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THE LIABILITY OF BUSINESS PARTNERS IN ATHENIAN LAW: THE DISPUTE BETWEEN LYCON AND MEGACLEIDES ([DEM.] 52.20–1)

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 the partnership or corporation.[1] 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.[2] And just as Athenian law did not recognize the legal existence of partnerships or corporations, 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.[3] 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.

An understanding of this aspect of Athenian law helps to explain the puzzling features of the legal dispute between Lycon, a man from Heraclea, and Megacleides of Eleusis, mentioned by Apollodorus in his speech against Callippus ([Dem.] 52.20–1). Since his aim in the part of the speech where the dispute is described is to prove that Callippus and Lycon were not close friends and the details of the dispute are not relevant to this point, Apollodorus gives only a brief summary of the background of the case and of the nature of Lycon's charge against Megacleides. Yet, the brevity of his account notwithstanding, Apollodorus provides us with enough information to identify the legal issues in the case.[4] Besides illustrating the nature of

[1] For the absence of the legal notion of partnership or corporation in Athenian law, see M. I. Finley, *Studies in Land and Credit in Ancient Athens, 500–200 B.C.* (New Brunswick, 1951), p. 275 n. 5. A. R. W. Harrison, *The Law of Athens: Property* (Oxford, 1968), p. 242 n. 1, questioned Finley's position, arguing that it rested merely on an inference from the fact that Attic documents do not differentiate consistently between the members of an association and the entity itself. But Finley's position is perfectly sound: see, for instance, M. Rheinstein and E. Shils, edd., *Max Weber on Law and Society* (New York, 1954), pp. 156–7: 'The most rational actualization of the legal personality of organizations consists in the complete separation of the legal spheres of the members from the separately constituted legal sphere of the organization; while certain persons designated according to rules are regarded from the legal point of view as alone authorized to assume obligations and acquire rights from the organization, the legal relations thus created do not at all affect the individual members and their property and are not regarded as their contracts, but all these relations are imputed to a separate and distinct body of assets. Similarly, what the members as such may claim from or owe to the organization under its rules, belongs to or affects their own private assets, which are legally entirely separate from those of the organization.'

[2] For the *koinonia*, see P. J. T. Endenburg, *Koinoonia: En Gemeenschap van Zaken bij de Griken in den klassieken Tijd* (Amsterdam, 1937).

[3] J. J. Lipsius, *Das attische Recht und Rechtsverfahren* (Leipzig, 1905–15), p. 771, thought that the δίκαι κοινωνικαί mentioned at Ar. *Ath. Pol.* 52.2 were suits against or by corporations, but his view was rightly questioned by A. R. W. Harrison, *The Law of Athens: Procedure* (Oxford, 1971), p. 22.

[4] One cannot argue that the case is not evidence about the principles of Athenian law because it was decided by a private arbitrator and not by a law court. Private arbitrators were guided

liability in loans contracted by multiple borrowers, an analysis of the case will also shed light on an important aspect of security in maritime loans and enable us to resolve a textual problem in Apollodorus' speech.

The dispute concerns a loan of 40 *mnai* that Lycon had made to Megacleides of Eleusis and his brother Thrasyllus for a voyage to Ace and back.[5] Apollodorus tells us that one of the men changed his mind and decided not to sail there nor to take the risk (*μεταδόξαν αὐτῷ μὴ ἐκεῖσε πλεῖν μηδὲ κινδυνεύειν*). The word *αὐτῷ* should refer to Megacleides in the same way that *αὐτοῦ* in the previous clause also refers to him. But Wolf was perplexed by the singular *αὐτῷ*.[6] Since the loan was made to Megacleides and Thrasyllus for their voyage to Ace, he reasoned that both of them must have decided not to go there and therefore proposed to emend *αὐτῷ* to *αὐτοῖς*.

