Serviles personae in Roman Law
“Paradox” or “Otherness”?

Carlo Pelloso
Università degli Studi di Verona
carlo.pelloso@univr.it

Abstract

This article aims at sketching the prima facie “paradoxical” legal status of “slaves” in Roman law. Hence, it deals with principles and rules directed to regulate two paradigmatic and highly relevant areas of economic life, i.e. sale and agency. Both shared the fundamental presence of servi or mancipia, conceived at times as mere objects, at times as real individuals. On the one hand, according to non-Roman conceptions (that consider slavery per se a liminal and, thereby, indefinable institution), the law concerning serviles personae would represent such a contradiction by merging the Aristotelian categories of bios and zoe. On the other hand, pre-classical and classical Roman law, adhering to a functional and wide notion of legal persona, and embodying a status-system, transcends any apparent inconsistency between property law and business law.

Keywords

Roman law – slavery – law of sale – law of agency – status

Introduction: Is Slavery a Roman “Paradox”?

A Ubiquitous and Ambiguous Institution

“Outside the region of procedure, there are few branches of the law in which the slave does not prominently appear.”

1 Bearing this over-quoted statement

---

1 William Warwick Buckland, The Roman Law of Slavery. The Conditions of the Slave in Private Law from Augustus to Justinian (Cambridge: Cambridge University Press, 1908, reprint 1970), vi. Estimates of the percentage of the slave population of Italy range from 15% to 40% in the
in mind allows for the framing of the supposed great “paradox” that characterized the archaic, pre-classical, and classical Roman law. A tablet found in London and dating back to late first century A.D. would seem to illustrate such a “paradox,” as well as the inner complexity of the Roman system, by documenting a sale including a warranty against defects and eviction, together with a personal guarantee.\(^2\) The buyer, Vegetus, is a slave of Montanus, also a slave of the Emperor, and the good sold by \textit{mancipatio} is likewise a slave, a girl called Fortunata. Slaves buy. Slaves are bought. Slaves have dependents. Slaves are dependents.

\textit{Slaves between Status and Ownership}

From several “patrimonial” aspects of the law of slavery, it is evident that \textit{servi} or \textit{mancipia} (the Roman legal terms regularly denoting slaves) were conceived of as \textit{res}:\(^3\) slavery was indeed defined by late-classical jurists as “an institution of \textit{ius gentium} whereby a human being is, contrary to nature, subject to the dominical power of another.”\(^4\) Already in the last centuries of the Republican


era, Cato unsympathetically described slaves in terms of stock to be bought and sold, as well as in terms of pledgeable assets; likewise, Varro maintained that a slave, as *instrumentum vocale*, is a piece of property, a commodity, in the same way of oxen and wagons are. Therefore, it is not erroneous to highlight that *servi*, as such, lacked any “legal, patrimonial and proprietary capacity,” as well as any “procedural standing,” during the Republic and the first centuries of the Empire, until the *ius naturae* gradually inspired more and more “humane” disciplines and treatments. Yet, one must be aware that this perspective is a non-historical one, tending to read the past—in particular the hierarchic stratifications that grounded and shaped Roman society as a whole—by means of current categories.

The Roman *ius personarum*—and, as a result, any other area concerning relationships between individuals—was not focussed on the simple concept of “capacity,” but on a multifaceted and multileveled system of “*status*” implying different duties and powers depending on the particular community to which one belonged. Thus, maintaining indignantly that a slave was not a real “person” in the world of law, is misleading, inexact, and totally inadequate to understand (and not to judge) the Romans and their culture. For example, just like a slave, who was granted no “capacity,” even a *consul*—that is the supreme

---

5 Cato, 2.7; Cato, 159.2; Varro, 1.17.1.
magistrate of the Roman Republic—could not own anything and could not sue anyone, since he was not given any “right” up to his pater’s death or up to his emancipation.

Moreover, if nobody can deny that slaves, as res, could be ill-treated or even inhumanely overworked⁸ (even though the censores, by means of their nota, punished the domini for private cruelty towards their own slaves),⁹ one has to point out the following. First, starting from the mid-republican period, slaves appeared to become an extremely appreciated economic resource. They were legally labelled as res mancipi, that is res pretiosiores (very valuable goods), as Gaius still maintains in the second century A.D.¹⁰ Should a dominus have treated his slaves cruelly and uselessly, he would have inflicted a serious economic harm to his current assets, to any possible income, and therefore to his present and future wealth. Second, many slaves were involved in rather skilled jobs.¹¹ In Rome, clerks, accountants, commercial agents, teachers, doctors, rhetoricians, and even superintendents, were predominantly slaves. Many of them, even though legally constituting “property” and—according to modern legal schemes—“object of rights,”¹² lived more comfortably than most free Roman citizens, especially if they were high-ranking officials in the adminis-

---

⁹ Dion. Hal. 20.3.
¹⁰ Gai 2.13–14a; D. 33.7.12.44.
¹¹ One could oppose the brutal account on the use of slaves in mines, as presented by Alfred Michael Hirt, Imperial Mines and Quarries in the Roman World: Organizational Aspects 27 B.C.–AD 235 (Oxford: Oxford University Press, 2010), 4.2.1. Yet, one has to keep it in mind that here we are dealing with criminals that, condemned ad metalla, became “slaves of the punishment,” servi poenae (see D. 49.14.12; D. 29.2.25.3; D. 34.8.3 pr.), and not with servi publici or servi fisci. Accordingly, they lost their freedom, their citizenship, their “legal capacity;” their whole property was confiscated, with some partial exceptions (D. 48.20.7 pr.); they could not buy their freedom, be sold, or be set free, thus becoming “walking dead” (see D. 40.5.24.5; D. 48.19.28 pr.). See Aglaia McClintock, Servi della pena. Condannati a morte nella Roma imperiale (Napoli: Edizioni Scientifiche Italiane, 2010), passim.
trative service of the prince. For instance, Musicus Scurranus was a slave of Tiberius and dispensator of the Gallic Treasury in the province of Lyon. After his death, he was sumptuously commemorated in Rome by as many as sixteen servi vicarii or peculiare (i.e. “under-slaves” or “slaves of slaves”). a commercial agent, a treasurer, three secretaries, a physician, two slaves responsible for the silverware, two general attendants, two bedroom attendants, a valet, two cooks, and a “woman.”

Slaves: Actors on the Stage of Law
From the “natural” and “theoretical” point of view, slaves were unambiguously homines, i.e. human beings. They were—in the same way as the liberi homines—personae, that is—etymologically—“individuals donning a mask,” “actors” playing different “roles” on the “stage of law” in relation to their own status. The Roman ius civile, in other words, could not rule out slaves’ human


14 Francesca Reduzzi-Merola, ‘Servo parere’. Studi sulla condizione giuridica degli schiavi vicari e dei sottoposti a schiavi nell’esperienza greca e romana (Napoli: Jovene, 1990), passim.

