

“...τούς νόμους διαστρέφειν...” What is (ab)use of law in 4<sup>th</sup>-century Athens?

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1. Isaeus 11 (*About Hagnias' estate*) 4: Λαβὲ οὖν αὐτοῖς τοὺς νόμους· σὺ δ' ἀνάβηθι δεῦρο, ἐπειδὴ δεινὸς εἶ διαβάλλειν καὶ τοὺς νόμους διαστρέφειν. Σὺ δ' ἀναγίγνωσκε. ΝΟΜΟΙ. Ἐπίσχες. ἐρωτήσω σέ. ἀδελφός ἐσθ' ὁ παῖς Ἀγνίου <ἢ> ἀδελφιδοῦς ἐξ ἀδελφοῦ ἢ ἐξ ἀδελφῆς γεγονώς, ἢ ἀνεψιός, ἢ ἐξ ἀνεψιοῦ πρὸς μητρὸς ἢ πρὸς πατρὸς; τί τούτων τῶν ὀνομάτων, οἷς ὁ νόμος τὴν ἀγχιστεῖαν δίδωσι; ((To the clerk): Please take these laws; and (to his opponent) you, come up here, since you are so clever at misrepresentation and at distorting the laws. (To the clerk): Read on. LAWS. Stop. I wish to question you. Is the child a brother of Hagnias, or a nephew, the son of a brother or sister, or a cousin, or the child of a cousin on his mother's or his father's side? Which of these titles, which are regarded by the law as constituting kinship, does he possess? – Loeb transl.)
2. Other instances of διαστρέφειν. Dem. 10 (*Against Philip 4<sup>th</sup>*) 75: τῶν λυμαίνεσθαι καὶ διαστρέφειν ἐξ ἴσου κάθησθ' ἀκροώμενοι (you sit and pay equal attention to those who wish to overthrow and distort them); Dem. 24 (*Against Timokrates*) 210: καὶ τοὺς λυμαινομένους καὶ διαστρέφοντας αὐτοὺς (νόμους) κολάζειν (and we should punish those who debase and pervert them); Hyp. 1 (*In defence of Lykophron*) 10: πρὸς δὲ τούτοις τοὺς τε μέλλοντας βοηθεῖν τοῖς φεύγουσι προδιαβάλλουσι καὶ αὐτοῦ τοῦ κρινομένου τὴν ἀπολογίαν διαστρέφουσιν (in addition to this the accusers create a prejudice against the advocates for the defence and distort the case of the accused himself); Demades, frg. 79.2: ὁ Δημοσθένης ὁ πικρὸς συκοφάντης διαστρέφων τὸ πρᾶγμα τῇ δεινότητι τῶν ρημάτων διέβαλεν. Din. frg. 9.3 (Konomis) Harpocr. s. v. κλιμάζῃ Δείναρχος ἐν τῷ ἐπιγραφομένῳ Συνηγορία Αἰσχίνῃ κατὰ Δεινίου· ὅταν οὖν ἀπολογούμενος κλιμάζῃ καὶ παράγῃ τοὺς νόμους ἀντὶ τοῦ παρακλίνῃ καὶ παρατρέπῃ· μήποτε δὲ δεῖ γράφειν βλιμάζῃ, ἵν' ἢ οἷον θλίβῃ καὶ βιάζῃται. See also Phot. K 783, Suda κ 1804: κλιμακίζειν μέμνηται Δείναρχος ἐν τῇ Ὑπὲρ Αἰσχίνου εἰσηγορίᾳ (sic), λέγων οὗτος κλιμακίζει τοὺς νόμους. ἔστιν δὲ οἷον παράγει καὶ διαστρέφει, ἴσως ἀπὸ τῆς κλίμακος εἰρημένου τοῦ ὀνόματος, ἥτις οὕσα ὄργανον βασανιστικὸν διαστρέφει τὰ σώματα τῶν βασανιζομένων. Pollux 3.155: καὶ πλαγιάζειν δὲ καὶ κλιμακίζειν παλαισμάτων ὀνόματα.
3. D. Chrys. 76.3-4: ἔπειτα τοὺς νόμους παρ' ἄλλων πυνθανόμεθα, τὰ δὲ ἔθῃ πάντες ἐπιστάμεθα. κακείνων μὲν εἰσιν οὐ σαφῶς ἐνιοι γεγραμμένοι καὶ διαστρέφονται πολλάκις ὑπὸ τῆς τῶν ρητόρων δυνάμεως τῶν δὲ ἐθῶν οὐδὲν ἀμφίβολον οὐδὲ σκολίον, οὐδ' ἂν περιγένοιτ' αὐτῶν λόγος.
