

THE REGULARITY OF MANUMISSION AT ROME*

The institution of slavery has served to perform different functions in different societies. The distinction between ‘closed’ and ‘open’ slavery¹ can be a useful one: in some societies slavery is a mechanism for the permanent exclusion of certain individuals from political and economic privileges, while in others it has served precisely to facilitate the integration of outsiders into the community. ‘The African slave, brought by a foray to the tribe, enjoys, from the beginning, the privileges and name of a child, and looks upon his master and mistress in every respect as his new parents. . . by care and diligence, he may soon become a master himself, and even more rich and powerful than he who led him captive.’² The model of an ‘open’ slavery implies that service as a slave is not a state to which a person is permanently, let alone ‘naturally’, assigned, but more akin to an age-grade. A parallel might be domestic or agricultural service as it was practised in much of Europe until this century – a period spent serving in another household after childhood and prior to marriage.³

A Roman slave, on formal manumission, joined the community of citizens. To what extent ought we therefore to succumb to the temptation to see slavery at Rome – in contrast to the Greek world – in terms of the ideal type of a ‘process of integration’? In a noted article on ‘Die Freilassung von Sklaven und die Struktur der Sklaverei in der römischen Kaiserzeit’ (*Rivista Storica dell’ Antichità* 2 [1972], 97–129), G. Alföldi argued that in the Roman Empire slavery was an ‘Übergangszustand’ (p. 122), a transitional state which ultimately gave most slaves a recognised if not a fully equal place as members of the Roman citizen community. Apart from three literary references, Alföldi adduced two groups of evidence to support his thesis: legal sources (pp. 101 ff.: specifically, the *Lex Aelia Sentia* of A.D. 4 and other legislation restricting the manumission of slaves under the age of thirty), and statistics drawn from inscriptions. He concluded that these statistics show that a slave could probably count on being freed almost as a matter of course (p. 114). Few would agree with this. It is true that of 1,126 persons of servile origin mentioned on inscriptions from Italy as having died before the age of 30, 59.3 per cent were freed, 40.7 per cent still slaves; of 740 persons who died over the age of 30, 89.3 per cent were freed, and only 10.7 per cent still slaves. But those slaves and freedmen mentioned on inscriptions are a highly atypical sample. Slaves who did not have the qualities to attain manumission

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¹ The distinction between ‘open’ and ‘closed’ types of slavery seems to have been formulated first by J. Goody: cf. ‘Slavery in time and space’ in J. L. Watson (ed.), *Asian and African Systems of Slavery* (Oxford, 1980), 16–42. The temptation to see Roman slavery as ‘open’ in practice as well as in theory was not resisted in T. E. J. Wiedemann, *Greek and Roman Slavery* (London, 1981), here abbreviated as *GARS*.

² D. and C. Livingstone, *Narrative of an Expedition to the Zambesi* (London, 1865), on the Ndebele. The picture is of course idealised; but the purpose of the idealisation is to make it clear to the potential audience of British radical-evangelicals that what was to be found in Central Africa was quite unlike what had to be condemned in New World slavery.

³ E.g. A. Kussmaul, *Servants in Husbandry in Early Modern England* (Cambridge 1981). Of course, in ‘open’ as in ‘closed’ slavery, slaves are perceived as much more marginal than servants, who are ‘insiders’: cf. O. Patterson, *Slavery and Social Death* (Harvard U.P., 1982).

were clearly less likely to be commemorated by means of a (relatively detailed, therefore costly) inscription; slaves who were considered *fideles*, but died young, might be so commemorated. More particularly, a freed slave's heirs would be keen to preserve a public record of his manumission in the form of a funerary inscription. Furthermore, these inscriptions give undue emphasis to those slaves and freedmen who had easy access to their *dominus*. As Alföldi noted (p. 116), 98 per cent of the surviving inscriptions are from the context of the *familia urbana*. The obvious explanation for why so few freedmen are attested from the *familia rustica* is that very few agricultural slaves were actually freed. This would appear to be confirmed by the fact that Varro (1.17.5) and Columella (1.8) assume that even *vilici* will be slaves, and that while they recommend that they be allowed to take a wife, they make no reference to any promise or prospect of freedom. Pliny the Elder's comparison of some agricultural workers to men 'who have no hope' refers specifically to slaves confined to an *ergastulum* as a punishment (*N.H.* 18.36 = *GARS* 145). It does not imply that other slaves, rural or domestic, did have the 'hope' that they would be freed.

Other statistical evidence might be relevant. Epitaphs suggest that in the most regulated *domus* at Rome, that of the emperor, manumission was in actual fact regularly achieved between the ages of 30 and 35. But does this support the assumption that 'manumission was not difficult for an intelligent, energetic and thrifty slave in the Early Empire'?⁴ The imperial household was not just different in scale from others; it also followed different procedures of manumission. The legal restrictions did not apply to the emperor: his slaves were not manumitted *vindicta* or *testamento*, but simply declared to be free (Paulus, *Ad Plautium* 16 = *Digest* 40.1.14.1). No conclusion can validly be drawn for practice in other households.

A cursory examination of the Oxyrhynchus Papyri (up to vol. XLII) reveals statements specifying the ages of 46 individual slaves or freedpersons ranging from 3 to 65 years. If the sample were large enough, which it is not, and other factors cancelled each other out, we should be able to reconstruct an age pyramid for this population. Of the 36 persons aged 30 or under, only 3 (8.3 per cent) had been freed; of the 10 over 30, 5 (50 per cent) had been.⁵ This would support the proposition that in Roman Egypt slaves tended to be freed as they got older (which will hardly surprise anyone). But this kind of statistical evidence is insufficient to entitle us to conclude that slavery here or elsewhere in the Roman empire corresponded to the 'integration' model.

