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***Slave ‘Crime and Punishment’: Management, Authority and  
Discretion in Roman Law and Literature***

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## ABSTRACT

This thesis investigates elite approximations to ‘crime and punishment’ in Roman slavery. ‘Crime’ and ‘punishment’ are understood here in a malleable sense, including delicts and crimes known in Roman law (and their formal, public punishments) along with the various so-called misdeeds that slaves commit (and receive punishment for) in the household. The thesis argues that concern with servile ‘crime and punishment’ is at the forefront of the Romans’ written output – including aside from the more readily obvious legal sources also non-legal writings. Moreover, this thesis contends that an understanding of Roman juridical thinking and law enhances our appreciation of non-legal writings that deal with servile ‘crime and punishment’, providing us with a greater insight into both the texts under scrutiny (and the literary discourse more broadly) and the thought-world of Roman slave-owners at large. To advance these ideas, the first part of this thesis outlines some chief juridical characterizations of the enslaved as discussed in one of the key texts focused on ‘crime and punishment’: Digest 47–49. The Digest survey paints a nuanced and varied picture of slaves in situations pertaining to ‘crime and punishment’. Along with detailing the objectification of the enslaved in the jurists’ mind, it also demonstrates the juridical recognition of servile agency and responsibility. Slaves were not merely conceptualized as objects, but also as active and independent subjects in front of the law and this is a crucial aspect to be acknowledged in order for the juridical approach to servile ‘crime and punishment’ to be fully comprehended. Viewed against the backdrop of the analysis of Digest 47–49, the argument that ‘crime and punishment’ and their legal ramifications resonate in non-legal writings (and are thus essential for fully understanding those texts, too) is explored through three literary case studies that are roughly contemporary with the discussed legal evidence: Petronius’ satirical *Cena Trimalchionis*, Apuleius’ novelistic *Metamorphoses*, and the prescriptive and idealistic works of the agricultural writers. Close examination of these literary texts leads to two key findings: first, that the topic under scrutiny as explored in these texts depends on proper understanding of Roman law and the associated juridical discourse; second, and consequently, that ‘crime and punishment’ is indeed central to a full appreciation of these non-legal writings more generally. The broader benefit of a fuller appreciation of the legal resonances in Roman literary texts that this thesis advances is, again, two-fold: first, it cautions against the notion that, in Roman society, law is a type of specialized knowledge exclusively in the remit of lawyers; second, it advances the wider discussion in

slavery studies of the relationship between law and slave-ownership, with particular regard to the role played by 'legal thinking' in slave-owners' (non-legal) discourse. In its totality, moreover, this thesis suggests that servile 'crime and punishment' was a matter of concern for Roman slave-owners, so much so that it occupied probably every possible textual niche – whether obviously so, as in the case of the Roman legal discourse, or less patently so, as in the case of the Roman literary universe. For this reason, this thesis suggests that (slave) management led to the constant exploration of, and preoccupation with, (masterly) authority and discretion – as evidenced across Roman law and literature.

## LAY SUMMARY

This thesis focuses on slave ‘crime and punishment’ in the ancient Roman world. It investigates this subject both in its legally defined manifestations, under the state jurisdiction, and in its instances occurring in domestic settings, under the masters’ discretion. Part I of this thesis outlines the multiple and complex characterizations of the delinquent slave in the Digest, a collection of juristic writings compiled in the sixth century CE that constitutes our main source for Roman law; among its fifty books, attention is paid chiefly to books 47–49, which concentrate precisely on ‘crime and punishment’. While the general opinion regarding the enslaved before the law is that of an inert object at the master’s whim, the survey of the Digest in this thesis shows that the enslaved may indeed be objectified in the jurist’s mind, yet slaves were also accredited with independence, agency and responsibility in ‘crime and punishment’ scenarios. Part I, then, offers a comprehensive picture of the enslaved in ‘crime and punishment’ situations as described in the legal sources. Building on the findings of Part I, Part II explores three literary case studies that are roughly contemporary with the discussed legal evidence and pertain to different types of literature, i.e. Petronius’ satire in the *Cena Trimalchionis*, Apuleius’ novel, the *Metamorphoses*, and the agricultural manuals of Cato, Varro and Columella. Their exploration demonstrates that servile delinquency and its legal ramifications infiltrate non-legal writings and facilitate the authors’ pursuit of their agendas. Awareness of Roman law and the associated juridical discourse, therefore, enhances our appreciation of both non-legal writings that deal with servile ‘crime and punishment’, and of the thought-world of Roman slave-owners in general. The consistent use of slave ‘crime and punishment’ and legal echoes to make points on the slave-owner’s authority and discretion indicates that the exercise of ownership over and management of the enslaved created masterly anxiety. The broader benefit of a fuller appreciation of the legal resonances in Roman literary texts that this thesis proposes is two-fold: first, it shows the widespread influence of law in daily life, and not just in that of the legal practitioners and writers; second, it feeds into the wider discussion in slavery studies that argue for a more prominent role of ‘legal thinking’ in slave-owners’ (non-legal) outputs.

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## NOTE ON ABBREVIATIONS

All abbreviations of the ancient sources follow *The Oxford Classical Dictionary*, 4<sup>th</sup> edition, with the exception of Justinian's Digest, abbreviated as Dig. and the *Pauli Sententiae*, abbreviated as *PS*.

Journal abbreviations follow those in *L'Année Philologique*.

## INTRODUCTION

In Plautus' *Asinaria*, the slaves Leonidas and Libanus find a peculiar way to congratulate each other over a mischief jointly perpetrated. Leonidas brags that the two of them have long persevered in wrongdoing and endured a diverse range of cruel punishments in the past (vv. 545-557). To this celebration of their stamina, Libanus answers with an enumeration of all the wiles and trickeries of his 'colleague' (vv. 558-565):

*Edepol virtutes qui tuas non possis conlaudare  
sic ut ego possim, quae domi duellique male fecisti.  
ne illa edepol pro merito tuo memorari multa possunt:  
ubi fidentem fraudaveris, ubi ero infidelis fueris,  
ubi verbis conceptis sciens libenter periuraris,  
ubi parietes perfoderis, in furto ubi sis prehensus,  
ubi saepe causam dixeris pendens adversus octo  
artutos, audacis viros, valentis virgatores.*

You wouldn't be able to praise your virtues as well as I could laud the troubles that you caused at home and at war. All those accomplishments that you earned cannot be remembered: when **you tricked someone who trusted you**, when **you were not trustworthy to the master**; when **you** gladly and consciously **perjured**, with solemn words; when **you tunnelled through the walls**; when **you got caught stealing**, when **you regularly defended yourself hung upside down against** eight muscly and brave **men learned in the art of beating with rods**.<sup>1</sup>

Leonidas, after proudly confirming all the listed endeavours, reciprocates the panegyric with a recitation of Libanus' record of misdeeds (vv. 567-575):

*verum edepol ne etiam tua quoque malefacta iterari multa  
et vero possunt: ubi sciens fideli infidus fueris,  
ubi prensus in furto sies manifesto et verberatus,  
[ubi periuraris, ubi sacro manus sis admolitus,]  
ubi eris damno, molestiae et dedecori saepe fueris,  
ubi creditum quod sit tibi datum esse pernegaris,  
[ubi amicae quam amico tuo fueris magis fidelis,]*

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<sup>1</sup> Throughout this thesis, all translations are my own, unless otherwise stated.

*ubi saepe ad languorem tua duritia dederis octo  
validos lictores, ulmeis adfectos lentis virgis.*

Actually not even your many feats can be recalled: when **you were deliberately untrustworthy** to someone who trusted you; when **you got caught red-handed stealing and were thus beaten for it**; when **you perjured**, when **you stole from the temple**; when **you created damage, annoyance and disgrace to the master**; when **you denied that a credit was paid to you**; when you were more faithful to your female friend than to your male friend; when **you regularly exhausted with your toughness eight strong lictors, armed with flexible elm rods**.

The two characters' insistence on punishment, along with the bragging over their misdeeds, is quite bizarre, even for Roman comedy.<sup>2</sup> It has therefore rightly attracted ample debate. Scholarly efforts have focused on the literary dimensions of this exchange, but also reflected on the real-life circumstances that lurk behind the punishments.<sup>3</sup>

On the other hand, Libanus and Leonidas' multiple offences have not received the same kind of detailed treatment that has been given to the repercussions of their misbehaviour. And yet, what the two slaves claim to have committed are not only trivial domestic misdeeds. In fact, a wide variety of offences is recorded, including actions punishable even under Roman law, i.e. outside the domestic setting. Most notably, while tricking someone or tunnelling through walls would have surely triggered a more or less severe punitive action at the discretion of the master,<sup>4</sup> the manifest theft that both characters brag about should have been disciplined

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<sup>2</sup> Perelli (1978) underlines that, in their cynical laudatory speeches, Libanus and Leonidas omit any moral or social justification for their conduct. This is not typical of Plautine slaves, as can be seen, by way of example, in *Bacch.* 649–660, where Chrysalus defends his misbehaviour claiming that it is only appropriate to damage the wicked and to rob the thief.

<sup>3</sup> To Seagal (1987) this boasting is a marker of the carnivalesque inversion of the comedy. Fitzgerald (2000) 40 noted that, for Libanus and Leonidas, punishment endurance is a badge of honour, and that this appropriation of the language of honour for people at the margin of the society is only “a fantasy of the free”. Stewart (2012) also highlighted how this endurance is equalled to *virtus*. McCarthy (2004a) commented that, since slaves are not prescribed to maintain their physical dignity (a prerogative and a burden of the freeborn), they have the licence of being irreverent about their bodies. Such graphic representations of violence and punishment, for Parker (1989), serve to defuse the free people's anxieties originating from these bodily chastisements; on the other hand, Fitzgerald (2000) maintains that they could have worked as a means to conquer further fears of the free, who were in this way reminded of the vulnerability of their own bodies.

<sup>4</sup> Note, however, that tunnelling through walls is also a kind of *adikia* in Athenian law, reflected in the verb *τοῦχωρυχῶ*, see Ar. *Plut* 165.

publicly;<sup>5</sup> such an offence, moreover, was already subject to severe punishment at the time of the Twelve Tables.<sup>6</sup> Analogous considerations apply to Libanus' theft from the temple, which constituted a serious crime known as *sacrilegium* (sacrilege) in Roman law.<sup>7</sup>

Despite the aforementioned scholarly neglect of the diversity of the listed crimes, especially regarding their 'comprehensiveness' across both private and public contexts, these Plautine passages are undeniably a prime example of the role that servile wrongs and punitive responses played in Roman slavery – what I have termed for the purposes of this thesis 'slave crime and punishment'. Repeatedly, our evidence speaks to the experience of the enslaved who endured punishment at the hands of their masters in response to actions the latter deemed to be misdeeds. And time and again, servile 'crime and punishment' has been studied and commented on, quite rightly, in modern scholarly literature,<sup>8</sup> although the 'punishment' element has attracted a more marked stress. Notably, following Bradley's argument, the relationship between *servi* and *domini* is frequently seen as a series of interactions framed by a reward and punishment logic.<sup>9</sup> Although the presence and employment of this strategy by the slave-owners is incontestable, this approach has directed the spotlight mainly on the slave-owner's authority and discretion.<sup>10</sup> As a result, the modern historical focus is less often put on

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<sup>5</sup> The *furtum manifestum*, which is the Latin legal expression for manifest theft, will be touched upon in Chapter 1.

<sup>6</sup> Table 8.14 shows a particular harshness towards slave perpetrators, who would have been thrown from the Tarpeian rock.

<sup>7</sup> According to Ulpian, those committing sacrilege could have been thrown to the beasts, burnt alive or sent to the gallows as a punishment (Dig. 48.13.7 *pr*). There are also legal echoes in other words used by the enslaved characters to describe their accomplishments, such as *fraudare*, *periurare* and *damnum*. The employment and effect of allusive legal language will be examined in Chapter 5 specifically. For the large number of legal jokes and scenes as well as the comic use of legal terminology in Plautus' plays see Watson (1970) 114 with detailed references and bibliography.

<sup>8</sup> Especially with a view to its comic dimensions, as will be seen in detail in Chapter 4.

<sup>9</sup> Bradley (1987).

<sup>10</sup> For further contributions on servile 'punishment' in this sense, see Saller (1994), who concentrated on the issue of chastisements and obedience in the household, for both *servi* and sons-in-power. The theme of punishment is also essential to the study of Plautine comedy, where the frequent infliction of chastisements on *servi* was supposed to create amusement, rather than repulsion; see for instance the works already cited in n. 3. This does not apply to Terence's comedy, in which the role of the slave is less prominent as argued by McCarthy (2004b). The only Terentian instances in which beating is used to create a comic effect are *Ad.* 213 and 244–5; their unusual character is pinpointed by Karakasis (2013) 215.

servile ‘crime’, i.e. on the enslaved as perpetrators of misdeeds.<sup>11</sup> Servile ‘crime’ and servile ‘punishment’, then, are somewhat disconnected in present scholarship, preventing the creation of a well-rounded picture of the delinquent slave. Moreover, when we pay heed to this figure, the slave’s misbehaviour is mostly analysed in the domestic context portrayed by much ancient literature, a tendency which gives centre stage, again, to the ‘jurisdiction’ of the master. Seen in this way, it becomes clear that if one excludes the attempts of Roman lawyers, who were understandably very much concerned with legal procedures and technicalities,<sup>12</sup> only sporadic comment has been given to the slave as the driver of actions that, like several of Libanus and Leonidas’ deeds, fall under the umbrella of Roman law.<sup>13</sup> Indeed, such servile breaches of criminal law are mostly reported and discussed in the juridical canon, which is still too often reckoned as an autonomous and separated genre of writing. The scholarly panorama on slave ‘crime and punishment’, then, also presents a gap between the discussion on domestic discipline/management and public regulation of servile delinquency, which mirrors the noted segregation of literature and law. To undo these artificial separations is a key objective of this thesis.

Thus, much as in Leonidas and Libanus’ ‘criminal records’, this thesis will deal with both public (i.e. state-controlled) and private (i.e. master-controlled) settings. In doing so, the following chapters provide a much more detailed analysis of the topic across the private-public divide than hitherto undertaken. To this end, the catch-all term ‘crime’ will include both actions formally recognized as crimes and delicts (and thus subject to sanction in Roman law), as well

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<sup>11</sup> Recognition of the slave agency, in this sense, has been given mainly with regard to slave revolts, which are not discussed in the present work. A comprehensive treatment of servile rebellions can be found in Urbainczyk (2014).

