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# MÜNSTERANER GLOSSAR ZU EINHEIT UND VIELFALT IM RECHT MÜNSTER GLOSSARY ON LEGAL UNITY AND PLURALISM

4. AUSGABE | 4th EDITION

**11** EViR Working Papers

KÄTE HAMBURGER KOLLEG MÜNSTER  
EINHEIT & VIELFALT  
IM RECHT   
LEGAL UNITY & PLURALISM

## SALVATORE MARINO

# SLAVERY (ANTIQUITY)

Slavery is the strongest legally configurable form of dependence to which a human being can be subjected. While our modern terminology depends on (and reflects) the more differentiated and multifaceted medieval situation [5], classical antiquity has shaped our modern understanding, with its dualistic distinction between free legal subjects and unfree legal objects and the reduced importance of mixed forms of semi-liberty. Due to its perceived authority, Roman law even shaped the socially and anthropologically different phenomenon of transatlantic slavery, e.g. in Louis XIV's Code Noir for the French colonies. The inherited Roman slave law, however, was only the tip of the iceberg of an equally diverse and complex system. The ancient world knew a wide range of degrees of legal subjugation, well beyond the simplistic free/unfree dichotomy.

Mixed forms play a significant role for our investigation in this respect, as their legal treatment let consider specifically how social and economic diversity was legally shaped and progressively brought to unity – while continuing to exist in its variety – and how it was legally let re-emerge. Such mixed forms were regulated since the Bronze Age. Hammurabi's Babylonian laws (18th c. BCE) pro-

vided a third category alongside the *awilum* (free man) and the *wardum* (subordinate): the *muškēnum* (“one who submits”). This polyvalent term described a category of poor low-status freemen who relied on the royal polity for their sustenance. The related custom of each new king to issue an act of release from debt bondage finally served to redress the inequalities within the society, periodically resetting the dependency relationships [2. 245–248].

A wide variety of unfree subordination relationships existed in the Mycenaean world, as we can infer from the Homeric poems. In Classical Greece, however, a slow tendency toward a more uniform configuration of the legal framework could be observed. Some domination forms which were different from chattel slavery and initially based on ethnic distinctions (e.g. the Helots) even developed over time into effective slavery. A sharper contrast between free and unfree begun to emerge, interestingly, parallel to the development of democratic freedom. This dynamic finally led to the asymmetrical, non-negotiable top-down perspective we find in Aristotle's concept of slavery [7]. This, however, corresponded only partially to the social diversity. Furthermore, the process was not uniform.

Debt slavery was abolished in Athens by Solon (6th c. BCE), but it was still practiced at about the same time in Gortyna, whose law regulated the categories of the *κατακείμενοι* (who pledged themselves for a period because of debts) and the *νενικαμένοι* (subjected because of a legal condemnation). The possibility of summoning slaves to court as well as of marriages between free and slaves is also a sign of not so pronounced ‘legal incapacity’.

The Roman world showed a similar variety in its early times, both within and outside the familia. Less or stronger pronounced bonds of personal dependency involved guarantors (*vades*), some lower-class people in their relationship with their protectors (*clientes*) and the self-bondage-like contract of the *nexi datio*. Older slave terminology such as *famulus* (servant-member of the family), *ancilla* (maid, slave-girl) or *puer* (to denote a young slave) reveals an original condition of less than total dependency on the pater familias. Also, early republican slaves still called their master *erūs* (‘lord master’) rather than *dominus* (‘lord owner’) [6].

However, with the development of a large-scale slave economy in the Mediterranean region from the 2nd c. BCE onwards, slavery in the Romanised world escalated to unprecedented levels. Correspondingly, a deeper and stronger bond of dependency between master (*dominus*) and slave (*servus*) took shape, parallel to the semantic-legal shift of property from *proprietas* to the more individualistic

defined and exclusive concept *dominium* [1. 58]. Legal institutes based on a common *ius gentium* gradually evolved towards a legal category of deep formal dependency, until the Roman legal system finally shaped them in the most straightforward way possible that we know from the classical times: inside the dichotomy between freeborns (*liberi*) and slaves (Gai. Inst. 1.9). By doing this, the Roman law underwent a process of simplification and rationalisation which was carried out by legislation and jurisprudence.