There is another distinction which might be helpful in trying to assess the evidence. An 'institution' implies both certain common practices, and also certain norms or ideals shared by the practitioners. That practices do not always correspond to the ideals is obvious. Nor does one have to be a Marxist to accept that one of the reasons why people believe in certain shared ideals ('ideology') is to enable them come to terms with and tolerate practices which would be intolerable when looked at from some alternative point of view.⁶ We may identify a bundle of ideas which enabled Romans

⁴ P. R. C. Weaver, *Familia Caesaris* (Cambridge, 1972), 97 ff.

⁵ 30 or under: slaves:

1.73, 94, 95; 2.263, 380; 3.475, 485; 4.716; 8.1110; 9.1209; 12.1451, 1463, 1547, 1548; 14.1638, 1648; 22.2338; 31.2582; 36.2777; 38.2873; 42.3053.

Freed: 4.722; 9.1205 (cf. also 3.490).

Over 30: slaves:

1.94; 2.375; 12.1548; 14.1643; 38.2856 (cf. also 7.1030).

Freed: 1.48; 2.255; 6.984; 9.1205; 38.2843.

⁶ For a discussion of analogous cases of ideals serving to make the practice of slavery tolerable see P. E. Lovejoy (ed.), *The Ideology of Slavery in Africa* (Beverly Hills/London, 1981).

to imagine that slavery as an institution contained enough elements of humanity to make it acceptable. They include the assimilation of slaves to children under the eye of a benign *paterfamilias* who cares for each one individually;⁷ the feeling that it is a good thing if one's slaves are *vernae*;⁸ and the suppression of almost all public reference to the slave trade, one aspect of the practice of slavery whose inhumanity could not be masked.⁹ The ideal of regular manumission belongs to the same context. A Roman wanted to believe that if a slave served him faithfully, he would be rewarded with the freedom he deserved. Frequently that reward would be granted at the master's death: Antonius Silvanus, in his Testament preserved on papyrus and dated A.D. 142 (*BGU* vii, 1695/6), asserts:

Cronionem servum meum post mortem meam, si omnia recte tractaverit... liberum volo.

Si omnia recte tractaverit: manumission is a just reward for faithful service. In an early fifth-century sermon, St Augustine states (*Sermo* 21.6 = *PL* 38.145 = *GARS* 31):

Servum tuum manumittendum manu ducis in Ecclesiam. Fit silentium, libellus¹⁰ tuus recitatur, aut fit desiderii tui prosecutio. Dicis te servum manumittere quod tibi in omnibus servaverit fidem. Hoc diligis, hoc honoras, hoc donas praemio libertatis.

It is an ideal which we frequently find referred to in literature. Two of Martial's epigrams are particularly interesting. 1.101 refers to his secretary, Demetrius:

Illa manus quondam studiorum fida meorum
et felix domino notaque Caesaribus,
destituit primos viridis Demetrius annos:
quarta tribus lustris addita messis erat.
Ne tamen ad Stygias famulus descenderet umbras, 5
ureret implicitum cum scelerata lues,
cavimus et domini ius omne remisimus aegro;
munere dignus erat convaluisse meo;
sensit deficiens sua praemia meque patronum
dixit ad infernas liber iturus aquas. 10

Demetrius is described as 'faithful', and his master was satisfied with him (*felix domino*). Demetrius died young, namely at nineteen (three *lustra* plus four harvests). Martial made legal provision (*cavimus*, line 7) that Demetrius should not enter Hades as a slave (*famulus*, line 5); while Demetrius lay sick on his deathbed, he surrendered all his rights over him (*remisimus ius omne domini*). He would have deserved to recover if Martial could have granted him that. As he died, he indicated his awareness of Martial's gift, and as he descended into Hades, a free man (*liber*), he addressed Martial as his patron. Manumission is represented as a reward (*praemia*) for the secretary's faithful service during his life (*fida manus*; *felix domino*).

The second epigram, 6.29, refers to an even more limiting case of manumission. Glaucia is a child of slave birth who dies aged twelve; the precise age is mentioned in the previous poem, 6.28, as well as in a long *consolatio* on the same theme by Statius (*Silv.* 2.1). Melior, an old man without a child of his own, had decided to free the boy

⁷ Pliny, *NH* 33.26 = *GARS* 83.

⁸ Typically, Horace, *Epod.* 2.65; Martial, 2.90.9; 3.58.22.

⁹ W. V. Harris, 'Towards a study of the Roman slave trade', *Mem. Am. Acad. Rome* 36 (1980), 117-40: 'It felt comfortable to be surrounded at home by one's *vernae*' (n. 17).

¹⁰ An example of such a *libellus* survives amongst the letters of Ennodius (bishop of Pavia, 514-21): 'Gerontium itaque, cuius a me comperta fides, pudor, integritas, et exigit libertatem, et suis dotibus innotescit, per praesens petitorium a beatitudine vestra Romanae deprecor civitatis gaudere consortio...' (*Opusculum* 8; *PL* 63.257 f.).

(apparently at birth), adopt him, and bring him up as his heir; the parents seem to have been manumitted as a reward – ‘in tua gaudia liber’ (Statius, *Silv.* 2.1.77). The parents may actually have been manumitted before the child’s birth, though this is unlikely, since Melior will have wanted to know that he was a male child before adopting him; I see no clear evidence in Statius that Glaucia was *ingenuus*.¹¹ In any case Martial makes him Melior’s freedman:

Non de plebe domus nec avarae, verna, catastae
sed domini sancto dignus amore puer.
Munera cum posset nondum sentire patroni
Glaucia libertus iam Melioris erat.

How could the manumission of a newborn child be justified, when he could hardly be expected to give objective proof of his *fides*? The poet justifies it by saying that Glaucia was not like the average household slave (*de plebe domūs*); that he was born in the household (*verna*) and did not enter it via the despised slave-market (*avarae catastae*); and that he was worthy of his master’s honourable love (line 2). Although paradoxically he was too young to appreciate his patron’s gift (*munus*, not *gratia*: a moral obligation, not an arbitrary present), he died as the freedman (sc. and not the slave) of Melior. So even here, the act of manumission is perceived as deserved, and not due to an arbitrary whim on the part of the owner.

