---

A table of contents for *Bibliotheca Sacra* can be found here:

https://biblicalstudies.org.uk/articles_bib-sacra_01.php

crystal have their abode; its communion is with the silent stars; it evaporates its liquids, and analyses its compounds in noiseless experiments. It may have tendencies which need to be resisted, but it is nevertheless not to be despised as a helper in acquainting us with God.

---

## ARTICLE VI.

### ROMAN SLAVERY.

Translated from the German of Dr. W. A. Becker, Professor in the University of Leipsic. By J. O. Lincoln, Prof. of Latin in Brown University.

[The following article is a translation from a learned work of Prof. W. A. Becker, entitled "A Manual of Roman Antiquities," now in course of publication in Germany. The first Part appeared in 1843, and is devoted to the subject of Roman Topography. It consists of two minor parts, the first embracing the sources of information, and the literature of the subject; and the second, the Topography itself. Accompanying this Part are a Plan of the City, prepared under the personal direction of the author, and four Plates, illustrative of the Fora, the Capitol, Fragments of the Capitoline Plan and Roman Coins. This Treatise on Topography has attracted great attention in Germany; and has been the subject, for the most part, of very favorable criticism; and even its severe reviewer, Prof. Preller of Dorpat, in the Jena Journal,[1] concedes to it the highest distinction in this department of labor, and calls it "the most useful Manual of Roman Antiquities." This review has elicited a rejoinder from the author, which has appeared as a Supplement to the First Part of the Manual, under the significant title of "A Warning," and, we fancy, will effect the author's purpose, of clearing the lists of all antagonists, who are not duly armed and equipped for the contest. The controversy involves the merits of what may be called the Italian and the German schools of Roman Topography; and Prof. Preller, a distinguished laborer in classical Archaeology, having spent the winter of 1843—44 in Rome, and prosecuted his topographical investigations in habits of daily intercourse with Canina and with the scholars there associated

[1] Jena Allgem. Liter. Zeitung, 1844, Nos. 121—127.

in the Archaeological Society, has come forth, on his return to Germany, as the champion of the Italian school, to rescue its fallen honor from the victorious hands of Dr. Becker. This matter is perhaps not yet at an end; but it may be safely concluded, that Roman topography has suffered no material injury under the treatment of Dr. Becker. The truth is, and we speak not without personal knowledge, the labors of Prof. Preller, though characterized by great ability, and conducted in connection with daily investigations on the spot, have not sprung from purely professional aims, nor been animated by an independent love of science, but have been largely mingled with private and local prejudices, and imbued with the zeal and spirit of party. This whole subject deserves an extended review; but we only remark in this passing notice, that it remains to be seen, whether the thorough philological cultivation and learning of a German scholar, aided by a personal examination of Roman localities, will not, in the settlement of the vexed questions of Roman Topography, prevail over the inferior classical scholarship of Italy, though combined with the great architectural skill and knowledge of Canina, and his long and intimate acquaintance with all the local antiquities of Rome.

It is from the second Part of the above mentioned work, only the first subdivision of which has very recently appeared, that the following account of Roman Slavery has been translated. This Part is devoted to the subject of Political Antiquities, and the present subdivision embraces three chapters, the first on the Origin of the Roman State, the second on the Divisions of the Roman Population, and the third on the Civil Constitution under the Kings. The account of Slavery occurs as one of the sections in the second chapter. In its character and method, it illustrates the learning and scholarship of the whole work. On account of its intrinsic merits, as well as the fact of the prevailing interest in our country on the general subject, we have thought it worthy of being rendered accessible to the American reader. We have not been unmindful of the valuable Essay on this subject by Prof. B. B. Edwards, which appeared in the Biblical Repository, Oct. 1835. The great merit of that Essay is too well known, to need any notice from the Translator of this Article; but its plan and contents were so far different, as not to render the present account superfluous or needless. It embraces some topics that lay beyond the present author's design, and on others did not profess to give minute and detailed information. The various forms of manumission, the civil position of the Libertini, and several other topics, are here

discussed more fully, exactly and satisfactorily, than in any other account that we have been able to find. We hope that the article itself, as well as the learned notes of the author, will prove useful to teachers and all others, who are interested in obtaining exact information on the subject of Roman Slavery.—Tr.]

In Rome, as in all the States of antiquity, the whole population fell into two classes, the *liberi* and the *servi*, the free, and the not free, or the slaves. In the earliest periods, the free were those who formed, in the tribes and the curiae, the *populus Romanus*, and there were no gradations of liberty; except that the clients (*clientes*) held a peculiar relation of political dependence, and enjoyed only a partial freedom. But when liberty came to be bestowed upon slaves, and there arose a class of persons, who were free, and yet did not stand upon a level of equality with the originally free, it became necessary to distinguish degrees of freedom.

The idea of freedom was defined by the Romans only in a negative manner. The lame definition,[1] according to which liberty is the natural power of doing anything that one will, unless hindered therein by violence or by law, was scarcely noticed in potitical and civil law, and the free were regarded only in opposition to slaves—a free man was one, *qui servitutem non servit*, who did not serve as a slave.

The free were divided into the *ingenui*, the freeborn, and the *libertini*, the freed, or the freedmen.

It was sufficient to the claim of free birth,[2] to be born of a free

[1] Inst. I. 3. (Justinian's Institutes.) Summa igitur divisio de jure personarum haec est, quod omnes homines aut liberi sunt, aut servi. Et *libertas* quidem est *naturalis facultas ejus, quod cuique facere libet, nisi si quid vi aut jure prohibetur*. Also, Theophilus I. 3. p. 22. Goth. (Godefroy's Edition) p. 43. Reiz' do. εὐχέρεια φυσικὴ ἑκάστῳ συγχωροῦσα πράττειν, ἃ βούλεται, ἐι μὴ νόμος ἢ βία χωλύσει, etc. Comp. Gaius, I. 9. Cicero also contents himself with the same definition in Paradoxa 5. 1. Quid est enim libertas? *potestas vivendi, ut velis*. An quisquam est alius liber, nisi ducere vitam, cui licet ut voluit?

