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***PECULIUM, FREEDOM, CITIZENSHIP:
GOLDEN TRIANGLE OR VICIOUS CIRCLE?
AN ACT IN TWO PARTS****

ULRIKE ROTH

The importance of the slave's hope for freedom for the smooth running of the Roman slave system has long been recognised by modern scholarship. This hope was mirrored on the masters' side by what Thomas Wiedemann has called 'the ideal of regular manumission'.¹ But despite the recognition of both (servile) hope and (masterly) ideal, scholars are much less agreed on how realistic a prospect manumission actually was, and how manumission was typically achieved. In fact, little work has been carried out to comprehend the actual mechanisms inherent in the granting of liberty to Roman slaves. Much of the debate has been on 'numbers', in terms both of the ages of slaves at manumission and of the manumission rate. Notwithstanding the difficulty in assessing either, manumission is generally regarded – as Keith Bradley put it – '[...] a distinctive feature of the Roman slavery system [...]'², not least because of the many epitaphs set up

* It is a pleasure to thank Michael Crawford, Paul Du Plessis and Leonhard Schumacher for their comments on earlier drafts of this chapter. Special thanks go to John Richardson, not just for various helpful suggestions, but most of all for getting me onto the right track concerning the presentation of the argument. All remaining errors are, of course, my own.

Translations of the Roman legal texts are my own unless stated otherwise. The following editions have been used:

The Digest of Justinian. Latin Text edited by Theodor Mommsen with the Aid of Paul Krüger. English Translation edited by Alan Watson, 4 vols. (Philadelphia/Penn: University of Pennsylvania Press 1985);

Codex Iustinianus in Corpus Iuris Civilis, vol. 2 edited by Paul Krüger (Berlin: Weidmann 1888);

The Institutes of Justinian. Text, Translation and Commentary. Ed. by J. A. C. Thomas (Cape Town, Wynberg, Johannesburg: Juta & Company Ltd 1975);

The Institutes of Gaius. Translated with an Introduction by W. M. Gordon and O. F. Robinson. With the Latin Text of Seckel and Kuebler (London: Duckworth 1988).

Texts and translations of classical authors are those of The Loeb Classical Library unless otherwise stated.

¹ T. E. J. Wiedemann, 'The regularity of manumission at Rome', *CQ* 35.1 (1985), 162-75, at 164.

² K. Bradley, *Slaves and Masters in the Roman Empire. A Study in Social Control* (New York 1987), 81 (and generally 81-112 for a still up-to-date introduction to and summary of the main issues revolving around the study of manumission in imperial Roman society).

by freedmen (and freedwomen) of the type discussed elsewhere in this volume by Leonhard Schumacher, and the good number of statutes, and discussions in our law codes that the matter attracted. At the same time, scholars are on the whole agreed that the ‘[...] acquisition of liberty [was] a far more difficult proposition than the strict letter of the law suggests.’³

Independently from each other – and for different reasons and with different methods – Geza Alföldy and Keith Hopkins put forward in the 1970s what has remained a highly controversial proposal to explain that ‘difficult proposition’: they argued for the widespread practice of slaves’ purchasing their own freedom by means of their *peculium* allowances.⁴ Leaving problems of argument aside, that view did not catch on primarily because the nature of the evidence employed did not allow for persuasive generalisation. The argument received a further blow from the widely shared opinion that a slave’s *peculium* was typically of negligible value, and its primary function to be identified outwith the context of slave emancipation, either in providing the slave masters with a means through which they could employ their slaves as business agents, or in providing slaves with a means through which they could maintain themselves.⁵ To quote, once more, Bradley: ‘[...] the slave’s *peculium* cannot have been in many cases a bonus, as it were, but a vital part of his basic needs.’⁶ In addition, not all slaves are seen as having had access to *peculium* allowances in the first instance – and typically not a majority at that.⁷ Those unable to purchase their freedom from this source thus seem to be left primarily with the mere hope for the master’s benevolent will (and hence the master’s death), just like Trimalchio’s fabulous slaves.⁸ Others may desperately hope for the odd opportunity

³ Bradley, *Slaves and Masters* (n. 2), 111.

⁴ G. Alföldy, ‘Die Freilassung von Sklaven und die Struktur der Sklaverei in der römischen Kaiserzeit’, *Rivista storica dell’antichità* 2 (1972), 97-129, and with addenda in G. Alföldy, *Die römische Gesellschaft. Ausgewählte Beiträge* (Wiesbaden 1986), 286-331: ‘Sklaverei’; K. Hopkins, *Conquerors and Slaves. Sociological Studies in Roman History 1* (Cambridge 1978), 115-32: ‘Why did the Romans free so many slaves?’. For a similar argument entirely in a Republican context see G. Fabre, *Libertus. Recherches sur les rapports patron-affranchi à la fin de la république romaine* (Paris 1981), 272-78. The comparative approach by Ronald Findlay lacks an understanding of the typological and chronological complexities of manumission in the Roman world: R. Findlay, ‘Slavery, incentives and manumission: a theoretical model’, *The Journal of Political Economy* 83.5 (1975), 923-44.

⁵ The former function is more widely studied than the latter, e.g. by W. L. Westermann, *The Slave Systems of Greek and Roman Antiquity* (Philadelphia 1955), 83; J. Crook, *Law and Life of Rome* (London 1967), 188-91; A. Kirschenbaum, *Sons, Slaves and Freedmen in Roman Commerce* (Jerusalem 1987), 31-88; A. Watson, *Roman Slave Law* (Baltimore and London 1987), 90-101; D. Johnston, ‘Peculiar Questions’, in P. McKechnie (ed.), *Thinking Like a Lawyer* (Leiden 2002), 5-13; for discussion of the latter function (in an agricultural context) see U. Roth, ‘To have *and* to be: food, status, and the *peculium* of agricultural slaves’, *JRA* 18 (2005), 278-92.

⁶ Bradley, *Slaves and Masters* (n. 2), 109.

⁷ Traditionally, scholars have denied the bulk of agricultural slaves access to *peculium* allowances. For discussion of this view, and an argument in favour of *peculium* allowances typically (also) granted to agricultural slaves see Roth, ‘To have *and* to be’ (n. 5).

⁸ Petronius, *Satyrical* 71.

to show exceptional loyalty vis-à-vis their owners, or, in the case of female slaves, for their masters' passionate feelings towards them,⁹ creating and reinforcing a mentality of (servile) submission. In most cases, then, manumission appeared what Bradley has called 'a fragile prospect'¹⁰, and the chance to purchase one's freedom limited to a small number of extremely privileged slaves – questioning the application of the arguments by Alföldy and Hopkins to the slave body as a whole.¹¹ As a result, that body emerged as essentially passive and without the capacity for agency in the pursuit of a good that most scholars regard at the same time as the object of every slave's foremost desire.¹²

The state of the evidence is not irresponsible for the confusion that the topic regularly causes: the many epitaphs set up by freed slaves are subject to the same problems of interpretation, both quantitative and qualitative, that ancient inscriptions typically attract; and the representations of manumission and freedmen in our literary sources have their own biases and obstacles to generalisation as the controversy over the interpretation of Trimalchio lucidly demonstrates.¹³ In the light of the fact that manumission was an act that was guided by law, it seems perhaps a bit surprising that beyond discussion of the statutes passed by (or ascribed to) Augustus, relatively little attention has actually been given by historians of ancient slavery to legal details concerning the acquisition of freedom. To count references in our law codes to slaves' purchase of manumission, as Hopkins did, may of course not convince others any more than it did him of the usability of the material.¹⁴ Paul Weaver, in a more recent study of Junian Latins and their children, even aimed '[...] to keep the more complicated legal material to a minimum'.¹⁵

⁹ It is a commonplace in modern scholarship to see a female slave's only or primary means of securing or enhancing her *peculium* and/or her chances for manumission in her sexuality – be it through prostitution or through marriage with her master. The view is fully expressed in I. Weiler, 'Eine Sklavin wird frei. Zur Rolle des Geschlechts bei der Freilassung', in H. Bellen and H. Heinen (eds.), *Fünfzig Jahre Forschungen zur Antiken Sklaverei an der Mainzer Akademie 1950-2000* (Stuttgart 2001), 113-32. See also A. Wacke, 'Manumissio matrimonii causa. Die Freilassung zwecks Heirat nach den Ehegesetzen des Augustus', in Bellen and Heinen (eds.), *op. cit.*, 133-58, esp. 140. For an alternative conceptualisation of a female's source of revenue see, e.g., D 15.1.27*pr* (Gaius).

¹⁰ Bradley, *Slaves and Masters* (n. 2), 111. See also the highly pessimistic view of most slaves' chances of testamentary manumission expressed in E. Champlin, *Final Judgments. Duty and Emotion in Roman Wills, 200 B.C. – A.D. 250* (Berkeley, Los Angeles, Oxford 1991), 141-42.

¹¹ Weiler, *Die Beendigung des Sklavenstatus* (note 96 below), vi and 215-75, esp. 243-50, lists the slave's purchase of freedom as 'Sonderformen einer Beendigung des Sklavenstatus' (my emphasis).

¹² For discussion of slaves' wish for freedom see Weiler, *Die Beendigung des Sklavenstatus* (note 96 below), 115-45.

¹³ The point concerning freedman epigraphy has been made clearly and frequently by Henrik Mouritsen in a number of articles; see, e.g., his 'Freedmen and decurions: epitaphs and social history in imperial Italy', *JRS* 95 (2005), 38-63. For the controversy over Trimalchio see P. Veyne, 'La vie de Trimalcion', *Annales. Économies Sociétés Civilisations* 16 (1961), 213-47 (republished as 'Vie de Trimalcion', in his *La société romaine* (Paris 1991), 13-56), and J. H. D'Arms, *Commerce and Social Standing in Ancient Rome* (Cambridge 1981), 97-120.

¹⁴ 'Unfortunately, the Roman evidence for frequent self-purchase of manumission is only circumstantial. The frequency with which the practice was mentioned in the Roman law codes (I

In what follows, I shall, in contrast to Weaver, foreground the study of fairly complex and difficult legal material. Moreover, I shall do so in the context of what may appear a mere legal technicality, seemingly bare of much meaning for the historian, and potentially equipped to excite the austere Roman lawyer only. But my aim is not that of the lawyer, let alone austerity. By combining the study of a legal technicality in a first part with an analysis of its socio-economic setting in a second part, I aim to understand better the internal organisation of the Roman slave system in the early and high Empire, or, to be more precise, in the period in which the *lex Iunia* applied.¹⁶ By doing so, I will open a new window on Roman manumission that allows us to identify for the first time a specific group amongst Roman freedmen (and freedwomen) – namely those who were freed by their living masters – with the purchase of freedom. The same window also serves to highlight the role of the slave's *peculium* in the manumission process as well as the centrality of the purchase of freedom to the Roman practice of managing slaves more generally. The latter considerations, in turn, will then be employed to expose a sophisticated (manumission) mechanism behind the Romans' quest to exploit, first, their slaves, then, their freedmen, by offering a premium that was even higher (and much rarer) than freedom: citizenship. Here, then, opens an act in two parts.

Part 1: 'the more complicated legal material'

The goal of this part is to show the widely held view that slaves typically were allowed their *peculium* upon manumission *inter vivos* to be wrong. I will moreover argue that the legal evidence suggests a contractual deal behind manumissions *inter vivos*, which, in turn, demonstrates that slaves manumitted in this way typically paid for their manumission out of their *peculium* allowances.

A mere legal technicality?

