

FREEDOM AND SLAVERY IN ROMAN LAW.¹

Persona, or *caput*, originally, meant the *Juristic Role of a Being of Will*. Hence all human beings were classified from the legal point of view as falling under the Law of Persons even when, as in the case of the slave, the individual was considered more as a thing, an object of rights rather than a subject thereof. Within this Law of Persons were also included Artificial Persons, such as corporations, under the fiction that they had a soul—or at least a will, expressing itself through their representatives.

Later *persona* and also *caput* differentiated in meanings into: (1) "a human being" (2) "full legal capacity." Thus we find Ulpian using the former in his dictum: "*Servile caput nullum ius habet*"; and Paul, the latter in his dictum: "*Servus nullum caput habet*." In the latter sense, legal personality of a human being began with birth and terminated with death, subject to the following fictions: (1) If an interest of the child arose after conception and before delivery, his existence as regards that interest was dated at that moment; (2) To secure a legal personality for the juristic acts of an inheritance not yet accepted by an heir that of the deceased proprietor was protracted.

In the fully developed Roman Law two elements were held to be necessary for full legal personality. They were (1) freedom from slavery (*libertas*), (2) citizenship (*civitas*). The loss of either of these elements involved loss of status. There were, further, certain incapacities of *law* such as those involved in marital and parental authority, and of *fact* such as female sex, youthful age, mental weakness, prodigality, etc.

The explanation by the institute writers of the grounds for slavery, while ethically unsatisfactory, suggests the general remark that law faithfully mirrors existing social institutions and conditions. Captives (adult males at least) were

¹In this sketch I have followed in the main Girard's treatment in his *Droit romain*.

butchered in primitive warfare. But there came a time when a people that had reached the pastoral and agricultural stage perceived the economy involved in sparing the lives of captives and using their unpaid service in farm labor. Thus slavery arose.

Slave a Thing The prevailing view of the Roman slave was that he was *a thing* and *not a person*.

1. He could have no family. The union of male and female was a mere fact, not a legal marriage.

2. He could have no property, could not be creditor or debtor, could not have an heir.

3. He was unable to appear in court. Injury to him constituted a tort against his master, as in case of any damage to property.

4. He was an object of property and possession, alienable like other property. He might be the joint property of several, or one might have a usufruct in him, another the bare title. Like other things he might be abandoned by his owner, not becoming free, but subject to occupation by the first comer.

But the fact that the slave was a human being differentiated him from other objects of property, and assimilated his position in certain important respects to that of a descendant under parental power. The modifications of the original view are in part as old as Rome, in part introduced during the period that included the last centuries of the Republic and the Empire up to Diocletian, and are in part due to Christian law.

Modification of View The most important early modification of the view that the slave was a mere thing, appears in the capacity given him to represent his master in certain juristic acts,—to borrow, so to speak, his master's legal personality in order to render that master an owner of property or make him a creditor. A citizen who could not acquire by means of another citizen a property right, an obligation, or an inheritance, could do this by means of his slave. In this respect, then, the slave was not merely an object of property, but was regarded as the instrument of a juristic act. But this capacity was granted the slave only in the interest of the owner and by way of involuntary agency, and it was strictly lim-

ited. It ceased at the point where the slave ceased to borrow his master's capacity. It was granted him only for the acts that the ancient law considered as a benefit to the master as giving that owner property rights. It did not permit of the slave's making his owner *debtor*.

But towards the end of the Republic new conditions and new ideas (particularly those of the stoic philosophy) tended to a larger view of the slave's individuality, not only in the field of property law but also in the law of persons and of procedure.

I. In property law the Civil Law (which, when property damage had been caused by a slave, had held his owner liable, or, if the slave had afterward been emancipated, the freedman himself bound at law for his former tort), reached the point of declaring that the slave's contract created a so-called "natural obligation," *i. e.*, an obligation that could not be pursued affirmatively in courts of justice, but could yet produce certain juristic effects, for example, could be successfully pleaded against compulsory repetition of a payment made in error (to that slave instead of his master).

