

The Legal Status of *Libertini* in Roman Law

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ABSTRACT: Towards the end of the Ancient Era, the legal institution of manumission represented a more advanced form of exploitation of former *servi*. Manumission was not created in favor of the former *servi*, proof that they were considered free people only in relation to third parties and that they did not acquire all civil and political rights, but in favor of the former masters, who had turned into patrons and who continued to exercise their influence on them through patronage relations.

KEYWORDS: *libertini*, *libertus*, *vindicta*, *censu*, *testamento*, limitation laws of manumissions

Notion

Libertini were *servi* freed by their masters from legal slavery (*libertini, qui ex iusta seruitute manumissi sunt*) (Girard 1890, 167). In order to understand more quickly the reason for the existence of the legal institution of manumission, it should be mentioned that towards the end of the Republic, there was a *servus* revolt led by Spartacus. The reality demonstrated the fact that *servi* were not considered persons (subjects of legal relations), but their objects. They could be exploited until exhaustion, which is why they did not give the return sought by their owners. The revolt led by Spartacus drew attention to the legal condition of the *servi* and demonstrated their desire for freedom.

Under these conditions, the *servus* owners understood the fact that the system of slavery is anachronistic and that the exploitation of people must take on other, more efficient forms. Therefore, the *servus* owners did not resort to manumit out of generosity, since the Roman economy was based on the labor of *servi*, but for practical reasons, since they understood that freed *servi* gave a better economic return in exchange for freedom.

The granting of freedom did not mean that the *servus* had left the former master's sphere of influence, since the former master had become the patron. The *libertus* was seen as a free person only by third parties. In relation to the former master, he had a condition similar to that of the son of the family in relation to the *pater familias*, proof that he depended on the former master with his person and goods.

In ancient times, when the *ius civile* was rigid and formalistic, the manumission was carried out through solemn forms and had the effect of acquiring Roman citizenship by the former *servus*. As the relations between the owners and the *libertini* weakened and the legal acts were freed from the ancient formalism, the manumissions became informal and no longer had the effect of acquiring the quality of a Roman citizen, but that of a Latin (Popescu 1992, 69).

The solemn forms of manumission

In ancient times, manumission was carried out through solemn forms: *vindicta*, *censu* and *testamento* (Axente 2020, 155). The person enslaved in these ways became a Roman citizen.

Vindicta was a solemn form of manumission that was carried out in front of a state authority. In ancient times, it was performed in front of the magistrate. On this occasion, the master uttered a solemn formula - *hunc liberum hominem esse volo* (I want this *servus* to be free) and touched the *servus* with a rod (*vindicta*). Touching the *servus* with the rod symbolized the presence of the spear, which was the symbol of Roman power and war. The free man lost his freedom by using the spear; symmetrically, the *servus* regained his freedom also by using the spear. Therefore, touching the *servus* with the rod symbolized the

renunciation of the power that the master had exercised over the servus until that moment. After completing these formalities, the magistrate pronounced the word *addico*, by which he gave legal value to the claims of the former master. In classical law, *vindicta* was much easier, since there was no longer any need to pronounce the previously mentioned solemn formula.

The *censu* was carried out at the time of the census. This is done in order to establish taxes. The censors had registers with the help of which they kept records of people and goods. Normally, *servi* were registered by their masters in the property register. The manumission was carried out, with the master's authorization, by transferring the servus from the register of goods to the register of persons (Garrido 1996, 451).

Manumission could also be done *testamento*. Testamentary manumission was of two kinds: direct and indirect. In the first situation, the testator expressed his will to free a servus. Manumission produced its effects at the moment of accepting the inheritance. This form of manumission was more advantageous for the *libertus*, since he had no patron.

Indirect manumission was the responsibility of the heir, as a result of an act of last will. As a rule, the act of last will took the form of a *fideicomis*. It represented a request addressed to the heir, by which he had to disenslave a servus through an act subsequent to the will. This form of testamentary manumission was disadvantageous for the former servus, because the heir became the patron of the *libertus*.