[2] It is probable that, in the earliest times, the condition of free birth was guarded with more strictness; that only the patricians were at first considered *ingenui*, then afterwards also the plebeians; but the son of a freedman would scarcely have been so considered. But it is certain that very early the notion of *ingenuus* was confined to free birth, in distinction from manumission. Thus *Gaius* I. 11. (a jurist in the time of Aurelian) *Ingenui sunt, qui liberi nati sunt*. Isid. Orig. IX. 4, 46. (Isidorus Originum, sive Etymologiarum.) Ingenui dicti, qui *in genere* habent libertatem, non in *facto*, sicut liberti. Thus it appears that the *ingenuus* was born at once to freedom and to citizenship, and came directly with birth into the class of the free.

mother; and the further development of this condition led to the mild practical view, that in all cases the decision should be made in favor of the child. Thus the condition was secured if the mother were free at the time of the birth, although the emancipation had taken place during pregnancy; on the other hand, it did not derogate from the freedom of the child, if the mother became a slave during pregnancy, and became a mother as a slave; and finally too, the children of a free woman by a slave, were considered free persons.[3]

Besides the natural freedom by birth, there was the liberty by manumission, as in the case of liberti, libertini, which will be more particularly explained below.

A Roman could be deprived of liberty in more than one way, but the gradations of civil freedom always remained unchangeable. The freedman could never gain the rights of free birth, and again these rights could be lost only with freedom itself. Hence when a freeborn Roman fell into slavery by captivity in war, and afterwards regained his liberty by manumission, and coming back to Rome was again invested *jure postliminii* (by the right of return) with his former rights, he passed notwithstanding the manumission, not as a *libertus*, but as *ingenuus*, according to the principle, *natalibus non officere manumissionem* (that manumission is no hindrance to one's birth-rights.

The class opposed to the free, as already mentioned, was the slaves. In reference to their position, it was the fundamental

[3] Inst. I. 4. Ingenuus est is, qui statim, ut natus est, liber est; sive ex duobus ingenuis, sive ex libertinis duobus, sive ex altero libertino et altero ingenuo. Sed etsi quis *ex matre nascitur libera*, patre servo, ingenuus nihilominus nascitur, quemadmodum, qui ex matre libera et incerto patre natus est, quoniam vulgo conceptus est (vulgo, illegitimately). Sufficit autem *liberam fuisse matrem eo tempore, quo nascitur*, licet ancilla conceperit. Et e contrario, si *libera conceperit*, deinde *ancilla facta pariat*, placuit, *eum qui nascitur, liberum nasci*, quia non debet calamitas matris ei nocere, qui in ventre est. Comp. Marcian. Digesta, I. 5. 5. and XL. 2. 19. The principle that one born of a free mother, but of a father who was a slave, is free-born, held *jure gentium*, by the law of nations, Gaius I. 82. On the other hand, several legislative enactments, as the Lex Aelia Sentina, and the Senatus Consultum Claudianum, did not acknowledge it, Gaius I. 83—86. Comp. Tacitus, Annals, XII. 53. and Suetonius, 'Vespasian,' p. 11. By the above S. C. the free woman, who became pregnant by a slave, without the consent of the slave's master to such intercourse, became the female slave of that master, and her child was a slave; if the master gave his consent to the intercourse, the mother remained free, but the child was at once slave and the property of the master. Hadrian altered this law, in favor of the freedom of the child, in such cases, where the mother remained free.

opinion of antiquity, that they were subject, it is true, contrary to their natural destination, but yet not the less *jure*, to the power and dominion of another.[4] In relation to his servitude, the slave was called *servus*, in Greek, δοῦλος; to the master's right of property in him, *mancipium* (ἀνδράποδον); in respect to his employment and services, *famulus, puer* (οἰκέτης, παῖς).

Slavery was established among the Romans upon a two-fold basis, *jure gentium*, by the law of nations, and *jure civili*, by the civil law. *Institutiones*, I. 3. 3. (by Justinian) Servi aut nascuntur, aut fiunt. Nascuntur ex ancillis nostris *fiunt, aut jure gentium, aut jure civili*. The same is otherwise expressed in the Digesta (Pandects), I. 5. 5. Servi autem in dominium nostrum rediguntur, *aut jure civili, aut gentium*. *Jure civili*, si quis se major viginti annis ad *pretium* participandum venire passus est; (the *pretium* means the price of his freedom, in reference to the case of a free person fraudulently allowing himself to be sold as a slave for the sake of a share in the purchase-money) *jure gentium* servi nostri sunt, qui ab hostibus capiuntur, aut qui ex ancillis nostris nascuntur. The former of these divisions explains the origin of slavery, in its relation to the slave, the latter has regard to the legal title of the master. The latter is the more useful and logically correct, for the distinction *aut nascuntur, aut fiunt* has no practical value, and those *qui nascuntur*, belong to the class of slaves *jure gentium*.

Accordingly, slavery could take place:

1. *Jure gentium*, by the law of nations, and

a) By capture in war, since the captured enemy, in common with all that was taken, became the property of the victor. Such prisoners of war were either destined, as *servi publici*, to the service of the State, or sold, as in the majority of cases, for the benefit of the public treasury.[5]

---

[4] Florentius, Digesta I. 5. 4. Servitus est constitutio *juris gentium*, qua *quis dominio alieni contra naturam subjicitur*. So Inst. 1. 3. Theophilus 1. 3. 2. Δουλεία δέ ἐστιν ἐθνικοῦ νομίμου διάτυπωσις ἐξ ἧς τις ὑποβάλλεται τῇ ἑτέρου δεσποτεία, ὑπεναντίον τοῦ φυσικοῦ νομίμου. In regard to the efforts of Greek philosophers to justify slavery, see Charicles II. p. 21 sqq. [a work on the Private Life of the Greeks, by Becker, the author of the present article, and resembling in plan and character Gallus, the corresponding work on Roman life, which has already been translated in England, though not yet re-published in this country.]

