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RESPONSE TO GERHARD THÜR

I am glad to say that there is much relating to the topic of real security in Greek Law about which Professor Thür and I agree. Most important, Thür accepts my position, now followed by many scholars, that “*hypothekē* (roughly ‘encumbrance’) and *praxis epi lysei* (‘sale on condition of release’) do not differ in substance, only in terminology.”¹ In my response, I will concentrate on points where I differ with him. I divide my response to Professor Thür’s rich and stimulating paper into three parts. In the first I discuss the nature of real security in the law of Athens and other Greek *poleis*. In the second I examine Thür’s claim that “our modern concept of ‘absolute’ and ‘exclusive’ title does not conform to Athenian legal thought.” In the third and final part I make some remarks about Thür’s discussion of the documents from Northern Greece. In an appendix I present the evidence showing the role of statutes in fostering economic activity.

I) There are two basic forms of real security: substitutive and collateral.

In the substitutive form of security, the object pledged as security for the obligation is viewed as equivalent to the obligation and acts as a “substitute” for the obligation. Consequently there is no possible difference between the monetary value of the obligation and the market value of the security. This has two important practical implications. First, if the creditor distrains upon the security as a result of the debtor’s default, then sells the security and does not receive the full amount of the obligation, he has no right to demand from the debtor the difference between the amount of the debt and the sale price of the security. Conversely, if the sale price of

¹ This is the main argument in Harris (1988), now reprinted with “Afterthoughts” in Harris (2006) 163-206. This point in my analysis has been accepted by Gauthier (1989) 396-97, Todd (1993) 254-5, Hatzopoulos (1991) 59, MacDowell (2004) (“earlier work has now been superseded by Harris 1988 and 1993”), Youni (1996), and Rhodes and Osborne (2003) 179. Although I accepted Pringheim’s principle of cash sale in Harris (1988), I am now less convinced by this theory than I was twenty years ago. See, for example, the critique of Millett (1990) 175-82, apparently unknown to Thür.

I basically agree with Thür about the unity of Greek law and the existence of basic principles “followed the laymen who skillfully drafted sales, leases, loans, mortgages and other contracts.” He might have cited the important study of Chaniotis (2004), which traces these principles in the area of property law in inter-state arbitration.

I would like to thank Selene Psoma and Fred Naiden for reading over a draft of this essay, catching several errors, and making useful suggestions.

the security is greater than the amount of the obligation, the debtor has no right to demand from the creditor the excess over the amount of the obligation.² In this form of security the creditor aims to gain possession of the security for his personal use, not to obtain the cash value of the security. Second, because there can be no difference between the amount of obligation and the sale price of the security, a debtor cannot pledge the security for two different obligations, with the first creditor having the right only to the amount of the sale price equivalent to the obligation, the second creditor having a right only to any excess amount resulting from the sale of the security.

In the collateral form of security the creditor does not aim to gain possession of the security but to obtain the cash value of the security to pay his obligation. The practical implications of this approach are very different. In the event of default, the creditor still has the right to seize and sell the security, but he has the right only to the amount equivalent to the debtor's obligation (and any penalties incurred). If there is an excess amount resulting the sale, the debtor has the right to the cash remaining after the obligation is paid off. On the other hand, if the cash obtained through the sale is less than the amount of the obligation, the creditor has the right to demand the difference from the debtor. In this type of security the creditor normally attempts to evaluate the market value of the security to ensure that it greatly exceeds the amount of the obligation.³

Finley believed that the Athenians and other Greeks knew only the substitutive form of security because their level of economic development remained at a low level for various reasons. Because the Greeks did not have extensive markets and credit relations, they did not think in market terms. According to Finley, for "the collateral idea to dominate, a relatively fluid credit economy is required, in which everything is readily translated into money; in which, in other words, all goods and commodities may have an immediate market value and are so conceived by the society." As a result, "Athenian security was normally substitutive in character."⁴ In particular, Finley pointed to Demosthenes' inventory of his father's estate when he claimed that the orator calculated the value of the twenty bed-makers in terms of "the size of the debt they secured" and "does not think of re-calculating the value of the twenty slaves in market terms."⁵ Finley's view was not original; Manigk had

² Finley (1985) 115: "The creditor took the property in case of default and that was the end of the matter."