But the most profound reform originated in the "Magistrate-made Law" of the Prætor's edict. With its crude conception of the master's interest the Civil Law had permitted the slave to acquire for his master, but not to render him a debtor, even if with that master's consent. Therefore the Civil Law prevented a master from employing his slave as agent in acts essential to the perfect freedom of commercial transactions. The Pretorian Law, however, permitted masters to use their slaves not only in becoming creditors, but also in becoming debtors. Pretorian Law ruled that the slave could bind his master when he acted with that master's consent. The two combinations which the Prætor's edict contemplated were these: (1) The master could place the slave in charge of a certain business (say of a commercial venture by sea or land, or of an industrial venture), and in that case, those who contracted with the slave within the limits of his powers, could successfully proceed against his master, on the ground of contract; in case of sale, an action

grounded on the contract of sale would then lie against the master, whether on the ground of his special authorization (*Quod iussu*), or of the general commission which the slave held as being in charge of his master's industrial or commercial venture; or (2) a second course could be followed by the master which would limit his own risks. This employed an institution already in existence—the so-called *peculium*. This *peculium* comprised the objects, live stock, money, houses, fields, other slaves, etc., which it had been customary for Roman proprietors to leave to the free administration of trusted slaves, and which, while at law recoverable by the master at any moment, came in fact to have a distinct character.

Such slaves were allowed to retain and use for themselves such *peculium*. It would practically never be withdrawn from the slave except in case of serious fault on his part.

From this brief statement it will be seen that the master then morally authorized the slave to enter into engagements with a third party respecting and to the extent of the aforesaid *peculium*. In fact he could and often did suffer the slave to contract regarding his *peculium* with the master himself, *e. g.*, to purchase the slave's liberty, if by business ability the slave should have sufficiently increased his *peculium*. To this Roman institution the prætor gave a certain legal validity by ruling that in conceding the *peculium* to the slave, his master had the purpose of authorizing the slave to contract up to the limit of his *peculium* with a third party—that, consequently, the master was liable himself to an action grounded on the slave's contracts, limited as to amount recoverable by the amount of the slave's *peculium*.

These two combinations furnish a good illustration of the way "law follows business." They were invented in the interest of the master himself, and of those who wished to have safeguards for their contracts made with slaves—perfect safeguards in the case of the first combination, and a limited protection in the case of the second. However, in effect, these contrivances of Prætorian Law greatly increased the independence of the slave, and magnified his individuality in the eyes of the law.

2. In the Law of Procedure the change of institutions also contributed to the development of legal status on the part of the slaves. The early law had recognized but one procedure, the ordinary procedure (*Ordo iudiciorum*), under which the magistrate sent the case before a jury. This procedure was inaccessible to slaves. But under the Empire a form of procedure called extraordinary, which we may call *administrative*, involving no jury, but taking place directly before the magistrate, or his legally-trained delegate, comes into use. Under this procedure a slave could appeal directly to the magistrate.

3. Again, in the Law of Persons we find decisions whose ground is the wish to recognize and protect the personality of the slaves. Such are those which take account of the relationship existing between slaves as producing its legal effect after the slave had been emancipated; or, even during slavery, preventing the separation of those whom it united. And numerous provisions are found even in the early Empire protecting the slave against harsh treatment. Yet it must be remembered that these statutes may be regarded as symptoms, as well as remedial.

Christianity continued the movement along the lines of physical protection and regard for ties of family existing among slaves, but did not seriously modify their legal condition.

The causes of slavery were: (1) Birth; (2) Facts; events or circumstances occurring after birth.

1. The child of a slave mother was a slave—no matter who was the father—as a slave woman could not marry, and it was only in marriage that child was linked to father.

In the early law the rigid interpretation of this rule considered only the moment of actual birth; disregarding the status of the mother at the time of conception. But the law changed rapidly on this point; and (taking a position already referred to as an exception to the general rule that legal existence begins at birth), reasoned that the child in the womb had a legal existence the moment it had an interest;

and secondly, that having once a legal existence, it could not lose its liberty by the act of an extraneous person, held that if at the time of conception, or at any later time prior to actual delivery of the child, its mother had been free, the child was born free.

After Birth Slavery was created posterior to birth by (1) the Law of Nations; (2) by the Civil

Law.

Capture was the mode under the "Law of Nations" which operated through the whole period of Roman history. Not only was this true of regular war against a declared public enemy but even under Justinian it applied to any strangers who had no treaty with the Roman government, and therefore no rights. Any one could seize and make a slave of such.