The matter at issue is straightforward: what happened to a slave's *peculium* upon manumission? Was the slave allowed the *peculium* or was it to be retained by the master? How, in other words, could a slave secure both freedom and *peculium*? W. W. Buckland, in his *Roman Law of Slavery*, answered the question thus:¹⁷

have found over seventy references) suggests that the practice was common': Hopkins, *Conquerors and Slaves* (n. 4), 128-29; the footnote acknowledges that '(f)requency of mention is a risky criterion.'

¹⁵ P. Weaver, 'Children of Junian-Latins', in B. Rawson and P. Weaver (eds.), *The Roman Family in Italy. Status, Sentiment, Space* (Oxford 1997), 55-72, at 55.

¹⁶ It is irrelevant for my argument if the *lex Iunia* was passed in 17 BC or AD 19. For discussion of the law's date in the present context see Duff, *Freedmen* (note 25 below), Appendix 1: 'Date of the Lex Iunia', and S. Treggiari, *Roman Freedmen During the Late Republic* (Oxford 1969), 30-31. Naturally, I shall exclude discussion of manumission *in ecclesiis* as this mode falls outwith the chronological scope of this chapter, as well as manumissions at the census, as this mode is not central to my argument.

¹⁷ W. W. Buckland, *The Roman Law of Slavery* (Cambridge 1908), 189.

Upon manumission of a slave, *inter vivos*, whether *vindicta* or informally, he took his *peculium*, unless it was expressly reserved [...] In other cases of transfer, however, the *peculium* did not pass except expressly. Even in manumission on death [by way of a will], it did not pass unless it was expressly given; whether it was so, or not, being a question of construction.

Having postulated the different technical arrangements regarding the transfer of the *peculium* depending on the manumission mode thus, Buckland found himself in need of explanation:¹⁸

The reason for the distinction between the two cases, a distinction of old standing, is not stated. The *peculium* is *res hereditaria*, and perhaps the governing idea is that the *heres* is not to be deprived by a too easy presumption.

We shall return to the issue of the heir later on. For the moment, it is important to stress that the mode of manumission had an effect on how the slave may secure both freedom and *peculium*. It was in the nature of things that disputes arose over the ownership of the former *peculium*, not least because, as far as we can tell, there was no formula for the transfer of the *peculium* even in the case of testamentary manumissions. Where such a transfer was not unambiguously made clear by the testator, the transfer was, as Buckland correctly states, subject to construction. Confusion over what constituted valid construction was widespread. Buckland exemplified the problem through reference to two examples brought up by the imperial Roman jurists Marcianus and Scaevola:¹⁹

Thus a gift of liberty with an exemption from rendering accounts was not a gift of the *peculium*. The slave had still to return what he held: he was merely excused from very careful enquiry as to waste, though not as to fraud, and he was not released from debts due to the *dominus*.

And Buckland continues:²⁰

But if he were to be free on rendering accounts, and paying the heir 10, this was a gift of the *peculium*, less that sum. A sum so ordered [in a will] to be paid as a condition on a gift of freedom, could be paid out of the *peculium* without any direction to that effect [...]

The classic example for the confusion experienced in ancient times over what constituted a valid construction with the effect of transferring the *peculium* with the slave is a passage from Ulpian, known to us from Book 33 of the Digest, rehearsing a rescript of Caracalla and Severus:²¹

¹⁸ Buckland, *The Roman Law of Slavery* (n. 17), 190.

¹⁹ Buckland, *The Roman Law of Slavery* (n. 17), 189-90, drawing on D 30.119 (Marcianus) and D 34.3.31.1 (Scaevola).

²⁰ Buckland, *The Roman Law of Slavery* (n. 17), 190.

²¹ D 33.8.8.7 (Ulpian).

Interdum etsi non sit legatum peculium, uelut legatum sic accipitur, id est in huiusmodi specie: quidam seruo libertatem, si rationes reddidisset, dederat, et si heredibus centum intulisset. imperator igitur noster cum patre rescripsit, peculium quidem non nisi legatum deberi: ‘uerum’, inquit, ‘si condicionibus praescriptis paruit seruus, testatorem uoluisse eum retinere peculium interpretamur’: uidelicet ex eo, quod ex peculio eum iusserat centum inferre.

From time to time, even though *peculium* has not been legated, it is treated as if it had been, that is, in a case of this kind; a man had given his freedom to a slave, if he rendered his accounts and paid a hundred to the heirs. In that case, then, our emperor with his father [Caracalla and Severus] replied that in principle *peculium* was not owed unless it had been legated. ‘But,’ he said, ‘if the slave complied with the prescribed conditions, we take it that the testator wanted him to retain *peculium*,’ that is on the ground that he had ordered him to pay the hundred from the *peculium*.

One could also say that a sum so ordered could *only* be (expected to be) paid out of the *peculium* upon manumission – as these were the slave’s only possessions allowed and taken account of by the master – and hence to specify a payment of X demonstrated by implication the master’s intention to let the slave have upon manumission the *peculium* minus X: it was, in a sense, an express statement for the transfer of the *peculium* (or rather what was left of it) in reverse. A statement that, according to the way modern scholarship has interpreted Buckland’s elliptical writing on the matter, was not required in the case of other modes of manumission, because in the latter, the *peculium* appears tacitly allowed anyhow. David Jones writes that ‘[...] when a slave was **freed during the lifetime of his master** (manumission *inter vivos*) it seems that the *peculium* would be **included** in the gift of freedom, unless it was expressly excluded (my emphases)’.²² And Jane Gardner, with due reference to Buckland, shows no hesitation in propounding that ‘(a)lthough it was customarily accepted [...] that a slave **manumitted in his master’s lifetime kept his *peculium*, unless his owner expressly withheld it**, a general rule to that effect is not stated until Severus and Caracalla (Buckland 1908: 189) (my emphases)’.²³ This *communis opinio* is not special to Anglophone scholarship; in his most recent contribution to the subject, Pedro López Barja de Quiroga summarises the issue accordingly: ‘[...] en las manumisiones *inter uiuos*, se entiende dado el peculio al esclavo si el dueño no se lo retira expresamente, mientras que, en las testamentarias, sucede lo contrario: no se considera legado el peculio salvo si así se hizo constar’.²⁴ With this, manumission during the lifetime of the master appears to have attracted an uncomplicated, if not an automatic transfer of the slave’s *peculium*, a transfer that was achieved only through due adherence to some (easily misconstrued) technicalities in the case of testamentary manumission. For a slave to get away with both freedom and *peculium*, then, required an initiative of the master if the slave was manumitted by will, but did not require an initiative of the master

²² D. F. Jones, *The Bankers of Puteoli. Finance, Trade and Industry in the Roman World* (Stroud 2006), 59.

²³ J.F. Gardner, *Being a Roman Citizen* (London and New York 1993), 37.

²⁴ P. López Barja de Quiroga, *Historia de la manumisión en Roma. De los orígenes a los Severos* (Madrid 2007), 91.

if the slave was manumitted in any other form. Structurally speaking, manumission by one's living master appears prospectively the better deal.

In sum, then, modern scholarship, in following Buckland's analysis of the matter, provides essentially two answers to the question posed at the outset of this section, depending on the manumission mode that the slave underwent. They can be summarised thus:

- i. Upon manumission of a slave after the death of the master, *i.e. ex testamento*, the transfer of *peculium* required express statement; the slave could not expect any *peculium* to be transferred with him (or her) unless so stated.
- ii. Upon manumission of a slave during the lifetime of the master, *i.e. inter vivos* (*vindicta*, *inter amicos* or otherwise), the transfer of *peculium* did not require express statement; the slave could expect his (or her) *peculium* to be transferred with him (or her) unless stated otherwise.

This conceptualisation is solidly ingrained in our way of looking at the matter in question. Readers could easily put themselves to the test and play Ulpian by ticking the boxes in Table 1 (below), to see if they, too, have swallowed the binary interpretation of Buckland's analysis of the legal situation. So: what would happen to Stichus' *peculium*, consisting, shall we say, of two cows, his partner Vicaria, and 100 sesterces, if A) he was manumitted by will without any clear directions (nor attempts at construction) regarding his *peculium*, or if B) he was manumitted during the master's lifetime in the presence of some of the master's friends, once more without any directions regarding the transfer of the *peculium*? How much, if any, of his *peculium* was Stichus likely to get away with?

Table 1:

<i>peculium</i>	Case A: Manumission <i>ex testamento</i>	Case B: Manumission <i>inter vivos</i>
2 cows	<input type="radio"/>	<input type="radio"/>
Vicaria	<input type="radio"/>	<input type="radio"/>
100 sesterces	<input type="radio"/>	<input type="radio"/>

To put readers out of their misery: in the current conceptualisation, Stichus, possessing in his *peculium* two cows, his partner Vicaria, and 100 sesterces, would walk away with precisely those two cows, Vicaria and the 100 sesterces, if manumitted during the lifetime of the master (since the master had not stated *a reservation*), whilst Stichus, possessing in his *peculium* two cows, his partner Vicaria and 100 sesterces, would walk alone into freedom if manumitted by way of will (since the master had not stated *an allowance* of the *peculium*, or any part thereof). In the latter scenario, the onus was on the master to decide and state how much (if any) of the *peculium* the slave ought to be allowed, and to make such statement legally watertight, whilst in the former this seems not to have been required.

And so what? Why should an (in any case seemingly clear) technical issue interest us if we want to understand better the internal organisation of the Roman slave system? The answer is that what appears as a mere legal technicality entails a number of significant historical implications and interpretations. One implication of the above described conceptualisation is that the law – by demanding a statement in favour of the transfer of

peculium for manumissions by will, but not for manumissions during the lifetime of the master – aimed, as Buckland in the above quotation suggests, at protecting the heir by making it more difficult, in the former scenario, for a transfer of *peculium* to take effect. The historical backdrop for this is provided in Arnold Duff's more lively imagination, where we encounter the typical early imperial manumissor who '[...] on the point of death [...] would hurriedly insert an emancipating clause into his will',²⁵ in order to ensure an impressive escort at the funeral, forgetting to include though the relevant statement for the transfer of *peculium*. Duff was not alone in remembering the forgetful testator: Thomas Collett Sandars, perhaps following the explanation given in Frag. Vat. 261 (discussed below), already argued that '(w)hen the master enfranchised his slave himself, he was present to demand the *peculium*, and if he did not, it was considered evident that he intended the slave to keep it. Not so in a legacy of liberty, in giving which the master might so easily forget the *peculium* that some expressions were required to show that he remembered it, and wished to give it to the slave.'²⁶ The law, by demanding such a statement, can thus be seen as redressing the balance between the economic loss suffered by the manumissor during his or her lifetime and the economic loss suffered by the heirs, in the same way as statutes that are seen to limit the number of slaves that can be freed in a will.²⁷

Another implication is that in the light of the described difficulties in ensuring the transfer of *peculium* (or any part thereof) after the death of the testator, manumission by will found much juridical refinement in ancient times and abundant comment in our law codes and legal text books, so much so that students of Roman slavery, trained, as a rule, to follow the patterns produced by the evidence, are generally agreed that '(m)anumissio *testamento* was at all times the most popular form',²⁸ and that '[...] this form of manumission always remained by far the most important'.²⁹ This opinion is so entrenched that Peter Garnsey even allowed himself to state that '(m)any modern authorities regard manumission *testamento* as the most common way to liberty, and although this could not conceivably be proven, their opinions must carry some weight.'³⁰ From this interpretation

²⁵ A. M. Duff, *Freedmen in the Early Roman Empire* (Oxford 1928), 31.

