SLAVERY AS A SOCIAL AND ECONOMIC INSTITUTION IN ANTIQUITY
WITH SPECIAL REFERENCE TO ROMAN LAW

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1. Slavery in Early Civilisations
The pyramids of Egypt, the ziggurats of Babylon, the temples of Hellas and the aqueducts of Rome do not only testify that a high degree of engineering and architectural knowledge developed in these ancient civilisations but they also indicate an organised employment of a vast manpower. ‘Employment’ is not to be interpreted in the modern sense, as apart from some artisans and craftsmen who were free citizens and received wages for the application of their skill and art, forced and unpaid labour was utilised. In public works, such as the erection of pyramids and temples, a substantial part of the labour needed consisted of villagers who were drafted in for the periods while they waited for the harvest. Their obligation to work was in the nature of taxes and frequently of a religious character. After the completion of their service they could return home. The most significant source of labour, both for the state itself and for citizens, however, was provided through the institution of slavery.

Slaves were human beings but they had no status as persons: their master owned them like beasts of burden or any other chattel. The cost of slave labour merely consisted of the initial capital outlay the owner had to pay, if he purchased the slave on the market, plus the most frugal feeding and lodging. In return the master received full productivity. The death of the slave meant not only loss of labour but loss of capital investment. If for any reason the slave ceased to be productive, he had no more justification to be kept, and the master, if unable to sell, could put him to death, like an unwanted animal. The upkeep of an idle slave cost relatively more than that of unused machinery.1

King Hamurabi’s Code2 in Babylon protected slaves to a certain extent, and though their owner could punish them he was not allowed to take their life. If another freeman killed a slave not owned by him, the master was entitled to demand compensation in the same manner as for the destruction of a domestic animal. The law aimed only incidentally at the defence of human life, mainly at the preservation of the human capital.

Babylonian slaves had to be branded like cattle, and the Code strictly forbade surgeons to remove the branding mark without the master’s instructions under punishment of cutting off the guilty hand that performed the operation. When a

2. Around 1800 B.C.; the Code was engraved in cuneiform characters on a 2.5 metre column of hard stone.
slave was liberated, which rarely happened, the surgical erasing of the mark could lawfully be undertaken.

The Code also prescribed the price of slaves according to age, sex, skill, knowledge, capability and usefulness. Females, in general, though not always, carried a cheaper rate. Some skilled tradesmen and scribes achieved a position of a nominal slavery, merely paid an annual charge to their master, and even could own property. Other fortunate individuals through ability of mind or beauty of body lived comfortably as personal attendants, secretaries, tutors or favourite concubines, and frequently exerted an influence over their master. The great majority of slaves, however, were not treated much better than animals, and worked in the fields, mills, mines and galleys.

It is not without interest that many artisans and craftsmen were free citizens employed by others, and the Code contains detailed regulations for the determination of their wages. The unskilled, heavy work was left for slaves.

In order to satisfy the constant demand for slave labour, upon which the smooth functioning of ancient economic systems greatly depended, slave traffic flourished. Besides prisoners of war and natural breeding, other methods of obtaining new slaves were applied. The Phoenicians, whom Homer characterises as 'rogues bringing countless trinkets in their dark ships', dominated the slave trade, and offered for sale ivory, gold, copper, tin, grain, wine and timber carried from all parts of the then known world, and also human wares. Their unscrupulous methods of acquiring all these goods, including slaves, did not abhor fraud, piracy and raids. One of their vile tricks was to invite rich citizens of foreign seaports for a feast on their ships, to make them drunk with drugged wine, and then to sail away. Thus, the markets exhibited a wide range of slaves for sale: those suitable for heavy physical work, well-educated men, beautiful girls, singers, dancers, artists, humpbacked jesters and dwarfs favoured for entertainment.

Some wealthy citizens in Carthage, itself a Phoenician settlement, owned as many as 20,000 slaves. In Egypt the Pharaoh and the temples had even greater numbers of them. The Israelites were in a position of bond servants while they dwelt in Egypt until Moses led them out of the land of bondage.