In Post-classical Law, a new solemn form of manumission appeared, the manumission made in the church (*manumissio procedit: aut enim ex sacris constitutionibus in sacrosanctis ecclesiis*) (Hanga 2002, 19). This was done through a declaration by the owner in the presence of the bishop and the people.

The non-solemn forms of manumission

Roman Law also knew non-solemn forms of manumission. These ways of manumission are provided by the Roman legal texts. According to Gaius's Institutes, manumission could be done by letter (*per epistulam*), in a circle of friends (*inter amicos*) or on the occasion of organizing a party (*per mensam*) (*manumissio procedit: aut enim ex sacris constitutionibus in sacrosanctis ecclesiis*). In the first situation, the manumission was carried out by means of a letter written by the master. In the second situation, the manumission was carried out based on the master's statement made in a circle of friends. In the third situation, manumission was done as a reward for the services rendered to the master. Compared to these methods, Justinian's Institutes add the possibility of freeing the servus in the street, when the praetor, proconsul or governor goes to the public bath or the theater (*servi vero a dominis semper manumitti solent, adeo ut vel in transitu manumittantur, veluti cum praetor aut proconsul aut praeses in balneum vel in theatrum eat*) (Girard 1890, 541).

Categories of *libertini*

Roman texts mention the existence of three categories of *libertini*: Roman citizens, Junian Latins and *dediticii* (*libertorum genera sunt tria, cives Romani, Latini Juniani, dediticiorum numero*) (Girard 1924, 124)

The *libertini* who became Roman citizens are *servi* freed by Roman citizens through *vindicta*, *censu* or *testamento*. They did not acquire all the rights enjoyed by the Roman citizen. In the opinion of the Romans, for easily understandable reasons, it was unacceptable that a *libertus* could have *ius militiae* (the right to be a soldier in the Roman legions) and *ius honorum* (the right to be elected as magistrate). He could not have *ius militiae*, because it was possible that the servus had fought against the Romans and it would have been inconceivable that a former enemy, who had become a Roman citizen, could enjoy this right. He also had no *ius honorum*, since a former enemy of the Roman people could not be elected as magistrate,

since, in this capacity, he would have participated in the decision-making process in Rome. The *libertus* took over part of the component elements of the former master's name: *praenomen* and *nomen gentilicium*. For example, after his release, Cicero's *libertus* was called Marcus Tullius Marci *libertus* Hermodorus. Marcus was the patron's first name, Tullius represented the patron's *nomen gentilicium*, *Marci libertus* was the equivalent of the parentage indication, and the *cognomen* was the name he had worn as a *servus* (Girard 1924, 129).

Junian Latins are *servi* manumitted through an informal way. Gaius tells us about them that they come from among the *servi* manumitted by letter or in a circle of friends, on the occasion of a party and that this name is due to the fact that they are assimilated to the Latins in the colonies and that they acquired their freedom through the benefit of the *lex Iunia* (*homines Latini Iuniani appellantur; Latini ideo, quia adsimulati sunt Latinis coloniariis; Iuniani ideo, quia per legem Iuniam libertatem acceperunt, cum olim servi uiderentur esse*) (Girard 1890, 168-169). We also know about them the fact that they lived free, but died *servi*, because the legal norms governing the matter of legal inheritance and testamentary inheritance did not apply to them (*non tamen illis permittit lex Iunia uel ipsis testamentum facere uel ex testamento alieno capere uel tutores testamento dari. Quod autem diximus ex testamento eos capere non posse, ita intellegemus, ne quid inde directo hereditatis legatorumue nomine eos posse capere dicamus; alioquin per fideicommissum capere possunt*) (Girard 1890, 169).

