

μον παρακατίθεμαί σοι, ὦ θύγατερ. ὃ βούλομαι δοθῆναι εἰς βίον χρῆσιν καὶ ἐπικαρπίαν μετοχὴν (a share) κώμης Νακλήνων . . . χρῆσις καὶ ἐπικαρπία is clearly identified with *ususfructus* in Novels 18.3: ταῖς μὲν γὰρ γυναιξὶ πάντα κατέλιπον τῶν ἐαυτῶν πραγμάτων τὸν οὐσοφρουκτον, τοῖς δὲ παισὶ τὴν δεσποτείαν γυμνήν. A few lines down Justinian deplores such wills and orders that in addition to the bare ownership of their legitimate inheritance the children should also receive its *ususfructus*: Οὐκ ἐξέσται τοίνυν τὸ λοιπὸν οὐδενὶ παντελῶς παῖδας ἔχοντι τοιοῦτό τι πράττειν, ἀλλὰ πάντως αὐτοῖς τοῦ νομίμου τούτου μέρους, ὅπερ νῦν ἀφωρίσαμεν, καὶ τὴν χρῆσιν καὶ τὴν ἐπικαρπίαν πρὸς τῇ δεσποτείᾳ καταλιμπανέτω . . . See also Theophilus 2.1.9, p. 99.19: *usúfructos* δέ ἐστι δίκαιόν τι φανεροῖς τρόποις συνιστάμενον, νῶ καταλαμβανόμενον, ὃ ποιεῖ με κατὰ τῆς ἐτέρου δεσποτείας ἔχειν χρῆσιν καὶ ἐπικαρπίαν.

## A Note on *munus, munus fungi* in Early Latin

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*Munus* is a specific type of *donum*<sup>1</sup>), from which it is to be distinguished by its obligatory character, implied by its root *mei-*, which denotes "exchange"<sup>2</sup>). Once the recipient accepted the *munus* ("exchange-gift"), he was under a burden of obligation (*onus*) to make a due return<sup>3</sup>), whether in kind (*donum*) or by a service (*officium*)<sup>4</sup>). There is no real support for Pinsent's claim<sup>5</sup>) that in

<sup>1</sup>) Ulp. Dig. 50.16.194: *inter donum et munus hoc interest, quod inter genus et speciem . . .*

<sup>2</sup>) See Ernout-Meillet, D.E.U.<sup>4</sup> 422; cf. Paul. Fest. p. 140 Müll.

<sup>3</sup>) For the concept of burdening obligation associated with *munus* see L. R. Palmer, 'The Concept of Social Obligation in Indo-European' in *Hommages à Max Niedermann* (Collection Latomus, Vol. XXIII (1956), pp. 258–69. The three meanings of *munus* are combined in Paul. Dig. 50.16.18: *munus tribus modis dicitur: uno donum . . . altero onus . . . tertio officium*. Palmer's view is rejected by G. Williams (CQ, 9 (1959), pp. 155ff.) but see N. Zagagi, *Tradition and Originality in Plautus: Studies of the Amatory Motifs in Plautine Comedy* (Hypomnemata, 62; Göttingen, 1980), p. 119 n. 47.

<sup>4</sup>) On the binding moral obligation associated with the institution of gift in antiquity see M. I. Finley, *The World of Odysseus* (London, 1956), pp. 68ff., 105ff., 134ff.; *idem*, 'Marriage, Sale and Gift in the Homeric World', *Seminar, An Annual Extraordinary Number of the Jurist*, 12 (1954), pp. 7ff.; É. Ben-

early Latin *donum* ("gift") was the predominant meaning of *munus*, whereas it implied *officium* only in the idiom *munus fungi*. Each meaning ("gift" and "service" should rather be regarded as conveying the presentation of the same obligatory counter-gift—to which the donor had rendered himself liable by the previous acceptance of a *munus*—in different ways (abstract and concrete). Pinsent's suggestion<sup>6</sup>) that *munus* ("gift") and \**muni-* (Pl. *munia* "unspecified duties") "were very early distinguished in meaning . . . then *munus* came to supply the singular for *munia* and this derived meaning spread to the plural" involves incomprehensible shift in meaning for *munus*—from "gift" to "duty". Furthermore, Plautus' idiomatic usage in *Nerv. Fr. II prohibentque moenia alia. unde ego fungar mea?* clearly attests to the lack of differentiation between *munera* and *munia* in Plautus' time<sup>7</sup>).

The double meaning of *munus* might originally have been embodied in the phrase *munus fungi*—"to enjoy", "to consume", "to take upon oneself an obligatory exchange"<sup>8</sup>), thence assuming the meaning "to perform one's duty in unspecified form" (*donum* or *officium*), when the context must be relied upon to indicate which of the meanings is intended<sup>9</sup>). Further support for this interpretation is found in some of the derivatives of *munus* which are capable of rendering both meanings and denote either one or the other, depending on the context, e.g. *munificus* "dutiful", "generous" (Isid. *Orig.* 10.166: *munificus dicitur, vel quia alicui multa munera dat, vel quia munus suum id est officium, quod debet, adimplet.* Cf. Schol. Cic. *Bob.* 137.3). Both meanings may be implied in the use of *munis* in Plaut. *Merc.* 105 (*dico eius pro meritis gratum me et munem fore*) and of *immunis* in Plaut. *Trin.* 354 (*is est immunis quoi nihil est qui munus fungatur suom*)<sup>10</sup>). See also Cic. *Sest.* 122; Ernout-Meillet, D.E. U.<sup>4</sup> s.v. *immunis*.

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veniste, 'Don et échange dans la vocabulaire indo-européen', *Ann. Sociol.*, 1948–9, pp. 7ff.; A. R. Hands, *Charities and Social Aid in Greece and Rome* (London, 1968), pp. 26ff. See also M. Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies* (transl. by I. Cunnison, London, 1954). For the Plautine concept see N. Zagagi, *op.cit.*, pp. 118ff.

<sup>5</sup>) J. Pinsent, 'The Original Meaning of Municeps', *CQ*, 4 (1954), p. 159.

<sup>6</sup>) *Art. cit.*, p. 161.

<sup>7</sup>) Cf. Ernout-Meillet, D.E. U.<sup>4</sup> 422

<sup>8</sup>) See J. Wackernagel, *Vorlesungen über Syntax* (Basel, 1920), p. 68.

<sup>9</sup>) See e.g. Plaut. *Trin.* 354 (cf. *Trin.* 687; *Nerv. Fr. II*); Lucil. 202; Cic. *Verr.* 2.3.86, where the phrase *munus fungi* appears to denote "to perform one's *pecuniary* obligations" (i.e. *donum* in a wider sense).

<sup>10</sup>) See however above, n. 9.