Mosaic law declared that slaves could be heathens only. Israelites served as hired workers for the customary seven years for wages which had to be paid promptly. Further, as a public and religious obligation, Israelites worked for short periods at the building of the Temple in Jerusalem. King Solomon raised a levy of 30,000 men out of Israel who worked by rotation: 10,000 men served for a month, then they went home for two months. Solomon also had 70,000 people 'that bare burdens', and 80,000 'hewers in the mountains'. No doubt, these bearers and quarry workers were foreigners and slaves. They were supervised by 3,300 overseers who might have been superior slaves but most probably were freemen, and received wages. Likewise, Hiram, the chief architect and craftsman whom Solomon 'fetched out of Tyre', and who 'was filled with wisdom, and understanding, and cunning to work all works in brass', together with his artisans, masons and craftsmen, had what today would be called a salaried position.

2. **Greek Slaves**

Even the Greeks, who first evolved the concept of democracy and, especially the Athenians, elevated human reason to a level never surpassed, accepted the institution of slavery as a natural division of mankind based on the intellectual inferiority of certain races, and their consequent natural aptitude for the servile condition. Their greatest thinkers found this difference normal, though they stressed the necessity of just treatment. Plato recommended that 'the right treatment of slaves is to behave properly to them, and to do to them, if possible, even more justice than to those who are our equals; the man who naturally and genuinely reverences justice, and hates injustice, is revealed in his dealings with any class of men to whom he can easily be unjust.' In Aristotle's view while there could be 'no friendship of a master for a slave as such', the slave being merely 'a living tool', friendship 'for him as a man' still was possible, and he

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10. 1 Kings, V, 13-14.
12. Id., VII, 13-14; this Hiram, the widow's son whose 'father was a man of Tyre, a worker in brass' should not be confused with Hiram, King of Tyre, mentioned in chapter V, who sent his servants to Solomon, and also gave cedar and fir trees. Hiram, the widow's son, was one of the builders commanded by Hiram, the king, to work for Solomon.
advocated the observance of domestic justice. The Stoic philosophers who preached equality among all men, including slaves, can be regarded as early champions of social outcasts. Perhaps the slaves' feelings were best summed up by Aristophanes who said that they muttered after beating and cursed their master behind his back.

Slaves possessed no rights and no human dignity. A master had absolute authority over his slave, but was not allowed to kill him. In cases of extreme hardship the slave could request his owner to place him on the market for sale, hoping that a new master would be less cruel. Slaves had to be exhibited completely naked on the marketplace to afford opportunity for examination by the prospective buyers. The concealment of any defects of the 'wares' invalidated the sale.

The Athenian state encouraged the holding of open sales, as on each transaction it collected sales tax. No wonder that Athens became one of the most important slave trade centres. Supply of captured enemies was well ensured by the continuous wars. Furthermore, until Solon's time an insolvent debtor, if his assets were not sufficient to pay the debts, was sold as a slave in order to distribute the proceeds among his creditors. Although Solon abolished this harsh rule no law interfered if the debtor 'voluntarily' sold himself or his children so that the creditors be satisfied.

Notwithstanding that the slaves all were equally without rights, their actual position and treatment varied, depending on their master, and according to their services. No doubt, the great majority of them worked as unskilled labourers, owned either by the state or by individuals, in farms, mines, shipyards, workshops or building constructions. In the silver mines of Laurion thousands of slaves toiled in chains, and for big slave-owners it was customary to hire their surplus labour force out to mines or farms. Nikias, the Athenian general, had one thousand slaves in the Laurion mines. Demosthenes, the orator, inherited from his father two workshops together with equipment and slaves.

Farm and mine slaves mostly worked under harsh conditions, and suffered by the cruelty of supervisors, themselves frequently superior slaves or freedmen. Household servants, mainly females, generally were in a better position except

17. *Frogs*, dialogue between Xanthias and Aeacus.
the unfortunate ones who operated the hand-mills until they dropped dead.

On the other end of the scale, skilled tradesmen, artisans, and persons with special ability — and luck — fared very well. Market inspectors, tax collectors, policemen and other functionaries frequently were slaves. Some of them achieved fame as medical men.