[5] The expression for the sale of prisoners of war was *sub corona venire*, as Livy, II. 17. IV. 34. IX. 42. Caesar, Bellum Gallicum, III. 16. Sometimes the more general expression occurs, *sub hasta venire*. The words *sub corona*

b) By birth. All who were born of a female slave, were slaves by birth, and belonged to the master of the mother, whoever might be the father, and whether a slave or not.[6] Some exceptions to this rule were made by particular laws (Lex Aelia Sentina, Senatus Consultum Claudianum), by which in certain cases the child of a free person became a slave, and vice versâ of a slave became free. (See above, Note 3.) The special name for slaves by birth, is *verna*.[7]

2. By the civil law. A free-born Roman could become a slave on several grounds: when unfaithful to his duties towards the State; when an insolvent debtor (since, according to the earliest legislation, the creditor could sell the debtor); and also when he had been guilty of certain crimes. Here, too, belongs the case of a free person fraudulently participating in the act of selling himself as a slave, for the sake of gain. But all these cases do not here deserve special notice, because it is very doubtful, whether a free-born Roman could ever become the slave of a Roman citizen. These various instances have respect to the loss or deterioration of the position of a free citizen in the State, by which he became more or less liable to certain civil and social disabilities. The practical servitude resulting from *mancipatio*, *nexus*, and *addictio* (as in case of debtors), cannot be considered genuine slavery.[8]

---

are to be understood literally. As in Caelius Sabinus, in Gellius VII. 4.—Mancipua—coronis induta—idcirco dicebantur *venire sub corona*. So Cato in Gellius, and also Festus, p. 306. Sub corona venire dicuntur, quia *captivi coronati solent venire*, etc. [Thus it appears that the captives were brought to market *crowned with garlands*, like the victims destined for sacrifice in the temples, and hence *sub corona venire*.]

[6] According to the principle, that in the cases, where there is no connubium (i. e. lawful wedlock, marriage between free persons) the children followed the *mother*, *partus sequitur matrem*. Ulpian, (a jurist in the time of Constantine,) Digesta, I. 5. 24. Lex naturae haec est, ut qui nascitur sine legitimo matrimonio, matrem sequatur, nisi lex specialis aliud inducat. Gaius I. 82. [*Connubium* is the word for the marriage-relation viewed from the position of the State, valid, lawful marriage, to which it was necessary that both parties be free persons—*matrimonium* has, properly, reference to the position of the wife (from *mater*, mother), meaning the honorable connection of a woman with a man as her husband. The word for the marriage connection between slaves, is *contubernium*.]

[7] [Dr. Becker introduces here a long and learned note upon the etymology of *verna*; which, however, goes no further than to make out the above fundamental meaning of the word. Döderlein, V. 137. considers it as exactly corresponding to the Gothic word *barn*, *one born*, *a child*.]

[8] [The author has here a paragraph of considerable length on the supposed import of *injusta servitus*, as opposed to *justa servitus*, the *servitus* being *injusta*, e. g. when a free-born Roman was taken prisoner in war. But he contends

With the Romans, a slave passed indeed for a human being, but one without any personal rights; in the legal sense he had no *caput*, no legal rights, no legal capacity.[9] He was in the *potestas* (power) of the master; but in a different manner from the case of children, in the power of the head of a family—with the slave it is a *potestas dominica, dominium*.[10] In consequence of this *dominium*, the master had entire right of property in the slave, and could do just as he pleased with his person and his life, his powers and his earnings.[11]

In regard to the power of life and death, it was unlimited. The master could use the slave for any purpose that suited his own pleasure. He could punish him, put him to pain and torture, and, free from all obligation to give an account of his actions, could put him to death in any way that pleased him. This right of unlimited dominion continued down to a late time, and certainly through the whole period of the Republic; and it can even be safely assumed that it was in less actual exercise in the earlier than in the later periods of Roman history. The arbitrary exercise of this power, which had been previously only subject to censorial animadversion, was gradually limited, at first by the operation of the Lex

that the expression never occurs in such sense either in classic or in legal use; and that, on the contrary, where it does occur, it has an entirely different sense. *Justa servitus* means *regular, lawful slavery*. If one is emancipated from such slavery, he becomes *libertinus, a freedman*. On the other hand, in cases where a person serves as a slave, but in such circumstances that, if he is freed, he becomes not *libertinus*, but returns to the class of the *ingenui*, the *free-born*, the condition cannot be called *injusta servitus*, but only not *justa servitus*, because to this latter is necessary not only *servire*, but also *jure servire* or *servitutem servire*. The true distinction of *injusta servitus*, on the contrary, is established upon a different, upon a philosophical basis. It is the Aristotelian justification of slavery on the ground of the original destination of some to be slaves and of others to be masters, of some to be rulers, and of others to be subjects, etc. De Rep. I. 6. According to the view of Aristotle, there occurs an ἀδικος δουλεία, *injusta servitus*, when the ἀνάξιος δουλεύει, i. e. the individual serves as a slave, who was designed ἄρχειν and δεσπόζειν, to be the master. To such an *injusta servitus*, there can indeed be the antithesis of a *justa servitus*, but not at all in the sense of Roman law; it would mean a *servitus* in which the φύσει δοῦλος, i. e. the slave by nature—intended to be such—δικαίως δουλεύει, serves justly.]—Tr.

[9] Digesta I. 19. 32. Quod attinet ad jus civile, servi pro nullis habentur; *non tamen et jure naturali*, quia, quod ad *jus naturale* attinet, *omnes homines aequales sunt*. IV. 5. 3. quia *servile caput* (civil condition of a slave) *nullum jus* habet, ideo nec minui potest.

[10] Potestates verbo plura significantur, in persona magistratuum imperium; in persona liberorum patria potestas; in persona servi dominium. Dig. L. 15, 215.

[11] See Becker's Charicles, II. p. 25.

