

## FREEDMEN AND SLAVES IN THE LIGHT OF LEGAL DOCUMENTS FROM FIRST-CENTURY A.D. CAMPANIA\*

Pompeii and Herculaneum are well known as sources for the study of Roman social life; not so well known are the wax tablets found there, which are perhaps our most intimate contact with Roman private law. My aim in this paper is to use these tablets in their context to illuminate the lives of those who lived and worked either side of the frontier between freedom and slavery. The topic is important in itself, but it has a special appeal on account of the immediacy of the evidence. Two particular themes may be mentioned in anticipation—first, the important but precarious socio-economic position of Roman slaves as both agents and objects, and secondly, the problems of the manumitted, especially after Augustus' legislation.

### THE TABLETS

The inscribed tablets that I am exploiting in this paper are not the first to be found in Campania. In 1875 a large *cista* was found in the house of L. Caecilius Iucundus—on the 'via di Stabia' in the northern quarter of Pompeii—which contained records of payments by the banker Iucundus himself and L. Caecilius Felix (perhaps his father), arising out of their business as auctioneers and as lessees of a *fullonica* (an establishment for the cleaning of clothes). The tablets were receipts given to Iucundus by both private individuals and the administration of the town, the *colonia Pompeiana*.<sup>1</sup> Although on the whole repetitive, these tablets are of great legal interest and give us a glimpse of the economic life of the colony, the sums involved being considerable—thousands or tens of thousands of sesterces. Two other tablets relating to a loan raised by Poppaea Note, the freedwoman of Prisca, and her surrender of slaves as security for the debt (a topic to which I will return) were found twelve years later.<sup>2</sup>

Much more can be learnt from the finds of the twentieth century, those from Herculaneum and from Murecine in the territory of Pompeii. The former came to light in the houses of L. Cominius Primus and L. Vennidius Ennychus and in the so-called House of the Bicentenary just before the Second World War, and were published between 1946 and 1955, on the first occasion by G. Pugliese-Carratelli, subsequently by him in collaboration with V. Arango-Ruiz.<sup>3</sup> The latter were discovered in 1959 in a

\* This paper in various versions has had a long history of performance. I am very grateful to members of my audiences and others for discussion and advice, especially John Crook, Jane Gardner, Greg Rowe, and Andrew Wallace-Hadrill. I cite the archive of the Sulpicii according to G. Camodeca's edition with its new abbreviation, *TPSulp* (see note 5), and the Herculaneum tablets (note 3) as *TH*. I use *RS* to refer to *Roman Statutes* (ed. M. Crawford, London, 1996).

<sup>1</sup> CIL IV.1.3340, cf. Bruns, *Fontes*<sup>7</sup>, 354–61, FIRA III<sup>2</sup>, 400–22; J. Andreau, *Les Affaires de Monsieur Iucundus*, CEFR 19 (Rome, 1974).

<sup>2</sup> Bruns (n. 1), 332–4; FIRA III.291–5.

<sup>3</sup> V. Arango-Ruiz, 'Tabulae Herculanaenses', *PP* 1 (1946), 379–85; 3 (1948), 165–84; 9 (1954), 54–74; 10 (1955), 448–77; 16 (1961) 66–73. See also id., 'Nuove osservazioni sul processo di Giusta', *PP* 6 (1951) 116–23; 'Testi e Documenti IV, Tavolette Ercolanensi (Il processo di Giusta)', *BIDR* 62 (1959), 223–45. A number of the tablets not discussed in this piece have been re-edited by G. Camodeca, *CErc* 23 (1993), 109–19; *Ostraka* 2 (1993), 197–209; *CErc* 24 (1994), 137–46; *CCG* 7 (1996), 167–78; *Atti XI Congr. ep. gr. lat. Roma 1997* (2 vols, Rome, 1999), 521–44;

building with *triclinia* (interpreted as either the headquarters of a *collegium* or an inn) during the preparations for building the *autostrada* from Pompeii to Salerno. Their publication was originally entrusted to C. Giordano and F. Sbordone; the texts were improved by L. Bove and (in one case dramatically) by J. G. Wolf and J. A. Crook,<sup>4</sup> and they are now finally accessible in a convenient and reliable form thanks to the work of G. Camodeca.<sup>5</sup> The documents are tablets belonging originally either to groups of two or three, diptychs or triptychs. The interior of the outside tablets and both sides of the middle of a triptych were waxed and inscribed with a stylus; the exterior text, which repeats the essential part of the document, was written in ink.