A consideration of the problems facing the maritime lender in antiquity reveals that the emendation is unnecessary. When a man lent money to a merchant for a trading voyage, it was customary for the merchant to pledge his ship or the cargo on it as security for the loan.[7] If the merchant defaulted on the loan, the lender could seize the ship or the cargo and sell it in lieu of repayment.[8] But what if the merchant decided to defraud the creditor by absconding with both cargo and ship? The lender would lose his money, and there would be no security for him to seize. Of course, the lender could accompany the merchant to keep an eye on him, but that would have been irksome. Indeed, we know of no case where a creditor chose to travel with the borrower for this purpose.[9] The solution to the problem was to have the lender make the loan to a pair of men, one of whom sailed with the ship while the other remained behind.[10] In the event that the borrower who sailed with the ship tried to defraud the

by the same legal principles as were the law courts. The parties in a suit might ask an arbitrator to ignore the legally stipulated penalties when making his judgment, but I am not concerned with the decision Archebiades might have reached. On this topic, see H. Meyer-Laurin, *Gesetz und Billigkeit im attischen Prozess* (Weimar, 1965), pp. 41–5 with the bibliography cited there.

[5] Megacleides probably intended to return with a cargo of grain. For Ace as a major supplier of grain for Greece, see Herodas 2.16–17 with W. Headlam, *Herodas: The Mimes and Fragments* (Cambridge, 1922), ad loc. For maritime loans in general, see the important articles of G. E. M. de Ste. Croix, 'Ancient Greek and Roman Maritime Loans', in H. Edey and B. S. Yamey (edd.), *Essays in Honour of W. T. Baxter* (London, 1974), 41–59, and P. C. Millett, 'Maritime Loans and the Structure of Credit in Fourth-Century Athens', in P. Garnsey, K. Hopkins, and C. R. Whittaker (edd.), *Trade in the Ancient Economy* (London, 1983), 36–52.

[6] H. Wolf in J. J. Reiske, *Oratorum Graecorum X* (Leipzig, 1774), p. 952: 'Si *τοὺς δανεισαμένους* subintelligas (as the subject of *πλεῖν*), verte: cum mutata sententia non committendum esse putasset, ut illi cum periculo illuc navigarent. Sed durum hoc est, et parum consentaneum. Quare legere malim, *μεταδόξαν αὐτοῖς*.' Wolf's emendation has been accepted by both the Loeb and Budé editors. Rennie's Oxford text retains *αὐτῷ*, but notes Wolf's proposal in the apparatus criticus.

[7] Ship pledged as security: Dem. 32.14; 35.33; 56.3. Cargo pledged as security: Dem. 32.12; 34.6; 35.10, 52.

[8] e.g. Dem. 33.6; 35.12.

[9] M. H. Hansen in S. Isager and M. H. Hansen, *Aspects of Athenian Society in the Fourth Century B.C.* (Odense, 1975), p. 83 n. 67, lists Lycon along with certain Massaliote citizens (Dem. 32.4–5, 12), Lampis and Theodorus (Dem. 34.6, 8,22, 26,40), as lenders who travelled with the ship. But there is no evidence in Dem. 32 that the Massaliot citizens sailed on the ship with their borrowers Zenothemis and Hegestratus, nor any in Dem. 34 that Theodorus travelled on Lampis' ship. Phormio claims that he repaid a loan to Lampis, but Chrysippus points out that his claim is implausible (Dem. 34.25–8). Besides, even if Lampis did lend money to Phormio, the former sailed with the ship not because he was a creditor, but because he was its *naukleros*.

[10] W. E. Thompson, 'The Commercial Dispute at D. 52.20', *AJP* 108 (1987), 600–2 at p. 601, suggests that this might have been the arrangement worked out between Lycon and the brothers, but does not pursue the possibility further. The passages he cites as referring to similar arrangements are not relevant to the question of maritime security: Dem. 34.8 concerns a letter

lender by failing to return, the lender could then demand repayment from the borrower who had remained behind, and if denied repayment, could initiate legal proceedings against him.

