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## Law and Economy in Classical Athens: [Demosthenes], “Against Dionysodorus”

### SUMMARY

This article was originally written for the online discussion series “Athenian Law in its Democratic Context,” organized by Adriaan Lanni and sponsored by Harvard University’s Center for Hellenic Studies. (Suggested Reading: Demosthenes 56, “Against Dionysodorus.”)

Sometime around 322 BCE a man named Dareius brought a private action in an Athenian court against a merchant called Dionysodorus. Dareius and his business partner Pamphilus had made a loan to Dionysodorus and his partner Parmeniscus for a trading voyage to Egypt and back. In his opening words of his speech to the court, Dareius describes the risks confronting men who made maritime loans.

“We who decide to engage in maritime trade and to entrust our property to other men are clearly aware of this fact: the borrower has an advantage over us in every respect. The borrower receives a clearly agreed upon sum of money, but all he leaves behind is just his promise to perform his legal duties in a small tablet bought for two obols and written on a tiny scrap of paper. We on the other hand do not promise to give the money, but immediately turn it over to the borrower. What do we place our trust in and what assurance do we receive when we part with our money? You and your laws which order that all agreements one makes willingly will be binding.” (Dem. 56.1–2)

In his closing words Dareius discusses the close connection between the role of the courts in enforcing contracts and the volume of trade in the marketplace of Athens.

“Do not ignore the fact that by resolving one dispute you are passing a law for the entire port of Athens. Many of the men who have chosen to engage in overseas trade are watching you to see how you will decide this case. If you think that written contracts and agreements between partners should be binding and you will not take the side of those who break them, those involved in lending will more readily make their assets available. As a result, the port will thrive, and you will benefit. But if shipowners are allowed to enter into written contracts requiring them to sail to Athens but then sail their ships to other

ports, claiming that their ship was wrecked and providing such excuses as the ones this Dionysodorus here is using, and allowed to pay only a share of the interest for the length of the journey they have sailed and not the interest under the terms of the contract, nothing will stand in the way of the cancellation of all contracts. For who will be willing to risk his own money when he sees that written contracts are not enforced, that arguments such as these carry more weight, and that the demands of wrongdoers prevail over justice? No one at all, judges; this is not in your collective interest nor in the interest of those who have chosen to work in commerce, the very men who are most useful both for all of you in common and individually for the person who deals with them.” (Dem. 56.48–50)

Dareius’ words reveal a keen awareness of the relationship between law and the economy. In his eyes, a healthy economy depends on the willingness of the courts to enforce contracts and assure lenders that their money will be repaid. This essay will take its cue from Dareius’ words and study how the laws of Athens supported the growth of market relations in Attica and overseas trade between the Piraeus and other Greek *poleis*. Part 1 begins by examining the nature of the Athenian economy, then sketches some of the laws and legal mechanisms the Athenians developed to regulate market transactions and promote commerce and trade. Part 2 studies the speech “Against Dionysodorus”

found in the Demosthenic corpus and analyzes the dispute between Dareius and Dionysodorus to discover what it reveals about the nature of the legal relationship between lenders and merchants involved in overseas trade.

[Professor Harris' description of this speech as "found in the Demosthenic corpus" is the responsible, scholarly way of noting that the authorship of the speech is uncertain. Tradition has passed the speech against Dionysodorus down to the present day as one of the many speeches written by Demosthenes, but scholars have come to doubt that Demosthenes himself actually wrote it. For lack of any better identification, we still refer to "Demosthenes 56," but many scholars will sometimes put the author's name in square-brackets – [Dem.] 56 – to indicate that its author is not really Demosthenes. – CWB]

#### PART 1.1

The economy of any given community is shaped to a large extent by the nature of its technology and the degree of the specialization of labor. In a society where technology has not progressed beyond subsistence agriculture, households will have little surplus to exchange with each other, and the community will not produce enough food to support a large workforce engaged in non-agricultural crafts. The economy of such a society will have no need for a permanent marketplace, and the relative infrequency of commodity exchange will produce few commercial disputes.

The predominant forms of exchange will be gift-giving and the payment of tribute to local lords in exchange for protection.

Classical Athens had progressed far beyond this primitive level of development. The most important technical developments were in the field of metallurgy, which enabled the Athenians to produce an array of iron tools and other products. Smiths made helmets, greaves, breastplates, and spears for soldiers, scythes, pruning-hooks, and ploughs for farmers, and knives for everyday use. Potters marketed a wide variety of vases for dining and symposia as well as amphoras and other jars for storage and transport. Many were engaged in making various types of clothing: there were fullers, dyers, sewers, weavers, tanners, shoemakers, and dye-makers. There were also numerous men employed in the building trades: carpenters, lead-cutters, lathe-workers, stone-cutters, sawyers, brickmakers, shipwrights, and muleteers for hauling heavy materials. And there were dozens, if not hundreds, who provided various services: doctors, barbers, hairdressers, wetnurses, innkeepers, clothes-cleaners, bankers, money-changers, bathhouse keepers, prostitutes, musicians, and various kinds of teachers. In fact, a recent study has found more than a hundred and seventy different occupations in Classical Athens. This was not a primitive economy based solely on subsistence agriculture.