If manumission was the due reward of the *servus fidelis*, then it followed that a slave-owner did not have any obligation to free a slave who had demonstrated that he was not *fidelis*. There is plenty of evidence that masters who were displeased with their slaves would include in their wills a clause prohibiting the slaves in question from ever being freed (cf. *Codex Justinianus* 3.36.5 = *GARS* 199; 7.12.2 = *GARS* 10). The partially preserved inscription with the Testament of Dasumius includes the injunction (*CIL* 6.2.10229, lines 80 f.):

Menecraten et Paedero<ten rogo ne manumittas et in eodem o>pere illos habeas donec viv<ent, quo habui ego, quoniam n>ullo merito meo tam valde <offenderunt gestione improba et ini>qua.

Thus the ideal that loyal service deserved manumission also implied that a master might be acting justly if he refused to free his slaves: he need have no moral compunction so long as he persuaded himself that his slaves had failed to show him the loyalty a master deserved (cf. ‘nullo merito meo’). One suspects that the formula ‘nulla fides > nulla manumissio’ may have been adduced very much more frequently in real life than the formula ‘fides > manumissio’.

In fact, the literary evidence cited by Alföldi in support of his proposition that the Romans actually practised regular manumission appears to prove only that they believed that they should do so. In the Eighth Philippic, Cicero exhorts the Senate to resist Antonius’ dictatorship (32):

Etenim, patres conscripti, cum in spem libertatis sexennio post sumus ingressi diutiusque servitutem perpassi quam captivi servi frugi et diligentes solent...

Clearly Cicero could not use this analogy between slavery and submission to the rule of Caesar and Antony if his senatorial audience did not believe that it was reasonable for a slave-owner to grant freedom after he had had possession of a slave for six years of adult labour – assuming of course that the slave was *frugi et diligens*. But Cicero does not mention six years because it is a statistical minimum (or average); these are the six years from Caesar’s crossing of the Rubicon in January 49 to February 43,

¹¹ As argued by M. Garrido-Hory, *Martial et l’esclavage* (Paris, 1981), 119.

during which the Roman state was politically enslaved. Any Roman senator would understand and accept Cicero's argument even if it would never occur to him to manumit any of his own slaves after six years. In his defence of Rabirius for treason, Cicero uses the argument that, if slaves can be expected to resist injustice, then *a fortiori* the Roman people should be expected to do the same (*Pro Rabirio perduellionis reo*, 15):

Ego omnibus meis opibus, omnibus consiliis, omnibus dictis atque factis repugnarim et resisterim crudelitati. Nisi forte hanc condicionem nobis esse voltis quam servi, si libertatis spem propositam non haberent, ferre nullo modo possent.

The argument that because slaves resist injustice, therefore a free people should support the speaker, appears elsewhere in Roman rhetoric (e.g. Memmius' speech in Sallust, *Bellum Jugurthinum* 31.11:

Servi aere parati iniusta imperia dominorum non perferunt; vos Quirites, in imperio nati, aequo animo servitutem toleratis?).

Cicero's variant implies that (masters believe that) slaves *believe* that they will obtain manumission, but is no firm indication that the *practice* was regular. The *topos* only confirms that slaves are a rhetorical symbol for the extreme margin of social existence – as they are explicitly said to be in the third text Alföldi cited, *Pro Balbo* 24. Here Cicero argues that Cornelius Balbus should be allowed to enjoy the privileges of Roman citizenship, 'quae pateant stipendiariis, pateant hostibus, pateant saepe servis'. It is clear from what follows that Cicero is referring specifically to cases where citizenship was granted to a slave by the Roman state as a reward for an act of patriotism,¹² and that the text throws no light on the frequency or otherwise of manumission by a slave's owner:

Servos denique, quorum ius, fortuna, condicio infima est, bene de re publica meritos persaepe libertate, id est civitate, publice donari videmus.

Other scholars have also been prone to confuse the ideal and the practice. The *Kleiner Pauly* article on 'Sklaverei' cites chapter 58 of Jerome's commentary on Isaiah 16 in support of the proposition that, in late antiquity, Christian masters manumitted their slaves after six years' service.¹³ Jerome is here referring with approval to the Old Testament custom of freeing slaves in the Jubilee Year:

Vetus narrat historia, anno remissionis septimo, vel quinquagesimo, qui est verus Jubilaeus, omnes possessiones redire ad dominos, et reddi servis pristinam libertatem, cunctaque nomina, quae vulgo appellant cautiones, irrita fieri.

It is difficult to see how this passage can support any proposition about late Roman practice, not just because it refers to Old Testament Israel, to liberation in the Jubilee Year rather than the seventh (or even, says Jerome, the fiftieth!) year of servitude,¹⁴ and to debt bondage (as Jerome's subsequent remarks about the secessions of the plebs

¹² Cf. *CJ* 7, title 13; for historical examples, Livy 26, 27 and *Per.* 77 = *GARS* 76 and 77.

¹³ H. Volkmann, art. 'Sklaverei', *Kleiner Pauly* 5.234. The reference should be to *PL* 24.587, not 565.

¹⁴ Jerome here refers to Leviticus 25 and 27; Volkmann's interpretation is perhaps based on Exodus 21.2: 'Si emeris servum hebraeum, sex annis serviet tibi: in septimo egredietur liber gratis'. These injunctions are discussed by I. Mendelsohn, *Slavery in the Ancient Near East* (New York, 1949), 85 ff. That this remained the practice among Jews in the Graeco-Roman world is clear from Philo, *De Specialibus Legibus* 2.79–85, and Josephus' comments on Herod's innovations, *Antiquities*, 16.1.1.

and *novae tabulae* show he clearly understood), but also because Jerome is holding it up as an ideal which his Roman contemporaries were signally failing to put into practice.

