

# **The Historical Development of Some Important Methods of Manumission in Roman Law**

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According to legend, Roman civilization began with the founding of the city of Rome by Romulus, its mythical first King, in 753 B.C.<sup>1</sup> The largely symbolic ending of its Western variant – it had been effectively shattered generations before – is usually dated at 476 A.D., when the feckless Romulus Augustus, the last Western Emperor, was deposed and a barbarian chief assumed the title of King of Rome.<sup>2</sup>

Thus many people, including historians of the period, conclude that Roman civilization lasted over one thousand years.<sup>3</sup> Roman law,

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<sup>1</sup> Mike J. CORBISHLEY, *L'Empire Romain Atlas Historique* 14 (Casterman 1990) (1989). As the mythological beginnings of all peoples must be, the recounting of this date is generally taken “cum grano salis.” Some historians place the founding of Rome by Italic peoples living in the district of Latium south of the Tiber, as no later than 1,000 B.C. Edward MCNALL BURNS, *Western Civilizations: Their History and Their Culture* Sixth Edition Volume 1: The Dawn of History through the Reformation 206 (W. W. Norton & Company, Inc. 1963) (1941).

<sup>2</sup> See BURNS, *supra* note 1, at 240.

<sup>3</sup> Over two thousand years, if one includes the life span of the Byzantine Empire, the successor to the Eastern half of the Roman Empire. The Byzantine civilization lived on during eras of flashing brilliance and decadent decline for over a thousand years after Germanic barbarians in the fifth century A.D. crossed the Roman frontiers, invaded and eventually almost completely destroyed what was left of the decaying Western half of the Empire. The usual fixing of the 5<sup>th</sup> century A.D. as the time of the fall of the Roman Empire illustrates how the contemporary West views the Western half alone as the legitimate Roman Empire.

However, despite great differences in culture, language and economic structure between the Eastern and Western halves, the Byzantines, at least in the early stages of

like Roman society, went through various stages during this time.<sup>4</sup> The first known stage of Roman law was formed during the Early Republic.<sup>5</sup> It was known as the *ius civile* and was applied exclusively until Rome's most important judicial magistrate, the Praetor, began "...aiding or supplementing or correcting the *ius civile*," probably sometime midway between the Early and Late Republic. It comprised statutes (surprisingly few), and customary institutions and rules of the Roman people, with the twelve tables as its foundation.<sup>6</sup> As befits an

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their civilization, certainly thought of themselves as a continuation of the Roman Empire. Constantine for example saw himself as changing the capital of the Empire from Rome to Constantinople. See BURNS, *supra* note 1, at 239. See also the discussion of Justinian, the great Sixth Century Byzantine Emperor, *infra* text and notes 36-37.

On the other hand, after the fall of Constantinople, the last redoubt of Byzantium, in 1453 and the subsequent marriage of Czar (from Caesar) Ivan III (Ivan the Great) to the niece of the last Byzantine Emperor in 1472, Moscow came to be referred to in Russia as the Third Rome: "...two Romes have already fallen but the third remains and a fourth there will not be." Lionel KOCHAN, *The Making of Modern Russia* 38 (Pelican Books 1963) (1962). Obviously, something more than self-anointment would seem necessary to establish legitimate succession, particularly if the Civil Law principle *le mort saisit le vif* is applied. The final judgment is left to those better qualified to make it.

<sup>4</sup> The division of history into stages is of course inherently misleading, but nevertheless convenient. In this paper I have adopted the stages found in BURNS, *supra* note 1, with some modifications, namely, the Monarchy (1000 B.C. to the end of the sixth century B.C.); the Early Republic (the end of sixth century B.C. to 146 B.C., according to the Burns. I date the end of the Early Republic at 218 B.C., the beginning of the second Punic war, whose successful conclusion brought great economic and social changes to Rome); the Late Republic (146 B.C. [218 by my reckoning] to 27 B.C.); the Principate (27 B.C. to 284 A.D.), and the Dominate or Late Empire (284 A.D. to 476 A.D.), at least for the Western half of the Empire—see *supra* note 3.) See BURNS, *supra* note 1, at 206, 209, 223, 238. These divisions coincide generally with those used by many Roman Law scholars: See, e.g., Barry NICHOLAS, *An Introduction to Roman Law* 3-14 (A. M. Honore & J. Raz eds., Oxford University Press 1991) (1962).