<sup>12</sup> See for instance Del Prete (1972) on the slave responsibility in criminal law. Buckland (1908), in his monumental work on the Roman law of slavery, only devotes a few pages to the delinquent slave, as lamented by Robinson (1981), who gives a much more exhaustive overview on the topic. The slave as offender is not too central to the analysis of Roman slave law given by Robleda (1976) and Watson (1987) either. Morabito (1981) offers a list of the Digest passages concerning offending slaves.

<sup>13</sup> Bradley (1987) and (1994), although paying closer attention to literary sources, do incorporate juridical writings while dealing with the issue of ‘crime and punishment’. In the latter work, Bradley links this thematic cluster to the idea of resisting slavery and uses a comparative angle. Sellin (1976) contains a section on the offending slave; this mostly provides a synopsis of servile chastisements (with a focus on domestic discipline and literary sources), but also briefly mentions some legal regulations aimed at limiting the slave-owners’ powers. Studies on single servile offences mostly concentrate on runaway slaves (a topic explored in Chapter 6) and include Bellen (1971), Poma (1987), Reduzzi Merola (2017), Rizzelli (2010), and Desideri (2015).

as those that, despite not being legally sanctioned, attracted punishments exerted by private masters. The macroarea of ‘crime’ studied in this thesis thus comprises:

- juridically defined delicts (*delicta*), i.e. civil wrongs – these were private offences distinguished in four groups in classical Roman law, namely insult and bodily injury (*iniuria*), theft (*furtum*), damage to property (*damnum iniuria datum*) and violent theft (*rapina*);
- juridically defined crimes (*crimina*), i.e. wrongs endangering the public order and hence prosecuted in the interest of the community;
- domestic offences, i.e. actions that were identified as misdeeds by Roman slave masters within their household contexts.

Similarly, the term ‘punishment’ entails:

- official penalties prescribed by the law and meted out by state magistrates;
- domestic chastisements decided upon and imparted by Roman *domini*.

As already hinted, the present work integrates a diverse set of textual evidence – legal and literary. The concern here is not so much with the lived reality of enslavement,<sup>14</sup> but with the conceptual articulation of the topic in texts produced by those engaged in slave-owning, and in particular among the Roman elites. But beyond the detailed assessment of the topic offered in the following chapters, the choice of evidence is also designed to bridge the previously mentioned divide – i.e. that between public and private, and hence between law and life. This thesis argues that there exists some considerable shared ground in the conceptualization of servile ‘crime and punishment’ in Roman legal and literary thinking that have a bearing on our appreciation of the studied texts. In particular, the combined analysis of legal and literary works in this thesis reveals a significant overlap in the preoccupation of Roman *domini* with controlling what has been termed the most ‘troublesome property’; the boundaries between the legal and the literary discourse on delinquent slaves appear thus porous. In practice, this work illustrates how an understanding of Roman juridical thinking and law enhances our appreciation of non-legal writings that deal with servile ‘crime and punishment’, equipping us

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<sup>14</sup> Contrarily to the approach of Morabito (1981), who used the Digest to access the reality of the social phenomenon of slavery.

with further insight into both the texts under scrutiny (and the literary discourse more broadly) and the thought-world of Roman slave-owners. This also means that the present thesis sides with those who caution against the notion that, in Roman society, law is a type of specialized knowledge exclusively within the remit of lawyers. The shared concerns discussed on the following pages function, on the other hand, as a powerful reminder that, at least in broad terms, the pool that produced Rome's jurists and its intellectual elites was one and the same – and that this pool was in turn produced by one and the same society. More generally speaking, this thesis will also advance the wider discussion in slavery studies of the relationship between law and slave-ownership, with particular regard to the role played by 'legal thinking' in slave-owners' (non-legal) discourse.<sup>15</sup> This is not to say that the present work engages in allusion-hunting, between literary and legal texts. Rather, a careful and detailed examination of some key legal texts is combined with some key literary case studies to build a framework that is robust enough to establish the argument here proposed.

Evidently, the very topic of this work makes an initial exploration of the juridical sources a prerequisite, despite the fact that the enslaved is, formally, a mere thing before the law. The jurists certainly do talk about *servi* as things (*res*), equating them to property on several occasions. However, they also display some sizeable awkwardness in framing the ownership (*dominium*)<sup>16</sup> of a living and thinking piece of property (who is ultimately a *persona*). This awkwardness surfaces rather patently in the 'crime and punishment' sphere, as shown in the first part of this thesis. Thus, Chapters 1–3 single out some chief juridical characterizations of the enslaved as discussed in Digest 47–49, a key set of books focused precisely on 'crime and punishment'. The idea of the enslaved as a *res* might generate the opinion that *servi* can almost exclusively play receptive roles in 'crime and punishment' situations. While previous contributions did not fully dismiss the active role of the delinquent slave, they either concentrated only on the delict side of the issue (and thus on the practical aspect of the master's involvement, liability and monetary redress)<sup>17</sup> or, vice versa, just on the enslaved as a criminal offender. For the latter topic, there is a tendency to address heavily the tangential (and brutal) aspects of torture and the *senatus consultum Silanianum*, at expense of other less sensational

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<sup>15</sup> The importance of considering slave law in relation to literature has been advocated, for American slavery, by Lowance & Pilditch (2008).

<sup>16</sup> The concept of *dominium* is defined by Birks (1985), as the power of using, alienating and destroying something.

<sup>17</sup> See for example Johnston (1995), but also Sirks (2013).

measures and offences.<sup>18</sup> In contrast, the present concentration on the Digest seeks to sketch a more holistic image of the slave as both the recipient *and* the perpetrator of juridically defined offences – and thus as both passive and active in the eye of the law, capturing all the nuances.<sup>19</sup> When it comes to their (expected) receptive role, the enslaved are not only pivotal examples for the explanation of juridical concepts, but are occasionally shown glimmers of compassion too; when portrayed in active roles, on the other hand, they appear eager to pursue their own interest and capable of conscientiously taking decisions, also irrespectively of their owners' influence. Quite obviously, the analysis of the enslaved delinquent goes hand in hand with the issues of servile liability and responsibility, all the more so when dealing with servile punishment, a topic which also offers the chance to discuss the correlation of legal status and legal standing. In short, the enslaved delinquent emerges as a multifaceted figure from the ensuing analysis, both recognizing their human condition and negating it to suit at will. While this perspective is not new as such, a detailed illustration is required to gain a fuller and richer understanding of the range of conceptualizations at work, aside from the multiplicity of contexts. Moreover, this thorough presentation paves the way for a more rigorous analysis of the theme of servile 'crime and punishment' in five selected literary works.

The chronological span of the chosen legal evidence (i.e. the array of jurists whose pronouncements are collected in the Digest) roughly ranges from the late republican era to the end of the high empire. This is therefore also the chronological framework for the selection of the literary texts explored in Chapters 4–6 – leaving Plautus, along with Leonidas and Libanus, to their own fates, given their chronologically incomparable location – although they could not have set the scene for the present investigation any better. Moreover, the lens of 'crime and punishment' will be put onto literary works contributing to different textual genres: Petronius' satirical take in the *Cena Trimalchionis*, Apuleius' novelistic *Metamorphoses*, and the prescriptive works of the agricultural writers. These are all works whose production stretches over the period of time between the second century BCE and the middle, perhaps even the end,

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<sup>18</sup> Buckland (1908), followed by Robinson (1981). Brunt (1980) and Coleman (2018) contain further discussion on torture, which is not the object of the present investigation – as it does not constitute a proper punishment, but rather a means to supposedly exact the truth from witnesses. See Harries (2013) for more detailed information on the *SC Silanianum*.

<sup>19</sup> No extensive work on servile 'crime and punishment' has been published so far. Bauman (1965) focuses on 'crime and punishment' more broadly and does not treat slaves separately in his discussion, adopting an approach that seems reminiscent of Crook (1967) 55. In his study on law and life at Rome, Crook justifies the choice of not discussing the enslaved separately by claiming that this mirrors the ways of the jurists who mentioned *servi* at several junctures and in conjunction with the free.

of the second century CE. Some further explication of the selection of literary works is however in order.

First, the lavish dinner party hosted by the freedman Trimalchio, in Petronius' *Cena Trimalchionis*, displays possibly the highest concentration and variety of servile punishments in the whole of Roman literature – well acknowledged as such. There seems to be, therefore, not much room for a fresh analysis. Yet, our understanding of the scenes of 'crime and punishment' in the banquet drastically changes, if one builds on the legal appreciation of the topic as laid out in the first part of this thesis. Thus, Chapter 4 provides a re-assessment of all the Trimalchian punishments, contextualizing them in the legal discourse. Along with demonstrating a wider engagement of the *Cena* with legal concerns as a result, the analysis of the *Cena*'s punitive sketches proves how essential legal resonances are to unlock *each and every* satirical innuendo. The key result of the investigation is the revelation of a hitherto unrecognized pattern in the representation of servile 'crime and punishments' on the Trimalchian stage. In short, the chapter shows how this stage works to depict a domestic jurisdiction out of control, where misplaced discretion is superficially mistaken for justified authority. The satirical target of the *Cena* in this case is not so much its freedmen protagonists, but the Roman imperial government, with particular regard to its system of jurisdiction. The analysis therefore also offers a new perspective on the nature of the text under examination

Next up, Apuleius' *Metamorphoses* – a novel long recognized, similarly to the *Satyricon*, for its engagement with the topic of slavery as well as with 'crime and punishment'. Once more, this may appear to reduce the chance to advance new insights; Chapter 5 nonetheless does so by giving prominence to just a single, seemingly minor set narrative in the *Metamorphoses*. Indeed, it is possibly the most neglected among the so-called 'inserted tales' which accompany the main plot of the *Metamorphoses* that is given centre stage, i.e. that of the *vilicus* (*Met.* 8.22). This narrative, featuring a slave who pursued his own interest and paid the dire consequences thereof, deals with the most gruesome punishment investigated in this thesis. More importantly, the discussion of the tale shows that the narrative is replete with so far unappreciated juridical resonances. These echoes not only paint ordinary life with pompous, parodic tones, but also demonstrate how, in even the tiniest tale, servile 'crime and punishment' is used to make crucial points about the powers of the slave-owners and their supposed limitations imposed by law. Indeed, much like in the discussion of the *Cena* in the preceding chapter, the analysis of the

*Metamorphoses* foregrounds a substantial ambiguity regarding the proper working of the law, contributing in this way to the scholarly discussion of the text's thrust and agenda.

In Chapter 6, the spotlight is mandatorily turned onto the agricultural manuals of Cato (234–149 BCE), Varro (116–27 BCE), and Columella (CE 4–70), an obvious choice, given the pivotal role played by slaves in Roman agriculture. Surprisingly, though, and despite their alleged utterly practical character, they contain no dedicated section on servile discipline – rendering their selection for present purposes seemingly futile. Indeed, their apparent scant regard for the unpleasant side of servile discipline creates an idyllic image of the estate, substantiating the notion of perfect management, based on undisputed authority and impeccable discretion on the part of the estate (and slave) owners and their chosen stand-ins. At a closer look, however, and once familiar with the legal knowledge foregrounded in the first part of this thesis, 'crime and punishment' issues arise at unexpected intersections. Thus, notwithstanding the image of the ideal *fundus* that the agricultural manuals paint at first sight, upon closer investigation we find a common ground between these texts and the Roman juridical debate on servile 'crime and punishment'. This removes almost at the drop of a hat the idyllic gloss that the Roman agricultural writers were so keen to use. It also exposes some major tensions that are rooted in slave management, and especially in the masters' realm of authority and discretion, thereby challenging their standard appreciation as descriptive model narratives.

A thorough examination of these literary texts, then, proves a double set of points: first, that a full understanding of Roman law and the associated juridical discourse is needed to gain a full grasp of servile 'crime and punishment' in the Roman literary panorama; second, and consequently, that the thematic cluster of 'crime and punishment' is crucial to reach a fuller appreciation of non-legal writings more generally. On a wider level, the shared ground between the legal and literary texts here illustrated encourages a greater consideration of legal issues in our explorations of the ancient Roman world. With regard to servile 'crime and punishment', management, authority and discretion clearly emerge as key pillars of the thought world from which the texts here analysed stem, and to which their authors in turn contributed. The concern with servile 'crime and punishment' that these texts reveal, then, is indicative of a palpable preoccupation, if not anxiety, among the Roman slave-holding elite regarding their very execution of management, authority and discretion over those whom they, therefore, so readily conceptualized as troublesome property. This preoccupation and this anxiety are largely

missing from the modern scholarly debate on Roman slave-holding. Thus, despite the superficial lack of concern with the reality of ancient life in this thesis, noted above, the ensuing discussion nonetheless speaks to an issue that originates from the practice of slave-owning and that, clearly, deserves detailed further investigation. But for now, due analysis of the chosen legal evidence for ‘slave crime and punishment’ is in order.

# PART I

## THE DELINQUENT SLAVE AND THE LAW: ANALYSING DIGEST 47–49

The first three chapters of this thesis offer an analysis of the Roman juridical discussion concerning civil wrongs and criminal actions in which enslaved individuals are involved. The sphere of ‘crime and punishment’, exposing the aspects of servile receptivity and (conversely) initiative and discernment, is possibly the area in which the institution of Roman slavery reveals all its contradictions most patently.<sup>20</sup> In structural terms, on the one hand, Roman law configured *servi* under the *ius gentium* as things, *res* – a perspective at the forefront of much modern scholarship on Roman slavery. On the other hand, there were practical considerations and circumstances that fostered the recognition of the enslaved’s human nature and faculties.<sup>21</sup> Moreover, when slaves are conceptualized as items of property in mature legal thought, they are also recognized to be so against nature, as remarked by Florentinus (Dig. 1.5.4):<sup>22</sup>

Florentinus, *Institutes*, book 9: **Freedom is one’s natural power** of doing what one pleases, save insofar as it is ruled out either by coercion or by law. 1. **Slavery is an institution** of the *ius gentium*, **whereby someone is against nature made subject to the ownership of another.**<sup>23</sup>

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<sup>20</sup> As Davis (1984) 20 has put it: “the institution of slavery has always been a source of conceptual contradiction ... [that partly] arose from the impossibility for transforming a conscious being into a totally dependent and nonessential consciousness – one whose essence is to be mere instrument and confirmation of an owner’s will”.

<sup>21</sup> Barrow (1937) 151 underlines that one of the spheres where this human recognition appeared earlier is that of agency and contract, in which enslaved figures played crucial roles. Kirschenbaum (1987) 31 confirms that in the period of classical Roman law the prominence of *servi* in commerce was such that they were “the true middlemen of the city”, possibly also because of the traditional stigma of commerce. For further discussion on the involvement of slaves in commerce, see Gamauf (2009a) and Gardner (2011) 419–423.

<sup>22</sup> *Libertas est naturalis facultas eius quod cuique facere libet, nisi si quid vi aut iure prohibetur. 1. Servitus est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur.*

<sup>23</sup> All translations of the Digest follow the Pennsylvania translation edited by Watson.