15 cIL VI 597= ILS 1514. See for funerary commemorations by free people received by servi institores, ILS 7546, 7637, 7638.


characteristics, and accordingly, it could not fail to recognize—as alongside their intellect, their skill, and their bodily shape—their “natural” capacity to will, to agree, to be party to a contract, and to perform.

The awareness that slaves were—and had to be recognized as - homines and personae from a biological and legal perspective, seriously influenced Roman society and economy. If, in the early Republic, a rather small number of slaves was living in Rome, as of the mid-third century B.C. the slave population quickly expanded and, by the end of the Republic, slaves represented one of the most predominant factors in the economic life of the city. Some tablets found at Murecine from the archive of the Sulpicii (a finance firm operating in Puteoli) clarify the importance of (skilful and smart) slaves in commerce, attesting to some interesting aspects of the process of the conclusion and recovery of a loan.

C. Novius Eunus is a dealer in grains and pulses, and he needs 10,000 sesterces. Hesicus is a slave of Euenus Primianus, a freedman of the emperor Tiberius. C. Novius Eunus borrows the money from Hesicus (acting on behalf of his master who is absent), and secures the return of the money by stipulatio. A few days later a further loan of 3,000 sesterces is concluded, but alongside the stipulatio (as personal security), wheat imported from Alexandria is pledged as real security. A third tablet, indeed, records Hesicus as taking over the lease of the


warehouse space where the stock pledged was stored, and on this occasion two slaves are parties to a contract. Hesicus is the conductor, while Diognetus likely acts as servus negotiator cum peculio: he belongs to Novius Cypaerus (a horrea publica), and his activity is ratified by means of a dominical iussum. After one year and two months, Hesicus stipulates that the remaining debt, including the capital and interest, is due to be paid either to himself or to an alternative promisee (adstipulator) named Sulpicius. Finally, a last tablet attests the total amount that was still due, a time limit for payment, and a penalty for delay.20

Sympathy for Slavery?
Slavery is nowadays morally and ideologically unacceptable. This is incontrovertible and the following conclusions, based on the previous remarks, neither hide nor openly entail a politically incorrect position sympathizing with what is an abomination: i.e., “forcibly taking human beings as captives.” Yet, the so-called “Roman slavery”, albeit seemingly rooted in the above-mentioned “paradox,” sounds less singularly discriminatory and less inhumane (as well as less “paradoxical”), if one dispassionately considers the institution at issue not only in its articulated entirety, but also as part of a wider system of status.

On the one hand, slaves did not belong to a monolithic and undifferentiated social class deemed as always unsatisfied, exploited, and thereby regularly occupied in acts of resistance. With the important exceptions of the areas of politics, law, and war, private slaves were employed in any type of work.

On the other hand, the link “slavery / lack of legal capacity” is misleading, as its two poles are not perfectly bijective. Indeed, a filius familias, albeit civis


and *liber,* was an *alieni iuris* individual in the same way as a *servus.* Even if the former was intended to become a *sui iuris* individual and the latter could just wish for *libertas* and *civitas,* *iure privatorum* both were definitely excluded from a full “personality,” prerogative of a *pater familias*—if one is allowed to use modern categories. Slaves themselves, despite a few episodes of large-scale revolts and naïve daily resistance towards their masters, appeared to

---

22 *Status civitatis,* for instance, enhanced severe obligations that other *status* did not encompass. If slaves, as *res* belonging to their masters, were not considered appropriate for use in war (D. 49.16.11; Plin. Ep. 10.29–30), Romans, as *hominis liberi et cives,* spent long years risking their own lives on battlefields: see Adrian Keith Goldsworthy, *The Roman Army at War 100 B.C.–A.D. 200* (Oxford: Clarendon Press, 1996), *passim.* Up to the first century B.C., military service constituted a duty embedded at the core of what it meant to be both a *civis Romanus* and a fundamental part of the *populus Romanus.* In the early second century B.C. over fifty per cent of all Roman citizens performed military service for an average of about seven years. Under Augustus, one sixth of all Italian citizens served as soldiers for a standard term of twenty years: See Hopkins, *Conquerors and Slaves,* 30. As Polybius attests (Polyb. 6.19.4), moreover, a young member of the Roman aristocracy could not stand for public office until he had completed even ten years of military service (Hans Beck, *Karriere und Hierarchie: Die römische Aristokratie und die Anfänge des cursus honorum in der mittleren Republik* [Berlin: Walter de Gruyter, 2005], *passim*). Private slaves were not Roman citizens; they belonged to Roman citizens and could be, *in hypothesi,* maltreated by their *domini:* this is incontrovertible. Yet, as such, they were kept far from the ‘noble’ dangers of the ‘bloody’ war. On the contrary, a *civis Romanus* belonged to his *populus,* was at its mercy, and had to perform duties inextricably attached to his *status.* Like an everlasting military service.

23 See Eva Cantarella, “Famiglia romana e demografia sociale. Spunti di riflessione critica e metodologica,” *Iura* 43 (1992): 99–111. It is important to remark that in her contribution dedicated to *Slavery and Roman Law* Jane F. Gardner never focuses on the plain but fundamental equation between *slaves* and *fili.* *Slavery, qua tale,* naturally creates moral and ideological repulsion and a society based on slavery cannot be wholly at ease with itself. Yet, some historical exaggerations, due to this feeling, are well recognizable and understandable. For instance Keith R. Bradley, *Slavery and Rebellion in the Roman World, 143 B.C.–70 B.C.* (Bloomington: Indiana University Press, 1989), 38, argues: “slavery as an institution was based ultimately on the violent subjection of one person to another that arose from the dominating power claimed when life was spared upon defeat in warfare ... So slaves were always at war with their owners.” Yet, if this were *in toto* true, the whole knowledge derived from Roman jurists on the use of slaves, as well as on the *peculium* and *naves* would be false. Actually, a master would not appoint an enemy as a business manager; a master would not grant an enemy part of his wealth to administer (see *infra*).