4. Death penalty for citing a non-existent law. Dem. 26 (*Against Aristogeiton II*) 24: Καὶ θάνατον μὲν ὠρικένας τὴν ζημίαν ἂν τις οὐκ ὄντα νόμον παράσχηται, τοὺς δὲ ὄντας εἰς τὴν τῶν ὥσπερ οὐκ ὄντων νόμων τάξιν ἄγοντας, τούτους ἀτιμωρήτους περιορᾷ;
5. “Artless proofs”. Aristot., *Rhetoric* 1375a - b: Περὶ δὲ τῶν ἀτέχνων καλουμένων πίστεων ἐχόμενόν ἐστι τῶν εἰρημένων ἐπιδραμεῖν· ἴδιαι γὰρ αὗται τῶν δικανικῶν. εἰσὶν δὲ πέντε τὸν ἀριθμόν, νόμοι, μάρτυρες, συνθήκαι, βάσανοι, ὅρκοι. πρῶτον μὲν οὖν περὶ νόμων εἴπωμεν, πῶς χρηστὸν καὶ προτρέποντα καὶ ἀποτρέποντα καὶ κατηγοροῦντα καὶ ἀπολογούμενον. φανερόν γάρ ὅτι, ἂν μὲν ἐναντίος ἢ ὁ γεγραμμένος τῷ πράγματι, τῷ κοινῷ χρηστὸν καὶ τοῖς ἐπιεικεστέροις καὶ δικαιότεροις. καὶ ὅτι τὸ «γνώμη τῇ ἀρίστη» τοῦτ' ἐστίν, τὸ μὴ παντελῶς χρῆσθαι τοῖς γεγραμμένοις. καὶ ὅτι τὸ μὲν ἐπιεικὲς αἰεὶ μένει καὶ οὐδέποτε μεταβάλλει, οὐδ' ὁ κοινός (κατὰ φύσιν γὰρ ἐστίν), οἱ δὲ γεγραμμένοι πολλάκις, ... καὶ ὅτι τὸ δίκαιόν ἐστιν ἀληθές τε καὶ συμφέρον, ἀλλ' οὐ τὸ δοκοῦν, ὥστ' οὐ νόμος ὁ γεγραμμένος· οὐ γὰρ ποιεῖ τὸ ἔργον τὸ τοῦ νόμου. καὶ ὅτι ὥσπερ ἀργυρογνώμων ὁ κριτής ἐστιν, ὅπως διακρίνῃ τὸ κίβδηλον δίκαιον καὶ τὸ ἀληθές. καὶ ὅτι βελτίονος ἀνδρὸς τὸ τοῖς ἀγράφοις ἢ τοῖς γεγραμμένοις χρῆσθαι καὶ ἐμμένειν.

καὶ εἴ ποὺ ἐναντίος νόμῳ εὐδοκιμοῦντι ἢ καὶ αὐτὸς αὐτῷ, οἷον ἐνίοτε ὁ μὲν κελεύει κύρια εἶναι ἅττ' ἂν συνθῶνται, ὁ δ' ἀπαγορεύει μὴ συνκύρια εἶναι ἅττ' ἂν συνθῶνται, ὁ δ' ἀπαγορεύει μὴ συντίθεσθαι παρὰ τὸν νόμον. καὶ εἰ ἀμφίβολος, ὥστε στρέφειν καὶ ὁρᾶν ἐπὶ ποτέραν [τὴν] ἀγωγὴν ἢ τὸ δίκαιον ἐφαρμόσει ἢ τὸ συμφέρον, εἴτα τούτῳ χρῆσθαι. καὶ εἰ τὰ μὲν πράγματα ἐφ' οἷς ἐτέθη ὁ νόμος μηκέτι μένει, ὁ δὲ νόμος, πειρατέον τοῦτο δηλοῦν καὶ μάχεσθαι ταύτῃ πρὸς τὸν νόμον. ἐὰν δὲ ὁ γεγραμμένος ἢ πρὸς τὸ πρᾶγμα, τό τε “γνώμη τῇ ἀρίστη” λεκτέον ὅτι οὐ τοῦ παρὰ τὸν νόμον ἕνεκα δικάζειν ἐστίν, ἀλλ' ἵνα, ἐὰν ἀγνοήσῃ τί λέγει ὁ νόμος, μὴ ἐπιорκῇ. καὶ ὅτι οὐ τὸ ἀπλῶς ἀγαθὸν αἰρεῖται οὐδεὶς, ἀλλὰ τὸ αὐτῷ. καὶ ὅτι οὐδὲν διαφέρει ἢ μὴ κείσθαι ἢ μὴ χρῆσθαι. καὶ ὅτι ἐν ταῖς ἄλλαις τέχναις οὐ λυσιτελεῖ παρασοφίζεσθαι τὸν ἱατρόν· οὐ γὰρ τοσοῦτο βλάπτει ἢ ἁμαρτία τοῦ ἱατροῦ ὅσον τὸ ἐθίζεσθαι ἀπειθεῖν τῷ ἄρχοντι. καὶ ὅτι τὸ τῶν νόμων σοφώτερον ζητεῖν εἶναι, τοῦτ' ἐστίν ὃ ἐν τοῖς ἐπαινουμένοις νόμοις ἀπαγορεύεται. καὶ περὶ μὲν τῶν νόμων οὕτως διωρίσθω (Following on what we have just spoken of, we have now briefly to run over what are called the inartificial proofs, for these properly belong to forensic oratory. These proofs are five in number: laws, witnesses, contracts, torture, oaths. Let us first then speak of the laws, and state what use should be made of them when exhorting or dissuading, accusing or defending. For it is evident that, if the written law is counter to our case, we must have recourse to the general law and equity, as more in accordance with justice; and we must argue that, when the dicast takes an oath to decide to the best of his judgement, he means that he will not abide rigorously by the written laws; that equity is ever constant and never changes, even as the general law, which is based on nature, whereas the written laws often vary ... and further, that justice is real and expedient, but not that which only appears just; nor the written law either, because it does not do the work of the law; that the judge is like an assayer of silver, whose duty is to distinguish spurious from genuine justice; that it is the part of a better man to make use of and abide by the unwritten rather than the written law. Again, it is necessary to see whether the law is contradictory to another approved law or to itself; for instance, one law enacts that all contracts should be binding, while another forbids making contracts contrary to the law. If the meaning of the law is equivocal, we must turn it about, and see in which way it is to be interpreted so as to suit the application of justice or expediency, and have recourse to that. If the conditions which led to the enactment of the law are now obsolete, while the law itself remains, one must endeavor to make this clear and to combat the law by this argument. But if the written law favors our case, we must say that the oath of the dicast “to decide to the best of his judgement” does not justify him in deciding contrary to the law, but is only intended to relieve him from the charge of perjury, if he is ignorant of the meaning of the law; that no one chooses that which is good absolutely, but that which is good for himself; that there is no difference between not using the laws and their not being enacted; that in the other arts there is no advantage in trying to be wiser than the physician, for an error on his part does not do so much harm as the habit of disobeying the authority; that to seek to be wiser than the laws is just what is forbidden in the most approved laws. Thus much for the laws.)

