

176. Tacitus, *Annals*, 12

Just as any other *paterfamilias* relied upon his freedmen procurators and slave *vilici*, so some early emperors, particularly Claudius, relied heavily upon their freedmen for advice, even on matters of public policy; since freedmen were outsiders who were not involved in the political rivalry of citizens, it was assumed that the advice they gave their patron would be objective. Only in the Flavian period were men of citizen status prepared to sacrifice their independence to join the imperial administration. The resentment felt by this later generation of imperial officials at the fact that their jobs had once been done by slaves is clearly expressed by Tacitus (and Pliny: *Letters*, 8, 6).

(53) Following these events, Claudius made a proposal to the Senate about the punishment of women who married slaves. It was enacted that those women who had succumbed to this dishonour without the knowledge of the slave's owner should be reduced to slave status, but if he had given his approval, to the status of freedwomen. The emperor made it known that his proposal had originated from Pallas; so the consul-elect Barea Soranus proposed that he should be awarded the rank of an honorary ex-praetor together with fifteen million Sesterces. Cornelius Scipio moved an amendment that he should be publicly thanked for allowing himself to be included amongst the emperor's servants and preferring the public good to his inherited nobility, since he was a descendant of the kings of Arcadia. Claudius stated that Pallas was happy just with the honour, and that he would continue to make do with his previous modest income. And so the Senate's decree was engraved publicly on a bronze tablet, praising for his old-fashioned frugality a freedman who owned three hundred million Sesterces. (54) But his brother, who was called Felix, showed no such restraint. He had already been appointed to govern Judaea and thought that with such influential connections he could commit any crime with impunity.

CHAPTER 9

THE TREATMENT OF SLAVES: CRUELTY, EXPLOITATION AND PROTECTION

177. *Lysias 4: Speech about a Premeditated Wounding*

A result of the Greek and Roman tendency to see free men and slaves as distinct and exclusive status groups was that punishments prescribed by law for slaves were of a different degree of severity to those for free men (see No. 7 above).

One of the most horrifying aspects of this is the frequency of references to the interrogation of slaves under torture (see No. 54, Ch. 16; Achilles Tatius, 8, 10.2). In this speech, an Athenian accused of wounding the joint owner of a slave concubine has no reservations about suggesting that she should be interrogated about the affray, and attacks his rival's qualms about torturing the girl he loves as absurd.

(12) So all these arguments and witnesses have shown you, Councillors, that there was no premeditation and that I have done nothing wrong. And I think that just as it would have been an indication that *he* was telling the truth if *I* had refused to accept an interrogation, so in the same way the fact that *he* didn't want the woman to be tortured to give evidence should be an indication that *I* am not lying, and his assertion that she is free should not be believed. I am just as much concerned in the question of whether she is free, since I paid half the money for her. (13) In fact he is lying, and not telling the truth at all. It would be monstrous if I could do what I wanted with her in order to ransom myself from the enemy, but now I cannot even ask her to tell the truth about the reasons why this trial has come about, although I am in danger of suffering the penalty of exile. On the contrary, it would be much more just to allow her to be interrogated in this case than to have her sold to provide money to ransom me back from the enemy, since there are other sources for obtaining money for a ransom if the enemy are prepared to accept one, but there is no other way of escaping private enemies — for they don't want money, but are trying to expel one from one's country. (14) So you should not listen to his plea that the woman should not be tortured, alleging that she is free; on the contrary, you should condemn him for fabricating baseless accusations, since his intention in refusing such a clear test was simply to deceive you. (15) You should not consider his challenge more worthy to be believed than ours, when he proposed that his own slaves should be interrogated under

torture. What they know is that we went to see him, and we all accept that — but the woman knows better than they whether we had been invited or not, and whether I was hit first, or struck him. (16) And if we had tortured his slaves, then because they are his property alone they would have been stupid enough to try to please him and tell lies about me. But the woman belonged to us in common, since we had both paid the same amount of money, and she knew that very well, since everything that has happened between us was because of her. (17) And no one will fail to notice that if she were interrogated under torture, it would put me at a disadvantage — yet I'm prepared to risk this; for she clearly cared a great deal more for him than for me, and she has associated herself with him in doing me wrong, but has never ever joined me to offend him. Yet I have turned to her for help, while he has not been prepared to trust her.

178. *Digest* 48, 18: 'Torturing Slaves'; 1: Ulpian, from *The Responsibilities of Proconsuls*, book 8

The Romans were perfectly aware that torturing someone was a serious matter, and should only be used where it was necessary and might bring useful results.

Interrogation is the usual method to bring out the truth about a criminal accusation. But we must consider under what circumstances and to what extent this should be done. That one should not use torture as a first step, and that this is not the way to give an interrogation the element of certainty, was both decreed in a Constitution of the Divine Emperor Augustus, and is stated in a letter of the Divine Emperor Hadrian to Sennius Sabinus. (1) This is the text of the rescript:

Torture against slaves should be employed as the last resort, at a point when someone is suspected of having committed the crime, and proof is not quite forthcoming from other arguments, so that it seems that the only step that is still missing is an admission by slaves.

179. *Dio Cassius*, 55, 5

There was no feeling that the occasions on which interrogation under torture was called for should be restricted: on the contrary, by late antiquity torture had been extended from slaves to all citizens except those of the highest status. One of the few restrictions was that slaves could not be called as witnesses against their own master without his

permission — and from the time of Augustus, this law was frequently circumvented by means of a fictitious sale; and later it was abandoned in all cases involving treason (*CTh.* 9, 6; cf. No. 75).

