

Aliquid de iure gustare: portrayal and criticism of lawyers in Petronius

Richard Gamauf

1. The *Satyricon* is a unique masterpiece of ancient literature that combines many outstanding qualities.¹ Its author² created a multi-layered work of fiction, alternating scenes of highly fantastic character with episodes in settings which *prima facie* appear like realistic representations of everyday life among the lower classes of Roman society.³ In episodes of the latter kind, Petronius leads modern readers into a world that is rarely documented in ancient literature outside the *Satyricon* and hardly recoverable from other sources. The reader is confronted with the spectacular business career and the peculiar world views of the obscenely wealthy freedman Trimalchio, who epitomizes the literary figure of the newly rich but unrefined upstart.⁴ Furthermore, one can overhear

¹ Modern scholars agree on *Satyrica* as the more likely title, but for reasons of convenience the commonly known title *Satyricon* will be retained. Good starting points to the vast literature are J. PRAG/I. REPATH (eds.): *Petronius: A Handbook*. Oxford 2009 and E. COURTNEY: *A Companion to Petronius*. Oxford 2001; online resources are listed on the Petronian Society Ancient Novel Page <http://www.chss.montclair.edu/classics/petron/PSNNOVEL.HTML> (visited on June 22, 2009).

² The authorship of T. Petronius Niger, the *arbiter elegantiae* of Nero's court (cf. Tac. ann. 16,17-20), is generally accepted nowadays; see E. COURTNEY: *Companion* (note 2) 5-11 and J. PRAG/I. REPATH: Introduction. In: J. PRAG/I. REPATH (eds.): *Petronius* (note 1) 5-9. For evidence in the text indicating a composition in Neronian times see C. VOUT: *The Satyrica and Neronian Culture*. In: J. PRAG/I. REPATH (eds.): *Petronius* (note 1) 101-113.

³ As a confession of the author's 'realistic' intentions one could read Eumopos' statement in § 132,15: *quodque facit populus, candida lingua refert*; see V. RUDICH: *Dissidence and Literature under Nero. The price of rhetoricization*. London/New York 1997, 230. On the crucial problem of Petronian realism in general e.g., E. LO CASCIO: *La vita economica e sociale delle città romane nella testimonianza del Satyricon*. In: L. CASTAGNA/E. LEFÈVRE (eds.): *Studien zu Petron und seiner Rezeption/Studi su Petronio e sulla sua fortuna*. Berlin/New York 2007, 3-14 and E. OLSHAUSEN: *Soziokulturelle Betrachtungen zur Cena Trimalchionis*. *Ibid.*, 15-31.

⁴ In the *cena Trimalchionis* (§§ 26-78); on the *cena* see E. COURTNEY: *Companion* (note 2) 72-126 and M. S. SMITH (ed.): *Petronii Arbitri Cena Trimalchionis*. Oxford 1975. The seminal study of Trimalchio's biography still is P. VEYNE: *Vie de Trimalcion*. *Annales E.S.C.* 16 (1961) 213-247; to what extent Trimalchio can be regarded as a typical freedman is shortly discussed by J. ANDREAU: *Freedmen in the Satyrica*. In: J. PRAG/I. REPATH (eds.): *Petronius* (note 1) 115s. and E. COURTNEY: *Companion* (note 2) 115. For the close personal relations between noble Romans and their freedmen and slaves that may explain Petronius' intimate knowledge of such circles see V. RUDICH: *Dissidence* (note 3) 189.

the chit-chat of other, less wealthy but equally vulgar, members of his class⁵ or get to know details of Roman slavery that, had it not been for the *Satyricon*, would have remained unknown to us.⁶

For a number of reasons, the *Satyricon* does not lend itself to an easy interpretation.⁷ Due to the fragmentary nature of the surviving text the original composition can only be roughly reconstructed, hence the correct context of one or the other scene remains enigmatic to some degree. In addition to this, the original placement of some smaller fragments can only be guessed. Setting such general textual problems aside, for a historian Petronius' text poses a number of further problems. Petronius wrote in order to amuse an educated readership and not to document contemporary everyday life. He composed a satire, not a social study. As a consequence, Petronius' text can not be simply read as an objective eyewitness account of his time (if something of that kind is conceivable anyhow).

However, low life environments of the first century A.D. are the stage on which Petronius unfolds his satirical story and they provide the indispensable background to the narrative. The characters depicted in the *Satyricon* are not only distorted by the inevitable bias of a member of the Roman nobility towards the lower echelons of society but also in order to achieve literary effects: Petronius frequently satirizes by exaggerating the realities of his days into grossly out of scale enormities when he wishes to create absurd situations or to ridicule his characters. In addition, the position taken by the narrator adds a further problem to a historical interpretation of the text: The first person story teller is Encolpius, an idler and petty criminal.⁸ His opinions must not be mistaken for Petronius' own attitudes nor do they present an outlaw's world view in a reliable manner.

Nevertheless, to a legal historian the world of the *Satyricon* offers a rich yield.⁹ Petronius' text sometimes employs legal language in a quite technical meaning. The education of this highly cultured courtier surely had equipped

⁵ On the freedmen in the *Satyricon* cf. J. ANDREAU: Freedmen (note 4) 114-124 and E. OLSHAUSEN: Soziokulturelle Betrachtungen (note 3) 15-31.

