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Aulus Gellius *Noctes Atticae* 20.1.12-13: Approaches to Evidence

Introduction

This paper was stimulated by my attendance at a conference on Roman Law in Edinburgh last September. What became apparent during the course of the papers given there was the difference in focus between those scholars who were legal historians and those historians who were using legal sources. We were reading the same texts, but seeing something totally different in them. This made me think about how one approaches a text; could more information be extracted out of any given text if different approaches were used to it? This paper attempts to examine a single, short passage, from the *Noctes Atticae* (or *Attic Nights*) of Aulus Gellius, from a number of standpoints, that of legal historian, numismatist, philologist and economic and social historian, in order to build a fuller picture of life in Ancient Rome.

The passage I have chosen to examine is by Aulus Gellius, a Roman gentleman and scholar who was born around 125 to 128 AD. *The Attic Nights* is a collection of anecdotes of events at which Gellius represents himself as being present. The text under examination is set as a 'discussion' between a jurist (a specialist in law), Sextus Caecilius, and a philosopher, Favorinus, about the Roman laws of the *Twelve Tables* and how they had become obsolete over time. This tale is given as an example. (An as was the name of a coin).

'One Lucius Veratius was an exceedingly wicked man and of cruel brutality. He used to amuse himself by striking free men in the face with his open hand. A slave followed him with a purse full of asses; as often as he had buffeted anyone, he ordered twenty-five asses to be counted out at once, according to the provision of the *Twelve Tables*'¹.

Twelve Tables

Roman law was, and still notionally is, based on *The Twelve Tables*. Tradition has it that in 509 BC the Romans threw out their unpopular king and declared that Rome was to be a republic, governed by two men from the patrician class, to be called consuls, elected each year by the people. By 451 BC rifts had begun to appear between the patricians and the plebeians. The

¹ Gellius *Attic Nights* 20.1.13.

patricians had control of all the major offices of the state and also knowledge of the laws, and so had power over the plebeians, who did not. This rift between the patricians and plebeians came to be called 'The Conflict of the Orders' and resulted, after the plebeians threatened to abandon the City of Rome and leave the patricians to rule themselves, with the patricians opening a number of magistracies to the plebeians and the promise of the first codification of the customary laws of the Romans, which were to be written down and displayed in a public place so that everyone knew what they were. A commission of ten men (the *Decemviri*) was chosen and they published a code of ten tables. This, however, proved insufficient for the plebeians, so the following year, 450 BC, another commission was established, the Second *Decemviri*, who added another two tables. All twelve tables were then inscribed onto bronze plates which were then displayed in the forum for all to see². The importance of this public display of the tables was that the consuls, the elected rulers of Rome, could be held to account against them.

The Twelve Tables became a part of Roman life. Male children who received any sort of an education were taught them; they were expected to recite them by heart. They were so well known, such a part of life, that none of our surviving ancient sources appear to have bothered to write them down in full. What we do know about this foundation of Roman Law, which is the foundation of most modern European law, comes from texts such as Gellius'.

Development of a law

This text tells us that one of the provisions of the *Twelve Tables* was for the protection of a Roman citizen against being struck. If a Roman citizen were to be struck the same provision set the penalty at twenty-five asses. This appears to be the original, most basic form, of the law. Remember that the *Twelve Tables* were the written form of customary laws, societies develop, and so do the laws which govern them. This passage can be used as a starting point to explore not only the development of the law itself but also the development of the administration of the law.