(4) Because it was not possible to order a slave to be tortured to give evidence against his own master, Augustus ordered that whenever the necessity for something like this should arise, the slave should be sold to the public treasury or to himself, so that he could be interrogated on the grounds that he was not the property of the accused. Some people expressed opposition to this, since the change of ownership was making the law meaningless, while others claimed that it was essential, since many people were organising plots both against the Emperor and against the authorities as a result of this provision.

180. *Digest* 29, 5: 'The Senate Recommendations Proposed by Silanus and Claudius; Those Whose Wills may not be Opened'; 1: Ulpian, from *On the Edict*, book 50

Another requirement of Roman law, formulated in a Senate Recommendation of 10 AD, which strikes us as particularly inhumane, was that if an owner was killed, all the slaves within earshot at the time had to be interrogated under torture and executed. The Will of the murdered man (which might provide for some of these slaves to be given their freedom) could not be opened until the enquiry was complete. An example mentioned by the historian Tacitus illustrates the rule that slaves who failed to assist their masters should be executed (*Annals*, 14, 42 = *L&R* II, 68). The jurists explain the reasoning behind this law:

(1) Since no household could be safe if slaves were not forced by the threat of danger to their own lives to protect their masters against enemies both internal and external; therefore Senatorial Recommendations were introduced to require the interrogation by the State of the slaves of men who had been murdered.

Sections 1–16 deal with definitions of the persons included under the terms 'masters' and 'slaves'.

(17) Labeo states that the term 'those murdered' includes all those killed as the result of violence or bloodshed, as for example anyone who has been throttled, strangled, thrown down from a height, struck with a stick or stone, or killed by means of some other weapon. (18) But if anyone has been done away with by poison or some other method which kills a person secretly, then vengeance for his death is not the concern

of this Senate Recommendation. This is because slaves must be punished for every occasion on which they have not brought their master help when they could have helped him against violence, but did not do so; now what could they have done to hinder those who were attacking him by means of poison or in some other way? (19) The Senate Recommendation does of course apply if the poison was administered by force. (20) So whenever violence was used in a way which normally results in death, we must take it that the Senate Recommendation applies. (21) So what does happen when it is asserted that a master was killed by poison and not by violence? Will the crime go unpunished? Certainly not: even if Silanus' Senate Recommendation does not apply and there is no investigation and punishment of all those who were under the same roof at the same time, any who knew of the crime or were responsible for it will nevertheless be punished. But the heir may enter into the inheritance and have the Will opened even before the judicial investigation has taken place.

[*What happens if the master commits suicide?*]

(22) If anybody turns his hand against himself, then although Silanus' Senate Recommendation does not apply, yet his death will be avenged in such a way that if he did this in the sight of his slaves and they might have been able to stop him from destroying himself, they are to be punished, but if they were not able to do so, they are to be acquitted.

[*Which slaves are to be interrogated?*]

(27) Let us examine how the phrase 'under the same roof' is to be understood; does it mean within the same walls or within the same dwelling or the same room or the same household or the same gardens or the same estate? Sextus says that courts have frequently adjudicated that all those should be punished as being 'under the same roof' who were somewhere where they were able to hear their master's voice, though of course some people have a louder voice than others, and not everyone can hear equally well. (28) The Divine Emperor Hadrian seems to have written something very similar in the following rescript:

On occasions when slaves are able to come to their master's assistance, they ought not to have more regard for their own safety than for that of their masters; and the fact that the slave girl who was sleeping in the same bedroom as her mistress would certainly have been able to come to her assistance — if not by using her body, then at least by shouting out, so as to be heard by anyone in the house or nearby — is proved by the very fact that she said that the murderer had threatened to kill her if she cried out. She therefore deserves to suffer the penalty of death, so that no other slaves may think that they should consider their own interests when their masters are in danger.

(29) This rescript has a number of implications: it does not pardon someone who was in the same room; it shows no mercy to someone who was afraid of being killed; and it shows that slaves must assist their masters even if just by shouting. (30) If someone is murdered while he is doing something on his country estate, it would be more than unjust if all the slaves who had been in that part of the world were to be interrogated and punished just because he happened to own a widely dispersed estate; it is enough if only those are interrogated who were with him when he is said to have been killed, and are suspected of having carried out the murder or having known about it. (31) If a master has been murdered while on a journey, those who were with him when he was killed or who had been with him but fled, are to be punished. But if there was no one who was with his master when he was killed, then these Senate Recommendations do not apply. (32) A male slave who is still a child and a slave girl who is not yet of an age to be married are not covered by these provisions; for allowances have to be made for youth.

181. Antiphon 5: *Death of Herodes*

Could owners execute their own slaves with complete impunity? The heirs of a murdered Athenian executed a slave who admitted complicity in the murder, before the slave's evidence had been heard by a court. The speaker attacks this, on the grounds that no one had the right to execute a slave without a trial — but this merely shows that at Athens sentence of death had to be carried out by the public executioners.

(47) What they did was to buy the slave who denounced the murderer and secretly kill him on their own initiative, without being authorised to do so by any vote on the part of the City, and in spite of the fact that he had not killed the murdered man himself. He should have been kept chained up, or given to some of my friends in return for a surety, or handed over to the State authorities so that there could be a vote on what was to happen to him. But instead you took it upon yourselves to find him guilty and execute him — not even the State can do that, punish someone with death without a formal decision by the Athenian community. So you are leaving the jury to be judges of whatever the slave may have asserted, but you appointed yourselves the judges of what he may have done. (48) And yet not even those who are caught in the act of murdering their owners may be executed by the owner's relatives: instead, they hand them over to the Authorities in accordance with your ancestral laws. And if a slave is allowed to testify against a free man in a case of murder, and an owner can initiate a prosecution

on behalf of his slave if he so wishes, and a jury's vote applies just as much to the man who kills a slave as to the man who kills a free man — then it would have been right for this slave to have been sent for trial and not to have been put to death by you uncondemned.