²⁶ T. C. Sandars, *The Institutes of Justinian with English Introduction, Translation, and Notes* (London, New York, Toronto 1952 (new impression of the 7th edition from 1883), 237. It is now accepted that more than 'expressions' ('*verba*') were taken into account in the interpretation of wills: H. J. Wieling, *Testamentsauslegung im Römischen Recht* (München 1972).

²⁷ The idea is fully developed in Duff, *Freedmen* (n. 25), who stresses, at 25, that '(a)ll expenses and formalities fell on the heirs, as its effects naturally did not take place till after the testator's death [...] vanity and benevolence both played an important part in rendering this form popular'; see also his explanation of the Augustan legislation on manumission as a whole: 28-35. The thought that the heirs were harder hit through manumission by will is also present in Treggiari, *Roman Freedmen* (n. 16), 27.

²⁸ Duff, *Freedmen* (n. 25), 25.

²⁹ Buckland, *The Roman Law of Slavery* (n. 17), 460.

³⁰ P. Garnsey, 'Independent freedmen and the economy of Roman Italy under the Principate', *Klio* 63 (1981), 359-71, at 362 [= Chapter 2: 'Independent freedmen and the economy of Roman Italy under the Principate' in W. Scheidel (ed.), *Cities, Peasants and Food in Classical Antiquity. Essays*

it follows that slaves had typically to wait (and hope) for their owners' death to be granted freedom, and that there was little they could do to influence (or speed up) that process. Having been placed at the very end of the master-slave-relationship, manumission is, effectively, not seen as vital to the internal organisation of slavery and slave labour, especially when combined with the idea of the vain master, keen to ensure at the last minute an impressive funerary escort. A mere technicality has thus become the root for wide-reaching historical interpretation.

Or? What if the binary interpretation of Buckland's discussion of the technicalities attached to different manumission modes was false? What if, to put it differently, no such distinction between the two cases existed? What if slaves could not hope for their *peculium* – in our example two cows, a partner and some money – to be allowed them *automatically* if manumitted *inter vivos* unless their masters pulled their fingers out to stop it? And what if Stichus would walk away with freedom, but only his cows and partner, if manumitted during the lifetime of the master, as a result of technicalities applied to the relevant manumission mode? Technicalities that reveal a contractual arrangement, one that exposes manumissions *inter vivos* as being structured around the assumption that slaves typically purchased their freedom out of their *peculia*? Thus giving the *peculium* centre stage in the acquisition of freedom – and with it the slave's agency in this process? Too frivolous a thought? Let's see.

The business of freedom

The matter evidently caused a good deal of confusion already in antiquity: Title 23 in the 7th Book of the Code of Justinian provides a glimpse of the difficulty experienced then in coming to terms with the correct legal technicality. There, Diocletian and Maximian are reported to have informed Rufinus thus:

Longe diversam causam eorum, qui a superstitibus manumittuntur, item illorum, quibus testamento libertas relinquitur, esse dissimulare non debueras, cum superiore quidem casu concessum tacite peculium, si non adimatur, posteriore vero, nisi specialiter fuerit datum, penes successorem remanere sit iuris evidentis.

You ought not to have disguised the fact that the case of those who are manumitted by living persons is greatly different from those to whom freedom has been left through a testament. In the case of the former, *peculium* is tacitly allowed if it is not taken away; in the case of the latter, unless it has been specifically given, the law is clear that it remains with the heirs.

As the above quoted passage by Ulpian already showed, Diocletian and Maximian, or rather their *libellis*, were not the first to comment on the matter; Severus and Caracalla also had to deal with it, recorded in the *Institutes* of Justinian thus:³¹

in Social and Economic History (Cambridge 1998)]. Bradley's rejection of the argument for the preponderance of testamentary manumission on grounds of the passing of the *lex Aelia* is based on a confusion of the granting of freedom *with* the granting of citizenship: *Slaves and Masters* (n. 2), 90-91.

³¹ *Inst.* 2.20.20.

peculium autem nisi legatum fuerit, manumisso non debetur, quamvis si vivus manumiserit, sufficit si non adimatur: et ita divi Severus et Antoninus rescriperunt.

Now, unless *peculium* had been given as a legacy, it is not owed to the manumitted slave; although had a living person manumitted him, it would have sufficed had it not been taken away. And so replied the divine Severus and Antoninus in a rescript.

Before Justinian and his compilers, the matter had already found entry into the compilation of juristic sources known to us as the *fragmenta iuris Romani Vaticana*. There, amongst a group of passages attributed to Papinian, we find the issue explained under chapter 261 already in the same way as in Justinian's *Institutes* and Code:

Peculium uindicta manumisso uel inter amicos si non adimatur, donari uidetur. quae ratio facit, ut ex iusta causa possidens usucapere rem possit. aliud in his placuit, qui testamento libertatem acceperunt, uel morte parentis potestate soluuntur; quos amittere peculium, si non sit legatum, constitit. neque enim tacita liberalitas defuncti permittentis retinere peculium potuit intellegi.

Peculium is seen as given if it is not taken away upon manumission *vindicta* or *inter amicos*. From this comes the rule that one who possesses lawfully can acquire ownership of a thing. A different rule is accepted for those who accept freedom through a testament, or are liberated from *potestas* by the death of their father: it is established that they lose *peculium* if it has not been legated. For one could not understand the silent generosity of the deceased as allowing to keep *peculium*.

Given the lawyer's career, acting at one point as secretary *a libellis*, it is of course tempting to identify Papinian also as the actual author of the rescript attributed to Severus and Caracalla, which in turn formed the basis of that attributed to Diocletian and Maximian: 26th September 194 until 12th February 202 is the period suggested by Tony Honoré for Papinian's time as Severus' secretary; our Severan rescript carries in any case one of the typical features of Papinian's style, namely the use of *quamvis* with the indicative.³² It is thus possible that Papinian is the source of what I shall expose in what follows as a severe misconception. Be this as it may, the problem that arises from the way Buckland discussed and explained the legal situation behind these passages is, as we saw, the implication of a difference *in principle* regarding the transfer of *peculium* depending on the mode of manumission – both a legal *and* a practical principle at that.

The evidential basis of Buckland's analysis needs stressing at this point: it was the two rescripts, just quoted, that are seminal for the postulated distinction. *That* distinction could not be *created* from the Digest, or indeed from any of the other passages quoted or cited by Buckland; only once such a distinction had been accepted, could the rest of the evidence be divided up and put into one or other box – and that not even always

³² T. Honoré, *Emperors and Lawyers* (London 1981), 56-59 (on Papinian's career and style), and 24-53 (on the use and reuse of rescripts). Papinian's authorship of the rescript would support Honoré's findings, reached through philological analyses, about the jurist's position at the time.

completely persuasively.³³ In fact, Buckland needs to argue that '(t)he general rule is attributed to Severus and Caracalla, but they were probably confirming a long-standing practice.'³⁴ Buckland's 'probably' makes plain enough the lack of other evidence from which this 'general rule' could be generated.

Construction, however, as Buckland said rightly, was a recognised way to determine the transfer of the slave's *peculium* upon manumission on death, leading, as briefly stated above, to a plethora of examples in our legal sources aiming to define what counted as valid construction and what did not; the value of construction, then, in ensuring the transfer of a slave's *peculium* is not in dispute, not least given the clear evidence we have for it.³⁵ At the same time, Buckland recognised correctly that *peculium* in testamentary manumission was in principle subject to *being given expressly*: '*specialiter fuerit datum*' is how Diocletian and Maximian put it. Yet, he managed to present the matter in such an elliptical manner that subsequent generations of scholars, perhaps less familiar with the evidence than Buckland was, misconstrued, as we shall now see, the consequences. For there is a curious moment when one stops to think about what is actually being said in these two rescripts. Once more, then, Severus and Caracalla, as well as Diocletian and Maximian, both texts quoted here in full again, first from Title 20 of the 2nd Book of Justinian's *Institutes*, and, then, from Title 23 of the 7th Book of Justinian's Code:

peculium autem nisi legatum fuerit, manumisso non debetur, quamvis si vivus manumiserit, sufficit si non adimatur: et ita divi Severus et Antoninus rescripserunt.

Longe diversam causam eorum, qui a superstibus manumittuntur, item illorum, quibus testamento libertas relinquitur, esse dissimulare non debueras, cum superiore quidem casu concessum tacite *peculium*, si non adimatur, posteriore vero, nisi specialiter fuerit datum, penes successorem remanere sit iuris evidentis.

We do not know the precise questions put to the emperors to which their secretaries responded. But this may not be so important after all. What is important is to remember that the replies given to the questions were normally addressed to subjects who were not

³³ The prime example for this is D 15.1.53 (Paul), which Buckland, *The Roman Law of Slavery* (n. 17), 189, footnote 4, puts into the '*vivus*-box', thus completely ignoring not only the fact that the passage does not provide any independent evidence for the mode of manumission it relates to, but moreover that the aim of the passage is to identify the different treatment of elements of a *peculium* that are 'hard' or real (*i.e.* objects or things) and of those that are 'soft' or virtual (*i.e.* rights or obligations): '*Si Stichus peculium cum manumitteretur ademptum non est, videtur concessum: debitores autem convenire nisi mandatis sibi actionibus non potest / Peculium* is seen as given to a slave if it is not taken away upon manumission. But if the charge to take legal action is not given to him, he cannot take action against his debtors.' The other examples given by Buckland are D 23.3.39*pr.* (Ulpian), *CJ* 7.23, and V. Fr. 261. He needs further to assume that in D 10.2.39.4 (Scaevola) '[...] the *peculium* must have been expressly reserved'; but if the slave had gained mere Latinity through his manumission, then the *peculium* would naturally return to the master anyhow upon the slave's death, to be fought over by the heirs.

³⁴ Buckland, *The Roman Law of Slavery* (n. 17), 189 (footnote 4).

³⁵ The examples given by Buckland are D 33.8.8.7 (Ulpian); D 34.3.28.7 (Scaevola); *CJ* 4.14.2; *CJ* 7.23.

trained as lawyers; the aim was not to explain legal principles in the way jurists may discuss such matters, but to provide answers that help inform the actions of subjects involved in a legal dispute or quarrel. Honoré calls the rescript system ‘a free legal advice service’³⁶. Moreover, we must not forget that the emperors, as Buckland pointed out so clearly, were not creating new law, but aimed to interpret existing legal *practice*, and in doing this, they engaged in what Honoré calls ‘a norm-creating act’³⁷. As is evident in the rescript of Diocletian and Maximian, they were in any case not prepared nor patient enough to explain from scratch the legal principles that their subjects had failed to come to terms with.

That said, it is clear, here as already in Frag. Vat. 261, that unless a slave’s *peculium* was legated – *legatum fuerit* – it was not subject to transfer with the slave. But as we have seen in the example provided by Ulpian from the 33rd Book of the Digest quoted at length above, the intention to transfer could *also* be expressed by way of construction: ‘(f)rom time to time’, Ulpian writes, ‘even though *peculium* has not been legated, it is treated as if it had been [...]’ – and follows up with an example of construction. Now, construction does, actually, not comply with the requirement to give *expressly* – *specialiter fuerit datum*: the construed gift (of the *peculium*) is neither unambiguous – hence the interest of the lawyers – nor express. But construction has become, as Ulpian tells us, accepted practice *in the place of an express statement* – occasionally, in any case – ‘*interdum*’ – *i.e.* from time to time, when the situation arose, and only then. The transfer of *peculium* in testamentary manumissions was thus not *in principle* a question of construction, but only ‘*interdum*’. In other words, Ulpian implies that the practical norm was identical with the legal norm (*i.e.* to give expressly), and that construction in testamentary manumissions was a diversion from both the practical and the legal norm – an accepted exception, not more.