³ For a summary of the differences between the two types of real security see Finley (1985) 115. Thür discusses only the rights of multiple creditors in real security but misses the crucial issue of the borrower's right to the excess and the creditor's right to collect any deficit. This invalidates much of his argument.

⁴ Finley (1985) 115. Finley (1953) admitted that the *poletai* records appear to contain the first apparent example of collateral security. I questioned this view in Harris (1988) 366, note 62 (= Harris [2006] 184, note 62) but now am inclined to accept it.

⁵ Finley (1951) 116. For the flaws in Finley's analysis of Dem. 27.9 see Harris (1988) 362-63 (= Harris [2006] 179-81).

taken the same position many years before.⁶ I followed Finley's view in essays published in 1988 and 1993,⁷ and Thür believes that I was correct to do so ("Following Finley (and others) Harris correctly points out that, in Athens, real security was substitutive in nature ('Verfallspfand')."). Thür does not observe, however, that I retracted my endorsement of Finley's position in my book published in 2006 without presenting detailed reasons.⁸ His paper now provides me with a welcome opportunity to present the evidence showing that the Athenians and other Greeks did develop the collateral form of security.

Finley's belief that the Athenians and other Greeks did not develop the notion of collateral security was based on views about the nature of exchange in Ancient Greece.⁹ Finley claimed that one could not speak of markets in the ancient Greek world because most exchange moved along networks among friends, kin or neighbors or through relations of dependence (clientship, tribute of subjects, etc.). The justification for his position is to be found in his *The Ancient Economy*.¹⁰ Finley argued that one could not analyze economic activity in the ancient world in terms of a "world market" because such a market could not come into existence without "the extreme division of labour and the absence of household self-sufficiency."¹¹ Because "Neither predicate existed to a sufficient degree in antiquity," Finley argued that one could not view the ancient economy as "an enormous conglomeration of interdependent markets." Finley ruled out *a priori* the possibility that there might have been enough specialization of labor to create local and regional markets.

Although the Greeks did not develop vertical specialization of labor to any significant degree, there was a considerable amount of horizontal specialization in the Classical period. In Athens alone, there are over 170 occupations attested in the fifth and fourth centuries BCE. A high enough level of specialization therefore existed to create the conditions necessary for extensive commodity exchange in local and regional markets.¹² *Pace* Finley this meant that creditors did have a permanent market available where they could readily convert securities into cash and were therefore capable of thinking in market terms. The obstacle that Finley claimed was

⁶ Manigk (1916).

⁷ Harris (1988) 356 and (1993). Thür does not appear to know the latter essay (reprinted in Harris [2006] 207-39), which *inter alia* demonstrates that Wolff's analysis of *apotimema* is based on a mistaken reading of several key passages.

⁸ Harris (2006) 239 citing Biscardi (1999) 173-98.

⁹ Thür does not examine the assumptions about the Greek economy lying behind Finley's views about real security.

¹⁰ Finley (1973) 34.

¹¹ This phrase is taken from Berry (1967) 106.

¹² For the evidence of horizontal specialization and its connection to the rise of permanent markets see Harris (2002b). For a more extensive analysis of markets in the Greek economy see Bresson (2007) and (2008) *passim*. Thür appears to be unaware of the earlier critique of Finley found in Bresson (2000).

responsible for preventing the emergence of the collateral idea did not in fact exist. I now turn to the evidence for collateral security overlooked by Finley.

1) Demosthenes 28.18

ποῖ δ' ἂν τραποίμεθα, εἴ τι ἄλλο ψηφίσαισθ' ἡμεῖς περὶ αὐτῶν; εἰς τὰ ὑποκείμενα τοῖς δανείσασιν; ἀλλὰ τῶν ὑποθεμένων ἐστίν. ἀλλ' εἰς τὰ περιόντα αὐτῶν; ἀλλὰ τούτου γίγνεται, τὴν ἐπωβελίαν ἐὰν ὄφλωμεν.

Translation: “To where would we turn if you should vote for any other verdict? To the property pledged as security to our creditors? But that belongs to them. To the excess (resulting from the sale of the security)? But that belongs to him if we owe the *epobelia*.”