By the "Civil Law," modes of creating slavery varied in different periods. Under the earliest law, a magistrate might sell to foreigners, deserters, and those who avoided the census, or recruiting officers; legal ascendants might sell their legal descendants; creditors, their insolvent debtors; one who had been robbed might sell the robber. The state itself might deliver to a wronged state the Roman causing the offence. It will be noticed that in the early law such a Roman must go into a foreign country—not remain at Rome as a slave.

Under the Empire, Civil Law causes of slavery were as follows: When one allowed another to sell him, pretending that he was a slave (with intent to prove his freedom and share in the price thus fraudulently obtained); also a commuted condemnation to death, or to hard labor in the mines, involved slavery to the municipality. If a free woman sustained illicit relations with a slave against the master's protest, she became that master's slave. These two rules were abrogated by Justinian. Lastly, if a freed slave were guilty of such acts toward his former master as the law termed ingratitude, he could be put back into slavery.

A process at law to determine whether one was free or a slave was stated in the Twelve Tables.

Legal Procedure Legend has it that the second decemvirate fell from power because Appius Claudius, one of its mem-

bers, violated in the case of Virginia the rule of the Twelve Tables by virtue of which *ad interim* possession of the person claimed as slave should be given pending trial in favor of liberty, *i. e.*, to that person (not yet proven a slave). The process was the old "Action of the Law" called the *Actio Sacramenti*. A claim to the slave was entered by the plaintiff, and a counterclaim that the person was free was made, not by the person concerned (for fear that it might result that a slave should have legal status as defendant), but by a representative, a so-called asserter of liberty (*assertor libertatis*). This joining of issue was followed by a wager, which in case of defeat of either party would proceed from that party to the state's coffers. In an action regarding liberty, the amount of the wager was purposely made the minimum amount, so as not to discourage the asserters of liberty!

Under the dynasty of the Severi a special prætor existed with the function of hearing such cases.

According to Roman notions perfect legal personality **Non-Citizenship** appertains only to the citizen. Theoretically, whoever was not citizen was legally a thing, was a slave, capable, if he had no Roman master, of becoming the property of the first citizen to "occupy" him. But these ideas, always the theoretic base of Roman law, never received an absolute application.

The protection accorded to the rights of clients and guest-friends is the very exception which proves the general rule. This protection was given because of the Roman citizen under whose care they were.

But there were always at Rome certain classes of men, free and non-citizens, who yet enjoyed a measure of legal protection. Such were originally the Latins—freemen of Latium, and the Peregrins—foreigners—whose cities had treaties with Rome. As time went on this element in the population became increasingly important. Again, the enfranchisement of a slave was often limited to the rights possessed by one of these classes—not extending to full citizenship. Therefore a complete survey of the law of persons must take account of them. Again, certain facts, events or circumstances would sometimes take away some of the

normal rights of freemen and of citizens without making them either slaves or foreigners.

And first the *Ingenui* or Freeborn persons. An *Ingenuus* was one who was born free and who had never legally ceased to be free. Such a person might be the child of a freed-man and freed-woman. Their blemish did not descend to their offspring (witness the poet Horace). But if one were once made a slave, he did not by regaining liberty regain his quality of free birth. That is, if he had become a slave at Rome. If his slavery had been in foreign parts, and was due to captivity, he regained his former rights by what was called *postliminium*. This view was originally due to the idea that foreign law-systems and their results had no significance in Rome. Later it was supported by the fiction that the returning citizen had never been despoiled of his rights. This retroactive fiction did not, of course, annihilate all the actual facts accomplished during his absence, but considered him as never having lost his *rights* of property and of paternal power.

The *Ingenuus* or Freeborn person might be citizen, or Latin, or Peregrin.

Citizens were those so born and those having acquired citizenship by naturalization or by favor of the law, as will be seen when we consider how one ceased to be Latin or Peregrin.

With reference to birth: When the two parents were citizens of the same condition, from the moment of conception of the child to that of birth, no difficulty meets us. If this were not so, two questions may arise:

1. The condition of which of the two parents was followed by the child?
2. At what moment this condition was effective?

1. Was there a marriage? In that case the child follows the condition of the father. If not (as occurred more frequently if parents were of unequal conditions, marriage being possible only between Romans unless by special favor of the law), then the child follows the condition of the mother. But an exception was created by statute when the mother was Roman and the father Peregrin. Then the child followed the inferior condition.