24 Keith R. Bradley, *Resisting Slavery at Rome,* in Keith R. Bradley and Paul Cartledge, eds.,
generally recognize and accept such a system. Many of them, once set free, prospered, integrated themselves into Roman society, and often became slave-owners themselves.\textsuperscript{25}

The following pages will be devoted to a simple sketch of the above-mentioned system entailing the legal \textit{status} of slaves according to Roman law. One will illustrate the principles and the rules created by magistrates and jurists in order to discipline two areas of private law (sale and “agency”) that were considered highly relevant in the commercial framework. Indeed, these two areas were strictly connected with one another and sharing a common feature, that is the fundamental presence of slaves. At times (since they lacked the \textit{status civitatis} and \textit{libertas}) \textit{servi} were considered mere \textit{res}, at times (since they were \textit{homines} exactly like \textit{liberi} and \textit{cives}) they were considered real \textit{personae}, whose legal \textit{status} often corresponded to that of a \textit{filius familias} (since both were not \textit{sui iuris personae}).

To all people of today, this immediately evokes two contrasting and incompatible pictures. On the one hand, the cruel and miserable degeneration permeating the illegal human trafficking and the appalling reification of human beings as objects. On the other hand, the enterprise run by pragmatic, hectic, and busy businessmen having no hesitation in sacrificing their lives and those of their dependents on the altar of outright profits.

By interpreting Roman Law by means of non-Roman or current categories, one cannot avoid seeing a deep contradiction that makes slavery itself a liminal and, thereby, indefinable institution, which would merge the Aristotelian conceptions of \textit{bios}, i.e. political life, and \textit{zoe}, i.e. biological life.\textsuperscript{26} On the contrary,

\begin{quote}
\end{quote}

\textsuperscript{25} See, for the episode of Furius Chresimus, Plin. \textit{nat. hist.} 18.41–43.

\textsuperscript{26} Arist. \textit{Pol.} 1252 b 27 10. For instance, Orlando Patterson, \textit{Slavery and Social Death: A Comparative Study} (Cambridge: Harvard University Press, 1982), 42 ff., maintains that the enigma of slavery supersedes the legal and economic spheres: indeed, slavery marks the threshold between the inside and outside, collapsing both the political and ontological differences between the human and the non-human, between being and non-being. Similarly, Giorgio Agamben, \textit{Homo Sacer: Sovereign Power and Bare Life} (Stanford: Stanford University Press, 1998), 109, points out that the concept of “bare life”—the paradigm of which, in his archaeological reconstruction, is the Roman \textit{homo sacer} (contra, see Luigi Garofalo, \textit{Biopolitica e diritto romano} [Napoli: Jovene, 2009], 113 ff.)—, represents “a zone of indistinction and continuous transition between man and beast.” As such, it would be the counterpart of the sovereign power on the state of exception and the target of the sovereign violence. In other words, according to Agamben, “bare life” would not overlap the concept of “biological existence,” being, on the contrary, the remainder of the
by interpreting Roman slavery in its legal and social context, one is inclined to regard it, in spite of its inner liminality, as a coherent and logical figure.\textsuperscript{27}

\textbf{Slaves and the Roman Law of Sale}

\textit{Slaves as Res}

Since they did not belong to the community of \textit{liberi cives}, slaves were—in some respects—like animals, and consequently, the same legal regime applied to both. For instance, the \textit{lex Aquilia}, enacted in the 3rd century B.C., seems to be concerned only with “unjust” damages to slaves, animals, and other types of property, but not with damages to free individuals. The first and the third \textit{capita} of the statute at issue respectively stipulated: “If anyone shall have unlawfully killed a male or female slave belonging to another or a four-footed animal, whatever may be the highest value of that in that year, so much money is he to be condemned to give to the owner;” and “If anyone shall cause loss to another, by burning, smashing or maiming unlawfully, whatever may be the value of that matter in the next thirty days, so much money is he to be condemned to give to the owner.”\textsuperscript{28}

Such proximity between animals and slaves, and the consequent legal assimilation is also well attested elsewhere. Nothing makes it clearer that the slaves, as \textit{res} (albeit \textit{sui generis}), could represent the object of ownership, than the legal discussions of the Roman jurists still in the classical period about whether an infirmity, an illness, or a bodily or psychological deficiency amounted to a defect.\textsuperscript{29} The contract of \textit{emptio-venditio} (i.e. obligatory sale) provides therefore a good paradigm and testifies the crucial importance of slaves for the Roman economy.

\begin{itemize}
    \item destroyed political life. Therefore, only ‘enslavement’ (and not slavery \textit{per se}) could fit such a concept, in my opinion.
\end{itemize}


\textsuperscript{28} Gai 3.210; Gai 3.218; D. 9.2.2 pr.–1; D. 9.2.27.5; D. 9.2.29.8. For further details, see Sara Galeotti, \textit{Ricerche sulla nozione di damnum 1: Il danno nel diritto romano tra semantica e interpretazione} (Napoli: Jovene, 2015), 97 ff.

\textsuperscript{29} See Gell. 4.2.1–15; D. 21.1.1–4 with Rosanna Ortu, \textit{Aiunt aediles ... Dichiarazioni del venditore e vizi della cosa venduta nell’editto ‘de mancipiis emundis vendundis’} (Torino: Giappichelli, 2008), 94 ff.
Defective Slaves and Ius Civile

During the last three centuries of the Republic, *iure civili* the buyer had normally to take the risk of possible defects that rendered the *merx* (i.e. the good sold) unfit for its ordinary or expected purposes. Therefore, if he wanted a specific warranty that the *merx* was either free from specific defects or that it had certain qualities (*promissum*), he had to ask the seller for a *stipulatio* to that effect. For instance, the parties could enter a *stipulatio* to the effect that the slave was healthy, that it was not a thief, and that it did not rob the corpses of their grave-clothes. Out of this formal and verbal contract, in case of misrepresentation, the *emptor*, in the quality of *stipulator*, could bring an action *ex stipulatu* against the seller-promise, regardless of the latter’s *scientia* or *ignorantia*. The contractual liability under this legal action was strict and limited to the *id quod interest* (that is the purchaser’s interest in the truth of the promise). As such, it could go beyond compensation for the lesser value of the object sold. Yet, the buyers ended any consideration of this remedy, its targets, and its sphere of applicability, as unsatisfactory. In an area of the law as important as the sale of slaves, a special liability needed to be introduced in order to increase the protection offered not only against frauds perpetrated by sellers, but also against negligence and unawareness.

For instance, female slaves were not purchased “solely as breeding stock,” and they could be sold as healthy even though they were “barren women,” unless the infertility was due to a bodily defect, but their fecundity was often a selling point, such as with sheep and cattle. The Severian jurist Paul deals with the sale of the prospective offspring of a female slave (*partus ancillae* as a *res sperata*), although he is concerned with the availability of the legal action

---

in contract where the *merx* does not exist and cannot come into existence, thus implying the impossibility of the seller’s obligation. Not disclosing to the buyer that the slave was barren, or over fifty years old, represented a typical fraud perpetrated by *scientes* sellers, but it could amount also to a case of *ignorantia venditoris*.