To exchange the goods and services produced by these craftsmen, there was a need for a permanent marketplace

and numerous retail merchants, both men (*kapeloi*) and women (*kapelides*). Our sources mention many people selling various sorts of commodities: salt-sellers, sausage-sellers, sellers of olive-oil, fishmongers, butchers, sellers of cumin, sellers of honey, wine-sellers, sellers of cheese, sellers of charcoal, needle-sellers, booksellers, clothes-sellers, lamp sellers, sellers of flax, and sellers of cloaks. The market in Athens was so large that it was divided into several different sections. Parts of the agora were named after the goods sold there. Pollux (9.47–8) mentions how Eupolis singled out the place “where books are for sale” and has one of his characters recall how “I went around to the garlic and the onions and the incense and straight to the perfume, and around to the trinkets (*gelge*).” If one were looking for wine, one went to the area around the city gate in the Kerameikos or Potter’s Quarter (Isaeus 7.2). Alexis in his *Kalasis* tells about a quarter know as the “rings” where utensils were sold (Pollux 10.18–19). A separate part of the market was called the women’s agora. The number of people working in non-agricultural occupations was so large that it was probably more than half of the population of Attica.

## PART 1.2

In the *Republic* (370e–371b) Plato observes that a *polis* with many *technai* (trades or occupations) cannot exist without imports from abroad. Although some scholars believe

that the Greek *polis* aimed at self-sufficiency, the ability to produce everything it needed on its own soil without resorting to trade, the Athenians appear to have had no qualms about importing many goods from abroad. In his “Funeral Oration,” Pericles boasts that “the greatness of our city brings it about that all the good things from the world flow in to us, so that it seems just as natural to enjoy foreign goods as our own local produce” (Thucydides 2.38. Cf. Isocrates 4.42). The “Old Oligarch” ([Xenophon] *Constitution of the Athenians* 2.7) observes how the Athenians trade with many different areas and import exotic delicacies from abroad; Sicily, Italy, Cyprus, Egypt, Lydia, Pontus, the Peloponnese and other regions ship their distinctive products to Athens. In his *Acharnians* Aristophanes has his comic hero Dikaiopolis establish a personal marketplace so he can trade with Athens’ enemies, Thebes and Megara. From Thebes there come “marjoram, pennyroyal rush-mats, lampwicks, ducks, jackdaws, francolins, coots, wrens, and dabchicks” (874-6) and Megara supplies salt and garlic (760-61). Even in 401 when Athenians were still recovering from a devastating siege followed by a bloody civil war, their imports appear to have been worth almost 2,000 talents a year (Andocides 1.133-35). The most important import was grain. Demosthenes (20.31-2) states that the Athenians imported 400,000 *medimnoi* a year from the Black Sea region alone, but Sicily and Egypt were also major suppliers.

The extensive marketplace in the agora and the large volume of overseas trade did not arise in a legal and political vacuum. In a small-scale economy where most transactions occur among family, friends and neighbors, there may be little need for legal regulation; social pressure and the ties of friendship (*philia*) suffice to create the necessary amount of trust needed to exchange goods and services. By contrast, in a large market like the agora, which served all of Attica and where most exchange took place between strangers, it was necessary to have magistrates and courts to provide merchants and their customers with the assurance that all transactions would be fair and that all contracts would be enforced. The main officials in the agora were the *Agoranomoi* or “Market-Controllers.” There were five in the city and five in the Peiraeus. According to the Aristotelian *Constitution of the Athenians* (50.1), they were responsible for supervising all items bought and sold so that they were in an acceptable condition. Grain was the main source of food for most Athenians, and there were special officials called *Sitophylakes* or “Grain-wardens,” to supervise the sale of grain, flour, and bread (*Constitution of the Athenians* 51.3). The position was so important that the number of *Sitophylakes* was increased from five to twenty in the city and from five to fifteen for the Peiraeus. These officials regulated the price of grain, then checked to see that millers did not charge too large a mark-up for barley-flour and the bakers sold bread at a price that was not too far above the cost of grain. The *Astynomoi* or “City-



Controllers,” on the other hand, maintained order and enforced regulations for the entire city of Athens (*Constitution of the Athenians* 50.2). One of their duties was to supervise the hiring of women who played the flute, harp or lyre and to keep their fees to no more than two drachmas. They also enforced building regulations to stop construction that encroached on public roads or created drainage problems.