More importantly, in Ulpian’s example the basis of the construction was essentially a requirement for the slave to pay a certain sum upon manumission. *I.e.* the construction of an intention aiming to give was thus based, odd as it may seem at first sight, on a demand for payment. It follows that any text in which such a construction could be seen was in itself a way of taking away from the slave – *adimere*. The aim of the text was to make plain how much was to be taken away, *i.e.* how much the slave was specifically deprived of. A text of this type, then, whilst not leaving anything at all *expressly* to the slave, was a form employed to make plain what should be taken (away), a form for – and a sign of – revoking (part of) a slave’s possessions. The rest, one could then say, was left to the slave – tacitly, as it were, without any express statement. But such a text, or rather its practical consequences, could hence be best described in pretty much the same way as our four emperors did in the case of the transfer of *peculium* upon manumissions *inter vivos*: ‘*concessum tacite peculium, si non adimatur*’. Once this is recognised, the very description they chose for the handling of the transfer of *peculium* in manumissions *inter vivos* points, in turn, to the employment of construction therein. But in contrast to testamentary manumission, which involved construction only on occasion (and otherwise operated a practical norm that followed tightly the legal norm), the use of construction in manumissions *inter vivos* became the practical norm – encouraged by and reflected in our emperors’ exclusive focus on that norm when

³⁶ Honoré, *Emperors and Lawyers* (n. 32), 33.

³⁷ Honoré, *Emperors and Lawyers* (n. 32), 33.

trying to inform the actions of their subjects in their legal dealings. And the very same exclusive focus was then employed, too, when describing the practical norm in testamentary manumissions: ‘unless it has been specifically given’, ‘unless *peculium* had been given as a legacy’, ‘if it has not been legated’, thus reinforcing the(ir) preferred practical norm. Diocletian and Maximian were of course quite right in stressing that the legal norm behind their advice is perfectly clear on this matter, ‘*iuris evidentis*’ – Caracalla’s and Severus’ ‘in principle’. But the presentation of that legal norm as the only way to transfer a slave’s *peculium* in testamentary manumissions is, as we know from Ulpian, actually wrong, for the very reason that construction was an accepted exception to both the legal and the practical norms.

It is important to realise that the difference described in our two rescripts is not a technical difference between the two manumission groups *when construction was employed* – for in that case there is none, but that between the practical norms. It is merely putting the point in different words to say that the technicalities *applied to construction* in testamentary manumissions were structurally identical to those applied to manumissions *inter vivos*. In the former case, this became *accepted practice next to the practical norm that followed the legal norm*, in the latter, *it was the practical norm*. And although it is impossible from the evidence discussed here to identify the legal norm in manumissions *inter vivos*, I’d not be surprised if it was in fact identical with the legal norm of testamentary manumissions.³⁸

Now where does this leave us with the proposed differences between manumissions *ex testamento* and manumissions in the lifetime of the *dominus*? As just stated, our texts imply that in the latter scenario the slaves were entitled to possessions of which they were not specifically deprived; the general practice was to let go what had not been revoked – *si non adimatur*, and this tacitly – *tacite*, the chosen rendering by our four emperors, thus stressing the different practical norm to that operating in testamentary manumissions. But

³⁸ Only the rescript by Diocletian and Maximian makes reference to the law, ‘*sit iuris evidentis*’. This has been rendered in a number of translations in such a way as to open up the possibility that the phrase applies to more than just the comments on testamentary manumissions; the implication would be description of the legal norms for both cases. But if this is what the secretary had wanted to express, he ought to have prepared his readers for this conclusion by inserting ‘*esse*’ after the ‘*concessum tacite peculium*’; as it stands, the ‘*sit iuris evidentis*’ qualifies the ‘*penes successorem remanere*’ only, and thus refers to the legal norm of testamentary manumissions alone. See, in contrast, S. P. Scott (tr.), *The Civil Law. Vol. XII* (New York, reprinted from the 1932 edition): ‘You should not forget that a great difference exists between the cases of those who have been manumitted by persons who were living at the time, and those to whom freedom has been bequeathed by will, as, in the first instance, they are tacitly entitled to their *peculium* if they were not specifically deprived of it, and in the second, the heirs will have the right to it, unless it was expressly left to the manumitted slave. *This rule of law is perfectly clear* (my emphasis)’; or, worse still, J. E. Spruit *et al.* (eds.), *Corpus Iuris Civilis. Tekst en Vertaling. Vol. VIII: Codex Justinianus 4-8* (Amsterdam 2007): ‘U had niet buiten beschouwing mogen laten dat de positie van degenen die door nog levende personen worden vrijgelaten en die van hen aan wie bij testament de vrijheid wordt vermaakt, in hoge mate verschillend is, omdat het een duidelijke rechtsregel is dat in het eerste geval het toegewezen vermogen hun stilzwijgend gelaten is, indien het niet wordt ontnomen, maar dit in het tweede geval bij de erfopvolger blijft, indien het [hun] niet uitdrukkelijk gegeven is (my emphasis)’.

why was the matter explained in this manner to our petitioners? What, in other words, is the *Sitz im Leben* of manumissions *inter vivos* that allowed rendering the practical norm in this way – and that caused the difference in practical norms between these and testamentary manumissions?

The answer to this question is simple, and takes us to the point at which we need to start grappling with the socio-economic setting of the relevant manumission modes. In short, the very fact that manumissions *inter vivos* typically attracted a tacit transfer of slave possessions, indicated by the use of construction, implies a contractual deal as the underlying arrangement for such manumissions. In other words, our emperors' rendering of the legal technicalities typically attached to the transfer of *peculium* upon manumissions during the lifetime of the masters indicates the purchase of freedom by the slave out of his or her *peculium*: the sales contract made clear how much the slave had to pay – and, consequently, how much, if any, the slave was granted thereafter, tacitly, as it were. It may come as a surprise that this had in fact been spelled out very clearly already well over a century ago, by Alfred Pernice:³⁹

Denn die Freilassung unter Lebenden erfolgte regelmässig auf Grund einer besonderen Vereinbarung zwischen Herrn und Sklaven und nach Zahlung, resp. unter Umständen nach Erlass einer bestimmten Kaufsumme. Ist eine solche Abrede der Freilassung vorhergegangen, so liegt es in der Natur der Sache, dass der Rest des Peculiums, aus dem natürlich die Kaufsumme genommen werden musste, dem Freigelassenen ohne Weiteres verblieb.

It may be worth repeating the main point so clearly made by Pernice: only a prior financial deal, a contractual arrangement in other words, explains why (the remainder of) the *peculium* can appear as tacitly granted, 'ohne Weiteres'. As Ulpian would say, if Stichus was asked to give a hundred (for his freedom), we take it that the owner wished the slave to retain (the remainder of) his *peculium* if he complied with that requirement; after all, it is (only) from the *peculium* that the slave could be asked to pay his master the hundred.⁴⁰ Instead of the two cows, his partner Vicaria and the 100 sesterces that readers would most probably have ticked in Table 1 for manumissions *inter vivos*, Stichus was likely to keep animals and woman only (or another combination of his *peculium*) upon manumission by his living master. Whilst allowing manumission for a range of reasons and under a variety of circumstances, it was the slaves' purchase of freedom out of their *peculia* that was at the heart of these manumission modes, and that defined their practical norm. And that norm sprang from the fact that the Romans made a business out of the

³⁹ A. Pernice, *Labeo. Römisches Privatrecht im ersten Jahrhundert der Kaiserzeit*, 5 vols. (Halle 1873), I:148. Pernice does not state the reason for his view.

⁴⁰ Garnsey's assertion that a slave's freedom bought with funds out of the slave's *peculium* frees that slave from patronal powers confuses much of what is behind the issue of the *servus suis nummis emptus* as it does not differentiate the source of the money; it is moreover based on disregard of the powers of the *lex Iunia*: 'Independent freedmen' (n. 30), 33. Slaves who did not have a *peculium* could still find access to the necessary monies, by chance, the help of friends, or the like: D 40.1.4.1 (Ulpian); there is no reason to think such an external source for the required monies *a priori* as exceptional as did Findlay: 'Slavery, incentives, and manumission' (n. 4), 931-32.

granting of freedom during their lifetimes. It may, perhaps, not be completely coincidental after all that the three surviving documentary records for manumissions *inter amicos* – that of Helena, Paramone and Techosis – all provide unambiguous evidence for the stipulation – and subsequent payment – of a price.⁴¹

Parting words

The aim of this part was to show the belief that ‘[...] a slave manumitted in his master’s lifetime kept his *peculium* [...]’⁴² because ‘[...] the *peculium* would be included in the gift of freedom [...]’,⁴³ evoking a generous gesture by the master, to be misconceived and misleading. In contrast, I hope to have demonstrated that the technicalities concerning the transfer of the *peculium* which lurk behind the rescripts issued by Severus and Caracalla on the one hand and Diocletian and Maximian on the other make clear that here, as elsewhere, masterly generosity was not the driving force behind the Romans’ dealings with their slaves: Stichus would have more than just milked his cows to get his freedom. This is not the point to start wondering what that price of freedom may typically have been. But even if we just very briefly consider the wide range of slave and freedmen statuses, the whole concept of typicality quickly goes out of the door. Yet, it may be permissible to suggest as a hypothesis that the price stood in good relation to the actual if not potential value of the assets at stake, and that, put crudely, the rich paid more than the poor. And if we divide the matter, merely for analytical purposes, as Caesar did with Gaul, into three parts, we could see the high flyers dishing out enormous reserves, the middling sort their honestly earned savings, others again merely an agreement for *operae*; exceptions welcome to prove the rule. When a price was stipulated, its purpose consisted in providing a cover for the loss of the assets that the master experienced through the manumission; and with the latter ranging widely – from labour potential, via replacement price to financial reserves – so the prices must have too. In fact, the chapters by Michael Crawford and Benet Salway in this volume remind us just how great the difference in purchase prices of slaves alone could be, leave alone the commercial potential and reserves if the newly made freedmen and freedwomen were envisaged as engaging in economic activities on their masters’ behalf.

None of what has been said so far excludes that slaves who were manumitted through their master’s will may also have dished out from their *peculium*: Ulpian’s discussion of the rescript of Caracalla and Severus is one of many pieces of evidence that demonstrates that such deals were (stipulated between master and slave to be) included in the master’s testament.⁴⁴ But the difference in the practical norms now evident between this manumission mode and manumissions *inter vivos* qualifies and puts into its (now marginal) place the meaning of the surviving snippets in our legal sources that concern

⁴¹ MChrest. 362 (Helena); P. Oxy. IX 1205 (Paramone); P. Lips. II 151 (Techosis). For discussion see R. Scholl, “‘Freilassung unter Freunden’ im römischen Ägypten”, in Bellen and Heinen (eds.), *Fünfzig Jahre Forschungen* (n. 9), 159-69.

⁴² Gardner, *Being a Roman Citizen* (n. 23), 37.

⁴³ Jones, *The Bankers of Puteoli* (n. 22), 59.