Legally speaking, then, what defines slaves is their subjection to the ownership (*dominium*) of a master; it is this chattel perspective that is, naturally, central to the juridical discourse and that has been foregrounded by modern scholars concerned with Roman slavery.<sup>24</sup> However, the jurist's words above (echoed also by Ulpian at Dig. 1.1.4) show how the idea of natural equality was not foreign to late classical jurists. Although not explicitly stated, we can see a hint at the idea that the slave has the same human nature as the freeborn. Slavery might then be seen as an ambiguous institution, potentially even open to vulnerability.<sup>25</sup>

The fact that the enslaved was simultaneously a human being and an item of property did not imply a logical contradiction in ancient thought (as shown by the scarce interest in reforming this institution against nature),<sup>26</sup> but there were several situations in which the hybrid nature of the enslaved had a bearing, even in the juridical realm where the slave was predominantly viewed as chattel. The first part of this thesis aims precisely to acknowledge that the juridical treatment of the enslaved was highly complex, providing insight into both perspectives on the enslaved: the slave as an owned *res*, and the slave as a human being with virtually the same faculties and dignity of their owner. More to the point, if, as Hopkins effectively summarized it “slaves were treated more as things than as persons” in Roman law,<sup>27</sup> there is a considerable amount of nuance in both treatments that need to be taken into account. We can then arrive at a more balanced picture of the enslaved before the law in ‘crime and punishment’ scenarios.

Part I, then, seeks to illustrate in sufficient detail that and how the Roman jurists discussed *servi* in both their acknowledged dimensions, i.e. as ‘things’ *and* as human beings. To this end, Chapter 1 offers an analytical survey of passages presenting the enslaved individuals in (the most regularly granted) passive roles – i.e. in scenarios where, as *res*, they are ‘at best’ the victims of an offence, or at the other extreme merely used as means to think about crimes and delicts. Chapter 2 matches this discussion by shifting the focus on the legal pronouncements that sketch the enslaved, perhaps surprisingly, in active roles – i.e. in scenarios in which they

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<sup>24</sup> This is evident even simply glancing at the table of contents of Buckland (1908), where ‘the slave as a thing’ is explored in an amount of pages which is three times the one dedicated to ‘the slave as man’ in non-commercial relations. As stated in n. 21 above, indeed, when scholars concentrate on the human nature of the enslaved, they mostly focus on the commercial enterprises guided by servile agents and the practical problems that this created, such as in Abatino & Dari-Mattiacci (2020).

<sup>25</sup> Bradley (1994) 135.

<sup>26</sup> Finley (1980) 73–5.

<sup>27</sup> Hopkins (1987) 123.

are portrayed as delinquent individuals, being themselves the drivers of the criminal actions. This is not to say that the two ‘roles’ are fixed, including the respective elements of passivity and activity: both categories comprise subtle nuances, defying the idea of a clear-cut polarized opposition.

Indeed, even regarding the juridical conceptualization of the enslaved as *res*, the *servus* is, intriguingly, not necessarily seen as merely the receiving party. Conversely, turning the gaze onto active roles in which the enslaved are discussed by the Roman jurists, we will ‘meet’ the enslaved again in a myriad of situations that require accurate differentiation: as adulterers in the bedroom, trying to make a personal profit on the estates where they are put to work, enlarging their allowances (*peculia*) with ‘unorthodox’ methods, ranging from theft to castration of their subordinates, counterfeiting money and documents, running away, and so forth. The list, as will be proven, is in fact lengthy, also counting offences that would not be considered as such if perpetrated by individuals of free legal standing. But the importance of Part I of this thesis lies in teasing out and foregrounding duly the diversity and complexity of the roles in which the enslaved are portrayed in the Roman legal discourse – and this right within the juridical exploration of ‘crime and punishment’. As will be shown, it is imperative to recognize that the juridical characterization of the enslaved is much more multifaceted than we would envision it if we start from the assumption that, as Bradley phrased it, “before the law the slave was rightless, an object to be controlled”.<sup>28</sup> Rather, the juridical discussion opens a window onto the considerable room for discretion in the Roman master’s exercise of authority over their so-called ‘troublesome property’: the law did not create a mechanism for dealing with enslaved offenders that could be followed blindly; instead, it actually demanded a certain amount of decisions-making on the part of the executive, once again harking back to the fundamental recognition of the shared humanity of all.

It is at this ‘decision-making’ juncture that a closer look at the punishment of enslaved individuals becomes important – for the sphere of punishment exposes plainly how not only the law, but private masters too, needed to negotiate their rightful authority over their human chattel both in the light of the legal situation and in that of the hybridity of the slave in front of the law. This is especially significant for present purposes because of the widely reiterated view that the enslaved is systematically punished more severely than a free delinquent – suggesting

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<sup>28</sup> Bradley (1988) 485.

a simple and simplistic conceptualization of individuals of unfree status vis-à-vis their free counterparts. In describing the cruellest rungs of the punishment ladder as ‘servile’, the notion of their subjection to the law as mere things, is reinforced. They are clearly below the ranks of those recognized as human by the law.

The fact that the most gruesome punishments are also imposed on free people is rarely mentioned in much of the modern discussion and, when it receives comment, the apparent contradiction is explained by reference to the low social rank of the free culprits in question,<sup>29</sup> underpinned by the contention that, in being subjected to them, the criminals are ideologically assimilated to slaves.<sup>30</sup> Admittedly, the idea that, also when it comes to punishment, “slaves naturally always remained at the bottom of the heap” is hard to overcome, especially as there are plenty of scenarios where this appears to be plainly the case.<sup>31</sup> An analysis of the enslaved’s potential subjectivity to formal proceedings by the Roman legal authorities, however, shows that the attribution of chastisements is not a straightforward matter that can be simply reduced to the servile or free status of the culprit. In this respect too, the enslaved culprit emerges less rigidly defined by their legal characterization as *res* as typically claimed, demanding a more sophisticated approach from the modern scholar with respect to their legal configuration – and the real-life repercussions that may follow suit. In sum, a close analysis of the jurists’ approach to servile punishment in Chapter 3 adds to the exploration of servile crimes and delicts in the first two chapters by advancing the idea of a complex mosaic that characterizes the delinquent slave in the eye of the law.

The advancement of this view in Part I of this thesis is made on the grounds of a sustained examination of the mentions of *servi* related to delicts and crimes in books 47, 48 and 49 of the Digest. These books belong to what Justinian grouped as the seventh part of the Digest (comprising books 45–50).<sup>32</sup> This final section lacks an easily identifiable common thread, being an agglomeration of heterogeneous material whose size was “dictated by the desire of

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<sup>29</sup> Garnsey (1970).

<sup>30</sup> Aubert (2002), with specific reference to crucifixion.

<sup>31</sup> Robinson (2007) 188.

<sup>32</sup> According to the *Constitutio Tanta*, the Digest can be divided in 7 sections. Books 1–4 are the so-called *Prōta*, followed by 5–11 on legal proceedings; one then finds books 12–19 on things, 20–27 on various subjects representing “all the most useful and best expressed laws drawn from everywhere”, books 28–36 on will, books 37–44 on *bonorum possessio* and the miscellaneous final section represented by books 45–50.

symmetry or by mystic association”, as Roby put it some time ago;<sup>33</sup> for this reason, no collective label was given to this set of books, contrary to what was done with the first six sections of the collection. Yet, this statement should not be misinterpreted: indeed, it is not the case that the distribution of the matter is entirely haphazard. A closer look reveals the logic according to which the legal provisions were gathered: while books 45 and 46 deal with obligations, book 47 focuses on civil wrongs, followed by book 48 on criminal law, so that the pair can be seen as describing the treatment of penal actions; the section then finds its natural conclusion in books 49 and 50, mainly concerned with appeals and aspects of public law respectively.<sup>34</sup> Considering this structure, among the books pertaining to the present analysis, 47 and 48 will be of greater interest. It is instructive to gain a clearer idea of their content by reference to one of the introductory constitutions of the Digest, the *Constitutio Tanta*, where they are described as follows (8a):<sup>35</sup>

And after this there are two terrifying books dealing with **private and extraordinary offenses and with public offenses**, which describe the total **severity and harshness of the penalties**. Mingled with these are the **provisions that have been made concerning audacious men who endeavour to conceal themselves and display themselves as contumacious**, and also the **question of the penalties that are inflicted on condemned persons**, or remitted, and the subject of their property.

Along with the “terrifying books”, we will also pay heed to book 49, which deals entirely with appeals against judgments regarding both civil and criminal cases, and thus offers further relevant material.

In their totality, the three chapters that constitute Part I revise what is in essence an unsophisticated modern take on the enslaved before the law, foregrounding in its place an argument for ‘diversity’ and ‘complexity’, and thus ultimately ‘malleability’ of the enslaved in the ‘crime and punishment’ sphere.

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<sup>33</sup> Roby (1884) xxix, xlv.

<sup>34</sup> Roby (1884) xxxiii.

<sup>35</sup> *Et post hoc duo terribiles libri positi sunt pro delictis privatis et extraordinariis nec non publicis criminibus, qui omnem continent severitatem poenarumque atrocitatem. Quibus permixta sunt et ea quae de audacibus hominibus cauta sunt, qui se celare conantur et contumaces existunt et de poenis, quae condemnatis infliguntur vel conceduntur, nec non de eorum substantiis.*

But arguing for complexity in the legal realm is no end for its own sake. Rather, what is presented in the next three chapters both lays the ground for and speaks directly to the configuration of the enslaved in the contexts of ‘crime and punishment’ in that other body of writing produced by Roman slave-owners, i.e. the non-legal texts of the period that are the focus of Part II. In the Roman literary universe, too, attention to detail – and legal detail in particular – is essential to unearth a much more complex and complicating view of the enslaved culprit and victim. Doing so, moreover, enables an often quite striking reading of well-known (and seemingly well understood) passages – thus reinforcing the importance of a confrontation with the law even in writings that are professedly far distanced from any legal thought.

Part I of this thesis, then, revises a widely shared view on the legal configuration of the enslaved when it comes to ‘crime and punishment’, thereby laying the foundation for a fresh look at some key ancient literary texts. In doing so, it firmly steers our gaze towards a much more multifaceted role of the enslaved in their conceptual configurations, i.e. their ‘usages’ in the Roman elite mind. Such an approach raises much broader questions about the relationship between the legal configuration of the enslaved and their literary conceptualization, tied in turn to the wider exploration of control and authority on the part of Roman slave-owners.

Let us see first how a particular category of Roman slave-owners, i.e. the legal writers, conceived the enslaved as receivers and perpetrators of criminal actions.

## CHAPTER 1

# Servile Passivity: the Slave as Example, Object and Victim in the Jurists' Mind

### Introduction

The most expected role of the enslaved in a legal context, and therefore the one from which the following survey on slave 'crime and punishment' must commence, is that of the object or receiving party. This is the conceptualization that casts *servi* and their actions as expressions of what I call servile passivity. The present chapter will, then, provide an overview of some of the cases of this nature that appear in Digest 47–49, with the goal of establishing one extreme cornerstone of how enslaved individuals were conceptualized by the Roman jurists with regard to civil wrongs and criminal actions.

As already noted in the Introduction to this thesis, the general emphasis on the enslaved's almost exclusively passive role is fostered by the Roman juridical idea of the slave as a commodity (*res*).<sup>36</sup> Indeed, the number of passages which explore servile passivity in the Digest is much higher than that of those focused on servile agency (which is the topic of Chapter 2). Despite being more copious, however, the Roman jurists' pronouncements on the enslaved as an object show a significantly smaller degree of variety than their counterparts, being mostly concerned with property rights. Indeed, when referring to *servi* as *res*, I shall borrow Wise's statement according to which "a Roman 'person' had rights, whereas a Roman 'thing' was the object of the rights of a person".<sup>37</sup>

Thus, the present chapter will not deny that the enslaved is a *res* in the jurists' mind. Nonetheless, apart from illustrating this extreme, it will additionally show that even the spectrum of servile passivity is much more nuanced than what is commonly foregrounded. Indeed, gathering diverse legal pronouncements in which slaves are shown to act as receiving parties of delicts and crimes demonstrates that, in certain situations, the jurists are, surprisingly,

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<sup>36</sup> See, for instance, Gardner (2011) and note, again, that this passivity does not apply to the slave as a business agent.

<sup>37</sup> Wise (2000) 31–32.

prone to recognize the essence of the slave's humanity – i.e. their very feelings, to be taken account of in their legal handling. But before delving into the more astonishing legal approaches to *servi* who suffer delicts and crimes, it is appropriate to begin with one fundamental illustration of the enslaved as a *res* – i.e. the way the jurists 'used' *servi* to think with, employing them as tools to establish powerful examples.

### 1. The slave as example

When the jurists 'exploit' *servi* to think with, they epitomize in their very craft the objectification of the enslaved in the eye of the law. In order to understand this 'usage' of the enslaved as example, some context must be provided. One must bear in mind that the Digest was published as a statute, with the eminently practical purpose of re-organizing the chaotic and varied amount of Roman law sources that was circulating at the time of Justinian. Because of this, it also contains passages which are aimed at legal theory and school use, becoming, to a large extent, "a collection of carefully crafted hypothetical cases designed by the jurists to illustrate legal doctrines".<sup>38</sup> In this 'fictitious' realm, the category of *servi* stands out as an almost constant presence when the explanation of pivotal legal issues is at stake.

As mooted, this conceptual exploitation is perhaps the most extreme form of reducing the enslaved to the status of a passive object. Moreover, the number of lines portraying *servi* in the act of suffering delicts and crimes is less abundant than the scenarios in which they are employed rather as a means to think with. It is indeed astounding to see how much Rome's jurists were accustomed to utilizing the enslaved as an example to clarify certain legal principles. As a reader, one soon realizes that, whenever the jurist wants to ensure that a specific legal concept related to 'crime and punishment' is fully understood, he mentions it in relation

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<sup>38</sup> Johnston (1999) 24, who also adds that it would obviously be impossible to consider these hypothetical cases as totally alienated from Roman everyday life. Indeed, many of the Digest passages reflect real cases. A distinction between real and hypothetical can be operated on the basis of the nature of the material. For instance, *responsa* and *digesta*, given by jurists in real cases, are likely to belong to the former category. They seem, in fact, actual opinion on actual facts expressed by actual people. This suggestion, as Johnston (1999) 25 specifies, is also given by the standard structure of these passages: the jurist provides the reader with a "bare recital of the facts", based on which he delivers his opinion about the law at issue. Another indication pointing at the fact that we are dealing with actual cases can be found in passages where real names (rather than stock ones, such as Lucius Titus and Gaius Seius) are used.

to *servi*. This creates the impression that no other example could convey the same meaning in the Romans' mind.