There are some other passages in Latin literature which might be interpreted to mean that old slaves were thought to be something unusual. But on closer examination I do not believe that any of them implies that masters ought to have manumitted their slaves before they reached old age, let alone that that was the practice. In his invective against Piso, one of the grounds on which Cicero attacks him is his parsimoniousness. He argues that, while a luxurious lifestyle is, in principle, immoral, there is a particular kind of *luxuria* ('conspicuous consumption') which is expected of a public figure. But this was not to be found in Piso's household; Piso was so unwilling to put his wealth to public use that he was not even prepared to spend money to acquire any new slaves, so that (*In Pisonem* 67)

Servi sordidi ministrant, nonnulli etiam senes; idem coquus, idem atriensis.

Cicero is referring to the generally recognised custom that those slaves who serve at a banquet ought to be young and handsome; one thinks of the fulminations of Juvenal (e.g. 5.52 ff.) or other satirists. Cicero mentions these 'formosi pueri, qui ministrant' in other discussions of the distinction between vulgar and elegant *luxuria*.¹⁵ But the fact that Romans felt they ought to have young and attractive slaves to make a good impression on their guests at parties hardly implies that they thought they ought to manumit them once they were no longer young and attractive (as in Juvenal's satire, or Seneca's 47th letter). Just what Roman slave-owners did do with elderly slaves who were not manumitted is a subject which might repay further investigation; they might be used as *paedagogi*, or doorkeepers, as in Seneca's 12th letter (*GARS* 135) – which makes it clear that a Roman slave-owner, even if like Seneca he enjoyed playing the part of a Stoic humanitarian, did not feel at all defensive about retaining an old man in slave status. Plutarch's criticism of Cato the Elder's statement that old slaves should be sold (Plut., *Cato*, 5.1 = *GARS* 210; and Cato, *de agricultura* 2.7 = *GARS* 202) tells us nothing about what Plutarch's contemporaries thought ought to be done with, or for, them. And Virgil (notoriously reticent about slavery) has the aged Tityrus say about his freedom (*Ecl.* 1.27 ff.):

Libertas, quae sera tamen respexit inertem,
Candidior postquam tondenti barba cadebat,
respexit tamen et longo post tempore venit.

Rather than entering into the controversy of what exactly the *libertas* referred to consists in, I would restrict myself to pointing out that while *sera* suggests that the old man should have attained his freedom much earlier, the reason why it has only now been granted to him is that he made no effort to attain it (*inertem*). Thus the *sera* refers to the fact that it is only recently that Tityrus has bothered about his freedom; it is not a chronological indicator implying that all men whose hair was grey could normally be expected to be free.

The literary texts prove no more than that frequent manumission was an ideal. They neither prove, nor disprove, that it was practised. Greek commentators on Roman customs thought that the extent to which the Romans practised manumission was highly peculiar; but although they refer to the number of slaves the Romans freed, what really surprised them was that such great numbers of persons of servile origin

¹⁵ *De finibus* 2.23; cf. Nisbet's note on *In Pis.* 67, pp. 130 f.

should be integrated into the Roman state as citizens.¹⁶ It was not the freeing of slaves but their integration as citizens that won the approval of Philip V of Macedon in his letter of 214 B.C. to the Larissans (*SIG*³, 543, line 31 = *ILS* 8763), and necessitated an uneasy apology from the pen of Dionysius of Halicarnassus (*Ant.* 4.24 = *GARS* 69). Dionysius claims personal knowledge of cases of unjustified testamentary manumission on a large scale, and recommends legislation of the kind actually enacted in the *Lex Fufia Caninia* (2 B.C.), which regulated the proportion of one's slaves that one might free at death. The effect of this law was to constrain a wealthy Roman's desire that his funeral be an occasion of conspicuous display, illustrating both his wealth (in slaves) and his humanity, in giving so many (supposedly worthy) slaves their due reward of freedom.

The *Lex Aelia Sentia* five years later (A.D. 4) took away the automatic right to citizenship on manumission from a large number of slaves, e.g. those who had been chained or branded or condemned to fight as gladiators as a punishment, or those manumitted before they had reached the age of thirty, or before their master had reached the age of twenty. (It also allowed citizenship to be acquired in a whole series of exceptions which had to be acknowledged by a special *consilium*.) Further details of the regulations are discussed by Gaius, *Institutes* 1, l. 13–47 (= *GARS* 5).

Perhaps the best argument in favour of the thesis that manumission at Rome was quantitatively significant is that otherwise Augustus would not have felt it necessary to regulate it. But it remains true that there may well have been major differences between what Dionysius, and even Augustus, thought the Romans did, and what they actually did. Legal enactments are in the peculiar position of having to mediate between perceived behavioural norms and actual behaviour. The *Lex Aelia Sentia* is not, *pace* Alföldi, evidence that most slaves were freed soon after the age of thirty: there was nothing to stop owners from freeing their slaves as Junian Latins before they reached that age. Apart from Martial's Demetrius and Glaucia, examples of such manumissions are to be found in the *Codex Justinianus* (e.g. 4.57.3: see below). The *Lex Aelia Sentia* regulated the granting of full Roman citizen status, not manumission as such. But what this law could do was give masters an excuse for not freeing a slave who deserved to be freed. This is nicely illustrated by an inscription from a tomb from Venafrum in central Italy (*CIL* X, 1.4917):

Debita libertas iuveni mihi lege negata
Morte immatura reddita perpetua est.

As an epitaph in verse-form, the inscription corresponds to Martial's epigrams. It was set up by Titucus Florianus and Teia Galla in their capacity as the owners of the *vilicus* Narcissus; Narcissus had died, at the age of 25, as a slave. His *domini* put into his mouth the complaint that the freedom he had deserved had been denied him by the *Lex Aelia Sentia*. It was not the *domini* who denied him his freedom, but the *lex*. In fact there would have been no reason why the owners should not have released Narcissus from slave status (if the *consilium* approved of a slave's manumission to enable him to act as a procurator, he could even attain full citizenship: Gaius, *Inst.* 1, 1.19 = *GARS* 5); and they felt that he deserved such release (*debita*). But they did not free him; and the law gave them a means of persuading themselves that *they* need have no uneasy conscience about not freeing Narcissus.