⁶ Cf. A. BRAVO GARCÍA: El 'Satiricón' como reflejo de la esclavitud de su tiempo. In: Cuadernos de filología clásica 6 (1974) 195-208 and G. PUGLISI: Il microcosmo di C. Pompeius Trimalchio Maecenatianus. Schiavi e liberti nella casa di un mercante romano (Petr. 27-78). In: Index 15 (1987) 207-226.

⁷ See e.g., N.W. SLATER: Reading the *Satyricon*. In: J. PRAG/I. REPATH (eds.): Petronius (note 1) 16-31.

⁸ He mentions his crimes in §§ 130, 2 and 133,3.

⁹ On the references to the law see L. DEBRAY: Pétrone et le droit privé romain In: RHDE 43 (1919) 5-70 and 127-186.

him with a solid background of legal learning so that the interpretation of the text can rely on the assumption that Petronius, in such cases, knowingly employed the language of the law (and that he expected his equally educated readership to comprehend what he intended to convey).¹⁰ Taking this into account sometimes helps to detect an additional dimension in an episode that can highlight its social background.¹¹

2. This paper will analyze passages in which Petronius portrays lawyers or allows his protagonists to voice critical opinions on courts or the local administration. In these instances the author uses persons from the bottom of Roman society, destitute free¹² or freedmen, as spokesmen to direct criticism against the legal system or the local power-holders. Given the special literary character of the source, the central aim of this study is to explore Petronius' intentions behind this criticism.

3. In the first remaining chapters of the novel, Petronius takes his readers to the Campanian port town of Puteoli (today's Pozzuoli north of Naples) and allows glimpses at the daily life of a small but prosperous Roman town during the time of emperor Nero's reign. This picture, however, seems to be out of focus. One hears nothing about the accomplishments of the rich and important families, local politics¹³ or regular town life. Instead, Petronius points at corruption and shortcomings both in the administration of justice and the town government.

The setting in §§ 12-15 is a sinister market place at Puteoli.¹⁴ Ascyltos

¹⁰ On the level of education of the ancient readership see R. HUNTER: Ancient readers. In: T. WHITMARSH (ed.): *The Cambridge Companion to the Greek and Roman Novel*. Cambridge 2008, 261-271.

¹¹ See e.g., § 8: A person, first introduced as a trustworthy *pater familias*, tries to seduce/rape Ascyltos. In the description of the immoral request – *prolatoque peculio coepit rogare stuprum* – Petronius unmasks the pretensions of the assailant: Calling the money offered for the intercourse *peculium* Petronius shows his status as son-in-power or slave (or in case of the *Satyricon* possibly freedman as well; see §§ 75 and 76 for freedmen talking about their *peculia*). On the passage cf. E. LEFÈVRE: Die novellistische Struktur der drei Erzählungen in Petron. 6-15. In: L. CASTAGNA/E. LEFÈVRE (eds.): *Studien* (note 3) 156-158 and TH. BAIER: *Encolps Phantasias*. In: L. CASTAGNA/E. LEFÈVRE (eds.): *Studien* (note 3) 151.

¹² The *status* of Encolpius and Ascyltos does not become clear; see J. ANDREAU: Freedmen (note 4) 117s. and A. RICHLIN: Sex in the *Satyrica*. Outlaws in Literatureland. In: J. PRAG/I. REPATH (eds.): *Petronius* (note 1) 86-88.

¹³ Only broken through the lens of the freedmen's criticism in §§ 44-45 (see *infra* after note 45).

¹⁴ A literary analysis of the passage is provided by E. LEFÈVRE: *Novellistische Struktur* (note 11) 163-170; an economic interpretation presents K. VERBOVEN: *A Funny Thing Happened*

and Encolpius arrive there one evening to sell a stolen cloak (*pallium*). They encounter a peasant couple who is offering a shabby *tunica* for sale. Upon inspection of the threadbare *tunica*, Ascyrtos recognizes it as the one they had lost in a previous (non-extant) episode of the novel and finds out that some coins which they had hidden in the seam of the *tunica* (their so-called *thesaurus*) are still in place. Now the retrieval of the *tunica* becomes their goal. While they discuss the best means to repossess the *tunica*, Ascyrtos recommends some sort of trick, whereas Encolpius insists on legal means: Since the skeptic Ascyrtos resists a lawsuit they agree on buying back the *tunica* with the proceeds from the intended sale of the cloak. But this plan fails because the peasants turn out to be the rightful owners of the cloak. To end the resulting quarrel, Ascyrtos proposes an out-of-court settlement: He suggests an exchange of cloak and *tunica*. Although the peasants agree, this solution is frustrated by the intervention of *advocati nocturni*¹⁵ who try to seize both contended items, allegedly to allow a hearing of the case on the following day. At the same time, a bizarre part-time barrister¹⁶ offers himself as fiduciary and clearly plans to exploit the situation. The scene ends when the enervated peasant throws the worn-out *tunica* into Ascyrtos' face and the scoundrels escape with their 'treasure'.¹⁷

4. The value of this episode for the study of Roman criticism towards the law and the legal profession has not escaped the attention of (legal) historians: D. Nörr quotes the scene as an example of criticism against corrupt judges in his book on *Rechtskritik* in Roman antiquity.¹⁸ For K. Verboven it can be either interpreted as "a bleak picture of how Roman law affected – or failed to affect – market practices", showing "the lack of effective legal institutions", or as

on My Way to the Market. Reading Petronius to Write Economic History. In: J. PRAG/I. REPATH (eds.): Petronius (note 1) 125-129.

¹⁵ Most translators see them as some sort of night guard, comparable to the *tres viri capitales/nocturni*; on the other hand it could be some less respectable advocates (so e.g., A. ARAGOSTI: Petronio Arbitro: Satyricon¹³. Milano 2007, 161: *alcuni avvocati – o piuttosto dei ladri, vista l'ora ed il luogo*). For the different interpretations see E. LEFÈVRE: Novellistische Struktur (note 11) 166.

¹⁶ According to E. LEFÈVRE: Novellistische Struktur (note 11) 167 he belongs "*offensichtlich zu der zweifelhaften juristischen Halbwelt.*"

¹⁷ There follows a lacuna of the text and the money is never mentioned in the remaining work. Most probably they faced a bitter disappointment. In this sense E. COURTNEY: Companion (note 2) 64s.

¹⁸ D. NÖRR: Rechtskritik in der römischen Antike. München 1974, 150 note 48.

a reflection of “the limitations of the justice system rather than its defects”.¹⁹ However, the *Rechtskritik* in the scene is more complex than that. In order to fully appreciate Petronius’ intentions, the criticism has to be analyzed within its literary context, before an attempt can be made to explore its background and its possible justifications.

The criticism is embedded in the context of Encolpius’ and Ascyltos’ attempt to retrieve the *thesaurus* in the *tunica*. For Petronius’ protagonists two ways seem possible: Encolpius favours a lawsuit, whereas Ascyltos recommends illegal manoeuvres. As Encolpius’ lays out his legal strategy he displays some quite thorough legal knowledge (not only for a self-confessed outlaw): He is well aware of the alternatives *interdictum*²⁰ or *rei vindicatio*²¹. Ascyltos is not interested in such details, because he regards legal means as hopeless.

It seems quite surprising that Encolpius considers going to court at all, since Petronius’ protagonists profess themselves outlaws²² and one would expect them to evade contact with the authorities. While Encolpius’ proposal constitutes a break with the self-assumed role of his literary character, Ascyltos remains true to his outlaw nature by rejecting any appeal to the law.²³ But in the discussion between the two the legitimacy of the law (*leges*) is never questioned: Ascyltos opts for trickery (*circuitu agendum*) because he does not expect a fair hearing. His scepticism is by no means based on their outlaw-status; he rather believes that no judge will trust the words of aliens (*quis habebit dicentibus fidem?*).²⁴ Furthermore he puts no trust in the courts assuming that the venality of judges excludes poor men *per se* from victory.²⁵

Since the case never goes to trial, the novel itself contains no further indications as to the validity of Ascyltos’ suspicions. The tumultuous events during the ‘pre-trial’ phase at the market and the way Petronius’ characterizes

¹⁹ K. VERBOVEN: A Funny Thing Happened (note 14) 126 prefers the second interpretation.

²⁰ § 13,4: ... *sed plane iure civili dimicandum, ut si nollet alienam rem domino reddere, ad interdictum veniret.*

²¹ § 13,3: ... *quo iure rem nostram vindicamus?*

²² § 125,4: ... *quam male est extra legem viventibus.*

²³ § 14,1: *Contra Ascyltos leges timebat ...*

²⁴ A quite realistic estimation, given the way Roman *iudices privati* reached their judgments.

²⁵ § 14,2: *Quid faciant leges, ubi sola pecunia regnat/ aut ubi paupertas vincere nulla potest?/ ipsi qui Cynica traducunt tempora pera/ non numquam nummis vendere vera solent./ ergo iudicium nihil est nisi publica merces,/ atque eques in causa qui sedet empty probat.*

No existing manuscript places the verses in the context of the market-scene; this is only a widely accepted reconstruction; see N. W. SLATER: Reading the *Satyrica*. In: J. PRAG/I. REPATH (eds.): Petronius (note 1) 21s.

the members of the legal profession therein do not foster optimism in this regard.

Whether the administration of justice during the first century A.D. really warranted such allegations is hard to determine: Petronius' picture could be a mere stereotype as well as a Roman nobleman's frowning judgement on the Campanian courts or even a veiled attack on courts of the capital. The highly sophisticated literary character of the source does not allow judgement on this question by a simple straightforward reading of the text.

As to the retrieval of the *thesaurus*, however, Petronius' position is clear: He sides with Ascyrtos. The author's special irony lies in the fact that he decides to prove Ascyrtos – and not the this time law-abiding Encolpius – right by letting him recuperate the tunic from its unlawful possessors. This victory is not won by legal means, but quite on the contrary: It is only achieved because Encolpius' idea to rely on the law proves a complete disaster from the outset. At least in the world of the novel, the day is won by the more realistic approach of Ascyrtos, the unrepentant villain. Encolpius' idealistic world view is no longer valid after the ruthless disclosure of the shortcomings of the legal system in this episode.