6. Need for interpretation. Aristot. *Rhetoric*, 1354 a21-b16: ἅπαντες γὰρ οἱ μὲν οἶονται δεῖν οὕτω τοὺς νόμους ἀγορεύειν, οἱ δὲ καὶ χρῶνται καὶ κωλύουσιν ἔξω τοῦ πράγματος λέγειν, καθάπερ καὶ ἐν Ἀρείῳ πάγῳ, ὀρθῶς τοῦτο νομίζοντες οὐ γὰρ δεῖ τὸν δικαστὴν διαστρέφειν εἰς ὀργὴν προάγοντας ἢ φθόνον ἢ ἔλεον· ὁμοίον γὰρ καὶ εἴ τις ᾧ μέλλει χρῆσθαι κανόνι, τοῦτον ποιήσειε στρεβλόν. ἔτι δὲ φανερόν ὅτι τοῦ μὲν ἀμφισβητοῦντος οὐδὲν ἐστίν ἔξω τοῦ δεῖξαι τὸ πρᾶγμα ὅτι ἐστίν ἢ οὐκ ἐστίν, ἢ γέγονεν ἢ οὐ γέγονεν· εἰ δὲ μέγα ἢ μικρόν, ἢ δίκαιον ἢ ἀδίκον, ὅσα μὴ ὁ νομοθέτης διώρικεν, αὐτὸν δὴ πού τὸν δικαστὴν δεῖ γινώσκειν καὶ οὐ μανθάνειν παρὰ τῶν ἀμφισβητούντων. μάλιστα μὲν οὖν προσήκει τοὺς ὀρθῶς κειμένους νόμους, ὅσα ἐνδέχεται, πάντα διορίζειν αὐτούς, καὶ ὅτι ἐλάχιστα καταλείπειν ἐπὶ τοῖς κρίνουσι, πρῶτον μὲν ὅτι ἔνα λαβεῖν καὶ ὀλίγους ῥᾶον ἢ πολλοὺς εὖ φρονούντας καὶ δυναμένους νομοθετεῖν καὶ δικάζειν· ἔπειθ' αἱ μὲν νομοθεσίαι ἐκ πολλοῦ χρόνου σκεψαμένων γίνονται, αἱ δὲ κρίσεις ἐξ ὑπογυίου, ὥστε χαλεπὸν ἀποδιδόναι τὸ δίκαιον καὶ τὸ συμφέρον καλῶς τοὺς κρίνοντας. τὸ δὲ πάντων μέγιστον, ὅτι ἢ μὲν τοῦ νομοθέτου κρίσις οὐ κατὰ μέρος, ἀλλὰ περὶ μελλόντων τε καὶ καθόλου ἐστίν, ὁ δ' ἐκκλησιαστὴς καὶ δικαστὴς ἤδη περὶ παρόντων καὶ ἀφωρισμένων κρίνουσιν· πρὸς οὓς καὶ τὸ φιλεῖν ἤδη καὶ τὸ μισεῖν καὶ τὸ ἴδιον συμφέρον συνήρτηται πολλάκις, ὥστε μηκέτι δύνασθαι θεωρεῖν ἱκανῶς τὸ ἀληθές, ἀλλ' ἐπισκοτεῖν τῇ κρίσει τὸ ἴδιον ἢ δὴ ἢ λυπηρόν. περὶ μὲν οὖν τῶν ἄλλων, ὥσπερ λέγομεν, δεῖ ὡς ἐλάχιστων ποιεῖν κύριον τὸν κριτὴν, περὶ δὲ τοῦ

γεγονέναι ἢ μὴ γεγονέναι, ἢ ἔσεσθαι ἢ μὴ ἔσεσθαι, ἢ εἶναι ἢ μὴ εἶναι, ἀνάγκη ἐπὶ τοῖς κριταῖς καταλείπειν· οὐ γὰρ δυνατόν ταῦτα τὸν νομοθέτην προῖδεῖν. (For all men either think that all the laws ought so to prescribe, or in fact carry out the principle and forbid speaking outside the subject, as in the court of Areopagus, and in this they are right. For it is wrong to warp the dicast's feelings, to arouse him to anger, jealousy or compassion, which would be like making the rule crooked which one intended to use. Further, it is evident that the only business of the litigant is to prove that the fact in question is or is not so, that it has happened or not; whether it is important or unimportant, just or unjust, in all cases in which the legislator has not laid down a ruling, is a matter for the dicast himself to decide; it is not the business of the litigants to instruct him. First of all, therefore, it is proper that laws, properly enacted, should themselves define the issue of all cases as far as possible, and leave as little as possible to the discretion of the judges; in the first place, because it is easier to find one or a few men of good sense, capable of framing laws and pronouncing judgements, than a large number; secondly, legislation is the result of long consideration, whereas judgements are delivered on the spur of the moment, so that it is difficult for the judges properly to decide questions of justice or expediency. But what is most important of all is that the judgement of the legislator does not apply to a particular case, but is universal and applies to the future, whereas the member of the public assembly and the dicast have to decide present and definite issues, and in their case love, hate, or personal interest is often involved, so that they are no longer capable of discerning the truth adequately, their judgement being obscured by their own pleasure or pain. All other cases, as we have just said, should be left to the authority of the judge as seldom as possible, except where it is a question of a thing having happened or not, of its going to happen or not, of being or not being so; this must be left to the discretion of the judges, for it is impossible for the legislator to foresee such questions).

