Odofredus, who speaks of *opere*

littera Florentina, from the humanists onward, the reading *opere locato (et) conducto* was generally accepted.³⁹ Furthermore, in the manuscripts and traditional editions up to the middle of the sixteenth century, the Greek words were missing (*Graeca non leguntur*).

Much has been written on the fragment in question in the last one and a half centuries. The following pages offer a brief overview of some of the most important opinions.

August Bechmann takes the passage into account to underline his conviction that the *locator* had to give to the *conductor* the materials out of which the *opus* had to be done,⁴⁰ stressing the fact of handing over (*datur*) a thing.⁴¹

Theodor Mommsen assumes that the private *locationes* were derived from the public ones.⁴² He defines the *locatio operis*, which in his opinion arose from the ancient censorial contract (in which the municipality is the *locator*), as the assumption of burdens (“Übernahme von Lasten”), without going into further detail.⁴³

Bernhard Windscheid does not explicitly refer to D. 50.16.5.1 in his chapter on rent; he merely describes the *locatio conductio operis* as a special case of “Dienstmiethe” or rather as “Werkverdingung” which is aimed at the result of the work that has to be produced.⁴⁴

Ugo Brasiello is convinced that in this passage we find evidence that the Romans predominantly look at work as already accomplished, or rather, as the thing that is the object of work. *Opus* for them is not all the work done to

locato (et) conducto, ibidem.

³⁹ Fiori 1999, 156. The interpretation of the passage by the humanists as opposition between *opus factum* and *corpus perfectum* was replaced at the beginning of the nineteenth century by the antithesis *opus* as result vs. *opus* as activity. For some time, the so-called *locatio operis* was interpreted as *species* of the *genus locatio operarum*; only from Dernburg onwards was the *locatio operis* seen as autonomous contract besides the *locatio operarum*. D. 50.16.5.1 has since then been read by the majority of scholars as indicating an opposition between *opus* and *opera*; for an overview of the earlier interpretations, see Fiori 1999, 156–157. For the interpretations from the twentieth century onward, see *infra*.

⁴⁰ Bechmann 1876, 430: “Alles Opus hat also eine reale Basis, und zwar ist diese eine Sache des Vergebenden”.

⁴¹ Bechmann 1876, 431 n. 1 with a reference to Paul. 34 *ed.* D. 19.2.22.1: *Quotiens autem faciendum aliquid datur, locatio est*.

⁴² This view is now widely refuted, see Fiori 1999, 13 n. 3.

⁴³ Mommsen 1885, 268.

⁴⁴ Windscheid 1900, 671.

accomplish something, but is precisely the thing that is considered—even before it begins to be done—as already having come into being.⁴⁵ *Opus locatum* is “*ex opere facto corpus aliquod perfectum*”, in other words, a new *corpus*, a *quid* that the craftsman creates with his work. According to Brasiello, this does not include the washing done by the *fullo*, nor the mending done by the *sarcinator*, nor does it include the transport of goods or the training of a slave.⁴⁶ No one will say that the rinsed or mended tunica is a *corpus* that has become *perfectum* or that the slave who has been taught the art of baking bread has become a *corpus perfectum* because of this. The sources do not say *opus locare* in any of these cases.⁴⁷ The expression is used only when there is a new *corpus* to build, like, for instance, when there is a house (a *villa* or an *insula*) to construct, a statue to sculpt or rings or vases to be worked on. In other words, *locatio operis* is not the “location of work” in general, but the location of a certain type of work, the location of the *opus*, understood in the sense of *corpus*.⁴⁸

Luigi Amirante confirms Brasiello's conclusion, retracing the concepts earlier jurists had of the *locatio conductio*:⁴⁹ he underlines that our oldest legal testimony on the topic is handed down to us by Quintus Mucius (cited by Pomponius 9 *ad Q. Muc. D.* 34.2.34 pr.) and concerns *aurum, quod aurifici faciendum dedisset*. It seems that for Quintus Mucius a *res locata* could only be one that the *conductor* had to return in its identity.⁵⁰ For Alfenus, who seems to report a *responsum* of his teacher Servius Sulpicius Rufus,⁵¹ it was already possible to locate a *res* that the *conductor* had to process, to transform and return in its genus (*idem genus*) after having

⁴⁵ Brasiello 1927, 577.

⁴⁶ Brasiello 1927, 579. Contrary to this, Martini 1958, 19–20, who underlines the material aspect of the verb *locare* as well, reads in D. 50.16.5.1 that the *locator* gives (*locat*) to the *conductor* the thing, on which his activity/work has to be done; the sources express this by *locare vestem poliendam, vitulos pascendos, onus vehendum* etc.

⁴⁷ Brasiello 1927, 578–579.

⁴⁸ Brasiello 1927, 574, assumes to clearly read from the sources that “i Romani stentano a vedere una locazione là dove non vi sia la res che passi dal locatore al conduttore”.

⁴⁹ Amirante 1959, 65–78.

⁵⁰ Amirante 1959, 70. Cf. also Schiavone 1987, 125–126; Ferrary, Schiavone and Stolfi 2018, 252–255 (“sebbene nulla sia detto espressamente, doveva dunque trattarsi di una *locatio operis*, in cui oggetto del *facere* fosse proprio, esclusivamente o almeno tendenzialmente, l'*aurum datum*”, 252–253).

⁵¹ Amirante 1959, 68 prefers to relate the contents of D. 19.2.31 to Alfenus. But see, for opposing opinions, *ibidem* n. 9.

worked on it (Alf. 5 dig. a Paulo epit. D. 19.2.31).⁵² Despite the broadening of the concept of *res locata*, however, Alfenus was still attached to the idea that the *res* must be materially existing at the time of the conclusion of the contract.⁵³ Only Labeo expresses the concept of *opus locatum*. While Luigi Amirante holds that the “concetto di *opus locatum* sia stato opera di Labeone”,⁵⁴ in other words that he had invented it,⁵⁵ Max Kaser excoriates the achievements of Labeo, supposing that he was probably just the first to have given a definition of *opus locatum* (“kann ihn auch bloss als erster definiert haben”).⁵⁶

Amirante, who does not examine the significance of the Greek words, suggests that in Labeo’s definition it is not the material (gold, silver, marble and so on) that is the object of the *locatio*, but rather the *opus* in the sense of “la *res* esistente solo idealmente al momento della conclusione del contratto, ma che, fatta perfetta, cioè compiuta dall’artefice, sarà da questo consegnata al locatore”. The artisan is therefore responsible for the perfect

⁵² Amirante 1959, 71. Cf. also Schiavone 1987, 126; Plisecka 2011, 150. In his study about the notion of *locatio* in epigraphic evidence, Biscardi (1960, 411) refers to the legal sense of the term *locare* in the same way: the handing over of a thing to a person and the corresponding receipt of it by the *conductor* with the obligation to return it in its identity or transformed according to the will of the parties. It is important to note that this is valid for all variants of *locatio*: public as well as private. Thanks to the analysis of the epigraphic evidence, Biscardi states that in fact all the applications of the later consensual contract of hire (that can be traced back to the *duo genera rerum locatarum* [D. 19.2.31]) were preceded historically by a *locatio* in the field of relations between public and private entities (ibidem, 439).