¹⁶ H. Chantraine's review of the origins of this Roman peculiarity ('Zur Entstehung der Freilassung mit Bürgerrechtserwerb in Rom', *ANRW* 1.2 [1972], 59–67), seems to me not to give enough emphasis to archaic Rome as a city which shared reciprocal rights of potential citizenship with the other Latin communities.

Here, then, is a clear illustration of how slave-owners, while believing in the 'fides > manumissio' formula, and also being exceptionally fond of their slave (otherwise they would not have commemorated him in this way), nevertheless avoided freeing him.

There are two particular areas where it might be possible to find further positive evidence for such a conflict between practice and theory. Clauses occasionally occur in contracts of sale and in wills stipulating that slaves should be set free after the fulfilment of certain conditions.¹⁷ Sometimes these clauses explicitly state (1) that the slave has to have reached a certain age, or (2) that a certain period of time must elapse, before he may be freed. Can we make any deduction from this material about how long a domestic slave would expect to have to wait before he had a chance of attaining freedom?

There are difficulties about establishing whether a particular text throws light on the practice or on the ideal. Imperial rescripts by and large refer to 'facts'. But they tell us about disputes as they were reported to the emperor; these reports may not have been typical (or even truthful). Lawyers' opinions were occasionally supported by reference to actual cases. On the other hand, a jurist's textbook will frequently describe a hypothetical situation intended to enable the student to identify more clearly the point his teacher wishes to discuss. The results may be interesting: where such textbook examples are based on real cases, they will be stripped of individual and inconsequential features such as names and numbers. The case as described by the jurist will be an ideal. If the jurist's ideal of what happened coincided with actual practice – if the manumission of slaves occurred as regularly as Romans liked to believe – then the figures which the jurists give in their theoretical discussions for the additional length of service or the age at manumission ought to correspond to the figures which occur in the actual cases reported in the *Digest* and the *Codex Justinianus*. In fact the surviving sample is too tiny to count as proof. Nevertheless, there is a deviation, and the extent of this deviation is noteworthy.

First, the texts relating to sale or donation. When a jurist discusses a contract of sale which stipulates that a slave has to be freed after a certain time, the exact number of years is frequently irrelevant. A phrase such as 'intra certum tempus' suffices for the example.¹⁸ But often the example given is 'within one year' or 'after one year'.¹⁹ These are not intended to be realistic statistics, but theoretical examples, as a citation from Paulus at *D* 40.1.23 shows, where the 'one year' is the arbitrary period of time within which the man who buys the slave ('Gaius Seius') is discovered to be a slave himself. There are two examples of a period between sale and manumission of more than one year. Paulus (*D* 40.12.38.3: from *Responsa*, book 15) considers the case of a slave Stichus, sold by Gaius Seius to Lucius Titius, on the condition that Titius should manumit Stichus when he had served him for three successive years:

Vendidit ita, ut Titius Stichum post triennium manumitteret, si continuo triennio servisset.

¹⁷ W. W. Buckland, *The Roman Law of Slavery* (Cambridge, 1908), 628 ff. and 482 ff. The microfiche *Concordance to the Digest Jurists* compiled by A. Honoré and J. Menner (Oxford, 1980) is an extremely helpful tool for the study of the *Digest*.

¹⁸ *D* 18.7 'De servis exportandis, vel si ita mancipium venierit, ut manumittatur vel contra': 3 (Paulus), 8 (Papinian); *D* 37.14 'De iure patronatus', 8 (Modestinus); *D* 29.2.71 (Ulpian) 1 'intra certum diem'; *D* 40.8 'Qui sine manumissione ad libertatem pervenient' 1 (Paulus).

¹⁹ *D* 24.1 'De donationibus inter virum et uxorem', 7 (Ulpian), 8: 'ut intra annum manumitteret', 9: 'ut intra annum manumittat'; *D* 40.1 'De manumissionibus', 20 (Papinian) 2: 'Puellam ea lege vendidit, ut post annum ab emptore manumitteretur'; 23 (Paulus): 'Caius Seius Pamphilam hac lege emit, ut intra annum manumitteretur'.

Stichus flees, but later returns to Titius: is Titius still obliged to manumit Stichus, and if so, when? The 'three years' is not to be read as a statistic: 'three years' is given rather than one because otherwise there can be no discussion of the meaning of 'continuo'. In the other example, Papinian considers a slave who is sold or donated on condition that he be freed after a further five years, and in the meantime provide a stated income each month (*D* 40.1.20.3: from *Responsa*, book 10):

ut homo libertatis causa traditus post quintum annum impletum manumitteretur et ut certam mercedem interea menstruam praeberet.

Is the provision of the *mercedes* each and every month a condition of his manumission? It is not: because the man is *libertatis causa traditus*, only the period of five years is relevant. These look much more like the kind of terms that might have been imposed in the real world, but again 'five years' is not a statistic, but merely an example of a round number of years.

The period of five years also occurs in a decree of Honorius and Theodosius to the Praetorian prefect Theodorus, dated December 408 or 409, referring to *postliminium*, the conditions under which a Roman citizen captured by a foreign power (here presumably the Visigoths) but then returned to Roman jurisdiction could recover his legal personality (*C.Th.* 5.7.2.1; cf. *CJ* 8.50.20 and *Const. Sirmond.* 16):

Decet redemptos aut datum pro se pretium emptoribus restituere aut labore (*CJ*: laboris) obsequio vel opere quinquennii vicem referre beneficii...

This entitles us to assume that Honorius considered five years' labour equivalent to a slave's purchase price. But it does not follow that in practice late Roman slave-owners were prepared to free their slaves after $5 + n$ years (where n represents some notional profit), especially where the slaves were not Roman citizens with a legal right to *postliminium*.²⁰

The title 'Si mancipium ita fuerit alienatum, ut manumittatur vel contra' in the *Codex Justinianus* (4.57) contains just six imperial rescripts, and here we are clearly dealing with actual historical instances. One has no time-clause (c. 2, A.D. 222), one refers only to 'statuto tempore' (c. 4, A.D. 240), one deals with prohibitions on manumission (c. 5, A.D. 240) and one concerns a fine for failure to manumit (c. 6, A.D. 293). The other two rescripts are more specific:

CJ 4.57.1 (A.D. 222): Imp. Alexander Aug. Patricensi. Si Patroclius, posteaquam te Hermiae donationis causa dedit lege dicta, ut si quindecim annis continuis servisses, ad libertatem perducereris ita, ut civis Romanus esses...