Petronia, which forbade that any one should give up his slave, arbitrarily (*sine judice*), *ad bestias depugnandas* (to fight with wild beasts); perhaps even in the time of Augustus, though the story of the cruelty of Vedius Pollio (Dio Cass. LIV. 23. Seneca de Irâ, III. 40) seems to prove, that up to that time there was no legal restriction on the right of the master. We find that Claudius took some measures to arrest the hard-heartedness of masters; but for the first time under Adrian, and afterwards more rigidly under Antoninus Pius, was it determined by legal enactment, that any one who should, of his own will, put a slave to death, should be just as liable to punishment, as if he had taken the life of any other person, over whom he had no control whatever. In addition to this, it may be observed, that the Grecian principle was introduced by Antoninus, that slaves who had sought refuge in a sanctuary from the excessive severity of a master, could not be brought back by force, but the master was compelled to sell them.

In reference to the second point already mentioned, that all which the slave earned, belonged to the master, the Roman was much more rigid than the Grecian law. Although in Greece the slave was considered ἔμψυχον ὄργανον or a κτῆμα (*a mere instrument endowed with life*, or *a possession*), yet there were there many slaves, who worked as tradesmen, and paid their master only a trifling tax upon the results of their labor; and apart from such a tax, the slaves in these cases had an independent title to the work of their hands. In Rome, on the contrary, the slave could indeed, by great diligence and economy, acquire a scanty property (peculium); but strictly considered, all this together with the slave himself, belonged to the master, and might be retained by him even at the period of manumission. The limitations of this legal provision were only of a practical nature, and grew out of the indulgence of the masters; so that the master not only allowed a slave to acquire property, but also took special occasion to bring about such a result. In these cases, the master either suffered the slave to retain the property, or to purchase with it his freedom.

The slave was not capable of a legal marriage connection, either with free persons or with slaves. The only sexual connection was a *contubernium*, (a mere living together) without any of the legitimate rights of marriage. See above, page 570.

The slave had no regular legal name, none except that which happened to be given him by his master. Thus he was called Marcipor, (Marci puer) Publipor, Quintipor, etc., according to the

name of the master. In other cases, some arbitrary name was given, or one borrowed from his native country, as Lydus, Syrus, a Lydian, a Syrian. Among the Greeks, a slave could bear any name belonging to a freeman, because with the Greeks the name itself was something accidental and changing; whereas with the Romans, as a name was a mark of a free citizen and a family inheritance, it could not be given to a slave.

Thus the slave was treated among the Romans, not as a person, but as a thing, yet always as a human being. He was destitute of all legal capacity; every injury, every offence done to him concerned only the master, and to him alone satisfaction was given, restitution was made. But not all that would have passed for an injury in reference to a free person, was so considered in reference to a slave; on the contrary, a slave could be insulted, and even be struck with the hand, with impunity. On the other hand, too, the master was held responsible for all offences committed by the slave; he could free himself from such responsibility, in cases of private injury, by giving up the slave to the injured party. In regard to offences committed against the master, the punishment was in general left with himself; but in case of the murder of the master in his own house, the punishment was administered by the State, (publica quaestio habebatur,) and on this point, owing to the great number of masters whose lives were threatened by slaves, the barbarous practice was thought necessary, of putting to death, without a single exception, all the slaves who were under the roof of the deceased at the time of the commission of the murder.[12]

[12] The necessity of this practice was argued on the ground, that only thus could the murder of masters be prevented, and their lives held secure. It was held the duty of every slave to hinder by all means the murder of his master, and he was kept bound to this duty by the application of the principle of fear for his personal safety. The first decree of the Senate on this point was the Silanianum, under Augustus, 763 of Rome. Its provisions were increased by Nero. (Tacitus, Ann. 13, 42.) We give it in English: "*A decree passed the Senate to protect the lives of masters by the punishment of offending slaves. With this view it was decreed, that in the case of a master slain by his slaves, execution should be done, not only upon all actual slaves, but also upon all who had received their freedom, but were still living under the roof of the deceased, at the time when the murder was committed.*"

This decree was executed with the utmost rigor, notwithstanding the tumult of the people, in the case of the Prefect of the city, Pedanius Secundus, slain by one of his slaves, in the year 61 A. D. Tacitus, in Annals, 14. 42. thus writes: *According to usage, every slave in the family was subject to capital punishment; but the people, pitying the fate of so many innocent men, assembled in*

### *Manumission.*

Since as we have already remarked, slavery among the Romans existed *jure gentium* and *jure civili*, and no one was a slave *jure naturae*, nothing hindered a slave becoming a freedman. This change of condition was effected by what is called manumission, (manumissio) inasmuch as the master released the slave from his own power—a right, which seems to have belonged to the master from the earliest times, although mention is found, that before Servius Tullius, the manumission formed the basis of no claim to citizenship.

In reference to this right of manumission, as it gradually developed itself, we have to observe two kinds, the *formal*, (feierliche, solemn,) and the *informal* (unfeierliche, not solemn,) *manumission*. The formal manumission took place by means of a solemn act, in which the master renounced his power forever, and its consequence was unrestricted freedom, and citizenship: by the *informal* manumission, the slave was only practically free, and, *jure Quiritium*, passed still for a slave, if the formal act did not follow.

Of the *formal manumission*, there was in the earliest times only one kind, the *manumissio vindicta;* afterwards three kinds, there being added to this one, the *manumissio censu*, and the *manumissio testamento*.

The *manumissio vindicta* was a symbolic action, by means of which the master declared before a judicial tribunal, that the slave should henceforth be free. The action itself consisted in this; the master appeared with the slave before the Praetor or some other one of the higher magistrates,[13] and a third person, in later times always a lictor, by an outward sign divested the mas-

*crowds, bent upon opposing the execution, and the affair well nigh came to a seditious insurrection.* And 14. 45—*Then the emperor issued a proclamation, and all the streets, leading to the place of execution, were lined with soldiers under arms. The unhappy victims suffered death.* The number in this case was four hundred.

[13] This act of emancipation always occurred before a magistrate; Livy (41. 9) names dictator, consul, interrex, censor, praetor; in the times of the republic, at least in the best times, in Rome, before the Praetor, and in the provinces, before the Proconsul or Propraetor. Afterwards, however, there was a departure from this rule, and it was sufficient that the emancipation took place before a magistrate, and in any place. Digesta, 40. 2. 7. Gaius (1. 20) says that the manumission sometimes occurred in the street, when the magistrate happened to be going to the bath, or to the theatre. At such a time, it was not necessary that the lictor be present. When a magistrate himself wished to emancipate a

ter of all power over the slave. The lictor laid a little staff[14] (festuca, virga, vindicta) upon the head of the slave, and solemnly pronounced these words: Nunc ego hominem liberum esse aio, I declare this man to be free.

