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THE MARITIME STATUTES OF DUBROVNIK AND THE RHODIAN SEA LAW (BYZANTIUM)

I propose, in the limited space below, to examine certain aspects of mediæval Ragusan maritime law and society and then to compare them with their counterparts in the Byzantine maritime tradition. Any further conclusions or extrapolations are rendered complex by a number of factors and so must remain guarded. An important source for the maritime laws and customs of Dubrovnik is book seven of the *Liber statutorum civitatis Ragusii* drawn up in 1272[1], but because my colleague, Prof. Bariša Krekič, has demonstrated amply the richness and significance of the Dubrovnik archival documentation[2] I shall restrict myself to the Ragusan statutes of 1272.

The exact relationship between the maritime law and society in the Ragusan statutes of 1272 and those in the Byzantine Rhodian Sea Law is difficult, at this point, to ascertain. First, the maritime practices of Dubrovnik are described for us in a document composed in 1272 whereas the Rhodian Sea Law has been dated, in its present form, to sometime between the sixth and the eighth century[3]. But it goes back to more ancient traditions, many of which are already incorporated into the *Digest of Justinian*, the present text probably having been reshaped in order to constitute part of the legal code known as the Basilica in the reign of Leo VI (866-912). If this latter assumption is correct the Byzantine naval law of the tenth century consisted of the Basilican (book 53) excerpts from the *Digest* plus the Rhodian Sea Law. Thus there is a distance of over three and a half centuries between the Dubrovnik statutes and the Rhodian Sea Law, and indeed the maritime history and societies of the Mediterranean had evolved considerably over that time. On the other hand, scholarly studies dealing with the maritime laws and customs of this particular sea have concluded that there was a common Romano-Byzantine influence in this area down into the twelfth century[4]. From these few observations the difficulties of carrying out any comparative study between the Ragusan and Byzantine maritime systems are strikingly obvious. Still, it is of interest to compare the two codes and to proceed to some preliminary and tentative observations.

By virtue of its strategic geographical location on the maritime route between Venice and Constantinople, because of its historical evolution (as a part of the Byzantine military/administrative theme of Dalmatia [867?-11th century]), and then as a commercial city developing within the Venetian-Constantinopolitan axis, the town and its citizens were in constant contact

[1] *Liber statutorum civitatis Ragusii compositus anno 1272*, ed. V. Bogosic et C. Jireček (Zagreb, 1904) (hereafter referred to only by book and chapter number in Roman numerals).

[2] B. Krekič, *Dubrovnik et le Levant au Moyen Age* (Paris, 1961); Also *Dubrovnik in the Fourteenth and Fifteenth Centuries. A city between East and West* (Norman, 1972).

[3] *Nomos Rhodion Nautikos. The Rhodian Sea-Law*, edited from the Manuscripts by W. Ashburner (Oxford, 1909) (hereafter cited by part and chapter, or simply, Ashburner).

[4] G. Petropoulos, *Nomika engrapha Siphnou tes sylloges G. Maridake (1684-1835) meta symvolon eis ten ereunan tou metavyzantinou dikaiou* (Athens, 1956), 219-222, who also refers to the following works unavailable to me: R. Zeno, *Storia del diritto marittimo italiano nel mediterraneo* (Milan, 1946), 100 ff; G. Bonolis, *Il diritto marittimo medioevale dell'Adriatico* (Pisa, 1921), 68; F. Colasso, *Medio evo del diritto*, I. *Le fonti* (Milano, 1954), 98, 436.

with the civilization, institutions, and economic life of the Byzantine Empire.[5] Thus its history and geography certainly exposed the life of the town to Byzantine influence. On the other hand, its rise to commercial prominence along with the other Italian towns means that it shared in a larger socio-economic expansion which had been preceded by a strong Romano-Byzantine maritime influence or presence, with the result that if there is some trace of maritime similarity with Byzantine maritime institutions and law, this similarity could have, at least theoretically, arisen from this later commercial development of Venice and other Italian cities, or it could have been inherited directly by the Ragusans from the long Byzantine administrative presence in parts of Dalmatia. Thus a closer study of the Greek terms in the Ragusan statutes would perhaps throw some light on this question. Such, for instance, are the Latin loan words based on the Greek word for ship ναῦς: *nauclerius, nauliçare* (to charter a ship), *nauliçates* (those chartering the ship), and the word ἐνθήκη from which the Latin *entege* and derivatives are formed and which connote goods and / or cash handed over to the *nauclerius* to be traded according to special laws.