Petronius' carefully composed satire reaches its literary climax when Ascyrtos negotiates the bargain with the peasants. They should return the *tunica* in exchange for the cloak:

'Videmus', inquit, 'suam cuique rem esse carissimam; reddant nobis tunicam nostram et pallium suum recipiant.' (§ 15,1)

In a writer of Petronius' sophistication the allusion to the famous *suum cuique*-formula in these lines is hardly incidental. As a matter of fact, the formula was already well known in learned circles at his time.²⁶ Its use can be traced back as far as Cato the Elder; it frequently appears in Cicero's writings and also once in Petronius' contemporary Seneca.²⁷

Suum cuique represents, according to Ulpian's famous definition of *iustitia*, one of the central elements of justice.²⁸ In Ulpian's opinion, justice provides

²⁶ On the history of the formula see U. MANTHE: Beiträge zur Entwicklung des antiken Gerechtigkeitsbegriffes I: Die Mathematisierung durch Pythagoras und Aristoteles. In: ZRG rom. Abt. 113 (1996) 1-31 and *idem*: Beiträge zur Entwicklung des antiken Gerechtigkeitsbegriffes II: Stoische Würdigkeit und die iuris praecepta Ulpian's. In: ZRG rom. Abt. 114 (1997) 1-26.

²⁷ Cato in Gell. 13.24: *Suum cuique per me uti atque frui licet*; for the evidence in Cicero see U. MANTHE: Beiträge II (note 26) 11; Sen. epist. 81.7: *'Hoc certe' inquis, 'iustitiae convenit, suum cuique reddere, beneficio gratiam, iniuriae talionem aut certe malam gratiam.'*

²⁸ D. 1,1,10 pr. (Ulp. 1 reg.) *Iustitia est constans et perpetua voluntas ius suum cuique tribuendi.* (1) *Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.*

the necessary moral guideline for the application of the law: In order to fulfil their function properly, lawyers should hold a firm intention (*voluntas*) to give everyone his due in accordance with the law. Only if applied according to the principles of justice can the law function as it should.²⁹

Bearing in mind the meaning of the *suum cuique*-formula, the market scene can be read as a sharp satire on the application of the law in this case. It is not by coincidence that Petronius uses the law-sceptic Ascyrtos as the advocate of *suum cuique tribuere* when he proposes the reciprocal transfer of the clothes, and by this the accomplishment of justice. But in a world as upside down as that of the *Satyricon* no such thing must be allowed to happen. This attempt to realize the *suum cuique* is frustrated by the meddling of some ‘lawyers’: The *advocati nocturni* intervene to keep cloak and *tunica* for themselves (*qui volebant pallium lucri facere*) and a suspicious looking part-time attorney (seemingly some sort of Roman forerunner of the ambulance-chaser) adds to the chaos by trying to impose his services on them. Encolpius and Ascyrtos keep their property only by getting out of reach of these ‘lawyers’.³⁰

5. Petronius did not design this travesty as a representation of the Roman judicial system. The crude exaggerations definitely exclude such a *prima facie* reading of the passage.³¹ The warning against a decline in the administration of justice caused by selfishness and greed however should not be lightly set aside. The same theme recurs later in the novel when Encolpius praises the miraculous powers of money in a sarcastic poem (§ 137, 9):

*Quisquis habet nummos, securo naviget aura
fortunamque suo temperet arbitrio.
uxorem ducat Danaen ipsumque licebit
Acrisium iubeat credere quod Danaen.
carmina componat, declamet, concrepet
omnes et peragat causas sitque Catone prior.*

²⁹ D 1,1,1 pr. (Ulp. 1 *inst.*) *Est autem (sc. ius) a iustitia appellatum: nam, ut eleganter Celsus definit, ius est ars boni et aequi.*

³⁰ Martial (2,13) once advises an out of court settlement to escape corrupt judges and greedy attorneys: “*Et iudex petit et petit patronus: solvas censeo, Sexte, creditori.*” According to A. A. DIMOPOULOU: *La rémunération de l’assistance en justice. Étude sur la relation avocat-plaideur à Rome.* Athens/Komotini 1999, 281 the Romans regarded judicial corruption and exorbitant attorney’s fees as “deux façades de la même déviation de la justice.”

³¹ See F. SCHULZ: *History of Roman Legal Science.* Oxford 1946, 109 (= *Geschichte der römischen Rechtswissenschaft.* Weimar 1961, 129) and E. LEFÈVRE: *Novellistische Struktur* (note 11) 168.

*iurisconsultus 'parret, non parret' habeto
atque esto quicquid Servius et Labeo.
multa loquor: quod vis, nummis praesentibus opta,
et veniet. clausum possidet arca Iovem.*

From a have-not's and outlaw's perspective the rich man's life promises success in any field. His ships master the seas and increase his wealth. His wife is worthy of Jupiter³². Furthermore he has success in art (*carmina componat*) as well as in court where he argues with better success than the prototype of a Roman *vir honestus*, Cato, because – even in the absence of rhetorical brilliance or legal expertise – his money will buy the judges' favourable decisions.³³

This indirect criticism does not sound like the caricature of small-town situations like in the market-scene. Petronius' readers could detect a more general reproach against declining ethical and professional standards in the Roman legal profession.³⁴ For this, the author contrasted the days gone by when *responsa* of eminent jurists had held authority in court with a present in which bribery replaced legal learning or forensic skills. By referring to jurists like Cicero's teacher Servius Sulpicius or the Augustan jurist Antistius Labeo, Petronius showed that things had been better not too long ago.³⁵

Our state of knowledge about the actual state of the administration of

³² This might also be a satirical side blow to Trimalchio. In spite of his business success his artistic aspirations were ridiculous and the relationship to his wife Fortunata was surely no reason for envy. On Petronius' characterization of their relationship see S. STUCCHI: Su alcuni esempi di *ekphrasis* relativi alla caratterizzazione dei personaggi petroniani. In: L. CASTAGNA/E. LEFÈVRE (eds.): Studien zu Petron und seiner Rezeption/Studi su Petronio e sulla sua fortuna. Berlin/New York 2007, 241.