2. With reference to the question as to which was the determining moment, one must again ask: was there a marriage? If so, the infant takes the condition of the father at the moment of conception, whatever the changes that condition may afterwards have undergone. If there were no marriage, the infant takes the condition of the mother at the moment of delivery, whatever the variations of condition she may have undergone during pregnancy. This rule was never modified, as was that applying to the child of a slave woman who had been free at some moment during pregnancy. Here may be mentioned the classification of the rights of citizens. And first the private rights:

Rights *Connubium*.—The right of legal marriage by virtue of which alone one might found a civil family.

Commercium.—The right to acquire and transmit civil property; hence the right to become creditor or debtor by all the civil modes, and the *Testamenti factio* or right to figure in a testament either as testator, as beneficiary, or as witness.

The public rights of citizens involved:

1. The right to serve in the legions.
2. The right to vote (*suffragium*).
3. The right to hold office.

(The right to vote was indicated in the citizen's official name, *e. g.*, Marcus Tullius, M. f., Corn (elia tribu), Cicero).

How one lost citizenship:

1. If the citizen became a slave (*ex. postliminium*), (*capitis diminutio maxima*).
2. When one becomes a Peregrin or a Latin. This loss was called *capitis dim. media*.

The Latins fall into two classes. The former of these classes, called the Old Latins, included, first, the early inhabitants of Latium, the region lying around Rome, then other various bodies were included, especially colonies that went out from Rome. After about 468-268 a new class of Latins was formed with lesser rights.

The Latins if present at Rome might vote, but could not hold office.

In *Private Law* the *Old Latins* had the *connubium* or right to contract a legal marriage with the Romans. Other Latins lacked this; hence, could not be a part of a Roman family, nor be intestate successors of a Roman citizen.

Their family rights among themselves were controlled by their own national law varying according to their local statutes which often present a likeness to those of Rome.

On the other hand, they have the *commercium* or right to enjoy the general property law of Rome. This means that as between themselves and in their business relations with Romans, they could employ all the methods of procedure of the Civil Law: the processes of conveying title by sale (*manupatio*) and by cession in court (*in iure cessio*), the ancient formal contract called *nexum* and the Roman testament whether as testator, beneficiary or witness.

In the Law of *Procedure*, the Latins could appear in a Roman court, and use the Roman procedure under the urban (*not* the peregrin) Prætor, and they were not confined to the formulary procedure but might use the old "Actions of the Law."

An interesting question is: How could the Latins gain full citizenship?

The modes may be grouped under:

1. Particular statute.
2. Naturalization.

1. The *Old Latins* could become Romans by merely domiciling at Rome. A statute revoked this right in (654-95) leading to the so-called social war, after which all the *Old Latins* were given citizenship. The statutes gave a Latin citizenship if he had held official position in his own town, and for certain other grounds.

2. Latins could be naturalized under certain laws, sometimes collectively (as the *Old Latins*, by a statute passed in 664) or individually for services rendered. Caracalla's ordinance conferring citizenship upon all inhabitants of the empire applied to the Latins.

The Peregrins were not in the developed stage of Roman law veritable strangers outside the pale of the law's protection. The earliest of these were members of states linked to Rome by treaties. When Rome became a world empire they became her subjects, the

free inhabitants of the empire that were neither citizens nor Latins. Their number was increased by loss of citizenship on the part of Romans who were banished (interdicted from fire and water).

Naturally the Peregrins had none of the political rights of citizens. As to private rights: they had neither the *con-nubium* nor the *commercium*. Excluded from all civil rights they could not protect property rights by the old *Actions of the Law*.

Yet in the developed law of the great state, as Roman subjects they necessarily had relations with Roman citizens, and for their relations necessarily had a law and a procedure.

Their law was set, failing the rare extension to them of Roman statutes, partly by their national law and partly by the Law of Nations. The extent to which the Peregrin might enjoy his own national law was determined at the time of the submission of his state, or when it was organized as a province (*cf.* Porto Rico). This subject demands study. The documents have not yet been properly worked up.