⁴⁴ For discussion see K. Bradley, *Slavery and Society at Rome* (Cambridge 1994), 160-62.

construction in testamentary manumissions, which, taken at face value, appeared to imply the typicality of a contractual deal for this mode, too.⁴⁵ We clearly fare better if we pay due attention in interpretation to Ulpian's '*interdum*'. In other words, one of the fringe benefits of our newly gained understanding of the different practical norms of testamentary manumissions and those carried out *inter vivos* is that we can finally qualify the relevant surviving evidence for testamentary manumission: it is evidently the atypicality of a contractual deal in testamentary manumissions – which caused the confusion over the transfer of the *peculium* outwith a clearly expressed legacy – that is responsible for the lawyers' occupation with the matter, and the production of what constitutes now conspicuous evidence; the amount of evidence is therefore not only a distorted mirror image of past reality, but most probably diametrically opposed to that reality. At the same time, the understanding we now have of the practical norm for manumissions *inter vivos*, expressed in the form of a contractual arrangement that stipulated a price, identifies that group of manumissions as *typically* producing freed men and women who had employed their *peculia*, with all that went with that, to effect manumission. The question that arises from this observation is why manumissions *inter vivos* attracted that practical norm, and whether there existed a (masterly or servile) preference for one or other of the modes (*vindicta*, *inter amicos*, etc.) that fall into this manumission group?

Part 2: 'a distinctive feature of the Roman slavery system'

The goal of this second part is to investigate the socio-economic setting that lurks behind our newly gained understanding of manumissions *inter vivos*. I will do this, first, on the example of a sub-group of this group of manumissions, namely those typically referred to by modern scholars as informal manumissions. The focus on informal manumissions allows exploration of the masterly advantages associated with the manumission of (their) slaves. Following on from there, it is then possible to reveal a manumission mechanism that was substantially more sophisticated than hitherto believed, based, like many other aspects of Roman life, on a differentiated conceptualisation of free and civic status, leading to an emancipation system that differentiated, too, the purchase of freedom from that of citizenship.

Legal dealings

I shall start with two commonplaces, followed by some brief historical considerations. First, then: there was no limit on the number of slaves masters could free during their lifetime, *i.e.* *inter vivos*, be it *inter amicos*, *per epistulam*, by the rod or through entry in the census lists.⁴⁶ Second, the Romans were known to employ so-called formal manumission

⁴⁵ This does not exclude that purchase out of the *peculium* may have been the most common condition put upon testamentary manumissions as Buckland suggests: *The Roman Law of Slavery* (n. 17), 496.

⁴⁶ Gaius, *Inst.* 1.44: *Ac ne ad eos quidem omnino haec lex pertinet, qui sine testamento manumittunt. itaque licet iis, qui vindicta aut censu aut inter amicos manumittunt, totam familiam suam liberare, scilicet si alia causa non impediat libertatem* / This Act [the Fufian-Caninian Act] also has no relevance for those who grant freedom otherwise than in a will. So those who manumit by rod, or by

procedures as well as so-called informal ones. Amongst the former were testamentary manumission, manumission by the rod and by the census; amongst the latter, scholars typically list the first two modes just listed, *i.e.* manumission by letter (*per epistulam*), and amongst some of the master's friends (*inter amicos*).⁴⁷ There existed some important differences though between Republic and Empire concerning the consequences that an informal manumission brought with it. During the Republic, informal manumission *inter amicos* for instance did not convey on the slave a new status: the slave remained a *servus*, and the declaration of emancipation was void in the eyes of the law. Most importantly, perhaps, the estate of the slave, the *peculium* to be precise, continued to be under the ownership of the (former) master, and indeed returned to the master (or his or her heirs) upon the death of the slave. Logically, the slave did not acquire citizenship through this form of manumission, citizenship rights having been restricted to the so-called formal modes of manumission – by the rod, the census, or by way of a will. The slave's liberty was thus highly vulnerable. In the late Republic, slaves freed informally become protected in their de facto enjoyment of liberty by the praetor, whilst, however, retaining their servile status. But the early Empire witnessed an important legal change: with the *lex Iunia*, a slave manumitted *inter amicos* (as well as slaves informally manumitted in a different way) gained so-called Junian Latin status – a half-way house between slavery and freedom. Amongst other things, slaves so manumitted were barred from making a will, and upon their death, the law which gave them Latin status was regarded as never having existed. It is important for the current discussion to understand clearly Gaius' remarks on the matter:⁴⁸

[...] per legem Iuniam eos omnes, quos praetor in libertate tuebatur, liberos esse coepisse et appellatos esse Latinos Iunianos: Latinos ideo, quia lex eos liberos proinde esse uoluit, atque si essent ciues Romani ingenui, qui ex urbe Roma in Latinas colonias deducti Latini coloniarii esse coeperunt; Iunianos ideo, quia per legem Iuniam liberi facti sunt, etiamsi non essent ciues Romani. legis itaque Iuniae lator cum intellegeret futurum, ut ea fictione res Latinorum defunctorum ad patronos pertinere desinerent, quia scilicet neque ut serui decederent, ut possent iure peculii res eorum ad patronos pertinere, neque liberti Latini hominis bona possent manumissionis iure ad patronos pertinere, necessarium existimauit, ne beneficium istis datum in iniuriam patronorum conuerteretur, cauere {uoluit}, ut bona eorum proinde ad manumissores pertinerent, ac si lex lata non esset. itaque iure quodam modo peculii bona Latinorum ad manumissores ea lege pertinent.

[...] as a result of the Junian Act, all those whose liberty the praetor protected came to be free and were called Junian Latins: Latins, because the Act intended them to have their freedom exactly as if they were freeborn Roman citizens who came to be

the census, or among friends, may free their entire household, that is, provided that there is no other bar to their freedom. (Translation adapted from the Gordon/Robinson edition.)

⁴⁷ For discussion see Buckland, *The Roman Law of Slavery* (n. 17), 444-45 and 548-51 (informal) and 449-61 (formal).

⁴⁸ Gaius, *Inst.* 3.56.

colonial Latins through emigration from the City of Rome to Latin colonies; Junian, because they were made free by the Junian Act, even though they were not to be Roman citizens. That being so, the draftsman of the Junian Act realised that the result of this fiction would be that the property of deceased Latins would cease to go to their patrons. They did not die as slaves and so their property could not go to their patrons as *peculium*; and the goods of a freedman who was a Latin could not go to his patron by virtue of his manumission. So that the benefit given to Latins should not rebound to the prejudice of their patrons, therefore, he considered it necessary to provide that their estates should go to the persons who manumitted them as if the Act had not been passed; and so by this Act the estates of Latins go to those who manumit them, in a certain sense as being a slave's *peculium*. (Translation adapted from the Gordon/Robinson edition.)

Whilst allowing slaves a more elevated status compared with that of the *servus* that manumission *inter amicos* brought with it during the Republic – namely that of a *libertus* – it is clear that a slave so manumitted during the Empire was still subject to a range of disabilities not shared by those manumitted in one of the formal modes of manumission.⁴⁹

In the light of these disabilities, it does not come as much of a surprise that the Romans were not slow in finding ways and means to allow a Junian Latin to gain full freedom, and with it Roman citizenship. This is not the place to discuss the motivations behind the different ways of doing so in detail; suffice it to stress that there were essentially two types of remedies that allowed a Junian Latin to gain Roman citizenship, namely those offered by the state, or – to be less anachronistic – in the name of the *populus Romanus*, and those offered by the individual patron.⁵⁰ The former, state(or: *populus*)-driven type of remedy evolved and changed over time, depending on the needs of the state, concentrating heavily on the capital city, and including, amongst others, and with further qualifications, service with the *vigiles* in Rome, the construction of a house in Rome, and three years' milling of grain for Rome. Alternatively, the presentation of a child of one year of age in front of the praetor allowed the Junian Latin (together with wife and child) to gain

⁴⁹ The assumption by E. Dal Lago and C. Katsari, 'Manumissio e ribellione nell'Impero romano e nel Sud degli Stati Uniti prima della Guerra Civile', in A. Gonzales (ed.), *La fin du statut servile? (Affranchissement, libération, abolition ...)*, 2 vols. (Besançon 2008), II:541-550, at 546, that '(n)ell'Impero romano, infatti, gli schiavi liberati, o liberti, non formavano nè una classe sociale a parte, nè un gruppo di individui che continuava a portare il marchio di un passato servile, come avveniva, invece, in altri sistemi schiavisti' so that '[...] i liberti [...] godevano degli stessi privilegi di cui godevano coloro che erano liberi dalla nascita', ignores the effects of the *lex Iunia*, and is more generally out of touch with recent scholarship on the integration of ex-slaves into Roman society, for which see, e.g., Mouritsen, 'Freedmen and decurions' (n. 13), or M. Corbier, 'Famille et intégration sociale: la trajectoire des affranchi(e)s', published in the same conference proceedings as the paper by Dal Lago and Katsari: II:313-27. If not all conditions were met upon formal manumission (e.g. the required age of the slave), the manumitted slave was given the status of a Junian Latin: Gaius, *Inst.* 1.17 (see also note 54 below).

⁵⁰ The two categories are the same as those recognised by David Daube more generally for manumissions (in the Republic): 'Two early patterns of manumission', *JRS* 36 (1946), 57-75.

citizenship.⁵¹ The other, patron-driven way out of Latinity depended in the first instance entirely on the goodwill of the patron, and could be effected in a range of ways, including the soliciting, through the patron, of a grant of the *princeps*, to which Pliny's correspondence provides some interesting windows.⁵² Practically speaking though, '[...] iteration', as Boudewijn Sirks put it, 'would be the obvious way',⁵³ *i.e.* a repetition of the manumission in one of the so-called formal modes. The matter is set out in detail by Gaius in his *Institutes*:⁵⁴

Praeterea possunt maiores triginta annorum manumissi et Latini facti iteratione ius Quiritium consequi. quo ----- triginta annorum manumittant ----- vv. 1½ ----- manumissus uindicta aut censu aut testamento et ciuis Romanus et eius libertus fit, qui eum iterauerit.

Moreover, men of over thirty years who have been manumitted and become Latins are able to obtain the right of citizenship by iteration. So ... of [over] thirty years, they may manumit ... a person manumitted by rod, by the census, or by will becomes both a Roman citizen and the freedman of the one who repeated the manumission.

(Translation adapted from the Gordon/Robinson edition.)

Despite the difficulty in reconstructing the text due to the defect in the manuscript, scholarly interpretation of the passage concerning iteration of a manumission that has led to Junian Latinity has been agreed. As Duff comments: '[...] it was always open to a Latin, whether he owed his inferior rank to his youth at the time he was freed or to the informal circumstances of his manumission, to ask his former master to repeat the ceremony of emancipation by the legal forms or at the legal age.'⁵⁵ One may wish to add that it was always open to the quiritary master, too, to repeat the manumission ceremony by the legal forms or at the legal age, be it by the rod, by the census or by will.⁵⁶ Logically, the same conditions and restrictions applied as are known otherwise for these modes of

⁵¹ For discussion in the current context see Duff, *Freedmen* (n. 25), 79-84, and Sirks, 'Informal manumission' (note 53 below), 254. Cf. Gaius, *Inst.* 1.28-35.

⁵² Pliny, *Epistulae* 7.16; 10.5; 10.6; 10.104; 10.105.

⁵³ A.J.B. Sirks, 'Informal manumission and the Lex Junia', *RIDA* 28 (1981), 247-76, at 253.

⁵⁴ Gaius, *Inst.* 1.35. The passage should be read in context with Gaius, *Inst.* 1.17: *Nam in cuius personam tria haec concurrunt, ut maior sit annorum triginta et ex iure Quiritium domini et iusta ac legitima manumissione liberetur, id est uindicta aut censu aut testamento, is ciuis Romanus fit; sin uero aliquid eorum deerit, Latinus erit* / For any person who fulfils three conditions – that he is above the age of thirty, that he is in the quiritary ownership of his master, and that he is freed by means of a lawful and legally recognised manumission (that is, by rod, by the census, or by will) – becomes a Roman citizen; but if any of those conditions is lacking he will be a Latin. (Translation adapted from the Gordon/Robinson edition.)

⁵⁵ Duff, *Freedmen* (n. 25), 80.