This was clearly the arrangement that was worked out between the lenders Dareius and Pamphilus and the borrowers Parmeniscus and Dionysodorus ([Dem.] 56.6).[11] Dareius and Pamphilus agreed to lend three thousand *drachmai* to Parmeniscus and Dionysodorus on the security of their ship for a voyage from the Peiraeus to Egypt and back. Parmeniscus sailed the ship to Egypt while Dionysodorus stayed in Athens (7). According to Dionysodorus, the ship was damaged on its return voyage and was forced to put in at Rhodes, where Parmeniscus sold the grain he had bought with the loan (21). When Dareius and Pamphilus learned of this, they confronted Dionysodorus and demanded that he repay the loan with the interest already agreed upon. Dionysodorus offered to repay the loan with the interest accumulated as far as Rhodes, but this proposal failed to satisfy the lenders, who then brought suit against him (11–18).[12] When the case came to trial, Parmeniscus was still plying the Mediterranean in the ship that had been pledged to Dareius and Pamphilus (4). In fact, the written agreement (*συγγραφή*) they had drawn up had provided for such an eventuality. In it the borrowers agreed that in the event that they defaulted and did not deliver up the ship, they would be liable to a penalty double the amount of the loan. They further agreed that the lenders could exact this penalty from either or both of them (45 *τὴν δὲ πρᾶξιν εἶναι καὶ ἐξ ἑνὸς καὶ ἐξ ἀμφοῖν*). Since Athenian law did not consider that joint borrowers formed a single partnership and were thus jointly liable for any breach of the agreement, Dionysodorus would not normally have been held liable for anything Parmeniscus did contrary to the terms of the agreement. In the absence of anything corresponding to the modern legal notion of partnership or corporation, it was necessary to add this *praxis*-provision to enable Dareius and Pamphilus to proceed against Dionysodorus.[13]

sent by a creditor to his slave and a friend, both in Bosporus, requesting them to inspect the goods pledged to him as security. [Dem.] 49.31–2 deals with a deposit made by Timosthenes to Phormio. [Dem.] 52.3 and 7 describe how Lycon instructed Pasion to pay the money he owed to Cephisiades, who was at the time abroad on a trading voyage. Nor does he cite [Dem.] 56, the case that is actually relevant to his point. Finally, Thompson does not attempt to discover the rationale behind the arrangement. Previous scholars have not discussed this type of security arrangement in maritime loans. No treatment of it can be found in Hansen and Isager, *Aspects of Athenian Society*, E. E. Cohen, *Ancient Athenian Maritime Courts* (Princeton, 1973), J. Vélissaropoulos, *Les Nauclères grecs. Recherches sur les institutions maritimes en Grèce et dans l'Orient hellénisé* (Geneva, 1980), and C. Carey and R. Reid, *Demosthenes: Selected Private Speeches* (Cambridge, 1985).

[11] For a similar arrangement see Dem. 35.16–17: when Androcles lends money to Artemon and Apollodorus on the security of goods to be purchased in Chalcidice and sold in the Pontus, Lacritus, Artemon's brother, reassures him by stating that he is his brother's partner (*κοινωνός*) and by promising *ποιήσειν...τὰ δίκαια ἅπαντα καὶ ἐπιδημήσειν Ἀθήνησι, τὸν ἀδελφὸν τὸν αὑτοῦ Ἀρτέμωνα πλεύσεσθαι ἐπὶ τοῖς χρήμασι*. Androcles, however, was incautious and did not make sure that Lacritus was included in the *syngraphe*.

[12] For a discussion of the legal issue involved in the case and Dionysodorus' defence, see Meyer-Laurin, *Gesetz und Billigkeit*, pp. 12–15. His analysis is superior to that of Carey and Reid, *Demosthenes*, pp. 197–200, who mistakenly argue that Dionysodorus probably sought 'some kind of "equity" ruling'.