182. Isocrates, *Panathenaicus*

This attack on the way the Spartans treated their *Perioikoi*, allied communities subject to their political hegemony, implies that arbitrarily killing one's own slave was generally recognised to be an offence against the gods.

(181) Right from the start these men have suffered severely, and in the present situation they have served Sparta well; yet the Spartan *Ephors* [annual magistrates] are allowed to execute without trial as many of them as they wish. As far as the rest of the Greeks are concerned, it is not holy to pollute oneself by killing even the most useless of one's household slaves.

183. Demosthenes 21: *Against Meidias*

The existence of religious sanctions or even legal pronouncements against killing one's own slave does not imply mechanisms for making the owner answerable before a court of law. But democratic Athens was anxious that wealthy men should be restrained from behaving like tyrants: so any citizen had the right to initiate legal proceedings against those who did not treat their slaves humanely.

The Law proclaims: (47) If anyone humiliates (*hybrizēi*) anyone, whether they are free or slave, or commits any illegal act against any of these: let any Athenian who has the right to do so who wishes submit their names to the *Thesmothetai*.

184. Xenophon, *Memorabilia*, 2, 1

Xenophon's account of the conversations of Socrates shows that it was taken for granted that a master would punish a slave who failed in any way to do as his master wished. Socrates is conversing with the anarchist Aristippos, who claims that it is neither ruling others nor being a slave, but simply being independent, that brings one closest to happiness. Socrates points out that we unfortunately live in a real world in which

the strong do everything they can to enslave the weak: why is Aristippos so confident that no one will try to enslave him?

(15) Is it because you would be thought the kind of slave who brings no master any profit? No one wants to keep in his household a man who does not want to do any work but enjoys an expensive lifestyle. (16) Let us consider how masters behave towards slaves of this sort. Is it not the case that they control any inclinations towards lechery by starving them? And stop them from stealing by locking up the places from which they might take things? Prevent them from running away by putting them in chains? Force the laziness out of them with beatings? Or what do you do when you find you have someone like that among your slaves?

(17) I inflict every kind of punishment upon him — said Aristippos — until I can force him to serve properly.

185. *Digest* 18, 1.42: Marcianus, from *Institutes*, book 1

At Rome, the heads of households had originally had the absolute right to punish their slaves, like their sons, with death (the *ius vitae necisque*: see Nos. 201, 235, Ch. 20). Under the Empire, the general tendency for the state to restrict or at least monitor the rights of a *paterfamilias* extended to the execution of slaves. This does not mean that slaves could not continue to be executed in the most brutal fashion, but at least they were protected from any arbitrary whim of their masters by the need to obtain a condemnation before a court.

Owners may not sell their slaves, albeit they are criminally inclined, in order to fight with wild beasts. Thus the rescripts of the Divine Brothers.

186. *Digest* 48, 8.11: Modestinus, from *Rules*, book 6

(1) When a slave has been given up to wild beasts, punishment applies not just to the person who sold him, but also the person who bought him.

(2) Following the *Lex Petronia* and the Senate Recommendations applying to that law, the rights of owners when they wanted to hand over their slaves to fight wild beasts were taken away from them; but if the slave has been brought before a Judge, and the owner's complaint is found to be justified, then he may be handed over for punishment.

**'ALL HUMAN BEINGS ARE EITHER FREE OR SLAVE':
THE SLAVE AS PROPERTY**

1. *Digest* 1, 5: 'On the Status of Persons'; 4: Florentinus, from *Institutes*, book 9

Both Greeks and Romans assigned their slaves a legal position which clearly separated them from other, 'free', members of the community. Although chattel slaves were human beings, and thus had certain moral rights (see Chapters 9 and 12), legally they were property in the absolute control of an owner – even to the extent that the owner could transfer his rights to someone else by gift or sale. All slaves were alike in being denied any legal claims on society; this masks the different social and economic roles that slaves played, for instance as either producers or consumers, as well as the fact that free citizens often performed identical economic functions to slaves.

Definitions and explanations of some of the most common terms associated with slavery are to be found in a passage from Justinian's *Digest* of Roman law, excerpted from an earlier textbook for law students.

Being free (*libertas*) is the natural ability to do whatever anyone pleases, unless one is prevented from doing it either by force or by law.

(1) Slavery is an institution of the common law of peoples (*ius gentium*) by which a person is put into the ownership (*dominium*) of somebody else, contrary to the natural order.

(2) Slaves (*servi*) are so called because commanders generally sell the people they capture and thereby save (*servare*) them instead of killing them.

(3) The word for property in slaves (*mancipia*) is derived from the fact that they are captured from the enemy by force of arms (*manu capiantur*).

2. Aristotle, *Politics*, 1, 2

In the ancient Greek and Roman world, the polarity between 'slave' and 'free' seemed as natural a way of dividing up the human race as those between men and women or young and old. But Greek philosophers soon recognised that these pairs of words were not all alike. That

The Code begins with regulations against those who try to imprison someone who has not, or not yet, been condemned by a court; it may be noted that the possibility is envisaged that a slave may be unwilling to return to his legitimate owner (see Nos. 211–26 below).