⁵⁶ So also Buckland, *The Roman Law of Slavery* (n. 17), 718: '[...] any Junian latin could, when he was over 30, be made a *civis* by *iteratio*, by the person in whom the quiritary ownership of him was now vested.'

manumission. Failing such iteration, or any of the other recognised remedies, the Junian Latin maintained that status into death.

Leaving aside the clear disadvantages that informal manumission brought for the slave vis-à-vis formal manumission, the creation of freedmen and freedwomen of Latin status entailed some distinct advantages for the masters. Notwithstanding the widely held view that economic *motives* were marginal for the passing of the *lex Iunia*, one *effect* of the statute consisted undoubtedly in an improvement of the informally freed slave's commercial potential for the master-now-patron. As Sirks put it:⁵⁷

[...] freedmen and slaves were used by Roman society to manage their riches, not only because the distances made the use of intermediaries desirable if not indispensable, but also because the Romans had values, rules and prohibitions that necessitated the rich and the senators to make use of freedmen and slaves. The law of the second century B.C. gave cause for discontent: with a slave the *dominus* kept the property of the put out capital and the profits, but was deemed personally liable *in solidum*; with a freedman the patron was not liable but he got nothing back, except if he had lent money [...] The *lex Iunia*, preserving the peculiar advantage, in this respect brought a clear gain to the patrons, as the informally freed now got a status recognized in civil law, and were enabled by the *ius commercii* to contract with private persons or the state (*redempturae*), to own and to litigate.

In short, Junian Latins gained the *ius commercii*, and, as Sirks has stressed, thus provided a means for their patrons to engage in business activities without themselves losing *dignitas* and *otium*: for '(a)s a Junian Latin was the legal owner of f.i. a ship, no one could accuse his patron – if a senator – of immoral or illegal conduct [...]'⁵⁸ In the same vein, the patrons could easily avoid any commercial restrictions or legal prohibitions put upon them as citizens and senators by utilising Junian Latins in their business enterprises in their place. Under the Republic, business activities carried out on behalf of their masters by slaves manumitted informally did not free the masters from involvement; after the *lex Iunia* it did. If during the early Empire masters chose slaves to act for them, they could be sued, if things went wrong, on the *actio de peculio*, or in some cases worse still, if their knowledge and their will could be demonstrated, on the *actio tributoria*: the financial risk was thus potentially quite unlimited.⁵⁹ If they, as they could, chose on the other hand to utilise a slave manumitted in one of the so-called formal modes, thus avoiding such potentially highly damaging law suits, they were however not entitled to the freedman's estate upon his death in the way they were with a slave's; only their patronal claim applied

⁵⁷ Sirks, 'Informal manumission' (n. 53), 272.

⁵⁸ Sirks, 'Informal manumission' (n. 53), 269; see generally 267-71.

⁵⁹ Jean Andreau is quite wrong in stating '[...] that the master of a slave with a *peculium* was responsible only for that sum [...]', and that '[...] his responsibility was indeed "limited"': *Banking and Business in the Roman World* (Cambridge 1999), 69, following A. Di Porto, *Impresa collettiva e schiavo 'manager' in Roma antica (II sec. a. C.– II. sec. d. C.)* (Milan 1984). For a sound discussion of the master's financial responsibility see D. Johnston, 'Suing the *paterfamilias*: theory and practice', in J. W. Cairns and P. du Plessis (eds.), *Beyond Dogmatics. Law and Society in the Roman World* (Edinburgh 2007), 173-84.

in the case of the formally manumitted slave.⁶⁰ In other words, if a master-cum-patron had equipped a freed slave with a juicy *peculium* in order to trade on his or her behalf, he or she might not be able to recover that *peculium* (in its totality) upon the freed slave's death because of the law of succession. With a Junian Latin, in contrast, the masters got the best of both worlds. They did not need, as Jean Andreau still maintained, to make a decision between the profitable and the good, between '[...] un esprit de profit et de speculation' on the one hand and the execution of their business enterprises '[...] *au contraire* avec prudence et en fonction de valeurs sociales et morales (my emphasis)'⁶¹ on the other: as far as the law was concerned, with a Junian Latin, they could have their cake and eat it too.

But there remained an *Endrisiko*: for what if these freedmen, with all the goodwill in the world and no intention of fraud or personal malice,⁶² reduced their possessions, as can so often happen when business transactions go wrong? If the *Caucillii* set up their freedmen as bankers and money-lenders with financial reserves large enough for the task, those reserves would be lost if the freedmen failed in business, and the *Caucillii* consequently perhaps somewhat out of pocket.⁶³ To put it differently, despite the great economic opening offered to masters by the *lex Iunia*, there remained some significant financial dangers in putting out one's assets via one's freedmen. Ten years ago, Jeremy Paterson stressed the issue of risk more generally in the context of the employment of freedmen (and slaves) especially in overseas trade, without however providing a solution.⁶⁴ Perhaps Roman patrons cared little about the assets they put out via their freedmen, whether or not they intended to use these as their agents or merely to help set them up in their own business? Sirks, in any case, worried little about the remaining financial risks in his attempt to stress the economic opening afforded the patrons by the *lex Iunia*.⁶⁵ As a consequence, his approach stands in contrast to that of the Romans for whom, to speak with Andreau, '[...] le souci de sécurité est largement dominant' – patrons included.⁶⁶ But how to bridge the gap? Or do we after all have to accept the opinion, only

⁶⁰ For a detailed table of the patronal claim under different statutes dependent on the different statuses involved see Sirks, 'Informal manumission' (n. 53), Table I: 'Outline of the succession to the *bona libertorum et libertarum* by patrons and their successors, based on Gai. 3.39/53'. On the estates of Latin freedmen see Gaius 3.55-76.

⁶¹ J. Andreau, 'Sur les choix économiques des notables Romains', in J. Andreau, J. France, S. Pittia (eds.), *Mentalités et choix économiques des Romains* (Bordeaux 2004), 71-85, at 76.

⁶² The law prevented freedmen from reducing their capital through fraud or malice: D 37.14.16 (Ulpian). For discussion in the context of informally freed slaves see Sirks, 'Informal manumission' (n. 53), 266-67.

⁶³ *CIL* VI 9181-9182.

⁶⁴ J. Paterson, 'Trade and traders in the Roman world: scale, structure, and organisation', in H. Parkins and C. Smith (eds.), *Trade, Traders and the Ancient City* (London and New York 1998), 149-67, at 161-66.

⁶⁵ A similar blind eye to the issue of financial risk underlies the approach by Henrik Mouritsen on the use of freedmen by their patrons in the urban economy: 'Roman freedmen and the urban economy: Pompeii in the first century A.D.', in F. Senatore (ed.), *Pompeii tra Sorrento e Sarno. Atti del terzo e quarto ciclo di conferenze di geologia, storia e archeologia* (Rome 2001), 1-27.

⁶⁶ Andreau, 'Sur les choix économiques' (n. 61), 74.

recently restated by López Barja de Quiroga, that '[...] economic motives played only a small role in Roman manumission'⁶⁷? *I.e.* do we have to accept that the main motivations for and benefits derived from the *lex Iunia* are to be seen primarily in non-economic considerations? With the champions amongst the latter being the 'merit test' – 'Latinity was a very valuable tool with which owners could gradually grant to their slaves the *magnum beneficium* of freedom and citizenship, according to their merits [...]', so that '[...] owners could use Latinity as a test period before definitely granting Roman citizenship' – followed closely on the hoof by the 'emergency measure' – '(c)ircumstances could easily arise in which any of the three formal modes of manumission [*vindicta, censu, testamento*] was inconvenient or impossible, for instance if there were no magistrate available or if the master or slave were dying'.⁶⁸

The answer to the latter set of questions is, obviously, negative – for the reply we can now give to the question as to how to bridge the gap as a result of our newly gained understanding of informal manumissions is self-evident: the recognition that Junian Latins were created on the basis of a contractual deal represents the very safety net that Sirks' argument is lacking. The security against undue risk in putting out their property via their freedmen was there, from the beginning, in the form of the price stipulated by the masters upon manumission of the slave, covering for losses in advance – including, as stated at the end of the first part of this chapter, labour potential, replacement prices and financial reserves. Once this is recognised, we need not any longer believe that the Romans '[...] had to feel great confidence in the freedman's ability and integrity' as William Harris still did, who consequently argued for the preferred employment of slaves (over freedmen) – 'a less risky mechanism' – in the case of the management of the (signed) lamp industry.⁶⁹

⁶⁷ P. López Barja de Quiroga, 'Junian Latins: status and number', *Athenaeum* 86 (1998), 133-63, at 160.

⁶⁸ 'Merit test': López Barja de Quiroga, 'Junian Latins' (n. 67), 159 (and restated with his general views on Roman manumission in *Historia de la manumisión en Roma* (n. 24), III: Leyes); 'emergency measure': Treggiari, *Roman Freedmen* (n. 16), 29 (applied to the imperial (provincial) situation in López Barja de Quiroga, 'Junian Latins' (n. 67), 159, and already considered in Buckland, *The Roman Law of Slavery* (n. 17), 444). Naturally, different scholars have picked out different nuances over the last century regarding the causes and consequences of the *lex Iunia*, which have a bearing on our view of preferred manumission modes. Despite some disagreements, their divergences are in essence however very small, and the aim of the law is typically seen, as López Barja de Quiroga states '[...] at solving the problem posed by informal manumissions; this was its purpose, very specific and very clear [...]', *i.e.* '[...] to solve this uncomfortable [Republican] situation, which had already provoked [...] a certain amount of social unrest [...]': 'Junian Latins' (n. 67), 135-36. Next to ideas of a 'merit test' and an 'emergency measure', the passing of the statute is thus seen as having been motivated also by humanitarian feelings of the masters towards their (informally) freed slaves: '(m)ost writers', writes Sirks, 'consider a sentiment of humanity the main reason for the law': 'Informal manumission' (n. 53), 257. For a detailed overview of modern explanations of the *lex Iunia* and the masters' motivations behind the statute's application see generally Sirks, *op. cit.*, and also his 'The *lex Iunia* and the effects of informal manumission and iteration', *RIDA* 30 (1983), 211-92.

⁶⁹ W. V. Harris, 'Roman terracotta lamps: the organization of an industry', *JRS* 70 (1980), 126-45, at 140.