First let us examine the various parties in the Ragusan maritime venture as they appear in the statutes. There is first the *partonus navis* or shipowner, who is occasionally represented by the *supraposítus* (defined as *vicarius patroni*). In a separate category is the *mercator* or merchant who frequently travels on the boat and who at other times does not accompany the cargo. The captain of the vessel is the *nauclerius* for whose election the statutes declare that a majority of the *patroni* is necessary[6]. Extremely important was the *scribanus* or scribe. Every ship of greater than 600 *modii* displacement was required to have on board a scribe. His duty was to record all sailors, both those travelling on shares and those sailing on salary, all boys, *conducti,* merchants and *entege* on the boat[7]. The sailor or *marinarius* was most frequently a sharer in the profits of the voyage, along with the *nauclerius,* although the statutes reveal that there were also sailors who sailed for salary rather than shares; the *marinarii* are ordered to be obedient to the *nauclerius*[8]. Mentioned also are slaves who sail as sailors[9] and the *puer mercatorum*, the lad of the merchants[10].

The naval society reflected in the Rhodian Sea Law is largely identical. There is the shipowner or δεσπότης τοῦ πλοίου[11] sometimes also called the ναύκληρος[12]. His representative is the προναύκληρος,[13] probably equivalent to the Ragusan *supraposítus*. The merchant, ἔμπορος, corresponds to the *mercator* in Dubrovnik. The Sea Law is more detailed as to the personnel who run the ship and enumerates:

ναύκληρος-captain
κυβερνήτης-steersman
πρωεύς-captain's mate
ναυπηγός-carpenter
καραβίτης-boatswain
παρασχαρίτης-cook

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[5] G. Ostrogorksy, *History of the Byzantine State*, revised ed. (New Brunswick, 1969), 236. J. Ferluga, *Vizantiska uprava u Dalmaciji* (Belgrade, 1958).

[6] VII, xviii: "Cum partoni alicujus navis vel ligni venerint ad elligendum, et faciendum nauclerium, sciendum est quod major pars patronorum debet vincere minorum partem patronorum et qualemcunque hominem major pars patronorum eligerit in nauclerium, ille debet esse nauclerius."

[7] VII, iii.

[8] VII, xxxiv.

[9] VII, xix.

[10] VII, x.

[11] III, 26.

[12] Chapter 8 in Appendix F; Ashburner, cxxxiv, cxxxv.

[13] III, 8.

The Byzantine Sea Law is thus more detailed as to the listing of the various participants in the maritime voyage as it mentions steersman, captain's mate, carpenter, boatswain and cook, none of whom is mentioned in the Ragusan statutes. However, one is to assume that such existed also on the Ragusan ships – simply they remain unmentioned. The silence of the statutes in this respect is curious for often these statutes are more comprehensive, more specific and more highly structured than the provisions of the Rhodian Sea Law.

Thus the Byzantine and Ragusan participants in maritime enterprise and society are largely identical with one exception, the maritime scribe. As we saw above, chapter three of the statutes underlines the necessity and importance of the presence of a scribe on board ship, whereas such an individual is nowhere mentioned in the Rhodian Sea Law. In the Ragusan statutes we perceive that the scribe plays a crucial role not only in representing the interest of the *comes* and council of Dubrovnik, but also in representing certain legal authority on board. He is to reveal, in the presence both of merchants and shipowner, all merchandise which is loaded onto the ship. By the third day of the voyage he must present to every merchant a document recording his merchandise. And if the shipowner or captain makes any agreement with the merchants or sailors they shall come to him and he shall record it in his ledger[14]. He is required to report all disobedience of sailors to their captain, as well as to report other infractions to the *comes* and council of Dubrovnik[15]. He must record any division of profits which takes place while the ship is still at sea[16], the earnest moneys given and agreements made in the chartering of a ship[17], and he must be careful to record all *entegas* (goods and cash) entrusted to the captain, as well as the persons to whom they belong[18].

Whereas the Rhodian Sea Law mentions no scribe on board, it reiterates the necessity of written contracts for the chartering of a ship[19], for the taking of maritime loans[20]; in the case of contributions toward loss incurred by jettison the written contract of partnership is to be applied[21]. Large cash sums advanced to a ship for investment in maritime commerce are to be set down in writing[22], a provision which seems to coincide with the Ragusan statute which requires the scribe to record *entegas*. The difference lies in the seeming absence of the scribe on board, in the Rhodian Sea Law. Chapter 17 of part three of the latter code seems to imply the absence of a scribe on board. For this passage speaks of a partnership contracted for a specific voyage in which A gives cash to B, who will invest it for the purposes of the voyage. The text reads: "The partnership is for a voyage, and he (A) writes down as it pleases him till when the partnership is to last"[23].