The second passage on the handout is a section from *The Institutes of Gaius*. The book dates to the 2nd Century AD, Gaius having thought to have lived from around 110 to at least 179 AD, so being contemporary with Gellius. *The Institutes* is basically a first year Roman Law text book, and appears to have been based on a series of lectures or even lecture notes. In the passages quoted on the handout one can see how the simple prohibition on striking a Roman citizen has developed, by analogy, to cover what we today would consider slander and libel as well as assault. The translation uses the word 'contempt' to convey the meaning of the word '*iniuria*', a better translation would probably be 'injury'. Development of the law by analogy seems to have been common, and it is reasonably clear how this one came about. One could injure a fellow citizen by physically striking him, as Lucius Veratius did, but one could also harm a fellow citizen by making a vocal attack on him (slander) or writing something defamatory about him (libel), each damaging his standing in the eyes of others. In each case an injury is inflicted, so they

² Does this give an indication of a high level of literacy at this time?

could be considered as being the same form of offence, therefore there was no need to develop new, separate, laws to cover slander and libel; the one law could be adapted to cover all offences. In the same way the law could be used to protect the wives, children and slaves of Roman citizens. An injury to a dependent was an injury to the head of a household and so could be pursued by both the one injured and the head of a household, as is explained in the last sentence of III.221.

The Gellius passage also demonstrates how the administration of the law changed and developed over time. The prohibition in *The Twelve Tables* on striking a citizen became obsolete, according to Gellius, because the penalty became insufficient. This passage, as it was intended to do, highlights the shortcomings of a law which does not adapt; the way in which the law was applied did, but the penalties were also set within the framework of the law and they were not increased. This passage demonstrates the ways in which the law could be abused. The Roman solution to this problem was not to increase the fixed penalties but to institute a different method of appraising damages. The responsibility for the formation of the law fell to the role of the Praetors, annually elected magistrates who ranked a step below the consuls. The Praetors role was to adjudicate legal problems, as is clear from the passage they did not act as judges of every individual case, but they did rule on what part of a law someone should be tried against, and they then appointed others to arbitrate between the two parties. In the tradition of the *Twelve Tables*, the Praetors, on taking up their magistracies at the start of their year in office, 'published' their edicts, a list of how they intended to deal with certain problems which they could see arising during their tenure. This system was highly adaptable to unforeseen circumstances. Over time successive Praetors developed a body of decisions which came to be called 'The Praetor's Edict', each adding or removing items as the need and personal preference dictated. This in turn became the basis for the development of the law during the early empire.

Much of Roman civil law was based, as has been described, on the Praetor's Edict. Yet, this passage of Gellius' also informs us that the great Roman jurist Labeo wrote a work *On The Twelve Tables*, this tale about Lucius Veratius comes from it. Labeo was one of the prominent jurists of the Augustan period and died towards the beginning of the reign of the emperor Tiberius. The importance of the *Twelve Tables* to the formation and development of Roman Law can be seen in the importance accorded them by Labeo, dedicating a whole work to them, in the early part of the empire, some 450 years after they were first written down. They were still relevant enough for Gaius to mention them some 150 years after Labeo. This demonstrates the way in which the Romans were able to reconcile innovation and change with the appearance of traditionalism.

Philology

As may have become apparent one of the problems with this text is its chronology. There is the problem of when the 'discussion' was supposed to have taken place and also at what period Veratius was going around having his fun. Gellius was writing around the second half of the second century AD,

the emperor he, Sextus Caecilius and Favorinus were waiting to pay their respects to, (the setting of the discussion being the courtyard outside the emperor's palace), was Antoninus Pius who reigned from 138 to 161 AD. But as has already been said, Labeo, the juristic authority this quote comes from, died towards the beginning of the reign of the Emperor Tiberius, who reigned from 14 to 37 AD, over a hundred years before. The use of the term "your friend Labeo", therefore, needs explanation. Unless the Labeo in question is an unknown jurist of the same name, the expression "your friend" is probably being used here to define the juristic school, followers of Labeo, to which Sextus Caecilius allied himself.