Needless to say, the different bargaining powers of both masters and slaves would have created enormous scope for variation in the price paid upon manumission from one case to the next. Similarly, there is every reason to think that there was as much variation in the amount, type and level of work carried out by freedmen and freedwomen for their patrons (and for themselves).⁷⁰ Hopkins' contention that the master's chief benefit from the stipulation of a price upon manumission was to 'replace an old slave with a young one' appears now too restrictive in focus to account for all the eventualities, opportunities and capabilities.⁷¹ At the same time, the stress on the masters' interests and benefits to the exclusion of the interests of and benefits for the freed slaves behind the legal dealings underlying their informal manumission may be equally in need of revision; for notwithstanding the difficulties in spotting what we may wish to call dependent and independent activities in our evidence for freedmen and freedwomen, there is no reason to doubt that even slaves freed to put to work on their masters' behalf would use their position and connections to make the most out of it for themselves, too, and to increase their *peculia*.⁷² There is, moreover, no reason to think that all slaves manumitted informally were employed for their patrons' business enterprises. The contractual nature underlying informal manumissions was equally useful from the masters' point of view for all and every slave manumission of this type, providing, at the very least, a cover for the lost labour potential if not the financial resources to replace the slave outright. A business (with freedom) that was safe and certain – like that sought, according to Plutarch, by Cato the Elder,⁷³ no matter at what economic level, and thus complying fully with the Romans' concerns over risk and security. Hence, in the light of the contractual nature quite generally applicable to such manumissions, the focus on the high flyers amongst slaves, *i.e.* those foregrounded by Sirks and set to act on their former master's behalf in the world of business, banking and the like, may indeed be quite unjustified.⁷⁴ Paying for one's

⁷⁰ A brief look at some conspicuous pieces of evidence demonstrates lucidly the different levels and niches of economic engagement of freedmen: *e.g.* fulling and the wool trade (*CIL* IV 1041; 2966; 2974, and for a modern discussion see O. W. Moeller, *The Wool Trade in Ancient Pompeii* (Leiden 1976), 31 and 98-104), trading and slave trading (*BGU* iv. 1114, and for a modern discussion of the freedman's career see W.V. Harris, 'A Julio-Claudian business family?', *ZPE* 130 (2000), 263-64), banking and auctioning (*CIL* VI 9183, and for a modern discussion of freedmen in banking see J. Andreau, *La vie financière dans le monde romain. Les métiers de manieurs d'argent (IV^e siècle av. J.-C. - III^e siècle ap. J.-C.)* (Rome 1987), esp. 359-441), hairdressing (*CIL* VI 9940), acting (*CIL* VI 10102), farming (Pliny, *Naturalis historia* 14.49).

⁷¹ Hopkins, *Conquerors and Slaves* (n. 4), 128.

⁷² This is in principle accepted by Garnsey: 'Independent freedmen' (n. 30), 364-66; but see also his synopsis of the contention that there exists '[...] the marked tendency of historians and lawyers to overestimate the level of dependence of freedmen [...]': 'Slaves in "business"', *Opus* 1 (1982), 105-08, at 106. Such 'independent' activity as described above does not question the contention that freed slaves who were manumitted for the purpose of engaging in business on their patron's behalf depended on the latter for their commercial set-up; the point has been elaborated in Mouritsen, 'Roman freedmen and the urban economy' (n. 65), 9-22.

⁷³ Plutarch, *Cato Maior* 21.5.

⁷⁴ Sirks argued that '[...] the senate must have had (the rich Junian Latins in view) when it accepted the *lex Junia* [...] it would not have done it for penniless people. That means that at the moment of

freedom was, structurally speaking, not a privilege of a select few. It affected, in principle, all informally freed slaves, *i.e.* all Junian Latins, rich or poor. And if, moreover, masters could entice their slaves more generally to join the manumission bandwagon here described, this made not just freedom, but slavery a safe and certain business by building amortisation of the slave labour force into the slave system.

No B-O-G-O-F

The economic opening that the *lex Iunia* created provides a structural explanation for a masterly preference for informal manumissions, rooted in the socio-economic setting behind these manumissions, from (labour) cost satisfaction to commercial agency, and visible in their practical norm, applicable throughout the Empire, and across all social levels. It is in fact important to recognise that the meaning of a contractual deal behind a manumission is not disputed in modern scholarship: '[...] freedom', as Bradley put it, 'in exchange for cash was a commercial transaction, governed on the owner's side not by morality or benevolence but by considerations of financial gain and loss.'⁷⁵ It follows that the recognition of a contractual arrangement as the conceptual framework that established a specific practical norm for a whole group of manumission modes demonstrates those modes as guided by precisely such considerations of financial gain and loss, and not by motivations that were spurred by ideas of a 'merit test' or an 'emergency measure', let alone humanitarian feelings. It was the masters' economic interests, as Bradley states, that guided these. That there would have been exceptions to this rule, does not question the principle.

But precisely such a commercial transaction formed the conceptual framework not just for informal manumissions, but, as stated earlier, quite generally for all manumissions carried out during the lifetime of the master, *i.e. inter vivos* – including, for instance, manumission by the rod that conferred citizenship status. As we saw above, there were enormous disadvantages associated with the status of the Junian Latin vis-à-vis that of a freed man (or woman) who held Roman citizenship. And it is hard to believe that a slave manumitted informally should not wish to shed these disadvantages. The only way to do so, as said, was through the acquisition of citizenship. So what would our Junian Latin have to do next should he or she wish to acquire such Roman citizenship? The answer is as short as brutal: they would need to start the cycle again that they had just successfully completed, moving from good slave to grateful freedman and freedwoman, working, once more, by the sweat of their brow, to accumulate resources that increased their *peculia*. After all, how else were they to shed Latinity and to acquire citizenship, if not through the purchase of full freedom by way of iteration?

manumission the slave would have a good chance of becoming rich, or was already rich, which again means that his *dominus* was rich': 'Informal manumission' (n. 53), 270. Contrary to the underlying view that privileges wealth, see, *e.g.*, the argument concerning commercial law by Jean-Jacques Aubert that it '[...] must have affected to a high degree the lives and well-being of a significant part of the population at large [...]': 'Conclusion: a historian's point of view', in J.-J. Aubert and B. Sirks (eds.), *Speculum Iuris. Roman Law as a Reflection of Social and Economic Life* (Ann Arbor 2002), 182-92, at 188.

⁷⁵ Bradley, *Slavery and Society* (n. 44), 159.

Naturally, they could have tried to complete one of the challenges offered by the state. But the forecasts sketched by various scholars for the acquisition of citizenship of informally freed slaves through accomplishment of one of the public challenges – including the production of a child – are rather pessimistic; L. Venidius Ennychus, from Herculaneum, took in any case over twenty years to shed Latinity by way of *anniculi probatio*.⁷⁶ Failing such patience or heroic deed (or merely the opportunity), ‘[...] iteration’, as Sirks said, ‘would be the obvious way’.⁷⁷ And what better means for our Junian Latin to entice the patron accordingly than through the colour of his or her money? Purchase, as we now know, formed after all the conceptual framework for manumissions during the master’s lifetime; iteration, in a patron-driven mode, during the patron’s lifetime, logically followed that pattern. Slaves who had become Junian Latins, and who now wished to gain Roman citizenship on top of the already gained freedom did not just pay once, but twice: there was no ‘B(uy)-O(ne)-G(et)-O(ne)-F(ree)’-deal in Roman slavery. To have your (full) freedom and (what was left of) your *peculium* usually came dear. Failure in business, or merely an inability to put aside savings, was, of course, always a possibility. But should the Junian Latin fail to accumulate any additional monies, the patron, as we saw, was not out of pocket. If, on the other hand, the Junian Latin was successful in his or her business enterprises but died before he or she amassed the necessary resources for iteration, the patron would receive a fringe benefit on the deal in the form of a juicy *peculium*. Naturally, the heirs could have sat tight, too, which may go some way to explain the dearth of legal disputes over the slaves’ *peculia* in informal manumissions, and hence the slim evidence for it.

The repercussions of this recognition (and of the cycle that stood behind it) on our view of what John Bodet called the ‘freedman’s mentality’ are clear: it is unlikely that for Junian Latins, ‘(t)he loosening of restraints at manumission let forth a flood of pent-up human desires [...]’⁷⁸ Instead, there is a good probability that their peculiar status had an influence on the Roman labour ethos, as had that of the slave. As we saw in Part 1, the masters’ preferred (economic) choice was for a contractual deal behind manumissions in their lifetimes, and such a deal was governed, as Bradley states, by masterly considerations of financial gain and loss. Logically, the deal was governed on the slaves’ side not so much by an expression of servile hope and a mentality of submission, but by an ethos of hard work and personal accomplishment, fostering, in turn, an ideology of

⁷⁶ For a brief summary of modern views see López Barja de Quiroga, ‘Junian Latins’ (n. 67), 155-59, and P. R. C. Weaver, ‘Where have all the Junian Latins gone? Nomenclature and status in the early Empire’, *Chiron* 20 (1990), 275-305, at 280-81. On L. Venidius Ennychus, whose acquisition of Roman citizenship is recorded in the *Tabulae Herculenses*, see G. Camodeca, ‘Cittadinanza romana. Latini Iuniani e lex Aelia Sentia. Alcuni nuovi dati dalla riedizione delle *Tabulae Herculenses*’, in L. Labruna (ed.), *Tradizione romanistica e costituzione I* (Naples 2006), 887-904, esp. 902-04, with ‘Per una riedizione dell’archivio ercolanese di L. Venidius Ennychus’, *Cronache Ercolanesi* 32 (2002), 257-80, esp. 260-66.

⁷⁷ Sirks, ‘Informal manumission’ (n. 53), 253.

⁷⁸ J. Bodet, ‘Trimalchio’s underworld’, in J. Tatum (ed.), *The Search for the Ancient Novel* (Baltimore and London 1994), 237-59, at 252 and 253.

achieved status.⁷⁹ The latter stood obviously in contrast to the ideology of inherited status cherished by the free-born elite. Perhaps we have in all this a reason why the scheme of creating Junian Latins was in place for over half a millennium,⁸⁰ providing, as it did, yet another crucial element of the Roman slave system through its encouragement of (servile) industry, reinforcing status differentials, maintaining ties of dependency and, most of all, supporting the accumulation of wealth by the free through the exploitation of somebody else's labour.⁸¹

Beyond partitioning

None of what has been argued here questions that there were slaves who got manumitted, and indeed gained Roman citizenship, in the lifetime of their masters without paying a single penny; or that there were slaves who were released entirely out of the goodness of their masters' hearts, benefiting from all their *peculium* allowances and what other allowances they had been granted: but I doubt there were (proportionally speaking) many of these. The practical norm behind the legal technicalities applied to the transfer of *peculium* in manumissions *inter vivos* suggests in any case a somewhat less rosy historical reality. And given that the masters had nothing to lose – either socially or economically – through manumitting their slaves in this way, they should have been positively predisposed towards the idea of doing so during their lifetimes. In fact, they had everything to gain from it. Contrary, then, to the assumption that an economic focus on the masters' part '[...] left most slaves with little hope of ever gaining their freedom',⁸² it in fact widened the options for them. We could also say that the acquisition of freedom may *therefore* not have been such a difficult proposition after all, and the prospect of liberty consequently not necessarily fragile. We should in any case not forget that our four emperors – Severus and Caracalla on the one hand, Diocletian and Maximilian on the other – actively favoured through their rescript system a practical norm for manumissions *inter vivos* that was based on a contractual deal, thus positively supporting the instrumental relationship between *peculium* and freedom laid out in this chapter.

When Alföldy and Hopkins argued for the widespread practice of slaves purchasing their freedom, they saw the economic potential restricted to replacing old (slave) with new

⁷⁹ It may not be entirely frivolous to suggest a possible relationship between the *lex Iunia* and the suspected increase in GNP in the first few centuries of imperial rule. On the question of a possible growth in per capita income in this period see E. Lo Cascio, 'The early Roman Empire: the state and the economy', in I. Morris, R. P. Saller, W. Scheidel (eds.), *The Cambridge Economic History of the Greco-Roman World* (Cambridge 2007), 619-47.

⁸⁰ The *lex Iunia* was abolished by Justinian.

⁸¹ The hub of the modern debate on slave personal production lies distinctly outwith the field of ancient slavery studies; see, e.g., the summary of the debate within Brazilian slavery studies now already some decades old by S.B. Schwartz, *Slaves, Peasants, and Rebels. Reconsidering Brazilian Slavery* (Urbana and Chicago 1996), esp. Ch. 3. For a recent discussion of the issue of slave personal production in the context of Roman slavery see Roth, 'To have *and* to be' (n. 5), 289-92.

⁸² Mouritsen, 'Roman freedmen and the urban economy' (n. 65), 21.