The Sea Law thus places the crucial writing down of the matter and sum before the voyage and it is the business of the two contracting parties themselves to draw up the contract. Though such a contract was undoubtedly essential also in Dubrovnik, the statute considers it crucial for the scribe to draw up a record within three days after departure and then to present it to the concerned parties. Thus the emphasis in this matter is placed, in the case of the Rhodian Sea Law, on the agreement drawn up on land, and in the case of the statutes on the second record drawn up by the scribe on board. In a recent study on post-Byzantine maritime custom and law in the

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[14] VII, lxvii.
[15] VII, ii, ix, xxxiv.
[16] VII, xxviii.
[17] VII, xxviii.
[18] VII, xlv.
[19] III, 20.
[20] II, 17, 18.
[21] III, 9.
[22] III, 12.
[23] III, 7.

Aegean, I have noted that in this latter maritime society also there is no mention of a scribe on board, and it is the captain who is decisive on board ship, either keeping ledgers of his own or else carrying all these details in his head without written records[24].

Obviously crucial to the maritime society is the ship. In the matter of the vessel the Ragusan statutes[25] exercise considerable constraint on the *patronus* (shipowner) to present his ship in the best operating condition and fully equipped, to the satisfaction of merchants. The opening chapter obliges the shipowner to present his ship in good condition, that it shall have the numbers of oarsmen agreed upon, that the expenses of caulking the boat will burden the society of rowers and the ship, whereas expenses of the rudders, too, will rest with the shipowner. Chapter three declares that the eight categories of ships (categorized according to volume of displacement) shall be provided with the appropriate ropes, cable, anchors, drag lines, rudders, sails and the like. The chapter is quite specific and detailed and provides that delinquent shipowners shall answer to the *comes* and council of Dubrovnik. In Ragusan maritime law the burden of seaworthiness of the ship is, in effect, placed on the shipowner. In the Rhodian Sea Law this burden falls not on the shipowner but on the merchants and passengers:

> The merchants and the passengers are not to load heavy and valuable cargoes on an old ship. If they load them, if while the ship is on its voyage it is damaged or destroyed, he who loaded an old ship has himself to thank for what has happened. When merchants are hiring ships, let them make precise inquiry from the other merchants who sailed before them before putting on their cargoes, if the ship is completely prepared, with a strong sailyard, sails, skins, anchors, ropes of hemp of the first quality, boats in perfect order, suitable tillers, sailors fit for their work, good seamen, brisk and smart, the ship's sides staunch. In a word, let the merchants make inquiry into everything and then proceed to load[26].

Whereas the provisions of the two maritime codes are in opposition as to the relative responsibility of shipowner and merchant in the matter of the ship's soundness, it is quite otherwise in the evaluation of a ship's worth for the purposes of levying a contribution on it to make up for damage or loss of whatever at sea. In chapter seven the Ragusan statutes ordain that in case of damage to the ship, brought on by God, as to masts, spars, sails, anchors, rudders, small boat or other equipment, contribution toward the damage is to be made by contributions of the community of the ship and by the ship itself. The ship shall be evaluated and then one-third of its value shall be subtracted for the purpose of reckoning the contribution.[27] The Rhodian Sea Law has an identical provision: "And in the valuation a deduction is made of one third and the ship is to come into contribution accordingly"[28].

But of crucial importance in this short comparative study is the series of complex relations within which the parties, the goods and cash come together in the carrying out of an overseas commercial enterprise[29]. Though the comparison of the two maritime codes has revealed a few similarities as to specifics, these in themselves are not sufficiently numerous to exhibit any close interrelation of the two codes. Both codes refer to sailors who sail *ad partes* (on shares of the profit) and *ad marinariciam*[30]. Sailors who participated on the basis of shares seem to have constituted the more usual type and the Ragusan statutes provide for "dispute over the number of shares

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[24] Speros Vryonis, Jr., "Local Institutions in the Greek Islands and Elements of Byzantine Continuity During Ottoman Rule," Godishnik na Sofiiskiia Universitet Sv. Kliment Ohridski[72] Nauchen Tsentyr. Slaviano-Vizantiiski Prouchvaniia Ivan Dujčev, vol. 83, 3, 1989 (1994), 85-144, passim.