Demosthenes has brought a suit against his guardians for squandering his inheritance and tells the judges that if they vote against him, he will not have any property left. He claims that he has pledged most of his property as security to creditors so as to obtain loans for liturgies and other expenses. He assumes that if his creditors seize and sell this property, he will still have a right to the excess (περιόντα) from which he can pay Aphobos the *epobelia* for losing his suit.¹³ He therefore assumes that he will have a right to any difference between the sale price of the security and the amount of his obligation to his creditors. On the substitutive approach to security, Demosthenes would not have a right to any excess.

2) *IG ii² 2670* = Finley (1985) no. 146,

ὄρος χωρίο προικὸς | Ἰπποκλείαι Δημοχά[ρ]ος Λευκονοιῶς Τ· | [ὄσ]ωι πλείονος ἄξι[ον] Κεκροπίδαϊς | [ὑ]πόκειται καὶ Φλυεῦ[σι].

Translation: “Marker of a property (given as) dowry for Hippocleia, daughter of Demochares of Leuconoia, one talent. The excess value has been pledged as security to the Cecropidai and to the Lycomedai and to the members of the deme of Phlya.”

3) *Hesperia* suppl.7 (1943) 1, no. 1 = Finley (1952) no. 147, lines 1-7.

ὄρος οἰκίας ἀποτε[τιμ]ημένης προικὸς Ε[ἰρη?]νεὶ Ἀντιδώρου Λευκονοιέως θυγατρὶ Χ δρα[χμῶν·] | ὄσωι πλέονος ἄξία ἐ[τιμήθ]η Ἀγλαοτίμει ὑπόκε[ιται] | ΗΗ καὶ Γεφυραίοις ΗΗΙ (. . .)

Translation: “Marker of a house pledged as security for the dowry of Eirene (?), daughter of Antidorus of Leuconoion, 1,000 drachmas. The excess value has been pledged as security to Aglaotimes for 200 drachmas, and to the *Gephyraioi* for 200 drachmas, and (...).”

In both of these arrangements, it is envisioned that the security would be sold in case of default and the excess of the amount over the amount of the first lien would be given to the other creditors. In others words, this presupposes a forced sale, not joint ownership by the creditors.

¹³ On the nature of the *epobolia* see now MacDowell and Wallace in this volume.

4) SIG³ 976, lines 64-68 – Law about Grain from Samos 200-150 BCE

ἐὰν δέ τις τῶν ἰ δανεισαμένων μὴ ἀποδιδόι τὸ ἀργύριον ἢ πᾶν ἢ μέρος τι, τὸ ὑπόθεμα ἀποδόσθω ἢ χιλαστύς. καὶ ἐὰν τις ὑπεροχὴ γένηται[ι], ἰ ἀποδότω τῷ τὸ ὑπόθεμα δόντι. ἐὰν δέ τι ἐνλίπη, τὴν πρῶξιν ἰ ποιησάσθω ἐκ τοῦ ἐγγύου.

Translation: “If any of the borrowers does not pay back the money either the entire sum or a part, let the Chiliastys sell the security (*hypothema*). If there is an excess amount, let him return it to the person who gave the security. If there is a deficit, let him collect it from the person who provides the security.”

5) SIG³ 672, lines 64 – Decree of Delphi – 162-160 BCE

εἰ δέ κα μὴ ἀποδιδῶντι καθὼς γέγραπται, τὰ ἐνέχυρα αὐτῶν τῶς πόλιος ἔστω, καὶ οἱ ἐπιμεληταὶ ἀεὶ οἱ ἐγδανείζοντες κύρ[ι]οι ἔστωσαν πωλέοντες. εἰ δὲ πωλείμενα τὰ ἐνέχυρα μὴ εὐρίσκοι τὸ ἀργύριον ποθ’ ὃ ὑπέκειτο τῷ πόλει, πράκτιμοι ἔστωσαν τοῖς ἐπιμεληταῖς ἀεὶ τοῖς ἐνάρχοις τοῦ ἰ ἐλλείποντος ἀργυρίου αὐτός τε ὁ δανεισάμενος καὶ οἱ γενόμενοι ἔγγυοι, τρόποι ὧι θέλοιεν πράσσειν, καθὼς καὶ τῶ[λ]α δαμόσια καὶ ποθίερα πράσσονται.