7. *Exo tou pragmatos legein.* Aristot. *Rhetoric*, 1354a 21: ἅπαντες γὰρ οἱ μὲν οἴονται δεῖν οὕτω τοὺς νόμους ἀγορεύειν, οἱ δὲ καὶ χρώνται καὶ κωλύουσιν ἔξω τοῦ πράγματος λέγειν, καθάπερ καὶ ἐν Ἀρείῳ πάγῳ, ὁρθῶς τοῦτο νομίζοντες.  
Dem. 57 (*Against Euboulides*) 66: Πολλὰ δ' ἔχων καὶ ἄλλ' ἐπιδείξει, ἃ τούτοις ἐστὶν διαπεπραγμένα καὶ ἃ εἰσιν ἐψευσμένοι. ἡδέως μὲν ἂν ὑμῖν λέγοιμι, ἐπειδὴ δ' ἔξω τοῦ πράγματος νομίζετ' εἶναι, ἔασω.
8. Knowledge of legal rules by *dikastai* and litigants alike. Is. 3 (*About Pyrrhos' estate*) 58-59: Ακριβῶς γὰρ ἐπιστάμεθα πάντες ὅτι ἀδελφῶν μὲν κλήρων ἐπιδικασία πᾶσιν ἐστὶν ἡμῖν, ὅτῳ δὲ γόνῳ γεγόνασι γνήσιοι παῖδες, οὐδενὶ ἐπιδικάζεσθαι τῶν πατρῶων προσήκει. Καὶ περὶ τούτων οὐδένα λόγον λεχθῆναι δεῖ· ἅπαντες γὰρ ὑμεῖς καὶ οἱ ἄλλοι πολῖται ἀνεπίδικα ἔχουσι τὰ ἑαυτῶν ἕκαστοι πατρῶα.  
Is. 7 (*About Apollodoros' estate*) 19: καὶ τοῦτο οὐκ ἀγνοούμενόν ἐστιν οὐδὲ παρ' αὐτοῖς τούτοις.
9. Variety of legal claims on an inheritance. Is. 4 (*About Nicostratus' estate*) 8-9: Δημοσθένης μὲν γε ἀδελφιδοῦς ἔφη αὐτῷ εἶναι, ἐπειδὴ δ' ἐξηλέγχθη ὑπὸ τούτων, ἀπέστη: Τήλεφος δὲ δοῦναι αὐτῷ Νικοστράτον ἅπαντα τὰ ἑαυτοῦ. καὶ οὗτος οὐ πολλῶ ὕστερον ἐπάύσατο. Αμεινιάδης δὲ ὄν αὐτῷ πρὸς τὸν ἄρχοντα ἦκεν ἄγων οὐδὲ τριετὴ γεγονότα, καὶ ταῦτ' οὐκ ἐπιδεδημηκότος τοῦ Νικοστράτου ἑνδεκα ἐτῶν Ἀθήνησι. Πύρρος δὲ ὁ Λαμπτρέυς τῇ μὲν Ἀθηναῖ ἔφη τὰ χρήματα ὑπὸ Νικοστράτου καθιερωσθαι, αὐτῷ δ' ὑπ' αὐτοῦ ἐκείνου δεδόςθαι. Κτησίας δ' ὁ Βησαιεύς καὶ Κραναὸς τὸ μὲν πρῶτον δίκην ἔφασαν τοῦ Νικοστράτου ταλάντου καταδεδικάσθαι, ἐπειδὴ δ' οὐκ εἶχον τοῦτο ἀποδείξει, ἀπελεύθερον αὐτὸν ἑαυτῶν προσεποιήσαντο εἶναι: καὶ οὐδ' οὗτοι ἂ ἔλεγον ἀπέδειξαν. (Demosthenes claimed that N. was his nephew..., Telephos claimed that N. donated (bequeathed?) his property..., Ameiniades tried to have recognized as a son of N. a three-year old boy and himself as a guardian..., Pyrrhos of Lamptraí claimed that N. has consecrated his property to Athena and left him the usufruct, Ktesias of Besa and Kranaos initially claimed that N. owed them a sum of money and later that N. was their freedman...).