⁵³ Amirante 1959, 77.

⁵⁴ Amirante 1959, 78. In a later article (and response to Kaufmann 1964) Amirante 1967, 56 specifies that Labeo did not intend to explain the meanings of *locare* and *conducere*, but of *opus* in this precise context, for short: the meaning of *opus locatum*, in the sense of a new and *perfectum corpus* that the *conductor* had to build and for the *perfectio* of which he was responsible. In connection with this notion another concept arises, that of *probatio operis*.

⁵⁵ Amirante 1959, 79. Schiavone (1987, 174) follows his view: “La citazione del giurista severiano riproduce, come sappiamo, un altro momento importante della riflessione teorica di Labeone: la formazione e la definizione del concetto di ‘opus locatum’”. See also idem 1971, 82.

⁵⁶ Kaser 1960, 232. The interpretation of Amirante is also strongly criticized by Thomas 1971, 674–675, who with regard to D. 50.16.5.1 stresses “it was the *res futura* which was *res locata* in a *locatio operis faciendi* involving the creation of a new thing” (ibidem, 675). Mayer-Maly 1959, 395, however, agrees with Amirante’s interpretation of the sources D. 19.2.31 and D. 50.16.5.1.

correspondence between the *opus locatum* and the *opus* that he delivers.⁵⁷

A different approach to the fragment is taken by Felix Wubbe. In his article on *opus* according to Labeo's definition, he gives a clear and precise exegesis of the fragment in question. He maintains that the problem consists in the fact that in this context the word *opus* does not have the same meaning as *ergon*—as is usually the case—but here, as to Labeo, *apotelesma* is the appropriate synonym. The usual reading of the text says that in the *locatio conductio operis* it is not the effort that counts, like in the *locatio conductio operarum*, but the result: the achievement. In short, in the common interpretation of the text ἀποτέλεσμα equals result, while ἔργον equals effort. So the sentence *id est ex opere facto corpus aliquod perfectum* is usually put in relation to the word *apotelesma*. This interpretation is, Wubbe writes, already clearly visible in the editions that add an *id est* after *apotelesma* and that try to find for their *id est* a paraphrase designating something even more perfect than the *corpus perfectum* in the original text.⁵⁸ This can be seen, for example, in an edition of the *Corpus iuris civilis*, dating from 1600:⁵⁹

Edition of the *Corpus iuris civilis* (Lyon 1600):

[...] quod Graeci ἀποτέλεσμα id est rem perfectam et absolutam vocant, non ἔργον opus, id est [...].

Two hundred years later, Berthelot replaces the term ἀποτέλεσμα with a string of verbs:⁶⁰

Les cinquante livres du Digeste ou des Pandectes de l'empereur Justinien, VII (Paris 1805):

Quand on dit que quelqu'un a loué ses services pour faire un ouvrage, Labéon dit qu'on doit entendre par ces termes ce que les Grecs appellant faire, achever, finir, et qu'on ne peut en être déchargé qu'après l'avoir rendu parfait.

Meanwhile Otto, Schilling and Sintenis relate the phrase *id est ex opere facto corpus aliquod perfectum* unequivocally to the term *apotelesma* and specify in a footnote that *ergon* means some work in general, and also an unfinished work.

⁵⁷ Amirante 1959, 80–81. This opinion is shared by Biscardi 1960, 442.

⁵⁸ Wubbe 1982, 244 with n. 14.

⁵⁹ This example is given by Wubbe 1982, 244 n. 14.

⁶⁰ Wubbe 1982, 244 n. 14 concedes that this is not really a translation of the passage and finds it interesting that the Greek term is translated by a sequence of verbs.

C.E. Otto, B. Schilling, C.F.F. Sintenis (Leipzig 1832, 1214):

Wenn ein Werk in Verding gegeben und genommen ist (*opere locato conducto*): Labeo sagt, dass mit diesen Worten ein solches Wort bezeichnet werde, welches die Griechen ἀποτέλεσμα—nicht ἔργον*—nennen, das heisst, eine durch die Verfertigung des Werkes entstandene vollendete Sache.

*D.h. ein Werk überhaupt, auch ein unvollendetes.

Contrary to all this evidence,⁶¹ Wubbe is convinced that the *id est* sentence explains *ergon* and that Labeo distinguishes between *opus* seen as “accomplished effort” (“effort accompli”) and its “possible material result” (“résultat matériel éventuel”).⁶² He concludes his study by stating that the *locator* can demand and the *conductor* must supply the *apotelesma*, the finished activity, the work as required (“l’activité finie, le travail ‘comme il faut’”). As the case may be, a *corpus perfectum* will result, but Wubbe is convinced that this is not the point. He underlines that the content of a *locatio conductio operis* is always a completed activity (and not a thing in the sense of *corpus*) that the *locator* may demand and that the *conductor* must provide.⁶³

A further reading putting the *id est* sentence into context is also possible: Martin, who assumes that Labeo had construction in mind when he formulated his definition,⁶⁴ suggests that the *id est* may “refer back to the last word of the main clause and recapitulate (in Latin) the conclusion he has demonstrated in the subordinate clause through the use of the Greek words”.⁶⁵

Close to Wubbe’s point of view is that of Paolo Pinna Parpaglia, who stresses that the interpretation offered by Brasiello and Amirante does not

⁶¹ And contrary to eminent authors who refer it to ἀποτέλεσμα as well, among whom Brasiello 1927, 577; Biscardi 1989, 170; Martini 2001, 146 (to mention a few).