The problem remains as to the date of this story of Veratius. As Labeo is quoted as its source it cannot be later than the beginning of the reign of Tiberius. That the incident led to an action by the praetors gives a date which it cannot have been earlier than; 367 BC³ being the date when the Praetorship was first introduced. The text, however, says that "the praetors afterwards decided" and the second Praetorship was not instituted until 247 BC. We thus have a period between 247 BC and 14 AD for this tale. Philology, the study of learning and literature, particularly in the area of linguistics, can help to narrow the gap. The second paragraph of the first section on the handout is the Latin text of the excerpt. The word '*crumenam*' is highlighted. This word, which comes from the same root as 'scrotum', is translated as 'purse' or 'money-bag'. It is, however, an unusual word choice. It appears that this word for a small money-bag fell out of use around the first quarter of the second century BC, its most frequent use being found in the plays of Plautus, who died around 180 BC. The word is used again, both times in poetry, by Horace⁴ and Juvenal⁵. Juvenal is thought to have been born in the mid-first century AD, so after the death of Labeo. Horace lived from 65 to 8 BC, so around the same time, and in the same circle, as Labeo. However, his choice of the word appears to have been on poetic grounds, not on common usage. We can therefore date the tale of Veratius to between 247 and 180 BC. It may be possible, with the help of numismatics, to date the event more closely.

Numismatics

Numismatics is not just the study of coins; it is the study of coinage and its development. The fine imposed for hitting a citizen by the *Twelve Tables* is given as twenty-five asses, the earliest form of Roman coinage. This was developed from the bronze *as*, a measure of weight, the original *as* weighing a Roman pound, 336 grams. There was a differentiation between a pound of bronze, as metal, which was called an *aes rude*, and an *as* as a coin, which was called the *aes grave*. It is likely that the Romans' first coinage only dates to around 280 BC. The weight of an *as* for this early period was about ten unicia, ounces, or 280 grams. Coins of this size were cast from molten bronze as opposed to being struck. The weight of the *as* decreased over time, due in no small part to the Punic War which was raging on the Italian peninsula at the time, reducing the amount of metal available to the Romans.

³ Licinian Sextian Acts

⁴ *Epistles* 1.4.11

⁵ *Satires* 11.38

The metal the Romans did manage to obtain had other uses, coin production had to vie with the production of weapons and armour for fighting the war. By 217 the weight of an as had dropped to six ounces, 168 grams; by around 214 it was down to three ounces, 84 grams, by 211 it had dropped again to just 2 ounces, 56 grams. 211 BC is the year when it is thought the Romans introduced a silver coinage, based on the denarius, with fractions of bronze.

The weight of the as is important for two reasons. The reduction in weight, without a similar reduction in value, marks a very important economic step; that of making the coin a token for a value rather than the coin being the value based on its weight of metal. This use of a token coinage is called a fiduciary currency. In order for a fiduciary system to work the population using the currency has to be confident that the face value of a coin will be honoured in any transactions. The second point brings us back to the word used in the text to describe the money-bag and helps to date this story of Veratius. As mentioned before, the word *crumena* comes from the same root as *scrotum*, and indicates a small bag. If this story was any earlier than 280 BC the as being referred to would have been a weight in metal as opposed to coin, and twenty five of them would have weighed 8.4 Kg. This weight, even carried by a slave, would not have been sufficient for Veratius to have much fun! It is also unlikely that such a large weight would be said to have been carried in a small bag. Even an as of ten ounces, the earliest coin weight, would give a weight for twenty-five asses of 7 Kg. It is therefore more likely that the date of this story is after 211 BC, when the as weighed 2 ounces, making the fine of twenty-five asses weigh only 1.4 Kg, a far easier weight to put into a small bag and, potentially, to give Veratius a bit more fun at his own expense. As stated before, *crumena* is used little after the time of Plautus so it is interesting that in two of his plays⁶ he is thought to be referring to the Praetor's Edict, in both passages someone is being warned that they may be hit, perhaps a reference to the outrages of Veratius. This may be confirmation that this story is set around the end of the third or beginning of the second century BC.