The *dediticii* are the former *servi* to whom the provisions of the *lex Aelia Sentia* were applied (Ciucă 1998, 163). Gaius mentions that this category included *servi* who were put in chains by their masters as punishment, those who were subjected to the red iron, those who, being suspected of committing a crime, were subjected to investigations by torture, and later it was proved that they were guilty of committing that crime, as well as those who were made to fight as gladiators (*lege itaque Aelia Sentia cauetur, ut, qui serui a dominis poenae nomine uincti sunt, quibusue stigmata inscripta sunt, deue quibus ob noxam quaestio tormentis habita sit et in ea noxa fuisse conuicti sunt, quiue ut ferro aut cum bestiis depugnarent traditi sint, inue ludum custodiamue coniecti fuerint, et postea uel ab eodem domino uel ab alio manumissi, eiusdem condicionis liberi fiant, cuius condicionis sunt peregrini dediticii*).

The legal condition of the *libertini*

After liberation, the former *servus* did not leave the sphere of influence of the one who had enslaved him. The power that the master had exercised over the *servus* (*dominica potestas*) was replaced by the legal relationship of patronage, which was characterized by the existence of certain rights and obligations.

The *libertus* had three obligations towards his *patronus*: *bona*, *obsequium* and *operae*.

Bona denotes the right that the *patronus* has over the goods of the *libertus* (Axente 2022, 153). Initially, when the patronage relationship was strong, this right was exercised even during the life of the *libertus*. Later, against the background of the decline of the power of the *pater familias* and the weakening of the relations between the *libertini* and the patrons, the latter exercised the *bona* upon the death of the *libertus*, provided that he had no legal heirs from the *sui heredes* category. If the patron was in difficulty, he had the right to receive maintenance from the *libertus*.

The *libertus* owed respect to his former master. This obligation of the *libertus* was designated by the term *obsequium* (Cătuneanu 1927, 135). In ancient times, the *obsequium* was the equivalent of the obedience that the *libertus* owed to the patron due to the fact that he had been manumitted. In other words, the *libertus* had a position almost similar to that of *filius familiae*, since the patron had over him the right of life and death (*ius vitae necisque*). The passage of time transformed this situation into the respect that the *libertus* owed to his patron, as

it follows from two classical texts, one belonging to Ulpian, the other to Gaius. According to Ulpian, when a patron asserts that his *libertus* has behaved contemptuously or offensively, or that he has insulted him, or his children, or his wife, or other such bad things, he will address the prefect who, depending on the seriousness of the complaint, will correct the culprit, either by reprimanding him, or by threatening him, or by hitting him with the *rub*, or by applying a harsher punishment; for most of the time, the free deserve to be punished. In any case, if the patron shows that he was accused by the *libertus* or that he conspired with his enemies against him, the *libertus* must be punished with deprivation of liberty by being sentenced to forced labor in a mine (*cum patronus contemni se a liberto dixerit vel contumeliosum sibi libertum queratur vel convicium se ab eo passum liberosque suos vel uxorem vel quid huic simile obicit: praefectus urbi adiri solet et pro modo querellae corrigere eum. Aut comminari aut fustibus castigare aut ulterius procedere in poena eius solet: nam et puniendi plerumque sunt liberti. Certe si se delatum a liberto vel conspirasse eum contra se cum inimicis doceat, etiam metalli poena in eum statui debet*) (Sâmbrian 2002, 190-191). According to Gaius, this obligation is materialized by the prohibition of the *libertus* to sue his patron without the authorization of the magistrate (*in summa sciendum est eum, qui cum aliquo consistere uelit, in ius uocare oportere et eum, qui uocatus est, si non uenerit, poenam ex edicto praetoris committere. quasdam tamen personas sine permissu praetoris in ius uocare non licet, uelut parentes patronos patronas, item liberos et parentes patroni patronae; et in eum, qui aduersus ea egerit, poena constituitur*) (Girard 1890, 290).

The *libertus* was obliged to render certain services to his patron. This obligation is designated by the term *operae* and materializes in two ways: *operae officiales* and *operae fabriles*. *Operae officiales* were ordinary services, resulting from the moral obligations that the *libertus* had towards his patron. The purpose of these services was to satisfy certain personal needs of the patron (for example, the obligation to accompany the patron on a trip). *Operae fabriles* were the services the *libertus* owed the patron according to his professional qualifications. They did not originate from the patronage relationship, but from a contract, *iusiurandum liberti*.

