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Response to Hans-Albert Rupprecht

A brief enumeration of the main editions of papyri cited by Professor Rupprecht and published since Taubenschlag's treatment of criminal law in the papyri will show clearly how welcome a new discussion of this subject is: *BGU* VI, VIII and X, *P. Lond.* VII, several volumes of *P. Köln*, *P. Tebt.* III 1 and 2, *P. Tebt.* IV, *P. Hamb.* I, many texts published in journals and reprinted in the *Sammelbuch*, and above all, *P. Enteux.* In sum, most of the pertinent evidence known today was not available to Taubenschlag in 1916. Much of it was known by the time Taubenschlag treated the subject in his *Law of Graeco-Roman Egypt*, the second edition of which appeared in 1955, but there his discussion was much more summary. Equally welcome is the focus on the Ptolemaic period, for one of the weaknesses of Taubenschlag's work is his belief in such a phenomenon as the law of Graeco-Roman Egypt and his failure to distinguish sufficiently between Ptolemaic and Roman institutions and behavior. Rupprecht's presentation of the Ptolemaic evidence helps preserve the specific character of the administration of justice during that period. Moreover, the undogmatic approach—and fidelity to the evidence—exemplified by his insistence that we cannot assume a uniform system of criminal justice give one good reason to take his conclusions seriously.

It may be just as well to confess that in serving as a respondent to this paper before this group I feel something of an imposter. I approach the matter as a social historian of Hellenistic and Roman Egypt, not as a specialist in law. This may be the source of my difficulties with terminology in this paper, as in much of the juristic literature about the offenses which are its subject. To me, however, the difficulties of terminology are closely related to the conceptual difficulty of the subject.

The first of these difficulties is the adoption from Roman law of the word delict, a term used both by Taubenschlag (writing in English in his *Law* but thinking in Polish and using a research assistant whose native language was German, as Professor Modrzejewski kindly informs me) and by Rupprecht (in German). More for my own sake than the reader's, let me quote Bruce Frier's formulation in his recent *Casebook on the Roman Law of Delict* (1), "we may define a delict in Roman law as a misdeed that is prosecuted through a private lawsuit brought by the individual and punished by a money penalty that the defendant must pay to the plaintiff." The degree to which such a description is applicable to the treatment of the offenses under consideration here is, as Rupprecht indicates at the outset, among the major questions at stake. The use of the term delict therefore begs the question. It may well be that the use of it here in German was not intended to have such technical meaning, but the appearance of the adjectival form *deliktischen* in the concluding sentence of the paper suggests that the word does carry some technical freight in this

discussion.

Are we then to use instead the vocabulary of criminal law, of crime and punishment? Here again there is a serious risk of begging the question. Rupprecht's set of questions, after all, ask us to consider whether we are looking principally at a state-run system of criminal justice or at a system of private procedure against wrongdoers who have brought harm to the plaintiffs. The vocabulary of criminality prejudices us toward the former answer just as much as delictal terminology does toward the latter. Moreover, we have no basis for approaching the entire problem on the assumption that either of these will describe accurately the way in which the administrators or population of Ptolemaic Egypt conceived of the matter. I do not have a new and neutral vocabulary for this subject to offer today, but the problem posed by our Latin-derived language of discourse seems to me substantial.

What do we learn from the painstaking collection of material and the acute and detailed analysis to which Rupprecht has subjected these texts? First, as he says, there is a great imprecision of terminology in the papyri. There are few technical terms, and they do not seem to be used consistently. That is characteristic of the Greeks generally, of course, from classical times down at least to Procopius, and does not of itself force us to conclude that there was no consistent structure in these proceedings. But it does not help us to discover that structure, and the readiness with which Rupprecht abandons any attempt to define closely the Greek terminology for theft points clearly to the difficulties we face.

Secondly, we are dealing mainly with administrative justice. The courts appear only infrequently, and those instances are all relatively early. I believe that Rupprecht is correct to reject Wolff's assignment to the courts of "private delicts." As Rupprecht points out, we have enough evidence to draw conclusions about the competence of functionaries, but not of courts. Distinguishing administrative and judicial aspects of the competence of Ptolemaic officials themselves is extremely difficult and probably imposes a distinction the ancients themselves would not have recognized.

The five offenses studied exhibit a unified procedure, as far as we can see. The injured party (in which I include the husband in the case of a woman, or a surviving relative in the case of murder) petitions the king or a royal official to have the case investigated. (There is evidence for a third party, serving in a surveillance role, reporting evidence of an offense in one instance which could concern either murder or wounding. The document, *P. Tebt.* III 730, is a guard's report of finding blood in a field; I see no reason to assume that murder is the only possibility.) From the point of notification on, the entire procedure is in the hands of royal officials, who carry out whatever investigation is necessary, try where appropriate to reconcile the two parties, and if that is unsuccessful, hear the case and impose judgment.