Economic

From an economic standpoint this story not only indicates when, and why, the Romans moved to a fiduciary coinage system but also tells us something about the Romans understanding of economics. Aulus Gellius has a philosopher and a jurist discussing this legal problem, both are presented as being wise, knowledgeable men. Gaius, in the second passage on the handout, is lecturing to students, who will have been from reasonably wealthy backgrounds and would have had a normal Roman education. Yet, Gellius has Favorinus, the philosopher, say that the law on iniuria, from the *Twelve Tables* is too lax because

“For who will be found so poor that twenty-five asses would keep him from inflicting an injury if he desired to?”⁷

⁶ Plautus *Captivi* 803; *Asinaria* 373

⁷ Gellius *Attic Nights* 20.1.12

This may be seen as a rhetorical device; however, Gaius also fails to understand the phenomenon of inflation because he says, on the same law

“And in those times of great poverty it seemed that these pecuniary penalties were satisfactory enough”⁸.

Both authors fail to understand that the cost of things have gone up, they think themselves richer than their ancestors because they have more money. Because the Romans didn't understand economics, in the way that we do today, they didn't write about it in ways which we can understand easily. Only by careful and extensive reading is it possible to find insights, or lack of them, such as this.

Aulus Gellius and the *Attic Nights*

A final point is to look at the text itself. Aulus Gellius was probably born between 125 and 128 AD; when he died is unknown. His place of birth is also unknown; some would have him come from an African colony, but his very Roman name (from a Samnite gens) could also make him a native of the city of Rome. All that is known of him comes from details within the *Attic Nights*. From these details we learn that he had a standard education for a member of the elite classes, as well as being educated in Rome he spent at least a year in Athens. He was probably in Greece to see the Pythian Games of 147 AD. In the introduction to the *Attic Nights* he says that the idea for the book first started to take shape during this time. Once his education had been completed he returned to Rome to take up a literary life, he was obviously wealthy enough not to have to find paid employment. He had a house in Rome and a place of retreat for the summer months at Praeneste. However, by the standards of his times, for the elite, this was probably seen as being impoverished. He owned only these properties, and none in the socially advantageous area of the Bay of Naples. He mentions important people in his book, but all apparently were met through his association with his tutors; as in this case; none appear to have been met after his return to Rome. Although he sets many of his anecdotes at dinners he is always the guest, never the host. As Holford-Strevens⁹ puts it in his biography of Gellius

“Although he is an accepted member of good society, he is one of its lesser members”.

This leads onto the purpose of the book. *Attic Nights* is not an encyclopaedic book but a miscellany. This had become almost a genre in its own right. It must be remembered that at this period books, usually in the form of scrolls, were relatively rare and expensive things. The only way to obtain a copy of a book was to have it physically copied; for this one needed to know who had a copy that a further copy could be taken from. Because of this it became a common practice to take only important excerpts from books, not to copy the entire book. Sometimes, as in the case of this text, these excerpts are all that we now have of important works. Because of this practice of copying

⁸ Gaius *Institutes* III.223

⁹ *Aulus Gellius* p.13

excerpts of texts it is more than likely that at some point Aulus Gellius had had access to a copy of Labeo's work *On The Twelve Tables*, or at least to this section on the law regarding *iniuria*. It is also probable that Labeo also took this example from an earlier work as there is no other mention of this episode, or of Lucius Veratius, in any know text.

Conclusion

But the *Attic Nights*, as can be seen in this text, is more than a collection of excerpts. This text sets the excerpt from Labeo in a setting of a debate between a philosopher and a jurist, not only does it preserve the text from Labeo, it puts it in the form of a conversation. It is thought that Gellius' purpose in writing the *Attic Nights* was to gather together a selection of things, on various topics, which could be used as conversation pieces in polite society, much as I have used it today in order to explore six and a half centuries of Roman history. I hope to have shown that so much more information can be squeezed out of a text by using as many different approaches as possible.