[25] VII, i, ii, viii.

[26] III, 11.

[27] VII, vii.

[28] II, 16, the translation is Ashburner's.

[29] For a detailed analysis, with most of the relevant details, Ashburner, xxix.

[30] VII, xxiii, xxiv. Sea Law, II, 2, 6. Ashburner, passim on prevalence of the sailors ad partes.

between the shipowner and the sailors"[31]. This was the dominant form also on Greek ships in the post-Byzantine era in the Ottoman-dominated Aegean[32]. Further, both the Ragusan and Rhodian codes agree that the portion of the captain is two share[33]. More significant, however, are certain general assumptions, of a broader nature, which are to be found in both codes. The first is the presupposition that maritime commerce, voyages and loans have greater risks, risks that are linked to the maritime nature of the undertaking. This is specifically stated in the Rhodian Sea Law where the code emphasizes the fundamental difference between land and sea loans.

Captains and merchants and whosoever borrow money on the security of ship and freight and cargo are not to borrow it as if it was a land loan...let them pay back the loan from the property on land with maritime interest[34].

And again:

A man borrows money and goes abroad. When the time agreed upon has expired, let them recover from his property on land according to law. If they cannot recover the debt, the capital of their loan shall be unconditionally repayable, but the interest shall be maritime interest for so long as he is abroad[35].

From earliest times, in Mediterranean commerce, naval loans were entitled to higher interest than were ordinary loans, precisely because of τῶν κατὰ θάλασσαν κινδύνων.[36] The Ragusan maritime statutes do not discuss maritime interest, but they do mention the danger, *peridulum*, from the sea and the legal effects it has on maritime ventures[37]. Thus maritime risks, 'εκ τῶν θαλασσῶν κινδύνων, not only affect the rate of interest in Byzantine law (where it is higher), but they affect the rights of all participating parties in the maritime venture. Acts of God such as storms, shipwrecks, fire, attacks by pirates and foreign enemies, are strongly contrasted with dangers occurring from the negligence of one or another of the contracting parties. In the former case, the investor had no certain guarantee for his profit, nor, necessarily, for his capital (though the latter could be guaranteed by real property as provided in the written contract). In such cases, the remnants of the ship, and cargo, and to a certain degree the cash and the property of the passengers, were pooled and the parties participating in the venture (shipowner, ship, merchants, captain, crew) shared in the remaining profits or losses according to their shares. The Rhodian Sea Law orders:

If the merchant loads the ship and there is gold with him and the ship happens to suffer one of the maritime risks and the cargo is lost and the ship goes to pieces, let what is saved from the ship and the cargo come to contribution, but let the merchant take his gold with him on paying a tenth[38].

The Ragusan statutes read similarly:

Regarding the ship which is wrecked.

We assert that if some ship or boat which sets out with *entegas* and suffers shipwreck, the ship itself or boat, must contribute from the profit which it itself should make and from the profit of the *entegas* themselves, but not from their capitals[39].

This is further amplified by the Ragusan code:

We resolve that all ships...which travel with *entegas*...and lose cash which is in the form of *entegas*, and similarly as much goods or indeed anything else that is in the form of *entega*, if they were entitled to share in the profit, thus do we so desire that they should share in the restitution of the damage, as much the ships as the sailors[40].

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[31] VII, xxvi.
[32] Vryonis, as in note 24 above.
[33] VII, xxx; Sea Law, II, 1.
[34] III, 16. The crucial phrase is "'εκ τῶν'ελλαίων'αποδιδότωσαν χρημάτων χρῆσιν ναυτικοῖς."
[35] III, 18: "ἔσται αὐτοῖς τὰ μὲν χρήματα ἔγγαια οἱ δὲ τόκοι ναυτικοὶ παντὸς τοῦ χρόνου ὅσον'αποδημήσει."
[36] III, 16, 17.
[37] VII, i; xxxiii on cursarii; xlvii, on naufragium.
[38] III, 30. See also, 31, 37, 40.
[39] VII, xlvii.
[40] VII, xlix.

This parallels almost exactly the provisions of the Rhodian Sea Law in cases of partnerships:

If there is an agreement for sharing in gain, after everything on board ship and the ship itself have been brought into contribution, let every man be liable for the loss which has occurred in proportion to his share of the gain[41].