But in any case the laws of individual states would apply only to Peregrins of the same state, and not even then when their state had made such an obstinate resistance as to receive no permission to use its own local statutes (*e. g.*, Jews). Such people were called "Surrendered" (*sediticu*). More important is the fact that the local statutes could not apply when the Peregrins belonged to different states, or when one of the parties was Roman citizen—the other, Peregrin.

But the *Law of Nations* was open to all peregrins as well in their relations with each other as in those existing between a peregrin and a Roman.

(The *Law of Nations* comprises a body of law progressively formed to serve as common law for all the members of the empire. While it does not present extensive rules in the *Law of Persons*, it does furnish a complete system of modes of acquiring property, of forming contract obligations and releases, to meet business needs.)

In *procedure*, to pass over special forms within the local systems of Peregrins, they could certainly enforce by legal

procedure the rights which Rome recognized as theirs, and before Roman tribunes. The process employed involved the special jury of three or five, called *recuperatores*. In 512 the task of attending to such cases, and securing such special juries, had become so great that a special prætor was appointed for them called the *Peregrin Prætor*. Before the formulary procedure was established by the statute called the *Lex Aebutia*, the *Peregrin Prætor* had found it necessary to indicate to such special juries their special task, in a sort of *advance* charge to the jury called the *formula*. Freed as he then was from the narrow restrictions of the *Actions of the Law*, the *Peregrin Prætor* developed a system of procedure which took the place of the actions of the law. We have already indicated the growth of the individuality of the slave under this system of procedure. The *Peregrin* could protect almost all his rights by it. Under the final system of procedure (after Diocletian), the so-called extraordinary procedure, the right of the *Peregrin* to legal procedure could not be called in question.

The *Peregrin* could become a citizen, as could the Latin, by special favor of the law or by naturalization. Under Justinian successive extensions of citizenship left the name of *Peregrin* only to those who had been condemned to the most serious penalties. But the thing itself existed in the case of the Barbarians living in frontier districts.

Citizen	Freedmen might be classed as citizen freed-
Freedmen	

men, Latin freedmen, or *Peregrin* freedmen.

The citizen freedmen, the only kind existing after Justinian, could be created in several ways. These are interesting as showing how a legal form may be extended to purposes never contemplated at its origin, perhaps even as subterfuges to evade the law.

1. The master might free his slave by having his name enrolled on the list of citizens, the *census*. The law had ruled that a citizen who evaded the census should thereby become a slave. *Per contra*, it came to be held that if on the motion of his master a slave's name were inscribed on the census he thereby becomes free. But as the census was made up only every fourth or fifth year, this method could be employed only intermittently.

2. The second form—by the *Vindicta*—was possible wherever the prætor's court sat. It was a collusive process at law. The owner of the slave had a friend serve as the asserter of the slave's liberty—just as when it was an actual process to decide whether or not a person was free. The slave's master, the only person who might contest the fictitious claim that the slave was free, in court conceded the claim of the asserter of liberty. The court had nothing to do but give a formal decision that the former slave was free, and the emancipation was a *res iudicata*. This is an interesting illustration of the way in which a magistrate while seeming to sanction an existing right could, in effect, create a new right.

3. A third method of emancipation was employed when a master chose to enjoy his property in the slave but deprive his heir of it. In the early period he could apply to the people in convention assembled for a private bill authorizing a change in the legal succession either in whole or in part. This was an early form of testament.

Now he might in this private bill have a provision inserted granting liberty to a slave. Under this form a condition or a date might be set subject to which or at which the slave should be free.

The first two forms gave freedom under the fiction of enforcing an existing right. The third was a definite new creation of the sovereign people. Yet the fact that the first two methods of emancipating were felt to be legal fictions, is shown in that full legal consequences so far as retroactive effects are concerned were not followed out. The beneficiary was considered not as freeborn but as a freedman.

In the later law various special methods of freeing slaves were used. Testamentary emancipation became more elastic as the testament ceased to be a private bill, and developed its modern form. Under Augustus the mortuary trust became a legal act, and the trustee might be bound to free a slave.

Emancipation in court followed the usual course of a symbolic fiction, dropping off the imitations of a real procedure of law, until it became a mere declaration in the presence of the magistrate. Under Christianity emancipation might take place in church before the clergy.