⁶² He reads the sentence like this: “*opus* est ce que les Grecs appellent ἀποτέλεσμα, ce n’est pas ce que les Grecs appellent ἔργον, l’objet matériel qui résulte éventuellement de l’*opus factum*” (246).

⁶³ Wubbe 1982, 251.

⁶⁴ Martin 1989, 37. A clear presentation of the general principles of construction management can be found in Rainer 1992, 505–508.

⁶⁵ Martin 1989, 37 n. 66. She is followed by Müller 2002, 72, who feels that Labeo himself assumes the common definition of the notion *opus* as ἔργον. Müller emphasizes that the *probatio* of the commissioned work is decisive for the existence of an *apotelesma*, because only with acceptance does the *opus* become a *corpus perfectum* (ibidem, 73).

take into account the fact that such an *opus locatum* can be performed in *pedes mensurasve*. Pinna Parpaglia maintains that the concept of *opus* that Labeo wants to clarify in the passage of interest seems to be much closer to that of material activity directed toward the execution of a given work than to that of work as the result of this same material activity.⁶⁶ For Pinna Parpaglia, the hidden meaning of the parenthesis *ex opere facto* is that the *perfectio* of the *corpus*, in other words its gradual refinement, is ultimately what counts (“quello che conta, in definitiva, è la *perfectio* del *corpus*, ossia il suo graduale perfezionamento”). The contents of the contract are not so much the *res* as the activity that has to take place on or in the *res*.⁶⁷ In other words, the *locatio operis* is not the letting and hiring of a *corpus aliquod perfectum*, but the letting and hiring of an activity directed to a specific purpose.⁶⁸ In sum, Pinna Parpaglia assumes that the term *opus*—as soon as it refers to a *locatio conductio*—indicates a goal-oriented activity, a technical operation carried out with a view to achieving a certain result.⁶⁹

At times D. 50.16.5.1 has been interpreted from the perspective of the opposition between *opus / locatio conductio operis* and *opera / locatio conductio operarum*.⁷⁰ Roberto Fiori doubts this interpretation because it seems strange for Labeo to give a definition in which the *definiendum* is found in the definition itself with a different meaning: *opus locatum conductum* would be the *corpus perfectum* as result of *opus factum*, understood as something else, as the simple activity.⁷¹

Ulrike Babusiaux, in her article on emblematic code switching in legal writings, places the *id est* fragment among other examples of jurists borrowing from neighboring disciplines, in this case from grammar. In her view, the Greek synonyms serve to elaborate the variants of the meaning of the edictal term.⁷²

⁶⁶ Pinna Parpaglia 1983, 148.

⁶⁷ Pinna Parpaglia 1983, 150.

⁶⁸ Pinna Parpaglia 1983, 151, who refers to a passage in Cic. *Verr.* 2.130–145 as evidence of his point of view.

⁶⁹ Pinna Parpaglia 1983, 154.

⁷⁰ For example by Martini (1958, 19–21), Kaser (1971, 570), Biscardi (1989, 169–171), Martin (1989, 37), Plisecka 2011, 150–153, just to mention a few.

⁷¹ Fiori 1999, 157. He states that the interpretation that recognizes in D. 50.16.5.1 an opposition between *l.c. operis* and *l.c. operarum* results from the superimposition of conceptual patterns on Roman sources that emerged in the Romanist tradition, 181.

⁷² Babusiaux 2014, 49.

Remo Martini considers how the fragment suggests that the Greeks, with regard to what the Romans call *locatio conductio operis*, would have spoken of *apotelesma* rather than *ergon*. Martini finds this puzzling, because the inscriptions concerning the procurement of public works, as well as the Laws of Plato relating to works commissioned to artisans, constantly speak of *ergon* in order to allude to the result of work.⁷³ He confirms his skepticism “circa la pretesa labeoniana di farci credere che per i Greci ἀποτέλεσμα sarebbe stato il risultato dell’attività lavorativa” some years later.⁷⁴ However, in his final essay on the topic, Martini recognizes that the Byzantine interpreters reused the Greek term *apotelesma* not in purely terminological terms, but with regard to content (“in chiave sostanziale”) in order to refer to an essential characteristic of the contract. He assumes that Labeo had thought of a *misthosis* “avente sì ad oggetto un *ergon* ma in cui quel che rilevava [...] sarebbe stato il portare a termine l’opera, l’*apotelein*”.⁷⁵

3. Linguistic and philosophical perspectives on ἀποτέλεσμα and ἔργον

Let us now take a closer look at what the Greek words of the fragment mean—generally and not only in a legal sense.

Apotelesma stems from the verb *apotelein*, meaning “perfecting”, “bringing a work to completion”. The *Thesaurus Linguae Latinae* gives as equivalents of *apotelesma*: *effectio*, *effectus*, *eventus*, *exitus*. Liddell and Scott propose it means “full completion”, “event, result” and “finished product”.⁷⁶ But while the word’s meanings of “event, result” are well-attested, the sense of it as a “finished product” occurs only in Philo of Alexandria (at the beginning of the first century AD) and in a late commentator of Aristotle.⁷⁷

According to Schiavone,⁷⁸ the use of *apotelesma* was infrequent until the first century AD, but this is refuted by Biscardi.⁷⁹ Bretone stresses the

⁷³ Martini 1998, 411.

⁷⁴ Martini 2001, 146.

⁷⁵ Martini 2011, 417–418.

⁷⁶ Liddell and Scott 1996, 682–683.

⁷⁷ Cf. Martini 2001, 147.

⁷⁸ Schiavone 1987, 174; idem 1971, 83.