Simplification was the first step: Mixed forms such as debt bondage were abolished and a clear distinction was made between legal bonds (*obligationes*) and other forms of a more personal dependency. Some of these evolved into legal institutes (*vadimonia*), others acquired a rather political and social meaning (*clientes*). Rationalisation was the second step. Although originated in Hellenistic natural law which distinguished between natural freedom and legal enslavement, Roman jurisprudence sought a uniform concept of slavery by configuring them within property law (also, arguing etymologically, *servus* from *servare*, ‘to retain’, was put in connection with the oldest Roman property right *mancipium*, cf. Inst. 1.3.3). As a result, slaves were not legal subjects, but mere objects (*res*) and civil law was to regard them as non-existent (D. 50.17.32). Their conjugal relationship was a mere de facto partnership (*contubernium*). They lacked capacity to stand trial and legal consequences for their acts could only be en-

forced indirectly through specific remedies involving their owners (*actiones adiecticiae qualitatis*). Coherently, there could be no such thing as a half-slave.

To soften the sharp contrast, Roman law did provide an intermediate category of personal dependency, the freedman, which was shaped by the legal instrument of the enfranchisement (*manumissio*). A freedman (*libertus*) was formally free but still dependent on his former owner (*patronus*) by a series of legal bonds [3]. The importance of such a figure in the Roman society is evident by its extensive employment by the imperial administration (*liberti Caesaris*).

Nevertheless, a hidden variety could still be observed within this clear pattern. So, on the one hand, some legal proceedings indirectly involving servi could also involve free men, and there were some categories of not entirely independent free citizens, such as those provided by the military condition. However, the very hidden variety can especially be seen in the hierarchical structure that Roman law let establish among slaves – that is, under the demarcation line of the dichotomy. In a process involving both legal abstraction and semantic shift, figures who originally were simply substitutes for other slaves (*servus vicarius*) were transformed into subjects de-

pendent on another principal *servus* [4]. They were formally slaves like the main ones, but subject to them according to the same rules as the master/slave pattern. Their economic and social relationship was regulated analogously (cf. D. 15.1.17). Social hierarchy among slaves was important for Roman jurists (cf. D. 47.10.15.44).

Eventually, pre-classical naturalism also re-emerged. Without altering the clear legal framework, an attempt to reconsider slaves under the principles of the law of personae was carried out by the legislation and jurists of the age of the Antonines [1. 64–69].

Finally, in the Late Antiquity, the need for intermediate figures above the demarcation line of the dichotomy reappeared, as the sharp dichotomy no longer corresponded to social reality and the new mentality. The *coloni* (registered tenants assigned to a landowner) as well as the low-status category of the *humiliores* exemplify this development. Strong dependency bonds not too dissimilar from the old ones were now regulated and qualified differently beyond the traditional slave system. Influence of biblical models as well as the existence of unclear shaped servant-types in the early Christian Church also played a role. Moreover, traditional concepts were adapted to different contexts (cf. Augustinus' *famulus Dei*).

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# IMPRINT

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The Käte Hamburger Kolleg „Einheit und Vielfalt im Recht | Legal Unity and Pluralism“ at the University of Münster is funded by the Federal Ministry of Education and Research (BMBF) under the funding code 01UK2101.

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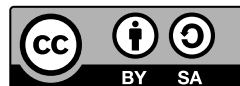
Ulrike Ludwig, Peter Oestmann u.a. (Hrsg.): Münsteraner Glossar zu Einheit und Vielfalt im Recht, 4. Ausgabe (EViR Working Papers 11), Münster 2024.

## Cite as

Ulrike Ludwig, Peter Oestmann et al. (Ed.): Münster Glossary on Legal Unity and Pluralism, 4th Edition (EViR Working Papers 11), Münster 2024.

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URN: [urn:nbn:de:hbz:6-46918570216](https://nbn-resolving.org/urn:nbn:de:hbz:6-46918570216)

DOI: [10.17879/46918569748](https://doi.org/10.17879/46918569748)

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ISSN: 2749-8166 (Print)

ISSN: 2749-8174 (Online)