The master then took hold of the slave by the hand, or by some other part of his body, turned him round,[15] uttering, at the same time, these words: hunc hominem liberum esse volo, (I choose that this man be free,) and then let him go. The magistrate finally ratified the declaration of the lictor (or *assertor in libertatem*,) and formally announced that the ceremony of manumission was complete, after which the master and others present congratulated the *novus libertus* in these words: *cum tu liber es, gaudeo*,[16] (I rejoice that you are free.) It is probable that the grounds of emancipation were given to the court by the master, and afterwards put on record, but this does not clearly appear, in regard to early times; afterwards as limitations of the right of manumission were introduced, such a course was unquestionably necessary.

---

slave, the ceremony always was observed in presence of an officer higher in authority than himself. Thus in Digesta, 40. 1. 14. Apud eum, cui par imperium est, manumittere non possumus. Sed praetor apud consulem manumittere potest. Apud collegam suum praetor manumittere non potest. Hence the emperor could emancipate without the Vindicta, because there was no one higher than himself, as in same passage, Imperator cum servum manumittit non vindictam imponit, sed cum voluit, fit liber is, qui manumittitur, ex lege Augusti.

[14] Cicero's Topica, 2 288. Vindicta vero est virgula quaedam, quam lictor manumittendi servi capiti imponens, eundem servum in libertatem vindicabat, dicens quaedam verba sollemnia, atque ideo illa virgula *vindicta* vocabatur. Comp. Horace, Sat. 2. 7. 76. Persius, 5. 83. But the proper name was festuca. Gaius, 4. 16. Qui vindicabat, festucam tenebat, etc. See Plautus Miles 4. 1. 15 and Persius 5. 175. The lictor gave the slave with it a *slight touch upon the head*, which is the meaning of *imponere vindictam*. In other places it is represented as a blow given the slave. Claudianus de quarto consulatu Honorii 615—grato remeat securior *ictu*, Tristes conditio *pulsatu fronte* recedit. A still more *striking* mention in Sidonius Apollinaris, Carmina 2.—Quorum (i. e. freedmen) gaudentes exceptant verbera malae (*cheeks*), where we might understand a veritable blow upon the cheek—especially when we compare a passage from Phaedrus, 2. 5. multo majoris *alapae* mecum veneunt. The same word *alapa* (a blow on the cheek or a box on the ear) occurs in Isidorus, Origines 9. 4. Apud veteres quando manumittebant, *alapa* percussos circumagebant.

[15] This act of turning the slave round seems to have been an essential part of the ceremony. Appianus relates of Labeo,—*τῆς δεξιᾶς λαβόμενος, καὶ περιστρέψας αὐτὸν, ὡς ἔθος ἐστι Ῥωμαίοις ἐλευθεροῦν*, etc.—having taken him by the hand, and *turned him about, according to the custom of the Romans, when freeing a slave*, etc. — So also Persius 5. 75. Una Quiritem *vertigo* facit—one *turn* makes a Roman citizen. And also ib. 78.

[16] This occurs frequently in the comic writers. Plautus, Menaechmi 5. 7. 42. and 5. 9. 87. Terence, Adelphi, 5. 9. 15.

This *manumissio vindicta* may justly be considered as the oldest form of emancipating, although the Vindicius mentioned in Livy, B. 2. 5, who made known the conspiracy of the Tarquins, is called the first one *vindicta manumissus*;[17] he was probably so designated, because that affair presented the first occasion of recording in history this ceremony of manumission.

The great importance of this formality is put beyond the possibility of doubt by Gaius, in his Doctrine upon the general subject of *Vindicatio*, (that is, Assertion of ownership, Appropriation). See in particular, Gaius, 4. 16. He is there treating of the *vindicatio* proper, where two parties in court contend for the possession of anything, and he instances in illustration the case of a man as the thing claimed. Hence the technical legal expression, applied to every species of property, *vis civilis* et *festucaria*, that is, the *civil force, outwardly indicated by the festuca*, resorted to, in asserting and maintaining an exclusive right of ownership. (This subject is fully discussed in Gellius, 20. 10.) Thus the *manumissio vindicta* was a particular case of this legal *vindicatio*, though necessarily somewhat modified in form. The *vindicatio* in this particular case was a *vindicatio in libertatem*, where the lictor or whoever else was the third party appeared as the *assertor libertatis*, that is, appeared as a *quasi* opponent of a master, and asserted a claim to the liberty of a slave. The two contending parties, then, were the lictor and the master, and the matter at issue the freedom of a slave. The modification of the ceremony consisted in this: the claim of the lictor having been put in, the master waived his right as the other party, being willing that the slave should be free, and instead of using the ordinary form, hunc hominem *meum* esse aio, I declare that this man is *my property*, uttered the expression, hunc hominem *liberum* esse aio, I declare this man *to be free*, and thereby gave his consent to his freedom. According to Gaius,[18] the *festuca* must be traced to the usages of war, as it represented the spear, *hasta*, the common emblem of rightful ownership. The name *vindicta* was unquestionably of later origin. The second kind of *formal manumission* was called *manumissio censu*, as the master had the name of the slave at once entered into the lists of

[17] Livy, 2. 5. Ille primum dicitur vindicta liberatus, etc. and Plutarch, Poplicola, 7. If the name *Vindicius* itself be not a fiction, it might have been derived from the *vindicta*, the person there referred to having been perhaps the first one, who was *publicly* freed.

[18] Gaius, 4. 16. *Festuca* autem utebantur *quasi hastae loco signo quodam justi dominii*; [omnium] enim maxime sua esse credebant, quae ex hostibus cepissent.

the censors as a citizen.[19] This act of registry presupposed that the slave had already a sufficient *peculium*, or that the master gave him with his freedom a private fortune. The simple entering of the name upon the lists of the assessors, without any farther legal procedure, was all that was necessary to render the emancipation good in the eye of the law; the question, however, has been started, whether the person became a free citizen immediately, or at the next following lustrum.