<sup>5</sup> It is generally agreed that little is reliably known of the law of the Monarchy, the first stage of Roman history. See NICHOLAS, *supra* note 4, at 3: "For the history of the first period, ...we have little reliable evidence, and for its law even less." See also W. W. BUCKLAND, *The Roman Law of Slavery* 439 (Cambridge University Press 1908). "With the very early law we are not concerned, and indeed little but guesswork is possible in relation to it. The origin of manumissions is unknown..."

<sup>6</sup> "...*ius civile*...resulted from legal institutions and principles rooted in the collective conscience of the Roman people and sanctioned by ancestral usage, common recognition or legislative fiat of the political community." This laconic but precise definition of the content of Roman law during the early Republic is from Hans Julius

agricultural and military society,<sup>7</sup> the *ius civile* was relatively formal and meticulous.<sup>8</sup> It provided three principal methods to free a slave: *manumissio vindicata*, *manumissio censu* and *manumissio testamento*.<sup>9</sup> The first, *manumissio vindicata*, involved the use of fiction and a collusion between parties. It was a variant of the action asserting ownership, and necessitated a *libertatis* (prisoner's friend) who instead of claiming that the man belonged to him, claimed that he was free.<sup>10</sup> The second, *manumissio censu*, as the name suggests, involved a slave being added, with his master's permission, to the censor's list of citizens.<sup>11</sup> The third, *manumissio testamento*, involved the manumitting of a slave by testament.<sup>12</sup> It is said to be an early form, and the most popular of the three.<sup>13</sup> Of the three original methods, it was to have the greatest influence on the law of manumission applied by the former provinces of Rome (present day

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WOLFF, *Roman Law: An Historical Introduction* 62 (University of Oklahoma Press 1987) (1951).

<sup>7</sup> "Intellectually and socially the Romans appeared to have made but slow advancement as yet. The times were still harsh and crude. Though writing had been adopted as early as the sixth century, little use was made of it except for the copying of laws, treaties and funerary inscriptions and orations. Inasmuch as education was limited to instruction imparted by the father in mainly sports, practical crafts, and soldierly virtues, probably the great majority of the people were still illiterate. *War and agriculture continued as the chief occupations for the bulk of the citizens...the comparative insignificance of Roman commerce at this time is pretty clearly indicated by the fact that the country had no standard system of coinage until 269 B.C.*" See BURNS, *supra* note 1, at 211-212.

<sup>8</sup> Gaius describes a case supposedly occurring in this period where a man lost his suit by alleging that another had cut his vines, while the XII Tables proscribed only the cutting of trees. Instit 4.11. See also Ph. J. THOMAS, *Introduction to Roman Law* 5 (Kluwer Law and Taxation Publishers 1986). "As has been stated, old Roman law was formalistic, rigid and narrow; it was, moreover, exclusively applicable to Roman citizens and this system of law was called *ius civile* or *ius Quiritum*, the law of the Roman people."

<sup>9</sup> Buckland mentions two others, *manumissio sacrorum causa* and adoption of a slave by his master, but dismisses them as seldom used and extinct by the classical period. See BUCKLAND, *supra* note 5, at 447-448.

<sup>10</sup> *Id.* at 441-442.

<sup>11</sup> *Id.* at 439-442.

<sup>12</sup> *Id.* at 442-444.

<sup>13</sup> Watson places the practice as clearly established by the time of the Twelve Tables. Alan WATSON, *Roman Slave Law* 26 (The Johns Hopkins University Press 1987).