A suitable first example of this conceptual passivity of the enslaved is constituted by the one we come across at the very beginning of book 47, in title 1 which deals with private delicts broadly, functioning as a sort of introduction. Before discussing specific delicts in detail, it is stated that, in cases of multiple delicts, wrongdoers should not expect any reduction of punishment; they will in fact be judged for every single committed offence. This general rule is elucidated through numerous references to *servi* (Dig. 47.1.2):<sup>39</sup>

Ulpian, *Sabinus, book 43*: Where several delicts run together, it is never the case that immunity is given in respect of any of them; nor does one delict reduce the penalty for another delict. 1. Consequently, **a man who steals and kills a slave will be liable for the abduction by the action for theft and for the killing by the Aquilian action, and neither action excluded the other.** 2. Similarly, **if he takes the slave by force and kills him, he will be liable to the action for goods taken by force for the former wrong and to the Aquilian action for the killing.** 3. The question has been asked whether, having recovered the value of the slave by the *condictio* for theft, the owner can nonetheless proceed by the Aquilian action. Pomponius writes that he can because the Aquilian action proceeds on one basis of assessment and the *condictio* for theft on another; for the Aquilian action comprises assessment at the highest value in the past year while the *condictio* does not go beyond the value at the time of bringing the action. If a slave were the wrongdoer, whichever the action in respect of which he be surrendered as the culprit, the other action will lapse. 4. Again, **if someone stole a slave and whipped him, he would be liable to both actions, that for theft and that for insult; and should he kill him, he would be liable to three actions.** 5. **Then, if a person abducted another man's female slave and debauched her, he would be liable in both actions, that for making a slave worse and the**

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<sup>39</sup> *Numquam plura delicta concurrentia faciunt, ut ullius impunitas detur: neque enim delictum ob aliud delictum minuit poenam.* 1. *Qui igitur hominem subripuit et occidit, quia subripuit, furti, quia occidit, Aquilia tenetur, neque altera harum actionum alteram consumit.* 2. *Idem dicendum, si rapuit et occidit, nam et vi bonorum raptorum et Aquilia tenebitur.* 3. *Quaesitum est, si condictus fuerit ex causa furtiva, an nihilo minus lege Aquilia agi possit. Et scripsit Pomponius agi posse, quia alterius aestimationis est legis Aquiliae actio, alterius condictio ex causa furtiva namque Aquilia eam aestimationem complectitur, quanti eo anno plurimi fuit, condictio autem ex causa furtiva non egreditur retrorsum iudicii accipiendi tempus. Sed si servus sit, qui haec admisit, ex quacumque actione noxae fuerit deditus, perempta est altera actio.* 4. *Item si quis subreptum flagello ceciderit, duabus actionibus tenetur furti et iniuriarum et si forte hunc eundem occiderit, tribus actionibus tenebitur.* 5. *Item si quis ancillam alienam subripuit et flagitaverit, utraque actione tenebitur, nam et servi corrupti agi poterit et furti.* 6. *Item si quis servum vulneravit, quem subripuerat, aequae duae actiones locum habebunt Aquiliae et furti.*

**action for theft. 6. And if someone wounded the slave whom he stole, both the Aquilian action and that for theft would lie.**

It is remarkable that, in order to underline one of the fundamental principles of Roman criminal law, the enslaved appears as the one and only example used. One could make sense of that considering the specific actions presented in Dig. 47.1.2: the Aquilian action and that for goods taken by force are first brought up,<sup>40</sup> followed by a reference to the *actio iniuriarum*,<sup>41</sup> and to the action for the corruption of the slave (*actio servi corrupti*).<sup>42</sup> It is easily discernible that the shared feature of these actions is that they all regard property rights and interferences with them. The jurists' recourse to the figure of the slave in these contexts confirms the traditional idea of the enslaved as the quintessential example of 'a thing' and, therefore, the best one to think with, in terms of *property* rights.<sup>43</sup> Even though Buckland does not elaborate on *servi* as examples in the sense here discussed, he is close to such a consideration when he writes that the Digest "contains a vast number of texts which speaks of the slave, but would be equally significant if they spoke of any other subject of property".<sup>44</sup> This statement, though, as the following paragraphs will illustrate, needs to be refined. It is in fact undeniable that, although using *servi* as examples, the jurists' intention is to conjure up a broader category of property. However, their specific choice of talking about the enslaved rather than something else undermines Buckland's contention regarding the equal significance of other subjects. Indeed,

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<sup>40</sup> The *lex Aquilia* of 286 BCE, which will be also discussed below and in Chapter 5, punishes the damage unjustly caused to another persons's property (*damnum iniuriae datum*). As Corbino (2005) 6 reminds us, while giving a very exhaustive discussion on the matter, Valditara (1998) etymologically connected *damnum* with the idea of material destruction. The term then developed to imply every kind of loss of an asset, and the law was employed when this asset (either partially or totally) was the object of killing (*occidere*), in case of *servi* or *pecudes*, burning (*urere*), breaking (*rumpere*) or tearing apart (*frangere*), in case of purely material *res*.

<sup>41</sup> This delict, and its English translation will be examined in detail in section 3 of this chapter.

<sup>42</sup> The corruption of the slave (*corruptio servi*) is extensively discussed in Dig. 11.3. The *actio servi corrupti* was brought up against people purposely (*dolo malo*) enticing enslaved individuals to commit robbery or other offences, to show moral misconduct or luxury, to escape from their masters and so on. This *actio* is also discussed by Bonfiglio (1998). An original interpretation is given by Schiller (1930), while Watson (1996) argues against it. For the *actio servi corrupti* specifically in Justinian's time see Albanese (1959).

<sup>43</sup> This finds confirmation in the fact that they continue to be considered things even when abandoned by the *paterfamilias*, thus becoming *res nullius*. As Watson (1968) 13 specifies the state of *res nullius* was shared by abandoned property, wild animals, unoccupied lands, hidden treasure, precious stones and the property of the enemy when captured in war. Evidently, the common factor is that all of them are un-owned.

<sup>44</sup> Buckland (1908) 10.

*servi* are mentioned too often and in passages that are too crucial for us not to realize that they are the most powerful examples to be used in juridical contexts.

This practice of using enslaved individuals as property *par excellence* is confirmed by numerous passages belonging to Digest 47.2, in which theft is discussed.<sup>45</sup> A few instances will suffice to clarify this concept of the *servus* as the perfect tool to discuss property rights. In Dig. 47.2.54.4, someone who has received something from a third party and is deprived of it by the actual owner is entitled, if he has the intention of retaining the item, to an *actio furti*; notably, the illustration that is offered to this convoluted rule involves an enslaved party.<sup>46</sup>

[Paul, *Edict*, book 39] If you hold something of mine because a third person gave it to you and I take it away, Julian says that you could have the action for theft against me, only if you have an interest in retaining possession of it; **instances would be that you defend the donated slave in noxal proceedings or give him attention when sick, so that you would have a good ground for retaining the slave against one asserting title to him.**

Here, evidently, Paul is merely concerned with property as such, not with *servi* as individuals; yet, once again, he singles them out as examples to clarify the general point.

A further instance of the ‘exemplification’ of *servi* is found in Dig. 47.2.48.5, which brings to the fore one of the issues related to the exercise of ownership on living beings:<sup>47</sup>

[Ulpian, *Sabinus*, book 42] **If a slave woman (*ancilla*) be stolen who is already pregnant or who conceives in the thief’s hands, her (slave) child is also stolen property**, whether born in the thief’s ménage or that of a possessor in good faith. In the latter case, however, the action for theft ceases to lie. If, though, the slave woman conceived while in the household of the possessor in good faith, the situation would be that the (slave) child would not be a stolen thing and could be usucapted. **The same holds good of stolen animals and their issue.**

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<sup>45</sup> See also Dig. 47.2.9, 47.2.14.15 and 47.2.46. Dig. 47.8, which concentrates on a particular kind of theft (that of goods taken by force and on tumult), is also relevant. Similar instances are in fact traced in Dig. 47.8.2.18 and 47.8.4.13.

<sup>46</sup> *Si ex donatione alterius rem meam teneas et eam subripiam, ita demum furti te agere mecum posse Iulianus ait, si intersit tua retinere possessionem, veluti si hominem donatum noxali iudicio defendisti vel aegrum curaveris, ut adversus vindicantem iustam retentionem habiturus sis.*

<sup>47</sup> *Ancilla si subripiatur praegnas vel apud furem concepit, partus furtivus est, sive apud furem edatur sive apud bonae fidei possessorem sed in hoc posteriore casu furti actio cessat. Sed si concepit apud bonae fidei possessorem ibique pepererit, eveniet, ut partus furtivus non sit, verum etiam usucapi possit. Idem et in pecudibus servandum est et in fetu eorum, quod in partu.*

Notably the jurist emphasizes the fact that the same rule applies to both *ancillae* and animals. This approach is not restricted to the books under discussion, as Gaius shows in Dig. 9.2.2.2, on the *lex Aquilia* again:<sup>48</sup>

[Gaius, *Provincial Edict*, book 7] It ... appears that **the statute treats equally our slaves and our four-footed cattle** which are kept in herds, such as sheep, goats, horses, mules and asses.

The equation between *servi* and animals is thus clearly attested in Roman law;<sup>49</sup> yet, coming back to the *ancilla* of Dig. 47.2.48.5, the jurist has chosen to illustrate the actual matter on a human being, i.e. the enslaved, rather than vice versa, thus rendering the enslaved in animalistic terms, and, in consequence, as a chattel if seen from the perspective of the individual's humanity.

These examples demonstrate easily the Roman jurists' preparedness to conceptualize *servi* as the absolute object, i.e. as the best thing 'good to think with'. The explanation of this juridical trend lies in the fact that, as is well known, *servi* were originally classified as *res Mancipi*, i.e. as the most prominent type of property in the early agricultural society of Rome.<sup>50</sup> In addition, they were also the kind of property that, more than any other, regularly held a considerable value for their owners and thus they represented excellent 'property examples'.<sup>51</sup> It is extremely

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<sup>48</sup> *Ut igitur apparet, servis nostris exaequat quadrupedes, quae pecudum numero sunt et gregatim habentur, veluti oves, caprae, boves, equi, muli, asini.*

<sup>49</sup> Such an approach was not exclusive to the realm of law, tracing back to Aristotle's first book of the *Politics*. The concept of the 'animalization of the slave' is brought up, for instance, by Bradley (2012) 59–78, while dealing with the asinine transformation at the core of Apuleius' *Metamorphoses*. Similar ideas appear in writers of domestic management such as Xenophon, Cato and Varro. But the assimilation of slaves and animals also appears in texts which have no ties with farming (an economic area characterized by strong servile presence). This is shown, just to cite one case, in *Ep.* 80.9, where Seneca pairs the undressing of the *servi* in the market and the pulling of a blanket off horses, showing that enslaved and animals were seen as commodities in the same way.

<sup>50</sup> In *Inst.* 2.14a–17, Gaius distinguishes between *res Mancipi* (which could have been transferred through *mancipatio*) and *nec Mancipi*, listing *servi* in the former group, together with land on Italian soil, buildings on Italian soil, draught or burden animals, rustic and predial servitudes. *Res Mancipi* were costly, durable and had their own individuality. These features render their possession more coveted and their juridical safeguard more feasible. For more on the distinction between these types of *res*, see Gallo (1958). For the sake of completeness, it must be specified that the distinction between *res Mancipi* and *nec Mancipi* has a prominent role in classical Roman law but ceases to exist with Justinian.

<sup>51</sup> Scheidel (2005) discusses and links the prices paid for slaves and the cost of servile labour in an admirable attempt to picture the effective value of *servi* at Rome, in Greece and in Egypt. His study is used by Harper (2010) who concentrates on Late Antiquity and also details the reasons for owning *servi*; considering both earnings generated from their labour and the desire of having them for the sake of possession, she references various works, among which Carrié (2005), Rathbone (2005), Andreau & Mancourant (1999) and Kehoe

revealing that, when surrounded by a crowd of enslaved attendants, a free citizen would have been seen as superior, even if he was actually not that wealthy.<sup>52</sup> Since *servi* were in fact status symbols, it is not so extraordinary to find them ‘used’ in the fashion we are dealing with in the legal writings. There is, nonetheless, a strikingly vast abundance of instances in the Digest, where the jurists conceive them as means to think with, thus reducing them in a double fashion to the role of object and, more critically still a mere thing – *res*. This means that *servi* are both depicted as property, according to the law, and are *also* employed as conceptual *tools* for juridical purposes, as if to perfect their enslavement.

There are, on the other hand, further paragraphs in the Digest where delinquent *servi* feature as examples, apparently breaking away from the passive mould. Yet, in such cases, even though *servi* are the perpetrators and thus the drivers of the criminal action, the jurist is not concerned with their agency, but rather with the important legal principles to be illustrated through them. For this reason, I contend that these cases too are to be assimilated into the category of passive conceptualization just defined. For instance, just after Dig. 48.19.1 *pr.*, where reversals of status in ‘crime and punishment’ scenarios are introduced, the first possibility explored as an example is that of the enslaved being manumitted (48.19.1.1–2):<sup>53</sup>

Ulpian, *Disputations*, book 8: Whenever an investigation is made into an offence, it is accepted that [the accused] should suffer, not the punishment which his status allows at the time when sentence is passed on him but that which he would have undergone if he had been sentenced at the time he committed the offence. 1. Similarly, **if a slave has committed an offence and is said subsequently to have attained his freedom, he ought to undergo that punishment which he would have undergone if he had been sentenced when he committed the offence.**

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(1997) provide an insight in the ‘economic rationality’ of landowners in antiquity. Crawford (2010) and Salway (2010) also dealt with slave prices, the latter mainly in relation to Diocletian’s edict on maximum prices.

<sup>52</sup> See Hopkins (1978) 112, who also claims that slavery as a form of wealth display had a long-lasting persistence, this being the custom even after servile labour was no longer the major means to produce wealth. Moreover, as Johnston (1999) 54 states, the greater formality and publicity were observed where land, *servi* and cattle were acquired.

<sup>53</sup> *Quotiens de delicto quaeritur, placuit non eam poenam subire quem debere, quam condicio eius admittit eo tempore, quo sententia de eo fertur, sed eam, quam sustineret, si eo tempore esset sententiam passus, cum deliquisset.* 1. *Proinde si servus crimen commiserit, deinde libertatem consecutus dicetur, eam poenam sustinere debet, quam sustineret, si tunc sententiam passus fuisset, cum deliquisset.* 2. *Per contrarium quoque si in deteriores condicionem fuerit redactus, eam poenam subire eum oportebit, quam sustineret, si in condicione priore durasset.*

2. On the other hand, too, if someone has been reduced to a meaner status, he ought to suffer that punishment which he would have undergone had he remained in his former status.