⁷⁹ Biscardi 1989, 164–166. It seems there is no real contradiction between the two

fact that the word does not appear at all in the *Nicomachean Ethics* nor in the rest of the surviving writings of Aristotle.⁸⁰ A rare example of its citation—and the only one with reference to Aristotle—can be found in his apocryphal work *Περὶ κόσμου*⁸¹ (*De mundo*) 5.397a 14, where it means “full completion”.⁸²

Arnaldo Biscardi provides a very close and detailed analysis of the term *apotelesma*.⁸³ Biscardi writes that interpretations of the old doctrine (an additional note to the *Glossa* and in Heineccius) show that ἀποτέλεσμα differs from ἔργον in the way that *opus* or *ergon* alludes to the activity deployed by a person who intends to achieve a certain definite result through his work, while *apotelesma* expresses the effect that is attained through the work done. Much more common, however, is the verb from which the noun derives and from which it takes its semantic field: ἀποτελεῖν.⁸⁴ Biscardi summarizes the results of modern lexica as follows: All verbs that have their roots in τελ- allude to an “attività di chi porta a compimento alcunché, nel disbrigo di un certo lavoro o di un certo negozio, donde il senso di perfezionamento, di ultimazione, di risultato raggiunto dei sostantivi che indicano la conclusione integrale dell’opera eseguita o il saldo di un paga-

scholars, since Schiavone refers only to the use of the noun ἀποτέλεσμα, while Biscardi mentions numerous examples of sources where a word appears that derives from the root τελ- (but not necessarily the noun). This is also true for the two central quotations of this article, see *infra*. Biscardi’s statement that the difference between the two *termini tecnici* was absolutely clear (“limpidissima”) in every-day spoken language is doubtful, because the sources he mentions are mainly philosophical or medical (Biscardi 1989, 169 and 165–166, see *infra* note 85).

⁸⁰ Bretone 1984, 188. That is also the reason why he does not identify an Aristotelian influence in our specific case, apart from the fact that there is no thematic connection between D. 50.16.5.1 and the passages of the *Nicomachean Ethics* cited; he perceives, however, a derivation as far as the definition of *metus* is concerned but considers the parallel between the Aristotelian *synallagma* and the Labeonian *contractus* to be illusory (*ibidem*, 188–189).

⁸¹ This work was written by the peripatetic Boethus of Sidon, a disciple of Andronicus of Rhodes between the second half of the first century BC and the first century AD and then inserted in the Aristotelian *corpus*, Adorno 1972, 163–164.

⁸² Schiavone 1971, 83. The specific context is the uninterrupted succession of days and nights for the integral fulfilment, i.e. for the realisation, of the month and of the year: εἰς μηνὸς ἀποτέλεσμα καὶ ἐνιαυτοῦ.

⁸³ Biscardi 1989, 163–171. The following lines constitute a sort of résumé of his article.

⁸⁴ Schiavone 1987, 174; *idem* 1971, 83.

mento dovuto”.⁸⁵

The semantic field of *ergon*, which is a much more common word than *apotelesma*,⁸⁶ corresponds to *opus*, so it means “work, deed”, “thing, matter”, “that which is made”. Even the phrases *érgon estín* and *opus est* have the same meaning. Of this correspondence we indeed have a certain proof in a passage by Plutarch:

Plut. *Rom.* 16.6:

ὀπίμια δὲ τὰ σκῦλα, φησὶ Βάρρων, καθότι καὶ τὴν περιουσίαν ὅπεμ λέγουσι. πιθανώτερον δ' ἂν τις εἴποι διὰ τὴν πράξιν: ὄπους γὰρ ὀνομάζεται τὸ ἔργον.⁸⁷

And such spoils were called “opima”, because as Varro says, “opes” is the Roman word for richness; but it would be more plausible to say that they were so called from the *deed of valour* involved, since “opus” is the Roman word for *deed* or *exploit*.⁸⁸

In the *Codex* of Justinian and in his *Novellae* the word *ergon* appears many times.⁸⁹ In the legal Byzantine texts, the term *opus* is always translated as ἔργον and in the commentary of the *Basilika* to the text in question it is stated that in the *locatio* of an *opus* (ἔργον) it is necessary to pay attention to the result (ἀποτέλεσμα).⁹⁰

⁸⁵ Examples of this meaning can be found, e.g., in the historiographers, in the language of Stoic philosophy, in treatises on medicine, in the *corpus* of Hermetic writings of neo-Platonic inspiration, and so on; ἀποτέλεσμα may also allude to artefacts, i.e. things that were subjected to careful and refined processing, “perfect products”. Even the modern Greek language conserves the core value of the noun ἀποτέλεσμα, Biscardi 1989, 165-166. And every time the *Novellae* use the noun ἀποτέλεσμα, in the parallel Latin version it has its correspondence in *effectus*, see *ibidem*, 170 with references and further literature. In the *Codex* of Justinian neither the noun *apotelesma* nor the verb *apotelein* appear, cf. Mayr and San Nicolò 1925, 38. However, we do encounter both words in his *Novellae*, cf. Bartoletti Colombo 1986, 268–269.

⁸⁶ Cf. Wubbe 1982, 244.

⁸⁷ Pinna Parpaglia 1983, 159 refers to this passage in order to underline his point of view. By stressing that in this text the Latin word *opus* “indicante chiaramente un’operazione tecnica, un lavoro indirizzato ad uno scopo, viene identificata con l’ἔργον” he seeks to highlight that *ergon* does not indicate a pure and simple work activity, but rather an activity or energy deployed in view of an end, “in breve, una azione vera e propria precisamente indirizzata e finalizzata”.

⁸⁸ Translation by Perrin 1982, 139.

⁸⁹ Cf. the passages listed in Mayr and San Nicolò 1925, 172 and in Bartoletti Colombo 1987, 1152–1153.

⁹⁰ *Bas.* 2.2.5.1 (Scheltema 1955, 21): ἐν τῇ τοῦ ἔργου μισθώσει τὸ ἀποτέλεσμα

Aldo Schiavone assumes that “Labeone con il suo ‘quod Graeci ... vocant’ avesse voluto alludere non a una accezione comune della parola nell’uso dei parlanti dell’area ellenistica, ma a una specifica posizione concettuale a lui ben presente”.⁹¹ This view is shared by Anna Plisecka.⁹²

In other words, Labeo does not refer here to the common language, which seems to be quite unprecise, but rather to the exactly defined concepts of Aristotelian philosophy. In doctrine, the two following passages of the *Nicomachean Ethics*, in which the contrast between these terms⁹³ appears very clearly, are usually cited in this regard:⁹⁴

Aristot. *Eth. Nic.* 2.6.2 (1106a.15–17):

ῥητέον οὖν ὅτι πᾶσα ἀρετή, οὗ ἂν ἦ ἀρετή, αὐτό τε εἶ ἔχον ἀποτελεῖ καὶ τὸ ἔργον αὐτοῦ εἶ ἀποδίδωσιν.