France, Portugal and Spain) in their colonies where they established large scale slavery beginning in the sixteenth century of our era.<sup>14</sup>

In the period known as the Late Republic, Rome rather quickly became a feared international conquering power, resulting in an avalanche of captured booty and slaves pouring into the city.<sup>15</sup> The *ius civile* on its own, formed when Rome was a predominately rustic, military society,<sup>16</sup> was insufficient to deal with the new legal arrangements stemming from this drastic change in Roman society, especially the great increase in commerce.<sup>17</sup> In response, the *ius*

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<sup>14</sup> See generally, Alan WATSON, *Slave Law in the Americas* (University of Georgia Press 1989).

<sup>15</sup> ...Not only did this series of fruitful campaigns establish the authority of Rome over a territory five times as large as that of contemporary France or Germany, and assign to her command of the Mediterranean and part of the Atlantic, but it brought the Romans into successive contact with the most diverse civilizations. ...The mob fell into ecstasies before the spoils taken from the Asiatic rulers from whom huge tributes were exacted by the triumphant generals who proudly exhibited their treasures of war...as in the preceding centuries, the great source from which servile labor was recruited continued to be the waging of war which led to the capture of tribes and whole nations and threw thousands and tens of thousands of human beings into the markets where they were sold by auction. The generals boasted just as loudly of their capture of slaves as of the treasures which they had pillaged from the vanquished kings or the contributions which they had levied..." PAUL-LOUIS, *Ancient Rome at Work: An Economic History of Rome from the Origins to the Empire* 62 (E. B. F. Wareing trans., Barnes & Noble, Inc. 1965) (1927). See also Perry ANDERSON, *Passages from Antiquity to Feudalism* 62 (Verso 1988) (1974). "Brunt estimates that in 225 B.C. there were some 4,400,000 free persons in Italy, to 600,000 slaves; by 43 B.C., there were perhaps 4,500,000 free to 3,000,000 slave inhabitants...the slave population quintupled. Nothing like this had even been seen in the Ancient World," citing P.A. BRUNT, *Italian Man Power 225 B.C. – A.D. 14*, Oxford 1971, 426.

<sup>16</sup> See BURNS, *supra* note 1, at 212: "...the comparative significance of Roman commerce at this time (i.e., before the Second Punic war) is pretty clearly indicated by the fact that the country had no standard system of coinage until 269 B.C."

<sup>17</sup> "Trade between Rome and the various parts of her territory, did not cease to grow in the latter centuries of the Republic, as it was to grow again in the first centuries of the Empire...we may say that this trade, at the time when Octavius crushed Antonius...was of dimensions unprecedented in history...whilst giving full credit to the extent of economic relationship which had come into existence for the first time or had resumed their original place in the Mediterranean areas, great care must be taken not to exaggerate them... It must not, however, be supposed that the trade of the last two centuries of the Republic – or even that of the last thirty years – was comparable to that which statistics show today for even small size, such as Belgium or Holland." See also ANDERSON, *supra* note 15, at 66: "...The economic growth of commodity exchange in Italy attendant on the construction of the Roman Imperial

*honorarium*, which had been gradually developing, came into prominence.<sup>18</sup> It resulted from the actions of *Aediles*, and to a much greater degree those of Praetors, the most important judicial officials of the Republic, “aiding or supplementing or correcting the *ius civile*”<sup>19</sup> by providing remedies that applied when the *ius civile* was seen to be lacking and blocking those remedies of the *ius civile* considered inappropriate to the new Roman society.<sup>20</sup>

Gradually, by this means a system of law, one that complemented but did not replace the *ius civile*, was formed. It became known as the *ius honorarium* or *ius praetorium*. This adaptation of Roman law to new conditions, the construction of the *ius honorarium*, is attributed to the Roman juriconsults, a professional group unique to Roman law.<sup>21</sup> Their *responsa* or expert opinions submitted to praetors, *aediles*, judges and parties were said to enjoy an authority that for all practical purposes was equal to the formal law.<sup>22</sup>

In keeping in a general tendency of the *ius honorarium* toward lesser formality than the *ius civile*, the Praetor “supplemented” the *ius civile* by recognizing certain informal manifestations of an intent to manumit, although the three actions of the *ius civile* were not overly burdensome. The letter granting freedom and the declaration before

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system, founded on the extensive use of slavery, thus found its judicial reflection in the creation of an unexampled commercial law in the later Republic.”