The Herculaneum tablets are a mixture of legal documents, of which one group is of outstanding interest—those relating to the lawsuit of Petronia Iusta. Those from Pompeii are the records of a firm which operated in fact not at Pompeii but at Puteoli across the bay—that of C. Sulpicius Faustus, Cinnamus, Onirus, and Eutyclus. Although Cinnamus was Faustus' freedman and on one occasion acted formally as his *procurator*,<sup>6</sup> they seemed in general to have behaved more as partners: indeed in one document Cinnamus is the principal and Faustus is one of those who may be acting on his behalf.<sup>7</sup> These documents relate to a large variety of loans and lawsuits. It has been argued that the Sulpicii were bankers in the sense of being *coactores argentarii*, like Iucundus, who collected money due from auctions as a middleman and advanced short-term credit, but the evidence is fragile. Even if this was one of their activities, it was not the most significant. Nor, as far as we can tell at present, did they receive deposits as *argentarii*. Rather it appears they undertook more elaborate loans as *faeneratores* and on occasion acted as agents of their clients, some of whom were involved in speculative commercial ventures.<sup>8</sup>

### THE SLAVE AND FREEDMAN AS AGENT

The Sulpicii themselves were by the time of the tablets an established firm of businessmen, only one of whom, Cinnamus was certainly not of free birth, but they were involved in business with both freedmen and slaves, who were seeking to

*Quaestiones Iuris: Festschr. J. G. Wolf*, ed. U. Manthe and C. Krampe, *Freib. Rechtsg. Abh.* N.F. 36 (Berlin, 2000), 53–76.

<sup>4</sup> J. G. Wolf, 'Aus dem neuen pompejanischen Urkundenfund: Der Seefrachtvertrag des Menelaos', *Freiburger Universitätsblätter* 65 (1979), 23–36, concerning *TPSulp* 78; J. G. Wolf and J. A. Crook, *Rechtsurkunden in Vulgarlatein aus den Jahren 37–9 n. Chr.*, *Abh. Heid. Ak. Wiss. Phil.-hist. Kl.* (1989).

<sup>5</sup> A convenient summary of early publications and bibliography can be found in L. Bove, *Documenti processuali dalle Tabulae Pompeianae di Murecine* (Naples, 1979), but reference should now be made through the edition and numeration of G. Camodeca, *Tabulae Pompeianae Sulpiciorum (TPSulp)*, *Vetera*, 12 (Rome, 1999), see also id., *L'Archivio Puteolano dei Sulpicii* 1 (Naples, 1992). For an important review of Camodeca's work, see G. Rowe, 'Trimalchio's world', *SCI* 20 (2001) 225–45, including an index to the Herculaneum tablets and a useful bibliography.

<sup>6</sup> *TPSulp* 72, 74; Camodeca (n. 5, 1999) 1.24; *ibid.*, 22–3 for the *gens* of the Sulpicii at Puteoli—attested otherwise in *Eph. Epig.* 8.451, where a Sulpicius Faustus is the son of a freedman Sulpicius Heraclidas—the family deriving its origin not from freedmen of the Campanian municipal aristocracy, but from further afield.

<sup>7</sup> *TPSulp* 48; Rowe (n. 5), 229, 233–4.

<sup>8</sup> For the debate over the exact nature of the business of the Sulpicii, see Camodeca (n. 5, 1999) 1.24–5—believing the Sulpicii to be *argentarii* and not involved in productive investment; *contra* J. Andreau, 'Affaires financières à Pouzzoles', *REL* 72 (1994), 39–55 at 50ff.; id., *Banking and Business in the Roman World* (Cambridge, 1999), 72–9; Rowe (n. 5), 229–31—holding them to be *faeneratores* making at least some commercial loans.

establish themselves financially and socially. Slaves and freedmen were deeply involved in what would have been regarded as the most important feature of Puteoli's commerce in the early empire—the trade in grain and other imported foodstuffs. A series of tablets is testimony to loans (*mutua*) made by Hesuchus, a slave of a freedman of the emperor Tiberius, Primianus Evenus, to C. Novius Eunus. On 18 June A.D. 37 Eunus borrowed 10,000 sesterces, and gave as a pledge (*pignus*) about 7,000 *modii* of Alexandrian wheat and 4,000 *modii* of chickpeas, emmer wheat, monocopium, and lentils in 200 sacks which he had deposited in the public *horrea Bassiana* at Puteoli. Sulpicius Faustus was one of the witnesses to the contract. Repayment was contracted by means of a *stipulatio* from the creditor and an ensuing *sponsio* (solemn promise) by the debtor (*TPSulp* 51). On 2 July following, Novius Eunus borrowed a further 3,000 sesterces from Hesucus on the same security as before (*TPSulp* 52). The same day Diognetus, the slave of C. Novius Cypaerus, rented to Hesucus *horreum* 12 in the Bassian warehouse, in which the wheat Hesuchus had received as a pledge was stored, and furthermore some space between the columns at the end of the same warehouse, where he had the 200 sacks of legumes stored (*TPSulp* 45). Other tablets give us glimpses of the later history of the loan. Just over a year later Novius Eunus still owed Hesucus, now the emperor Gaius' slave, 1130 sesterces and made a solemn promise (*sponsio*) that he would repay this on demand to Hesucus or Faustus (*TPSulp* 67). Another year passed, and 'the 1250 sesterces remaining when the whole sum has been calculated' was still outstanding: Hesuchus and Faustus resorted to extreme measures to exact it, an oath by Jupiter and the emperor to repay and an apparently illegal rate of interest for any sum overdue after the new settlement date (*TPSulp* 68). A contract of *mutuum* itself contained no provisions about interest; that had to be contracted by a further agreement. It is possible that the 1,130 sesterces were interest on the total loan of 13,000 sesterces over the year A.D. 37–8, which had not been included in the formal stipulations we possess, but in some other formal agreement now lost or in an informal *pactum*, and the 1,250 sesterces were the same sum with the addition of a further year's interest on that sum.