The Gods

Anyone who initiates proceedings concerning a free man or a slave is not to lead the person off before the trial. If he does lead him off, let him fine him for leading off: for a free man ten staters, for a slave five; and order him to release the person within three days. If he does not release him, let him condemn him to a fine: for a free man one stater, for a slave one drachma, per day, until he release him: and the judge, having sworn an oath, shall make a ruling as to the time. If he denies that he led him off, and there is no witness to testify, the judge, having sworn an oath, shall make a ruling. If one side claims that a man is free, the other that he is a slave, the benefit of the doubt is to be given to those who claim that he is free. If both sides argue that a slave belongs to them, then if there is a witness, he is to declare judgement according to his testimony, but if there are witnesses on both sides, or on neither side, the judge, having sworn an oath, shall make a ruling. If the court decides against the person who is holding a man, he must release the man within five days, if he is a free man; and he must hand him over in good faith if he is a slave. If he does not release or hand over the man, let him declare that the complainant is being awarded compensation: for a free man, fifty staters, plus one stater per day until he releases him, for a slave ten staters, plus one drachma per day until he hands him over in good faith. If one year elapses after the judge has pronounced judgement, three times the original compensation may be exacted, or less, but not more; and the judge, having sworn an oath, shall make a ruling as to the time. If the slave who has been ordered to be returned to his owner flees to a temple, the defendant shall summon the complainant and with two free adults as witnesses he shall show him the slave at the temple at which he has taken refuge; he may do this in person, or someone else may do it on his behalf; but if he does not summon the complainant and show him the slave, he is to pay the compensation specified above. If he has still not handed over the slave after a whole year, he is to pay the simple fines as well.

4. *Digest* 1, 5: 'On the Status of Persons'; 5: Marcianus, from *Institutes*, book 1

Roman jurists codified clear and strict rules about the conditions under which a person was legitimately a slave:

The status of all slaves is the same, but free men are divided into the free-born (*ingenui*) and freedmen (*libertini*).

(1) Slaves come into our ownership either by civil law or the common law of peoples (*ius gentium*) – by the civil law, if anyone over twenty allows himself to be sold in order to benefit by retaining a share of the purchase price; and by the common law of peoples, those who have been captured in war and those who are the children of our slave women are our slaves.

(2) The free-born are those who are born of a free mother; it is sufficient for her to be free at the time when the child is born, even if she was a slave when she conceived, and conversely, if she conceived as a free woman, but later gave birth as a slave, we recognise the child that is born as free. (It does not matter whether the mother conceived the child within or without a recognised marriage.) The reason for this is that the mother's adversity ought not to prejudice a child in the womb.

(3) This raises the question of whether the child of a slave woman who was set free when pregnant, but was again reduced to slave status or sent into exile before giving birth, should be slave or free. But it has rightly been accepted that the child is in fact born free, and it is sufficient for an unborn child that its mother was free at any time in between.

5. Gaius, *Institutes*, book 1, 1; 8–55

In the second century AD, an otherwise unknown jurist called Gaius wrote a textbook of Roman law for students. He sets out clearly the different legal statuses of slaves, citizens and different categories of freedmen, and mentions the various pieces of legislation which affected slaves, particularly the *Lex Aelia Sentia* of 4 AD; we may note the similarity in Roman law between the dependence of a slave and that of a son on the master of the household (c. 55).

(1) Every community that is governed by laws and customs uses partly its own particular law and partly the law common to all mankind. For whatever system of justice each community establishes for itself, that is its own particular law and is called 'civil law' as the law particular to that community (*civitas*), while that which natural reason has established among all human beings is observed equally by all peoples, and is called 'law of nations' (*ius gentium*) since it is the standard of justice which all mankind observes. Thus the Roman People in part follows its own particular system of justice and in part the common law of all mankind. We shall note what this distinction implies in particular instances at the relevant point.

(8) The system of justice which we use can be divided according to how it relates to persons, to things and to actions. Let us first see how it relates to persons.

(9) The principal distinction made by the law of persons is this, that all human beings are either free men or slaves.

(10) Next, some free men are free-born (*ingenui*), others freedmen (*libertini*).

(11) The free-born are those who were free when they were born; freedmen are those who have been released from a state of slavery.

(12) Freedmen belong to one of three status groups: they are either Roman citizens, or Latins, or subjects (*dediticii*). Let us examine each status group separately, beginning with subjects.

Dediticii

(13) The *Lex Aelia Sentia* requires that any slaves who had been put in chains as a punishment by their masters or had been branded or interrogated under torture about some crime of which they were found to be guilty; and any who had been handed over to fight as gladiators or with wild beasts, or had belonged to a troupe of gladiators or had been imprisoned; should, if the same owner or any subsequent owner manumits them, become free men of the same status as subject foreigners (*peregrini dediticii*).

(14) 'Subject foreigners' is the name given to those who had once fought a regular war against the Roman People, were defeated, and gave themselves up.

(15) We will never accept that slaves who have suffered a disgrace of this kind can become either Roman citizens or Latins (whatever the procedure of manumission and whatever their age at the time, even if they were in their masters' full ownership); we consider that they should always be held to have the status of subjects.

Citizens

(16) But if a slave has suffered no such disgrace, he sometimes becomes a Roman citizen when he is manumitted, and sometimes a Latin.

(17) A slave becomes a Roman citizen if he fulfils the following three conditions. He must be over thirty years of age; his master must own him by Quiritary right; and he must be set free by a just and legitimate manumission, i.e. by the rod (*vindicta*) or by census or by Will. If any of these conditions is not met, he will become a Latin.