CJ 4.57.3 (A.D. 224): Imp. Alexander Aug. Fulcinio Maximo. Si Iusta Saturnino puellam nomine Firmam agentem tunc annos septem hac lege vendiderit, ut cum haberet annos viginti quinque, libera esset... Ideoque impleto vicensimo quinto anno, Firma libera facta est, nec obest ei, quod vicensimo septimo anno manumissa est, quae iam ex constitutione libera est; et is, quem post vicensimum quintum annum ex te conceptum enixa est, ingenuus est.

The case of Firma supports the view that some Roman slaves could indeed look forward to being freed even before the age of thirty (she would however have become a Junian Latin). But it is worth noting that her owner was in no hurry to fulfil his legal (let alone moral) obligation. Patricensis' fifteen years do not suggest that the passage through slavery to citizenship, when it did occur, was necessarily rapid.²¹

Sales contracts might also stipulate that the buyer had to manumit the slave at his

²⁰ There is a full discussion of the ruling in Buckland, 291 ff., esp. 297.

²¹ It should be remembered that in actual fact sales contracts might stipulate very much longer periods: Augustus imposed terms of thirty or twenty years on rebellious war-captives (Sueton. *Aug.* 21 = *GARS* 119; Dio, 53.25.4).

death or (meaning the same) while he was still alive. The jurists discuss such sales²² and gifts.²³ Wills frequently contain *fideicommissa* stipulating that an heir or legatee should free particular slaves either immediately or after a certain number of years (other conditions may be required; the most usual is the presentation of accounts). Here too most of the evidence provided by the *Digest* consists of jurists' discussions of particular points at issue rather than cases which actually occurred.²⁴ Thus excerpts refer to wills requiring manumission 'post certam aetatem' (*D* 40.5.23.3) or 'ad certum tempus' (*D* 40.7.41), where the actual age or number of years was of no concern to the lawyers. There is discussion of the meaning of the condition that manumission be effected 'intra annum' (*D* 40.4.15: Julianus, from *Digesta*, book 32; *D* 40.4.41.2: Labeo, quoted by Pomponius, *Ex Plautio*, book 7). When the phrase 'post annos' occurs 'indistincte', we are told that *favor libertatis* requires this to be interpreted as meaning 'two years' (*D* 40.4.17.2: Julianus, *Digesta*, book 42). These are not statistics, but periods of time selected because they are suitable for explaining the meaning of phrases like 'post anno' or 'intra annum'. The same applies to some other periods of time mentioned. The passage from Labeo quoted by Pomponius (*D* 40.4.41.2) goes on to say that 'intra annum decimum' means 'at any time within ten years', and not 'at the end of ten years', and Pomponius' discussion of the difference between 'duodecimo anno' and 'post duodecim annos' is concerned with what it means to use the word 'post' rather than the ablative. Paulus elsewhere points out (*D* 4.7.4.2; 5; 8: from *Ad Sabinum*, book 5) that a slave 'servire Titio anno et liber esse iussus' only becomes free after a full year has passed. Some of the references to longer periods of service might have been based on real cases, even though the individuals involved have been masked by means of type-names such as Stichus, Damas or Pamphila. Pomponius considers a clause requiring Stichus to be freed if he has paid the heir 1000 *nummi* for three consecutive years (*D* 40.4.41.1):

Stichus servus meus heredi meo mille nummos anno biennio triennio postquam ego mortuus ero, si soluerit satisve fecerit, liber esto.

He concludes that Stichus cannot be freed if he offers to pay it all at once, *nisi... triennio praeterito*. On the other hand, when Ulpian discusses what happens 'si servus, qui annua bima trima die iussus est dena dare, tota simul offerat heredi non exspectata die' (*D* 40.7.3.13–14: from *Ad Sabinum* book 27), he allows him his freedom as soon as he pays, pointing out that it would be to the heir's advantage to collect the money at the earliest possible moment. The same three-year clause also occurs at *D* 40.7.18 (Paulus, *De libertatibus dandis*). Labeo refers to a three-year period when pointing out that 'nihil interest utro modo caveas: si servierit, an si triennio operas dederit' (*D* 40.7.41: Paulus' epitome of *Pithanon*, book 1). There are several references to periods of five years. Papinian (*D* 40.5.23.4: *Responsa*, book 9) has a testator who 'servum a filio post quinque annos, si eo tempore mercedem diurnam filio praestitisset, manumitti voluit'; the question is what happens if the slave goes missing in the two years following and does not provide the services. Ulpian points out that an heir can manumit at an earlier time than that required by the will (*D* 40.7.3.15: from *Ad Sabinum*, book 27):

²² *D* 18.7.10 (Scaevola), 'post mortemque eius in libertate morarentur'; *D* 40.8.4 (Ulpian), 'ut a vivo emptore manumittatur'.

²³ *D* 40.8.8 (Papinian), 'mancipia mater filiae donaverat, ut filia curaret ea post mortem suam esse libera' – where liberty is acquired even if the daughter dies before the mother.

²⁴ I omit references to the period of two to six months within which the heirs were required to complete the process of manumitting a slave (*D* 40.7.40.7 and 8).

Si ita sit libertas servo data, si quinquennio heredi servierit, deinde eum heres manumiserit statim liber fit.

Celsus has a slave required to pay 100 *nummi* within a five-year period (*D* 40.7.23: *Digesta*, book 22):

Si intra quinquennium Stichus centum dederit, liber esto.