Hesuchus is acting as an agent first for the emperor's freedman and then for the emperor himself, but he is apparently not acting on specific instructions but rather as a commercial entrepreneur, encouraged to make money for his principal and himself. However, even if acting in a private capacity, he would have exploited the fact that ultimately he had the backing of the emperor. At least one other member of the imperial family had an interest in business at Puteoli. Other tablets refers to 13,000 *modii* of Alexandrian wheat taken as a pledge by Sulpicius Faustus and deposited in *Horrea Barbatiana* in the property of Domitia Lepida—none other than Nero's aunt (*TPSulp* 46, 79). Novius Cypaerus, who let the space in the *Horrea Bassiana* to Hesuchus, was probably not acting as the direct representative of the colony of Puteoli, like Secundus and Privatus, the public slaves of Pompeii, who appear in the Iucundus archive. He must either have contracted to manage the warehouses or have been a lessee who was subletting. In fact, as the list of witnesses shows, he was Eunus' own freedman, and this would explain the token rent of 1 sesterce.<sup>9</sup>

It is clear that some of the Alexandrian wheat, which was central to the economy of Rome and the subsistence of the poor, was owned by private individuals on its journey

<sup>9</sup> *TPSulp* 46, tab. ii, p. 4. For Secundus and Privatus, see FIRA III, 418–20; Bruns, 359–60. Niceros, the public slave of Puteoli (*TPSulp* 56), is also found probably acting in a private capacity.

between growers in Egypt and consumers in Italy.<sup>10</sup> Why was Eunus using the produce as a pledge rather than selling it? One obvious answer is that he was hoping to sell it later, during the following winter or spring, at a higher price. Nor need this have been the only element of speculation: he may have borrowed the money to invest in another cargo. We may wonder how far Roman emperors approved of their dependants supporting this kind of speculation, or indeed how far they were concerned with the way dependants made money, provided that they were successful.

The documents have a more general significance in illustrating the operations of freedmen and slaves as agents, in particular those called by the Romans *institores*. It may seem remarkable that a slave was allowed such discretion, even if he was the slave of the emperor. The power of the emperor did of course put his slaves and freedmen in a special category. However, this does not explain the economic importance and upward mobility of these two classes. One major reason was the restricted exploitation in Roman law of the notion of agency.<sup>11</sup> If a free man, not in the *potestas* of another, was appointed as a procurator by *mandatum*, this originally did not create a liability either of the principal to the third party or vice versa. However, the commercial unit was often the *familia* rather than a business partnership. There, slaves who were in the legal power of their masters, could be regarded as representing them (as a son in *potestate* could represent his father), and it is probably for this reason that the concept of *institores* developed, first attested in the late Republic but arguably a century older.<sup>12</sup> Contracts made by a slave *institor* with his master's consent created a legal nexus between principal and third party, so that the master was liable and could himself sue on the contract. Although slaves are taken as the prime examples of *institores*, by the time of the Principate a free man or another man's slave could be placed in this position. It is probable that this came about through former slaves being freed but continuing to undertake business for their former masters. However, when the *institor* was not the principal's slave, the principal seems to have had no action against a third party, though he could be sued by him.<sup>13</sup>

### THE SLAVE AS OBJECT

A slave was also a chattel. This is strikingly illustrated in the following documents (*TPSulp* 85–7). A tablet dated to 5 October A.D. 51 (*TPSulp* 85) records the posting of a notice in the forum at Puteoli on the 'Sextian *parastatica*' advertising the auction of

the man Felix, the man Carus, the man Ianuarius, the woman Primigeneia, the woman Primigeneia the younger, the boy Ampliatus. These slaves M. Egnatius Suavis was said to have given in *mancipium* for 1 sesterce to C. Sulpicius Cinna *'fidei fiduciae causa'* on account of 26,000 sesterces.

They were to be sold 'on October 14th next in the forum in front of the Caesonian

<sup>10</sup> Andreau (n. 8, 1994) 46–7; (1999) 74–5; M. W. Frederiksen, *Campania* (London, 1984), 327–8.

<sup>11</sup> On the function and legal status of *institores*, see especially J. J. Aubert, *Business Managers in Ancient Rome: A Social and Economic Study of Institores 200 B.C.–A.D. 250* (Leiden, 1994), 1–111; A. Kirschenbaum, *Sons, Slaves and Freedmen in Roman Commerce* (Jerusalem, 1987), 89–121.

<sup>12</sup> *Dig.* 14.3.5.1—Ser. Sulpicius Rufus; Aubert (n. 11) 52–7, 76; Kirschenbaum (n. 11), 95–6.

<sup>13</sup> *Dig.* 5.1.19.3 (Ulpian, citing Labeo); 14.3.1.1 (Ulpian, noting Marcellus' view that the principal should also have an action).