(18) The condition about the age of the slave first appeared in the *Lex Aelia Sentia*. That law does not allow slaves below thirty to become Roman citizens on manumission unless they have been freed by the rod after a council (*consilium*) accepted there was just reason for the manumission.

(19) A just reason for manumission exists when, for example, a man manumits in the presence of a council a natural son, daughter, brother or sister; or a child he has brought up [*alumnus* = foundling], or his *paedagogus* [the slave whose job it had been to look after him as a child], or a slave whom he wants to employ as his manager (*procurator*), or a slave girl whom he intends to marry.

(20) In the city of Rome, the council comprises five Roman senators and five equestrians; in the provinces it consists of twenty local justices (*recuperatores*) who must be Roman citizens, and meets on the last day of the provincial assizes; at Rome there are certain fixed days for manumissions before a council. Slaves over thirty can in fact be manumitted at any time; so that manumissions can even take place when the Praetor or Proconsul is passing by on his way to the baths or theatre, for instance.

(21) Furthermore, a slave under thirty can become a Roman citizen by manumission if he has been declared free in the Will of an insolvent master and appointed as his heir [i.e. to take over the liabilities: the *heres necessarius*], provided that he is not excluded by another heir.

Junian Latins

(22) . . . [persons who do not fulfil the conditions for full citizenship] are called 'Junian Latins': Latins because they are assimilated to the status of those Latins who lived in the ancient colonies; Junian because they received their freedom through the *Lex Junia*, since they were previously considered to have the status of slaves.

(23) But the *Lex Junia* does not give them the right to make a Will themselves, or to inherit or be appointed as guardians under someone else's Will.

(24) When we said that they cannot inherit under a Will, we meant that they cannot receive anything directly as an inheritance or legacy; but they can receive things by way of a trust (*fideicommissum*).

Digression - Dediticii

(25) But those who have the status of subjects cannot receive anything at all by Will, no more than any foreigner can, and according to the general opinion, they cannot make a Will themselves.

(26) The lowest kind of freedom is therefore that of those whose status is that of subjects; and no statute, Senate Recommendation or Imperial Constitution gives them access to Roman citizenship.

(27) They are even banned from the city of Rome or anywhere within the hundredth milestone from Rome, and any who break this law have to be sold publicly together with their property, subject to the condition that they must never serve as slaves in the city of Rome or within a hundred miles of Rome, and that they must never be manumitted; if

they are manumitted, the law stipulates that they become slaves of the Roman People. All these provisions are laid down by the *Lex Aelia Sentia*.

(28) But there are many ways in which Latins can become Roman citizens.

(29) First of all there are the regulations laid down by the *Lex Aelia Sentia*. Anyone under thirty who has been manumitted and has become a Latin; if he marries a wife who is either a Roman citizen or a colonial Latin or a woman of the same status as himself, and this marriage was witnessed by not less than seven adult Roman citizens, and he has a son; then, when that son becomes one year old, he has the right under this law to go to the Praetor (or in a province the governor) and prove that he has married in accordance with the *Lex Aelia Sentia* and has a year-old son.

And if the magistrate to whom the case is taken declares that the facts are as stated, then both the Latin himself and his wife (if she is of the same status) and son (if he is of the same status too) must be recognised as Roman citizens.

(30) (I added the phrase 'if he is of the same status too' with respect to the son because if the wife of a Latin is a Roman citizen, then her son is born as a Roman citizen, in accordance with a recent Senate Recommendation proposed by the Divine Emperor Hadrian.)

(31) Although the *Lex Aelia Sentia* only gives this right to acquire Roman citizenship to those who were less than thirty years old on manumission and thus became Latins, this was later extended to persons who were over thirty on manumission and became Latins, by a Senate Recommendation passed in the consulship of Pegasus and Pusio [early in the reign of Vespasian].

(32) But even if the Latin dies before he has been able to establish that he has a year-old son, the mother can prove it, and if she was previously a Latin she will thus become a Roman citizen herself. [...] Even if the son is a Roman citizen already, because he is the child of a mother who is a Roman citizen, she still ought to prove his case; for then he can become the natural heir (*suus heres*) of his father.

(32a) What was said regarding a year-old son applies equally to a year-old daughter.

(32b) Furthermore, under the *Lex Visellia*, anyone who has become a Latin through manumission, whether he is over or under thirty, acquires the full rights of a Roman citizen if he has completed six years' service in the *vigiles* (police) at Rome. It is asserted that a Senate Recommendation was later passed granting citizenship on completion of three years' service.

(32c) By an edict of Claudius, Latins also obtain full citizen rights if they have built a sea-going ship with a capacity of not less than 10,000

modii of corn, and that ship, or its replacement, has been used to bring corn to Rome over a period of six years.

(33) Furthermore, it was enacted by Nero that a Latin who owned property worth 200,000 Sesterces or more and built a house in the city of Rome on which he spent not less than half his property, could obtain full citizen rights.

(34) Finally, Trajan enacted that if a Latin kept a mill going in the city over a period of three years, grinding not less than 100 *modii* of corn daily, he could acquire full citizen rights.