There were very few freeborn citizens who worked for wages, except as craftsmen employed by a fellow citizen craftsman. As a rule a citizen did not soil his hands with rough, unskilled physical labour.21

One way to escape from slavery was to volunteer for military service. The continuous wars always needed more and more men. Once in the Army difference between a citizen and a slave soldier disappeared. Furthermore bravery on the field could be rewarded with the granting of freedom. Many slaves, however, used military service as an opportunity to escape to the enemy, frequently their kinsmen, though if recaptured, as deserters they were put to death.22

3. The Slave in Roman Law
(i) The Nature and Causes of Slavery
The Romans, in the view of Sir Henry Maine, derived the institution of slavery from a supposed agreement between the victor and the vanquished in which the first stipulated for the perpetual services of the foe, while the other gained in consideration the life which he had legitimately forfeited.23

Justinian defined slavery as an institution of the ius gentium in which one person, contrary to nature is subjected to the dominium of another.24 It is of some interest to note that although at the time of promulgating the Codex Justinianus25 Christianity was already the state religion, the law still accepted the division of mankind into free and unfree persons, albeit with some disapproval, as a social fact.

The status of being a slave originated from causes defined partly in the ius gentium, partly in the ius civile.

In ius gentium a person became a slave in the following circumstances:

(a) A foreigner captured in war as an enemy, whose life was spared for the very purpose of perpetual servitude; such persons were the property of the state, and sold to private citizens.

24. Inst. i.3.2.
25. The first Code was promulgated in 529, A.D., the second Code which survived in 534; the Institutes were promulgated in 533.
(b) A child of a female slave, irrespective of the status of the father, even though the father was the master himself; in later times, however, if the mother had been free during her pregnancy, notwithstanding her later enslavement the child when born became free.  

In *ius civile* the following causes existed:

(a) A free woman who despite warnings from the owner continued cohabiting with the slave, after three denunciations, herself became the property of the master by magisterial award. This rule, however, was abolished by Justinian.

(b) A manifest thief was reduced to slavery under the XII Tables.

(c) A citizen who evaded the census or his military duties could be sold by the state as a slave.

(d) An insolvent debtor in early law could be sold into foreign slavery.

(e) A liberated slave could be recalled into slavery by his patron or sold, for gross ingratitude.

(f) A free person condemned to death, or to hard labour in the mines, or to fight with wild beasts in the circus, became a slave. Justinian abolished this rule.

(g) A free man, over twenty years of age, who allowed himself to be sold as a slave fraudulently in order to share the price, could be adjudged a slave. The praetor had the right to refuse his *proclamatio in libertatem*. In later law upon refund of the price he recovered his free status.

(h) A newborn child whose parents were extremely poor could be sold into slavery but with a perpetual right of redemption.  

(ii) The Legal Position of Slaves

The legal position of a slave was that of a chattel, a thing, a *res*. He could be owned, though curiously Roman law recognised ownerless slaves: *servi poenae* and slaves of the *Fiscus*, the treasury, but it may be argued that the owner in

27. Most of these causes were abolished by the time of Justinian but (h) remained in force; see Leage, *op.cit.*, 54-57; Schulz, *Classical Roman Law*, (Clarendon Press, Oxford, 1954) 481 & Seq.

fact was the state. The slave was an object, but not a subject, of rights: he himself had no capacity to own property, and in general no right at all. Correspondingly he could not incur any obligations.

Certain characteristics pertinent to the slave’s status, however, demonstrate that his personality as a human being to a limited extent de facto, and potentially de iure, was recognised. These qualifications can be set out as follows:

(a) The master had not only dominium, but also potestas over the slave. Dominium, ownership, indicated the slave’s chattel-like position; but potestas could be exercised over human beings only, like the patria potestas, over members of the familia.

(b) A slave had the capacity of being made a free man, even a Roman citizen, by using the proper procedure.

(c) A child born to a female slave, an ancilla, though a slave, was not a fructus like a new born animal.

(d) A slave could act for his master in entering into contracts; thus the master benefited from any proprietary rights or profits deriving from the slave’s contracts; the slave himself acquired no rights.

(e) A slave could be instituted heir for the benefit of the master.

(f) A slave was criminally responsible.

The above points sufficiently illustrate the legal distinction between a res and a slave. Apart from these few redeeming features all slaves lived in a rightless condition, subject to the whim of their master. The rule, in servorum condicione nulla differentia est, applied as a matter of law.