These Latin and Greek provisions, which provide for the peculiarities of maritime loans both in terms of the higher interest rate and in terms of the principle that members of the venture share in both profit and loss, open up the broader theme of the basic contractual forms which define these sea ventures. We see that those who share share not only in both profit and loss, but that they constitute a very peculiar type of society. The Byzantine term refers to a partnership for gain in which the boat, cargo and cash share in both profit and loss. We have already seen, from both the Ragusan and Byzantine maritime codes, that merchant, captain, sailor and shipowner in many instances are the parties which share in profit and loss, but in proportions that vary not only from one group to another, but also from one type of contract to another.

The statutes of Dubrovnik speak of a maritime partnership termed the *cologancia* or *collegantia,* which is known more frequently in the documents of the Italian cities as *commenda* (or some form thereof)[42]. This is essentially a partnership between merchants:

If a Ragusan accepts from another Ragusan money or merchandise in *collogancia* (in partnership) for the purpose of sailing inside the Gulf, the money or goods themselves belong to the fortune of him to whom they belong...And concerning the profit that the owner of the money or merchandise shall have, he shall have two parts and the other shall have one-third; unless the owner himself has made a different agreement with him. It shall be known that the latter is not able to go outside the Gulf without the former's permission, and if he should go out without the former's permission and something should happen to the money, the entire damage (*periculum*) remains on him and his property[43].

The text is clear. The *collogancia* is between two merchants, and does not involve the ship and its crew. Further, A gives all the money and goods, B handles them for the purpose of maritime commerce. The profit generally, and unless otherwise specified in writing, shall be 2/3 to A, and 1/3 to B. If B exceeds his instructions from A, B and his property are security for the losses. Otherwise he is not liable to losses consequent to maritime risks[44].

A more comprehensive type of partnership in the Ragusan statutes is the *entega.*

Concerning money which goes with a ship.

Money or wealth which goes with a ship or boat of a Ragusan or that goes through the Gulf with *entegas,* must travel in the fortune (luck) of the masters of the money itself, *maris et gentis clare factam;* And if the entire profit that the Lord shall thereafter give from the aforesaid money and also from the freight on going and returning, and from the other profits that the ship or boat can have, the ship and sailors shall have two parts of the profit, and the money itself shall have 1/3[45].

Herein defined, the *entega* is a partnership between goods/money and ship, or between merchants, shipowner and crew. Merchants, shipowner, and crew contribute to the venture and so share in the profits: 1/3 of the profit goes to the money or merchant, and 2/3 to the ship (or shipowner) and sailors. The sixteenth century Ragusan lawyer, Gondola, in defining the *entega* (no longer practiced in Ragusa during his times, but still operative in Apulia) states that:

The profit is divided into three parts of which one part went to the owner of the capital, a second part to the owner of the ship, and a third part to the sailors[46].

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41 III, 9, translation by Ashburner.
42 Ashburner, ccxxxvii, ff.
43 VII, 1.
44 See Ashburner, ccxxxvii, ff.
45 VII, xlii.
46 *Liber statutorum civitatis Ragusii...*, p. 420.

If the venture sailed outside the Gulf (Adriatic), the shares of the profit changed, the owner of the *entega* received 1/2, and the ship and crew 1/2.[47] Money and merchandise which travel on board as *entega* have a common fortune. In case of damage or loss at sea the danger falls upon the merchants who own the *entega.*[48] From a later chapter we see that this chapter means that all of the merchants participating in the venture must share the 1/2 or 1/3 loss in common. It does not mean that the shipowner and sailors do not share in a part of the loss as we see in chapter 47:

Concerning a ship which suffers shipwreck.

We assert that if some ship or boat that voyages with *entega* suffers shipwreck, the ship or boat itself shall contribute from the profits which it itself shall make and from the profit of the *entegas* themselves, but not from their capital."[49] {this is identical to quote #39}

Finally, chapter 49 repeats the principle of the joint liability of ship and sailors in case of loss at sea[50].

We assert that all ships...that voyage with *entegas*...and lose the moneys which are in *entegas*, and similarly both goods, or indeed whatever else might be in the form of *entega*, just as they share in the profit so do we desire that they bear restitution for the damage...both ship and sailors.

Thus we see clearly that the *entega* is a partnership of ship and cargo in which the profits and risks are shared and in which the maritime risk serves as the common axis of discerning shares, profits, and losses.

It would be well to pause to note two additional facts about this type of partnership. First, the *scribanus* is required to record all the *entegas* in the ship's register[51] and from whom they were received. Second, before the ship is allowed to depart Ragusa with its *entegas*, the *nauclerius* and sailors must reveal to the owners of the ship and also to the owners of the *entegas* what and how much is being carried.