(35) Persons who are over thirty when manumitted and have become Latins can obtain full citizen rights by having the ceremony of manumission repeated; so can those manumitted below thirty, when they reach that age. In every case a Junian Latin over thirty, whose manumission is formally repeated by the man who has Quiritary ownership over him by the ceremony of the rod, the census or Will, becomes a Roman citizen and the freedman of the man who performed the second manumission. Consequently: if you hold the right to use a slave (*possessio*), but he belongs to me according to Quiritary law, then he can be made a Latin by you, acting alone; but the second manumission can be performed only by me, and not by you as well, and as a result he becomes my freedman. Even if he attains the full status of a Roman citizen by any of the other procedures, he still becomes my freedman. On the other hand you are given possession of any property he leaves behind when he dies, whatever the way in which he had obtained full citizen status. But if he belongs to the same owner both by possession and according to Quiritary law, he can become both a Latin and a full Roman citizen by a single act of manumission.

Restrictions on Manumission

(36) Not everyone who wishes to manumit is legally permitted to do so.

(37) A manumission made with a view to defraud creditors or a patron is void; the liberation is prevented by the *Lex Aelia Sentia*.

(38) The same *Lex* also prevents an owner under twenty from manumitting, except by the rod and after a council has accepted that there is a just reason.

(39) Just reasons for manumission exist where, for instance, someone manumits his father or mother, or his *paedagogus*, or someone who has been brought up with him. But the reasons instanced above for the case of slaves manumitted when under thirty can be put forward here too; and conversely, those mentioned in the case of an owner under twenty may also apply for a slave under thirty.

(40) The result of this restriction on the freeing of slaves by owners aged under twenty imposed by the *Lex Aelia Sentia* is that, although an owner who has reached the age of fourteen can make a Will and

institute an heir and leave legacies, if he is still under twenty he cannot give a slave his freedom.

(41) And even if an owner under twenty wants to make his slave a Latin, he still has to prove before a council that there is a just reason, and only afterwards may he manumit the slave informally in the presence of his friends.

(42) The *Lex Fufia Caninia* [2 BC] set an additional restriction on the manumission of slaves by Will.

(43) Those who own more than two and not more than ten slaves are allowed to manumit up to half the number; those who own more than ten and not more than thirty are allowed to manumit up to a third; but those who own more than thirty and not more than a hundred have the right to manumit up to a quarter; and finally, those who own more than a hundred and not more than five hundred are allowed to manumit not more than a fifth; those who own more than five hundred are not given the right to manumit any more — the law forbids anyone to manumit more than a hundred. But if you only own one or two slaves, you are not covered by this law, and there are no restrictions upon your freedom to manumit.

(44) Nor does this law apply to those who free their slaves by some other procedure than by Will. Thus a master manumitting by the rod or by census or informally in the presence of his friends, may set free his whole household, so long as there is no other impediment to giving them their freedom.

(45) What we have said regarding the number of slaves who may be manumitted by Will is to be interpreted in such a way that in a situation where only half, a quarter or a fifth may be freed, there is no requirement to manumit fewer than could have been manumitted under the preceding proportion. This is provided for in the law itself, for it would have been absurd if the owner of ten slaves should be allowed to manumit five (because he may free up to half that number), while the owner of twelve should not be allowed to manumit more than four.

(46) [When a Will manumits more slaves than permitted by the law:] If a Will requests freedom to be given to slaves whose names are written in a circle, then because it is impossible to establish any ranking by which some have a greater right to manumission than others, none of them may be set free. This is because the *Lex Fufia Caninia* makes void any act intended to cheat the objectives of that law. There are also a number of particular Senate Recommendations which make void tricks contrived to evade the law.

(47) In conclusion, it should be noted that the *Lex Aelia Sentia* forbids manumissions made in order to defraud creditors, and this was extended to foreigners as well, by a decision of the Senate proposed by Hadrian; but the other provisions of this law do not apply to foreigners.

Types of Dependence

(48) We now come to a second distinction made by the law of persons. Some persons are independent agents (*sui iuris*) and some are dependent on the rights of another (*alieni iuris*).

(49) Furthermore, some of those who are in a condition of dependence are in another's power (*potestas*), some in their hands (*manus*) and some in their ownership (*mancipium*).

(50) Let us now look at persons who are in a position of dependence; for when we have established what sort of people these are, we shall be able to see who are independent agents.

(51) And first let us consider those who are in another's power.

(52) Slaves are in the power of their owners. This power is derived from the common law of nations, for we can see that among all nations alike owners have the power of life and death over their slaves, and whatever is acquired by a slave is acquired on behalf of his owner.

(53) But nowadays neither Roman citizens nor any other people who are subject to the sovereignty of the Roman People have the right to treat their slaves with excessive and unreasonable brutality. For a Constitution of the Divine Emperor Antoninus orders anyone who kills his own slave without due reason to be brought to justice in exactly the same way as one who kills another's slave. Excessively harsh treatment on the part of owners is also limited by a Constitution of the same Emperor; for when certain provincial governors asked him for a ruling regarding slaves who had taken refuge at the temples of gods or statues of emperors, he declared that owners were to be forced to sell their slaves if the cruelty of their behaviour appeared to be unbearable. In both cases he ruled justly, for we ought not to misuse our rights — that is the ground for interdicting those who waste their own property from administering it.

(54) Now since there are two kinds of ownership among Roman citizens — slaves may belong to their owners by possession or by Quiritary right, or both — we say that a slave is in the power of an owner who has possession over him, even though he may not belong to the same man by Quiritary right. For someone who simply has the title to Quiritary ownership of a slave cannot be said to have power over him.

(55) Similarly in our power are those of our children who are begotten in a recognised marriage; this is a custom peculiar to Roman citizens.