Aristot. *Eth. Nic.* 6.12.6 (1144a.7–8):

ἔτι τὸ ἔργον ἀποτελεῖται κατὰ τὴν φρόνησιν καὶ τὴν ἠθικὴν ἀρετήν.

In the first passage Aristotle talks about *arete* and says: “It must then be premised that all excellence has a twofold effect on the thing to which it belongs: it not only renders the thing itself good, but it also causes it to perform its function well”.⁹⁵ Scholars translate the relevant terms in different ways: in this sentence *ergon* means “function” or “result of the activity”, since the quality of work done is perceived more in its result than in the activity itself;⁹⁶ others have simply interpreted *ergon* as “work”,⁹⁷ while *apotelein* is translated as “rendered perfect”.

θεωρεῖται. Cf. in this regard Martini 2011, 416–417.

⁹¹ Schiavone 1987, 173. See also idem 1971, 80.

⁹² Plisecka 2009, 67; eadem 2011, 151. She reads the words *corpus perfectum* in the sense that “l’oggetto della *locatio operis* poteva essere costituito esclusivamente da una cosa materiale” (152–153).

⁹³ It should not go unmentioned that in those passages it is not the noun *apotelesma* that occurs, but rather its corresponding verb *apotelein*.

⁹⁴ Two other very famous examples of borrowings from the *Nicomachean Ethics* found in Labeo’s *libri ad edictum* are the concepts of *synallagma* (Ulp. 11 *ed. D.* 50.16.19: “contractum” as “*ultra citroque obligatio*”) and *metus* (Ulp. 11 *ed. D.* 4.2.5: “*timor maioris malitatis*”), cf. Schiavone 1971, 71–87 and 94.

⁹⁵ Translation: Rackham 1926, 89. Schiavone 1971, 83 translates: “Si deve dunque dire [...] che ogni virtù, a seconda dell’oggetto cui appartiene, lo perfeziona (*ἀποτελεῖ*) e rende buono il suo lavoro (τὸ ἔργον)”.

⁹⁶ Fiori 1999, 159.

⁹⁷ Schiavone 1987, 175.

The second fragment reads: “Also Prudence as well as Moral Virtue determines the complete performance of man’s proper function”.⁹⁸ Again we have *ergon* in the sense of “function” or “result of the activity” or “(human) work”; and *apoteleitai* in the sense of the complete(d) performance.⁹⁹

Ergon is in fact one of Aristotle’s key concepts. However, he did not explicitly introduce the concept of *ergon*, but he understands it as Plato had explained it at the end of Book 1 of his *Politeia*, demonstrating in this way once more continuity with what others had thought.¹⁰⁰

After first posing the question of *telos*, the good, and *eudaimonia* in *Nicomachean Ethics* 1.6, Aristotle suggests that the question of the highest human goal can perhaps best be answered by referring to the *ergon*, that is, the task or function of the human being.¹⁰¹ Professions and general roles have an *ergon* associated with them: a specific task by which they are precisely defined. The same is true of bodily organs. For example, the cobbler has the task of making shoes; the eye has the task of seeing. A certain meaning of the word “good” is implied by this concept of *ergon*, in so far as one can perform the task in question either in a merely mediocre way or in an excellent way. Now, if human beings are possessors of a role, and human organs have a function, then the human being as a whole—the human being as a human being—also has an *ergon*. Aristotle thus assumes a given function or task of the human being and calls this *ergon*. By the *ergon* of the human being, the good life is now to be determined in such a way that it consists in the excellent accomplishment of the human task.¹⁰²

As we have seen, in doctrine the relevant terms are translated and interpreted in different ways. Schiavone concludes from the mentioned texts of the *Nicomachean Ethics* that “*ergon* è lo sforzo fisico o intellettuale; *apotelesma* individua il risultato (materiale) compiuto attraverso il lavoro”.¹⁰³ With regard to these fragments Roberto Fiori argues that both *ergon* and *apoteleitai* take their common meanings.¹⁰⁴ Based on the aforementioned

⁹⁸ Translation: Rackham 1926, 367. Schiavone 1971, 83 renders: “L’opera umana [τὸ ἔργον] si porta a compimento (ἀποτελεῖται) attraverso la saggezza e la virtù etica”.

⁹⁹ Fiori 1999, 159: The virtues do not lead from activity to result but guarantee that the result is good. Schiavone 1987, 175.

¹⁰⁰ Stemmer 2012, 70.

¹⁰¹ Wolf 2010, 84–85.

¹⁰² Ibidem, 85.

¹⁰³ Schiavone 1987, 175; see also idem 1971, 83.

¹⁰⁴ Fiori 1999, 159.

passages, he concludes that the opposition between *ergon* and *apotelesma* is not between “(material) activity” and “(material) result of activity” but the opposition between “result” and “good, positive result”.¹⁰⁵ In his very precise exegesis of D. 50.16.5.1, which takes into consideration mainly linguistic aspects, Fiori assumes that ἀποτέλεσμα can be translated as *corpus perfectum* and ἔργον as *opus factum*, thus returning to the reading of the humanists.¹⁰⁶ He identifies a *definitio per genus et speciem* that does not point so much to a “definizione ‘reale’, ossia ‘di essenza’”, but more to a “definizione ‘nominale’, volta all’*explicatio* dell’espressione ‘*opus locatum conductum*’”.¹⁰⁷ In other words, he assumes that in this passage Labeo simply wanted to show that in a *locatio conductio faciendi* it is necessary that the product of the activity of the *conductor* corresponds to the agreement of the parties and that it does not suffice if he has just manufactured any ‘product’.¹⁰⁸

Instead of arguing in favor of or against one of the interpretations, another *opus* of Aristotle that has never been taken into account in the interpretation of D. 50.16.5.1 should be added to the discussion: his *Eudemian Ethics*.

Aristot. *Eth. Eud.* 2.1219a13-18:

ἀλλὰ τὸ ἔργον λέγεται διχῶς, τῶν μὲν γὰρ ἔστιν ἕτερόν τι τὸ ἔργον παρὰ τὴν χρῆσιν, οἷον οἰκοδομικῆς οἰκία ἀλλ’ οὐκ οἰκοδόμησις καὶ ἰατρικῆς ὑγίεια ἀλλ’ οὐχ ὑγιάνσις οὐδ’ ἰάτρευσις, τῶν δ’ ἡ χρῆσις ἔργον, οἷον ὄψεως ὄρασις καὶ μαθηματικῆς ἐπιστήμης θεωρία. ὥστ’ ἀνάγκη, ὧν ἔργον ἡ χρῆσις, τὴν χρῆσιν βέλτιον εἶναι τῆς ἕξεως.