10. *Anakrisis.* Is. 6 (*About Philoktemon's estate*) 12-13: Ὅτε γὰρ αἱ ἀνακρίσεις ἦσαν πρὸς τῷ ἄρχοντι καὶ οὗτοι παρακατέβαλον ὥς ὑπὲρ γνησίων τῶνδ' Εὐκτῆμονος ὄντων, ἐρωτώμενοι ὑφ' ἡμῶν τίς εἴη αὐτῶν μήτηρ καὶ ὅπου θυγάτηρ, οὐκ εἶχον ἀποδείξει, διαμαρτυρομένων ἡμῶν καὶ τοῦ

ἄρχοντος κελεύοντος ἀποκρίνασθαι κατὰ τὸν νόμον. <Καίτοι δεινόν>, ὦ ἄνδρες, ἀμφισβητεῖν μὲν ὡς ὑπὲρ γνησίων καὶ διαμαρτυρεῖν, μητέρα δὲ ἥτις ἦν μὴ ἔχειν ἀποδειῖξαι μηδὲ προσήκοντα αὐτοῖς μηδὲνα. Ἀλλὰ τότε μὲν Λημνίαν σκηψάμενοι ταύτην, ἀναβολὴν ἐποιήσαντο. Τὸ δ' ὕστερον ἦκοντες εἰς τὴν ἀνάκρισιν, πρὶν καὶ τίνα ἐρέσθαι, εὐθὺς ἔλεγον ὅτι Καλλίππη μήτηρ, αὕτη δ' εἴη Πιστοξένου θυγάτηρ, ὡς ἐξαρκέσον εἰ ὄνομα μόνον πορίσαιντο τὸν Πιστόξενον. Ἐρομένων δ' ἡμῶν ὅστις εἴη καὶ εἰ ζῇ ἢ μὴ, ἐν Σικελίᾳ ἔφασαν ἀποθανεῖν στρατευόμενον, καταλιπόντα ταύτην θυγατέρα παρὰ τῷ Εὐκτῆμονι, ἐξ ἐπιτροπευομένης δὲ τούτῳ γενέσθαι, πρᾶγμα πλάττοντες ἀναιδεῖα ὑπερβάλλον καὶ οὐδὲ γενόμενον, ὡς ἐγὼ ὑμῖν ἀποφανῶ ἐκ τούτων πρῶτον ὧν αὐτοὶ ἀπεκρίναντο. (When the interrogations took place before the archon, and my opponents paid money into court in support of their claim that these young men were the legitimate sons of Euctemon, on being asked by us who, and whose daughter, their mother was, they could not supply the information, although we protested and the archon ordered them to reply in accordance with the law. It was surely a strange proceeding, gentlemen, to make a claim on their behalf as legitimate and to lodge a protestation, and yet not be able to state who was their mother or name any of their relatives. At the time they alleged that she was a Lemnian and so secured a delay; subsequently, when they appeared at the interrogation, without giving time for anyone to ask a question, they immediately declared that the mother was Callippe and that she was the daughter of Pisto Xenus, as though it was enough for them merely to produce the name of Pisto Xenus. When we asked who he was and whether he was alive or not, they said that he had died on military service in Sicily, leaving a daughter, this Callippe, in the house of Euctemon, and that these two sons were born to her while she was under his guardianship, thus inventing a story surpassing the limits of impudence and quite untrue, as I will prove to you first of all from the answers which they themselves gave. – Loeb transl.).

11. Explanation. Implicit: Is. 3 (About Pyrrhos' estate) 68: ὁ γὰρ νόμος διαρρήδην λέγει ἐξεῖναι διαθέσθαι ὅπως ἂν ἐθέλῃ τις τὰ αὐτοῦ, ἐὰν μὴ παῖδας γνησίους καταλίπη ἄρρενας: ἂν δὲ θηλείας καταλίπη, σὺν ταύταις. οὐκοῦν μετὰ τῶν θυγατέρων ἔστι δοῦναι καὶ διαθέσθαι τὰ αὐτοῦ: ἂνεν δὲ τῶν γνησίων θυγατέρων οὐχ οἷόν τε οὔτε ποιήσασθαι οὔτε δοῦναι οὐδενὶ οὐδὲν τῶν ἐαυτοῦ. Explicit: Dem. 23 (Against Aristokrates) 33: ἁλμαίνεσθαι δὲ' φησὶ 'μὴ, μηδὲ ἀποιῶν.' ταῦτα δ' ἐστὶν τί; τὸ μὲν δὴ μὴ ἁλμαίνεσθαι γνῶριμον οἶδ' ὅτι πᾶσιν μὴ μαστιγοῦν, μὴ δεῖν, μὴ τὰ τοιαῦτα ποιεῖν λέγει, τὸ δὲ μηδ' ἀποιῶν μὴ χρήματα πράττεσθαι: τὰ γὰρ χρήματ' ἀποιῶν ὠνόμαζον οἱ παλαιοί. ("Not to maltreat or amerce," says the statute. What does that mean? Every one, I am sure, understands that not to maltreat means that there is to be no scourging, no binding nor anything like that, and that not to amerce means not to extort blood-money, for the ancients called fining amercement. – Loeb transl.)
12. Spirit v. letter of the law: Lysias 10 (Against Theomnestus I) 6-7: Ἵσως τοίνυν, ὦ ἄνδρες δικασταί, περὶ τούτων μὲν οὐδὲν ἀπολογήσεται, ἐρεῖ δὲ πρὸς ὑμᾶς ἅπερ ἐτόλμα λέγειν καὶ πρὸς τὸν διαιτητὴν, ὡς οὐκ ἔστι τῶν ἀπορρήτων ἐὰν τις εἴπῃ τὸν πατέρα ἀπεκτονέειν τὸν γὰρ νόμον οὐ ταῦτ' ἀπαγορεύειν, ἀλλ' ἀνδροφόνον οὐκ ἐὰν λέγειν. Ἐγὼ δὲ οἶμαι δεῖν, ὦ ἄνδρες δικασταί, οὐ περὶ τῶν ὀνομάτων διαφέρεισθαι ἀλλὰ τῆς τούτων διανοίας, καὶ πάντας εἰδέναι ὅτι, ὅσοι <ἀπεκτόνασί τινας, καὶ ἀνδροφόνον εἰσί, καὶ ὅσοι> ἀνδροφόνον εἰσί, καὶ ἀπεκτόνασί τινας. Πολὺ γὰρ <ἂν> ἔργον ἦν τῷ νομοθέτῃ ἅπαντα τὰ ὀνόματα γράφειν ὅσα τὴν αὐτὴν δύναμιν ἔχει ἀλλὰ περὶ ἑνὸς εἰπὼν περὶ πάντων ἐδήλωσεν.
13. Argument by analogy. Is. 1 (About Kleonymus' estate) 40: οὐκ ἄρα δίκαια οὐδ' ὑμῖν αὐτοῖς συμφέροντα οὐδὲ τοῖς νόμοις ὁμολογούμενα ψηφιεῖσθε, εἰ τῶν μὲν συμφορῶν τοὺς ἐγγυτάτω γένει κοινωνεῖν ἀναγκάσετε, χρημάτων δὲ καταλειφθέντων πάντας ἀνθρώπους κυριωτέρους ἢ τούτους ποιήσετε. (Your verdict, then, will not be just or in your own interest or in harmony with the law, if you are going to force those who are next of kin to share in the misfortunes of their relatives, but, when money has been left, give anyone rather than them the right to its possession – Loeb transl.)