6. Suetonius, *Augustus*, 40

The background to the *Lex Aelia Sentia* of 4 AD, which introduced the regulations for certain kinds of manumission recorded by Gaius, is described by historians like Dio Cassius (No. 71 below), and the pressures

on the Roman government to maintain clear boundaries between slavery and freedom are mentioned elsewhere (Nos. 68–70 below).

(3) He also thought it very important that the people should be kept pure and uncorrupted by any taint of foreign or slave blood; so he was very sparing in granting Roman citizenship, and set limits to the number of slaves that might be manumitted . . . (4) He was not satisfied with imposing all sorts of difficulties to prevent slaves from being given their freedom, and many more difficulties preventing them from being given full freedom (for he introduced detailed conditions regarding the number, status and types of those who could be manumitted); he ruled in addition that no one who had ever been chained or tortured should attain citizenship through any form of manumission.

7. *Digest* 48, 19.10: Macer, from *Public Courts*, book 2

One of the effects of this status distinction was that any legal judgement had to demonstrate the slave's inferiority publicly, either by assessing damage to a slave as less costly than to a free man (see the fines in the Gortyn Code, No. 3 above, or the compensation in the *Twelve Tables*, No. 188 below), or by inflicting a more degrading punishment (for sentencing to hard labour, normally in the mines, see No. 125 below).

(1) Slaves should be sentenced according to the rules applying to the punishment of the lower orders. For those crimes for which a free man [of the lower orders] is thrashed with rods, a slave must be sentenced to be whipped and returned to his owner; for those crimes for which a free man is first thrashed and then condemned to hard labour, a slave must be sentenced to be whipped and then to be returned to his owner to be kept in chains for the same period of time. If a slave who has been sentenced to be returned to his owner to be kept in chains is not in fact taken back by him, he is to be sold; and if he can find no one who is prepared to buy him, he should be sentenced to hard labour for life.

8. Caius, *Institutes*, book 2, 86–91 (= *Digest* 41, 1.10: 'Acquiring Property Rights')

A consequence of the owner's absolute right of property over his slave was that the slave could not be entitled to own property himself; everything he had or acquired through inheritance or business dealings legally belonged to the head of his household. Conversely, the master

was liable for any damage that a slave he owned might have caused (hence outstanding liabilities had to be announced at sales of slaves: No. 104). At Rome, the head of a household had the right to choose to surrender such a dependant (*noxus*) to the claimant rather than pay damages.

On the other hand, Roman law had at an early date recognised that a son who had not been formally emancipated by his father nevertheless had full use of and responsibility over whatever property his father, as head of the household, had decided to entrust to him (his 'flock' or *peculium*); and it was accepted that slaves too had a right to their *peculium* (No. 32).

(86) We can acquire things not just through our own person, but also through those who are subject to us by *potestas* (power), *manus* (control) or *mancipium* ('taking hold of'), and also through those slaves over whom we merely have a usufruct, and through free men and slaves belonging to other people whom we possess in good faith. Let us consider these various categories in turn.

(87) Anything that those children who are in our *potestas*, or our slaves, receive by mancipation or obtain by handing over or by stipulation or by any other legal procedure, that thing is acquired for us. This is because anyone in our *potestas* is unable to have anything of his own. Thus if he is named anyone's heir, he cannot take over the inheritance except on our orders, and if he does take it over on our orders, that inheritance belongs to us exactly as though we ourselves had been named as heirs; similarly of course any legacy left to them belongs to us.

(88) It is worth stressing that if a slave is in the possession of one man (*in bonis*), but belongs to someone else by full legal title (*ex iure Quiritium*), the things he acquires by any legal process whatsoever all belong only to the man in whose possession he is.

(91) The rule regarding those slaves in whom we only have a usufruct, is that anything they acquire by using our property or as a result of their own activities, that is acquired for us. But anything they acquire on any other account belongs to the person who has the ownership of the slaves.

9. *Codex* 7, 8.6; 10.6

The only person entitled to decide whether a slave should be manumitted was the person with legal ownership – and if he were a minor, neither his guardian or even his father could exercise that right on his behalf.

A. The Emperor Alexander Severus, to Auctor.

If your guardian manumitted some slaves who had been bought with your money, then they did not become free: since slaves of this kind, like other property bought with a ward's money, are pledged on the ward's behalf.

B. The Emperors Diocletian and Maximianus, to Midas (Ad 294).

If your father manumitted your slave, even though you were less than twenty years old at the time and agreed to the manumission, he was nevertheless not in a position to give them their freedom.

10. *Codex 7, 12.2*

If an owner's right was absolute, then he could impose conditions affecting a slave on subsequent owners — either when he sold the slave (see Gaius 27, No. 5 above; Nos. 119 and 194 below) or when he died and left him to an heir; as third-century emperors reminded petitioners:

The August Emperors Valerian and Gallienus, to Theodorus.

A slave who was expressly forbidden to be manumitted in his owner's Will cannot be given his freedom.

1. But it is relevant to this case whether the testator forbade those slaves whom he described as having been brought up together with his son to be sold or freed because their service as slaves was needed for the good of his children, or whether he was rather imposing a penalty because they had served him badly.
2. For if the first is the case, then freedom can be gained when the requirement for service comes to an end with the death of the person whose interests were intended.

But if the second is the case, then the decision taken against the slaves as a punishment must remain in force, since our Sacred predecessors as Emperors decided that such provisions in Wills could impose perpetual slavery on slaves who had behaved badly, so that they could not even be given their freedom if someone bought them as a legal fiction.