But the term ‘work’ has two meanings: for some things have a work that is something different from the employment of them, for instance the work of architecture is a house, not the act of building, that of medicine health, not the process of healing or curing, whereas with other things their work is the process of using them, for instance the work of sight is the act of seeing, that of mathematical science the contemplation of mathematical truth. So

¹⁰⁵ Fiori 1999, 159: “[...] dovremmo concludere che che l’opposizione tra ἔργον e ἀποτέλεσμα non sia tra ‘attività (materiale)’ e ‘risultato (materiale) dell’attività’, ma tra ‘risultato’ e ‘risultato buono, positivo’”.

¹⁰⁶ Fiori 1999, 163–164. Plisecka 2011, 152, however, does not see the point in using categories such as *opus factum* and *opus perfectum* that do not derive directly from the text and calls Labeo’s definition tautological, if interpreted in the way Fiori suggests.

¹⁰⁷ Fiori 1999, 165; see also 365 n. 14.

¹⁰⁸ Fiori 1999, 164–165.

it follows that with the things whose work is the employment of them, the act of employing them must be of more value than the state of possessing them.¹⁰⁹

In the *ergon*-argument of the *Eudemian Ethics*, Aristotle states that the *ergon* can be an activity, or the result of such an activity: the product detached from the activity that produced it. Thus, the *ergon* of architecture is the houses, not the building of the houses; the *ergon* of medicine is the health of the patients, not the medical treatment; the *ergon* of shoemaking is the shoes, and so on. In all these cases, *ergon* cannot be translated as “function”, but it simply means “result”.¹¹⁰ If we understand *ergon* in this sense, Labeo’s *id est* sentence of D. 50.16.5.1 may actually also refer to the term *ergon* (which would confirm Wubbe’s interpretation). But this is a question to which no definite answer can be given.

The *communis opinio* is to read *apotelesma* as “result, full completion” and *ergon* as “activity, work, labor, job”.¹¹¹ However, some Romanist scholars already pointed out that *ergon* means not only “activity”, but the “result” of the activity.¹¹² So the following hypothesis might be offered: since it can be assumed that Labeo was perfectly aware of this double meaning of *ergon* (activity as well as result), he might have chosen the other word—*apotelesma*—in his definition of the *locatio conductio operis* to be as clear and precise as possible, emphasizing his acceptance of the multiple connotations of the terms.

One additional idea might be offered here: perhaps Labeo included the Greek words in his famous definition owing to the fact that the contract of letting and hiring was classified as one arising from the *ius gentium* and was therefore also available to non-Roman citizens.¹¹³ He was addressing an audience that understood both languages and his use of Greek terms attempted to enable a better understanding of his definition.¹¹⁴

¹⁰⁹ Translation by Rackham 1961, 237.

¹¹⁰ Cf. Stemmer 2012, 71.

¹¹¹ Just to mention a few who do so: Longo 1921, 129; Brasiello 1927, 577; Martin 1989, 37; Müller 2002, 72–74; Plisecka 2011, 150. A special case is Kreller 1950, 361, who translates ἔργον as “der bearbeitete Gegenstand” (the processed item), an opinion that cannot be shared after all that had been said before.

¹¹² Fiori 1999, 158 for all, with further reading in n. 102.

¹¹³ Cf. Biscardi 1960, 441; Du Plessis 2012, 7; Du Plessis 2023, 2294.

¹¹⁴ Wubbe 1982, 244 is also convinced of this fact (“Labéon s’adresse à un public qui comprend les deux mots”).

4. Greek-Hellenistic law

A brief look at what the rules of the ‘work contract’ were like in ancient Greece completes the overall picture. As far as life in the community was concerned, “the first duty of an Athenian man was to support himself and his family, whether by producing food on their own farm or by some other means. There was in fact a law against idleness”.¹¹⁵ This *nomos argias* was supposed to fight unemployment and poverty, both of which represented a risk for public order. Since the state of inactivity was related to an inclination towards criminality, the lawgiver’s purpose seems to have been that of making the citizens productive, also by giving importance to the various crafts.¹¹⁶ One possibility for fulfilling this obligation of being productive lay in completing a contract for work (μίσθωσις). As far as Greek law is concerned, there are contradictory opinions about the nature of this contract to be found in doctrine.¹¹⁷ On the one hand, Biscardi thinks that the contract of *misthosis* was perceived by the Greeks as uniform, even at the end of its development—despite the diversity of its possible applications—¹¹⁸ and he distinguishes it from the contract of tender (“contratto di appalto”).¹¹⁹ On the other hand, Martini states that in classical Athens there were two different types of work contracts, comparable to those in Roman law: on the one hand there were the μισθωτοί who were paid per day, and on the other there were those who were paid with sums corresponding to certain amounts of

¹¹⁵ MacDowell 1978, 155. Normally, an Athenian was free to choose his own method of making a living, provided that it was an honest one.

¹¹⁶ Cecchet 2016, *passim*. This law, whose meaning and implications are controversial, was probably introduced in the context of the sixth-century agrarian legislation. In the beginning it was aimed at preserving public land as well as the property of the *oikos* and it punished those who neglected agricultural work. In the classical period the *nomos* widened its field of application and was interpreted as a regulation against unemployment and begging, cf. *ibidem*.

¹¹⁷ The expression ‘Greek law’ shall be intended in the sense of legal experience of the Greek-Hellenistic world in its entirety, from Mycenaean origins to the threshold of Byzantine law, cf. Biscardi 1979, 2.

¹¹⁸ Biscardi 1982, 153–154 lists the following examples: to make available against payment (“messa a mercede”) one’s own person, a slave, a herd, a building, etc., in the way that the other party derives an advantage from the use of the movable or immovable property, from the labour or from the services of the worker. He also names the cases of the handing over of an object that shall be restored or of some material for building a house, a ship and the like.