³³ *Parret – non parret* clearly refers to the verdict of the *iudex privatus* (Festus p. 262 Lindsay: *Parret, quod est in formulis, ...*); see U. BABUSIAUX: Id quod actum est. Zur Ermittlung des Parteivillens im klassischen römischen Zivilprozeß, München 2006, 8-10. If one would accept interpretation of L. DEBRAY: Pétrone (note 9) 34 of the passage, Petronius would be accusing Servius and Labeo of venal *responsa* and law-bending!

³⁴ D. NÖRR: Rechtskritik (note 18) 86; see also J. ANDREAU: Freedmen (note 4) 124.

On the question whether the modern term 'profession' can rightfully applied to Roman advocates see A. J. CROOK: Legal Advocacy in the Roman World. London 1995, 41-45.

³⁵ Cf. also the confrontation of *causidici* and *iurisconsulti* in Sen.apocol. 12.2: *Omnnes laeti, hilares: populus Romanus ambulabat tanquam liber; Agatho et pauci causidici plorabant, sed plane ex animo. iurisconsulti e tenebris procedebant, pallidi, graciles, vix animam habentes, tanquam qui tum maxime reviviscerent. ex his unus cum vidisset capita conferentes et fortunas suas deplorantes causidicos, accedit et ait: "dicebam vobis: non semper Saturnalia erunt."* See E. LEFÈVRE: Novellistische Struktur (note 11) 168.

justice in Petronius' time does not put us in an easy position to assess the validity of such charges. One must not take Petronius' criticism too literally, but his scepticism was also no singular opinion. Similar diatribes against the type of the venal attorney³⁶ ("*o causidici, venale genus*") can be found in other authors as well.³⁷ And for conservative contemporaries the waning respect for the *exempla* of the *veteres* was a reason for concern.³⁸

6. Both in the market scene and Encolpius' poem, Petronius draws a direct connection between the declining ethical standards and the increasing importance of money. In order to put such reproaches into perspective one has to read them as elements of the *Satyricon*'s fictional cosmos. For any understanding of the author's intentions with the whole work the *cena Trimalchionis* plays a crucial role. It captures a prominent part in the extant text and may have done so as well in the original composition. Recently J. Andreau pointed out its prominence for any understanding of Petronius' views by stressing "that the *Cena* is a satire on the entirety of Roman life at the time, and not only of the world of the freedmen."³⁹

The *cena* presents a picture of society in which money constitutes the supreme value.⁴⁰ Its main protagonist, the upstart freedman Trimalchio, mocks his inherited senatorial fortune (*patrimonium laticlavium*) as a mere nullity that he will never be content with: *Nemini tamen nihil satis est*.⁴¹ For an ex-slave money is the sole measure of success. But neither his money-fixation nor his vulgarity prevent Trimalchio from taking a leading role within the 'parallel-

³⁶ The Roman jurists, however, were exempt from this sort of critique; see D. NÖRR: Rechtskritik (note 18) 86.

³⁷ The quote is in Sen.apocol. 12,3; cf. also Tac.ann. 11,5,2: *Nec quicquam publicae mercis tam venale fuit quam advocatorum perfidia*, ... See also A.A. DIMOPOULOU: La rémunération (note 30) 310-317.

³⁸ See Gaius Cassius' famous rhetorical outburst in connection with the murder of Pedanius Secundus in Tac.ann. 14,42-45. On which see D. NÖRR: C. Cassius Longinus: Der Jurist als Rhetor (Bemerkungen zu Tacitus, Ann. 14,42-45. In: *idem*, *Historiae iuris antiqui*. Gesammelte Schriften 3. Goldbach 2003, 1585-1620 (first published in *Althistorische Studien*. FS Bengtson. Wiesbaden 1983, 187-222)

³⁹ J. ANDREAU: Freedmen (note 4) 124.

⁴⁰ V. RUDICH: Dissidence (note 3) 186 states that the author unfolds the "not unfamiliar drama of a society where a spiritual quest is replaced by material pursuits." On criticism of materialism in Petronius and other contemporary authors see RUDICH *ibid.* 202s., 232-237.

⁴¹ § 76,3. On the economic and social background R. GAMAUF: Slaves doing business: the role of Roman law in the economy of a Roman household. In: *European Review of History – Revue européenne d'histoire* 16 (2009) 336.

society' of freedmen.⁴² Devoid of regular prospects of social rise freedmen adopted a value system in which wealth was highly esteemed.⁴³ To a nobleman of Petronius' social standing, however, Trimalchio's career provided a source of amusement and ridicule. On the other hand, for slaves or less prosperous freedmen it represented the fulfilment of their wildest dreams.