To ensure that sellers used the correct weights and measures, there were ten *Metronomoi* or “Controllers of Measures.” The *Constitution of the Athenians* (51.1) describes the duties of the *Metronomoi* in very general terms, but an inscription dated to the second century contains a law about the use of weights and measures (*Inscriptiones Graecae* II<sup>2</sup> 1011). It is unlikely that the duties of the *Metronomoi* changed very much over time so that many of its provisions are probably similar with minor changes to take account of modifications in coinage standards. The magistrates responsible for implementing this law are to make sample measures for wet and dry goods and weights and to compel all those who buy and sell to use them (lines 7–9). The law is comprehensive: it applies to sellers in the agora, in workshops, in retail shops, in wine shops and storehouses (line 9). Magistrates cannot make weights larger or smaller than these prescribed weights (lines 10–11). If the magistrates do not comply, they are to owe 1,000 drachmas to Demeter and Kore (lines 10–13). Private citizens have the right to report the property of those officials who incur

the fine (lines 13–14), but the Council of 600 has the job of making sure no one is using counterfeit weights and measures (lines 16–18). There follow detailed regulations about how to measure various items such as nuts and beans for sale (lines 19–26). If merchants do employ containers smaller than the required size, the magistrate should sell the contents at public auction, deposit the price at the public bank, and destroy the container (lines 27–29). To keep the official weights and measures in permanent use, the law instructs a certain Diodorus, the son of Theophilus from the deme of Halieus to hand them over to three public slaves stationed in various places. These slaves are to make them available to any magistrates who request them (lines 37–42). The final clause in the law makes those who commit offenses in regard to these weights and measures subject to the law about *kakourgoi* – this may be the same law mentioned in the *Constitution of the Athenians* (52.1) about thieves, enslavers and clothes-snatchers, which gave private citizens the right to arrest these offenders – and instructs the Areopagus to mete out punishment to those who violate its provisions (lines 56–60).

### PART 1.3

Plato (*Republic* 371b. Cf. Aristotle *Politics* 1.3.13.1257a) observes that a *polis* with a high volume of trade required coinage to facilitate exchange. It is possible to sustain a high volume of commodity exchange with just weighed

silver bullion, but coins contain certain advantages that facilitate exchange. Since coins have fixed values and contain precious metal that has already been weighed and checked for purity, they enable merchants and customers to conduct transactions with greater efficiency, to increase the speed of exchange, and to make exchange subject to the law. To facilitate market transactions, the Athenians minted several denominations of silver and bronze coin. The largest denomination in the fourth century BCE was the tetradrachm, and smallest denominations were the quarter-obol (some in silver, but later large numbers in bronze) and the eighth-obol or chalkous (small numbers in silver, but large numbers in bronze after 350 BCE). This range of denominations shows that coinage was not designed just for infrequent purchases of expensive goods or for payments of taxes and fines, but for everyday buying and selling of small items in the agora.

The law of Nicophon passed in 375/74 gives us specific information about how the Athenians enforced regulations about silver coinage. The main official responsible for implementing the law is a public slave called the *Dokimastes* or “Tester,” who sat near the tables, that is, where the bankers conducted their business in the agora. The Tester was ordered to evaluate any coins given to him for examination. After testing them, he was to return the genuine ones, but to keep the counterfeit coins, cut them in two, and turn them over to the Mother of the Gods (lines 8–13). If the Tester does not perform his duties, the *Syllogeis* of the

People are to give him fifty lashes (lines 13–6). In the event that someone refuses to accept silver coins approved by the Tester, all his goods on display that day are to be confiscated (lines 16–18). The law then specifies where charges are to be brought and empowers magistrates to decide cases involving fewer than ten drachmas (lines 18–23). For larger sums, they must bring the case before the court. If the various officials assigned to carry out the law do not perform their duties, a private citizen can report them to the Council, which has the power to impose a fine up to 500 drachmas and to remove the offender from office.

#### PART 1.4

Some scholars believe that the enforcement of the law in Classical Athens lay primarily in the hand of private citizens, but it is hard to square this view with the ancient evidence for the administration of law in the agora. In the law of Nicophon the primary responsibility for enforcing the law lies in the hands of a public slave, the Tester, the *Syllogeis* who supervise him, the *Sitophylakes*, and the Council, which supervises all these officials. Private individuals can provide information to these officials and receive rewards, but it is the officials who confiscate counterfeit coins and the goods of merchants who do not accept good coins. In the law about weights and measures there is also some role for private initiative in reporting offenses, but the most important tasks in overseeing these regulations lie in the

hands of the *Metronomoi*, public slaves, and the Areopagus. The growth of market transactions in the Athenian agora grew to the extent that strict regulations were needed to ensure fairness and order, and the enforcement of these regulations was primarily in the hands of public officials.

Extensive specialization of labor and the development of market-relations also created a need for several types of contracts. The laws of Athens contained a general provision that all agreements which the parties entered into willingly and which did not violate the law were binding, that is, the courts would enforce them if one party refused to abide by the terms of the contract. There was also a rule against fraud, which invalidated contracts where one party acted deceitfully. There were various types of contracts for hire (*misthosis*); like the Roman contract of *locatio-conductio*, Athenian contracts for hire covered agreements where one hired the labor of another person, where one leased some land, a building, or some movable item, and where one hired a craftsman to produce a certain item or perform a task. There is some controversy about the nature of contracts for sale in Athenian Law, but it is clear that the Athenians recognized that a sale created rights and duties for both parties. In particular the seller was required to “warrant” (*bebaïoun* is the Greek term) the sale, that is, he had to guarantee that he was the actual owner of the object he was selling. This protected the buyer against a third party who might later come forward, claim to be the actual owner, and demand that the buyer return it to him. In the

case of slaves, there was also a warranty against latent defects; if one sold a slave who turned out to have a disease, the buyer could return the slave and demand repayment of the sale price, This warranty may have extended to sales of other commodities.