**Sales of Slaves in the Marketplace: The Ius Honorarium**

Between the third and the second centuries B.C., the *aediles curules*—i.e. minor magistrates responsible for marketplaces—through their edict “*de mancipiis emendis vendundis*” (i.e. “about slaves for sale”) introduced a new remedy for latent defects and diseases called *actio redhibitoria*. In cases in which


37 Gell. 4.2.1; D. 21.1.1.1. See Otto Lenel, *Das ‘Edictum Perpetuum’. Ein Versuch zu seiner Wieder-
the seller failed to disclose publicly (palam pronuntiare) any latent disease or defect (morbus vitiumve), or whether the slave was a runaway (fugitivus), a loiterer (erro), or a delinquent under noxal liability (noxae), the action at issue was indifferent to the defendant’s knowledge or good faith (whereas, in contrast, ignorantia and scientia venditoris were relevant iure civili). Since this remedy was not justified by a breach of contract, it looked like an “action in tort,” depending on the violation of the aedilian provisions. Moreover, the aedilian remedy was directed to the termination of the contract and not to damages (as, in contrast, the actiones civiles were).

If, originally, the aedilian provisions were concerned with the sales of slaves only, later (likely between Cicero and Labeo), the magistrates themselves extended these provisions to the sales of iumenta, that is beasts of draught. They also implemented their original system with a new remedy aiming at the reduction of the purchase-price. The aedilian provisions shaped a strong system of protection. Yet, many sellers of slaves were averse to giving such a warranty and, by rejecting ex contractu the aedilian provisions, they preferred to be held liable just for the specific diseases and defects in the terms agreed upon by the parties to the contract.

---


38 Cic. de off. 3.17.71; D. 21.1.1.2; D. 21.1.4.4; D. 21.1.17.23; D. 21.1.45.52.


42 Aulus Gellius, quoting the jurist Sabinus, remarks that it was customary to put felt caps on
These aedilian rules were routinely enforced in day-to-day commercial activities affecting relationships among Romans as well as between cives and peregrini. The system was praiseworthy and helpful, but not exhaustive. What if a slave (as well as an animal of draught, and a res nec mancipi) was made an object of a sale, but at the same time the parties entered the contract outside the marketplace? What if the sale was concluded in the marketplace, but either the merx was not a slave or the slave had a defect that the aediles did not list in their edict? What if the seller falsely assured a quality in the slave or other goods? In these three cases, the aedilian edict was unambiguously unsuitable. Such legal gaps were required to be filled and thus the Roman jurists provided new, more effective forms of legal protections.43 In other words, the sale of slaves represented the legal and ideological prototype as well as the historical basis for the ancient (and current) remedial systems of buyer—and consumer-protection.44

As far as the first two aedilian gaps are concerned, it is important to point out the following points. By the time of the late Republic, the actio empti itself starts being conceived of as a remedy available not only if the seller had not performed the contractual oportere dare facere, but also if he somehow had acted in conflict with “good faith.” Consequently, as we read in Cicero and Valerius Maximus, the buyer of res mancipi (or, perhaps, of real estate only) was granted a legal action directly grounded, iure civili, on the sale-contract, where the merx turned out to have some defects. The classical jurists often attest the subsidiary use of the contractual action against the dolus venditoris, as the buyer of the slave was not allowed to start the actio redhibitoria.45

---


45 D. 21.1.9–10; D. 21.1.2–4; D. 21.1.38.7.
The action *ex empto* for damages (that is aiming at the *id quod actoris interest*)\(^46\) could be started, in accordance with its new extended targets, if the seller had omitted to disclose any defect known to him.\(^47\) In addition, if any concealment of latent defects could initially amount to a “breach of good faith” only in case of *scientia venditoris*,\(^48\) the classical jurists, following Julian, started to suggest further applications of the same remedy: by the second century A.D., the buyer could start the *actio ex empto* even out of a non-malicious silence. Yet, where the seller was *sciens*, the monetary condemnation was restricted to the reduced value of the objects themselves and to any consequential loss; on the contrary, the buyer could obtain a mere reduction of the purchase price, such as in an aedilian *iudicium aestimatorium* or *quantî minoris*.\(^49\) The contractual action, being at the beginnings just a subsidiary remedy susceptible to be used only where the case failed to meet the conditions required by the *aediles*, ended up overlapping the aedilian protections. Thus, *adiuvandi iuris civilis causa*, it shaped a two-level system characterized by the principle of “flexibility of action and choice of procedure.”

As far as the third aedilian gap is concerned, since the last few centuries of the Republic, the buyer was likely allowed to start the contractual action where the seller had assured the buyer, by an informal *dictum in venditione*, that the *merx* was free from certain defects or that it had certain qualities.\(^50\) At first, the buyer could not sue the seller *ex empto*, if both were in good faith. Yet the late classical legal science—as Ulpian, albeit hesitantly, attests—changed such regime. Jurists thought that the informal *dictum* brought about reasonable reliance in the purchaser, whether the *venditor* was *sciens* or *ignorans* of the misrepresentation. Thus, if the slave being sold was a thief, and the seller, albeit unaware, assured the buyer of the contrary in the course of the negotiations, the seller was held liable under *actio empti*.\(^51\)

\(^{46}\) d. 18.1.78.3; d. 18.6.16; d. 19.1.6.4; d. 19.1.13 pr.–2; d. 18.1.45.


\(^{48}\) See d. 19.1.4 pr.; d. 21.1.9–10; D. 21.1.38.7.


\(^{50}\) d. 19.1.6.4; d. 19.1.13.3; see d. 18.1.45; D. 18.1.78.3; D. 18.6.16; D. 19.1.6.4; D. 19.1.13.2.