It is significant that, before discussing the reduction of the *ingenui* to a lesser status, the manumitted *servus* is mentioned to point out that wrongdoers should suffer the punishment which would have been suitable to them at the moment of the misdeeds, even if, when actually being sentenced, their status had experienced a significant change. It might be argued that the prominence of the manumitted *servus* relates to the more frequent possibility of manumission if compared to the lessening of a free person's status. Yet, considering the freeborn Romans' point of view as dominant in the Digest, the latter situation would have been a greater concern to the jurists. The fact that the enslaved is listed first confirms their conceptualization as a privileged example.

More passages allow us to uphold and elaborate this perspective. The fundamental distinction between manifest and non-manifest theft is touched upon at the beginning of the title on theft, in Dig. 47.2.2, and expounded by Ulpian at 47.2.3: to be a manifest thief one must be caught either red-handed or with the stolen goods. In a theft, though, adds Paul at Dig. 47.2.6, there can be several interferences, which is why, when applying the label of manifest or non-manifest thief, one needs to refer to the time of the theft (*initium*). No wonder that the enslaved appears to dispel any doubt on the issue regarding what is meant by *initium* (Dig. 47.2.7 *pr.*):<sup>54</sup>

Ulpian, *Sabinus, book 41*: **Suppose a man to have perpetrated a theft while he was a slave but to have been apprehended after he had been manumitted**; let us consider whether he be a manifest thief. Pomponius, in his ninth book from Sabinus, says no, because the origin of the theft, when he was in servitude, was not manifest.

Even if, indisputably, the enslaved is not the centre of the discussion, he is still there to clarify the general rule expressed previously.

Lastly, that liability follows the wrongdoer (*noxia caput sequitur*) is one of the milestones of Roman criminal law and it is therefore stated in the same paradigmatic first title of the Digest

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<sup>54</sup> *Si quis in servitute furtum fecerit et manumissus deprehendatur, an fur manifestus sit, videamus. Et ait Pomponius libro nono decimo ex Sabino non posse eum manifesti conveniri, quia origo furti in servitute facti non fuit manifesti.*

on private delicts mentioned above (47.1.2).<sup>55</sup> It is nevertheless compelling that, when the idea of *noxam caput sequitur* is considered again, the example used to explain this general precept involves a *servus* (Dig. 47.2.18):<sup>56</sup>

Paul, *Sabinus*, book 9: When it is said that liability follows the wrongdoer, this is true in the sense that redress which became available when the deed was done follows the person of the miscreant. And so the Cassians think that **if your slave perpetrates a theft from me and, having become his owner, I sell him, I will not be able to proceed against his purchaser.**

In these last lines, the *servus*-thief is taking up again an active role. The servile thieving, though, is not the focus of the discussion, which is aimed at simplifying the legal principle already mentioned and the liability of the master: thus, again, the *servus* appears as a mere tool.<sup>57</sup>

The few cases here gathered belong to a much more substantial group of Digest passages which reveal that the enslaved played, in the collective Roman juridical imagination, a role so great that no other example could have clarified the law in the same effective fashion. It is also remarkable that this conceptual exploitation implied both passive and active roles on the enslaved's part, as demonstrated. Yet, in the cases under scrutiny, when *servi* play active roles, the ultimate purpose of their presence is to be instruments in the jurist's mind, i.e. pure and simple examples to explicate legal provisions.

## 2. The slave as object

After the 'conceptual' passivity that has been just discussed, actual passivity in the eye of the law remains to be explored. The enslaved as the object (i.e. the receiving party) of delicts and

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<sup>55</sup> *Servi* and sons-in-power had no legal standing. Nevertheless, they could not have got away with any delicts and crimes they had committed. As will be seen in Chapter 2, despite not being the material executors of the misdeeds, masters and fathers were liable for the delicts committed by those under their *potestas*. The principle of *noxam caput sequitur* is developed because changes may have occurred regarding the ownership of a *servus* or a son-in-power. When this change happened after the wrong was committed, the liability concerning the master/father at the moment of the wrongdoing was transferred to the new owner/father. For a broader overview on liability see Johnston (1995).

<sup>56</sup> *Quod dicitur noxam caput sequi, tunc verum est, ut quae initio adversus aliquem nata est caput nocentis sequatur ideoque si servus tuus furtum mihi fecerit et dominus eius effectus eum vendidero, non posse me agere cum emptore Cassiani putant.*

<sup>57</sup> Something similar happens in Dig. 47.2.57.5, where two *servi* actively engaging in theft are conceptual tools to clarify the legal rights of a free person in such a case. An analogous pattern concerns Dig. 47.2.65 (64).

crimes corresponds to the traditional image we have of the human chattels before the law, as noted at the outset. Evidently, dealing with *servi* as objects means again to engage with their conceptualization as property by their masters. As Joshel pointed out more broadly, the role of law was that of setting the boundaries in which the various actions could take place, as well as the roles one could have by rights and privileges; as will increasingly be stressed in this thesis, this had been done, evidently, “from the perspective of the jurists who owned property, including slaves”.<sup>58</sup>

As mentioned before, legally speaking, enslaved individuals were no more than objects and we find a lapidary definition of them as such in Gaius’ *Inst.* 2.13, where they are included in the category of corporeal things (*corporales res*).<sup>59</sup> Accordingly, being a *res*, as any other kind of property, the enslaved could undergo the process of, inter alia, sale (as well as those of lending, mortgaging, etc.), and be stolen too, as illustrated at Dig. 47.2.75:<sup>60</sup>

Javolenus, *Letters, book 4*: **I bought a stolen slave-woman in good faith for two gold pieces, and when she was in my possession, Attius stole her from me. Now both the owner and I are suing Attius for theft. I ask what should be the basis of computation for each of us? The reply is: for the purchaser, double his interest; for the owner, double the woman’s value.** We should feel no concern that a penalty for theft is to be awarded to two people; for where reparation is made in respect of one and the same thing, the purchaser’s justification for an award is his possession of the thing, the owner’s, his very title to it.

The reification of the enslaved, reduced to their mere value, is dominant here.<sup>61</sup> Such insight is not confined to the set of books pertaining to the present analysis, it also

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<sup>58</sup> Joshel (2010) 14.

<sup>59</sup> “Corporeal things are those that can be touched, such as ... the slave” (*corporales [res] hae sunt quae tangi possunt velut ... homo*). The idea of the *servus* as an owned item is also confirmed by the indirect evidence that in early Roman society slave names were compounds consisting of the owner’s *praenomen* and *-por*, which has been understood as standing for *puer* (e.g. Marcipor, the slave of Marcus). See also the argument advanced by Cheesman (2009).

<sup>60</sup> *Furtivam ancillam bona fide duorum aureorum emptam cum possiderem, subripuit mihi Attius, cum quo et ego et dominus furti agimus. Quaero, quanta aestimatio pro utroque fieri debet. Respondit: emptori duplo, quanti eius interest, aestimari debet, domino autem duplo, quanti ea mulier fuerit. Nec nos movere debet, quod duobus poena furti praestabitur, quippe, cum eiusdem rei nomine praestetur, emptori eius possessionis, domino ipsius proprietatis causa praestanda est.* A similar situation, albeit legally more complex and detailed, can be found in Dig. 47.2.46.1–6. See also Dig. 47.2.14.5–7.

<sup>61</sup> So far, the discussion of the gender of the enslaved has been avoided. We can infer that most of the law applies to both sexes, as shown here and as explicitly stated by Julian at Dig. 32.62. Considering other passages (e.g. Dig. 47.2.39, 47.10.25 and the already mentioned 47.2.48.5), however, it appears that the

surfaces, for instance, where legacies are discussed (Dig. 32.1.65). Not surprisingly, there, *servi* are given overriding consideration (in terms of lines as well as being the first type of property to be dealt with), followed by herd animals.

Yet, beyond the comparison of *servi* with animals, a parallel between the condition of the enslaved and that of the son-in-power can also be drawn, despite the significant differences between the two categories.<sup>62</sup> The pairing of *servi* and *fili* at Dig. 9.2.33 *pr.* serves a particularly strong purpose to our discussion, although not from the books of our immediate interest here. The passage is therefore given in full:<sup>63</sup>

Paul, *Plautius*, book 2: **If you kill my slave**, I think that **personal feelings should not be taken into account** (as where someone kills your natural son whom you would be prepared to buy for a great price) but only what he would be worth to the world at large. Sextus Pedius says that **the prices of things are to be taken generally and not according to personal affections** nor their special utility to particular individuals; and accordingly, he says that he who has a natural son is none the richer because he would redeem him for a great price if someone else possessed him, nor does he who possesses someone else's son actually have as much as he could sell him for to his father. For under the *lex Aquilia*, we sue for the amount of the harm suffered, and we are said to have lost either whatever we could have gained or what we are obliged to pay out.

A double set of observations can be made regarding Paul's pronouncement: the enslaved is again equated to their value, continuing to be confined in the *res*-category, yet it is underlined

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jurists are more prone to mention female enslaved individuals in contexts pertaining to reproduction and sexual exploitation. Therefore, in order to make sense of the presence of an enslaved woman here, we might think that the passage reflects a real case. On *ancillae* and the law, see Treggiari (1979a).

<sup>62</sup> The paramount difference is that the son-in-power was regarded as a person before the law, as Kirschenbaum (1987) reminds us, describing the impossibility to own property for both the *filius* and the *servus*. There is also a profound discrepancy in the kind of authority exercised over them by the *paterfamilias*. In explaining it, Saller (1994) quotes Cicero, *Rep.* 3.37, according to whom, while a father governs his children who comply out of readiness to obey (*propter oboediendi facilitatem*), when it comes to *servi*, a master needs to coerce and break (*coercet et frangit*).

<sup>63</sup> *Si servum meum occidisti, non affectiones aestimandas esse puto, veluti si filium tuum naturalem quis occiderit quem tu magno emptum velles, sed quanti omnibus valeret. Sextus quoque Pedius ait pretia rerum non ex affectione nec utilitate singulorum, sed communiter fungi itaque eum, qui filium naturalem possidet, non eo locupletiore esse, quod eum plurimo, si alius possideret, redempturus fuit, nec illum, qui filium alienum possideat, tantum habere, quanti eum patri vendere posset. In lege enim Aquilia damnum consequimur et amisisse dicemur, quod aut consequi potuimus aut erogare cogimus.*

that this value cannot be subject to changes due to affection.<sup>64</sup> We will return to the second aspect later on, when discussing the idea of the enslaved as victim.

Let us, then, for now stay with the idea of the *servus* as *res* which obviously emerges from this passage. The sentimental matter is given consideration mainly to point out that a materialistic point of view must be adopted at any rate, because *servi* do not generate an affection that is capable of economic appreciation.

The pronouncement above (along with many others where the enslaved is portrayed in this exact same way as a commodity) belongs to Dig. 9.2, which deals entirely with the already mentioned *lex Aquilia* on wrongful damage to property. In view of the recurring presence of the enslaved in this context, it is predictable that, being conceived as a thing, the majority of the offences a *servus* can be subjected to in Dig. 47–49 would be related to property. Indeed, it is notable that the greatest number of them belong to the category of theft, while the possibilities of physical injury and assault, whether corporal or verbal, are also contemplated. In this latter group, *iniuria*, to which Digest 47.10 is devoted in its entirety, must be kept in mind as crucial to our analysis and will benefit a further and longer comment in the next section.<sup>65</sup> At any rate, all the above-mentioned delicts are framed by the broader idea of damages done to or interference with the master's property and proprietary rights. This is most evident when female slaves are subjected to adultery or *stuprum* (as in Dig. 48.5.6 *pr* and 47.10.25): the perpetrator of these offences towards them is not seen as committing such crimes, but rather as breaching the *lex Aquilia*, committing *iniuria* or corrupting the enslaved.<sup>66</sup>

Among the other crimes and delicts which a slave can be subjected to, and which do not gravitate towards the sphere of theft and physical/verbal outrage, kidnapping (*plagium*) must be seen first, with Callistratus' pronouncement at Dig. 48.15.6.2:<sup>67</sup>

[Callistratus, *Judicial Examinations*, book 6] **It is laid down by the *lex Fabia* that** a freeman who hides another, freeborn or freed, against his will, or keeps him in fetters or buys him,

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<sup>64</sup> For sentimental attitudes towards slaves in juridical texts, see Treggiari (1979b) 74–7.

<sup>65</sup> For *iniuria* and *servi* in general, see Dig. 47.10.1.3, 47.10.9.4, 47.10.13 *pr.*, 47.10.15.34–35, 47.10.15.42–49, 47.10.26. Some of these passages will be deeply explored in Section 3.

<sup>66</sup> As one can read at Dig. 48.5.6 *pr*. See also McGinn (1998) 196 on this.

<sup>67</sup> *Lege Fabia cavetur, ut liber, qui hominem ingenuum vel libertinum invitum celaverit invinctum habuerit emerit sciens dolo malo quive in earum qua re socius erit, quique servo alieno servaere persuaserit, ut a domino dominave fugiat, vel eum eamve invito vel insciente domino dominave celaverit, invinctum habuerit emerit sciens dolo malo quive in ea re socius erit, eius poena teneatur.*

knowingly and with malicious intent, or who is an accomplice in any of these things, and **anyone who persuades another's slave, male or female, to run away from his master or mistress, or conceals him or her against the will or without the knowledge of the master or mistress, or keeps him in fetters, or buys him, knowingly and with malicious intent, or who is an accomplice in the matter, is liable to the penalty** [of the statute].

The circumstances of the kidnapping of a slave are painstakingly described, necessitated by the fact that a few lines above the jurists had defined a series of circumstances in which the label of kidnapping could not have been straightforwardly applied.<sup>68</sup> The ambiguous nature of the *servus* rendered the *actio furti* or the *actio servi corrupti* a preferable option in specific instances. In the figure of the kidnapped slave, then, the safeguard of human freedom (which prompted the transition of *plagium* from a civil wrong to a criminal offence) and that of proprietary rights (which were central to the earlier conception of *plagium*), appear to be blending.<sup>69</sup>

Only three more examples of servile passivity can be enumerated, all falling squarely within the domain of the *lex Cornelia* of 81 BCE on murderers and poisoners, discussed in Dig. 48.8. It must be stated that, according to this law, prosecution for murder was guaranteed independently from the legal status of the victim and of the perpetrator: indeed, at Dig. 48.8.1 *pr.*, Marcian states that the law targets *qui hominem occiderit*. There is scholarly agreement in considering *homo* as encompassing both the free and the enslaved in this particular case,<sup>70</sup> but the fact that the latter is not explicitly singled out shows that this inclusion was somewhat incidental. The goal of the *lex Cornelia*, in fact, was the *utilitas publica*, i.e. preventing the violation of the security of the public order – and thus Sulla originally included slaves not with regard to their human life, but rather considering the broader implications of their murder for the community.<sup>71</sup> We have previously seen, however, that the killing of the enslaved was grouped within the provisions of the *lex Aquilia*. Inconsistencies are not uncommon in the

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<sup>68</sup> Dig. 48.15.2, 48.15.3 *pr.*, 48.15.6 *pr.*, 48.15.6.1.