*chalcidicum* at the third hour'. 'The security had begun to be advertised on September 15th, A.D. 51.' A second tablet of 23 October tells us of a gathering (*conventus*) of *sponsores* and *creditores* of Suavis after his death and the absence of an heir (*TPSulp* 86): this would have interrupted the sale of the slaves, as is shown by a third. From this last, dated 30 October, it seems that the sale was delayed 'until the next market-day (*nundinae*)' (*TPSulp* 87). A similar sale in A.D. 61 of a woman slave Fortunata, taken as real security, is attested elsewhere in this archive (*TPSulp* 90–2).

Egnatius Suavis had used his slaves as security for a loan. *Mancipatio fidei fiduciae causa* actually transferred property to the ownership of the creditor by means of a formal sale for 1 sesterce. We find this also in the case of the slave Fortunata, the security given by Poppaea Note for the loan she raised, and in the 'Formula Baetica'.<sup>14</sup> The loan seems to have fallen due for repayment on or before 15 September, when notice of foreclosure on the security was advertised. The auction was to have taken place thirty-one days later, after the lapse of three market-days (*nundinae*), a similar interval to that prescribed before the execution of judgment given against a debtor.<sup>15</sup>

A point of interest is the *chalcidicum* at which the sale was to take place. The one in question at Puteoli does not survive, but there is a well-known parallel, the arcade in front of the Eumachia building in the forum at Pompeii. The two inscriptions relating to the building ran:

Eumachia L.f. sacerd. public. nomine suo et M. Numistri Frontonis fili chalcidicum cryptam porticus Concordiae Augustae Pietati sua pecunia fecit eademque dedicavit.

Eumachia daughter of Lucius public priestess created with her own money the *chalcidicum*, crypt, and porticoes for Concordia Augusta Pietas in her own name and that of her son Marcus Numistrius Fronto and she too dedicated it.<sup>16</sup>

The *chalcidicum* is the external arcade by contrast with the *porticus*, the peristyle inside. At either end of this *chalcidicum* beyond the apsidal and rectangular niches for statues there were small stairways, which could have been used as pulpits for auctioneers. We may imagine that in a *chalcidicum* goods for sale might be displayed within the confines of the arcade and the public kept back by temporary barriers erected between the columns. A *parastatica* is a form of square pillar. I would cautiously suggest that the square statue-bases that we find next to the columns in the Eumachia arcade were called *parastaticae* and hence that the *parastatica Sextiana* where the sale of Egnatius Suavis' slaves was advertised was a similar base at Puteoli with the statue of a Sextius.<sup>17</sup> The slave as object and the slave as agent seem to be at opposite ends of a spectrum. Yet a slave might be both, and not only potentially, but at one and the same time. One might have to execute a formal sale of one's own slave *institor* as real security. Indeed the *Digest* cites instances of people using the slaves of others as *institores*, and one of the ways this might arise would be if the slave *institor* continued to work for the original owner who had transferred him as security for a loan.<sup>18</sup>

<sup>14</sup> *TPSulp* 90–2; Bruns (n. 1), 332–5; FIRA III, 291–5.

<sup>15</sup> XII Tab. III.1 (Gell. 15.13.11; 20.1.45; RS II, 625ff.).

<sup>16</sup> ILS 3785 (CIL X 310, 311). For a description of the building, see F. Coarelli, E. la Rocca, M. and A. de Vos, *Guida Archeologica di Pompeii* (Verona, 1976), 114–18.

<sup>17</sup> See CIL IV 5538, cf. 799 for a L. Sextius Syrticus at Pompeii..

<sup>18</sup> *Dig.* 14.3.5 and 17.

### THE SLAVE AND THE FREEDMAN OR FREEDWOMAN IN THE FAMILY

To study slaves, freedmen, and freedwomen as human beings rather than factors in commerce we must change the scene to Herculaneum. One of the deposits of tablets there was found in the Casa del Bicentenario, a house in Insula V facing the *decumanus maximus*, where the latter forms a quasi-forum. The house got its name because its excavation was finished in 1938—the bicentenary of the resumption of excavation in the eighteenth century. The deposit is of twelve pairs of linked tablets in various states of preservation relating to a lawsuit brought by the girl Petronia Iusta—one that reveals family complexities that rival those in modern soap-operas. When they were first published, the human interest in the story evoked sentimental reactions from the legal scholars who studied the case.

The earliest tablets in the series record *vadimonia*, sureties obtained for appearance before a praetor, the magistrate who performed jurisdiction in civil cases—that is, he decided if a legal action was admissible, embodied the issue at stake in a *formula*, and entrusted it to a judge or judges to decide. Petronia, described as ‘the woman who claims that she is Petronia, daughter of Spurius, Iusta’ (*ea quae se Petroniam Sp.f. Iustam esse dicat*), secured a surety on 7 September in the year A.D. 75 from Calatoria Themis, who acted on the authority of a *tutor*, legal guardian, C. Petronius Telesphorus, that Themis should appear on 3 December following at the second hour before the tribunal of the urban praetor in the forum of Augustus (TH 13–14). Next, a similar surety was obtained on March 4, A.D. 76 from M. Calatorius Speudon that he should appear on that same day at the third hour (TH 15); the action is apparently the same, but it has been delayed and Speudon’s presence is now required. One reason for the delay and change is probably that the *tutor* of Calatoria Themis in the first *vadimonium* has now apparently become a witness for the plaintiff. He had perhaps been appointed Calatoria’s *tutor* for the occasion, since a woman could not act in law without the authority of a man in cases handled by the praetor at Rome, and this had been later found to be incompatible with his position in the case. Calatorius Speudon would therefore probably be Themis’ new *tutor*.<sup>19</sup>