Until the first century A.D. the master had absolute authority to punish his slave, even to torture or kill him. The lex Petronia prohibited the sending of slaves to fight with wild animals in the arena without approval of a magistrate. An edict of Claudius declared that slaves abandoned for being old or infirm, by virtue of the abandonment gained freedom. Hadrian forbade the infliction of the death penalty on a servant unless with the consent of the magistrate. Curiously, the lex Cornelia de sicariis, in 81 B.C. already made the killing of another’s slave homicide, thereby recognising the servant as a human being, but not until Antoninus Pius was this law extended to the killing of the master’s own slave. Antoninus Pius also granted slaves the right to seek the protection of the law against intolerabilis saevitia. If they sought refuge in a temple or at the statues of

31. Around A.D. 79.
the Emperor, after an inquiry, the magistrate had power to sell them to another master, hopefully more considerate. Finally, Justinian restricted the right of punishment to a reasonable chastisement. At this juncture it may be noted with some reverence to King Hamurabi that his Code about 2,000 years earlier had already advanced to the stage of affording a reasonable protection to slaves.

Wrongful acts committed against the person of a slave, short of wilful taking of his life, amounted to offences against his master, and only he could sue. If the slave suffered actual physical damage, action could be commenced under the lex Aquilia as in the case of damage to a domestic animal. Alternatively, the master could sue by actio iniuriarum, if he was able to show that the delict primarily affected him.

(iii) The Social Position of Slaves

The social position of slaves, in contrast to the legal one, showed many variations.

As in Greece, slaves provided cheap labour. While in early Republican times they were members of other Latin tribes, with the growth of the Empire their greatly increased numbers came from the far corners of the Roman world, and then no racial affinity or similarity of language assisted their integration in society. Slaves were used mainly in the cultivation of large landed properties, and, no doubt, the great majority of them lived under harsh and inhuman conditions. If they lost their strength and productivity, the economic reasons for their sustenance came to an end. Cato even argued that it was more economical to work a slave to death, and replace him with fresh manpower, than to treat him properly. Pliny the Younger, although much later, expressed a more humane attitude when lamenting the premature death of some of his slaves. ‘Others’, he wrote to Paternus, ‘describe misfortunes of this kind as pecuniary loss’, but Pliny, who always readily granted freedom to his slaves, and allowed them ‘to make a kind of will,’ grieved for them as members of his household.

Slave labour was needed also for work in mines, building, construction, shipping as rowers, and generally carrying out heavy manual labour, operaes illiberales. Many of the slaves, however, were skilled artisans, and performed

33. A plebiscitum proposed by Aquilius, a tribune in 287 B.C.
34. Action to obtain redress for an iniuria, a civil wrong, suffered by the plaintiff himself.
36. Pliny the Younger, Epistles, VIII, 16; as to capacity to hold property see infra.
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операция liberalis,37 originally reserved for free craftsmen. At the same time masses of impoverished plebeians sought a livelihood as wage labourers, and had difficulties in competing with slaves. Already Julius Caesar tried to check the importation of slaves, as they took the available employment opportunities from citizens. Thus, a certain levelling off occurred between poor citizens and slaves, and frequently the economic position of the latter surpassed that of the former.38

It is true that certain crafts were the privilege of citizens. Captains, officers and helmsmen of ships had to be skilled sailors and free citizens, while the propulsion was provided by galley slaves.39

Educated slaves, mainly but not exclusively Greeks, carried on practice as doctors, or filled responsible positions as teachers, secretaries, managers of estates, or carried on some commercial activity. Their social position resembled that of free men, — well respected free men — but in law they were still rightless.40 How could they be engaged in any business without contractual capacity?

By long existing custom some masters allowed the slave to use certain property or money for his own purposes, as his own. This peculium belonged de iure to the master as the owner of the slave, but de facto the servus was frequently permitted to enjoy it. The profits derived from business transacted with the consent of the master, depending on his good will, might have been left with the slave, or they had to be regularly accounted for. In any case, both the peculium and the earnings were to be surrendered to the master upon demand. It does not appear that the right to the peculium was usually exercised. A practice grew up under which the master had the legal ownership but the servant enjoyed an equitable or social claim over the property.