The precise age of this form of emancipation cannot be pointed out. It is perhaps very old. It seems to have been preserved until the time of Adrian, though under altered relations, and after that period to have fallen into disuse.[20]

The *third form* was the *manumissio testamento*, manumission by will. This was common in early times, as it is mentioned in the laws of the twelve tables. It took place either directly, by an express clause in the will, or indirectly by a *fideicommissum*, legacy in trust, in accordance with which the heir was to effect the emancipation. This latter method was also extended, by means of purchase, to the case of slaves, belonging to the heir or to the legatee, or to any other person.

In the former of these just mentioned modes, where the slave was freed directly, he became the freedman of the testator, and was consequently without a patron, though sustaining a similar relation to the heir of his former master. Such a slave was called *libertus orcinus*,[21] (*orcus*, death, because freed by the last will of his master). The slave freed by legacy in trust became *libertus manumissoris*, the freedman of the legatee, who actually effected the emancipation. To the condition of these last, previously to

[19] Göttling, (Staatsverfassung,) thinks that this manumission by the Census was at first only an accidental appendage to the *manumissio vindicta*, and that in all cases this latter had already taken place. But this seems to me very improbable. The person freed by the Vindicta was unconditionally free, and there can be no doubt that he himself as already a citizen, had his name entered with the censors, without the intervention of his patron. What proof can be obtained from the passages cited, in Plutarch, Poplicola 7. and Livy, 2. 5. 41. 9. seems to me unintelligible.

[20] Huschke, Verf. d. Serv. p. 544. thinks, that this was the last form of the *justa manumissio*, after the introduction of the twelve tables.

[21] For the explanation of the word *orcinus*, see the Digesta, 26. 4. 3. The same word is ironically applied by Suetonius (Augustus, 35) to the senators who crept into the Senate by various illegitimate means, after the death of Caesar. These, too, were called by Plutarch, (Anton. 15) Χαρωνῖται (from Χάρων, Charon).

the attainment of freedom, is referred the expression found in inscriptions, *libertus futurus.*[22]

Sometimes slaves were emancipated by will, with a condition annexed, *sub conditione*, for instance the payment of a certain sum to the heir, a point which is mentioned in the Twelve Tables.[23] Such slaves were called, up to the period of the fulfilment of the condition, *statu liberi*, but during the interval still remained slaves.[24] But if the heir himself in any way hindered the due fulfilment, the slave was free without it.[25] For a slave to have an interest in the inheritance, it was a requisite condition, that his freedom had been declared in the will. In such case, he was called *necessarius haeres*, that is, a necessary heir, one who must become at once free and an heir, *nolens volens.*[26]

### *The Limitation of the right of Emancipation.*

By the law of nations every slave was capable of freedom.[27] But in particular cases it could happen, either by special laws, or by some express appointment of the master, that the emancipation might either be entirely hindered, or at least limited.[28] The growing abuses[29] of the right of emancipation finally introduced important limitations, which affected both the slave's capability of freedom, and the master's capability of unconditional manumission. In regard to the qualification of the slave, it was provided

[22] Orellius Inscriptiones Latinae, 2980. 5006. Yet this is scarcely correct, or at least is to be understood as applying especially to those *sub conditione manumissi.*

[23] There were various conditions, besides the one mentioned above. Thus for instance (Digesta, 40. 4. 44), lighting a lamp every other month, and observing other solemnities, at the tomb of the deceased master, serving the heir of the deceased (as in ib. 52) during the period of youth, or (ib. 5. 41) for ten years, or (ib. § 10) for sixteen years. Similar things are also mentioned in connection with persons liberated by *legacy*, § 13, 14. Such instances of emancipation also occur in Greek wills. [We give here the substance of the author's note, without the numerous Latin quotations.]

[24] Ulpian 2. 1. Digesta, 40. 7. 1. 9.

[25] Festus, p. 314. Ulpian, 2. 5. Digesta, 40. 7. 3. 19. § 3. Compare Rein, Römisches Privatrecht, p. 284.

[26] Gaius, 2, 153. Instit. 2. 19. 1. Ulpian, Fragm. 22. 11.

[27] Ulpian, 1 1. 4. Theophilus, 1. 5.

[28] Digesta, 40. 1. 9. Here, too, belongs the ordinance of Adrian (ib. 1. 8) that no slave should attain to actual freedom, who had been freed in order that he might escape the consequences of crime. Up to Adrian's time, it frequently occurred, that a slave was emancipated for the purpose of shielding him from the *quaestio*, *judicial investigation*, as for instance in the case of Milo.

[29] Dionysius, 4. 24. gives a dark picture of these terrible abuses. Compare Dio Cass. 39. 24.

by the Lex Aelia Sentina[30] (757 of Rome) that no slave, who had been the subject of a disgraceful legal punishment should attain to regular liberty and citizenship, but could only be admitted to the lower degree of freedom conceded to the *peregrini dediticii*, (foreigners, captive by surrender). This law also determined, that the person freed, who was under thirty years of age, could attain to regular citizenship, only under certain conditions.

In regard to the master, the same law provided that he must not be under twenty years of age; yet this provision was liable to some exceptions.[31]

A still more important limitation was introduced by the *Lex Furia Caninia* (year 761 Au. C.), which put a check to the disorder occasioned by unlimited emancipation, by providing that in proportion to the number of slaves that any one possessed, only a certain portion could be freed. For one or two slaves there was no definite provision; but between the numbers of three and ten, only half could be emancipated, of any number under thirty, a third, under a hundred a quarter, under five hundred a fifth part, and in no case whatever more than a hundred.

Sometimes the State itself granted liberty to slaves, upon such, for instance as had given information against persons guilty of criminal offences.[32] It is not clear what form of emancipation was in such cases selected. It were the most natural supposition that the *manumissio censu* was then used, but the case of Vindicius already mentioned, and also one that occurs in Varro, seem to be in favor of the Vindicta. There is no reason for supposing, that in such instances the rights of citizenship were not also united with the gift of freedom.[33] On the other hand, it is cer-

[30] Gaius, 1. 13. Theophilus 1. 5. 3. Comp. Suetonius, Augustus, 40. Ulpian, Fragm. 1. 11. Dio Cass. 56, 33.