Thus the statutes of Dubrovnik in describing these two types of partnership, that is a partnership of merchants and also a partnership of ship and cargo, provide us with material which lends itself to a comparison with similar associations in the Rhodian Sea Law[52]. Both types of partnership exist in the text of the latter code, though they are not described with anything like the precision that we see in the statutes of Dubrovnik. Thus it is more by implicit than by explicit evidence that we can detect their presence in earlier Byzantine nautical custom. Let us next glance momentarily at the relevant passages in the Rhodian Sea Law.

A gives gold or silver for the service of a partnership. The partnership is for a voyage, and he writes down as it pleases him till when the partnership is to last. B, who takes the gold or the silver, does not return it to A when the time is fulfilled, and it comes to grief through fire or robbers or shipwreck. A is to be kept harmless and receive his own again. But if, before the time fixed by the contract is completed, a loss arises from the dangers of the sea, it seemed good that they should bear the loss according to their shares and to the contract as they would have shared in the gain[53].

This contractual arrangement bears a strong resemblance to the *collegantia* of Dubrovnik which we examined above. A provides the cash for the enterprise but remains at home, while his partner B boards ship and handles the cash for purposes of maritime commerce. Both share in the profit and loss, but unlike the Ragusan *collegantia* (which specifies how the two partners are to

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47 VII, xliii.
48 VII, xliv.
49 VII, xlvii.
50 VII, xlix.
51 For quaterno, *Dizionario di marina medievale e moderno* (Rome, 1937), 702.
52 See the detailed and excellent observations in Ashburner, ccxxxiv-ccl.
53 III, 17.

share–2/3 for A, 1/3 for B) there is no specification in the Rhodian Sea Law as to the respective shares. Nevertheless there is an essential similarity between the Ragusan *collegantia* and the Byzantine κερδοκοινωνία.

The Rhodian Sea Law also implies the existence of the second type of partnership, of the type that we saw in the *entega* of Dubrovnik. Though it does not describe this type of partnership explicitly and in detail, nevertheless in spelling out liabilities in case of maritime disaster we are able to detect in the Byzantine code where the liabilities fall and from this system of liabilities we can deduce the nature of the partnership[54]. In certain other contracts we see that the sailors have no connection with the merchant but rather receive their share of the profit from the shipowner and the profit of the ship. But if we examine chapters 9, 27 and 32 of part three of the Rhodian Sea Law we discern something quite different. All three of these chapters are concerned with setting the contributions which the concerned parties must make to cover the damages from a maritime danger or disaster. It is the most detailed of such provisions providing for contributions in case of damage to be found in either of the two codes presently under discussion.

If the captain is deliberating about jettison, let him ask the passengers who have goods on board; and let them take a vote what is to be done. Let there be brought into contribution the goods; the bedclothes and wearing apparel and utensils are all to be valued; and, if jettison takes place, with the captain and passengers the valuation is not to exceed a *litra*; with the steersman and mate, it is not to exceed half a *litra*; with a sailor, it is not to exceed three *grammata*. Slaves and anyone else on board who is not being carried for sale are to be valued at three *minas;* if any one is being carried for sale, he is to be valued at two *minas*. In the same way if goods are carried away by enemies or by robbers or...together with the belongings of sailors, these too are to come into the calculation and contribute to the same principle. If there is an agreement for sharing in gain, after everything on board ship and the ship itself have been brought into contribution, let every man be liable for the loss which has occurred in proportion to his share of the gain[55].

Two important principles emerge from this particular text: If there is a partnership contract for gain, (a) the ship and everything on board are brought into contribution, (b) the resulting loss, after the contributions have been allowed, is charged to each individual in proportion to the share of the gain between ship and cargo, (i.e. among the merchants, the shipowner and the crew). Therefore it is in essence the contract which in Dubrovnik was called *entega*. Again, as in the contract between the merchants discussed above, there is no specification of the share which belonged to each of the three parties, but this is a detail and does not affect essentially the nature of the contract. Again in chapters 27 and 32 of part three of the Rhodian Sea Law both ship and cargo come into contribution so that we are dealing here also with an *entega*-type contract[56].

We conclude, therefore, that with certain differences only in detail, the Ragusan *collegantia* and *entega* are very clearly also present in the Rhodian Sea Law. Of particular interest in this respect is chapter 21 in part three of the Byzantine text for in speaking of a partnership it gives the hypothetical case of two merchants who concluded a maritime partnership

"...καί τὸ τέλος...περὶ μιᾶς 'ενθήκης ἐτελέσαμεν."