<sup>18</sup> “The great period of the *ius honorium* however was that last century of the Republican era, when radical changes in the economic and social structure of Rome rendered many old institutions obsolete...” See WOLFF, *supra* note 6, at 75.

<sup>19</sup> Dig. 1.1. 7.1

<sup>20</sup> The development of the *ius honorium* is succinctly described, with an effective use of examples and with great success in WOLFF, *infra* note 6, at 33, 70-84. The *Aediles* were holders of an annual office that was made a part of the Roman magistracy in 367 B.C. They had as part of their duties the maintenance of order in the public market place. In their capacity as market officers the *Aediles* are said to be responsible for developing important features of the Roman law of sales in the Late Republic by the use of methods similar to those of the Praetors. WOLFF, *supra* note 6, at 34, 80, 81.

<sup>21</sup> “The Roman juriconsult did not practice law in the manner we understand by this expression. He would not ordinarily try cases in court or aid parties in their pleadings before magistrates and judges. He confined himself to giving advice on questions of law. He did his work, not as a way of earning a living, but rather as a gentleman’s hobby. It was this very circumstance which gave the legal profession its unusual standing.” WOLFF, *supra* note 6, at 96.

<sup>22</sup> *Id.* at 97.

witnesses were two effective examples of these informal methods.<sup>23</sup> This class of praetorian manumitted slaves, however, possessed few of the rights of citizenship, and in fact were said to have only *de facto* enjoyment of liberty.<sup>24</sup> They were later classified as Junian Latins by a *lex Junia* and became free but still not Roman citizens.<sup>25</sup> Justinian's legislation, in the 6<sup>th</sup> century A.D. put an end to this situation, which had become anachronistic by his time. It declared that all manumissions recognized as valid, formal or informal, made the manumitted slave a *civus*.<sup>26</sup>

The Late Republic was not transformed gently into the next stage of Roman civilization, the Early Empire or Principate – nevertheless, it was so transformed.<sup>27</sup> During the Principate two new types of law were introduced, one made by the Emperor, the other by the Roman Senate, for the first time in Roman history.<sup>28</sup> In the Principate, the practice of the Emperor making law began slowly and was not blatantly overt.<sup>29</sup> In the Late Empire, it became open, and the only official manner in which law was formed.<sup>30</sup> The innovative power of the Senate to make law atrophied as the Emperor gained more control.

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<sup>23</sup> See BUCKLAND, *supra* note 5, at 444, see also WATSON, *supra* note 13, at 30. There are other "peculiar" cases mentioned by BUCKLAND at 447.

<sup>24</sup> See BUCKLAND, *supra* note 23, at 445.

<sup>25</sup> See *supra* note 13, at 28.

<sup>26</sup> See BUCKLAND, *supra* note 5, at 555.

<sup>27</sup> See BURNS, *supra* note 1, at 223. The section dealing with the Late Republic is appropriately designated "The Storm and Stress of the Late Republic," indicative of the political turmoil of that period, culminating in the assassination of Julius Ceasar, Augustus' victory at Actium, and the beginning of his relatively pacific reign. See also P.A. BRUNT, *Social Conflicts in the Roman Republic*, London 1971, for a survey of the concomitant class struggles of the period.

<sup>28</sup> During the long course of Roman constitutional history the Senate had always been, at least *de jure*, an advisory body. However during the Principate, "...The legislative power which had formally belonged to the assemblies passed now to the Senate, so that by the early second century A.D. it was beyond question that its resolutions (*senatus consulta*) had the force of law. But here too the effective voice was that of the Emperor: the Senate was virtually his mouthpiece." NICHOLAS, *supra* note 4, at 10.