The issue, as revealed by the *testimonia* in the action in A.D. 76, is whether Petronia was born free or born a slave and then liberated. The procedure was an *actio per sponsionem* (an action arising from a solemn promise), more precisely a *praeiudicium an ingenua sit* (a preliminary judgment whether a woman is freeborn).<sup>20</sup> The witnesses made conflicting claims. C. Petronius Telesphorus, the former *tutor* of Calatoria Themis, wrote and swore by the genius of the emperor and his children that he knew that Petronia Iusta was born free and the daughter of his fellow ex-slave (*colliberta*), and that he had negotiated with Petronius Stephanus and Calatoria Themis that he (*sic*), that is Stephanus, should receive payment for nurture (*alimenta*) and restore her daughter to her (sc. Petronia Vitalis). It is from this that he knows that the woman Iusta was born free (TH 16). M. Vinicius Proculus and Ti. Iulius Sabinus both gave testimony with a similar oath that they had heard Stephanus saying about Vitalis on the day before a certain Ides, ‘the woman we are about to manumit is the only one we have’, and on the following day she was manumitted. Hence they knew that the women in question (Iusta) was born free from Petronia Vitalis (TH 17–18). The argument here

<sup>19</sup> Gai. *Inst.* 1.185; Ulp. *Tit.* 11.27; cf. Arangio-Ruiz (n. 3, 1951), 122. This section of TH is to be found in Arango-Ruiz (n. 3, 1948).

<sup>20</sup> Arangio-Ruiz (n. 3, 1948), 128.

is that if Iusta had been already born at the time of the manumission, Vitalis would not have been Stephanus and Themis' only slave. P. Arrius (?Manceps) and Q. Tamudius Optatus similarly concluded that Iusta had not been born before her mother's manumission, when they testified that they had heard Stephanus saying to Vitalis, 'Why do you have a grudge against your daughter, when we are treating her like a daughter?' (unless '*invidet filiae*' means 'grudge [us] your daughter') (*TH* 19–20). The reason would seem to be either that Stephanus and Themis would not have called Iusta Vitalis' daughter, if she had once been their slave, or that they would not have felt it necessary to defend the appropriation of a freedwoman.

On behalf of the respondent, Sex. Vibidius Ampliatus swore that he had always had *domesticitas* with Stephanus and Themis and he knew that the girl was a freedwoman of Themis. His reason is poorly preserved: originally read in such a way as to include a reference to buying, it was subsequently interpreted as a referring to the *nomendator* of Calatoria Themis, but this text might merely refer to something done in the name (*nomine*) of Calatoria Themis (*TH* 23).<sup>21</sup> M. Calatorius Marullus was illiterate and had a certain Mammius to write for him. His testimony was simply that he knew the girl and that Calatoria Themis had manumitted her (*TH* 24). Other testimony was given whose text is not preserved on the relevant tablets. The case depended not on a point of law but on matters of fact (*coniectura* in the language of Roman rhetoric); the nature of the dispute entails that one or the other side was committing perjury. It is a striking contrast to the standard of testimony applied in British courts that the witnesses swear the truth of not only what they have seen and heard but also the inferences they have drawn from the seeing and hearing. It is not certain that the reasoned inferences of the witnesses for Iusta and of Ampliatus would have been necessarily more impressive than the bald assertion of Marullus, that he was close to that family and (it is implied) could claim to know. However, we must assume that this sort of argued evidence was in principle effective.<sup>22</sup>

The case was to be dealt with *in iure* by the praetor at Rome, who would have heard the formal claims, established the formula according to which the case was going to be tried, and appointed a *iudex*—conceivably a local man from the neighbourhood of Herculaneum.<sup>23</sup> The documents containing testimony were drawn up and sealed in the presence of witnesses before the trial. This took place in certain criminal cases;<sup>24</sup> it is also found in a civil case in the late Republic,<sup>25</sup> though, to our knowledge, it was not compulsory in the Republic.<sup>26</sup> It is also noticeable that two witnesses for Iusta give testimony to what they have heard in exactly the same terms. This implies collusion and perhaps their use of the same legal adviser. Such a person would in any case be needed to help them produce their evidence in a standard form—for the most part they wrote the interior text of the tablets themselves.<sup>27</sup>

What can we deduce about this case and its background? Petronia claimed to be called Iusta, the daughter of Spurius. The latter is a regular phrase denoting illegit-

<sup>21</sup> Arangio-Ruiz (n. 3, 1959), 236–7 for the restoration, *nom[en]clat[or]e*.