Among the freedmen gathered at his house, Trimalchio's wealth was unique. Most of his freedmen guests were less prosperous;⁴⁴ some faced a daily struggle for survival.⁴⁵ A down-to-earth example of a freedman's aspirations gives Echion, a rag dealer,⁴⁶ when he describes the future he has in mind for his pet-slave (*deliciae*)⁴⁷ Primigenius⁴⁸. The boy, so he hopes, will learn a trade either – and the hierarchy is telling!⁴⁹ – barber, *praeco* (town crier, auctioneer) or at least barrister (*causidicus*).⁵⁰ For Echion the attractiveness of the 'law career' lies in the prospect of a steady income (*habet haec res panem.*). The 'legal education' to serve that purpose has to be equally cheap. As it seems, it shall consist of nothing more than the study of a few textbooks (*libra rubricata!*).⁵¹

⁴² On Trimalchio's circle see J. ANDREAU: Freedmen (note 4) 120.

⁴³ E. COURTNEY: Companion (note 2) 87; J. ANDREAU: Freedmen (note 4) 124 and S. HALES: Freedmen's Cribs. Domestic Vulgarity on the Bay of Naples. In: J. PRAG/I. REPATH (eds.): Petronius (note 1) 170.

⁴⁴ In § 43 a certain Chrysantus is mentioned who left a considerable estate.

⁴⁵ Their various sources of income are discussed by J. ANDREAU: Freedmen (note 4) 118s.; on the economy in the Satyricon K. VERBOVEN: A Funny Thing Happened (note 14) 125-139.

⁴⁶ On Echion's occupation see J. ANDREAU: Freedmen (note 4) 119.

⁴⁷ On *deliciae/pueri delicati* see CHR. LAES: Desperately Different? *Delicia* Children in the Roman Household. In: D. L. BALCH/C. OSIEK: Early Christian Families in Context. An Interdisciplinary Dialogue. Gran Rapids, Mich./Cambridge, UK 2003, 298-324; E. HERRMANN-OTTO: *Ex ancilla natus*. Untersuchungen zu den „hausgeborenen“ Sklaven und Sklavinnen im Westen des römischen Kaiserreiches. Wiesbaden 1994, 310-312.

⁴⁸ § 46,7 and 8: "... *Emi ergo nunc puero aliquot libra rubricata, quia volo illum ad domusionem aliquid de iure gustare. habet haec res panem. nam litteris satis inquinatus est. quod si resilierit, destinavi illum artificii docere, aut tonstreinum aut praeconem aut certe causidicum, quod illi auferre non possit nisi Orcus. ideo illi cotidie clamo: „Primigeni, crede mihi, quicquid discis, tibi discis. vides Phileronem causidicum: si non didicisset, hodie famem a labris non abigeret. modo, modo, collo suo circumferebat onera venalia; nunc etiam adversus Norbanum se extendit.“ litterae thesaurum est, et artificium nunquam moritur“.*

⁴⁹ On this M. S. SMITH (ed.): Cena (note 4) 124 and E. COURTNEY: Companion (note 2) 92s.

⁵⁰ Cf. E. HERRMANN-OTTO: *Ex ancilla natus* (note 47) 315 Fn. 49; E. COURTNEY: Companion (note 2) 92s.; E. OLSHAUSEN: Soziokulturelle Betrachtungen (note 3) 26f.; J. ANDREAU: Freedmen (note 4) 119; K. VERBOVEN: A Funny Thing Happened (note 14) 130.

⁵¹ W. KUNKEL takes this as an indication that some lawyers' education consisted of book learning only; W. KUNKEL: *Die römischen Juristen. Herkunft und soziale Stellung*². 1967 (reprint Köln/Weimar/Wien 2001), 344 note 729. A Roman jurist admitting a slave boy into the circle of his *auditores* is indeed hardly imaginable.

But the freedman does not regard this as a shortcoming, because neither famous advocates of Cicero's calibre⁵² nor respected Roman jurists shall serve as role models for the boy, but the rather humble local *causidicus*⁵³ Phileros. He too was a self-made lawyer who had not received any education during his youth but picked up some law later in his life (one wonders how and how much?) while he worked as a porter.⁵⁴ Otherwise, Echion declares, Phileros would not be able to earn a living (*hodie famem a labris non abigeret*).⁵⁵

In the freedmen-world the legal profession is one possible occupation among many. In Primigenius' case it shall not be chosen as a vocation for its intellectual merits or as a means to foster a career in politics but exclusively because it promises a steady income.⁵⁶ This is what counts for Echion, and not the hope for the boy's brilliant career as an attorney or a social rise.⁵⁷

These impressions of the education and the economic situation of small town legal practitioners – which seem quite reliable – shed a different light on the presentation of the advocate in § 15,4: Petronius introduces him as a *cocio* (dealer, broker) and occasional barrister (*qui solebat aliquando etiam causas agere*). In contrast to Phileros, this un-named member of the 'bar' obviously could not live off the money he made from his legal practice alone. Therefore he was active in more than one profession and not very particular in his attempts to attract new clients.

In Pompeii may have existed 'law schools' run by local *causidici*. See J. KEPARTOVÁ: Kinder in Pompeji. Eine epigraphische Untersuchung, *Klio* 66 (1984) 204. A singular opinion is E. OLSHAUSEN: Soziokulturelle Betrachtungen (note 3) 27 who reads Trimalchios's statement in § 48.4 (*Ego autem si causas non ago, in domusionem tamen litteras didici*) as a reference to some basic law studies for home use on his part: "Er hat sich aber auch für den Hausgebrauch in die Rechtswissenschaften eingearbeitet" (footnotes omitted).