\(^{51}\) d. 19.1.13.3; see d. 18.1.78.3; D. 18.6.16; D. 19.1.6.4; D. 19.1.13.2; D. 18.1.45; D. 19.1.6–4; moreover,
This was the situation between the end of the Republic and the beginning of the Principate. A need for higher harmonization, as well as for new reforms, started emerging. Indeed, if a slave sold in the marketplace presented an aedilian defect, the buyer was allowed *iure honorario* to obtain the judicial termination of the contract. By contrast, if a slave (as well as another *merx*), did not present the qualities formally or informally assured, the buyer was allowed *iure civili* to sue the seller just for damages (enforcing either a strict liability in case of *stipulatio*, or a liability for fraud in case of *dictum*). As the aedilian remedies were inspiration for the legal science to attach new applications and tasks to the civilian contractual actions (during the pre-classical and classical period), the casuistic solutions offered by the jurists themselves in the area of the general law of sales encouraged the enactment of new aedilian provisions in the first century A.D. So, if the seller of slaves at the marketplace, through a so-called *dictum promissumve*, misrepresented the *status quo* of the *merx*, he could also be sued by the aedilian action *ad resolvendam emptionem*, whether or not he was aware of his false assumptions. As long as the aedilian conditions (concerning the place and the object of the contract) were met, the buyer’s choice

---


54 Hor. *epist.* 2.2.1–19, and, above all, D. 21.1.17.20; D. 21.1.64.1. See, moreover, D. 21.1.18.1; D. 21.1.4.4. From D. 21.1.38.10 we learn that the Roman jurists extended this remedy and this target to the sale of draught animals.
could *iure honorario* go beyond the protection granted by the contractual civil action *ex empto* (primarily concerned with fraudulent sellers).\(^{55}\)

**Slaves as Contracting Parties and the Roman Law of Business Agency**

**Negotiatio and Representation: The Limits of Ius Civile**

According to pre-classical and classical Roman law, it is undeniable that slaves were conceived of as “private property”: they did not belong to the *populus Romanus* (as each *liber civis* did); they belonged to a *liber civis*. On grounds of the *ius utendi abutendi*, a *dominus* could hypothetically do anything he liked with his slaves.\(^{56}\) Yet, as already pointed out, they were not only *res* or *instrumenta* susceptible to be used as simple and material work-force for degrading and heavy activities.\(^{57}\) Rome was, in fact, a society that deeply and largely relied on ownership on the one side, and on economic employment of dependents on the other.\(^{58}\) Owners and *patres familias* provided specific training to highly skilled individuals, both *servi* and *filii*, in order to train and to use authentic “managers.”\(^{59}\)

Engaging slaves in business activities was commonplace in Roman society at all levels: epigraphic evidence as well as the Justinian Digest describe slaves buying and selling, acknowledging receipts of money, making loans, and receiving loans. The highly intricate nature which characterizes Roman slav-

---

\(^{55}\) See, as supporters of the opinion that *actio redhibitoria* for *dicta promissave* was an aedilian remedy just *adiauandi iuris civilis causa*, Arangio-Ruiz, *La compravendita* 2, 366 ff.; Impallomeni, *L’editto*, cit., 258 ff.; Watson, “Sellers’ Liability,” 172; *contra*, see Nunzia Donadio, “Garanzia per i vizi della cosa e responsabilità contrattuale,” in Eva Jakab and Wolfgang Ernst, eds., *Kaufen nach Römischem Recht. Antikes Erbe in den europäischen Kaufrechtsordnungen* (Berlin—Heidelberg: Springer, 2008), 80 ff. (maintaining that the *dicta promissave* could take place even earlier and thereby the aedilian remedies and the *actio empi* were ruled by the principle of subsidiarity too).

\(^{56}\) Gai 1.52. In the Principate the masters’ right to mistreat or arbitrarily slay their slaves was restricted by law: see Gai 1.53; D. 40.8.2; D. 48.8.11.2; D. 1.6.2; D. 48.8.4.2; C.Th. 9.12.1; i. 1.8.2.

\(^{57}\) A wide range of occupations is well attested even in legal sources: see D. 6.1.28, 9.2.5.3, 19.2.13.4, 24.1.28.1, 30.34.36, 32.65.3, 33.7.12.32, 38.1.7.5.


Serviles personae in Roman law

ery emerges from two paradigmatic sources. The first is a comment of Paul to Neratius. The jurist makes it clear that a slave was plainly considered to be a “piece of property” (depending on two different opinions, belonging either to the equipment of the taberna cauponaria, i.e. the inn, or to the resources of the caupona, i.e. the lodging business). Yet, at the same time, it was also a “manager” (that is a dependent appointed to carry out the negotiatio, i.e. the business). The second source, a Macedonian funerary inscription, well illustrates that a slave was not merely (from the legal and economic perspective) a res and an institor, but also (from the social perspective) a human being for whom one could have feelings of respect, appreciation, and even love.

Such status quo requires some additional explanation. First, obligations were binding inter partes only. Out of the “doctrine of privity” and of the absence of a developed “concept of direct representation,” two principals (cives sui iuris) exclusively could regularly enter a contractus. In other words, any contract was, iure civili, source of rights and claims inter partes, and the intervention of a third party as a representative was regularly excluded. Second, this funda-

60 D. 33.7.13 pr.: Maria Antonietta Ligios, Nomen negotiationis. Profili di continuità e di autonoma della negotiatio nell’esperienza giuridica romana (Torino: Giappichelli, 2013), 1 ff., 121 f.
61 CIL 3.14206,21 = ILS 7479. ILS 7212 goes even further: in a burial collegium, slave members reclined at dinner together with free men. Martial (1.101) mourns the incoming death of his secretary and manumits him, so that he can die as a free person. The slave Tiro, the literary assistant of M. Tullius Cicero shared a strong intimacy with his owner and could move at ease among his aristocratic friends and colleagues: Susan Treggiari, “The Freedmen of Cicero,” Greece & Rome 16 (1969): 195–204; Susan Treggiari, Roman Freedmen During the Late Republic (Oxford: Clarendon Press, 1969), 259 ff.
62 According to the “doctrine of privity”, a contract gives no rights and creates no obligations on any third party or agent except the parties to it; only parties to contracts can bring an action to enforce their rights or to claim damages. But, by virtue of “direct representation”, an agent, acting in the name of a principal (so that the third party knows or ought know this), establishes a direct relationship between the principal and the third. As far as Roman law is concerned, a principal had no contractual action if the transaction was concluded by an outsider on his behalf. Regularly he could only sue the agent himself on grounds of “mandate” or “authorized administration.” See Renato Quadrato, “Rappresentanza (diritto romano),” Enciclopedia del diritto 38 (Milano, 1987): 418 ff.; A. Kirschenbaum, Sons, Slaves and Freedmen in Roman Commerce (Washington, D.C.—Jerusalem: Magnes Press, 1987), 7 ff.; Alan Watson, Roman Slave Law (Baltimore—London: John Hopkins University, 1987), 105 ff. Contra Maria Miceli, Studi sulla rappresentanza nel diritto romano (Milano: Giuffrè, 2008), passim (supporting the existence of direct representation in the area of obligations); Andreas Wacke, “Alle origini della rappresentanza diretta: le azioni adiettizie,” in Nozione, formazione e interpretazione del diritto dall’età romana alle esperienze moderne.
mental legal principle was balanced by another one concerning acquisitions. Any property and any right acquired by a slave or a filius immediately and automatically vested in the dominus or the pater. Yet, by law, a dependent was only entitled to increase his superior’s assets, so that any conveyance implying a patrimonial diminution had to be considered legally ineffective. Therefore, the liberi cives sui iuris who wished to enter legal transactions at a distance could theoretically obtain rights by appointing a dependent as a commercial agent and by sending him to a given place. Third, after the first Punic war, the employment of people carrying out commercial ventures and managing businesses functions “on behalf of” others became de facto inevitable and constituted—as Ulpian makes clear—a key-area of the praetorian law, as it had intensive and important consequences from the economic point of view. On the one hand, since it is highly unlikely for a pater familias to have had a sufficient number of filii—natural or adopted—to post as agents, slaves played the most important role in running any business of great scale. On the other hand, the flows affecting the above-depicted system made it very difficult to employ a dependent to carry out a proper and proficient commercial activity.