Bibliography

Ancient Sources

Gaius. *The Institutes of Gaius*. Translated by W.M. Gordon and O.F. Robinson. London: Duckworth, 1988. Reprint, 2001.

Gellius, Aulus. *The Attic Nights of Aulus Gellius*. Translated by J.C. Rolfe. 3 vols, *Loeb Classical Library*, 1927.

Selected Bibliography

Crawford, M.H. *Roman Republican Coinage*. 2 vols. Cambridge: Cambridge University Press, 1974.

Holford-Strevens, L. *Aulus Gellius: An Antonine Scholar and His Achievement*. Revised ed. Oxford: Oxford University Press, 2003.

Jolowicz, H.F., and B. Nicholas. *Historical Introduction to the Study of Roman Law*. 3rd ed. Cambridge: Cambridge University Press, 1972.

Mattingly, H. *Roman Coins*. London: Methuen and Co. Ltd, 1928.

Handout

Gellius, *Attic Nights*

Book 20.1.12 - 13

“But as for my statement that some laws were excessively lenient, do not you yourself think that law too lax, which reads as follows with regard to the penalty for an injury: ‘If anyone has inflicted an injury upon another, let him be fined twenty-five asses’? For who will be found so poor that twenty-five asses would keep him from inflicting an injury if he desired to? [13] And therefore your friend Labeo also, in the work which he wrote *On the Twelve Tables*, expressing his disapproval of that law, says: ‘One Lucius Veratius was an exceedingly wicked man and of cruel brutality. He used to amuse himself by striking free men in the face with his open hand. A slave followed him with a purse full of asses; as often as he had buffeted anyone, he ordered twenty-five asses to be counted out at once, according to the provision of the *Twelve Tables*’. Therefore,” he continued, “the praetors afterwards decided that this law was obsolete and invalid and declared that they would appoint arbiters to appraise damages”.

Quod vero dixi videri quaedam esse inpendio molliora, nonne tibi quoque videtur nimis esse dilutum quod ita de iniuria poenienda scriptum est: ‘Si iniuriam alteri faxsit, viginti quinque aeris poenae sunt?’ Quis enim erit tam inops, quem ab iniuriae faciendae libidine viginti quinque asses deterreant? [13] Itaque cum eam legem Labeo quoque vester in libris, quos *Ad Duodecim Tabulas* conscripsit, non probaret: ‘Quidam,’ inquit, ‘L. Veratius fuit egregie homo inprobus atque inmani vecordia. Is pro delectamento habebat, os hominis liberi manus suae palma verberare. Eum servus sequebatur ferens **crumenam** plenam assium; ut quemque depalmaverat, numerari statim secundum *Duodecim Tabulas* quinque et viginti asses iubebat.’ Propterea,” inquit, “praetores postea hanc abolescere et relinquere censuerunt iniuriisque aedtumandis recuperatores se daturos edixerunt”.

The Institutes of Gaius

III.220 ff.

220. Now, contempt [iniuria] is committed not only when someone is struck with a fist or with clubs, or even flogged, but also when a vocal attack is made on him, when his goods are advertised for sale as a debtor’s by someone who knows he owes him nothing, when someone writes a defamatory book or poem about someone, or when someone harasses a lady or a youth; and finally in many other ways.

221. Now, we can be the victim of contempt [iniuriam] not only in our own person but also through our children, if they are still within paternal power, and also through our wives, even if they are not in marital subordination to us. And so, for instance, if you commit a contempt against my daughter, who is married to Titius, an action can be brought against you not only for my daughter herself but also for both myself and Titius.

223. Under the Twelve Tables the penalty for this delict was, for a damaged limb, retaliation; for a broken or bruised bone, on the other hand, it was 300 ‘asses’ if a free man’s bone had been broken but 150 if it was a slave’s; for all other contempts [iniurias], on the other hand, the penalty established was twenty-five ‘asses’. And in those times of great poverty it seemed that these pecuniary penalties were satisfactory enough.