¹¹⁹ Biscardi 1982, 154.

work done and who were called *μισθωταί*. Between these two categories Plato seems to delineate a strong difference on the social level.¹²⁰ While building contracts (for temples, theaters, city walls, and so on) have been preserved in inscriptions, mostly in the form of public building tenders, private work contracts are mainly preserved in papyri.¹²¹

As for the private work contract, the parties are named as the one who ‘entrusts’ work (*ἐκδούς* or *ἐκδιδόν*) and the one who assumes it (*ἀναιρούμενος* [τὸ] ἔργον). These terms are mentioned by Plato and confirmed in other sources, all of which speak of ἔργον that had to be realized within a given period of time.¹²² On this matter, Martini refers to D. 50.16.5.1, stating that we can see Labeo was speaking of *ἀποτελεσμα* pointedly, if we take into consideration that Plato¹²³ used the verb *ἀποτελέω* repeatedly in his *Nomoi*:¹²⁴

Plat. *Nom.* 11.920b:

οὔτοι δὴ πάντες χώραν καὶ δῆμον θεραπεύοντες διατελοῦσιν, οἱ μὲν ἄρχοντες τῶν κατὰ πόλεμον ἀγώνων, οἱ δὲ ὀργάνων τε καὶ ἔργων ἀποτελοῦντες γένεσιν ἔμμισθον.

These all continually serve both the country and the people: the one class are leaders in the contests of war, the others produce for pay instruments and works.

¹²⁰ Martini 1997, 49–50. While he speaks with little respect for the *μισθωτοί* (not being worth being called companions because of their poor mental capacity), Plato compares the artisans, *μισθωταί*, to *demiourgoi*/military commanders, and praises both for their service to the country and the people. The artisans who are sacred in Hephaestus and Athens carry out various jobs (*ἔργα*) for a fee (*μισθός*) in addition to undertaking the production of tools and implements (*ὄργανα*), thus organizing the people’s lives with their arts (*τέχναι*); the military commanders who are sacred in Ares and Athens on their part protect the productions of the former with their defensive arts, see quotations in *ibidem*, 49 n. 5 and 6. Cf. also the comments on this topic in Thür 1984, 489–491.

¹²¹ Thür 2000, 273. For detailed facts on the contract between the *polis* as awarding authority (“Bauher”) and the private building contractors, cf. Thür 1984, *passim*.

¹²² A fact from which we can deduce that the work necessarily had to be done with full autonomy, Martini 1997, 51 with references. We are also informed that a remuneration (*μισθός*) was agreed for this work, commensurate with the value of the work, or maybe with the individual capacity of the artisan. And a written form was necessary: Plato does not mention it, but it is referred to in other sources, cfr. *ibidem*.

¹²³ Apart from the building inscriptions, this is the only source that describes the ancient Greek contract of work in more detail, cf. Thür 1984, 487.

¹²⁴ Martini 1997, 51 n. 13. Thür 1984, 487 n. 46 assumes that Plato is talking in *Nom.* 11.920e–921d of a “Werklieferungsvertrag”.

Plat. *Nom.* 11.921a:

ἂν δὴ τις δημιουργῶν εἰς χρόνον εἰρημένον ἔργον μὴ ἀποτελέσῃ διὰ κάκην, μὴδὲν τὸν βιοδότην θεὸν ἐπαιδεσθεὶς, ἡγούμενος ὡς οἰκεῖον συγγνώμονα εἶναι θεόν, οὐδὲν τῷ νῶ βλέπων, πρῶτον μὲν δίκην τῷ θεῷ ὑφέξει, δεῦτερον δὲ ἐπόμενος αὐτῷ νόμος κείσθω.

If any craftsman fail to execute his work within the time named, owing to baseness –he not revering the god who gives him his livelihood, but deeming him (in his blindness of mind) to be merciful because of his kinship, –he shall, in the first place, pay a penalty to the god, and, secondly, there shall be a law enacted to suit his case.¹²⁵

On the papyri of Graeco-Roman Egypt, Du Plessis writes they “cannot necessarily be taken to reflect ‘Roman’ practice as discussed by the Roman jurists in their works”.¹²⁶ But the mentioned passages of Plato give a hint: although in his *Nomoi* as well as in the epigraphic sources *ergon* always refers to the object of the contract, Plato stresses at the same time that the crucial thing is to complete the work (*apotelein*). This corresponds perfectly with Labeo's words: *corpus aliquod perfectum*.¹²⁷

5. Labeo and his open mindset

To conclude, a deeper insight into the circumstances in which the fragment D. 50.16.5.1 was written shall be offered: as established above, Labeo almost certainly wrote these lines. Labeo,¹²⁸ born in Ligures Baebiani (near today's Circello) circa 55 BC, was the son of the jurisconsult and Caesar's opponent Pacuvius Antistius Labeo. A disciple of Trebatius, Labeo probably did not receive his legal training in Rome and started to *respondere* at a very young age. Thanks to Pomponius we know that Labeo spent six months a year in Rome *cum studiosis*, while he withdrew from the *Urbs* for the rest of the year to devote himself to writing.¹²⁹ As a *iusperitus* and founder of the Proculeian school, he fought for human dignity and against

¹²⁵ Translations by Bury 1984, 415.

¹²⁶ Du Plessis 2012, 7; see also idem 2023, 2293–2294.

¹²⁷ Cf. Martini 2011, 418.

¹²⁸ About his life and works see, among many others, Pernice 1873, 7–92; Guarino 1955, *passim*; Kunkel 1967, 32–34 and 114; Schiavone 2017, 301–328.

¹²⁹ Pomp. *lib. sing. ench.* D. 1.2.2.47: [...] *et totum annum ita diviserat, ut Romae sex mensibus cum studiosis esset, sex mensibus secederet et conscribendis liberis operam daret. [...]*

the political oppression, however carefully disguised, of Augustus. He declined to accept office when Augustus offered him the consulship whereby he would have become *consul suffectus*.¹³⁰ When Labeo died between 15 and 22 AD, he left many writings, among which were the *libri ad edictum*, *Pithana*, *Epistulae* and *Responsa*.