11. *Digest 11, 3: 'Corrupting a Slave'; 1: Ulpian, from On the Edict, book 23; 2: Paulus, from On the Edict, book 19*

Any action which reduced the value of a slave to his owner was an infringement of his property rights. This applied to violence and sometimes insults against a slave (see Nos. 188–9 below), and also to

corrupting him in other ways.

(4) Is a man only liable under the Edict if he has incited a slave of previously good character to do something wrong, or also when he has incited a bad slave to do something, or shown a bad slave how to go about doing it? It is more correct to hold that he is liable even when he has merely shown a bad slave how he could do something wrong. In fact he is even liable if the slave was going to run away or steal something anyway, and he merely praised his intention — for one shouldn't make a bad slave even worse by praising him. Thus a man is held to be guilty of corrupting a slave whether he is making a good slave bad, or a bad slave worse.

(5) And a person also makes a slave worse if he persuades him to commit wrongful damage or theft or to run away or to incite someone else's slave [to do these things] or to falsify his *peculium* or to indulge in sex or become a vagrant or interest himself in sorcery or spend too much time at public shows or be involved in sedition; or if he uses words or bribes to persuade his owner's agent to destroy or falsify the master's accounts, or just to alter an account that has been entrusted to him; or

2. [Paulus] else causes a slave to live in ostentatious luxury or to be disobedient or persuades him to submit to homosexual acts.

12. *Strabo, 7, 3.12*

The slave was an outsider who brought no rights with him from the society he came from, and had no claims on the host society which maintained him. The extent of this deracination is symbolised by the fact that he had to accept the religion of his new owner's household (Roman slaves would swear by the *genius*, life spirit, of their master: Nos. 82, 135), and had no name apart from that which his owner chose to give him.

The Getai are the people living in the area reaching eastwards to the Black Sea, while the Dacians live in the area towards Germany and the sources of the Danube. I think that these people were originally called 'Dai'; and it was because of them that the names 'Geta' and 'Daos' were so common with the Athenians — at least, this is a more likely explanation than that they were named after the Scythian tribe called the 'Daai', since they live far away in Central Asia and it is most unlikely that any slaves were ever brought to Attica from there. The Athenians would either name their slaves after the peoples from whom they were imported, like 'Lydos' or 'Syros', or give them names which were

common in those countries, like 'Manes' or 'Midas' for a Phrygian, or 'Tibios' for a Paphlagonian.

13. Varro, *The Latin Language*, 8, 9

At Rome too, a master gave his slave whatever name he decided; in early Rome, slaves were apparently called by their master's name, plus the suffix *-por* ('boy'): e.g. Marcipor (No. 83). Later there was a much wider range of personal names.

The fact that a slave has a name associated with a particular ethnic group is thus no proof that he belonged to that race – which undermines attempts to calculate the ethnic make-up of the slave and freedman population of Italy on the basis of names found in inscriptions.

Latin inscriptions formally identify slaves with reference to their owners, e.g. as *GAI S.*, while freedmen automatically took the personal and family names of their patron. Thus Marcus Tullius Cicero first chose the name *TIRO* ('new recruit') for his slave secretary; on manumission, that became his *cognomen* and he became *MARCUS TULLIUS M.L. TIRO* (Marcus Tullius, Marcus' freedman, called Tiro). Consequently we can date inscriptions of members of the imperial household (Nos. 171–5 below), because freedmen took the family names of whatever emperors presided over their manumission.

(21) There are two ways in which names can be derived; one is arbitrary and the other natural. It is arbitrary to impose whatever name anyone wishes – for instance, when three men buy one slave at Ephesus, often one of them will derive the name from that of the trader, e.g. Artemidorus, and call him Artemas, while another will call him Ion after Ionia, the district where he bought him, a third Ephesius because he was bought at Ephesus; so everyone calls his slave something different after different things, just as he likes.

14. *Code of Theodosius*, 4, 8.5 (Interpretation)

The corollary to the principle that a man who was a slave was a slave for ever unless his owner manumitted him in accordance with the recognised procedure, was that a free man too was free for ever, unless he became a slave in a legally recognised way. Thus Greek law codes lay down heavy penalties for anyone who kidnaps a free man (see No. 3 above; freedmen need particular protection: see No. 25 below, or a fifth-century law from Gortyn, Hainsworth *Tituli Dorici et Ionici* (Leyden 1972), No. 64 = Schwyzler 175). Under Roman law, any person

who was forced to serve as a slave illegally – not just a Roman citizen – could appeal to a Roman magistrate to be restored to free status (see Nos. 121 and 230, ch. 3.1 below). In a Constitution dated Sirmium, 20 July 322 AD, Constantine reminds the Prefect of the City of Rome, Maximus:

If anyone tries to reduce to slavery someone who is free, [the Emperor] commands that, on the order of a judge, he is to be led past the populace and through public places in order to find a man to defend his status; and if he finds such a sponsor, he is to petition the judge in writing, so that his free-born status should not be lost as a result of silence. If the person who is claimed as a slave cannot assist himself or fails to find a sponsor, he is to be handed over as a slave to the master who claims him back, but is not to suffer any legal penalty. But he is not to lose utterly any hope of freedom as a result of being handed back in this way, and if he does later find an opportunity and a sponsor, he is to claim free status and must be heard by the law. If the suit is renewed in this way and those who are claimed as slaves prove that they are free-born, then he who had unjustly imperilled their free-born status is to be required to pay the same number of slaves of the same age and sex to those whom he tried to reduce to slavery. In the assessment of this fine, those slaves are not to be included who are shown to have been born while the case was pendent.