Without appropriate legal mechanisms for enforcing contracts between trading partners, as well as without means for monitoring agents in remote locations, Roman economy would have quickly collapsed, and the Mediterranean world would not have integrated the Roman markets. If one of the contracting parties was a servus or a filius familias, in the quality of “agent,” indeed the doctrine of privity of contract as well as the principle of representation, needed not be applied in its strictest sense. Moreover, under a contract

Ricerche dedicate al Professor Filippo Gallo 2 (Napoli: Jovene, 1997), 697 (suggesting the existence of direct representation in Roman law).

Ownership and rights could be acquired through slaves, but not alieno nomine through extraneous free representatives (See Gai 2.87; Gai 2.95; D. 45.1.38.17; D. 50.17.73-4; I. 2.9-5, 3.19-19).

Gai 2.95; D. 50.17.133; D. 46.4.8.4.


D. 14.3.1.
concluded between a servus (promisor) and a third-party (promisee), a mere 
debitum-creditum relationship took place (that is a relationship not protected 
by actio); no legal vinculum arised. Accordingly, the creditor had no procedural 
remedy, neither against the slave, nor against the dominus. The former had no 
proprietary capacity (from the substantive perspective), as well as no standing 
to appear in court as a defendant (from the procedural perspective). The latter, 
out of the doctrine of privity and the conception of dependents as ‘instruments 
of acquisition’, was not liable. Obviously, as long as this was the case, nobody 
would have dealt with a servus or a filius familias: such an inequality was exces-
slavishly detrimental and risky even to those who needed (and not just wanted) to 
enter a contract with a dependent. Some correction was therefore necessary.

_The Praetorian System: the Slave’s Duty to Perform and the Master’s 
Liability_ 

The situation changed through the praetorian introduction of legal remedies 
during the mid or late Republican period. The Roman praetor created three 
actions both allowing the so-called natural creditors to sue the principal of a 
business under the contractual obligation (or, better, the contractual oportere) 
undertaken by his agent (obviously, if and only if the contract was concluded 
on account of the business he had been put in charge of). A first remedy, named actio exercitoria (action for shipping), allowed claims 
against ship-owners (exercitor) for contracts concluded with the captain of the 
ship (magister). A second one, that is the actio institoria, was susceptible to be

67 Gai 3.119a; D. 35.1.40.3; D. 46.1.16.4; D. 44.7.10. Carlo Pelloso, “Il concetto di actio alla luce 
della struttura primitiva del vincolo obbligatorio,” in Luigi Garofalo, ed., _Actio in rem e actio 

68 Gai 4.69–74a. Emilio Valiño, “Las _actiones adiecticiae qualitatis_ y sus relaciones basicas en 
derecho romano,” _Anuario de Historia del Derecho español_ 37 (1967): 339–480; Luuk De 
Ligt, “Legal History and Economic History: the Case of the _Actiones Adiecticiae qualitatis_,” 
_Tijdschrift voor Rechtsgeschiedenis_ 47 (1999): 205–226; Aubert, _Business Managers_, 46 ff.; 
Miceli, _Sulla struttura formulare delle actiones adiecticiae qualitatis_ (Torino: Giappichelli, 
2001), 188 ff.; Andreas Wacke, “Die adjektizischen Klagen im Überblick I. Von der Reeder-
und der Betriebsleiterklage zur direkten Stellvertretung,” _Zeitschrift der Savigny Stiftung 
für Rechtsgeschichte_ 111 (1994): 283–362; Coppola Bisazza, _Dal iussum domini, passim_; Di 
Porto, _Impresa collettiva_, 35 ff., 196 ff. The problem concerning the chronological order of 
the praetorian measures at issue is under debate: see Valino, “Las _actiones adiecticiae qual-
itatis_,” 344 ff.; Aubert, _Business Managers_, 78 ff. and De Ligt, “Legal History and Economic 
History,” 212 ff.

69 D. 14.3.5.11; D. 14.1.7; D. 14.3.13 pr.; D. 14.5.1.
started against the principal who had appointed a “commercial agent” (institor) in charge of a business, for dealings carried out by the latter. Finally, at least as early as Labeo’s age,70 where the principal had made an invitation (iussum)—addressed either to potential third parties or to the dependent71—the principal was liable in solidum, that is for the total amount of the debt. Litigation, as the praetorian formulae attest, involved two fundamental questions. Is there a debitum-creditum relationship between the claimant and the dependent?72 Was the dependent dealing with third parties out of a defendant’s praepositio or iussum? If the answer was yes, the principal was exposed to unlimited liability: had the agents accumulated heavy losses within the terms of the appointment (praepositio), the principal would have remained without any protection.73 Obviously, a principal could satisfy a claim better than his agent could; thus a customer, de facto, would have started these actiones as first resorts, even if the agent had not been a dependent.

The praetorian remedy constituted the only vehicle of protection for the customer, provided that the agent had been a dependent. As it is well known, a slave, being merely an instrument of a dominus, had no proprietary capacity and no standing to appear before magistrates and judges. In classical Roman law, in contrast, a filius could personally be bound by the contract; he could appear before magistrates and judges; he could even be condemned. Yet, since he continued to be considered as a free citizen without a very “proprietary capacity,” no execution of the possible condemnatory judgment could follow.

Ulpian reports that the praetor introduced a further remedy, alongside the creation of the three actiones directed to enforce the principal’s unlimited liability and Gaius points out the subsidiary and residual nature of the new actio.74 It was based on the peculium,—that is a fund granted by a pater familias

70 See D. 15.4.1.9 compared with D. 15.3.16.
73 Obviously, if a dominus makes it clear that a servus is just an employee and not a business manager by means of a proscriptio, the liability is not unlimited: see D. 14.3.11.2–4; D. 15.1.47 pr.; D. 15.1.29.1.
74 D. 15.1.1 pr.; D. 14.5.1.
or a *dominus* to a person in his power, either *filius*, or *servus*—, and it did not matter whether or not the former knew of, or consented to, the latter’s *negotiatio*.