[13] For a similar clause in a document for a maritime loan, see Dem. 35.12. For the purpose of the *praxis*-clause, see H. J. Wolff, 'The Praxis-Provision in Papyri Contracts', *TAPA* 72 (1941), 418–38 at p. 428: 'the primary purpose of the contractual *praxis*-provision' is to create 'the debtor's liability and subjection to a possible execution to be carried out by the person for whom the clause was made out, in cases not covered by any liability provided for by law'. See also D. Simon, *Studien zur Praxis der Stipulationklausel* (Munich, 1964).

Applying what we have learned from the information found in [Dem.] 56 to the case described by Apollodorus, we can now see that the arrangement with Lycon must have called for Megacleides to sail to Ace while his brother remained in Athens. Since it was Megacleides who was supposed to sail to Ace, it was he alone who changed his mind and decided not to make the voyage there. That is why the text reads αὐτῷ, not αὐτοῖς.

Megacleides' change of mind appears to have been the cause of the dispute. He had promised Lycon that he would go to Ace, and Lycon had lent him money for the trip in the expectation that he would journey there and pay him interest upon his return to Athens. But when Megacleides changed his mind, a dispute arose about the payment of the interest (περὶ τῶν τόκων). Lycon, the lender, naturally claimed that the interest was still due since Megacleides had promised to pay it when the loan was made. By promising to pay it and then refusing to do so, Megacleides deceived him (ἐξηπατημένος). Megacleides probably defended himself by arguing that he did not owe the interest because he had never made the voyage.[14]

It is clear from Apollodorus' summary of the case that Lycon brought his suit against Megacleides alone, not Megacleides and Thrasyllus (ἐγκαλέσας τι τῷ Μεγακλείδῃ; note also that only Megacleides is brought forward as a witness to the dispute). One might argue that Lycon must have proceeded against both Megacleides and Thrasyllus since as joint borrowers they formed a partnership and were thus jointly liable. Such a view is mistaken for it rests on the erroneous assumption that the Athenians possessed a notion of legal personality similar to our own. But, as we have seen, the Athenians, like the Romans, had no legal concept akin to our modern notion of partnership or corporation.[15] In Athenian law each partner was individually responsible for his own actions. If one member of a group of borrowers or lenders breached the terms of the loan agreement, the normal procedure was for the plaintiff to proceed against that one person, not the entire group.

The dispute between the borrower Pantaenetus and his creditors Evergus and Nicobulus provides a good illustration of this.[16] Nicobulus and Evergus lent Pantaenetus a sum of 105 *mnai* on the security of a workshop at Maroneia and the thirty slaves in it (Dem. 37.4). While Nicobulus was away on a business trip to the Pontus, Evergus took possession of the workshop on the grounds that Pantaenetus had failed to make interest payments and to fulfil his duties under the terms of their agreement (6–7). Unable to use the workshop, Pantaenetus fell behind in his payments on his mining lease from the state and was listed as a public debtor. The

[14] I follow the reconstruction offered by Thompson, art. cit. (n. 10), 601 n. 4. It was probably disputes of this sort that led to the inclusion of phrases like σὺν ἡμιολίᾳ in the loan documents found on Greek papyri in Egypt. By adding this phrase, the debtor agreed beforehand to pay the stated interest on the loan even if he repaid the principal long before it was due. For the phrase and its meaning, see N. Lewis, 'The Meaning of σὺν ἡμιολίᾳ and Kindred Expressions in Loan Contracts', *TAPA* 76 (1945), 126–39.

[15] For the absence of modern notions of juridical personality in Roman law, see B. Nicholas, *An Introduction to Roman Law* (Oxford, 1962), pp. 60–1. Cf. R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri* (New York, 1944), p. 49: there is 'no evidence of the existence of private bodies with a fully corporate personality in Greco-Roman private law in Egypt'.