During the Republic the political inferiority of the freedman seemed sufficient protection to the state from any danger resulting from such an increase in citizenship. But under the Empire certain statutes restricting emancipation were passed. The first of these (*Fufia Caninia*) restricted the number of testamentary emancipations to a certain proportion of the slaves owned.

The second (*Aelia Sentia*, A. D. 4) had four provisions:

1. Raising the age of a possible emancipator (from puberty) to twenty years, except when satisfactory grounds could be given for the emancipation.

2. Annuling (not revoking) emancipations made in defraud of creditors.

3. Forbidding the emancipation of a slave below thirty years of age.

4. Forbidding that slaves who had been visited with a serious punishment should be so emancipated as to become *citizens* (allowing them to become peregrins).

Justinian abolished the first of these laws (proportional). He abolished the clause in the later (*Aelia Sentia*) relating to age of emancipator.

In *private law*, the freedmen were in the early law forbidden to marry freeborn citizens. In 736 this restriction was limited to the senatorial families, and it was abolished by Justinian.

**Effects of
Emancipation**

The most important phase of the private law of freedmen is the institution called the Patronate (*Patronatus*). The former master was called *Patronus*, patron. The relation existing between him and his freedman resembled in some ways that between parent and child. The patron gave legal personality to his freedman, as the father to his child. (This was shown in the freedman's name.) The rights resulting involved family rights and property rights.

They may be gathered under three heads:

1. *Obssequium*.—Respect. In early days the freedman submitted to domestic jurisdiction. Later he was not allowed to bring an action at law against his patron without special permit from the prætor. If permitted and successful the condemnation would be within the limits of the patron's resources.

2. *Operae*.—Labor and services. The patron when freeing his slave might enter into convention with him for certain services or labor, and obtain them at law.

3. Property. A reciprocal relation, in case of extreme poverty, to furnish sustenance. In case of death of freedman without posterity, the patron or descendants succeeded. This included guardianship of infants or females.

Failure on the part of freedman subjected him to revocation of freedom.

In *public law* the freedman has no right to be office holder or sit in the Senate. Rule applies to descendants in first degree. May not serve in the legions. Under Augustus restriction went further and forbade freedman's voting. In 23 A. D., statute forbade his occupying municipal office, *i. e.*, outside Rome. But political incapacities might be removed by imperial favor, in the so-called *restitutio natalium* or the concession of the so-called *jus aureorum anulorum*. Justinian granted these privileges to all freedmen, always preserving the rights of the patron.

Slaves freed by Latins were Latin freedmen. There is a notable class of Latin freedmen called Junian Latin, *Latini Juniani*. Such were: (1) Freedmen who had been emancipated informally, *inter amicos, per epistolam*. Such informal emancipations were originally unenforcible at law. Finally the prætor decided in equity that the master should not be allowed to revoke, *i. e.*, claim his strict-law rights. This gave the anomaly of a man who could not be claimed as slave and yet was not free.

The Junian statute established for such a special liberty. It applied also to a freedman emancipated by one who had not a civil law title but a pretorian title. It applied to one emancipated under thirty years, to one abandoned because old and sick, to a slave who gave evidence in a case of ravishing.

Their children were born free, and they could acquire property for themselves. But the Junians were distinguished from others in this way: they died slaves in the eyes of the law. So they could have no universal successor either testamentary or intestate. Their goods were then taken up by their previous master—not as successor but under the

title of *peculium*. These masters were then liable for the Junian's debts only up to the extent of the *peculium*.

The Junians could be witnesses to a will, or beneficiaries thereof—the so-called passive *testamenti factio*—but could only take if within a fixed time after the testator's death they should have become citizens. They could not be named as guardians under the testament.

How could the Junians acquire citizenship?

The methods were quite numerous. We may merely mention among them: The special favor of the law to promote marriage and large families: services to the administration in matters of police, transportation, supplying rations and housing troops: imperial privilege. The right of the patron was not annulled unless with his consent. Justinian elevated this class to full citizen freedmen by abolishing all distinctions between freedmen.