The Athenians also knew the practice of providing earnest money (*arrhabon*). When two parties agreed to a sale, but the buyer could not pay the full purchase price, he could give the seller earnest money until he could come up with the rest of the cash. If he failed to make the full payment, the seller could keep the earnest money as a penalty. On the other hand, if the seller refused to accept full payment and convey the item to be sold, the law allowed the buyer to sue him for a certain amount. Theophrastus states that the laws of Thurii permitted the buyer to bring an action for the full amount of the sale price, and the laws of Athens probably contained a similar provision. There were also contracts for deposit (*parakatatheke*), which were similar to the Roman contract of *depositum* (Dem. 36.5–6), and suits that enabled lenders to sue borrowers when they defaulted. If the lender made his loan at a rate of 1% interest per month (12% a year) or to provide capital for starting an enterprise, he could bring his case as a “monthly suit.” This meant his case received privileged treatment and was decided within a month, thus avoiding long delays that might cause financial losses (*Ath. Pol.* 52.2).

## PART 1.5

Two contracts that are important for an understanding of the dispute between Dareius and Dionysodorus are partnership (*koinonia*) and real security (*apotimema*). One of the most striking features of Athenian laws regulating commercial activities is the absence of any concept akin to the modern legal notion of corporation. Despite the presence in Athenian society of numerous *koinoniai*, groups of individuals cooperating for some purpose, be it commercial or otherwise, Athenian law concerned itself solely with individual persons and did not recognize the separate legal existence of collective entities. And just as Athenian law did not recognize the legal existence of corporations or collective enterprises, it also did not possess the notion of corporate liability. This meant that if someone entered into an agreement with a group of individuals and one of those individuals violated the terms of the agreement, the plaintiff proceeded only against the individual who acted contrary to the agreement, not against the group as a whole. If the plaintiff won his suit, he only had a right to receive compensation from the defendant's private property; he did not have a claim on all the funds held in common by the group. Instead of forming a corporation, business partners would enter into an agreement called a *koinonia* (partnership) or *koinopraxia*, which was similar to the Roman contract of *societas* (Justinian *Institutes* 2.25). This arrangement set forth what each party would contribute

to the joint enterprise and what share in the profits each was entitled to receive. Suits arising from these agreements received special treatment as “monthly suits” in the Athenian courts, which would indicate that they were sufficiently numerous to merit separate attention (*Constitution of the Athenians* 52.2).

The practice of providing security was an effective way of providing lenders with some assurance that they could recover their money in the event of the borrower’s default. The Athenians had two basic contracts for security, personal security (*engye*) and real security (*apotimema*). In personal security for a loan, the borrower arranges for a third party to come forward and to promise the lender that he will fulfill the borrower’s obligations in the event that the borrower does not make interest payments or repay the principal. In real security, the borrower pledges some of his property, either movable or immovable, as security to the creditor. If the borrower defaults, the creditor has the right to seize the property pledged as security, and, if he wishes, to sell it for cash in lieu of repayment. Some scholars have claimed that the Athenians had no laws about real security and that this reflected the primitive nature of the economy. The sources for Athenian law, however, provide at least three examples of laws about real security. One protected the ownership of the lender who seized property pledged as security as a result of default (Isaeus 10.24). If someone challenged another person’s ownership of property, the laws allowed the latter to defend his ownership by proving



that he had received it as security. A second law protected the lender who acquired a security in this way from further claims by the borrower (Demosthenes 41.10). A third law provided the lender with an action against the borrower if he defaulted and refused to turn over goods pledged as security (Isaeus 6.31; [Demosthenes] 56.3, 38, 40, 45). These laws show that lenders did not rely just on social attitudes about reciprocity when making loans. As Dareius says in the speech “Against Dionysodorus,” lenders trusted in the protections afforded by the legal system.

The courts of Athens enforced contracts made not only by citizens but also by metics and foreigners. In modern terminology, the laws of Athens recognized the principle of “supranationality” in commercial disputes. This meant that even if one was not a citizen of Athens, one could still bring a private action against another party no matter what his citizenship. Some scholars claim that the Athenian courts served primarily as an arena for competition among elite citizens, but the preserved court speeches show that foreign merchants were also active in bringing suits. For instance, Demosthenes (21.176) recalls how Evander of Thespieae brought a commercial suit against Menippus of Caria and won a judgment of two talents. Granting foreigners access to the courts and enforcing their contracts was an important way of promoting overseas trade. In fact, all four of the individuals involved in the case described in “Against Dionysodorus” appear to have been metics. Athens was not the only community to recognize supranationality in

commercial disputes: Dareius imagines the possibility of Athenians getting involved in legal case in Rhodes (Demosthenes 56.47. Cf. Demosthenes 32.18; 45.64).