Scaevola's Stichus has to pay the heir 60 *nummi* a month for five years (*D* 40.7.40.2: *Digesta*, book 24):

Pamphilo liberto, quem heredem ex parte instituerat, Stichum servum praelegaverat et ei libertatem his verbis dederat: ita ut, si tibi ex die mortis meae per annos continuos quinque menstruos sexagenos dederit, tunc eum manumittas.

Other examples make the slave serve for seven years after the testator's death. Alfenus Varus notes that a period as a fugitive should not be counted towards the required period of service (*D* 40.7.14.1: from *Digesta*, book 4):

Servus cum heredi annorum septem operas dedisset liber esse iussus erat. Is servus fugerat et annum in fuga fecerat. Cum septem anni praeterissent, respondit non esse liberum: non enim fugitivum operas domino dedisse. Quare nisi totidem dies, quot afuisset, servisset, non fore liberum. Sed et si ita scriptum esset, ut tum liber esset, cum septem annis servisset, potuisse liberum esse, si tempus fugae reversus servisset.

Javolenus mentions the period of seven years as an example when he points out that the same applies when a slave is unable to provide *operae* because he is involved in a court case (*D* 40.7.39.3: from *Ex Posterioribus Labeonis*, book 4):

Dama servus cum heredi meo annorum septem operas solverit liber esto. Et si servus intra septem annos in iudicio publico esset et septimus annus praeterisset, Servius ait eum non liberari debere. Labeo et si postea solvisset annorum septem operas, liberum futurum: quod verum est.

The period of service required may be even longer: if a will grants a slave his freedom after ten years, but a pension from the point of his master's death, then the heir has to provide for him in the intervening period (*D* 33.1.16: Paulus, *Ad Neratium*, book 3):

Servus post decem annos liber esse iussus est legatumque ei ex die mortis domini in annos singulos relictum est. Eorum quidem annorum, quibus iam liber erit, legatum debebitur: interim autem heres ei alimenta praestare compellitur.

In this case, the longer period of time has been selected because it is to the disadvantage of the legatee. Lawyers seem to have thought that ten years was an unusually long period of further service. The republican *Lex Fabia de Plagiariis* barred a slave who had committed an offence for which his owner had had to provide compensation from being set free within ten years of the delict (*D* 40.1.12; Paulus, *Ad edictum*, book 50):

Lege Fabia prohibetur servus qui plagium admisit pro quo dominus poenam intulit intra decem annos manumitti.

Labeo's example of a Stichus asked to pay a sum of money within ten years has already been mentioned (*D* 40.4.41.2). The impression which these textbook examples give is that ten years was chosen because it was thought by jurists to be unusually long.²⁵

When we turn to the handful of cases in the *Digest* where there can be little doubt that they were taken from real life, the periods of time mentioned appear generally to be longer than in the jurists' theoretical examples. In a long passage from Scaevola's

²⁵ The period of 'ten years' freedom granted a slave at *D* 40.4.33 f. is an example of a meaningless and therefore void clause.

Responsa, book 4 (*D* 40.5.41), most of the names are exemplars like L. Titius, Stichus, Damas etc. Nevertheless there is considerable detail which is irrelevant to the legal points Scaevola wishes to discuss. One of the wills cited is given in Greek and there can be no doubt that Scaevola is quoting from an actual Greek will (c. 4). He considers a requirement that ‘Thais ancilla mea cum heredi meo servierit annos decem volo sit mea liberta’ (introduction – the problem was that since the testator did not expressly free Thais himself, she would become the heir’s freedwoman, not the testator’s). The name Thais does not occur anywhere else in the *Digest*; yet normally Scaevola does not avoid using type-names (the various forms of Stichus, Pamphilus and Damas appear 112, 50 and 10 times respectively, according to the Honoré/Menner *Concordance*). This suggests that Thais’ ten years of additional service were real. A Lucius Titius requests:

December dispensator meus, Severus vilicus et Victorina vilica Severi contubernalis, in annos octo liberi sunt: quos in ministerio filii mei esse volo (c. 15).

The legal question is whether the eight years are to count from the date when the testament was drawn up, or from the testator’s death two years and six months later; Scaevola’s reply is that the context makes it clear that the testator wanted the slaves to look after his son, who was nine years old at the time the will was made, until he had grown up, so that the eight years were to be counted from the date of the will. The details here are inessential to the point at issue and must be based on a real will. This example makes it clear that the term of extra years’ service the testator decided upon was in fact not a function of the slaves’ age, or of how much longer they would have to wait for the freedom they were thought to be entitled to: what mattered was how much longer the testator’s heirs would need their services. This also emerges from some of Scaevola’s other examples. In c. 10 and c. 13, slaves are required to serve the testator’s son until he is sixteen:

[c. 10] Capitem servum meum, cum Marcianus filius meus sedecim annos impleverit, rationibus redditis liberum esse volo.

[c. 13] Cum filius meus sedecim annos impleverit, Stichum rationibus redditis manumittant (sc. heredes mei).

Ulpian (*D* 40.7.19: from *Ad edictum*, book 14) cites fourteen years:

Si filius quantum decimum annum compleverit...

There is also an obscure reference by Julianus to a Stichus who is to be freed and given a farm when someone (presumably the heir) reaches the age of thirty (*D* 40.4.16: *Digesta*, book 36). A daughter would be able to dispense with her slaves’ services when she married:

[c. 16] Spendophorus, cum filia mea in familia nupserit, si rationes idonee filiae meae administratas reddiderit, liber esto.

Scaevola explains that even if the girl predeceases her father, the slave would still become free at the point when ‘si viveret, Titia annos haberet amplius duodecim’. A citation from Papinian discusses in general terms such requirements for manumission once a son had reached a certain age (*D* 40.5.23.3):

Libertas a filio post certam aetatem eius data.