(slave).⁸³ At the core of their arguments were the so-called formal modes of manumission, ignoring the importance of iteration,⁸⁴ and they were in the main concerned with numbers – a point resolutely not touched upon here, but reserved, together with a more detailed analysis of the price(s) of freedom and the impact of gender upon manumission, for a future occasion. But we can now be certain that they both barked up the wrong manumission tree in their quest to assess the regularity of manumission in the Roman Empire. The socio-economic setting of manumissions *inter vivos*, expressed in the form of a business deal – now fully identified through the recognition of the correct legal technicalities behind the relevant manumission modes – in conjunction with the exposure of the significance of iteration for the acquisition of citizenship, discloses slave emancipation in the Roman Empire as an act in two parts, not unlike the degree structure of some old English universities.

From all this it follows that informal manumission was the masters' preferred (socio-economic) choice for their slaves' *first* step to (full) freedom. And in the lack of evidence to the contrary in individual cases, this, in turn, discloses our Junian Latins as freedmen who had purchased their freedom. We could also say that it is with the Junian Latins that we have to reckon when we want to know why the Romans freed so many slaves. Just as it is with the slaves' *peculium* allowances, their agency and industry, that we have to think if we want to come to terms with issues of the internal organisation of slavery. For how many of them the proposed relationship between *peculium*, freedom and citizenship proved to be a golden triangle rather than a vicious circle is probably forever unknowable; and we may moreover wish to join Henrik Mouritsen in seeing in the freedman's realisation of great wealth and high status the exception that proves the rule.⁸⁵ Yet we can be fairly certain that the recently expressed view, that 'exits through enfranchisement' from slavery '[...] allow the slave system to be rid of the less useful elements or the ones that are more difficult to subjugate',⁸⁶ lacks any realistic backdrop in the Roman world.

That the double exploitation of Roman slaves – working for their masters and working for 'themselves' – assumed behind the manumission mechanism argued for here, created

⁸³ This has also been argued on the basis of the three Egyptian manumissions *inter amicos* mentioned above: Scholl, "Freilassung unter Freunden" (n. 41), 168, following J. A. Straus, 'L'esclavage dans l'Égypte Romaine', *ANRW* II (10.1), 841-911, at 892-93.

⁸⁴ Garnsey, 'Independent freedmen' (n. 30) is imprecise when stating, at 31, that '[...] Alföldy's analysis is concerned only with manumissions *inter vivos* [...]'; as iteration is not an issue for Alföldy, his concentration on the age of 30 demonstrates his interest in only some of the manumission modes employed during the lifetime of the masters – namely those that award citizenship: 'Die Freilassung von Sklaven' (n. 4), *passim*. Hopkins, on the other hand, focuses on testamentary manumissions, and, like Alföldy, on slaves who gain citizenship upon manumission: *Conquerors and Slaves* (n. 4), 116 (on citizenship) and 128-29 (on mention of the purchase of freedom in legal references to testamentary manumissions).

⁸⁵ Mouritsen, 'Roman freedmen and the urban economy' (n. 65), esp. 15-22.

⁸⁶ O. Pétrel-Grenouilleau, 'Processes of exiting the slave systems: a typology', in E. Dal Lago and C. Katsari (eds.), *Slave Systems. Ancient and Modern* (Cambridge 2008), 233-64, at 242 (also published as 'Modes de sortie de l'esclavage', in Gonzales (ed.), *La fin du statut servile?* (n. 49), II:511-40).

windows for individuality and creativity in slavery is perhaps one of the more uncomfortable aspects of the Roman slave system to come to terms with; not least since the masters' ultimate power over the slaves' *peculium* allowances would in turn have acted, to speak with Bradley, as a means of social control. It is perhaps not less uncomfortable to realise the scale at which the Romans were prepared to exploit their freedmen, too. Or the variety of different niches and statuses that individuals would have carved out for themselves, depending on opportunity, ability, age, gender and much else. And it may be equally uncomfortable to recognise the widespread belief that the Romans typically gave citizenship to their former slaves – '(a)lmost all ex-slaves freed by Roman masters received Roman citizenship [...]'⁸⁷, Moses Finley's 'astonishing rule'⁸⁸ – to be without solid foundation, at least in the period under discussion here. The relevant literary snippets, imperial statutes and freedman epitaphs, have failed, for the reasons stated at the outset of this chapter, to be manipulated in a manner that provides more than just incidental argumentation: we simply have no grip on the evidence that allows us to deduce with certainty how many of those recognisable in our sources as freed men and freed women actually managed to gain Roman citizenship. As is well known, Junian Latins could and did carry the *tria nomina* (as did Latins), making identification of Roman citizens amongst the freedmen body regularly fairly difficult.⁸⁹ Perhaps, imperial Romans were more hesitant after all in assuming their former slaves into the citizen body than typically thought, and the diversity of personal fates, social statuses and civic capabilities amongst the freedmen body richer than often assumed. The story of the Junian Latins serves in any case as a stark reminder of the futility, recently revived by Jonathan Prag and Ian Repath, of conceptualising freedmen as a (single) 'social class'.⁹⁰

⁸⁷ Hopkins, *Conquerors and Slaves* (n. 4), 116.

⁸⁸ M. I. Finley, *Ancient Slavery and Modern Ideology* (London 1980), 97.

⁸⁹ For reasons that are quite unclear the false assumption that the *tria nomina* 'signals unambiguously [...] a Roman citizen' (L. H. Petersen's *The Freedman in Roman Art and Art History* (Cambridge 2006), 109) has recently found a number of adherents. In the same vein as Lauren Petersen see, e.g., V. M. Hope, *Roman Death. The Dying and the Dead in Ancient Rome* (London and New York, 2009), 167-68, J. Perkins, *Roman Imperial Identities in the Early Christian Era* (London and New York, 2009), 130, A. Richlin, 'Sex in the *Satyrica*: outlaws in literatureland', in Prag and Repath (eds.), *Petronius* (note 90 below), 82-100, at 86. The use of the *tria nomina* without any additional indicators of civic status – e.g. a tribal indication – remains highly ambiguous as a marker for citizenship. The point has been made clearly by Weaver, 'Children of Junian-Latins' (n. 15), 56, and underlies more generally his attempt to spot Junian Latins in the (epigraphic) evidence: 'Where have all the Junian Latins gone?' (n. 76).

⁹⁰ J. Prag and I. Repath (eds.), *Petronius. A Handbook* (Oxford 2009), 3. The volume as a whole continues the widespread habit of ignoring the effects of the *lex Iunia*, and despite its claim to bring together historical (esp. socio-economic) and philological analyses, it makes no attempt to alert its targeted student audience to the differences in freedmen statuses, and the relationship between (type of) manumission and citizenship that is crucial for their (socio-economic) assessment; instead, it reinforces the Trimalchian model as *the* (only) model of freedman-ship, -art, -culture, etc.: *passim* (and xiii). This lack of differentiation is even evident in the chapter that discusses (amongst other things) the legal status of freedmen (J. Andreau, 'Freedmen in the *Satyrica*', 114-24, at 117-18).

It is a near commonplace in the scholarship on this topic to propose contrasts: independence versus dependency, formal manumission versus informal – so-called, and to seek out these contrasts in our evidence. But the Romans were craftier than that. In a world in which iteration was important, so-called informal manumission could be a stepping-stone to so-called formal manumission, turning evidence for a Junian Latin into a potential signpost to a fully fledged freedman endowed with Roman citizenship later on, or disclosing a legal snippet on testamentary manumission as evidence for the occurrence of an earlier manumission *inter amicos*, etc. Similarly, the patronal dependency that functioned as the basis for the freedman's commercial set-up (where applicable) may act as the platform for their own, 'independent' economic activity, copying the double system of working for 'oneself' and working for the master already tried (successfully) in slavery. And the same multiplicity applied to the various economic levels at which the Romans' freed slaves were active – from the day labourer to the maritime trader, for reasons made clear above. The layers of grey in between the (independent) black and the (dependent) white could thus be legion. Within the analytical niche chosen here – the socio-economic setting – the very fact that the new legal situation created by the *lex Iunia* allowed for both the maximisation of commercial opportunities *and* the maintenance of traditions and morals demonstrates lucidly the diversity of interests at play that is so typical for Roman imperial society. It also shows how the elite at Rome went about finding openings that allowed them to preserve their *otium* whilst not missing out on prospects offered through *negotium*.⁹¹

Andreau still maintained only a few years back a clear dichotomy of attitudes amongst the elite concerning *otium* and *negotium* when he wrote that '(I)es stratégies extrêmement actives, qui visent avant tout à l'enrichissement et supposent un engagement maximum [...] ne sont guère compatibles avec le mode de vie de l'élite [...]'.⁹² But perhaps the time has come to put to rest the ghost of Paul Veyne, and to accept that, quite unlike us, the Romans were not so daft as to separate social from economic benefits, political from legal ones; all these did not only go well together, but were actually intrinsically intertwined with each other – not least through the medium we call slavery.⁹³ The peculiar institution is, as Alan Watson put it, '[...] an institution that operates on economic, moral, social, and political levels',⁹⁴ and these levels were set to interact and cross-fertilise each other in Roman society. Perhaps it would be too strong a claim to say that it was the *invention* of slavery that brought with it a system that allowed the Romans to have their cake and eat it too; but the institution's elaboration and refinement, from the mid-Republic onwards, ought certainly be viewed as encouraging the exploitation of men and opportunities *tout court*, establishing and reinforcing a range of mentalities and statuses that became characteristic for the world the emperors made.

⁹¹ The same general conclusion on the elite's involvement in all aspects of the (urban) economy has also been advocated by Mouritsen, 'Roman freedmen and the urban economy' (n. 65), esp. 20-22.

⁹² Andreau, 'Sur les choix économiques' (n. 61), 84.

⁹³ Veyne, 'La vie de Trimalcion' (n. 13).

⁹⁴ Watson, *Roman Slave Law* (n. 5), 1.

Manumission, and the exploitation of the Romans' freed men and women that went with it, bearing fully in mind the diversity of fates and personal destinies as well as the various levels of social and economic activity that we may be able to spot amongst them, would be better understood if seen as a distinctive feature of the human capacity to use and abuse, and with this of the Roman slavery system. That capacity, then, led to the establishment of a highly sophisticated emancipation mechanism, based on a differentiated conceptualisation of freedom and citizenship, which allowed maximum exploitation of and control over slaves and freedmen. Yet, manumission was not just a distinctive feature of the Roman slave system, but of Roman society more generally, permitting and strengthening legal as well as social differences, not least through a (servile) culture of achievement that forever separated the freed slave from those whose status was inherited. Seen in this way, manumission was not a device for integration but for separation.⁹⁵ 'Die Beendigung des Sklavenstatus', as Ingomar Weiler still termed it,⁹⁶ was a means to preserve as well as expand on that very status through the creation of a range of other statuses that were, as Henri Wallon already postulated for quite different reasons to the ones laboured here, '(t)oujours soumis au bon plaisir du maître'.⁹⁷

⁹⁵ A lack of social integration (and differences in this respect vis-à-vis their own children) has also been deduced for freedmen by Henrik Mouritsen in his study of epitaphs from Pompeii and Ostia: 'Freedmen and decurions' (n. 13), 62. For the debate on the chances and accomplishments of the children of Junian Latins see Weaver, 'Children of Junian-Latins' (n. 15).

⁹⁶ I. Weiler, *Die Beendigung des Sklavenstatus im Altertum. Ein Beitrag zur vergleichenden Sozialgeschichte* (Stuttgart 2003).

⁹⁷ H. Wallon, *L'histoire de l'esclavage dans l'antiquité*, 3 vols. (Paris 1879), II:392.