#### PART 1.6

Since the import of grain was so vital for the food supply of Attica, the laws of Athens contained several measures aimed at maintaining an adequate supply of grain and keeping prices low. First, there was a ban on all exports of grain from Attica (Demosthenes 34.37; 35.50–1; 58.8–9). Second, there was a law that made it illegal for any Athenian or metic to engage in transporting grain to any port besides Athens or to make a loan for such a trading voyage (Dem. 35.50). Third, there was a law that prohibited purchases of more than fifty *phormoi* of grain (Lysias 22.5–6). There is some debate as to whether this law aimed at preventing hoarding or the formation of cartels, but the intent was clearly to prevent the manipulation of grain prices. Fourth, there were laws fixing the amount of profit that millers could make on ground barley and that bakers could make on loaves of bread (*Constitution of the Athenians* 51.3). Fifth, a recently discovered law of Agyrrhius passed in 374/3 BCE orders the Assembly to sell the grain collected from two taxes, the *pentekoste* or 2% tax on grain and the *dodekate* or 8 $\frac{1}{3}$ % tax collected in the islands of Lemnos, Scyros, and Imbros, not before the month of Anthesterion at price fixed by the Assembly. The *pentekoste*

was collected on all grain imports and the *dodekate* was a transit tax collected on all grain that merchants brought to the islands and then shipped to other ports. The month of Anthesterion was right before the harvest and during the time when the seas were closed to shipping. Since shortages of grain might occur at this time, the law therefore instructed the Assembly to sell the grain collected from the two taxes during this month in order to keep prices low. Sixth, the Assembly often voted honors to foreign kings who granted special privileges to men shipping grain to Athens (Demosthenes 20.29–40; *Inscriptiones Graecae* II<sup>2</sup> 212).

This brief survey reveals that the Athenians not only developed a market economy and carried on extensive overseas trade but also established numerous officials for supervising their marketplace and created the laws needed to regulate market transactions and resolve commercial disputes. The next section examines how some of these laws worked in practice in a dispute between two lenders and two borrowers involved in overseas trade.

## PART 2.1

When reading a court speech by an Attic orator, one must always bear in mind that the speech presents only one side of a case where there was at least one other side of the story. For this reason a reader must always be careful to notice which statements made by a litigant are supported by the

evidence of documents or the testimony of witnesses and which are not. Even if the statements made by one speaker appear to be reliable, it is still possible that he may have omitted key facts or supported relevant information. In some places litigants report what they believe their opponents will say, but in the absence of their actual statements, it is impossible to know how accurately the speaker presents the views of his opponent. With these caveats in mind, let us turn to the speech given by Dareius, “Against Dionysodorus.”

## PART 2.2

Dareius begins his narrative by recounting the terms of the contract he and his partner concluded with Dionysodorus and Parmeniscus. About a year before, in the month of Metageitnion, Dionysodorus and Parmeniscus asked Dareius to lend them money on the security of their ship for a voyage to Egypt with either Athens or Rhodes as the final destination (5). They also promised to pay interest for the duration of the voyage to either port. The date of their request is significant: the month of Metageitnion roughly corresponds to our month of August. Hesiod in the *Works and Days* (663–65) recommends sailing only during the fifty days after the summer solstice, that is, from the end of June to about the middle of August. Vegetius (*De re militaria* 4.39) writes that the best period for sailing extends from May 27 to September 14. From September 14 to No-

vember 10 sailing is risky, and after that it is too dangerous. This meant that Parmeniscus was starting very late in the season and might encounter rough weather on his return trip from Egypt. Dareius does not lay any emphasis on the date of the contract, but it will become significant when looking at Dionysodorus' reply to Dareius' charges.

Dareius and Pamphilus replied that they would not lend unless the contract required a return voyage to Athens (6). They obviously insisted on this condition because they did not wish to break the law forbidding Athenians and metics from lending money to merchants to ship grain to ports besides Athens. When Dionysodorus and Parmeniscus agreed to this condition, Dareius and Pamphilus lent them 3,000 drachmas on the security of their ship, and a written contract was drawn up (6). Dareius and his partner thus chose to accept a pledge of real security, which was standard in loans for large amounts. To support his account of these facts, Dionysodorus has the contract read out to the court. It is crucial to observe what this piece of evidence proves and what it does not prove. All the document confirms is that the four men concluded an agreement on certain terms. It does not show that Dionysodorus and Parmeniscus initially asked to borrow money for a voyage to Rhodes and not to Athens. Dionysodorus could easily have invented this part of the narrative to demonstrate that Parmeniscus at first did not wish to promise that he would return to Athens and was already thinking about sailing back only as far as Rhodes even before he set out.