Translation: “If they do not pay back in accordance with what has been recorded, let their securities belong to the city, and the Overseers who made the loans have the power to sell them. If the securities once they are sold do not provide the money (i.e. the loan) for which they were pledged to the city, let the borrower and his sureties be liable to the Overseers for the remaining sum (which they can collect) in any way they wish to collect, in the same way as they do with other public and temple money.”

As in the law from Samos, the security is not viewed as a substitute for the loan, but as providing cash from its sale. The debtor has the right to the excess. In both of these laws there is a forced sale carried out by public officials.

6) SIG³ 364, lines 32-41 – Law of Ephesus about Debt (early third century BCE)

ὅσοι δὲ ἐπὶ ἰ τοῖς ὑπερέχουσι δεδανείκασιν, εἶναι τὴν κοιμὴν αὐτοῖς ἐκ τοῦ περιόντος μέρους τῷ ἰ γεωργῶι, κᾶν εἷς κᾶμ πλείους ὦσι, τοῖς πρώτοις καὶ τοῖς ἄλλοις ἐπεξῆς, τὸν δὲ ἰ [νό]μον εἶναι καὶ τούτοις καθάπερ καὶ τοῖς πρώτοις πρώτους δανείκασιν. εἰ δὲ τινες ἰ [ὑποθέ]ντες ἄλλοις κτήματα δεδανεισμένοι εἰσὶμ παρ’ ἐτέρων ὡς ἐπ’ ἰ ελευθέρους ἰ [τοῖς κ]τήμασι, ἐξαπατήσαντες τοὺς ὑστέρους δανειστάς. ἐξεῖναι τοῖς ὑστέροις ἰ [δανεισ]ταῖς ἐξαλλάξασιν τοὺς πρότερον δανειστάς κατὰ τὸν συλλογισμὸν τοῦ κοινοῦ πολ[λέμου] ἔχειν τὰ κτήματα, ἐὰν δὲ ἐνοφείληται τι αὐτοῖς ἔτι, εἶναι τὴν κοιμὴν τοῖς ἰ [δανεισ]ταῖς ἐκ τῆς ἄλλης οὐσίας τοῦ χρειστοῦ πάσης, τρόπῳ ὧ δύνωνται, ἀζημίους ἰ [ἀπάση]ς ζημίας.

Translation: “All those who have lent money on the surplus (of property already pledged as security) can recover their money from the excess, whether there is one (creditor) or are more (than one), the first (lenders) and the others in order. The same rule applies to these as to those who made the first loan. If some have given property to others as security when borrowing money from others making them believe that

this property is unencumbered and deceive the later lenders, it is permitted for the later lenders to exchange places with the previous lenders taking into consideration the Common War and take possession of the property. But if there is still something owing to them, the lenders have the right to recover it from all the property of the borrower in whatever way they can without incurring any penalty.”

Here again too the creditor has the right to demand any deficit between the price obtained by the sale of the security and the amount of obligation. In all these passages it is taken for granted that the security can readily be converted into cash. In an economy where there were permanent markets in most communities, that should come as no surprise. Thür claims that “the effects of collateral security were achieved by means of the age-old principle of substitution” but admits that “there is no direct evidence for my conclusion.” The evidence examined above shows that there is no need to speculate about the bargaining among creditors in case of default to overcome the obstacles posed by the substitutive form of security. In fact, the one detailed account of bargaining among creditors, which is found in Demosthenes’ *Against Pantaenetus*, makes it clear that creditors followed the collateral principle.¹⁴

II) Thür asserts that “our modern concept of ‘absolute’ and exclusive title doesn’t fit to the Athenians’ legal thinking. In their eyes ownership was an elastic, functionally divided position to be modified by mutual agreements between different parties.” Because the Athenians had a different view of ownership, both the creditor and the debtor might view property pledged as security as belonging to both at once. Thür provides almost no evidence for this sweeping assertion, which collides with weighty objections on both theoretical and empirical grounds.