[31] This, as well as the limitation in the preceding sentence, was left liable to the decision of a council consisting, in Rome itself, of five senators and five knights; and, in the provinces, of twenty Roman citizens; by whom exceptions were admitted, if there seemed just cause for emancipation. Gaius, 1, 18. and § 19. Compare also Gaius, 1. 20. Rein, Röm. Privat. R. p. 278. Walter, Rechtsgeschichte, p. 499.

[32] Cicero pro Balbo, 9. Also his Phillip. 8. 11.; pro Rabirio, 11. So in Livy, 26, 27. the thirteen slaves, by whose exertions the temple was saved from fire; and, on the promise of the Senate to reward with liberty and money, the discoverer of the incendiary, a slave made known the conspiracy, and was rewarded with liberty and twenty thousand *asses* (*viginti millia aeris*). So the two slaves who informed of the conspiracy of the Carthaginian hostages, Livy, 32. 26. and the informers of the slave conspiracies, Livy, 4. 45. id. 22. 33. and 27. 3.

[33] Göttling (*Staatsverfassung*, p. 14. 3) expresses this opinion. The single

tain from this very case of Vindicius, that slaves who had made discovery of a crime that endangered the peace of the State, even at the expense of betraying their own masters, were emancipated by the State, and invested with the fuller immunities of the *justa libertas*. Indeed citizenship was not withheld from such a slave even if he attained freedom by an action, which was acknowledged to be in itself penal; but he was executed as a *civis* by being thrown from the Tarpeian rock, a capital punishment that was inflicted only upon a Roman citizen.[34] In concluding this part of the subject, it is to be observed that there is much obscurity hanging about the civil position of the slaves called *volones* (volunteers), who served in the second Punic war.[35] The supposition that they had previously gained their freedom, and the assertion that after the attainment of a well-earned freedom they had become independent of the State, and free from all civil duties, are equally destitute of foundation.

### *The Liberti or Libertini.*

A preliminary question here arises concerning the distinction between the words *libertus* and *libertinus*. In reference to this point, it may be said with certainty, that in the earliest times, the name *libertus* was applied to a person who was himself freed from slavery, and the name *libertinus* to one who was the son of a freedman; but in the lapse of time, as the distinction between the children of freedmen and the freeborn gradually faded away, there was less occasion for the former being called *libertini*, so that finally this word *libertinus* was also given only to persons themselves made free. Thus both these words, *libertus* and *libertinus*, came to mean *a freedman*, with this distinction between them as synonymes, that *libertus* had reference to the manumission and to the

instance, in which any doubt can be maintained of the truth of the above position, is that of the Volscian slave who betrayed the fortress of Artena to the Romans. But this was a foreign slave, and his conduct merited contempt; for if in ordinary instances duty to the State was deemed paramount to duty towards the master, no such view could be taken of the act of base treason, of which this slave was guilty. Yet it is difficult to determine what relation of freedom this Servius Romanus held, for his name shows that he was a freedman, and he had become a land proprietor; but where is there, in that period, a class of Roman freemen, destitute of citizenship?

[34] An instance of this kind occurs in Plutarch's Life of Sylla, in the case of the slave who betrayed Sulpicius. "Sylla gave the slave his freedom, and then had him thrown from the Tarpeian rock." — Also Valerius Maximus, 6. 5. 7. Dio Cass. 48. 34.

[35] Livy, 22. 57. It would seem, that, at the outset no certain promise of freedom was given. Hence Tiberius Gracchus, whose army was composed chiefly

relation to the former master and now patron, *libertinus* to the rank of the freedman, and his position in the State. [Thus for instance, in practical use, if you wish to designate a person emancipated by Augustus, you would say *libertus Augusti*, not *libertinus;* but if you wished to designate the civil position of a person thus freed, you would call him a *libertinus*, not a *libertus.*]

The first result that emancipation effected, was that the freedman received a name, which distinguished him as a Roman citizen. If he had been freed by a citizen, he took the name and the christian name (Nomen and Praenomen) of his patron, and was admitted into the house (*Gens*) to which he belonged, although he did not become a partaker of all the rights belonging to the membership of this political union.[36] For a family name (Cognomen), he either retained his slave name, or took one borrowed from his natural descent, or from some other source.[37] It is less certain, how it was in early times with slaves who received their freedom from the State. It is probable that for the most part the name Romanus[38] was given them as a Praenomen, but in later times they took the name of the magistrate by whose official services they had been freed.

The new freedman, bearing now the name of a citizen, gave token also by other outward means of his change of condition.

---

of *volones*, proposes their freedom in the senate, in the second year of their service, when they began to show symptoms of disaffection, Livy, 24. 14. On the bestowment of freedom, after the battle of Beneventum, they appear in the usual dress of the *libertinus*, ib. c. 16. Göttling, p. 145, says, "They are free, but not citizens, and scatter after the death of their commander, who freed them;" and intimates that they passed into a condition of absolute independence of Rome. In regard to this Livy, indeed, says (25. 20), that "the volunteer army, who had served with great fidelity while Gracchus yet lived, forsook the standard on his death, as if they were discharged from service;" but this does not seem to have been the case in general, nor had they any right to pursue such a course, and the State regarded those as deserters, who had abandoned the army. In proof of this is the direction sent to the consuls, mentioned in Livy, 25. 22 that "they should take care to collect again the deserters from the volunteer army, and bring them back to military duty." This again in Liv. 27. 38. Therefore it is clear, that they were still regarded as *Volones*, and must be considered as holding a peculiar relation, which is to be distinguished from that of the other *libertini*.

[36] [For an account of the division of the Roman people into tribes, curiae *gentes*, and families, see Niebuhr on the Early Constitution of Rome, Hist. Vol. I. c. 21].

[37] For instance, P. Terentius Afer, Cn. Publicius Menander, and many others in Cic. pro Balbo, 11. Also see Cic. ad Atticum, 4. 16.