Though procedurally there is only scanty evidence for any distinctions among these offenses, Rupprecht has argued that there is a difference in the sanctions to be imposed,

with punishment and return of lost goods in the cases of robbery and theft (punishment only in the case of murder), but compensatory fines in the cases of wounding and hybris. This is in my view a distinction with no significant difference; as I shall argue below, both compensation and restitution are simply means of restoring the situation of the injured party in society. Punishment, on the other hand, is described so vaguely as to escape altogether any exact knowledge, as Rupprecht clearly indicates.

Rupprecht has pointed out that there is no mention of different *dikai* into which one could sort cases, such as one might encounter in city laws and such as occur in *P. Halensis*. (The term *dikê* does occur, but only in the records of a decision by a court in Crocodilopolis, in *P. Gurob* 2 = *Sel. Pap.* II 256.) Nor do the courts play any significant role, as he notes. The *laokritai* are mentioned only in *P. Enteux.* 83, where the *stratêgos* orders them to try the case if the parties (both with Egyptian names) cannot be reconciled. The *chrêmatistai* occur twice, in *P. Fay.* 12 and *UPZ* II 170. Otherwise, it is administrative officials who hear all cases and make all decisions. The fact that the entire process is in official hands, that unaffected official persons might notify superiors of offenses, that courts are largely absent, and that there is some element of punishment mentioned all argue against seeing these cases—except perhaps for those few which do come before courts—as civil suits. They cannot reasonably be categorized as part of private law, in the sense that Roman delicts are.

On the other hand, it seems to me difficult to see here a tendency toward the development of a royal criminal law. For one thing, the overwhelming body of evidence points to restitution, to recovery of the complainant's position before the act, as the goal of the case. In the case of murder, regrettably, none of the texts indicates the penalty expected or actually levied. Rupprecht has argued that *P. Tebt.* I 14 indicates confiscation of the murderer's property as a penalty, but there is nothing in the text to support that interpretation. The order is to freeze (θεῖναι ἐν πίστει) the defendant's assets (which turn out to be rather meager). All that is accomplished is to guarantee that what assets there are will not be dissipated or otherwise unavailable to pay whatever penalty is levied. General confiscation is nowhere suggested.

What little evidence there is about penalties certainly all indicates an assessment (*timêma*) levied against the defendant and going to the plaintiff. In some cases of wounding and of hybris, amounts are actually mentioned; the figure 200 drachmas appears in two texts, 1000 in another one. It seems likely that an estimate of the actual damage was involved, although we cannot tell if it was then multiplied as a punitive measure. In general, the plaintiffs want to be made whole, to receive their due, as Rupprecht rightly emphasizes in the case of robbery. Anything else is secondary, and Rupprecht points out (again, while speaking of robbery) that we do not know if requests for punishment were really pursued.

There are, however, some instances in which the plaintiffs ask for an unspecified

punishment for the malefactor in addition to compensation. These are, not, I think, paralleled in the Roman period and are thus of considerable interest. Their salient feature, however, is the lack of specificity. "So that he may not get off unpunished" or "so that they may receive what is appropriate" and such phrasings appear in a fair number of texts—oddly enough, in more texts concerning theft than any other offense. The only text cited by Rupprecht as requesting only punishment (*P. Tebt.* III 784) is vague about what that punishment might be.

Are we then to see this as criminal law? I think not. Despite the involvement of royal officials throughout the procedure and the possibility of punishments, restitution remains the key element of what the plaintiff is seeking. Moreover, there is not one piece of evidence that the "appropriate penalty" was ever imposed in any case known to us, that is, that "criminal" punishment beyond restitution was inflicted. And the official preference for resolution of cases via reconciliation does not point to "criminal" as the appropriate category for these actions.

Much of our difficulty, I think, lies not in the evidence or in the ancient situation at all, but in our approach to the question. I can see no evidence that what we call criminal action was distinguished by these Greeks and Egyptians from any other dispute, and in most cases they tried to settle problems locally first and went to the authorities, if they did at all, for reestablishment of their property and social position. This remains true in the Roman period, perhaps even more true than under the Ptolemies. Criminal punishment in our sense, in this understanding, was a negligible matter, because so little "crime" was actually prosecuted as such. When a complaint is filed, it aims at restoration of social equilibrium and the honor and material position of the complainant, not at punishing the misdeed itself, which is not seen as "crime" but as ancillary to the disruption of the social fabric. One might, in fact, go so far as to say that "criminal" and "penal" are simply inappropriate vocabulary, borrowed from modern views but inapplicable in Ptolemaic Egypt. They refer not to any inherent quality of behavior, but to the view that societal authorities take of it. And there is no evidence that the Ptolemaic authorities made any such distinction.[1]

Finally, Rupprecht's conclusion that the presence of Ptolemaic officials, with power of coercion, was a decisive element in the insignificance of careful distinctions between judicial and official powers seems to me eminently correct. Even the kinds of distinctions made in Athenian law are not to be expected in a countryside where the social and political milieu was not that of the Greek city, but that of a monarchy. As Rupprecht points out, the evidence we have is not, except for *P. Halensis*, about the Greek cities of Egypt but about the villages and towns of the countryside.

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1 Cf. for the Roman period my remarks in *BASP* 26 (1989) 201-16.