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A RESPONSE TO LENE RUBINSTEIN

Using with admirable dexterity all the varied corpora of Greek inscriptions as primary evidence, Lene Rubinstein presents a sample of her on-going research, viz., legal institutions in the Greek world outside of Athens; her essay on *arai* in Greek laws is a companion piece to her recent and seminal work on volunteer prosecutors in the Greek World.[1] Here, in the essay on *arai*, she focuses on evidence for public curses used as legal deterrents in inscriptions dating from the fourth century down to about 150 B.C.; she supplements this with some of the evidence for the practice of self-imprecation as the confirmation of an undertaking made by oath. Her purpose is, ostensibly, to examine the curses against the model provided for the most part by K. Latte in 1920: according to Latte, attestations of public curses in texts dating from the late classical period and later are 'essentially empty formulae retained in legal systems that had in other respects undergone a process of secularization.'[2] Again, according to Latte, the decline in the importance of the *ara* as a legal deterrent was due not only to changes in religious perceptions but also to 'the increasing power of political institutions within individual Greek communities.'[3] With the exception of Asia Minor where the *ara* retained religious substance, these sanctions in the Hellenistic period had turned into 'mere ornaments with which even the most trivial honorary decree was lavishly adorned.'[4] Rubinstein asks, is Latte's evolutionary model correct? Does it fit the inscriptions we now possess from the fourth century and later?

In dealing with the vast corpora of evidence, Rubinstein follows Latte's method in part: just as he had listed the offences subjected to curses in the famous fifth century Teian inscription to show their nature – that the offences all caused serious threat to public welfare, so too Rubinstein lists the Teian offences. She uses them, however, to provide a comparative taxonomy: many though not all the offences appear to be subject to public imprecation in later inscriptions and almost all 'were anything but trivial.'[5] One area where Rubinstein perceives

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1 Rubinstein 2003.

2 Rubinstein's paraphrase of Latte 1920: 76.

3 Rubinstein's paraphrase of Latte 1920: 87.

4 Rubinstein's translation of Latte 1920: 76.

5 Rubinstein tends to qualify a decree or a category of a decree as 'trivial' or 'apparently trivial' (with irony, of course). The leit motif promotes an argument: a decree which is not trivial and which is accompanied by an imprecation is using that imprecation as an important aid to carrying out the law (cf. Koerner 1987: 468). The leit motif slightly distorts Latte's argument. While Rubinstein is right to contest the use of the adjective

great continuity with archaic inscriptions is that of offences committed in relation to religious ritual and sacred property. An area of apparent difference is manifested in the post-archaic texts by the absence of imprecations for officials who do not impose penalties and by the near absence of imprecations for officials who do not step down from office after a specified period or for officials who do not carry out specified tasks. The absence of imprecation in the last category appears to buttress Latte's argument that the strengthening of political institutions resulted in a decreased need to invoke divine sanctions.

Rubinstein appears to follow Latte in this argument but at this point, using her more extensive evidence, she makes her first real departure and original point: there were numerous gaps in developed legal systems that might be and were in fact remedied by public imprecation. Whereas 'the threat posed by the unaccountable individual official' may have been perceived as 'less acute in the late classical and early Hellenistic *poleis*' and so may not have required imprecation, there were other areas of accountability where an imprecation might help out – e.g., in regard to 'judges who cast their votes in secret ballots and participants in large political gatherings' – citizens who might render a decree invalid by proposing its abolition or something contrary to its provisions. Imprecation might be useful in this last case – especially, according to Rubinstein, since imprecation 'would undoubtedly have been complemented by regular legal actions' similar to the Athenian *graphê paranomôn* and the outcome of such trials would be unpredictable.[6] Moreover, problems posed 'by offences of omission' persisted – such as failing to report an offence. In fact, the imprecation texts suggest that 'the weakest link in the process of law-enforcement was the individual citizen whose agency was required for setting the process of law-enforcement in motion.' This is the reason, Rubinstein tells us, that 'we find the public imprecation complementing the procedures and penalties that depended on individual prosecutors for their activation.'[7]

I want to stop at this point and focus on Rubinstein's last point and the trend of her argument in general. Rubinstein has galloped through thousands of inscriptions from all over the Greek world and over a very wide period. In the process of this gallop, she has left Latte's argument and model far behind. Most importantly, she has decided, perhaps heuristically, to assume what had to be proved, at least

(*gleichgültigsten*) to describe certain honorary decrees, even the very ones to which Latte had attached the word or the concept, yet Latte's method was *not* first to measure a decree's importance and then to allow the criterion of 'significance' to determine whether an accompanying curse was 'real' or 'ornamental' (so that a curse accompanying a trivial honorary decree would necessarily be 'ornamental'); his method (granted, not always pellucid) was to question whether the curse was imbued with religious meaning in the first instance.