According to the terms of the contract, Dionysodorus and Parmeniscus received the money and sent their ship to Egypt, the latter sailing on board and the former staying behind (7). These details are also significant for they reveal another one of the terms of the contract and help us to understand why the lender made their loan to two borrowers and not to one. In the beginning of his speech, Dareius describes the enormous risks taken by those who lend money for overseas trade: the borrower takes the money and the ship, which serves as security for the loan, and sails away, leaving the lender behind with only a scrap of paper containing his promise. As the narrative unfolds, however, Dareius shows that his position was not quite so vulnerable as he makes it out to be. Although Parmeniscus had departed with the money and the security for the loan (his ship), the contract required that Dionysodorus stay in Athens. The purpose of this arrangement was to enable Dareius and Pamphilus to bring an action against Dionysodorus in case Parmeniscus did not return. Later on in the speech, Dareius discloses another key aspect of the contract: if the borrowers concealed their ship, they would owe double, and the lenders had the right to demand the interest and principal from either one or both of the borrowers (45). The absence of modern notions of legal personality made such a clause necessary. A modern lender can make a loan to a shipping company made up of several owners and employees. If someone in the company absconds with money and disappears, the lender can

still recover his money from the company. As we noted above, in Athenian law someone could not lend to a company but only to individuals. As a result, Dareius and his partner made their loan to two men, required that one remain in Athens, and added the stipulation that each of them (or both) was responsible for repayment of the loan (in modern legal terminology this is known as “joint and several liability”). If Parmeniscus did not return, Dareius and his partner could then sue Dionysodorus. If the court awarded them damages, Dionysodorus would have to pay, then attempt to recover a share of his losses from his partner Parmeniscus. If Parmeniscus refused to pay, Dionysodorus could sue his partner for violating their contract of *koinonia*. One should therefore not be deceived by Dareius’ rhetoric in his opening words to the court: Parmeniscus may have departed with both the money and his ship, but he had to leave behind his partner Dionysodorus as a hostage for his good behavior. Dareius was not quite so vulnerable as he wanted the court to believe.

### PART 2.3

In the next part of his narrative Dareius presents a scandalous account of Parmeniscus’ activities once he reached Egypt (7–9). He accuses his opponent’s partner of conspiring with Cleomenes, the ruler of Egypt installed by Alexander the Great (Arrian *Anabasis* 3.5.2–5; Curtius Rufus 4.8.5) and helping him to raise the price of grain.

He describes how these men had stationed their agents in various cities; these agents wrote to them indicating where the price of grain was highest and then sent their cargoes where they could reap the greatest profits. When Parmeniscus left Athens, the price of grain was high, but after he left the arrival of a large shipment from Sicily caused the price to fall. According to Dareius, it was this turn of events that caused Parmeniscus to ignore the terms of the contract and sail to Rhodes where he unloaded his cargo of grain and sold it (10).

Needless to say, there was another side to the story. Further on in the speech, Dareius predicts Dionysodorus will say that the ship suffered damage on its voyage back from Alexandria and was forced to put in at Rhodes (21). To prove that he was telling the truth, Dionysodorus would state that he hired some ship in Rhodes to transport some of his cargo to Athens. There were also other creditors who were willing to accept payment of interest only as far as Rhodes (22). Dareius claims that his opponents made up this excuse and that their true reason for unloading their cargo in Rhodes was to make a larger profit. Since we do not have Dionysodorus' speech, it is hard to judge between the two accounts. But it is crucial to recall that Pamphilus had started his voyage to Egypt late in the sailing season so that he might well have encountered rough weather on his return trip to Athens.



## PART 2.4

When Dareius and Pamphilus discovered what had happened, they confronted Dionysodorus and complained about his partner's failure to return to Athens as they had promised (11). What was more, they were now open to the charge that they had broken the law by lending money to transport grain to a port other than Athens. These protests got them nowhere so they began to request payment of the interest and principal of the loan (12). Dionysodorus expressed his willingness to comply with their demand but would pay the interest only on the voyage to Rhodes. Dareius and Pamphilus replied that they could not accept this offer.

Dionysodorus then gathered a crowd of witnesses and repeated this offer in front of them (13). This was an attempt to intimidate his opponents and also to demonstrate his own willingness to be reasonable and compromise. Some Athenians who happened to be present suggested a temporary solution: Dareius and Pamphilus should accept the amount offered to them and take their dispute about the remaining amount to court (14). Since they did not want to appear litigious, they declared their intention to follow this solution. This put Dionysodorus on the defensive so he stated that he would comply provided that in exchange they destroy the document containing the agreement. Dareius and Parmeniscus could naturally not accede to this

condition since it would rob them of the evidence they needed to prove their case in court (15–6).