<sup>29</sup> The process is described in WOLFF, *supra* note 6, at 84-90.

<sup>30</sup> "...Under the constitutional conception of the Dominate, the government no longer administered the law of the Roman people: it now dictated that law. The old law – as well as new institutions – had become completely dependent on the absolute rule of the ruler." See WOLFF, *supra* note 6, at 90.

It was also in the Principate, the classical period of Roman law, that the most important source of Roman law, ironically an unofficial one, came to fruition. During this period there was an immense growth in the literary production of the juriconsults, represented by a variety of legal works of very different types. The Roman law that survives today consists in great part of excerpts from these works, preserved by Justinian in his *Corpus Iuris Civilis*, as we shall see shortly.<sup>31</sup>

The number of slaves manumitted by the Romans in the Late Republic and Early Empire gives testimony to the popularity of the practice.<sup>32</sup> Augustus, the first Emperor, or *Princeps* as he preferred to be called, was the first to place serious limits on manumission, perhaps as part of his general campaign to return Roman society to its republican values.<sup>33</sup> The manumission by will was limited to a

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<sup>31</sup> Once again Wolff admirably summarizes the process as well as some of the important actors, and the types of works produced. See WOLFF, *supra* note 6, at 103-126.

<sup>32</sup> In his section, From Punic Wars to the Empire, Louis makes the following statements: "...Manumissions, in spite of certain proscriptions to the contrary, multiplied without cease. They attained an average of 300 per annum in the third century and every thing goes to show that they become still more numerous later." LOUIS, *supra* note 6, at 140.

<sup>33</sup> Some economic historians attribute these measures to a baser motive: the desire to maintain slavery as the primary base of the economic system. See LOUIS, *supra* note 15, at 250. In the Republic's early days, voluntarily accepted aristocratic rule was the foundation of Roman society. It was the result of the values of the early aristocrats so admired by Augustus. Since at least from the time of the Late Republic, the continued prosperity of Rome's senatorial aristocracy rested firmly of the maintenance of large scale slavery to provide labor for their latifundia, the motives are inextricably intertwined. To fortify the rule of the aristocracy the system of slavery had to be protected; to protect slavery's dominant role in society manumissions had to be limited—at least so the reasoning went.

The problem faced by Augustus was of course the changed nature of the Roman senatorial aristocracy viz., from a class characterized in early history by "...unusually high ethical standards and statesmanlike wisdom, a tenacity in adversity, and a spirit of disinterested patriotism which both justified and secured its claim to leadership." WOLFF, *supra* note 6, at 26, to the Late Republic's rapacious "...senatorial aristocracy [that] profited enormously from the financial sacking of the Mediterranean that succeeded progressive annexations by Rome, making boundless fortunes in tribute, extortion, land and slaves: but it was utterly unwilling to provide even a modicum of compensation to the soldiery whose fighting yielded those unheard of gains to it...To have paid them...would have meant taxing the possessing classes, however slightly,

proportion of the number of slaves owned by the manumitting party. In addition, the approval of a special counsel was required for the manumission of a slave under 30 as well as manumission by owners under 20.<sup>34</sup> These restrictions were not overly harsh and were repealed or modified by Justinian in the sixth century.<sup>35</sup>

The continuing mention of Justinian calls for a short explanation. In the sixth century A.D., Justinian became Emperor of the Byzantine Empire, comprising in the main only the Eastern half of the old Roman Empire, which did not include Rome itself. Nevertheless, Justinian dreamed of reuniting the two halves of the empire—the Western half, a great part of which had fallen into decay,<sup>36</sup> had lost any effective administrative control when it fell under the conquering sway of barbarian Germanic tribes, in the fifth century A.D.<sup>37</sup>

One Empire, One Church, One Law – this was the grandiose dream of Justinian: the first was partially implemented by his transitory reconquests in the West; the second is exemplified by the magnificent Hagia Sofia in Constantinople, and the last and ultimately most important is represented by the *Corpus Iuris Civilis*. In this monumental work Justinian had the disparate and scattered sources of the Roman law of his time reorganized in three parts – The Digest,

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and this the ruling aristocracy refused to consider.” ANDERSON, *supra* note 15, at 67, 68.