The period in which Labeo was writing encompassed the beginning of the Principate, a time when intellectual work was first seen in its intrinsic specificity as a genuine alternative to political engagement turned outwards toward the general public. It is the era when the first ‘intellectuals’ of Rome were formed, who, at least temporarily, devoted themselves to study ‘professionally’. This was a time that saw the increasing detachment of the individual branches of knowledge from their immediate practical applications and theoretical developments were encouraged. For these purposes, an education in Greece (something the Roman elite had already been undertaking for several generations) provided a vast stock of methods and contents for the intellectuals of Labeo’s period to fall back on.¹³¹ Labeo is one of the most illustrious examples of this approach to thinking and writing.¹³²

¹³⁰ Pomp. *lib. sing. ench.* D. 1.2.2.47: [...] *Labeo noluit, cum offerretur ei ab Augusto consulatus, quo suffectus fieret, honorem suscipere, sed plurimum studii operam dedit.* [...] Labeo was an opposer of the regime of Augustus for all his life, see Bretonne 1984, 129–184. To the Augustans and their spokesman Capito, Labeo’s *libertas* seemed irrational and exorbitant (ibidem, 19; cfr. Gell. 13.12.3–6). See also Pernice 1873, 14–17.

¹³¹ Schiavone 1971, 46–48; idem 2017, 301–306, 303: “[...] il formarsi di un ceto ‘professionale’ di giuristi come corpo sociale distinto”. It can be taken for granted that Cicero possessed the works of Aristotle (edited by Andronicus of Rhodes) in his library. Trebatius, a friend of Cicero and Labeo’s teacher, discovered the *Topica* and owing to Trebatius’ difficulties in understanding them, Cicero wrote a summary of the Aristotelian *opus* and dedicated his *Topica* to the jurist. Schiavone draws the conclusion that if Trebatius had read these works, then brilliant minds such as Servius and Labeo must have dedicated themselves all the more to the reading and study of Aristotle’s works, Schiavone 1987, 174; idem 1971, 81–82. On the availability of the writings of Aristotle in Rome in the first century BC, see also Moraux 1973, 36–44; Bretonne 1984, 182. For literature on the reception of Greek philosophy in the *scientia iuris* at the end of the Roman republic see, among many others, Costa 1892, passim; Kübler 1934, passim, who speaks of a “förmliche Einwanderung griechischer Philosophen in Rom” (p. 82) and underlines that “die römische Rechtswissenschaft ihr Dasein der Befruchtung durch die griechische Philosophie verdankte” (p. 98); Senn 1934, passim; Stroux 1934, passim, who refers to the three Greek disciplines that exerted a major influence on Roman jurisprudence: grammar, philosophy, and rhetoric; Wieacker 1988, 618–630 and 639–662; and especially Giltaij 2016, passim.

¹³² Of course it must be admitted that the identification of the sources for Labeo’s culture

Labeo's preference for *definitiones*¹³³ might have its origin in Servius. It is highly probable that Labeo knew Servius' writings, perhaps because of the wide circulation of Servius' writings in the legal circles of the late Republic, or even because of direct contact between the two jurists.¹³⁴ Schiavone suspects that Labeo's attempts to define certain terms derive from Servius' line of thought, with the intention of establishing a connection to the previous effort and developing what had been worked out—no longer on a purely 'logical' level, but on a normative foundation.¹³⁵

Labeo's many innovations were indicative of the quality of his genius and the trust he had in his own learning, which had drawn heavily on other branches of knowledge. As the following texts confirm, Labeo was trained in many disciplines:¹³⁶

Pomp. *lb. sg. ench.* D. 1.2.2.47:

[...] hi duo primum veluti diversas sectas fecerunt: nam Ateius Capito in his, quae ei tradita fuerant, perseverabat, Labeo ingenii qualitate et fiducia doctrinae, qui et ceteris operis sapientiae operam dederat, plurima innovare instituit.

Gell. 13.10.1:

[...] ceterarum quoque bonarum artium non expers fuit, et in grammaticam sese atque dialecticam litterasque antiquiores altioresque penetraverat Latinarumque vocum origines rationesque percullerat, eaque praecipue scientia ad enodandos plerosque iuris laqueos utebatur.

Perhaps it is legitimate to deduce Labeo's penchant for definitions—which were of the utmost importance for an *ars* that was only just beginning to emerge—from his extra-legal studies¹³⁷ since the prevailing philosophi-

and way of thinking can only produce hypothetical answers.

¹³³ Cf. Kunkel 1967, 203.

¹³⁴ Thanks to Pomponius we know that Labeo's father, Pacuvius Antistius Labeo, was a disciple of Servius Sulpicius Rufus, cf. Pomp. *lib. sing. ench.* D. 1.2.2.44.

¹³⁵ Schiavone 1971, 56–57.

¹³⁶ Kreller 1950, 361 calls him “der universal gebildete Labeo”; Biscardi 1989, 167 designates him “spirito fervido e geniale”, and Martini 2011, 418 qualifies him “il grande giurista classico”.

¹³⁷ Pernice 1873, 25. Pernice divides Labeo's definitions into two groups: 1. Expressions that are frequently used in legal orders or private declarations of intent, for example *fugitivus*, *negotiator* or *scaena*. He also assigns D. 50.16.5.1 to this group (*opus*). In this case, these are not mere word explanations, but “Präzisierungen wirklicher Rechtsbegriffe”; 2. Expressions that involve determining the meaning *in abstractis*, like for example *dolus malus*, *ibidem*, 26.

cal system exerted an indirect influence also on legal doctrine by affecting the period's entire way of thinking.¹³⁸ So maybe this helps to explain why Labeo—in contrast with other jurisconsults such as Ateius Capito, who preserved the line that had been handed down to him—chose to use the Greek terms in his definition of *locatio conductio operis*.¹³⁹ For Labeo, including the Greek terms was presumably not just an intellectual game,¹⁴⁰ but an attempt to bring into discussion the Greek-philosophical notions¹⁴¹ familiar to his educated readers.¹⁴²

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¹³⁸ Pernice 1873, 31.

¹³⁹ Cf. Plisecka 2009, 67.

¹⁴⁰ Cf. Babusiaux 2014, 58: “Diese Spielerei ist [...] in den Differenzierungen von opus bei Labeo [...] erkennbar”.

¹⁴¹ By doing so Labeo was not an exception: the use of the Greek-philosophical language is quite common also in the letters of Cicero, one of Labeo's contemporaries, see Cugusi 1983, 87 with examples in note 231.

¹⁴² Cf. Schiavone 1971, 66, who assumes that behind the generic phrase “*quod Graeci ... vocant*”, “si nascondano ricordi labeoniani di testi greci ben precisi, e non ignoti ai lettori colti del giurista”.

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