Indeed, this patrimonial entity named *peculium*—as the jurists maintain—was concretely what a slave kept separate from his master’s account, with the latter’s initial permission, and after deducing all that the former owes the latter as well as, according to some jurists, all dependants attached to the *familia*. It was composed by any kind of property and commodities, such as moveables, real estate, credits, debits, and—as we have already seen—even other slaves (*vicarii* or *peculiares*) could be parts of the “dedicated peculiar assets.” All these items were *de iure* property of the principal. Yet, as one can infer from Marcellus, the dependent in charge of them, by means of a general permission, could deal with them as if they were his own: as a human being, a *peculium* could be born, grow, decline, and die. As a result, a slave operating with a *peculium* ended up becoming *de facto* a very independent “business manager” who acted rather independently from his *dominus*, taking on much of the responsibility of the commercial activity. In short, in order to retain the profits generated, a

---


76 D. 15.1.7.4–7; D. 15.1.17.

77 D. 15.1.7.1.

78 D. 15.1.39. A *peculium* existed out of a master’s or a father’s permission. It could be modified by means of transactions due to special or general authorisations. Yet, the owner—as Pomponius maintains—had not to know in detail its precise contents and its changes (D. 15.1.4.1–6).

slave negotiator cum peculio was personally interested in running the business accurately: even if this clearly does not mean that, in practice, economic life was regularly structured through the peculium (as opposed to a praepositoio or to a iussum) and that economic assets were purposefully and primarily placed in the peculium with a view to running the business.  

Even if it is true that a peculium turned out to be a private fund rather than a way to structure liability, it is equally true that out of it creditors were given recourse against the dominus or the pater familias for damages. Yet, such a remedy was restricted to the amount of the peculium, and not to the full extent of the creditum obtained by the dependent, as one can infer from the edictal name of the remedy, that is “actio de peculio,” later incremented through the clause “aut de in rem verso” (according to which the versio represented a contributing factor in calculating the liability ceiling, rather than a negative condition). On the one hand, this actio was indeed based on the contractual debitum naturale entered by a dependent (for instance in the quality of buyer, lessee, borrower etc.), as well as on the preceding grant of a fund of property

---

80 Johnston, “Peculiar Questions,” 5: the peculium represented an important device of balancing the interests of those involved in trade, both by imposing some liability, and by restricting the liability, otherwise in solidum. Obviously, what law provides (that is a limited liability of the owner for slaves running businesses) does not necessarily correspond with what happens in practice.


(as the intentio, which does not refer at all to the peculium, makes clear). On the other hand, it was directed to enforce the reus’ limited liability (as the condemnatio, which is expressed in terms, and to the extent, of the peculium, attests). The sui iuris individual, liable under this action, was at risk up to the value of the assets composing the fund that his slave or his filius had been entrusted, even if the former had no idea what the latter was concretely doing. In this vein, therefore, the regular rules concerning bankruptcy proceedings did not apply, as well as the liability—albeit limited—to which the principal was exposed was a strict one, as his ignorantia and scientia were irrelevant.

Since all these remedies allowed a creditor to bring an action against the principal, they enhanced a breach of the rule that the person of debitor (i.e. the party that had to perform under contract) corresponded to the person of the obligatus (i.e. the party that was sued in case of non-performance). In other words, through these actions praetorian Roman law makes it clear that Schuld and Haftung turned out to be two separate and divisible aspects of the obligatory phaenomenon.

**The Peculium, the Independent Slave-Manager and the Multilevel Liability**

A pater or a dominus could be sued on account of his dependant’s dealings for as much as—but no more than—the value of the peculium, only de residuo. The “principal” incurred “peculiar liability” only if the following two negative

---

84 David Johnston, “Suing the Pater Familias: Theory and Practice,” in John W. Cairns and Paul J. du Plessis, eds., Beyond Dogmatics. Law and Society in the Roman World (Edinburgh: Edinburgh University Press, 2007), 173–184. Any peculium’s value may fluctuate, either increasing, or diminishing, or vanishing its substance. In case of litigation on the peculium, according to Ulpian, if the peculiar fund has no assets at the beginning of the proceedings (that is at the time of the litis contestatio), but it has some value when the judgment is given, the actio de peculio turns out to be grounded (d. 15.1.30 pr.). Moreover, if the peculium is insufficient by the time of the judge’s sententia, but, then, an increment occurs so that the whole debt can be repaid, the creditor, just partially compensated, is allowed to get the first judgment voided and thereby to start anew the actio de peculio for the residuum (d. 15.1.30.4). If the servus dies, is manumitted, or is alienated, the peculium ceases de iure to exist. Notwithstanding that, the Roman praetor allows the creditor to start the actio de peculio for a whole year after the events at issue: indeed material losses or gains may still occur and these are fictitiously conceived of as increments and decrements of the peculium itself (d. 15.2.1 pr.–1; 15.2.3). Even a malicious removal of the peculium by the owner could take place (d. 15.1.21 pr.): the praetor imputed to the peculium property that ceased to be in it due to the fraud, so that its value had to be taken into account in calculating the cap of the owner’s liability (Buckland, The Roman Law of Slavery, 218 ff.).
conditions were met. He had not appointed his dependent to carry out business activities (i.e. no praepositio took place). He had not permitted a particular transaction or more dealings (i.e. no iussum was given). Obviously, liability continued to be limited by the value of the peculium if the claimant could not prove (or was not interested to prove) that the defendant had obtained a direct benefit due to the enrichment that had followed the transaction (i.e. no evidence of a versio in rem was given). The value of the peculium (or, alternatively, the amount of the benefit) represented the legal “ceiling” or “cap” of liability for a Roman citizen that did not want to (or could not) be directly or indirectly involved in the exercitio negotiationis.