## PART 2.5

Dareius' next move was to issue a challenge (*proklesis*) (18). This was another attempt to bring social pressure to bear on his opponents and to force them to settle the dispute out of court. A challenge could take many forms. One of the best known is the challenge made to opponent asking him to hand over his slaves for examination under torture about some key issue. The person who received the challenge might accept it (especially if he felt confident about the outcome), decline it, or propose a settlement as an alternative to further conflict. If the person who received the challenge declined it, he laid himself open to the suspicion that he lacked confidence in his own case, and his opponent might later use his refusal to accept as an argument against him. This form of dispute resolution had a long history and is found already in the account of the funeral games for Patroclus in the *Iliad* (23.261–611). In the chariot race held by Achilles to honor his dead comrade, Antilochus uses cunning to force Menelaus to fall behind him and to gain an advantage that enables him to come in second after the winner Diomedes. Angry at this ruse, Menelaus challenges him to swear an oath to Poseidon that he did not prevail by guile (581–85). This maneuver puts Antilochus in an awkward position: he can swear the oath

and commit perjury in front of his companions or decline the challenge and tacitly admit that Menelaus is right. If he chooses the former option, he gains a reputation for swearing false oaths, and in the future his companions will never trust him. As a way out of his dilemma, Antilochus offers Menelaus the mare he won (23.586–595), and this solution satisfies his opponent and ends the conflict (596–611).

Dareius presented Dionysodorus with another kind of challenge by inviting him to submit their case to a private arbitrator (18). Private arbitration was a popular form of dispute resolution, which avoided many of the pitfalls of going to court. By using an arbitrator, both parties could avoid the delays of waiting for officials to schedule a trial and paying court fees. The procedure before an arbitrator was also simpler and informal. Instead of making a formal speeches before hundreds of judges, the litigants presented the case to an arbitrator who could ask questions and clarify the issues. The arbitrator also had more flexibility than the judges in an Athenian court, who could either vote to accept or reject the plaintiff's request: an arbitrator could attempt to reconcile the parties, suggest a compromise solution, or render a judgment. If one of the parties then did not abide by the arbitrator's decision, the other party could bring an action in court for breach of the agreement. Dareius does not say why Dionysodorus rejected his challenge. His opponent may not have found the terms of the challenge acceptable, or the two parties may not have been able to find an arbitrator whom both could trust. Despite

the failure of the challenge to settle the dispute, the tactic employed by Dareius was not a complete waste of effort: once in court Dareius drew attention to Dionysodorus' refusal to accept the challenge as a way of attacking his credibility and portraying him as difficult and unreasonable.

## PART 2.6

The preliminary skirmishes between Dareius and Dionysodorus serve to remind students of Athenian Law that a trial in court was often only the last step in a long series of maneuvers between litigants. Whatever their true intentions, each one attempted to act as if he did not wish to bring their case to court; both men strove to win over public opinion by offering compromises and avoiding the appearance of being litigious. This led to a series of proposals and counter-proposals, each aimed ostensibly to reach a settlement. Given the nature of the sources for Athenian Law, it is impossible know how often attempts at out-of-court settlements succeeded, but it would appear that Greek attitudes favored settlement over trial. The Athenians admired a bold warrior on the battlefield and a determined competitor in an athletic contest, but in the agora they expected citizens and metics to refrain from aggressive behavior and to demonstrate their willingness to compromise and cooperate. But social attitudes against litigiousness and the possibility of compromise were not strong enough in this instance to achieve a settlement, and

Dareius was forced (or preferred) to bring his case against Dionysodorus to court.

After presenting his version of the facts in the case (5–18), Dareius turns to his legal arguments (19–44). Some scholars claim that the Athenians were amateurs in legal matters, but even the structure of Dareius' speech reveals a certain level of legal sophistication. Dareius does not throw together factual and legal arguments, but keeps the two kinds of arguments strictly separate. This separation reveals his awareness that the two kinds of arguments are different and require different methods of reasoning. The narrative of the speech recounts a series of events and carefully attempts to create causal links among these events by analyzing the motives of his opponents and showing them acting consistently in accordance with these motives. The section containing the legal arguments is very different. Here Dareius focusses more closely on the terms of the contract and contrasts how the actions of his opponents violated the contract, then refutes the arguments his opponents will present. Narrative gives way to analysis, and the different modes of presentation show that Dareius clearly understood the distinction between factual and legal arguments.

As Dareius stresses in his opening words, he relies primarily on the Athenian law stating that all agreements entered into willingly are binding. He therefore places great weight on the actual wording of the contract. He predicts that Dionysodorus will make three main arguments in his

defense. First, he will claim that their ship was “wrecked” or “damaged” on its return from Egypt and forced to put in at Rhodes. To prove this assertion, Dareius will show that he hired ships at Rhodes to transport some of his cargo to Athens. Second, he will point out how several other creditors were willing to accept payment of interest only as far as Rhodes. Third, he will rely on a clause in the contract that obligated him to repay the loan only in the event that “the ship was safe.” Since the ship could not arrive safely in the Peiraeus, Dionysodorus was not obligated to repay the loan. This section of the speech is valuable for giving some indication of the points Dionysodorus may have made. On the other hand, one cannot be certain that Dareius does not misrepresent his opponent’s arguments or fails to do them full justice.