<sup>22</sup> For witnesses arguing a point in a public trial, see Asc. 60–61, 79–80C on the consulars who spoke against the former tribune C. Cornelius.

<sup>23</sup> Arangio-Ruiz (n. 3, 1951), 126.

<sup>24</sup> Cic. *Cael.* 55, *Chu.* 168; FIRA III, no. 188, pp. 591–2; cf. Cic. *Flac.* 21 for the sealing of evidence with the seals of the jurors under the *lex Iulia de repetundis*.

<sup>25</sup> Cic. *Q. Rosc.* 43.

<sup>26</sup> A surprise witness in Cic. *Cael.* 19.

<sup>27</sup> Arangio-Ruiz (n. 3, 1959), 236–7.

imacy; '*Sp(uri). f(ilia).*' is perhaps a corrupt extension of '*s.p.*' = '*sine patre*'.<sup>28</sup> Thus in her view she was a bastard, but by implication freeborn. Her *cognomen* makes nice contrast with the name of her foster-mother Themis (Justice). The *vadimonia* documents show that it is she who is bringing the action. This implies that up to now she has been supposed to be a freedwoman (*liberta*).<sup>29</sup> It is also clear that she is of age. Otherwise she would not have been allowed to summons someone before the praetor.<sup>30</sup> However, she would not ordinarily have been allowed to bring an action against a parent or patron of hers (which is what Calatoria Themis claimed to be) without the praetor's special permission.<sup>31</sup> If she failed to obtain permission, she was liable to a fine of 10,000 sesterces.<sup>32</sup>

It was common ground between the parties that Petronia Vitalis was the natural mother of Iusta and had been manumitted (*TH* 16, 20). The question was whether Iusta was born while her mother was still a slave or not (*TH* 17). If her mother was no longer a slave at Iusta's birth, then, according to *ius gentium*, Iusta had been born free.<sup>33</sup> Two witnesses, however, maintained that Themis had manumitted the girl (*TH* 23–4). Calatorius Marullus testified, '*me scire puellam, me item Calatoriam Themidem manumisisse*', in my view to be translated 'I know the girl; I know also that Calatoria Themis manumitted her'—this seems less awkward than 'I know the girl; I know that Calatoria Themis manumitted me as well as her', suggested by Arangio-Ruiz.<sup>34</sup> As Jane Gardner has pointed out to me, the *nomen* of Petronia Iusta implies that, if a slave, she would have been considered the slave of Petronius Stephanus, perhaps owned jointly with his wife, as her mother was, according to the testimony of Vinicius Proculus and Iulius Sabinus (*TH* 17–18). If, as Themis' witnesses alleged, Iusta was manumitted by Themis alone, this may have been in Stephanus' absence.

The girl had in any case been brought up by Petronius Stephanus and his wife (*TH* 16) and, as they are stated by one of Iusta's witnesses to have protested, had been treated like their own daughter. This did not affect her status in Roman law as slave, freeborn, or freed. Trajan in a reply to Pliny, seems to have given the technically correct answer about foster-children, *threptoi* or *alumnulae*: a freeborn child, who had been exposed and brought up by foster-parents, could be claimed as freeborn without necessarily having to pay *alimenta*, the cost of the upbringing, to the foster-parents.<sup>35</sup> According to Petronius Telesphorus' testimony, Iusta's foster-parents were offered *alimenta* (*TH* 16). This offer may have been made because the fostering had been undertaken with the mother's consent, even if there was no relevant contract that could be produced, or simply as a means of persuasion. The aim of the offer was to separate Iusta from the *familia* of Stephanus.<sup>36</sup> It is interesting that Vitalis believed that she had sufficient money to pay. Nevertheless, the foster-parents had refused to release the girl to her natural mother, Stephanus treating Iusta as if he had either *patria potestas* over her or the power of a master over a slave.

<sup>28</sup> '*Unde solent spurii filii appellari, vel a graeca voce quasi sporade concepti* (highly unlikely), *vel quasi sine patre filii*' (Gai. *Inst.* 1.64).

<sup>29</sup> *Dig.* 22.3.14 shows that this is the proper procedure for someone supposed at the time to be of freedman/woman status. If Themis had been claiming that a girl formerly thought to be *ingenua* was in fact her freedwoman, it would have been for her to bring the action.

<sup>30</sup> *Dig.* 3.1.3; *Ed. perp. pr. urb.* 6.1.

<sup>31</sup> *Dig.* 2.4.4.1; *Ed. perp.* 5.2; Gai. *Inst.* 4.46.

<sup>32</sup> *Dig.* 2.4.10.2, 4, 12; 2.4.16; Gai. *Inst.* 4.183.

<sup>33</sup> Gai. *Inst.* 1.78, 88–9.

<sup>34</sup> Arangio-Ruiz, *PP* (1948), 151.

<sup>35</sup> Pliny, *Ep.* 10.66 (on which see A. Lintott, *Imperium Romanum* [London, 1993], 151, 222–3); Arangio-Ruiz, *BIDR* (1959), 226ff.; A. J. Boyé, 'Pro Petronia Iusta', *Mélanges Lévy-Bruhl* (Paris, 1959), 29–48 at 29ff.