In none of these cases did the jurists, or the testators, take into account how old the slaves might have been, or for how long they might already have served. An example from Marcellus (*D* 40.5.56: *liber singularis responsorum*) shows that it was not

unthinkable for a testator to require his slaves to serve sons yet unborn for fourteen or more years beyond the years they had already served him:

Stichum et Pamphilum servos meos et Erotem et Diphilum peto et fidei heredum committo, ut cum ad pubertatem liberi mei pervenerint, manumittant. Quod si mihi liberi nati non erunt aut intra pubertatem decesserint...

Justinian's *Codex* also contains a number of passages illustrating what might happen in actual practice. A rescript of Philip the Arab explicitly shows how in these cases the testator was not thinking about any set number of years' service, but about the needs of his children (*CJ* 7.2.8: A.D. 244–247, since Philip's son is not yet an *Augustus*):

Imp. Philippus A. et Philippus C. Gemello. Cum testator libertatem tempore nuptiarum filii sui vel filiae servo dari iussit, non tempus praestituit, sed potius condicioni locum fecit, ut non insecutis nuptiis libertas iure posci non possit.

A rescript of Diocletian (*CJ* 7.11.6) refers to slaves whom the addressee was required to free when she had reached a certain age:

hos, quos tu rogata manumittere fueras certo aetatis tuae tempore...

And a rescript of Alexander Severus gives us an actual example of the son's age: not 14 or 16 as in the textbooks, but 25 – the son died before he reached that age, but the emperor ruled that the slave must none the less be manumitted (*CJ* 7.4.9: A.D. 231):

Imp. Alexander A. Mercuriali. Fideicommissaria quidem libertas ita tibi relicta, cum testatoris filius ad annum vigensimum quintum pervenisset...

The two *Digest* texts referring to requests that a slave be freed when he reaches a certain age both refer to the age of thirty – the earliest possible age under the *Lex Aelia Sentia*. *D* 40.7.13.5, from Julianus, *Digesta*, book 43, is not illuminating:

Stichus cum erit annorum triginta liber esto.

But Pomponius cites what was clearly an actual case (*D* 40.4.46: from *Ex variis lectionibus*, book 7):

Aristo Neratio Appiano (Mss; Prisco, Krueger) rescripsit, testamento liber esse iussus, cum annorum triginta esset, antequam ad eam aetatem pervenerit si in metallum damnatus sit ac postea revocetur, sine dubitatione cum libertate legatum ad eum pertinere neque metallorum poena ius eius mutari...

Examples of such clauses surviving in papyrus documents suggest that when the slave's age was specified, it was claimed to be thirty or over; a Roman testator would hardly have prejudiced his slave's chance of attaining full citizenship by stating anything else. But we recall that Firma's vendor wanted her freed at 25 (*CJ* 4.57.3: A.D. 224). In a Greek will from third-century Egypt, C. Longinus Castor stresses that Marcella and Cleopatra are both over thirty (MIZONA ETΩN TPIAKONTA: Bruns, *Fontes*, p. 312); but he also wants Cleopatra's daughter Serapias freed, and wisely omits to state her age. The certificate of Helen's manumission 'coram amicos' in A.D. 221 stated that she was 'about 34' (Bruns, *Fontes*, p. 369). In a third-century will, the testator requests that his bought slave Dameis be emancipated at his death: she is only 13 when the will is made (*PSI* 9.1030). References in Oxyrhynchus papyri of the Roman period to the age at emancipation (not by will) include 26 (4.722), 35 (1.48; 38.2843) and 40 (9.1205: a Jewish woman, redeemed by other Jews together with her children, said to be aged 10 and 4). If the wills of the philosophers Aristotle and Lycon in Diogenes Laertius (5.13 ff. and 72 ff.: *GARS* 95) are genuine, their provisions are

not relevant to the Roman world. In any case the remarkably short periods of service required in Lycon's will (2 years for Agathon, 4 for the litter-bearers Ophelion and Poseidonius, and immediate freedom for 10 others) will reflect the generosity ascribed to an intellectual, rather than actual practice.²⁶

In conclusion, the evidence of the jurists suggests that when a Roman slave-owner provided for ultimate manumission in his will or in a contract of sale, he paid scant attention to the ideal that a faithful slave should be manumitted. That does not mean that he did not believe in that ideal; and the fact that when the jurists edited real cases to produce textbook examples, they preferred to give periods of one or three years, and considered ten years a long time, suggests that they, too, believed that a *servus fidelis* would soon be granted his freedom. But the real world was ruled by self-interest. Self-interest would provide a strong incentive for promising a skilled slave his freedom: it would make him work more willingly, and more efficiently. Self-interest might also be a strong incentive actually to free a slave: a slave was a capital investment which might at any moment have to be written off as a result of death or illness, and the older the slave, the greater the danger. Far better to free the slave and invest the money he paid for this freedom (or even one's own money) in training a younger slave in the same skills. (It is far from paradoxical that the more highly skilled a slave – i.e. the greater the loss to the owner if he suddenly became incapacitated – the greater the owner's willingness to let him have his freedom.) In the Roman world, masters were certainly prepared to free their slaves when it was in their own interests – as in other slave-owning societies. But this practice must be distinguished from the ideal that slaves would be freed so long as they deserved it. This was not of course an ideal that was unique to Rome; Greek writers stressed the efficacy of promising slaves their freedom, as an encouragement to co-operation and a disincentive to resistance.²⁷ The ideal did not exist only to persuade slaves that they should acquiesce in their lot. Equally important was its function in allowing the slave-holders to come to terms with the moral issues with which their own position confronted them. If they believed that it was a generally accepted rule that a loyal slave would soon be freed, and that a wicked slave did not deserve freedom, then they could sleep with an easier conscience even if the criteria they applied in practice were those of self-interest.

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²⁶ For the genuineness of these wills, cf. H. B. Gottschalk, 'Notes on the wills of the Peripatetic scholars', *Hermes* 100 (1972), 312 ff.

²⁷ E.g. (ps.-)Aristotle, *Oikonomikos* 1.5.6 = *GARS* 206. Similar promises of freedom in many other slave-holding societies are discussed by O. Patterson, *Slavery and Social Death* (Harvard U.P., 1982), chs. 8–10.