In answer to the first argument Dareius questions his opponent’s claim that the ship suffered serious damage. If this was so, why did the ship later sail back to Egypt and is now visiting every port in the sea except Athens? He brushes aside Dionysodorus’ story that his partner shipped some of his cargo to Athens; he claims that they only transported the items that were selling at high prices in Athens, but sold their grain in Rhodes because the price for grain was higher there. Dareius’ objection rest in part on the unproven fact that the ship is now sailing again. Dareius provides no evidence for his assertion, and Dionysodorus might well have denied that the ship could have been repaired. Dareius also assumes that Dio-

nysodorus could have shipped the grain from Rhodes to Athens, but he does not countenance the possibility that officials in Rhodes may have forced him and his partner to sell their grain there. As noted in Section 1, the Athenians had a law that forbid citizens and metics from transporting grain outside of Attica and established a board of ten superintendents of the port to enforce this law (*Constitution of the Athenians* 51.4). The people of Rhodes could have had a similar law, and the officials at Rhodes might have prevented Parmeniscus from shipping the grain (Cf. [Aristotle] *Oeconomica* 1348b33f). Such a scenario is all the more likely when one recalls that Dareius himself insists that the price of grain was much higher in Rhodes than it was in Athens. Faced with a severe shortage, officials in Rhodes are unlikely to have allowed Parmeniscus to remove the grain from their market. In fact, several sources indicate that poleis might detain ships carrying grain to other ports and force them to sell their cargoes (e.g. [Demosthenes] 50.6).

## PART 2.7

Dareius next addresses Dionysodorus' second argument that his other creditors accepted his proposal to receive the payment of interest only as far as Rhodes. He dismisses this argument on the grounds that the settlements reached with the other creditors are irrelevant to his own case (26). He insists on the terms of their agreement: either

they show that the contract is not binding or abide by its terms (27). Dionysodorus probably intended to contrast the willingness of the other creditors to settle for a smaller amount of interest with Dareius' own intransigence as a way of making him look greedy and stubborn. To counter this strategy, Dareius claims that these creditors did not yield part of their gains, but actually profited from their settlement since they immediately recovered their loans at Rhodes, then were able to lend out the principal again to the two men and receive interest from their subsequent trip to Egypt and back (28–29). Dareius' counter-attack not only accuses the other creditors of acting solely out of a desire for profit but also charges them with lending money to ship grain to another port besides Athens. In reality, it may have been Dareius who was the greedy one. Whatever amount of interest the other creditors may have been earning, Dareius and his partner would have gained far more if they won their case since they were asking for double the principal or 6,000 drachmas.

Dareius devotes the longest reply to Dionysodorus' argument based on the clause which required repayment only in the case that the ship arrived safely. Dareius interprets this clause narrowly and claims its only applied in the case where the ship actually sank. Dionysodorus appears to have interpreted the clause differently (38). To judge from Dareius' brief summary of his argument, Dionysodorus was prepared to stress the clause in the contract that called for the ship to return to Athens. Since the ship suffered



serious damage, it could not continue safely on its voyage and arrive safely in the Piraeus. In other words, Dionysodorus gave a broad interpretation of this clause, which he argued gave exemption to himself and to his partner not only if the ship sank, but also in the eventuality that it suffered damage and was unable to continue safely on its journey. Dareius' reply to this argument is that Dionysodorus could have repaired the ship and continued on his voyage to the Piraeus. But Dareius' reply may ignore the possibility that Pamphilus may have been forced to sell the grain in Rhodes.

#### PART 2.8

Whatever the actual circumstances, the different interpretations of the phrase “if the ship arrives safely” illustrate what the philosopher of law H. L. A. Hart has called “the open texture of law.” Hart notes that laws and contracts usually contain general terms or cover large categories of persons or actions. While these terms and categories provide clear guidance in most situations, it may on occasion be difficult to know how to apply a general rule to a specific situation. In this case, the phrase “if the ship arrives safely” contains a potential ambiguity. The phrase obviously exempted the borrower from repayment if the ship sank, but left it unclear how to apportion losses if the ship was only damaged and forced to seek a harbor short of its final destination. Should the borrower have to pay additional

interest or was it unfair for the borrower to shoulder all the losses caused by the unforeseen circumstances? The Athenians were certainly familiar with the practice of allocating risk; for instance, in the law of Agyrrhius discussed in Part 1.6, one clause stipulates that the men who collected the dodekate had to take the entire risk of loss during transport of the grain to Athens (lines 11–15). In the private contract drawn up by Dareius and Dionysodorus, however, this question was not addressed. As a result, the dispute ended up in court. It would be fascinating to know how the court decided the legal issue involved in the case and how it arrived at its decision, but the sources are silent.

The speech “Against Dionysodorus” provides valuable information about the legal relationship between lenders and merchants in overseas trade. Although lenders took considerable risks in making loans to merchants, the law provided them with several ways of minimizing these risks. Taking advantage of *praxis*-clauses and the practice of real security and relying on the courts to enforce contracts, lenders could increase the odds of recovering their principal and earning interest. As Dareius observes in the closing words of his speech, the laws and the courts of Athens played a major role in promoting the overseas trade that made the agora of Athens a thriving marketplace.



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