14. Argument de minore ad maiore. Dem. 23 (Against Aristokrates) 76: εἰ τοίνυν τῶν ἀψύχων καὶ μὴ μετεχόντων τοῦ φρονεῖν οὐδὲν ἐσθ' ὅσιον, τοιαύτην ἔχον αἰτίαν, ἐὰν ἄκριτον, ἢ πού τόν γ'

ἀδικοῦντα μὲν οὐδέν, ἐὰν τύχη, θήσω δ' ἀδικοῦντα, ἀλλ' ἄνθρωπόν γ' ὄντα καὶ μετεληφότα τῇ τύχῃ τῆς αὐτῆς ἡμῖν φύσεως, ἀνόσιον καὶ δεινὸν ἄνευ λόγου καὶ ψήφου ποιεῖν ἔκδοτον ἐπ' αἰτία τοιαύτῃ. (Well, if it is not righteous to deny a trial even to a lifeless and senseless thing, the object of so grave an accusation, assuredly it is impious and outrageous that a man who may possibly be not guilty, and who in any case, —and I will assume him to be guilty, —is a human being endowed by fortune with the same nature as ourselves, should be made an outcast on such a charge without a hearing and without a verdict. - Loeb transl.)

Dem. 20 (*Against Leptines*) 9: πῶς γὰρ οὐκ αἰσχρόν, ὧ ἄνδρες Ἀθηναῖοι, κατὰ μὲν τὴν ἀγορὰν ἀψευδεῖν νόμον γεγράφθαι, ἐφ' οἷς οὐδέν ἐστι δημοσία βλάβος εἴ τις ψεύδεται, ἐν δὲ τῷ κοινῷ μὴ χρῆσθαι τῷ νόμῳ τούτῳ τὴν πόλιν τὴν αὐτὴν ἐπιτάξασαν τοῖς ἰδιώταις, ἀλλὰ τοὺς ἀγαθόν τι πεποιηκότας ἐξαπατῆσαι, καὶ ταῦτ' οὐ μικρὰν ζημίαν ὀφλήσειν μέλλουσιν; (When we have a law which forbids cheating in the marketplace, where a falsehood entails no public injury, is it not disgraceful that in public affairs the same state should not abide by the law which it enjoins on private individuals, but should cheat its benefactors, and that although it is itself likely to incur no small penalty? - Loeb transl.).

15. Contraction. Hyp. 4 (*Against Athenogenes*) 13-17: τὰ μὲν τοίνυν πεπραγμένα, ὧ ἄνδρες δικασταί, καθ' ἐν ἑκαστον ἀκηκόατε. ἐρεῖ δὲ πρὸς ὑμᾶς ἀντίκα μάλα Ἀθηνογένης ὡς ὁ νόμος λέγει, ὅσα ἂν ἕτερος ἐτέρῳ ὁμολογήσῃ κύρια εἶναι. τὰ γε δίκαια, ὧ βέλτιστε: τὰ δὲ μὴ τοῦναντίον ἀπαγορεύει μὴ κύρια εἶναι. ἐξ αὐτῶν δέ σοι τῶν νόμων ἐγὼ φανερώτερον ποιήσω. καὶ γὰρ οὕτω με διατέθεικας καὶ περίφοβον πεποίηκας μὴ ἀπόλωμαι ὑπὸ σοῦ καὶ τῆς δεινότητος τῆς σῆς, ὥστε τοὺς τε νόμους ἐξετάζειν καὶ μελετᾶν νύκτα καὶ ἡμέραν, πάρεργα τᾶλλα πάντα ποιησάμενον. ὁ μὲν τοίνυν εἷς νόμος κελεύει ἀψευδεῖν ἐν τῇ ἀγορᾷ, πάντων, οἶμαι, παράγγελμα κάλλιστον παραγγέλλων: σὺ δὲ ψευσάμενος ἐν μέσῃ τῇ ἀγορᾷ συνθήκας κατ' ἐμοῦ ἔθου. ἐπεὶ ἐὰν δείξης προειπῶν ἐμοὶ τοὺς ἐράνους καὶ τὰ χρέα, ἢ γράψας ἐν ταῖς συνθήκαις ὅσους ἐπυθόμην, οὐδὲν ἀντιλέγω σοι ἀλλ' ὁμολογῶ ὀφείλειν. μετὰ δὲ ταῦτα ἕτερος νόμος ἐστὶ περὶ ὧν ὁμολογοῦντες ἀλλήλοις συμβάλλουσιν, ὅταν τις πωλῇ ἀνδράποδον προλέγειν ἕαν τι ἔχη ἄρρῳσθημα, εἰ δὲ μὴ, ἀναγωγὴ τούτου ἐστίν. καίτοι ὅπου τὰ παρὰ τῆς τύχης νοσήματα ἂν μὴ δηλώσῃ τις πωλῶν οἰκέτην ἀνάγειν ἔξεστι, πῶς τὰ γε παρὰ σοῦ ἀδικήματα συσκευασθέντα οὐκ ἀναδεκτέον σοὶ ἐστίν; ἀλλὰ μὴν τὸ μὲν ἐπιληπτον ἀνδράποδον οὐ προσαπολλύει τοῦ πριαμένου τὴν οὐσίαν, ὁ δὲ Μίδα, ὃν σύ μοι ἀπέδου, καὶ τὴν τῶν φίλων τῶν ἐμῶν ἀπολώλεκε. σκέψαι δέ, ὧ Ἀθηνόγενης, μὴ μόνον περὶ τῶν οἰκετῶν, ἀλλὰ καὶ περὶ τῶν ἐλευθέρων σωμάτων ὃν τρόπον οἱ νόμοι ἔχουσιν. οἶσθα γὰρ δήπου καὶ σὺ καὶ οἱ ἄλλοι πάντες ὅτι οἱ ἐκ τῶν ἐγγυητῶν γυναικῶν παῖδες οὗτοι γνήσιοι εἰσιν. ἀλλὰ μὴν οὐκ ἀπέχρησε τῷ νομοθέτῃ τὸ ἐγγυηθῆναι τὴν γυναικα ὑπὸ τοῦ πατρὸς ἢ τοῦ ἀδελφοῦ, ἀλλ' ἔγραψε διαρρηδὴν ἐν τῷ νόμῳ, ἦν ἂν ἐγγυήσῃ τις ἐπὶ δίκαις δάμαρτα ἐκ ταύτης εἶναι παιδας γνησίους, καὶ οὐκ ἕαν τις ψευσάμενος ὡς θυγατέρα ἐγγυήσῃ ἄλλην τινά. ἀλλὰ τὰς μὲν δικάϊας ἐγγύας κυρίας, τὰς δὲ μὴ δικάϊας ἀκύρους καθίστησιν. ἔτι δὲ καὶ ὁ περὶ τῶν διαθηκῶν νόμος παραπλήσιος τούτοις ἐστίν: κελεύει γὰρ ἐξεῖναι τὰ ἑαυτοῦ διατίθεσθαι ὅπως ἂν τις βούληται πλὴν ἢ γήρως ἔνεκεν ἢ νόσου ἢ μανιῶν ἢ γυναικὶ πειθόμενον ἢ ὑπὸ δεσμοῦ ἢ ὑπὸ ἀνάγκης καταληφθέντα. ὅπου δὲ οὐδὲ περὶ τῶν αὐτοῦ ἰδίων αἰ μὴ δίκαιαι διαθήκαι κύριαί εἰσιν, πῶς Ἀθηνογένει γε κατὰ τῶν ἐμῶν συνθεμένῳ τοιαῦτα δεῖ κύρια εἶναι; (Well, gentlemen of the jury, you have heard the facts in detail. But Athenogenes will presently tell you that in law whatever agreements one man makes with another are binding. Yes, my friend, just agreements. But if they are unjust, the opposite is true: the law forbids that they be binding. I will quote the laws themselves to make this clearer to you. For you have reduced me to such a state of fear lest I shall be ruined by you and your craftiness that I have been searching the laws night and day and studying them to the neglect of everything else. The first law, then, stipulates that people shall not tell lies in the market, which seems to me a most admirable provision. Yet you lied in the middle of the market when you made the agreement to defraud me. But if you show that you declared to me beforehand the contributions and the debts, or that you wrote in the agreement the names of those whose existence I later discovered, I have no quarrel with you; I admit that I owe the money. After this there is a second law, covering agreements between individuals, which states that whenever anyone sells a slave, he must declare in advance any physical disability from which the man suffers. Otherwise the slave in question can be returned

to the vendor. And yet if a slave can be returned simply because of some weakness due to mischance which the master keeps secret at the time of the sale, how can you fail to take the responsibility for the crimes which you deliberately planned? But the epileptic slave does not involve the buyer in fresh expense, whereas Midas, whom you sold to me, has even lost my friends' money. Consider the legal position, Athenogenes, as regards free persons as well as slaves. No doubt you know as everyone does that the children of married women are legitimate. Yet the mere act of betrothing a woman on the part of a father or brother was not enough for the lawmaker. On the contrary, he wrote expressly in the law: "whomsoever any man has lawfully betrothed as wife, her children shall be legitimate"; not: "if any man has betrothed some other woman on the pretence that she is his daughter." He lays it down that just betrothals shall be valid and unjust ones invalid. Moreover the law dealing with wills is very similar to this. It allows a man to bequeath his property as he wishes unless he is affected by old age, illness or insanity, and provided he is not influenced by a woman or imprisoned or otherwise coerced. But if even our own personal property cannot be administered according to an unjust will, surely Athenogenes who is disposing of my property through his agreement cannot enforce such terms. - Loeb transl.)

16. Presumed will of the legislator. Is. 2 (*About Menekles' estate*) 13: Ὁ γὰρ νομοθέτης, ὧ ἄνδρες, διὰ τοῦτο τὸν νόμον ἔθηκεν οὕτως ὁρῶν μόνην ταύτην καταφυγὴν οὔσαν τῆς ἐρημίας καὶ παραψυχῇ τῷ βίῳ τοῖς ἄπαισι τῶν ἀνθρώπων, τὸ ἐξεῖναι ποιήσασθαι ὅντινα ἂν βούλωνται. Is. 2 (*About Menekles' estate*) 16-17: Ὡς μὲν τοίνυν ἐξῆν τῷ Μενεκλεί ποιήσασθαι ὅν ἀντὶ ὅντινα ἐβούλετο, ὁ νόμος αὐτὸς δηλοῖ.
17. Being economical with the truth. Is. 10 (*About Aristarchus' estate*) 9-10: οἶμαι τοίνυν πάντας ὑμᾶς εἰδέναι, ὧ ἄνδρες, ὅτι κατὰ διαθήκας αἱ εἰσαγωγαὶ τῶν εἰσποιητῶν γίνονται, διδόντων τὰ ἑαυτῶν καὶ ὑεῖς ποιουμένων, ἄλλως δὲ οὐκ ἔξεστιν.