First, the theoretical grounds. In a seminal article A. M. Honoré examined the definitions of ownership found in lawcodes from very different legal traditions: British and American drawing on the common law tradition, French, Italian, and German shaped by the Civil law tradition, and the Soviet influenced by Marxist conceptions.¹⁵ In each case there was broad agreement that ownership is “the greatest possible interest in a thing which a mature system of law recognizes.”¹⁶ He then listed ten incidents of ownership that are recognized in all these legal systems: 1) right to possess, 2) right to use, 3) right to manage, 4) right to income, 5) right to

¹⁴ This is most obvious at Dem. 37.12 where one set of creditors states that the value of Pantaenetus’ workshop is much more than the amounts of their two loans. In other words, they make a distinction between value of the loans and the market value of the security and do not regard the security as a substitute for the two loans. For a detailed analysis of these negotiations see Harris (1988) 370-77 (= Harris [2006] 190-99). For the reasons why the court sided with Nicobulus in his case against Evergus see Harris (2004) 253-56.

¹⁵ Honoré (1961).

¹⁶ In Harris (1988) 369 (= Harris [2006] 188) I wrote that ownership is an almost universal concept. At the time I was not aware of the work of Honoré providing the evidence for this view.

capital, 6) right to security, 7) transmissibility, 8) absence of term, 9) prohibition of harmful use, and 10) liability to execution.¹⁷ Honoré did not confine himself to modern European systems, but also drew on work by anthropologists like B. Malinowski, whose field-work revealed that pre-state communities with low levels of technical specialization and social differentiation share the same basic conception of ownership.

Although different legal systems recognize the same basic rights of owners, they may differ in the following areas: 1) who is capable of exercising the rights of ownership? 2) what kinds of items can be subject of ownership? and 3) what are the restrictions placed on the rights of ownership? *Pace* Thür, Greek legal systems and modern ones did not differ in terms of their basic conceptions of the rights of ownership, but about these issues. For instance, foreigners could not own land in Athens and many other Greek *poleis* whereas they can in Modern Europe and North America.¹⁸ In ancient Greece masters could own other human beings and exercise the rights of ownership over them; most countries in the world have now outlawed the ownership of human beings. In ancient Greece there were very few restrictions on the owner's rights over his land; today there are numerous zoning, building, and environmental regulations restricting the rights of owners.¹⁹

Second, empirical grounds. I have searched through the work of A. Kränzlein about ownership and property and find no view of ownership in the laws of the Greek *poleis* similar to the one adumbrated by Thür. In fact, Kränzlein builds much of his analysis on a passage from Plato, *Euthydemus* 301e-302a which defines ownership as having the power to do whatever one pleases with an object: "Do you consider then, he said, those things yours which you control and have the power to use as you wish? For example, an ox or a sheep would you consider them yours if you were free to sell or give them, or sacrifice them to any god you might wish? And those objects that are not like this are not yours? (...) It is just as you say: only things like this are mine."²⁰ This is very close to the definition given by Honoré.

Third, the Athenians and other Greeks often describe the act of pledging security as agreement of sale, which is an alienation of property, not sharing of property. In fact, in several *horoi* the creditor indicates that the act of hypothecation makes him the owner of the security, not joint owner (Finley nos. 1, 2, 2A). There is a word for common ownership in the Greek *koinonia* and words derived from it.²¹

¹⁷ For the exercise of these rights by owners over slaves in ancient Greece see Harris (2006) 250-51.

¹⁸ For the rule and the exceptions see Hennig (1994).

¹⁹ For public regulation of private property see Hennig (1995).

²⁰ ἄρ' οὖν, ἔφη, τὰ πάντα ἡγεῖσά εἶναι, ὧν ἂν ἄρξῃς καὶ ἐξῆ σοι αὐτοῖς χρῆσθαι ὅ τι ἂν βούλη, οἷον βοῦς καὶ πρόβατον, ἄρ' ἂν ἡγοῖο τὰ πάντα σὰ εἶναι, ἃ σοι ἐξεῖ καὶ ἀποδόσθαι καὶ δοῦναι καὶ θῦσαι ὅτω βούλοιο θεῶν; ἃ δ' ἂν μὴ οὕτως ἔχη, οὐ σά; - πάνυ μὲν οὖν, ἔφην, οὕτως ἔχη. τὰ τοιαῦτα ἐστὶ μόνον ἐμά.

²¹ On joint ownership see Biscardi (1999) 23-74.