During the Empire the custom of peculium solidified, and the slave was allowed to acquire as his own earnings profits from the peculium together with any gift received, though the peculium itself remained in the master's ownership. As masters rarely exercised their claim, slaves were enabled to purchase freedom by using the very peculium.41

37. Professional men could not enter into a contract to perform opera illiberales, but other freemen could, and they usually carried out the work by their slaves.
38. Weber, op.cit., 156; Brinton and others, op.cit., 48; Nicholas, op.cit., 70.
39. Weber, loc.cit.; Brinton and others, loc.cit.; according to Phelps-Brown captains of ships at early imperial times frequently were slaves, but the common seamen citizens: op.cit., 17.
40. Nicholas, op.cit., 70; as to social conditions in general see Carcopino, Daily Life in Ancient Rome, passim.
(iv) Cessation of Slavery

Mention has been made that slaves had the capacity of changing their status, and some of them purchased liberty.

Manumission was the usual method of granting freedom to a slave. This required certain formal acts to be performed by the master, and had the immediate effect of granting not only liberty but the status of a Roman citizen, a *civis Romanus*, although the former slave was referred to as a *libertus*, or *libertinus*. Four Three main methods of manumission existed:

(a) *Manumissio Vindicta*. This was in the form of a *lis*. The master and a friend who played the part of the plaintiff accompanied by the slave appeared before the *praetor*. The plaintiff, as *adsertor libertatis* touched the slave with a wand and made the claim: *Hunc ego hominem ex iure Quiritium liberum esse aio*. The fiction put forward asserted that the slave always had been a free man. The master offered no counterclaim, and the *praetor* made a declaration accordingly. In later law the solemn formalities were eroded, and it was sufficient for the master to declare his intention to liberate a slave.

(b) *Manumissio Censu*. When the quinquennial census was taken by the censor, with the master’s consent, the name of the slave could be added. Enlistment made him a *civis*. This method, however, lapsed into desuetude at the end of the Republic.

(c) *Manumissio Testamento*. Using this method the master made a provision in his will either directing that upon his death a named slave should be freed or that his legatee or heir should free the slave. Certain conditions could be attached to this form of liberation, such as lapse of certain time, happening of an event, or the payment of a sum of money by the slave.

Beside the main forms of manumission less formal proceedings could also confer freedom, though not necessarily citizenship: *per epistulam* or *inter amicos*, or by any properly evidenced expression of intention. Such purported manumission, however, created a somewhat uncertain status, *de facto* liberty under the protection of the *praetor*.

The *lex Fufia Caninia* passed during the reign of Augustus restricted testamental manumission to a fixed proportion of the slaves owned by the

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42. In respect to his former master the freedman was a *libertus*, but to outsiders a *libertinus*.


44. Around 2 B.C.
testator. A few years later the *lex Aelia Sentia*\(^45\) provided that the approval of a special council had to be obtained if the slave was under 30, or the master under 20 years of age. Furthermore, slaves of bad character, who suffered ignominious punishment, upon liberation did not, and could not, become citizens: they possessed only a *pessima libertas*.\(^46\) These *dediticii* were prohibited from living in, or within 100 miles of Rome. The *lex Junia Norbana*\(^47\) conferred on slaves who were *de facto* liberated a status of a lesser *de iure* freedom: the *Latini Juniani* though without Roman citizenship had the capacity to acquire it at any later time. The main disability arose from the lack of *testamenti factio*. Such a freedman had *commercium*, the legal capacity to acquire proprietary rights, but he could not make a will, and all his property reverted to his former master by law. Further, he had no *connubium*, the right to contract a marriage, and therefore no *patria potestas* could arise over his children. His issue, however, were free-born citizens.