18. Manipulation of key elements. Is. 1 (*About Kleonymos' estate*) 42-43: Πρὸς δὲ τούτοις ἐνθυμήθητε ὅτι αὐτὰς ἔλυσε μὲν Κλεώνυμος εὖ φρονῶν, διέθετο δὲ ὀργισθεὶς καὶ οὐκ ὀρθῶς βουλευόμενος. Dem. 20 (*Against Leptines*) 155-6: ὁ τοίνυν νόμος οὗτος ὁ Λεπτίνου, οὐ μόνον, ὧ ἄνδρες Ἀθηναῖοι, τοῦτ' ἀδικεῖ, ὅτι τὰς τιμὰς ἀναιρῶν τῶν εὐεργεσιῶν ἀχρεῖον τὴν ἐπιείκειαν τοῖς φιλοτιμεισθαί βουλομένοις καθίστησιν, ἀλλ' ὅτι καὶ παρανομίας δόξαν αἰσχίστην τῇ πόλει καταλείπει. ἵστε γὰρ δῆπου τοῦθ' ὅτι τῶν τὰ δεινότηθ' ἡμᾶς ἀδικούντων ἐν ἐκάστῳ τίμημ' ὑπάρχει διὰ τὸν νόμον, ὃς διαρρήδην λέγει 'μηδὲ ὡς χρὴ τίμημ' ὑπάρχειν ἐπὶ κρίσει πλέον ἢ ἓν, ὅπότερον ἂν τὸ δικαστήριον τιμῇ, παθεῖν ἢ ἀποτεῖσαι: ἀμφοτέρω δὲ μὴ ἔξεστω'. Ἀλλ' οὐχ οὗτος ἐχρήσατο τούτῳ τῷ μέτρῳ, ἀλλ' ἐάν τις ἀπαιτήσῃ χάριν ὑμᾶς, «ἀτιμος ἔστω» φησὶν «καὶ ἡ οὐσία δημοσία ἔστω». Δύο τιμήματα ταῦτα. (Now the law of Leptines, Athenians, does harm not only by abolishing the rewards of good service and so rendering fruitless the good intentions of those who are ambitious for honor, but also by leaving our city under the serious reproach of imbecility. For you are of course aware that for each grave offence a single penalty is provided by the law, which says explicitly that "at any trial there shall be not more than one assessment of penalty, whichever the court imposes, whether a personal punishment or a fine, but not both." - Loeb transl.)
19. Abuse of process. Is. 3 (*About Pyrrhos' estate*) 60: Οὗτοι τοίνυν εἰς τοῦτο τόλμης ἀφιγμένοι εἰσὶν ὥστε τῷ μὲν εἰσποιήτῳ οὐκ ἔφασαν ἐπιδικάσασθαι προσήκειν τῶν δοθέντων, τῇ δὲ Φίλῃ, ἣν φασὶ θυγατέραν γνησίαν τῷ Πύρρῳ καταλελειφθαι, λαχεῖν τοῦ κλήρου τοῦ πατρώου τὴν λῆξιν ἡξίωσαν. Καίτοι (ὅπερ εἶπον καὶ πρότερον) ὅσοι μὲν <ἂν> καταλίπωσι γνησίους παῖδας ἐξ αὐτῶν, οὐ προσήκει τοῖς παισὶν ἐπιδικάσασθαι τῶν πατρώων' ὅσοι δὲ διαθήκαις αὐτοῖς εἰσποιοῦνται, τούτοις ἐπιδικάζεσθαι προσήκει τῶν δοθέντων. (Our opponents, then, have pushed their effrontery so far that, while they denied that the adopted son need obtain the adjudication of an estate which has been bequeathed to him, they thought fit to claim the adjudication of her father's estate to Phile, whom they allege to have been a legitimate daughter left by Pyrrhus. Yet, as I have already said, when testators leave legitimate issue, their children need not demand the adjudication of their patrimony; but on the contrary, when testators adopt children by will, such children must obtain an adjudication of what is bequeathed to them.- Loeb transl.)

20. "Adulteration". Is. 7 (*About Apollodorus' estate*) 1: Ὡμην μὲν, ὦ ἄνδρες, προσήκειν οὐ τὰς τοιαύτας ἀμφισβητεῖσθαι ποιήσεις, εἴ τις ἀντὸς ζῶν καὶ φρονῶν ἐποιήσατο καὶ ἐπὶ τὰ ἱερὰ ἀγαγὼν εἰς τοὺς συγγενεῖς ἀπέδειξε καὶ εἰς τὰ κοινὰ γραμματεῖα ἐνέγραψεν ...
- Dem. 59 (*Against Neaira*) 17: τοῦ μὲν νόμου τοίνυν ἀκηκόατε, ὦ ἄνδρες δικασταί, ὃς οὐκ ἐᾷ τὴν ξένην τῷ ἀστῶ συνοικεῖν οὐδὲ τὴν ἀστὴν τῷ ξένῳ, οὐδὲ παιδοποιεῖσθαι, τέχνη οὐδὲ μηχανῇ οὐδεμιᾶ: ἐὰν δέ τις παρὰ ταῦτα ποιῇ, γραφὴν πεποίηκεν κατ' αὐτῶν εἶναι πρὸς τοὺς θεσμοθέτας, κατὰ τε τοῦ ξένου καὶ τῆς ξένης, κὰν ἄλῳ, πεπρᾶσθαι κελεύει. ὥς οὖν ἐστι ξένη Νέαιρα αὐτή, τοῦθ' ὑμῖν βούλομαι ἐξ ἀρχῆς ἀκριβῶς ἐπιδείξαι. (You have heard the law, men of the jury, which forbids the union of an alien woman with an Athenian, or of an Athenian woman with an alien in any way or manner whatsoever, or the procreation of children. And if any persons shall transgress this law, it has provided that there shall be an indictment against them before the Thesmothetae, against both the alien man and the alien woman, and that, if convicted, any such person shall be sold. I wish, therefore, to prove to you convincingly from the very beginning that this woman Neaera is an alien. - Loeb transl.)