Besides those slaves emancipated under local rules by **Peregrin Freedmen** Peregrin masters there was by the above-mentioned statute (*Aelia Sentia*) another source of Peregrin freedmen. Those whose master was a citizen, but who had received such serious punishment during slavery that they were thought unworthy to become citizens. These were assimilated to the "Surrendered Peregrins" (*Dediticii*). They could not be makers nor beneficiaries under a testament. They belonged to no city. They might never become Roman citizens. They could not domicile within a hundred miles of Rome without falling back into slavery. Justinian abolished these harsh conditions.

Certain cases of quasi-slavery may be noted.

1. A freeman acting on good faith as slave. Both parties **Quasi-Slavery** must believe him to be a slave. The distinction was drawn that he was free; and yet that all property he acquired during his quasi-slavery should go to the master, provided, first, it was acquired by his labor (*opera*) or, second, by use of his quasi-master's capital (*ex re sua*).

In the old law judgment debtors, and contract debtors under the formal *nexum*, were awarded as slaves to the creditor, *i. e.*, the creditor's right extended to the person of the debtor, who might be allowed to work out his debt. In 428

a statute freed contract debtors from this personal service. Respecting judgment debtor, it remained in force throughout the classical period of the law; and was not suppressed until 388 A. D.

Persons ransomed from captivity, if unable to repay their ransom, were held to personal service, as a pawn or security, until the amount was repaid. In 409 A. D., by statute, a limit of five years was put to their service.

Roman citizens who hired out to take part in the gladiatorial shows suffered a certain loss of status, and could form the object of a theft.

Historically the persons *in mancipio*—in bondage—are an interesting class. The early *Paterfamilias* could alienate—sell—his children. If beyond the Tiber, they became slaves; if in Latium, the child became *in mancipio*. He might do the latter to make money through pay for their labor, or to surrender a son who had committed a tort—rather than pay for the damage. Again, the process was used fictitiously as a method of freeing the son from the father's power—to emancipate him or pass him to an adoptive father.

One *in mancipio* remained free and citizen, kept his political rights and marital rights, but lost all rights over children in existence before his change of condition. He suffered the so-called least diminution of status (*C. d. Min.*) losing his former family rights (*exc.* over wife). He came under a certain authority of the person into whose *mancipium* he comes, *analogous* to the power over slave.

One *in mancipio* could not put himself under a contract obligation. He could be used by his master as a servant or laborer, and also as a juristic medium through which to acquire property. His children were born in the status in which he was. He could be alienated like a slave (including transmission by testament). He could be emancipated. The emancipator had rights of patron. But if the emancipated bondman were a son he fell under his father again unless the father had sold him three times. In classic law the cases of this grew rare, and the differences between it and slavery were emphasized. In fact, the father used the sale process for two purposes only at this time: either first to emancipate

a son by the fictitious three sales, followed by emancipation; or second, to surrender the son in lieu of paying damages resulting from his tort. An action for injury could be brought against a master who maltreated his bondman. The master could be mulcted to meet contract debts of bondman up to the amount received by him through the bondman's labor (this pretorian). The bondsman's children no longer were born bondmen. Justinian abolished the last trace of the institution.

The Institutes do not speak of the colonate or serfdom; but under the Christian empire the institution
Colonnate took a place only second to slavery.

The *Colonus*, or serf, was an hereditary farmer, attached in perpetuity, himself and descendants, to the soil which he cultivated, giving in return money or crops. We should perhaps best express his relation as that of slave not to the individual but to the soil. But as slave he was subject to the correction of the proprietor of the owner of the land, could not set up a plea against him, and could be claimed at law if he deserted the farm.

On the other hand, he could not be separated from the farm; he could not be sold apart from the land, nor the land apart from him. Nor could the proprietor increase the revenue required from him. If this were attempted an exception to the general rule allowed him to set up a plea in court.

The serf could marry, become proprietor and creditor; but as a rule had no right to alienate.

The condition results (1) from birth, if either of his parents was a serf; (2) from contract obligation when a poor man agrees to become a serf; (3) from condemnation of "tramps" to be serfs of the one who has denounced them before the court; (4) from prescription of thirty years.

The condition terminates in only two ways: (1) By acquisition of the ground to which he was linked, or (2) by attaining the Bishopric of the Christian church.

The first absolutely reliable document attesting the existence of this condition dates 332 A. D.

Edgar S. Shumway.