"...and we paid the tax on...one *entheke*"[57].

Now the Greek word *entheke* here means capital and/or cargo, the exact meaning which is conveyed by the Ragusan *entega*. Further, *entega* derives directly from the Greek 'ενθήκη, both as to its specific and more generic meaning.

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54 This is the methodological approach of Ashburner, ccxli-ccxlii.
55 III, 9.
56 Also, II, 35.
57 Also in III, 32.

Next we shall examine the provisions of the two codes as regards jettison. The Ragusan statutes use the verb *prohicere*, and the Rhodian Sea Law employs the terms 'εκβολή,' αποβολή' to refer to jettison. The appropriate Ragusan statute is entitled:

Concerning those who jettison something from the ship into the sea.

We assert that if someone should decide to jettison something from the ship or boat into the sea, (and should do so) without the desire of the *nauclerius* and of the majority of those who are on board that ship, that one who jettisons shall be required to make good all of that which he jettisoned[58].

The chapter is clear, simple, specific. Jettison can only occur after the approval of the majority of all those on board, plus the captain.

There is a similar, though slightly different, provision in the Rhodian Sea Law:

If the captain is deliberating about jettison, let him ask the passengers who have goods on board, and let them take a vote what is to be done[59].

There is a slight difference, however, in that the Rhodian Sea Law specifies that those who are to vote as to jettison are all those passengers with goods or cash (χρήματα) on board, whereas the Ragusan provision states that *all* those on board are to vote on jettison. The Rhodian Sea Law provides instances as to the manner in which jettison is to proceed[60].

If goods are to be thrown into the sea, let the merchant be the first to throw and then let the sailors take a hand. Moreover none of the sailors is to steal. If anyone steals, let the robber make it good twofold and lose his whole gain[61].

Both practices, i.e. the vote and the priority of the merchant in jettisoning the merchandise, go back to ancient Græco-Roman practices and occur as well in the majority of the maritime codes of the mediæval Italian cities[62].

Finally there is the matter of salvage, on which subject the Ragusan statutes have but one provision:

If a ship or boat should come upon goods at sea, or should capture some ship or a boat of enemies, everything that it has shall be divided into four parts; the ship or boat shall have one part, the second part shall belong to the cargo on the ship or boat, and the sailors and merchants shall have the other two parts among themselves equally[63].

In the Byzantine maritime tradition regarding jettison, the *Justinianic Digest*, reproduced in the later Basilica, established the general principles that were operative in this domain: 1. The original owners of goods lost in a storm still retained title. 2. Those who appropriated such goods are adjudged to be thieves. This applied not only to goods found on the high seas but for merchandise washed up on the shores as well. The Sea Law, however, underscores the right of the salvor to some share in the property thus found as a reward for and incentive to exertion in this direction[64].

Thus in the case of the law of salvage the materials in the maritime laws of Dubrovnik and Byzantium do not speak of fundamental similarities. Indeed the one passage that deals with the law of Salvage in Dubrovnik either indicates a system which is in complete opposition to that which prevailed in Byzantium, or else it does not cover all the possibilities in the disposition of salvaged goods and ships. It is highly probable that both these latter propositions are close to the truth.

Conclusions

It is appropriate at this point to attempt to make some observations, if not hard conclusions, as to the relation of the contents of and practices contained in the two maritime codes we have

[58] VII, lviii.
[59] III, 9.
[60] This is discussed in Part III, 38 which begins by addressing a hypothetical case in which a ship is carrying grain. But then the language of the text changes and the passage seems to be talking about merchandise in general.
[61] III, 38.
[62] Ashburner, cclxviii, ff, who cites Demosthenes and Juvenal.
[63] VII, xxxv.
[64] All of this is spelled out in detail by Ashburner, cclxxxviii-ccxciii.

just compared. For reasons indicated at the beginning this is a very complex matter, the supporting materials are insufficient, and so we must not expect too much.