⁵² On Cicero as an advocate see e.g., F. WIEACKER: Cicero als Advokat. Berlin 1965 and J. POWELL/J. PATERSON: Cicero the Advocate. Oxford 2004.

⁵³ On the status of *causidici* see A. A. DIMOPOULOU: La rémunération (note 30) 61s and 258s.

⁵⁴ For examples of similar careers in Martial see A.A. DIMOPOULOU: La rémunération (note 30) 314.

⁵⁵ If he can be identified with Phileros, the speaker in § 43, who displays intimate knowledge of the estate of a recently deceased rich freedman, then, if he had handled the estate, his income might not have been so meagre. E. COURTNEY: Companion (note 2) 93, however, denies the identity.

⁵⁶ On this see also E. LO CASCIO: La vita (note 3) 10s. Roman tradition (not practice) until the early principate was opposed to monetary rewards for advocates; this may have been different on lower levels; cf. A.J. CROOK: Legal Advocacy (note 34) 129-131; for a full treatment of the question of remuneration see A.A. DIMOPOULOU: La rémunération (note 30).

⁵⁷ A. J. CROOK: Legal Advocacy (note 34) 44 excludes that "advocacy in itself conferred high social status".

Petronius' sneering representation of greedy lawyers in § 15 can very well reflect the economic situation of small town legal practitioners, possibly from a freedmen background. They may have used means to land cases for which a Roman nobleman lacked any understanding. From the moralizing upper class perspective a professional habitus that was necessary to survive under such circumstances indicated character flaws, such as thievishness, greed or money fixation. But within the different value system in the lower social strata an outwardly concern for money was nothing to be ashamed of, given the everyday struggle for survival.⁵⁸

7. The meagre economic situation of the average freedmen less lucky than Trimalchio dominates the political discussions during the *cena*.⁵⁹ Not the top level political life⁶⁰ but their everyday upkeep occupies the speakers' minds most. Hence the *aediles* who are in charge of the grain supply⁶¹ bear the brunt of criticism.⁶² They are accused of acting in collusion with the *pistores* (millers/bakers) to keep the prices of flour and bread up during a drought and to profit from enormous bribes.⁶³ The speakers feel themselves as victims of these malversations (§ 44.3: *itaque populus minutus laborat*):⁶⁴ They find it hard to procure bread⁶⁵ and are even forced to sell their small belongings to afford the expensive grain⁶⁶ while the leading families exploit their misery. Their deep-going discontent makes the freedmen even blame the drought itself

⁵⁸ A. J. CROOK: Legal Advocacy (note 34) 43 assumes that advocates who did not belong to the top levels of society could make only a precarious living out of litigation.

⁵⁹ § 44 and 45. V. RUDICH: Dissidence (note 3) 242s. sees the freedmen suffering from an "inferiority complex".

⁶⁰ A *praetor* (another term for *duumvir* cf. e.g., E. COURTNEY: Companion, note 2, 108) is mentioned once in § 65,4; J. ANDREAU: Freedmen (note 4) 123 stresses that in general the elite is absent from the *Satyricon*. On the role of politics in the *cena* cf. E. OLSHAUSEN: Soziokulturelle Betrachtungen (note 3) 20 and V. RUDICH: Dissidence (note 3) 244s.

⁶¹ On the organization of the grain supply see B. SIRKS: Food for Rome: The legal structure of the transportation and processing of supplies for the imperial distributions in Rome and Constantinople. Amsterdam 1991 and E. HÖBENREICH, *Annona: Juristische Aspekte der stadtrömischen Lebensmittelversorgung im Prinzipat*. Graz 1997.

⁶² See also E. OLSHAUSEN: Soziokulturelle Betrachtungen (note 3) 21.

⁶³ On food crises during the early principate see P. GARNSEY: Famine and Food Supply in the Graeco Roman World. Response to Risk and Crisis. Cambridge 1989, 220-225.

⁶⁴ On the victims of food shortages and popular reactions P. GARNSEY: Famine (note 63) 32 and 240-243.

⁶⁵ § 44,2: *Non mehercules hodie buccam panis invenire potui*.

⁶⁶ § 44,15: *Quod ad me attinet, iam pannos meos comedi, et si perseverat haec annona, casulas meas vendam*. On the social background see J. ANDREAU: Freedmen (note 4) 119; see also P. GARNSEY: Famine (note 63) 33.

on the moral decline of the better circles that enrich themselves but ignore the religious rituals.⁶⁷

In this passage, Petronius paints the picture of a general moral decline: Both the top families and the ordinary citizenry no longer live up to the standards of the past. In the speakers' self-criticism the utter lack of political influence of the ordinary freedmen unveils itself.⁶⁸

8. As already stated at the beginning, the study of the *Satyricon* as a historical source rests on the reliability of the seemingly 'naturalistic' elements of the story. Even though the novel was by no means intended as a colportage, its author presents a surprisingly coherent picture of life at the margins of Roman society. Cohesiveness alone – though arguably intended by Petronius⁶⁹ – does not suffice to qualify the text as a reliable historical source. It may very well be that “the *Satyric(on)* informs us not about reality, but about ways of representing reality in a given period.”⁷⁰ In order to understand Petronius' position towards lawyers one must differentiate the various layers of the narrative: A simple, *prima facie* realistic interpretation of the market scene would exploit it for highlighting shortcomings of the Roman judicial system of the time.⁷¹ Although the points raised by Petronius' were criticised by other writers of the time as well,⁷² the criticism in itself remains too unspecific to warrant any attempt to link it to specific contemporary developments. Read in that way, the market scene expresses no more than a general suspicion vis-à-vis the legal profession, a stereotype that can be found at almost any time in history.⁷³

Upon closer scrutiny of the literary techniques employed by the author and by contextualizing the scene, the genuinely Petronian points of view can be discovered. Petronius' criticism is not *Rechtskritik* but *Juristenkritik*.