<sup>36</sup> Arangio-Ruiz (n. 35).



The law about Iusta's status was plain; the facts were in dispute. Although we cannot be certain who is giving false evidence, Iusta must at least have felt confident in her case to risk the consequences of offending her foster-mother by bringing the action. She must also have had help in bringing the action (the tablets do not disclose who was her *tutor* for the purposes of the case). It is also likely that there was a certain amount of co-operation from the defence to enable the case to be brought. One may suspect that Petronius Telesphorus, who moved from being Calatoria Themis' *tutor* to being a witness for Iusta, had something to do with it. He was a freedman from the same household as Petronia Vitalis, his *colliberta* (TH 16), his former master having been perhaps the elder C. Petronius Stephanus, who appears in a list of witnesses to a document that otherwise does not survive.<sup>37</sup> An intriguing question is who in fact was the girl's natural father. Although a case can be made for the younger Stephanus who, according to witnesses for the plaintiff, had become her foster-father, but, according to the respondent, was her former master and patron,<sup>38</sup> the name Iusta that Petronia claimed suggests a Petronius Iustus. A certain C. Petronius C.f. Men(enia) Iustus does in fact appear in the album of *Augustales* from Herculaneum, though in a century termed '*Cla(udia) Ingen(uorum)*'.<sup>39</sup>

The story may be provisionally construed as follows. C. Petronius Stephanus, son of a father of the same name, was married to Calatoria Themis, herself possibly a freedwoman and probably connected with M. Calatorius Speudon (TH 15), and M. Calatorius Marullus (TH 24).<sup>40</sup> Stephanus and Themis were probably childless. Petronia Vitalis, a slave-woman in the household, became pregnant. She was manumitted about the time she was due to have the baby. No father came forward, but after the birth and Vitalis' manumission (in whichever order these came) Stephanus and Themis undertook to foster the child, perhaps at the request of Telesphorus, because Vitalis was unable to support the child herself, since she was unmarried and doubtless short of money. At some point Vitalis tried to get the child back with Telesphorus' aid, offering to pay the expenses of fostering, but this was rejected and Vitalis let the matter drop. It appears from the evidence being presented by Iusta and indeed the fact that it was she who brought the case, that by late A.D. 75 Vitalis was dead.<sup>41</sup> Iusta herself had grown up and through conversation with her mother or Telesphorus come to the conclusion that she was freeborn but illegitimate, in spite of the fact that her foster-parents were treating her as a freedwoman. She decided to establish her status in court. Why did she go to such lengths, when she was in fact free?

One conceivable answer is that she was making a bid to be recognized by her natural father, if he was Petronius Iustus. However, a further possible aim—and one of some importance—would have been to escape the status of Junian Latin. As a result of legislation during Augustus' reign, those freedmen and women who were not formally manumitted by the *vindicta* before an appropriate magistrate or manumitted by will (*testamento*), or whose formal manumission violated the rules laid down in the *leges*

<sup>37</sup> TH 30; cf. Arangio-Ruiz (n. 34), 133, and see the inscribed album of *Augustales* (note 35 below), AE (1978), 119(b), col. I, where a C. Petronius Stephanus is preceded by a C. Petronius S[...].

<sup>38</sup> J. A. Crook, *Law and Life of Rome* (London, 1967), 48.

<sup>39</sup> AE 1978, 119(a), col. II; for fragments discovered earlier, see CIL X 1403a–I, and on the album G. Guadagno, *CErc* 7 (1977), 114–23; S. E. Ostrow, 'Augustales along the Bay of Naples', *Historia* 34 (1985), 64–101 at 76–8.

<sup>40</sup> Calatorius is a common *nomen* at Herculaneum. In the album there are two *ingenui* including M. Calatorius Acratus (AE [1978], 119[b], col. I), four *liberti*, and one of uncertain status.

<sup>41</sup> Arangio-Ruiz (n. 34), 131.

*Fufia Caninia* and *Aelia Sentia*, fell into a kind of limbo, where, though no longer slaves, they lacked proper citizen-rights.<sup>42</sup> They could not make wills or inherit. The escape-route for men was marriage to a Roman or Latin woman and the procreation of a child who lived to the age of one; for women, marriage only to another Latin followed by production of a child who lived to that same age. In so far as Calatoria Themis could not apparently provide legal evidence for manumission, if Iusta had been manumitted, it could only have been informally and thus she would have been a Junian Latin. If she had been Vitalis' free but illegitimate daughter, she would have taken her mother's status. Hence, if Vitalis had also been manumitted informally, Iusta's free birth would not have helped her to escape Junian Latin status, since she had been born out of *conubium*. However, it is at least possible that Vitalis had been manumitted formally, and in that case Iusta's plan was legally viable.<sup>43</sup>