Of the eleven items examined in both legal documents there are striking similarities or virtual identical practices in eight items. First, there is the use of identical technical terms in a limited number of cases, but which terms are in themselves important: the words for captain, the noun for chartering a vessel, as well as the nouns for charterers and charter, and most importantly the word indicating cargo and/or capital. Second, there is a virtual but not quite complete, identity of the various parties participating in overseas commercial ventures. Third, in the evaluation of a ship for purposes of contribution to damage suffered because of maritime dangers, both codes provide that after the evaluation, one third of the value of the ship shall be deducted before they proceed to levy the contributions on the participants in the venture. Both codes assume that the sailors on a maritime venture, in the majority of the cases, participate in the shares of the profit and loss. The share of the captain of the ship is identical in both codes. Sixth, acts of God, the so-called maritime dangers or risks affect the commercial venture in regard to the contributions which each member shall make in order to make good some part or all of the loss. This is the principle that participants in the venture for gain must also participate in the venture's loss. Seventh, and perhaps most important of all, is the fact that two of the most important types of contracts for maritime commercial partnerships are, in essence, identical in both codes: The Ragusan *entega* and *collegantia* exist under the more generic name *koinonia* in the Rhodian Sea Law. Finally, the laws governing jettison are essentially predicated upon the same principle: the approval of the majority of those involved.

Where there were basic differences observed in the two codes (that is within the limited number of practices examined) we see clear indications of very different practices in the maritime life of the two states. Striking is the role of the *scribanus* on the Ragusan ship, whereas the Rhodian Sea Law seems to indicate that he did not exist on Byzantine ships. Similarly the two codes are in opposition as to the legal responsibility for the ship's seaworthiness: The Ragusans place this on the shoulders of the shipowner, the Byzantines on the backs of the merchants. Whereas the Byzantine code gives considerable detail on the nature of the maritime loan, this is not the case in the Ragusan maritime statutes. Though the laws of jettison are identical in principle, the two codes make a fine distinction as to which members of the enterprise shall vote on the jettison proposed by the ship captain. In the case of the Ragusans, all persons on board the ship shall vote. In the Rhodian Sea Law, it is all those who participate in the fate of the capital and merchandise (i.e. all those who have shares in it). Thus if the sailors are sailing *ad partes*, then the provisions would be identical with the provisions of the Ragusan code on jettison. If they sail only for salary, then they would not participate in the deliberations and voting on jettison. Finally, on the law of salvage, the two codes would seem to present completely different usage.

From this rapid summary of the similarities and dissimilarities I think that we can conclude that we are talking about two maritime societies which have very strong and important similarities and the question arises as to the origins of this similarity. Here, I find it difficult to come to any hard and fast conclusion. I have already referred to the political relations of Byzantium and Ragusa in the ninth, tenth, and eleventh centuries as one possible factor in this similarity. On the other hand, there is the established fact of a more general Byzantine influence in maritime law and practice in this part of the Mediterranean, and specifically among the maritime codes of the Italian cities. Finally, I should point to the ancient character of many of these practices, simply by quoting from a fragment of the work of the Greek comic poet Diphilus of Sinope, second half of the fourth century B.C. In the fragment of this comedy, *The Painter*, preserved in the writings of Athenæus, he depicts the type of the arrogant chef who caters at the banquets of the affluent:

No, Draco, I won't take you on for a job unless you are likely to spend the day as a table-maker with a lavish abundance of good materials. For I never go to a man until I first make sure who is giving the sacrificial feast, or why the dinner is given, or what people he has invited. I have a diagram of all classes, those to whom I should hire myself out, and those of whom I must beware. Take for example the class that belongs in the port. A sea-captain offers sacrifice to pay a vow; he has lost the mast or rudder of his ship and completely wrecked it, or he has tossed the cargo overboard when he was full of water. I let that kind of man alone, because he never does anything for pleasure, but only through custom. While the libations are poured he is calculating how big a share of the loss he can levy on those sailing with him, reckoning it all up and so each of them must eat his own vitals. But another man has sailed into port from Byzantium; only a two days' voyage without a scratch; he has made money, and is overjoyed that he has made a profit of ten or twelve percent. He is full of talk about his fares, he belches forth his loans, celebrating a debauch with the help of tough panders. Up to him I sidle purring, the moment he disembarks; I put my hand in his, I remind him of Zeus the Saviour, I am all engrossed in the thought of serving him. That's my way...But where I am taking you now is to a brothel. There a courtesan is celebrating the Adonis festival sumptuously in company with other harlots. You will stuff yourself lavishly, and the folds of your tunic as well...[65]

This anonymous cook, whose cheeky and snobbish economic calculations have been immortalized in Attic Middle comedy, inadvertantly but humorously reveals to us maritime practices and usages that prevailed among both Byzantines and Ragusans, and those underline the nature of a broader and more ancient maritime society.

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[65] Athenæus, *Deipnosophistae*, VII, 292. The translation is that of C. Gulick in the Loeb series.