The economic and social changes in all areas of Roman society brought about by the plunder of the wealthier area to the East of Rome that began with the Second Punic War have been alluded to earlier. See note 46, *supra*. See also Edith HAMILTON, *The Roman Way* 142, 143 (W.W. Norton & Company 1984)(1932), describing Augustus’ Rome: “...Rome is first of all a place where money rules—Queen Money...there was no settled class of any sort. The man who got rich got all the other prizes too; he was the one to be admired and emulated and chosen for office.” Augustus’ frustration at the failure of his legislative and moralizing efforts to return the people of Rome to earlier values and standards have been well documented. See, e.g., BURNS, *supra* note 1, at 224.

<sup>34</sup> See WATSON, *supra* note 13, at 28-29.

<sup>35</sup> He repealed the *lex Fufia Caninia*, relating to testamentary restrictions but retained traces of the restrictions of the *lex Aelia Sentia*, by requiring a number of witnesses to effect certain manumissions. See NICHOLAS, *supra* note 4, at 76; WATSON, *supra* note 14, at 34.

<sup>36</sup> A poetic if lurid description of the situation is found in ANDERSON, *supra* note 15, at 108: “It was into this darkening world of sybaritic oligarchs, dismantled defenses and desperate rural masses that the Germanic barbarians entered when they crossed the frozen Rhine on the last day of 406.”

<sup>37</sup> See *supra* note 3.

Code and Institutes – the three, taken together came to be known as Justinian’s Code or the *Corpus Iuris Civilis* (Body of Civil Law).<sup>38</sup>

Justinian’s collection is almost all that remains of Roman law; it is only a small part of the original Roman law materials, some claim as little as five percent.<sup>39</sup> So to the extent that Roman law was received in some degree or another in virtually every part of Europe, it was induced over the course of hundreds of years in European universities almost totally from the *Corpus Iuris Civilis* of Justinian. The Roman law of manumission was no exception.

At least four methods of emancipation found in Justinian’s collection could be applied easily in the newly discovered territories of the European states where slavery was implemented.<sup>40</sup> The first was the oldest, the manumission by testament, freed by Justinian from Augustus’ limiting conditions;<sup>41</sup> the second was manumission by a writing granting freedom--this method required five witnesses writing their names on the document,<sup>42</sup> the third type of manumission was effected by declaration before witnesses (*inter amicos*), – five signing witnesses were required here, as well as the formal recording of the act and the signature of a *tabellio*, an official said to be similar to a notary.<sup>43</sup> In addition to these variations of three older methods that were incorporated in the *Corpus Iuris Civilis*, there were additional methods added by Justinian.<sup>44</sup>

This concludes a brief sketch of the law concerning some of the important methods of manumission in Rome. It illustrates that manumission in the Roman Empire was a relatively simple affair. The reason for this simplicity, however, does not have to do with an innate goodness on the part of the Romans or to the success of admonitions by its moralists, Stoic or Christian,<sup>45</sup> but in all probability, at least in

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<sup>38</sup> See WOLFF, *supra* note 6, at 162-174.

<sup>39</sup> *Id.* at 123.

<sup>40</sup> England was of course the one exception. The attenuated reliance by England on Roman slave law in favor of a law of slavery “...made from scratch”, is thoroughly documented by WATSON, *supra* note 63-82 in his Chapter England and Slave Law in America.

<sup>41</sup> See WATSON, *supra* note 13, at 32, 33.