[38] Göttling thinks that any name taken at random was assumed for the Nomen (the name of the Gens), and the word Romanensis was added for a Cog-

He assumed the toga, the dress of the free-born Roman, had his head shaven, and wore a hat (*pileus*), or else a white woollen band about his head.

For the future, the freedman remained in a relation of dependence to his former master, that resembled the old clientship, which in early times was held with great strictness, but gradually became more and more loose and uncertain in its character. He sustained various obligations to his patron; but these, with the exception of such as were expressly stipulated at the time of emancipation, grew rather out of a kind of filial relation, than out of any legal relation which involved mutual rights and duties. It is evident from the very nature of the relation of patron, that the freedman was under obligation to cultivate and observe a courteous and respectful demeanor towards his former master, that he should aid him so far as possible in misfortune, and never, except under very special circumstances, sue him at law. But if on the other hand, the freedman should show himself ungrateful to his patron, it does not clearly appear that the latter had any legal means of punishing him and bringing him back to his duty. In the early period of the Empire, however, the patron could banish an offending freedman a hundred miles from Rome:[39] and an instance is mentioned by Göttling, taken from an inscription, of a female slave who was denied by her patron, burial with the usual honors in the family sepulchre. In later times, the prefect of the city, and in the provinces the proconsuls were at liberty to inflict corporeal punishment upon freedmen who had been guilty of gross departures from the duty they owed to their patrons; but nothing of this kind is on record, which has reference to the period of the Republic. It is probable that the increasing corruption of morals and the dissolution of social relations gradually brought about such an indecent and reckless conduct of freedmen towards their patrons, that it became absolutely necessary to fix severe judicial penalties, and in cases of aggravated offence, even to order back a freedman to the condition of slavery.[40]

To the more important rights of a patron, belonged that of in-

nomen. But this cannot be, as Romanensis does not occur, either as Nomen or Cognomen. The appeal to Varro, Lingua Lat. 8. 41. is inadmissible, for the word itself is a mere arbitrary emendation by Müller. For further information on this point, Dio Cass. 39. 43.

[39] Under Nero bitter complaints were made concerning the conduct of freedmen towards their patrons. Tacitus, Ann. 13. 26.

[40] Comp. Walter, Rechtgeschichte, p. 509.

heritance to the goods of a freedman. By a provision in the Twelve Tables, the patron inherited, when the freedman died without a will, and without heirs of his own (*sui haeredes*); but by a praetorial edict this was modified, the half of the inheritance being allowed to the patron, if the freedman left no children; and the Lex Papia Poppaea granted the patron a portion, even when the freedman left children, if the number was less than three.[41] The death of the freedman put an end to this relation of inheritance, since his children were freeborn. On the other hand, on the death of the patron, the children succeeded to the rights of their deceased father. In the case of freedmen who died without nearer heirs, the members of the house to which his family belonged, shared the inheritance.[42]

Having thus discussed the subject of the *formal* or *regular manumission*, with its civil consequences, it remains only that we mention the *informal manumission*. This consisted, in general, in the mere private declaration of a master, that his slave should be free. Such a declaration occurred in various ways. But the most common expression for this kind of emancipation is *manumissio inter amicos*,[43] (manumission among friends,) by which is meant that the master signified his willingness to the freedom of a slave, in the midst of a company of his friends. In other instances, the master declared his will by letter, *per epistolam*, or only in a tacit manner, by inviting a slave to the family table, (*manumissio per mensam*).[44] Such an emancipation formed the basis of a merely practical,[45] not a legal condition of freedom, and the individual still remained a slave in the eye of the law. Yet a recall of such a declaration was not allowed to the master, but the praetor protected[46] the slave against all attempts of the master to reduce him again to actual slavery. This continued to be the arrangement, until the enactment of the *lex Junia Norbana*, (772 *A. U. C.*) which secured to such slaves a right similar to that enjoyed by the Latin colonies, and created the order of the *Latini Puriani*.

In conclusion we have to notice some special forms of manumission. The first is the one that took place, *adoptione*, by adoption, a kind of emancipation which is recorded as a possible one,

[41] Gaius, 3, 40. Ulpian, Fr. 29.
[42] Cic. de Oratore, 1. 39.
[43] Seneca, de vita beata. Gaius, 1. 44.—Instit. 1. 5. 1. and Theophilus 1. 5. 1.
[44] Theophilus, 1. 5. 4.
[45] Cic. pro Milone, 12. Pliny, Epist. 4. 10. Dositheus, de manumissione, 4.
[46] Gaius, 3. 56. Comp. Tac. Ann. 13. 27.

rather than as one that actually obtained.[47] It is probable that in instances of this kind, the adopter was obliged to declare the slave in the presence of the praetor, at once as free, and as his adopted son.

Another special form of manumission, in relation to which there exists much obscurity, is the *manumissio sacrorum causâ*, (manumission for the sake of sacred rites, which the slave was to perform). Festus is the only writer, who mentions this form of emancipation, and the text of the passage is in such a sadly mutilated state, that we can gather from it nothing more than the conjecture, that the emancipation occurred in such cases, for the purpose of investing the individual with certain priestly functions. So far as the mere form is concerned, this species of emancipation mostly coincides with the *Vindicta*, though the same words were probably not employed.

A third special kind to be mentioned, is that in which the master emancipated a slave on his dying bed. This is mentioned by Labeo, cited in Appian, Civ. 4. 135. It is singular, that Labeo there imitated the action of the Vindicta, and it may well be questioned, if such a declaration of the master's will was regarded as a form of the regular manumission, or merely of one that occurred *inter amicos*.

Finally, is the instance only once mentioned, of a sick slave being emancipated, that he might die a free man.

These last four species do not form new kinds of emancipation; the first two might be classed under the Vindicta, the third either under the *manumissio testamento*, or the *manumissio inter amicos*; the last stands by itself, as an instance of an informal manumission.

---

[47] Gellius, 5. 19. Instit. I. 11. 12. Comp. Quintus. Declin. 340. 342. See also Huschke, Studien d. Röm. Recht. p. 212.