For a long time, *libertini* could not marry ingenues. Starting from the time of Augustus, this prohibition was annulled, except for the ingenues who were part of the senatorial order.

Limitation laws on manumissions

During the reign of Augustus, the question of limiting manumissions arose. Compared to the advantages it presented, this practice had gained momentum and risked affecting the economy, as well as the way of organization and functioning of the Roman state. The Roman economy was based exclusively on the work of *serui*, but the increase in the frequency of manumissions was likely to affect economic relations. The numerous manumissions were likely to affect the way the state was organized and operated, as certain *libertini* could become citizens, a quality that opened the doors to a career as a civil servant in the state apparatus. By virtue of these considerations, Augustus was obliged to limit the manumissions by means of the *lex Aelia Sentia* and the *lex Fufia Caninia*.

By the first law, measures were adopted against the manumissions that the *seruus* owner could do during his life. This law established the fulfillment of certain conditions (Watson 1991, 5) for the realization of manumissions. Gaius says that the first condition was that the manumission should not be done to defraud the creditors or the patron. *Serui* who had suffered serious punishments could not become Roman citizens, but *dediticii*. The *Lex Aelia Sentia* imposed certain conditions regarding the person of the master and that of the *seruus*. The jurisconsult Gaius stated that young people under the age of 20 could only free *serui* by *vindicta* and only if they had proven the just reason for the release before a commission. In Rome, this commission was composed of five senators and five pubescent Roman knights;

instead, in the provinces, the commission was made up of twenty recovery workers, Roman citizens. Gaius also tells us that just grounds for release are when someone releases his father or mother, a perceptor or a foster brother (*iustae autem causae manumissionis sunt, ueluti si quis patrem aut matrem aut paedagogum aut conlactaneum manumittat*) (Girard 1890, 171). The law also imposed certain conditions regarding the person of the servus. He had to be over 30 years old to become a Roman citizen; otherwise, it became Junian Latin.

Lex Fufia Caninia governed manumissions made by will. The jurisconsult Gaius, through a fragment of the Institutes, shows us that the testator can manumit a certain number of *servi*, which was related to the total number of *servi* at his disposal. The master who would have more than two *servi*, but not more than 10, can free up to half of their number; he who would have more than 10, but not more than 30, is allowed to release up to a third of this number. Instead, the one who would have more than 30, but not more than 100, is given the opportunity to release at most a quarter. The person who would have between 100 and 500 *servi* cannot free more than one fifth of the total number of *servi*. If someone has more than 500 *servi*, he cannot free more than 100 of them (*nam ei, qui plures quam duos neque plures quam decem seruos habebit, usque ad partem dimidiam eius numeri manumittere permittitur; ei uero, qui plures quam X neque plures quam XXX seruos habebit, usque ad tertiam partem eius numeri manumittere permittitur. at ei, qui plures quam XXX neque plures quam centum habebit, usque ad partem quartam potestas manumittendi datur. nouissime ei, qui plures quam C habebit nec plures quam D, non plures manumittere permittitur quam quintam partem; neque plures quam D habentis ratio habetur, ut ex eo numero pars definiatur, sed praescribit lex, ne cui plures manumittere liceat quam C*) (Girard 1890, 171).

Conclusions

Although it represented the foundation of the economy, towards the end of the Ancient Era, the institution of slavery had proven to be anachronistic. The *servi* wanted their freedom. Knowing that they could be exploited until exhaustion, they were not interested in working efficiently, or this fact could result in poor quality products and was likely to weaken the Roman exchange economy. To avoid such consequences, the Romans thought of a system that was not created in favor of the *libertini*, but in favor of the servus owners. This system allowed more efficient exploitation of the *libertini*, limited their rights and allowed the *pater familias* to maintain them in a state of dependence.

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