<sup>42</sup> *Id.* at 34.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> At least if we are to believe LOUIS, *supra* note 5, at 247-250: “The Stoics at no time thought of demanding the abolition of slavery. Seneca has left us eloquent though

the important periods of the Late Republic and Principate, concerns their relative cultural level vis-a-vis part of their slave population.<sup>46</sup> It was during this time that the Romans became the first people to introduce field gang slavery to history.<sup>47</sup> In this respect, beginning in the sixteenth century, they were emulated in those areas of the Americas with significant slave populations.

However, unlike the slaveholding areas of North and South America colonized by Europeans, the Romans had a significant group of slaves that differed markedly from those unfortunate beings who labored in the fields of Italy and beyond. This group was part of the slave population taken from the territory East of Rome, an area that contained a level of society whose members were considerably more culturally sophisticated than the hardy warriors of the Late Republic.<sup>48</sup>

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somewhat high-flown tirades on human fraternity...but these were philosophical or literary themes from which no practical conclusion is to be drawn, as is proved by the fact that he himself had a large staff of slaves...he does not seem to have asked himself the question whether the mere fact of their condition was not contrary to many of his ideas...Epictetus considered that a man was free, even though his body were in chains, so long as his spirit was master of itself. The moral influence of the Stoic sect was in consequence necessarily small in its effect upon the servile system.” As for the effect of Christianity on slavery’s abolition: “In the apologia of the Christians which he addressed to Marcus Aurelius, Athenagoras lays stress upon their favorable disposition towards slavery, citing a proof of the fact that they themselves possessed slaves...Like the Stoics, the Christians continued to preach that the masters should show some clemency in their relations with slaves, but they did not go further than this. Like the Stoics too, they felt disdain for the liberty of the body and exalted only moral liberty—thus offending nobody.” Engels’ acerbic dictum, that “Christianity was perfectly innocent of this gradual dying out of slavery,” represents the extreme articulation of the hypothesis. MARX-ENGELS, *Selected Works* 570, (1968).

<sup>46</sup> Before the second Punic War, the Roman slaves were for the most part not taken from the more sophisticated East, and were more or less as hardy and unlettered as the Romans themselves. See *infra* note 48. The large scale decline of slavery and the eventual establishment of the colinate – a state halfway between slavery and freedom – during the latter stages of the Dominate stem from causes unique to that period. See LOUIS, *supra* note 15, at 241-257.

<sup>47</sup> See ANDERSON, *supra* note 15, at 60.

<sup>48</sup> “It was not only Greece who, in the words of the poet, “vanquished her victors”: all of the countries of the East which the legions crossed imposed upon Rome their tastes, their luxuries and their vices... It was inevitable that in the course of time these rude warriors, whose lodgings were narrow and crude, whose food hardly ever varied and whose dress remained rustic should be tempted by the habits of the populations of Greece and the Hellenic countries. The climate softened them and they drew trenchant comparisons between the grossness of life in Rome, and the refined

While most of the Eastern slaves labored in the fields, many from this cultured group often served as doctors, teachers of the Romans' children and managers of their businesses.<sup>49</sup> As such they often became invaluable in an economic sense to the Romans they served, and often were offered the prospect of future manumission to spur them on to greater efforts. In some cases they were even allowed to purchase their own freedom from a fund they controlled, called a *peculium*. Although it was legally the property of their masters, the slaves were given some privileges regarding its use.<sup>50</sup> No doubt some were also freed in gratitude for their loyalty and even companionship. While there are no statistics, it seems reasonable to conclude that most of the manumitted slaves in Rome during the Late Republic and Principate were part of this cultured part of the Eastern Roman slave population.

