The Slave in Roman Law: *Persona* (person) or *Res* (thing)?

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How did the classical Roman jurists conceive of personhood? To what extent were slaves treated as people or things within the Roman law of slavery? The paradoxical position in Roman law of the slave as a human object has long vexed scholars, and this project shall attempt to reconcile the two positions.

The Social & Legal Position of the Slave

The institution of slavery was fundamental to life at Ancient Rome. At its height, slaves were estimated to make up as much as 35% of the city's population (**Bradley (1994) 12**). Slaves were owned at all levels of society, and in varying quantities. For instance, the AD 189 will of Gaius Longinus Castor, a veteran of the Roman fleet at Misenum, provides for the freeing of only three slaves and names four other likely slaves (**B.G.U. 326**). Thus, slave ownership was not confined to those of significant means or station. Additionally, where a slave was in daily contact with their master (such as Castor's small staff), they would be far more likely to be humanised, and granted privileges like manumission (freedom) or a property fund called the *peculium*.

On the other side of the spectrum, the Imperial family and members of the Roman elite could own slave cohorts of hundreds or thousands. For instance, Pliny describes a certain Gaius Caecilius Isidorus, who in 8BC left a will containing a vast fortune - despite himself being a freed slave:

> "there is Gaius Caecilius Isidorus, the freedman of Gaius Caecilius who... executed a will dated January 27 in which he declared that in spite of heavy losses in the civil war **he nevertheless left 4,116 slaves**, 3,600 pairs of oxen, 257,000 head of other cattle, and 60 million sesterces in cash, and he gave instructions for 1,100,000 to be spent on his funeral."
>
> Pliny the Elder, *Natural History* 33.47 (trans. H. Rackham)

Slaves were classified as either urban or rural, with the former generally experiencing a higher quality of life. Their roles were highly specialised (though each slave likely held more than one position), for example:

Urban Slave Jobs:

- Record Keeper (*tabularius*)
- Storeman (*cellarius*)
- Attendant (*pedisequus(m)/pedisqua(f)*)
- Clothes-Folder (*capsarius*)

Rural Slave Jobs:

- Ploughman (*bubulcus*)
- Shepherd (*ovilio*)
- Poultry Fattener (*fartor*)
- Furniture Supervisor (*suppellecticarius*)

The distinction between persons (*personae*) and things (*res*) was first articulated by the jurist Gaius in his 2nd C. AD textbook: "The whole of the law observed by us relates either to persons or to things or to actions." (**Inst.Gai.1.8**). The law of persons included slaves, as it concerned all human beings - even those deprived of rights. Although slaves were bought, sold and used at their master's discretion, we shall see that their human character frequently emerged.

Defining Slavery: An Institution Contrary to Nature?

Gaius begins his section on the law of persons by stating that the "primary distinction in the law of persons is this, that all men are either free or slaves." (**Inst.Gai.1.9**; **D.1.5.3**). A definition of slavery itself is given by the later jurist Ulpian:

> **D.1.5.4.1**: "Slavery is an institution of the *ius gentium* ('law of nations'), whereby someone is against nature made subject to the ownership of another."

Natural Law (*Ius Naturale*):
The 'laws' determined by the natural organisation of the universe, which apply to all living beings (e.g. self-preservation, procreation).

Law of Nations (*Ius Gentium*):
The set of basic normative rules common to communities, which apply to all humans.

Civil Law (*Ius Civile*):
The legal rules particular to the Roman people, and applicable/accessible only to them.

But what was meant by **nature**?
To Gaius, it was merely one aspect of the *ius gentium* (a basic set of rules perceived as common to all human societies). However, Ulpian greatly expanded the importance of nature, solidifying it as a distinct source of Roman law. He envisioned three discrete sources of law, with each applying to a more restricted group. This development was likely spurred by the increasingly mainstream position of Stoic philosophy in Ulpian's post-Marcus Aurelius legal culture (**Honoré (2010) 201-203**).

Persona: The Mask of the Legal Stage

The Latin word *persona* originally referred to a theatre mask, and expanded to mean the part/role which the mask represented. It came to mean *homo* (a person), to the extent of their specific role/function (**Duff (1938) 3-5**). This term would sometimes include a qualifier, e.g. where emperor Constantine refers at **C.4.46.3** to a *legitimae defensionis persona* ('person of lawful defence'), this means a 'duly qualified and appointed curator' (**ibid. 9**).