Justinian repealed the *lex Fufia Caninia*, and abolished the intermediate categories of *Latini Juniani* and *dediticii* by declaring them citizens. The *lex Aelia Sentia* was modified permitting the master to manumit by will at 17, and by a further amendment, at 14 years of age.\(^48\)

Certain persons existed in a legal twilight between freedom and slavery. Though most of these indeterminate classes disappeared by the time of, or after, Justinian, some forms survived, and reappeared in medieval feudal society. The most important class was that of the *coloni glebae adscripti*, serfs who were free at law but tied to the land, and had to work for their lord. They were not permitted to leave the estate without the consent of their master, but they could not be sold as slaves. It was possible, however, to dispose of the land together with the serfs.\(^49\)

Furthermore, some vestiges of the former slave status remained even after full citizenship; The obligations of *bona*, *obsequium* and *operae* bound the freedman. Under the first one, if the freedman died without leaving children, the *patronus* had rights of intestate succession. The second one meant the duty of respect, and assistance if the patron was in need. Similarly, in case of necessity

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45. A.D. 4.
47. Around A.D. 19.
49. Leage, *op.cit.*, 73; in Weber's view slavery disappeared in the middle ages and was replaced with serfdoms, because in Northern Europe slaves could not be cheaply clad and fed; serfs who paid rent and had no right to leave the land were more profitable: *op.cit.*, 64, 108.
the *libertas* could turn to his former master for help. As a corollary, the praetor’s permission had to be obtained to an action against the former master. *Operae* signified a legal duty to perform certain defined reasonable services for the patron.50

Frequently manumission meant only a legal but not a social or economic change in the position of the freedman, as usually he continued to serve his *dominus*, now *patronus*, as before.

4. Conclusions
Social critics might assert that behind the façade of a highly articulated system of legal principles the underlying spirit of the Roman law was cruel and inhuman, and not even the codification of Justinian, which purported to infuse the spirit of Christianity, ameliorated it.51 It must be remembered, nevertheless, that Roman jurists, just as their counterparts in England who evolved the common law, were aware of the social and economic needs of their community, and formulated the legal principles to meet the practical demands. If the law was harsh, so were the general social conditions, and not even philosophers questioned the rightness of slavery, as an institution.52

There is frequently, however, a great difference between the strict law and the social practice, and this fact has already been pointed out with reference to the *peculium*. The further facts that impoverished citizens, mainly plebeians, though legally free, sunk to the level of *proletarii*, and lived on corn-dole, occasional wage labour, and on the beneficence of a wealthy man to whom they attached themselves as *clientes*, while on the other hand many slaves achieved wealth and social position, manifestly illustrate the lack of direct connexion between political liberty and economic or social success. Even in the 19th century, referring to the politically emancipated English working class, J.S. Mill not without justification commented: ‘Freedom of contract is but another name for freedom of coercion.’53

The position of the slave was greatly mitigated in early Republican times by his being accepted as a member of the enlarged patriarchal family. Comparing the position of a slave with that of a *filius* under the power of the *paterfamilias*

50. Leage, *op.cit.*, 71; Nicholas, *op.cit.*, 75-76.
52. See references to Plato, Aristotle and Pliny, *supra*; Nicholas, *op.cit.*, 7-9, 70-1.
many similarities may be observed. The *patria potestas* gave practically unlimited power to the father both over the child’s person and any property he might have possessed. Some aspects of this power can truly be called cruel and inhuman, and in later law certain practices were prohibited; others merely fell into desuetude. Thus, a child could be exposed to die of cold and hunger; or be sold as a slave. Only Constantine made the killing of a child by the father a crime, and Justinian added the right to redeem the child sold into slavery.

As to property, a *filius* had no capacity to own any; everything he acquired was that of his father. There grew up a practice of *peculium* which initially was similar to that of a slave, but later the son acquired the right to hold certain property in his own name. Finally, *emancipatio* changed the son’s status, as manumission changed that of a slave.54 Naturally, there were still great differences between the position of a *filius* and the slave, but the main point that both were under the power of the *paterfamilias* has been adequately illustrated.

Sir Henry Maine most likely approximated to the truth when he said:

> It is . . . more probable that the son was practically assimilated to the slave, than that the slave shared any tenderness which in later times was shown to the son . . . [W]herever servitude is sanctioned, the slave has . . . greater advantages under systems which preserve some memento of his earlier condition than under those which have adopted some other theory of civil degradation . . . The Roman law was arrested in its growing tendency to look upon [the slave] as an article of property . . . [W]herever servitude is sanctioned by . . . Roman jurisprudence, the servile condition is never intolerably wretched.55

54. Leage, *op.cit.*, 90-98; Nicholas, *op.cit.*, 76-80.
55 Maine, *op.cit.*, 97.