An interesting aside flows from this distinction. Professor Alan Watson has written convincingly concerning the lack of racism in Roman slavery, compared to the color code applied in the Southern United States.<sup>51</sup> After its successful eastern conquests, as Rome conquered the territory to the North and West, the captives taken were in the main illiterate barbarian tribesmen who were put to work in the fields. Thus it seems reasonable to assume that to the extent there was an ethnic prejudice concerning slaves among the Romans, it would have been directed toward this Celtic and Germanic fair skinned, often light haired segment of the slave population that would be found

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existence of the East... The ensuing transformation...aroused the indignation of the moralists of the time. They denounced the ...intrusions of Greeks and Orientals, of rhetoricians, *professors*, mimics and dancers..." – a curious juxtaposition for those of our profession? See LOUIS, *supra* note 15, at 126, 127.

<sup>49</sup> As to the importance of slaves in the economic life of Rome, see Aaron KIRSCHENBARUM, *Sons, Slaves and Freedom in Roman Commerce* 31, 32 (The Magnus Press 1987): "In the period of classical Roman law, commerce was to a great extent in the hands of slaves; they were the true middlemen of the city. A significant number of them were endowed with business acumen and commercial savoir faire. Moreover, trade had not lost its traditional stigma,...agents, particularly slaves and freed men, afforded a convenient method whereby a Roman could maintain the air of an aristocrat while his feet stood firmly on the solid ground of gold derived from business and trade."

<sup>50</sup> See WASTON, *supra* note 13, at 90-101.

<sup>51</sup> See generally, WATSON, *supra* note 14.

almost exclusively among the gangs laboring in the fields.<sup>52</sup> One would be much less likely to find one of them teaching Roman children or working as doctors and managers of Roman businesses or as freed slaves strolling down Rome's streets. Cicero's invidious judgment of the captured slaves from Britain illustrates the point.<sup>53</sup> Another irony of history.

The title of this paper promises an historical outline of some of the important methods of manumission in Roman law. By now the reader will have inferred the criteria used to select, from the variegated and numerous methods of manumission used by the Romans during their long history, those deemed most important: the degree of use by the Romans themselves as well as the adaptability to a much later system of large scale slavery employed by modern Europeans beginning in the sixteenth century were the two standards employed.

In any event, as we have seen, the Roman law of manumission was on the whole rather remarkably liberal, especially when compared with other areas of the Roman law of slavery, which can fairly be described as harsh, if not brutal, especially when applied to the large gangs toiling in the *latifunda*, mines and industries of Rome of the Late Republic, Principate and Dominate.<sup>54</sup> The logic behind the development of this liberal area of the Roman law of slavery; its

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<sup>52</sup> "...The growth of the large estates was made possible by large gangs of labouring slaves, drawn mainly from the ruder and hardier races of the north." See NICHOLAS, *supra* note 4, at 70. The Nordic variant of the theory of eugenics is, of course, a product of the nineteenth and twentieth centuries of our own Christian era. Given the empirical data available to them, one can suppose that its postulation to the elite of Antiquity would have evoked a mixture of astonishment and bemusement. If we can analogize our own species to the noble canine, history amply illustrates the truth of the old bromide "Every dog has his day."

<sup>53</sup> "The result of the war in Britain is looked forward to with anxiety. There is not a scrap of silver on the island, not booty either except slaves – and I don't fancy there will be any with literary or musical talent among *them*." Quoted in HAMILTON, *supra* note 33, at 90.

<sup>54</sup> Everyone is familiar with the Roman tripartite description: the slave was an *instrumentum vocale*, a speaking tool; livestock an *instrumentum semi-vocale*, and the implement an *instrumentum mutum*. Of course slaves had a human side as well, which was recognized in large areas of Roman Law. See WATSON, *supra* note 13 for a discussion of the law's treatment of the slave as thing and as man. Furthermore, laws were passed through Roman history to mollify the treatment of slaves. These are said, however, to be caused less by a spirit of clemency than a desire to maintain a resource that the economic system depended on. See LOUIS, *supra* note 15, at 247. Few have argued that the system on the whole was humane.

application by the European powers in their slave holding territories, and the implications that this holds for the theory of Legal Transplants espoused by Professor Alan Watson are all topics that deserve further attention.