<sup>69</sup> On the evolution of *plagium* and on this offence in general see Lardone (1932).

<sup>70</sup> This is also confirmed by Dig. 48.8.2.

<sup>71</sup> See Cloud (1969), whose stance is still relevant as shown by Amielańczyk (2020), an article which contains further bibliography on the matter.

Digest,<sup>72</sup> but Gaius offers a helpful insight to solve this contradiction. The jurist claims that, in case of a slave being killed, two possibilities were viable for the owner (*Inst.* 3.213):<sup>73</sup>

the person whose slave was killed has the free choice either of **prosecuting the perpetrator for a capital crime, or of bringing an action for damage** under this law [i.e. the Aquilian action].

This pronouncement comes as no surprise, given the ‘hybrid’ nature of the enslaved we have made reference to already countless times. It looks as if *servi* could have been regarded either as commodities or as human beings at their master’s discretion when a serious crime like murder was in question.

Slaves are explicitly mentioned with respect to castration and throwing to the beasts which, as already specified, were grouped under the macroarea of the *lex Cornelia*. The two crimes are the object of two bans which are usually seen as an attempt to limit the slave-owners’ authority over their human chattel. The prohibition of the former crime is found in Dig. 48.8.6:<sup>74</sup>

Venuleius Saturninus, *Duties of Proconsul, book 1*: It is provided by a *senatus consultum* given in the consulship of Neratius Priscus and Annius Verus that **whoever hands his slave over for castration is fined half his property.**

The need of constraining this practice is also expressed by Ulpian at Dig. 48.8.4.2, with regard to both the free and the enslaved individual (*liberum servumve*), but this was a crime whose legal manifestations mostly concerned *servi*.<sup>75</sup> The humanitarian concern which is not patently

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<sup>72</sup> As Humfress (2005) 163 summarized, the Digest compilers “found the law in whatever imperial legislative texts they could, regardless of their original scope of application or circumstances of promulgation”. The material they gathered is then heterogeneous, but it also comes from different times and areas of the empire. Moreover, it was snipped and reassembled, frequently out of context and with interpolations too. One must also bear in mind that the ambitious reorganization of Roman law to which the Digest belongs was implemented in some five years. For a more in-depth discussion of the composition of the Digest, see Honoré (1978).

<sup>73</sup> *Cuius autem servus occisus est, is liberum arbitrium habet uel capitali crimine reum facere eum, qui occiderit, uel hac lege damnum persequi.*

<sup>74</sup> *Is, qui servum castrandum tradiderit, pro parte dimidia bonorum multatur ex senatus consulto, quod Neratio Prisco et Annio Vero consulibus factum est.*

<sup>75</sup> Robinson (1995) 51. Apparently, the castration of *servi* for commercial purposes was so widespread and frequent that Domitian had already fixed a low maximum price for *spadones*, as testified by Suetonius in his life of the emperor. In a forthcoming article, J. P. Lewis delves into the purpose and effectiveness of Domitian’s ban.

expressed here is also lacking in Modestinus' words when delineating the prohibition of throwing slaves to the beasts (Dig. 48.8.11.1–2):<sup>76</sup>

[Modestinus, *Rules, book 6*] 1. If a **slave be thrown to the beasts** without [having been before] a judge, not only he who sold him but also he who bought him shall be liable to punishment. 2. Following the *lex Petronia* and the *senatus consulta* relating to it, masters have lost the power of handing over at their own discretion their slaves to fight with the beasts; but after the slave has been produced before a judge, if his master's complaint is just, he shall in this case be handed over to punishment.

We will have the chance to come back to this specific ban in Chapters 5 and 6, but for present purposes we must concentrate on the absence of any kind of grounds for its introduction. In this, the juridical approach to castration and *ad bestias datio* will be seen as contrasting with the legal provisions at the core of the next section. There, the patent expression of justifications and concerns regarding *servi* will mark a turning point in their conceptualization by the jurists.

### 3. The slave as victim

So far, we have explored the juridical image of the enslaved as a thing. At the same time, one cannot contradict Bradley when he notes that “if legal regulation of slaves as a form of property was both desirable and necessary, in practical circumstances, real life if you will, it was impossible to deny the humanity of the slave”.<sup>77</sup> As a result, he continues, slaves could not be regulated in the same way as any other type of property, leading, at times, to rather “contorted” legal pronouncements.

That Roman law is concerned with the material dimension of slaves and simultaneously with their humanity is shown patently by the passage at the core of the present section. When taking into account the slave's own individuality and ability to feel physical pain, the law clearly encapsulates the hybrid character of the enslaved in all its complexity.

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<sup>76</sup> 1. *Servo sine iudice ad bestias dato non solum qui vendidit poena, verum et qui comparavit tenebitur.* 2. *Post legem Petroniam et senatus consulta ad eam legem pertinentia dominis potestas ablata est ad bestias depugnandas suo arbitrio servos tradere, oblato tamen iudici servo, si iusta sit domini querella, sic poenae tradetur.*

<sup>77</sup> Bradley (1988) 485.

Since the present chapter seeks to flesh out the legal image of the *servus* when subjected to crimes and delicts, title 10 of Digest 47 must receive separate and closer scrutiny. There, as will be shown, the *servus* seems in fact to resemble a human being more than a commodity. In order to better underline this characterization, I will distinguish between objects (i.e. the term which I used so far) and victims of delicts and crimes, with the latter implying a more sympathetic view of the enslaved when suffering misdeeds. This distinction will thus represent the factual one between *res* and human being.

That being clarified, let us now concentrate on Digest 47.10, regarding contumelies and defamatory writings. These offences both belong to the sphere of *iniuria*, which, as specified by Ulpian's introductory remarks (47.10.1 *pr.*), broadly entails what is not done rightly. Therefore, the term can be used as a synonym for damage (and the example brought up is that of the *lex Aquilia*) or unfairness (in the delivering of a judgement, for instance).<sup>78</sup> Nonetheless, the proper meaning of the word, states Ulpian, is 'contumely' (*contumelia*), a concept encompassing the acts of despising or deriding, including both physically and verbally.<sup>79</sup> This Digest title thus basically comprises defamation and corporal assault.

Perhaps the most effective definition of contumely is given by Birks, who describes it as the "contemptuous harassment of another, calculated to cause distress in the nature of anger and humiliation (the desire for revenge, joined with grief) but violating, not an interest in emotional calm, but the victim's right to his or her proper share of respect".<sup>80</sup> On this basis, the content of title 10 will be scrutinized in further detail. One of the primary assumptions regarding *iniuria* occurs at Dig. 47.10.1.3:<sup>81</sup>

[Ulpian, *Edict*, book 56] Again, **a contumely can be effected against someone personally or through others**: personally, when a head of household or matron is directly affronted; **through**

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<sup>78</sup> On the ties between *iniuria* and the *lex Aquilia*, as well as their complementarity and overlapping see Cursi (2012) 274–279.

<sup>79</sup> Birks (1997) 8 highlights the resemblance between *contumelia* and *hybris* (already pointed out in *Inst. Iust.* 4.4 *pr.*), as in them "the attitude of mind of one who harasses another and the acts which derive from that mental attitude" are correlated. Speaking of the translation of the Roman term, he also adds that 'contempt' would be a more fitting word than 'contumely', which is used in the Pennsylvania translation of the Digest.

<sup>80</sup> Birks (1997) 11.

<sup>81</sup> *Item aut per semet ipsum alicui fit iniuria aut per alias personas. Per semet, cum directo ipsi cui patri familias vel matri familias fit iniuria, per alias, cum per consequentias fit, cum fit liberis meis vel servis meis vel uxori nuruive; spectat enim ad nos iniuria, quae in his fit, qui vel potestati nostrae vel affectui subiecti sint.*

**others**, when it happens by consequence, **as when the affront is to one's children or slave**, one's wife or daughter-in-law; for a contumely affects us which is suffered by those who are **subject to our power** or are the **objects of our affection**.

No significant difference can be found between Ulpian's statement and what was previously examined when dwelling on the *servus* as an object. Here, however, the idea of the enslaved as an extension of the master is perhaps more self-evident: the slave's body and dignity are not affected *per se*, but reflect on the master.<sup>82</sup> *Iniuria*, in fact, was an offence against the masters' honour, and the masters' honour was enhanced by the subjection of *servi*, as Patterson underlined more broadly.<sup>83</sup> The parallelism with property-related offences considered in the previous sections is undeniable, but this concept can be better understood looking at Dig. 47.10.15.45:<sup>84</sup>

[Ulpian, *Edict*, book 77] **An affront to a slave sometimes affects the master also, sometimes not; for if the slave is posing as a freeman or if the person who beats him thinks that he belongs to someone else and would not have done it if he knew that the slave was mine**, Mela writes that **the striker cannot be sued** as having affronted me.

Leaving the 'active' element of the enslaved posing as a free person aside for the moment, it appears that there is ground for an *actio iniuriarum* only if the perpetrator manifests the unmistakable intention to insult the master by means of his *servus*.<sup>85</sup> This is not the only

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<sup>82</sup> A point made even clearer by Paul at Dig. 47.10.18.1, where, if a slave perpetrates an affront towards another slave, the proceedings should be as if the master had been the victim of the affront.

<sup>83</sup> Patterson (1982) 79. As enslaved individuals had no belongings, they also lacked honour. This, in fact, as summarized by Garnsey (1970) 279 derived from a mixture of power and wealth, along with style of life. The link between the honour/self-representation of the owner and the behaviour of enslaved is most explicitly stated, with regard to mistresses, by Jer. *Ep* 79.9 where they are judged also considering the habits of their servile attendants. A further indication of the fact that slaves enhanced one's status can be found, in a juridical context, at Dig. 26.7.13 pr. in which the number of *servi* in attendance of a *pupillus* must be commensurated with the dignity and wealth of the *pupillus* himself. We can thus rephrase the statement "the slave was not a slave because he was the object of property, but because he could not be the subject of property" found in Patterson (1982) 28, adding honour to give a more rounded definition. It is interesting how *servi* would have increased, for their masters, something they could not have owned themselves.

<sup>84</sup> *Interdum iniuria servo facta ad dominum redundat, interdum non; nam si pro libero se gerentem aut cum eum alterius potius quam meum existimat quis, non caesurus eum, si meum scisset, non posse eum, quasi mihi iniuriam fecerit, sic conveniri Mela scribit.*

<sup>85</sup> As pointed out by Descheemaeker & Scott (2013) 13 "*dignitas* is assailed, not when certain outcomes are made out, but precisely by the defendant's mind-attitude of disregarding the other party's status when it stands in their way". A further specification is added in Dig. 47.10.26, where again the enslaved and the son-in-power are paired, this time in the situations of being insulted, taken to a cook-shop or to play dice. These actions are seen as examples of mockery, even with the enslaved's consent and although being the result of

peculiarity of this delict which brings *servi* to play in rather curious roles. At Dig. 47.10.15.39, for instance, the magistrate who whips the enslaved can be liable to the *actio iniuriarum*, if the master claims he is doing it against good morals (*adversus bonos mores*),<sup>86</sup> while in Dig. 47.10.15.42, the same *actio* is granted against anyone who tortures a *servus* according to the master's instructions but exceeding the limits.

The last two provisions mentioned feature the master intervening in the act of judging the punishment and torment exerted on his human chattel by a third party, and re-establishing his power over them when stepping in. However, the enslaved does not merely function as a proxy of the owners, and insults perpetrated towards them are not condemned solely because they constitute an invasion of the master's proprietary rights. *Servi* could have been themselves the target of affront, which should not have gone unpunished. This possibility is juridically recognized, demonstrating that, in some circumstances, the law conceived the *servus* as the recipient of this offence in every sense – thus significantly shifting the outlook on the nature of *servi*.<sup>87</sup> More than a commodity (i.e. an object), the enslaved will be proved to be conceptualized as a victim, which implicates the expression of a degree of sympathy by the jurist.

This transition from object to victim is most evident in Dig. 47.10.15.35, where Ulpian maintains that one cannot get away with physically offending a *servus* for the sake of insulting himself and not the master:<sup>88</sup>

[Ulpian, *Edict*, book 77] If someone so inflict an outrage upon a slave that it be done to his master, in my view the master can bring the action for insult in his own right; but if the beating was not directed to the master, **the outrage perpetrated upon the slave as such should not**

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a bad advice (*malum consilium*) given without thinking about the master. The kind of mockery considered entails no *iniuria* but rather *servi corruptio*. The moral implications of the act of persuading (*persuadere*) the enslaved became of increasing importance in the *actio iniuriarum*, as stated by Albanese (1959) 145.

<sup>86</sup> *Adversus bonos mores* is defined by Paul at Dig. 47.10.15.38 as something which is not inflicted with the intention to correct or amend (*corrigendi* or *emendandi animo*).

<sup>87</sup> Obviously, even though the action was brought on the enslaved's account, the owner was still the plaintiff, due to the lack of legal standing on the part of the *servus*. Note however also a similar complexity in Athenian law, discussed in Canevaro (2018).

<sup>88</sup> *Si quis sic fecit iniuriam servo, ut domino faceret, video dominum iniuriarum agere posse suo nomine. Si vero non ad suggillationem domini id fecit, ipsi servo facta iniuria inulta a praetore relinqui non debuit, maxime si verberibus vel quaestione fieret: hanc enim et servum sentire palam est.*

**be left unavenged by the praetor, especially if it occurs through a thrashing or through torture: for it is obvious that even a slave feels such things.**<sup>89</sup>

One should make sense of the last statement,<sup>90</sup> as it is distinctly underlined through its very inclusion.<sup>91</sup> An analogous, puzzling insertion has already been noted when dealing with Dig. 9.2.33 *pr.* in Section 2. There, feelings were brought up as well, with the indirect parallel between the enslaved and son-in-power being made on the basis of affection. The *servus* was still passive, as the object of this fondness, but it surprises us that it is worth pointing out personal feelings towards an enslaved individual in a legal context. This brings us to a wider characteristic of the Digest: a superficial view of the work might generate the expectation of reading, in this collection, a legal response for every real-life situation; actually, though, the only aspect that counts is the concern of the lawmakers. According to this, and this only, criterion the legal provisions were selected and discussed.<sup>92</sup> As a consequence, every situation collected in the Digest is there either because it constituted a social problem which actually presented itself or because it was anyway reckoned as sufficiently relevant for legal treatment. Therefore, the enslaved as an object of affection must have been a real issue – a recognition that is deeply revealing of the perception of the *servus* before the law. This surprising reference, as a proof of the fact that even the ‘traditional’ servile conceptualization as passive carries several shades, is plainly pushed further when considering the passage which is presently being unfolded. Here, feelings are mentioned again, but in the sense of the physical experience of pain.