To my knowledge, no creditors or borrowers in Athens and other Greek *poleis* ever use this term to describe their relationship in regard to the security. I therefore see no reason to alter the basic features of my analysis of the reasons for the differing views of the creditor and the debtor about the ownership in Athenian Law.²²

III) Thür claims that four documents from Northern Greece recording sales actually concern transactions involving real security (*SEG* 41:564; *SEG* 47:999; *SEG* 38: 671-73). None of the documents however actually contain terms denoting real security or indicate that the sales took place in the context of loans or other obligations.²³ On the other hand, the texts found on *horoi* from Attica, Amorgos, Lemnos and Skyros either use the language of real security or assert that the buyer has the right of redemption in the sale or indicate that the sale takes place in the context of a loan or other type of agreement and is therefore a pledge of security. Thür's analysis of these documents rests on nothing more than improbable speculation.

Thür claims that the term οὐνή κάτοχος (*SEG* 38:671) in an inscription found in Northern Greece at Amygdalia indicates that the document records a transaction involving property pledged as security. The inscription records a sale of a vineyard and a house in the city by a Glaucias, son of Strato, to Apollodorus, son of Poris, for three hundred drachmas. Thür attempts to explicate this term by analyzing a passage from Isaeus (2.28), two inscriptions from Mylasa (*IK* 34, 109, 8-10; 204.9-12) and three papyri (*PFrankf.* 7.6-9; *PTebt.* I 60.102-4; *MChr.* 314.34-37). In these passages different words are used to describe a property on which there is a lien or which is subject to dispute. Thür then claims that a creditor had a claim on the property of seller Glaucias, but the buyer Apollodorus decided to go ahead with the transaction. Because there was a risk for Apollodorus, Thür believes this was not an actual sale but a loan on security (although nothing in the inscription would suggest this). Depending on the outcome of the dispute, the price of the property would be adjusted upwards or downwards. Thür cites no other example of this unparalleled type of arrangement either in Northern Greece or in other *poleis*. There are several problems with this argument, but the most serious objection is that the term οὐνή κάτοχος occurs in none of the passages studied by Thür.²⁴ At Isaeus 2.28 the word used is κατοκώχιμον ("encumbered"). In one of the inscriptions from Mylasa and

²² Thür misrepresents my analysis when he claims that I consider the difference of opinion about the ownership of the security as "only a matter of rhetoric." The issue is legal not rhetorical. In fact, I do not use the terms "rhetoric" or "rhetorical" in my essay.

²³ Nothing compels one to believe that the word *nomos* in *SEG* 41:564 must refer to a clause in a security contract.

²⁴ One might also point out that the creditor is not named in the inscription, and there is no mention of any potential adjustment of the sale price. This much of Thür's argument rests on nothing more than speculation.

two of the papyri the term is *κατόχιμος* (“encumbered”). In the remaining papyrus the word is *κατοχή*.

A better way to determine the meaning of the phrase would be to examine a passage where the adjective *κάτοχος* is actually found. Dionysius of Halicarnassus in his *Isocrates* (9) summarizes Isocrates’ discussion of Spartan claims to Messenia in his *Archidamus*. The Spartans had received the territory from the sons of Cresphontes as a gift following instructions from the god. The war they fought for it strengthened their acquisition (*ἐπικυρώσαντος . . . τὴν κτῆσιν τοῦ πολέμου*),²⁵ and the passage of time made it *κάτοχος* and secure (*βέβαιον*). The term is used as a synonym of “secure” and is employed in a context where the speaker argues the Spartans have firm and uncontested ownership of the land. This would indicate that the phrase *οὐνὴ κάτοχος* should mean “secure” or “incontestable sale.” This translation makes much better sense in the context of the sale document from Northern Greece. Just as the Spartans have secure title of Messenia because they received it from the previous owners, the sons of Cresphontes, Glaucias has secure title of the land sold to Apollodorus because he inherited it from his father Strato (lines 7-8). The document is similar to another found in the same place, which records a sale of land by Dinnys son of Pottes (?) to Nicon, son of Cteson. In this document Dinnys asserts his legitimate title to his land by stating he received it as security from Dionysius, the son of Cteson (lines 9-12).²⁶ Another parallel can be found in a *horos* found on Amorgos where the seller or pledgor asserts his secure title to land by indicating that he acquired it legitimately.²⁷ This interpretation is supported by the passage of Dionysius, makes much better sense in the context of the document, and finds parallels in two inscriptions. It is thus superior to that of Thür.

