

REVISTA INTERNACIONAL DE DERECHO ROMANO

A NOTE ON TWO SIGNS IN PETRONIUS¹

**UNA NOTA SOBRE DOS AVISOS EN
PETRONIO**

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The legal and economic realities behind Petronius' humor have often been discussed. The role of Trimalchio's signs/notices (*libelli*) deserves to be noted in this connection. It will be argued below that such signs were intended to protect Trimalchio and, more

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importantly, non-fictional property owners from negligence liability (*culpa*), basically for “failure to warn.”

Libellus # 1. On the doorpost of Trimalchio’s house the following notice was posted: “No slave to go out of doors except by the master’s orders. Penalty, one hundred stripes” (*Satyricon* 28.6; tr. Heseltine). As Best (1965: 73) points out: “Whether it was a temporary punitive restraint or a long-standing order of the estate is not indicated, but the message is addressed to all the slaves and presumes they can read.” The ability of slaves to read is, however, a necessary but not a sufficient explanation for erection of the sign.

Libellus # 2. “I nearly fell backwards and broke my leg. For on the left hand as you went in, not far from the porter’s office, a great dog on a chain was painted on the wall, and over him was written in block capitals (*CAVE CANEM*) ‘BEWARE OF THE DOG’” (*Satyricon* 29.1; tr. Heseltine).

That Roman tort law distinguished between negligent and diligent behavior is well illustrated by Paul:

If a pruner threw down a branch from a tree and killed a slave passing underneath (the same applies to working on a scaffold), he is liable only if it falls down in a public place and he failed to shout a warning so that the accident could be avoided. But Mucius says that even if the accident occurred in a private place, an action could

be brought if his conduct is blameworthy; and he thinks there is fault when what could have been foreseen by a diligent man was not foreseen or when a warning was shouted too late for the danger to be avoided. (*Digest* 9.2.31; tr. Watson)

The aim of *Libellus* # 1 was not so much (or certainly not only) to prevent the household's slaves from shirking but to limit the owner's legal liability for legal wrongs (financial and physical) his slaves might commit when they went out of his doors and oversight. Note that the interest of the master in having his slaves perform their assigned duties is only indirectly served by the warning not to go outside without permission. Legal support for understanding the sign in terms of liability avoidance is provided by *Digest* 25.1.47 Paul: "The master who displays a notice in a shop saying, 'I forbid transactions to be made with my slave Januarius,' procures immunity only from the action on the manager's conduct, not from the action on the *peculium*" (tr. Watson). Paul says: "If I had given you notice not to lend money to a slave whom I had appointed, Proculus says that my defense takes the form, 'unless it appears that the defendant gave notice to the plaintiff not to lend money to that slave.'" (*Digest* 14.3.17.17). A sign in the shop is a way of providing the exculpatory notice/warning. Not having authorized the transaction an owner could not be held liable *in solidum*.

More generally, “In all noxal actions², wherever knowledge on the part of the master is required, ‘knowledge’ must be understood to include instances where he could have prevented the slave but did not do so” (*Digest* 9.4.3 Ulpian; tr. Watson). Trimalchio’s legal defense is the following: “This slave did not have permission to go the tavern or to the marketplace (or wherever)! Not only did I not know that he was sneaking out but I took prudent measures to prevent him from doing this. Therefore, I was not legally negligent.”

With respect to *Libellus* # 2, Heseltine (1969: 48, n. 1) notes that pictorial notices of dogs are often found as floor mosaics in the entrance of houses at Pompeii (see Bergmann 1994: 227 Fig. 3). Indeed, there is a wall fresco of a large dog from Pompeii’s via dell’Abbondanza, Regio 1 (Ins. 12 n. 3; Ricotti 1983: 126-7, fig. 69). Sometimes the mosaics are accompanied by the phrase *CAVE CANEM* (Schmeling 2011: 95-6 with references). The mosaic depicting a large dog in the *fauces* of the “House of the Tragic Poet” has been taken to reflect the Neronian taste for

² The *paterfamilias* was liable for the delicts of his children and slaves and, Johnston (1994-1995: 1525) explains, “[T]here was no functional limit on this liability. But rather than paying damages for the delict, the *paterfamilias* had the option of surrendering the wrongdoer to the plaintiff: *noxal* surrender... Accordingly, the liability of the *paterfamilias* for the delicts of those in his family was limited by the value of their persons.”

naive realism satirized by Petronius (Bergmann 1994: 229).

In fact, Trimalchio owned a dangerous dog. Trimalchio being reminded of his duties “ordered them to bring in Scylax, ‘the guardian of the house and the slaves.’ An enormous dog on a chain was at once led in, and on receiving a kick from the porter as a hint to lie down, he curled up in front of the table” (*Satyricon* 64.7; tr. Heseltine). Later on, “Giton led us through the gallery to the door, where the dog on the chain welcomed us with such a noise that Ascyrtos fell straight into the fish-pond...But the porter by his intervention pacified the dog and saved us...” (72.7; tr. Heseltine).

Signs on contemporary suburban laws announcing “*This home is protected by an ADT (or other brand) security system*” are visible to all passersby and may deter burglars but are mainly intended to advertise the manufacturer/installer. Trimalchio’s depiction of the dog was located inside the entrance. Thus the aim of the *CAVE CANON* notice was not so much to warn burglars away but rather to give legal notice/warning to legitimate visitors of a dangerous condition within the premises. By posting the sign the property owner not only reduced the risk of injury to entrants but, legally more importantly, eliminated or reduced his liability in an *actio de pauperie*.

“*Pauperies* is damage done without any legal wrong on the part of the doer, and, of course, an animal is incapable of committing a legal wrong because it is devoid of reasoning. Therefore, as Servius writes, this action lies when a four-footed animal does harm because its wild nature has been excited...” (*Digest* 9.2.3-4 Ulpian). Servius’ description would certainly apply to a watch-dog confronted by an apparent trespasser. Note the danger to Giton and Ascyltos who wandered alone and without authorization in seeking to find an exit from Trimalchio’s labyrinthine house. Had the pair sued for injuries inflicted by Scylax their expected monetary damages would have been reduced because they were themselves negligent (*culpa levis* “ordinary negligence”) in disregarding Trimalchio’s warning. Concretely, the notice posted by Trimalchio limited his liability by warning—“ENTER AT YOUR OWN RISK” and then stay close to your hosts.

References

Bergmann, Bettina. (1994). “The Roman House as Memory Theater: The House of the Tragic Poet in Pompeii.” *The Art Bulletin*, 76, 225-56.

Best, Edward E., Jr. (1965). “Attitudes Toward Literacy Reflected in Petronius.” *CJ*, 61, 72-6.

Heseltine, Michael. (1969). *Petronius*. Cambridge, MA: Harvard University Press.

Johnston, David. (1994-1995). "Limiting Liability: Roman Law and the Civil Law Tradition." *Chicago-Kent Law Review*, 70. 1515-38.

Ricotti, Eugenia Salza Pina. (1983). *L'Arte del convito nella Roma antica*. Rome: Bretschneider.

Schmeling, Gareth. (2011), *A Commentary on the Satyrical of Petronius*. Oxford: Oxford University Press.

Watson, Alan. (1998). *The Digest of Justinian*. 2 Vols. Philadelphia, PA: University of Pennsylvania Press.