Meanwhile the surviving legal texts refer to slaves as *personae* as many as 27 times (**Buckland (1908) 4**). These instances mostly give the word its ordinary meaning of 'person', or otherwise relate to the slave's role as agent.

However, slaves seem to have been afforded rights and duties in some instances. They do not have the capacity to appear in court, except as defendants in criminal trials (**Kurki (2019) 10**). A slaveowner was permitted to sue for *iniuria* (defamation) committed against his slave *servi nomine* (in the name of the slave). This was possibly to allow for a suit where direct intent against the master could not be proven (**Nowicka (2020) 240**), but the action still seems to hinge on the dignity of the slave. This may be explained by a 'bundle theory' of personhood, which posits that recognition of legal personality is not binary, but rests on a series of contextual incidents (**Kurki (2019) 93-94**). A minor may benefit from passive rights and protections, but would not be actively burdened by contractual obligations. Similarly, a slave may have certain obligations placed upon them, whilst being denied almost all rights - their personality can be put on or taken away like a mask on the legal stage.

Terracotta Tragic Mask (Rome first-second C.)
(BM 1873,0820.568)
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The *Peculium:* Could A Slave Own Property?

The *peculium* was a property fund granted by the *paterfamilias* (head of the household) to his dependants, being the only individual capable of holding property rights. Any property could be included (money, land, movables inc. other slaves) and although it technically belonged to the master, he would not take it away arbitrarily - both due to social convention (**Żeber (1981) 70; Roth (2005) 278**) and so as not to fall afoul of the slave's creditors (**Gamauf (2009) 340**). The arrangement was mutually beneficial:

Benefits to the Slave

- **Improved Quality of Life & Social Prestige:** Many sources attest to the lavish fortunes which a prudent slave of high station could accumulate. The funerary relief of emperor Tiberius' slave and provincial treasurer Musicus Scurranus was commissioned by his 16 sub-slaves (*vicarii*), some likely with *peculia* of their own (**ILS 1514; Bradley (1994) 2-3; Roth (2005) 278**).
- References to the *peculia* of agricultural slaves are rare (**Roth (2005) 279**). However, the polymath Varro refers to granting animals for his rural slaves' maintenance (***Res Rusticae*** **1.19.3**). Cato actually reports allocating a smaller grain ration to his overseers than to the ordinary field hands (***de Agricultura*** **56**). This suggests that domesticated animals must have been granted as a reward, providing a diversified food source and key resources like wool and fertiliser (**Roth (2005) 279-81**).
- **Buying Freedom:** A slave could use his *peculium* to buy his own freedom; by the Republican period the price of manumission would actually be agreed well ahead of the transaction (**Żeber (1981) 72**). Thus, wealth-building was incentivised, and often with an all-or-nothing approach to investment (as any 'unspent' *peculium* would automatically revert to the master upon the slave's death) (**Gamauf (2009) 336**).

Benefits to the Master

- **Incentives & Penalties:** The *peculium* could be used to reward productive slaves, and to compensate injuries against third parties or other slaves within the same household. In Petronius' *Satyricon*, we even see the master being informed of a 'trial' which was held between two of his slaves (*Sat.* 53; **Gamauf (2009) 338**). This shows how such governing functions might be delegated in a large household.
- **Limited Liability:** From c.3rd-1st century BC, it first became possible for slaves to enter into contracts binding on their masters, allowing for business management without the master's direct involvement or in geographically remote regions (**Aubert (2013) 192-93; Silver (2016) 68**). Perhaps more importantly, the slave's creditors could only claim against the master up to the value of the *peculium*. This limited the master's liability for his slave's dealings to the amount he chose to grant (**Gamauf (2009) 332**). Thus, slaveowners could easily calculate their potential loss and invest in their slave's *peculium* only as much as they were willing to risk - one of the main benefits to investors of the modern LLC.

This capacity for pseudo-ownership is unique to slaves as a class of property, and shows how their humanity could be recognised and exploited. This recognition also varied massively between slaves. The *peculium* often started with a slave putting aside and selling part of their rations - business acumen may be further rewarded by a direct grant of property (**Gamauf (2009) 335**). This would be simply inaccessible to a manual labourer, whose time would be occupied with either work or rest. Thus, going back to Kurki's bundle theory, it is not just that some aspects of personhood were allowed and others denied to slaves as a whole - rather, the degree to which a slave's humanity was recognised depended heavily on their social standing and proximity to their master.

Bibliography

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