We have found that there are no good reasons to believe that any of the inscriptions analyzed by Thür have anything to do with real security. They are thus irrelevant to the discussion of the topic and cannot be used to support his arguments about the substitutive nature of real security in Greek Law.

²⁵ For legitimate acquisition of territory by gift and by war see Chaniotis (2004).

²⁶ See Hatzopoulos (1988) 27 for the text.

²⁷ For instance, Finley no. 102.

APPENDIX

Thür claims that “Contract clauses, not statutes met the needs of a growing economy” but presents no ancient sources to support this general statement. There is much evidence, overlooked by Thür, which disproves his view.

Several ancient authors observed a connection between the development of statutes and the growth of economic activity. The work entitled the *Anonymous Iamblichii* notes the importance of “law and order” (*eunomia*) for the circulation of goods, which brings advantages to all men: “Trust (or credit) arises from law and order (*eunomia*) and brings great benefits to all men and is responsible for great advantages. For as a result of this (i.e. *eunomia*) wealth comes into common use, and in this way even if there is little, it is still sufficient because it circulates.”²⁸ A similar view is found in a passage of Isocrates (7.31-35). A litigant in an Athenian court urges the judges to enforce a loan contract because of the benefits strict adherence to the law has on trade: “For the resources provided to those who work do not come from the borrowers but from the lenders. No ship, no ship-owner, no passenger could put to sea if the part contributed by the lender were removed. In the laws there are many excellent protections granted to them. It is your duty to make clear that you cooperate in enforcing them and do not give in to dishonest men so that you gain the greatest possible advantage from your market.” (Dem. 34.51-52). Another litigant tells the judges that their decision to uphold the law about contracts will have a good effect on their market: “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 if 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.” (Dem. 56.48-50).

These general statements are supported by the evidence of many statutes enacted by the Athenians and other Greek *poleis* that served to provide the legal infrastructure needed for market relations.²⁹ This list is not comprehensive but proves the basic point that the Athenians passed many statutes to meet the needs of a growing economy.

- 1) Maritime laws – Dem. 35.3 with Cohen (1973); Vélissaropoulos (1980).
- 2) Law about real security – Dem. 41.7-10 with Harris (2006) 207-39.
- 3) Law about testing coinage – Stroud (1974).
- 4) Law about warranty against latent defects in sale of slaves – Hyp. *Ath.* 15. Possibly extended to other items – see Lysias. 8.10-12.
- 5) Law against fraud in the Agora – Hyp. *Ath.* 14.
- 6) Law about price of grain, flour, and bread – *Ath. Pol.* 50.1
- 7) Law against buying more than *phormoi* of grain – Lysias 22.5-6.
- 8) Law banning exports of grain from Athens – Dem. 34.37; 35.50-1; 58.8-9.
- 9) Law making it illegal to make loan for export of grain from Athens – Dem. 35.50.

²⁸ For a perceptive analysis of this passage see Faraguna (1994) 584-87.

²⁹ For a general treatment of the relationship between law and economy in Classical Athens see Harris (2006) 143-62. For market regulations in Athens and other Greek *poleis* see Stanley (1976).

- 10) Law about selling grain collected from the *pentekoste* and *dodekate* in Anthesterion – Stroud (1998) and Harris (1999).
- 11) Law on personal security – Dem. 33.27.
- 12) Law about weights and measures – *IG ii² 1013* with *Ath. Pol.* 51.1.
- 13) Law regulating the hire of females who play the *aulos*, harp or lyre – *Ath. Pol.* 50.2.
- 14) Warranty of title in sale assured by law – Isaeus 5.22 with Wyse (1904) 435-37.
- 15) Laws about mining – Dem. 37.35-36 with Faraguna (2005) and MacDowell (2005).
- 16) Possible law setting recommended prices – see Bresson (2000) 183-210.
- 17) Law about charging interest in loans – Lysias 10.18.
- 18) Decrees granting privileges to Proxenoï – Culasso Gastaldi (2004). For the role of *Proxenoï* in facilitating trade – Dem. 53 with Marek (1985).
- 19) Commercial Treaties Between Poleis (*sumbola*) – Gauthier (1972).
- 20) Law requiring that losses resulting from jettison be shared equally among all passengers – Athenaeus 7.292a-b. Cf. *Digest* 14.2.2. pr.

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