Thus, as anticipated at the end of Section 2, consideration (and apprehension) for the enslaved’s pain was not expressed in Dig. 48.8.6 and 48.8.11.1–2, dealing with the harsher offences of castration and throwing to the beasts respectively. The fact that in this pronouncement, instead, the involvement of the enslaved’s experience of pain is patently declared must mean something, especially when considering the cold, hard fact summarised by Patterson that “with

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<sup>89</sup> The Pennsylvania translation of the Digest has “the slave himself feels such things”.

<sup>90</sup> The sentence to which it belongs was deemed to be interpolated by Perozzi (1906) 209 n. 4. However, more modern studies, such as Ziliotto (2020) and the works cited there, do not consider it an interpolation.

<sup>91</sup> As Roby (1884) xii reminds us, explaining the composition of the Code, Justinian’s commission had the task of collecting, but also of editing the previous legal material, thus also omitting any superfluous matter which had no tie with the real purport of the constitution.

<sup>92</sup> Watson (1987). After specifying that the aim of the Digest is not to reflect the concern of the society as a whole, he adds that, despite this, the legal treatment also contains important traces of public concern.

slaves, politeness is not necessary”.<sup>93</sup> No one would have obliged the jurist to express such a concern, yet it is there. Though this passage is not enough by itself to contradict Patterson’s statement according to which no slaveholding society has ever taken into account the honour or dignity of a slave in law or practice, a significant deviation in the way juridical thinking portrays *servi* is traceable.<sup>94</sup> Insisting on the implication of feelings and physical pain for the enslaved (as in Dig. 47.10.15.35) was not indispensable at all, indeed, if the aim of the law was that of merely safeguarding the owner’s property (i.e. an enslaved purely perceived as an object).

It is relevant to adduce here, as a point of comparison, a rescript quoted by Ulpian at Dig. 1.6.2 that establishes the need for *servi* to be granted a generic form of help when exposed to “cruelty, starvation, and intolerable wrongdoing”. The legal pronouncement is given below in full to pinpoint the difference between this kind of provision and the one under scrutiny:<sup>95</sup>

Ulpian, *Duties of Proconsul*, book 8: If a master savages his slave or forces him into committing some indecency and foul malpractice, the functions of the governor are declared in the rescript addressed by the deified Pius to Aelius Marcianus, proconsul of Baetica. Here are the terms of the rescript: “The power of masters over their slaves certainly ought not to be infringed and there must be no derogation from any man’s legal rights. **But it is in the interest of masters that those who make just complaint be not denied relief against brutality or starvation or intolerable wrongdoing.** Therefore, judicially examine those who have fled the household of Julius Sabinus to take refuge at the statue and if you find it proven that they have been treated more harshly than is fair or have been subjected to infamous wrongdoing, then issue an order for their sale subject to the condition that they shall not come back under the power of their present master. And if he should practice fraudulent evasion of my determination [on this point], let him understand that I shall bring more severe retribution on the deed”. The deified Hadrian

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<sup>93</sup> Patterson (1982) 22.

<sup>94</sup> Patterson (1982) 193.

<sup>95</sup> *Si dominus in servos saevierit vel ad impudicitiam turpemque violationem compellat, quae sint partes praesidis, ex rescripto divi Pii ad Aelium Marcianum proconsulem Baeticae manifestabitur. Cuius rescripti verba haec sunt: “Dominorum quidem potestatem in suos servos illibatam esse oportet nec cuiquam hominum ius suum detrahi, sed dominorum interest ne auxilium contra saevitiam vel famem vel intolerabilem iniuriam denegetur his qui iuste deprecantur. Ideoque cognosce de querellis eorum, qui ex familia Iulii Sabini ad statuam confugerunt, et si vel durius habitos quam aequum est vel infami iniuria affectos cognoveris, venire iube ita, ut in potestate domini non revertantur. Qui si meae constitutioni fraudem fecerit, sciet me admissum severius executurum”. Divus etiam Hadrianus Umbricium quandam matronam in quinquennium relegavit, quod ex levissimis causis ancillas atrocissime tractasset.*

also once ordered the relegation of one Umbricia, a lady of family, for the five-year census period on the ground that she had for the most trifling reasons subjected her serving women to appalling treatment.

The rescript clearly subordinates the enslaved's pain to the interest of the master.<sup>96</sup> Particularly violent and offensive behaviours, in fact, could have shaken the public order, which rested on a servile production system. It will be seen more fully in Chapter 6 that other key non-legal writings focused on slave labour, i.e. the relevant treatises of Cato, Varro and Columella, advocate benevolence towards *servi*, too, suggesting similarly that they have feelings and reactions to be borne in mind. However, awareness of these aspects and the resulting paternalistic attitude are clearly being recommended in these texts because they will allow the slaveholders to wholly exploit their servile manpower in the fields.<sup>97</sup> So, once again, the welfare of the enslaved is safeguarded not in a disinterested way, but rather to procure benefits for their masters. As a proof that a different kind of sensibility is showcased in Dig. 47.10.15.35, it must be stressed that the necessity to punish the person who physically insulted the enslaved is not drawn upon because it is profitable for the owner (or at least this is not explicitly mentioned) – but precisely because the enslaved *feels* such gratuitous violence. Thus, Ulpian's words seem to be pronounced on the part of the *servus*.

Whatever the complexities of the issue under discussion, it has thus far been demonstrated how problematic it is to understand the *servus* as a bare object in this section of the Digest, at least when it comes to corporal abuse. But the delict of *iniuria*, as expressed above, can also be perpetrated in the absence of a corporal offence: the enslaved could have been the recipient of verbal insults too. In this case, there were rather limited possibilities to bring an *actio*

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<sup>96</sup> This is an example of seemingly humanitarian provisions that were “dictated by concern for morality and the security of the free population rather than for the slaves”, to use the words of Treggiari (1996) 886. Among these, she also lists Claudius' rescript which prescribed the concession of freedom when a sick *servus* was abandoned (Dig. 40.8.2).

<sup>97</sup> Still stressing on the pair slave-animal, see Columella, *Rust.* 5. 5–6 where the societal bond of ducks is said to be taken into account: duck should not watch their relations die, as this could cause a kind of pain which might result in their death in an inopportune moment for the seller. On the other hand, as Foss (2012) 109 points out, “whenever cruelty suited financial gain, expediency, or even culinary preference, cruelty was recommended”.

*iniuriarum* in respect of a slave, as spelled out by Ulpian at Dig. 47.10.15.44, but this should not mislead us:<sup>98</sup>

[Ulpian, *Edict*, book 77] Thus, **the praetor does not promise an action for every affront in respect of a slave** (*servi nomine*); if the slave be slightly struck or mildly abused, the praetor will not give an action; but **if he be put to shame** by some act or lampoon I think that **the praetor's investigation should take into account the standing of the slave**; for it is highly relevant what sort of slave he is, whether he be honest, regular, and responsible, a steward or only a common slave, a drudge or whatever. And what if he be in fetters, marked,<sup>99</sup> and of the deepest notoriety? **The praetor, therefore, will take into account both the alleged affront and the person of the slave** said to have suffered it and will grant or refuse the action accordingly.

When it came to serious verbal abuse, the opportunity of acting *servi nomine* had the proviso of the magistrate's evaluation of the standing and the behaviour of the enslaved himself.<sup>100</sup> On the one hand this would have constituted an obstacle to the enactment of the law being a non-objective process – thus making the *actio iniuriarum servi nomine* for verbal outrage a rarer eventuality. Notwithstanding any potential negative impacts on the mental health of the enslaved, one could argue, in fact, that no economic damage would have been caused to the master by a verbal insult, while a physical affront could have impeded the *servus* from performing his tasks (and the latter, consequently, would have been a more pressing concern).

But there is certainly more than a materialistic view to this legal provision, which must also be interpreted in the light of a different sensibility towards the *servus*. The granting of the *actio iniuriarum servi nomine*, in fact, follows the consideration of the enslaved's position in the household pecking order, but also, and most remarkably, an assessment of the enslaved's

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<sup>98</sup> *Itaque praetor non ex omni causa iniuriarum iudicium servi nomine promittit, nam si leviter percussus sit vel maledictum ei leviter, non dabit actionem. At si infamatus sit vel facto aliquo vel carmine scripto puto causae cognitionem praetoris porrigendam et ad servi qualitatem etenim multum interest, qualis servus sit, bonae frugi, ordinarius, dispensator, an vero vulgaris vel mediastinus an qualisqualis. Et quid si compeditus vel male notus vel notae extremae? Habebit igitur praetor rationem tam iniuriae, quae admissa dicitur, quam personae servi, in quem admissa dicitur, et sic aut permittet aut denegabit actionem.*

<sup>99</sup> The Pennsylvania translation has 'branded', but the use of 'marked' will be preferred for reasons to be explained in n. 264.

<sup>100</sup> As stated by Descheemaeker (2013) 80, in the context of Roman law, "because injuries to 'being' are incapable of being immediately valued in money, we need external information to know what aim or aims the monetary award granted to the claimant pursues".

disposition and character. This equips the *servus* not only with a degree of humanity, but also of individuality – something inconceivable for a mere piece of inert property.

It is completely understandable that in the scenario of verbal abuse towards an enslaved person, a master would have been keen to act in defence of an honest, regular, and responsible slave (as these are the features mentioned in the passage discussed), whether it was a matter of affection, or a sort of gratitude fostered by material interests. Ulpian's lines, however, overcome this utilitarian perspective once again, because the less diligent among the enslaved, in the same context of serious verbal outrage, is not automatically penalized. By contrast, his pronouncement also encompasses *servi* who committed an offence and have been put in fetters for it (*compediti*),<sup>101</sup> have previously escaped (carrying the *extrema nota*),<sup>102</sup> or are well known to the juridical authorities – not exactly the kind of slaves for whom one would develop personal feelings, or on whom one would rely to guarantee a boost of productivity on the estate or in the house. These rambunctious slaves, however, would still receive a hearing from the magistrate, pondering on both the person of the *servus* and the offence allegedly suffered. It appears rather difficult to see this concern and safeguard as worth expressing in the case of enslaved individuals who not only are (perceived as) less conscientious and hard-working than those previously mentioned, but also are delinquent slaves – *unless* we do attribute to them a certain degree of humanity. There would have been no reasons, in fact, for bothering the magistrate for a judgement if the insulted *servus* was solely regarded as a tool.

## Conclusion

To reach and identify the enslaved's humanity in juridical texts is not a novelty.<sup>103</sup> Traces of it were also found by Buckland, who listed many examples in which the jurists speak of *servi* as persons.<sup>104</sup> Nevertheless, when this happens, he argued, the jurist is not concerned with the *servus* as a human being, but as the part he plays in the juridical situation considered.<sup>105</sup>

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<sup>101</sup> Chapters 3 and 6 will expand on this punishment.

<sup>102</sup> As will be explained in Chapter 6, an enslaved caught after running away would have been given a mark that was designated with the terms *nota*, *stigma* or *signum*. This punishment seems to be meted out for other offences too, as reported in Chapter 4.

<sup>103</sup> See, for example, Vogt (1965).

<sup>104</sup> Buckland (1908) 4 n. 2.

<sup>105</sup> Since *persona* means also a person with legal capacity, Buckland (1908) 5 specifies that when the term stands alone it is not always the equivalent of *persona civilis*.

The humanity implicit in the treatment of *iniuria* is, however, somewhat different. Cursi has already highlighted how Ulpian's pronouncement introduces a 'personal perspective' in the possibility of the *actio iniuriarum servi nomine*, overcoming the 'property perspective' used by Gaius with regard to the enslaved.<sup>106</sup> It must be stressed further, however, that this title of the Digest explicitly attests the possibility of the enslaved's feelings being affected as an aspect worth being pointed out *per se* in a legal context (Dig. 47.10.15.35); moreover, at Dig. 47.10.15.44, the evaluation of the conduct of *servi*, even the misbehaved ones, appears as a means to arrive to a judgement in *iniuria* matters.<sup>107</sup> This shows both sympathy vis-à-vis a human being, and individuality. In this, then, the jurists demonstrate an extraordinarily wide conceptualization of servile passivity – from lifeless object to pained victim – which has been the centre of attention in the foregoing discussion.

In its totality, this chapter has demonstrated that *servi* can have peculiar roles and considerations, even in their passive, most 'traditional' characterization, when it comes to civil wrongs and criminal actions. Clearly the juridical debate on 'crime' and the enslaved, then, is replete with nuances that can be easily missed when approaching this evidence with firm views on the subordination of the enslaved in Roman law. That there is more yet to take note of, when thinking about the enslaved in front of the law, will become even more obvious in the ensuing chapter, on servile agency.

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<sup>106</sup> Cursi (2012).

<sup>107</sup> The pronouncements on *iniuria* are all Ulpianic. This may suggest a humanization, and thus an amelioration, in the juridical perception of *servi* over time, something which has been noticed more broadly by several scholars. Westermann (1949), for instance, specifically (though briefly) deals with this amelioration of the enslaved's consideration in Roman legislation. Also Palma (1992) dealt with the influence of *humanitas* in the juridical discourse from the Hadrianic to the Severan rule more broadly. Seen this way, the discussed evidence would appear to confirm the picture of a transition, a symptom of a new sensibility towards the enslaved, which surpasses the purely materialistic view. While discussing the *actio iniuriarum servi nomine*, Buckland (1908) 82 too maintains that this was a quite late accomplishment, deducing that, since it is absent in Gaius' *Institutiones*, this juridical possibility was the last one to develop. However, considering the selective nature of the Digest, we are unable to gain certainty on the chronological matter.

## CHAPTER 2

# Servile Agency:<sup>108</sup> the Slave as Offender, their Liability and Responsibility

### Introduction

In the foregoing discussion, we have seen that servile passivity has a broad spectrum: *servi* can be regarded as juridical tools for the explanation of outstanding legal principles or, more straightforwardly, as the recipients (as it were) of the misdeeds described. It was also illustrated that, and how, the humanity of the enslaved was at times acknowledged, thereby revealing considerable scope for understanding the enslaved not merely in their role as chattels.