[6] Rubinstein provides no evidence for 'regular legal actions that would be similar to the Athenian *graphê paranomôn*.'

[7] A long note (14) is attached to this statement, citing twelve examples – one of which is too fragmentary for any claim (I di Cos 53), and two others are decisions of corporate bodies that are independent of the *polis* (the decree of the Klytidai, PEP Chios 80 and an honorary decree of merchants and sea captains in Delos, ID 1520).

according to Latte's conceptual framework, namely, that the threat of divine punishment was perceived 'as both real and serious in the fourth century.' Once a religious belief is assumed, everything falls into place. But religious belief had been the crux of the matter. Rubinstein has changed the game plan: Latte was concerned with the religious basis of a curse's efficacy; Rubinstein is concerned with the law's efficiency. For Latte, one criterion of efficacy was whether the curse stood by itself or was accompanied by legal procedures – e.g., if someone commits a particular offence, he is to be cursed *and* a volunteer prosecutor is to pursue him. Such a blending, according to Latte, demonstrates a waning in a belief in the gods' efficacy.

But Rubinstein has assumed belief and her focus are those very decrees or regulations that blend imprecation with legal aids as remedies for offences and as goads in law enforcement. As I've mentioned already, she thinks the imprecation texts suggest that 'the weakest link in the process of law-enforcement was the individual citizen whose agency was required for setting the process of law-enforcement in motion.' Hence we find the combination of imprecation and legal remedy. Rubinstein may be right, but if so, then a possible implication should be made explicit: the inclusion of imprecations in such decrees is not accidental; it is a rational decision to use the gods, to manipulate the conduct of society's members – it is a matter of 'social control' – if a witness does not turn up to prosecute the offender, we can curse him and that will encourage others to take up the slack. There is probably no need to point out that such manipulation of religious belief does not signify belief in the gods' efficacy; it might better signify cynical exploitation on the part of the makers of the laws.[8] I do not think that is correct, and Rubinstein certainly hasn't proved that is correct – but I do believe it is the conceptual framework she has presented – a rational legal system where lawmakers insert imprecations in their laws when citizens need an extra spur to motion or where the chain of hierarchical chastisers comes to a halt.

Rubinstein has made an important contribution to the study of Greek law by pointing out the diverse legal deterrents used by different Greek *poleis*. That contribution, however, has been obscured by a line of argument that has used Latte as a straw man; if Rubinstein were to see that argument to its conclusion, then she should have clearly demarcated the imprecation texts of Asia Minor (which Latte saw as retaining religiosity) from texts elsewhere in the Greek world. More importantly, she should have demonstrated how the religiosity of a curse can be

[8] An alternative view is possible: the imprecations in these inscriptions may be rhetorical: they are not mere ornaments, but they signify, 'this penalty is really awful and there is nothing worse possible.' It is possible to interpret some texts cited in Rubinstein n. 14 in this way; this is especially true of texts that present numerous offences and only one is to be cursed; such an offence is surely the worst; and sometimes it is presented last (ID 1520, Delos, second century) and sometimes the offender is the highest magistrate in a series, though not necessarily in a series presented in a growing crescendo (IPArk 2 Tegea, fourth century).

proven. That, of course, is the hardest task and one that probably cannot be accomplished on such a broad scale. Surely curse tablets, appeals to justice at oracles, 'judicial prayers' all attest to vibrant religious belief in classical and Hellenistic cities throughout the Greek world.[9] A method to determine religiosity of curses in the texts cited by Rubinstein might require a data base for all the other kinds of texts just mentioned (curse tablets, appeals to justice at oracles, etc.) dated and located in their home *poleis*. To assume religious efficacy only on the basis of texts that combine legal deterrents with curses is a weak foundation.

It is not an easy matter to measure religious belief. But in this instance, the stones themselves might speak to us – on a micro-level. Here I call attention, very briefly, to the *editio princeps* by Wörrle and Lambrinudakis in *Chiron* 1983 of the text mentioned by Rubinstein in n. 14 as SEG 33.679, a law from second century Paros that provides protection for documentary archives. The editors, by situating the law in its rhetorical shape on the stone, by drawing comparisons with the measure of attention given to imprecations on other stones – whether a curse stands by itself as a law or decree or is isolated from the rest of the text – make very convincing arguments for the use of curses that are religiously based in times of crisis (as they suppose for Paros) and for the continuity of curses in Teos. This is a different approach from Rubinstein's, yet one that follows the line of Ziebarth and Latte – who had taken into account changes in geographical place, changes in religious climate – and one that argues for and does not assume religious belief.

Although I am critical of the logical disposition of Rubinstein's essay, I think it is a valuable contribution to the study of legal deterrents in the Greek world.

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[9] See, e.g., Chaniotis 1997; Faraone 2002; Versnel 2002.