[16] Carey and Reid, *Demosthenes*, pp. 114–17, do not realize that the Athenians did not share our modern notion of juristic personality and consequently give a confused account of the relationship between Nicobulus and Evergus. For instance, they state that 'the probability is that as partners in the loan both Nicobulus and Evergus could be held responsible for the acts committed by one of them'. But if so, why doesn't the charge against Nicobulus drawn up by Pantaenetus (23–9) contain any mention of Evergus' actions?

situation concerning the workshop was complicated by the fact that there was another set of creditors, the existence of whose claims Pantaenetus had previously hidden from Nicobulus and Evergus.[17] The dispute over the various claims to the workshop was settled by the three parties (7–16), but Pantaenetus was still angry about Evergus having caused him to miss his payments to the state and therefore brought a suit against him. After winning his suit against Evergus (2, 8, 46), Pantaenetus then decided to bring a separate suit against Nicobulus. He charged Nicobulus with having plotted against him by instructing his slave Antigenes to seize his mine and the money his own slave was carrying as payment for the *katabole* to the state (22–9). In his speech against Pantaenetus, Nicobulus employs several lines of argument to prove that his opponent's suit is not actionable, but nowhere does he argue that Pantaenetus is legally required to bring one suit against both partners. And just as Pantaenetus was able to bring one suit against Evergus and then a separate suit against Nicobulus, Lycon brought a suit against Megacleides alone. After all, it had been Megacleides who had promised to sail to Ace and had then changed his mind. Since Thrasyllus had apparently done nothing contrary to the terms of the agreement, he could not be charged with deceiving Lycon.[18]

We can now fill in the details omitted by Apollodorus. Lycon made a maritime loan to Megacleides and his brother Thrasyllus for a trading voyage to Ace. The loan was clearly interest-bearing though we are not told what the rate was fixed at. According to the agreement, Megacleides was to travel to Ace while his brother remained in Athens. For some reason or other, Megacleides decided not to make the trip. Lycon then demanded repayment of the loan plus the interest promised to him. Megacleides offered to repay just the principal, but when his offer was refused, apparently chose to keep the principal until an agreement could be reached.[19] Thereupon Lycon called on his friend Archebiades to settle the dispute. Thrasyllus never became involved in the dispute because he had done nothing contrary to the terms of the agreement with Lycon and because Lycon was not compelled by Athenian law to proceed against both partners at the same time. The procedure followed in the case, though at first puzzling, makes perfect sense once we remember that the Athenians lacked the modern legal notion of partnership or corporation.

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[17] Previous analyses of the dispute are vitiated by their failure to understand the difference between the two proposals made by the other creditors at 12–13. For a discussion of the settlement worked out by the three parties and its implications for our understanding of real security in Classical Athens, see my 'When is a Sale not a Sale? The Riddle of Athenian Terminology for Real Security Revisited', *CQ* 38 (1988), 370–7.

[18] Such an explanation of the procedure followed in the dispute is preferable to Thompson's suggestion (art. cit. (n. 10), 601–2) that Apollodorus, though using the singular throughout the passage, considers the acts of Megacleides to be the work of both Megacleides and Thrasyllus. As we have seen, this assumption is unnecessary; the passage can easily be explained without resorting to any hypothesis about Apollodorus' linguistic habits. Moreover, the passage adduced by Thompson as a parallel, [Dem.] 35.6–7, is not really similar. Here the author employs the plural several times before switching to the singular. That is not the case in Apollodorus' account of Lycon's dispute. Apollodorus only says that the two men received the loan, but never states that both were involved in the ensuing dispute. Finally, if, as Thompson claims, both Megacleides and Thrasyllus participated in the arbitration, why was Megacleides alone called on to testify about Archebiades' role as arbitrator?

[19] Thompson, art. cit. (n. 10), 601 n. 4, aptly compares the action of Dionysodorus at [Dem.] 56.12–16 and 32.

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