Accordingly, Gaius explains that nobody could be so thoughtless as to start a subsidiary remedy, such as the actio de peculio vel de in rem verso, if the creditor—starting, in contrast, an actio exercitoria, or institoria, or quod iussu—could recover in full (being the reus exercitor held liable to expectation and restitution damages in solidum). Under the “peculiar legal action,” on the one hand, the claimant was to demonstrate that either the slave with whom he had entered the contract had obtained a peculium, or that a patrimonial benefit accrued to the dominus. On the other hand, liability was restricted to patrimonial assets that were ultimately very hard to determine and to prove before the judge.85

Sometimes a Roman enterprise could be much more complex and hierarchically structured. For instance, a person (A), being in the power of a sui iuris citizen (B), could ordinarily act as a magister navis (the captain of the ship) even if he did not own the ship and the equipment. Yet, A—granted with the ship, alongside other goods, such as servi peculiares or vicarii—could even act as a very exercitor (i.e., usually, the shipowner himself), and accordingly appoint one of his “peculiar slaves” (C). This servus peculiaris, after the appointment, could undertake natural obligations ex contractu with third parties. A dissatisfied creditor (D), without protection iure civili, had to bring a praetorian actio against B (the owner of the ship) and not against A (the exercitor) or C (the magister): this is incontrovertible. Nevertheless, was B’s liability limited or unlimited? Ulpian provides a satisfactory answer. On the one hand, if A ran the maritime business according to B’s voluntas, then the latter’s liability for contracts concluded by C and D was without limitation. On the other hand, if the business was carried on just by the voluntas, and at the initiative, of A, B was exposed to liability just up to, and not more than, A’s peculium.86

85 Gai 4.74. In this vein, some texts point out the importance of rationes (accounts), making it clear, that peculia’s accounts were kept separately from those for the rest of the owner’s patrimony.

In other words, as far as a one-layer business is concerned, the person who appoints a dependent as *magister navis* or *institor* is held liable without limitation (as it is when a *iussum* is concerned). Indeed, the former is the owner of the company assets, and is aware of the *negotiatio* carried on by the latter, that is his *servus ordinarius*. On the contrary, should a *dominus* or a *pater familias* not make any *praepositio*, but give his dependent a *taberna* or a *navis* as mere elements included in the *peculium*, the situation would totally change. Actually, the situation is even more complicated. If the “principal” knows about the commercial operation, and does not forbid it (so that the conditions of *scientia* and *patientia* are met), the creditor can choose to start an *actio tributoria* instead of the *actio de peculio vel de in rem verso*.87 Under this remedy, the *reus* is exposed to a limited liability (being the *merx peculiaris*, i.e. the amount used for the particular business under litigation, the maximum threshold), and the creditors are not topped by the principal, with regard to the distribution of the *peculium* in case of bankruptcy.88 If the latter is ignorant, there is only the *actio de peculio*, so that he is liable within the amount of the assets attached to the dependent (or, possibly, within the benefit).

In case of a business articulated on two layers, the liability of the Roman citizen being in the top-level position is limited to the amount of the first *peculium*, if the following conditions occur. The *navis* or the *taberna* just amount to *bona peculiaria*; the dependent appoints a *servus vicarius* of his; the *pater familias* or the *dominus* is not aware of the business. On the contrary, if a

---


88 Under the *actio tributoria*, liability was limited by the amount of the *peculium* used in relation to the particular business (D. 15.1.8). Gaius suggests that the choice between the *actio de peculio* and the *actio tributoria* is fundamental: if it is true that the *merx peculiarius* might consist just in a small part of the whole *peculium*, it is likewise true that possible deductions in favour of the owner should not always be significant (D. 14.4.11; see D. 14.4.1.2). The claimant’s choice does in any case extinguish his claim (D. 14.4.9.1); see D. 14.4.1 pr.; D. 14.4.1.3; D. 14.4.5.11.
commercial operation is carried out by a *servus vicarius* undertaking natural obligations, the praetorian liability cannot go beyond the value of the *subpeculium*’s assets where the *servus ordinarius* had not appointed the *negotiator* and totally ignores the business.

**Servi: That is, Slaves?**

To conclude, at first Roman law introduced magisterial remedies that, by enforcing obligations *ius praetorio*, overcame *ius civile* and allowed those who needed or intended to do business with dependents-agents to sue their owners or their fathers: *servi*, exactly in the same way as *filii familias*, are conceived of as business managers whose activity the principals disdain and consider worthy passing on. The risk of an economic collapse—connected to the patriarchal structure of the Roman *familia* and the nature of civil *obligatio*—is removed by protecting third contracting parties and making the principals liable without limitation on grounds of their *voluntas*. Indeed, the first three *actiones adiecticiae* seem to be better suited for a local or regional trade, concerning a situation characterized by proximity among commercial partners. For a dependent to be of some utility in commercial activities embedded in a wider space, it was necessary for the principal to incur in some liability, yet not too much. Thus, the praetorian system further eased the employment of dependents in carrying out commercial dealings, both by discouraging the direct involvement of the principal, and making both slaves and *filii familias* loyal independent business agents (through a limitation of the former’s liability). Thus, the problem of monitoring was ultimately solved, and at the same time the prototype of

---


90 For the important role played by virtues such as *probitas* and *fides* in enforcement, see Henrik Mouritsen, *The Freedman in the Roman World* (Cambridge—New York: Cambridge University Press, 2011).

91 For a simplistic view suggesting that, by granting a *peculium* and so, by encouraging slaves to self-enforce the performance of the assigned tasks, masters wanted to lower their costs of supervision, see Hopkins, *Conquerors and Slaves*, 125 ff.; Willem J. Zwalte, “Callistus’s Case: Some Legal Aspects of Roman Business Activities,” in Lukas De Blois and John Rich, eds., *The Transformation of Economic Life under the Roman Empire* (Amsterdam: Gieben, 2002), 127; see Andreas Fleckner, “The *peculium*: A Legal Device for Donations to Personae Alieno Iuri Subiectae?,” in Filippo Carlà and Maja Gori, eds., *Gift Giving and the Embedded Economy in the Ancient World* (Heidelberg: Universitätsverlag Winter, 2014), 222.
the Roman noble farmer, as depicted by Columella, was safe: *sui iuris* individuals could keep away from business, under the protection offered by law.

People that one nowadays would define as lacking legal, patrimonial and procedural capacity carved up the economic sphere and business. Wealth and progress were in the hands of people labelled with a term evoking nowadays “outcasts and rejects”: slaves.

**Works Cited**


Donadio, Nunzia. La tutela del compratore tra actiones aediliciae et actio empti (Milano: Giuffrè, 2004).


JOURNAL OF GLOBAL SLAVERY 3 (2018) 92–128


Manna, Lorena. *Actio redhibitoria e responsabilità per i vizi della cosa nell’editto de mancipiis vendundis* (Milano: Giuffrè, 1994).


Ortu, Rosanna. “*Aiant aediles ...*” *Dichiarazioni del venditore e vizi della cosa venduta nell’editto ‘de mancipiis emundis vendundis’* (Torino: Giappichelli, 2008).


Talamanca, Mario. “Vendita in generale (diritto romano).” Enciclopedia del diritto 46 (Milano, 1993), 303–475.