### THE HOUSE OF THE BICENTENARY AND ITS OCCUPANTS

So far the Petronia Iusta tablets, but what about their provenance? They were found in the portico on the south-eastern side of the peristyle of the House of the Bicentenary (Insula V, nos. 13–18), not far from the kitchen and lavatory, perhaps having fallen from one of the now missing upper rooms on that side of the peristyle. It is likely that the house was the home of one, if not both, of the protagonists in the trial. This will be true if the tablets were those used by Themis and her supporters, and also if they were Iusta's copies and after the trial she remained in the house in which she was brought up. When Maiuri published his account of the house in the 1950s, he noted the find-spot of the tablets, but he did not relate to them his deductions about the nature of the house, although these were clearly in part derived from the information in the tablets—now already published.<sup>44</sup>

Maiuri describes it as a large patrician house, constructed for the most part in Augustan *opus reticulatum* with a canonic Tuscan atrium. Originally it was connected by doors to two houses to the west: Insula V, nos. 8 and 11 ('Casa del Bel Cortile'). It remained in this state until c. A.D. 55–60. Then the shops at the front were separated from it, one (nos. 17–18) completely, the other (nos. 13–14) partially. The family now created a new staircase to an upper flat over the entrance in the north-west corner of room 16, in place of that in room 13, which was blocked off. The upper rooms round the peristyle, which Maiuri took to be the old slave-quarters, were at this time subdivided for, he conjectured, the use of lodgers (room A on the western side of the peristyle is famous for the mark left by a somewhat irregular cross on the wall). The fine, early Fourth-Style decoration became neglected: the walls of the peristyle became rough; no works of art remained, and part of the late-Tiberian fresco of Daedalus and Pasiphae in the *tablinum* was replaced with an insert of ordinary red. Maiuri concluded by saying:

<sup>42</sup> Gai. *Inst.* 1.28ff.; J. F. Gardner, *Women in Roman Law and Society* (London, 1986), 138ff., 223ff.; S. Treggiari, *CAH X* (Cambridge, 1996<sup>2</sup>), 893–7.

<sup>43</sup> Arangio-Ruiz (n. 34); P. R. C. Weaver, 'Children of freedmen (and freedwomen)', in B. Rawson (ed.), *Marriage, Divorce and Children in Ancient Rome* (Oxford, 1991), 166–90 at 166ff. I cannot agree that Themis' husband was dead (Weaver, 168), since he appears as a witness in tablets *TH* 29 and 30: presumably Themis had a *tutor* for the lawsuit, because she had not been married *cum manu* and so was not in the power of her husband.

<sup>44</sup> A. Maiuri, *Ercolano. I nuovi scavi* 1 (Rome, 1958), 222ff.

All those rooms on the western side of the peristyle, poorly lit as they were for the most part, must have been used as living-quarters for slaves, while the house was in the hands of a noble and wealthy family. When it passed into the hands of some freedman, who is likely to have drawn his chief income from the exercise of trade and the careful management of his own money, this part of the house must have been rented out to a group of strangers, merchants or artisans, who also got their humble living from the neighbourhood of the *forum* and the management of some small business there.

The general notion of a decline in standards in town life resulting from the departure of a local aristocracy has been criticized by Wallace-Hadrill.<sup>45</sup> Were there ever nobles and patricians in *Herculaneum*, we may reasonably ask? As for the Casa del Bicentenario, the Stephani, to judge from the album (note 35 above) were freeborn. Nevertheless, the picture of the final use of the house is not entirely implausible. Can an improvement be made to Maiuri's conjectures?

We may imagine that Petronius Stephanus' father, apparently freeborn himself though obviously of a freedman family, inherited the house from its former master, after perhaps having received testamentary instructions (*fidei commissa*) to look after the freedmen and slaves of the household. The heir became a *rentier*. His son, the younger Petronius Stephanus, perhaps then took for himself and his wife the rooms above the *fauces*, while the two shops on either side of the entrance were hived off for dependants of the household. Other old members of the *familia* continued to live in rooms around the peristyle, earning their own living and paying Stephanus rent. A year or two later one of these, a woman called Petronia Vitalis, became pregnant. She was manumitted, delivered of a baby girl, but compelled by economic pressure to have the baby fostered by Stephanus and Themis. She then continued with her job, watching her daughter grow to maturity from close by. At one point she tried to get the girl back by offering the younger Stephanus and Themis compensation for their expense, with her fellow freedman Petronius Telesphorus playing the broker. This failed, and it was left to her daughter, after she herself had reached maturity and her mother had died, to try to claim her free birth. If we wish to exercise our imagination further, we can wonder whether Iusta failed and was relegated to an unpleasant room on the smellier side of the peristyle, or she succeeded and was even recognized by her father, to the disgust of her foster-mother.

Such speculation aside, what the house and tablets attest is the nature of life in a town like *Herculaneum*, in particular among the dependants of a wealthy family. The atmosphere is intimate, even claustrophobic. There is eavesdropping through doors and windows and no one has real privacy. Everyone's affairs become intertwined. Moreover, we find illustrated the way that freedmen and freedwomen continued to make use of the house in which they had been slaves. The household is not the economic unit in *Herculaneum*, but it is the social nucleus.

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<sup>45</sup> A. Wallace-Hadrill, *Houses and Society in Pompeii and Herculaneum* (Princeton, 1994), 122ff., esp. 124–6.