⁶⁷ § 44,17s. On this see E. OLSHAUSEN: *Soziokulturelle Betrachtungen* (note 3) 23.

⁶⁸ § 45,1-4. On the 'impotence' of freedmen in the public sphere cf. S. HALES: *Freedmen's Cribs* (note 43) 178s. M. KLEIJWEGT: *Freed Slaves, Self-presentation and Corporate Identity in the Roman World*. In: M. KLEIJWEGT (ed.): *The Faces of Freedom: The Manumission and Emancipation of Slaves in Old World and New World Slavery*. Leiden 2006, 89-115 provides examples of freedmen acting in public roles.

⁶⁹ On self-referentiality in Petronius see C. PANAYOTAKIS: *Petronius and the Roman Literary Tradition*. In: J. PRAG/I. REPATH (eds.): *Petronius* (note 1) 61s.

⁷⁰ C. VOUT: *The Satyricon* (note 2) 102.

⁷¹ See *supra* at note 19.

⁷² See *supra* note 37.

⁷³ Cf. the judgement of E. LEFÈVRE: *Novellistische Struktur* (note 11) 168: “*Das ist eine Satire auf die gegenwärtige Justiz. Sie ist zeitlos ...*“

Even when Ascyrtos favours fraud to get the tunic back, he never disputes the legitimacy of the *leges* as such. In order to affirm the moral superiority of the outlaw's position, Petronius, the brilliant stylist and satirist, lives up to the highest literary standards by weaving in an allusion to the *suum cuique*-formula. When he allows Ascyrtos to succeed, the author dooms Encolpius' naïve trust in the law and sides with the one outlaw who has remained true to his assigned role. But he expects a reader who recognizes the idea of *suum cuique tribuere* behind Ascyrtos' proposal to do the same on moral grounds. Petronius, the 'immoral immoralist' (*V. Rudich*), paints a bleak picture of a society in which the laws are (unintentionally, one supposes) upheld only by outlaws such as Encolpius and Ascyrtos. The professional 'lawyers' show no such intentions at all. Petronius portrays them as a much greater danger to law and society than the two outlaws, as those responsible for the fact that one can not trust lawful means to achieve *suum cuique*.

For this demise of the legal profession Petronius singles out avarice as the determining factor. As the poem in § 137,9 again confirms, in the world of the *Satyricon* everyone assumes that success in court can and has to be bought. The author presents the *iudicium* not as the place where one may expect *suum cuique tribuere*, but as a market where justice is turned into a *publica merces* that goes to the party placing the highest bid. By "*quid faciant leges, ubi sola pecunia regnat?*" Ascyrtos laments the loss of authority of the laws and denounces the preponderance of materialistic interests. But not all characters in the *Satyricon* share this opinion. *Pecunia regnat* could also sum up the quintessence of Trimalchio's crudely materialistic outlook. In the *cena* the nouveau-riche freedman demonstrates his firm conviction that he can buy whatever he wants. But as *P. Veyne*⁷⁴ has demonstrated, by this Petronius unmasks Trimalchio's shallowness because he never internalized the ethical standards necessary for a 'sensible' use of his wealth. He epitomizes the immoral rich that is the target of the narrator's implicit criticism in § 137,9. Undoubtedly Trimalchio would not have had any scruples to buy court rulings in his favour. Both passages bitterly censure a society that has lost its ethical foundations.⁷⁵

In the *cena* Petronius targets the freedmen as a group. The discussions of the professional prospects of attorneys in the *cena* provide the social background⁷⁶ of the *Juristenkritik* the market scene. Petronius' avaricious

⁷⁴ P. VEYNE: *Vie* (note 4).

⁷⁵ V. RUDICH: *Dissidence* (note 3) 187 holds that Petronius' "oeuvre must be firmly related to the crisis in the *mos maiorum* ... threatened at this point with ultimate disintegration".

⁷⁶ According to E. COURTNEY: *Companion* (note 2) 87 (quoting E. AUERBACH: *Mimesis*).

lawyer surely comes from the lower social strata; he may be a freedman with a background similar to that of Phileros⁷⁷ or a freeborn person of equally low standing.

So one can see that the depicted decline of the legal profession is not a merely moral phenomenon but related to contemporary social phenomena, in this case, the rise of the freedmen and their likes during the first century A.D. who in small Italian towns were taking over functions previously held by the local nobility. The *arbiter elegantiae* observed their business practices disapprovingly because he ignored their everyday miseries that caused them. For him this remained a strange world and he amused his audience by showing them what they usually ignored right before their eyes. Even if naturalistic or social critical tendencies were far from his mind, his carefully styled presentation still allows us to learn a lot about the meaner aspects of the world that surrounded him and his readers.

Bern 1946, 9th ed. Bern 2001) in the representation of Trimalchio's guests surpasses all ancient literature in its realism.

⁷⁷ *Supra* after note 53.