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<sup>108</sup> Throughout this thesis, the use of the term ‘agency’ refers to the slaves’ ability to escape the absolute control of the master for their own pursuits and/or in line with their own perspectives. Given the focus of the present analysis on ‘crime and punishment’, slave agency understood in this sense frequently emerges therefore in contexts viewed by masters as forms of slave delinquency. It is thus opportune to acknowledge that my use of ‘agency’ underscores elements of independence and choice in an otherwise oppressive, and largely one-sided system. Note in this context also that the lack of what today is called self-determination is a decisive criterion for the Roman jurist Florentinus, as cited in the *Digest*, for the distinction between free and unfree status (Dig. 1.5.4). Within this setting, one of the chief aims of the present work is to tease out how the ability of the unfree to explore agency under slavery is viewed and represented in both legal and literary texts, and, by extension, in Roman elite society. My interest is thus different to the search for servile agency in many cognate fields of inquiry, most notably the study of plantation slavery in the Antebellum South, where much of the gravity of the debate on servile agency has centred. Seminal to this debate has been Johnson (2003), who criticized the liberalizing underpinning presented in many scholars’ discussions of agency. We should also note the focus on expressions of servile agency in modern scholarship in particular with regard to rejections of servile status, most notably in the context of outright rebellion against (their) slavery on the part of the enslaved. This perspective has side-lined other expressions of servile agency, and their recognition by slave-owners, including such that occurred within the existing power structures (and without necessarily posing a challenge to those structures). This side-lining has led to an unhelpful dichotomy that associates agency firmly with opposition to slavery while effectively removing notions of agency *within* slavery. The consequence has been the further association of the humanity of the enslaved with resistance to slavery, effectively stripping the non-resistant slave of their humanity in turn. For a recent challenge to this approach in the field of US slavery studies, see Forret (2008). For the issue regarding the liberalizing underpinning of ‘agency’, and the relationship between a person’s will and desires and their freedom to act, see also the philosophical debate, e.g. Pulman (2011). For a different perspective on the place of servile agency in the field of ancient history, see Vlassopoulos (2021), 147–165.

However, the role of the passive partaker, both conceptual and factual, is not the only one the enslaved is bound to play in ‘crime and punishment’ situations including those recorded in the Digest.<sup>109</sup> Indeed, as anticipated, the selection of books under examination paints a curious picture upon closer scrutiny: the criminal actions a slave could potentially commit are, in fact, more numerous than those the slave could suffer.<sup>110</sup> On the passive side, an enslaved individual can be subject to theft (in all its variations), kidnapping, murder, castration, throwing to the beasts and *iniuria*. When portrayed as the driver of the (criminal) action, by contrast, the enslaved features in a much wider array of situations. The misdeeds a slave can commit are related to theft, goods forcibly taken, trees secretly felled, building into tombs, removal of boundary stones, kidnapping, castration, adultery, *iniuria*, forgery, murder, parricide, provision of information against their masters, conspiracy against their masters, fraudulent claims of freedom and volunteering for military service.<sup>111</sup>

The purpose of the present chapter is to illustrate and evaluate this surprising evidence, thereby completing the analysis of the juridical conceptualization of the *servus* in the context of delicts and crimes as displayed in Digest 47–49. As will be seen, this discussion is complementary to the previous chapter in significant ways, creating a holistic image of the slave’s role.

### 1. The slave as offender

To stress, once again, that slaves can feature actively in ‘crime’ scenarios, it is worth quoting Brasiello’s definition of *servi* as people who did not have rights and whose personality, then, expressed itself only in a few manifestations, among which there was however the possibility of breaking the law.<sup>112</sup> The first striking characteristic of this active role is that, although the slaves are the actual executors of the misdeeds, they are not always targeted as liable for them. A bipartition, then, can be immediately drawn between the passages of the Digest in which *servi* act as the wrongdoers: those where the liability falls onto their masters, and those in which

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<sup>109</sup> Only Robinson (1981) focused on the criminal slave, which, in her opinion, is a more interesting subject than the victim slave. Robinson assembled a rich collection of evidence, which, however, deserves further analysis and consideration.

<sup>110</sup> In spite of the variety of delicts and crimes a slave can potentially perpetrate, the provisions on active slaves are less copious than those on slaves taking up passive roles, as already maintained in Chapter 1.

<sup>111</sup> Most of the Digest titles are referenced here as they are named in the Pennsylvania translation of the Digest.

<sup>112</sup> Brasiello (1937) 36. Non-citizens and (partly) women belonged to this category as well.

the law recognizes them as personally liable. The second ‘option’ configures the enslaved as 100% active and concerns the breaking of criminal law, while the first one regards civil wrongs. This said, while it is useful initially to identify a distinction between the two macroareas of offences for analytical purposes, it will soon become apparent that a strict dichotomy would be overly simplistic. Once again, in fact, the picture is more multifaceted than one would assume, in response to the human nature of the offending actors.

The slave committing civil wrongs will be considered first, as the present chapter seeks to trace a conceptual progression regarding servile liability, which is indirect proof of the legal recognition of the slave’s activity.

## 2. Masters’ liability and noxal surrender

Civil wrongs were punished through pecuniary fines, but since slaves could not *own* money, such monetary charges did not apply to them (as openly declared by Venuleius Saturninus at Dig. 48.2.12.4).<sup>113</sup> The assets of the masters to which they belonged would thus have been involved, and precisely on this ground the masters were seen as liable for the civil offences of their *servi*.<sup>114</sup> Practically, then, this liability of the owner brings us back to the idea of the enslaved as a piece of property of the *dominus*, a mere part of his asset. Nonetheless, this should not deceive us – the slave is all but passive even in this respect.

There is a striking variety of situations in which the enslaved is portrayed as committing even just a single civil offence. Let us take theft as an example. The idea that, if a slave perpetrates *furtum*, the master is going to be regarded as liable is apparently taken for granted in the three books here analysed. Indeed, no general rule is proclaimed to explain it, but, rather, the first mention of such a case depicts the enslaved committing theft in the house of his owner, as an

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<sup>113</sup> This does not mean that slaves would have got away with their misdeeds. It is patent that the Roman jurists put a great deal of attention on the figures of slaves and sons-in-power as the wrongdoers, an aspect already pointed out by Watson (1987) 75–76. Remarkably, when the civil misdeed was perpetrated by a *servus* or a *filius familias*, the victim would have been more than sure to receive either the sum of money expected from the law by the master/father, or (according to the mechanism of *noxae deditio* that will be explained later) the slave/son to be kept or sold, with an evident economic advantage. It is not surprising, then, that the strangest and most particularized criminal situations assembled in the Digest always concern slaves or sons-in-power, as in Dig. 47.2.68.4, which will be considered later on.

<sup>114</sup> For the same reason, the offended party could have not brought an action against the slaves themselves (the *servi* being *res* and thus having no legal standing), but rather against the one who was in control of them at the moment in which the action was brought.

accomplice of either his wife or his son-in-power. To give a clearer idea of Dig. 47.2.52.1–4, I quote Ulpian’s words in full:<sup>115</sup>

Ulpian, *Edict, book 37*: If someone abet a woman removing her husband’s goods, he will be liable for theft. 1. And if he commits theft with her, he will be liable for theft, even though she cannot be sued. 2. A wife herself, who gave aid to a thief from her husband, would be liable to, not the action for theft, but that for the removal of goods.<sup>116</sup> 3. **Whether she could be liable in respect of her slave so doing is no matter of doubt.** 4. **The same applies to a son-in-power who is a soldier.** Although he would personally not be liable to his father in an action for theft, **he can be so liable in respect of a slave, part of his *peculium castrense*, if the slave should steal from his father.**

In this domestic context the *servus* perpetrates theft as a tangible extension of the wife and the son-in-power,<sup>117</sup> but cases in which the slave acts deliberately and autonomously are not lacking either. Digest 47.2 is replete with instances depicting the thieving slave in a plurality of detailed and at times bizarre situations. For instance, the jurists present the enslaved robbing a thief with the intent of enlarging his personal allowance (47.2.68.4),<sup>118</sup> a borrowed slave stealing something that the master borrowed (47.2.54.1–2), and *servi* owned in common committing thefts (47.2.62 *pr.*), just to cite a few examples. Moreover, title 6 of Digest 47 is entirely devoted to the thefts of the *familia* (i.e. a body of slaves), and shows, among the other instances, a group of slaves owned in common stealing something with the knowledge of one of the owners (47.6.5), slaves thieving and causing problems among the co-heirs (47.6.6), and so on.

Due to the large assortment of details provided above, the panorama of theft situations looks already quite variegated. To assess properly both this and the separate treatment of theft

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<sup>115</sup> *Si quis uxori res mariti subtrahenti opem consiliumve accommodaverit, furti tenebitur. 1. Sed et si furtum cum ea fecit, tenebitur furti, cum ipsa non teneatur. 2. Ipsa quoque si opem furi tulit, furti non tenebitur, sed rerum amotarum. 3. Servi vero sui nomine furti eam teneri nequaquam ambigendum est. 4. Idem dicendum est et in filio familias milite, nam ipse patri furti non tenebitur, servi autem sui nomine castrensis tenebitur, si patri servus furtum fecerit.*

<sup>116</sup> That of the *actio rerum amotarum* is a label only found in cases concerning husbands and wives. It was seen as a milder version of the *actio furti*, which would have been dishonourable to employ between a married couple. Further discussion of this action is in Wacke (1963).

<sup>117</sup> This peculiar situation enables the *uxor* and the *filius* to gain a significant legal standing, becoming liable for the kind of actions here contemplated. In a situation of more straightforward theft, in fact, the liability for their misdeeds would have fallen onto the *pater familias*. A similar situation is found in Dig. 47.8.2.19, regarding the *impubes*.

<sup>118</sup> I.e. his *peculium*, a topic which will be discussed shortly in Section 2.1.

committed by *familiae*, we have to recall the peculiarity of the Digest which I remarked in Chapter 1 when discussing servile passivity. The situations gathered in the collection are mentioned since they indeed occurred or were regarded as possessing relevance for legal treatment according to the jurists. This gives us a better insight into the slave's activity in the sphere of crime and delict. The juridical perspective depicts *servi* as wrongdoers in the most disparate occasions and stresses this since these situations were, purportedly, likely to present themselves again. This means that, regardless of the fact that, at times, their masters would have been liable for their actions, slaves were regarded as effectively active and independent agents in a great amount of scenarios – at least by the jurists.

Keeping this in mind, a greater variety in terms of offences and a higher degree of autonomy on part of the enslaved can be appreciated when we consider the mechanism of *noxae deditio*.<sup>119</sup> Indeed, when apprehended, *servi* could have then been 'exonerated',<sup>120</sup> with the master paying a monetary redress to the offended party, but also noxally surrendered to the plaintiff. The latter alternative represents both a guarantee for the master and an initial development in the conceptualization of the slave as something more than a commodity.

The *noxae deditio* is traced back to the Twelve Tables,<sup>121</sup> but, while in pre-classical Roman law it was suitable in a wide range of scenarios, masters were later allowed to have recourse to it only when ignorant or not privy to the servile misdeeds (*inscientes* or *ignorantes*). The jurists frequently insist on the absence of *scientia domini*, which means the masters could have ceded their slaves to the offended party only if the civil misdeed had been committed without their

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<sup>119</sup> Discussion of the origin and the scope of noxal liability may be found Buckland (1908) 98–100.

<sup>120</sup> We ignore, however, the repercussions suffered by the enslaved within the walls of the *domus*, as this topic lies outside the scope of juridical treatment.

<sup>121</sup> See Table 12.2b for *noxae deditio* in respect of sons-in-power and slaves, and Table 8.6 for that in respect of animals. Lévy-Bruhl (1947) 133–134 contains an explanation of the evolution of the concept and usage of noxal surrender. By the time it was referred to in the Digest it had lost its original value (that of purifying the entire *familia* which was 'infected' by the misdeed of one of its members) to become something more practical, making the economic interest prevail over the religious one. Vacca (1982) 704 adds that, in archaic times, *noxae deditio* seemed to be a duty of the master, while in classical law it became a possibility offered to him, whenever the payment of the monetary redress was too onerous. It is also interesting how the term *nox*, according to *Inst. Iust.* 4.8.1, represents the body which did harm, i.e. the slave, while *noxia* indicates the harm itself. For a discussion on the terms *nox*/*noxia* and their evolution, see Thome (1992) 79–80.

knowledge and control. When the *dominus* was not privy, further safeguards were provided, as established by Ulpian at Dig. 47.6.1 *pr.* and 1.<sup>122</sup>

Ulpian, *Edict, book 38* The praetor propounded a most valuable edict whereby **to safeguard masters against the delicts of their slaves, namely that if several commit a delict, masters shall not be stripped of their patrimony by being obliged to surrender them all noxally or to pay damages in respect of each of them.** By this edict, the ruling is given that if he indeed be willing to declare the slaves guilty, he may surrender noxally all who took part in the theft; but if he should prefer to make monetary redress, **he may offer only what would be due if a free person had committed the theft, and keep his body of slaves.** 1. This concession is made to the master, however, **only where the theft took place without his knowledge [*ignorante eo*]**; if he were privy to the delict, it is not open to him. In such case, he can be sued in respect of himself and by the noxal action of each individual slave, and he cannot make satisfaction by the one amount that a freeman would have to pay. We take him to be privy who knows what is going on and does not prevent it. For we must look to knowledge which also comprises willingness. **If the master has knowledge and forbids the slaves who, however, carry on, it must be said that he may avail himself of the benefit of the edict.**

Although the interest of the slave-owner stands out as the primary concern here (and in the mechanism of *noxae deditio* overall), it is also evident that, in the situations presented, an element of individual responsibility of the enslaved can be identified. In the act of being surrendered, the enslaved is targeted as responsible for the misdeed committed, but the final sentence of Dig. 47.6.1.1 above also presents the case of the master being aware and trying to stop the *servus* who nonetheless disregards his orders and deliberately perpetrates the civil wrong.

In the set of Digest books considered, other provisions prescribing noxal surrender as a suitable option portray the enslaved as clearly removed from the master's oversight. Indeed, at 47.2.42, the slave commits theft after taking the initiative without the master's authority; at 47.2.62.1,

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<sup>122</sup> *Utilissimum id edictum praetor proposuit, quo dominis prospiceret adversus maleficia servorum, videlicet ne, cum plures furtum admittunt, evertant domini patrimonium, si omnes dedere aut pro singulis aestimationem litis offerre cogatur. Datur igitur arbitrium hoc edicto, ut, si quidem velit dicere noxios servos, possit omnes dedere, qui participaverunt furtum; enimvero si maluerit aestimationem offerre, tantum offerat, quantum, si unus liber furtum fecisset, et retineat familiam suam. 1. Haec autem facultas domino tribuitur totiens, quotiens ignorante eo furtum factum est, ceterum si sciente, facultas ei non erit data. Nam et suo nomine et singulorum nomine conveniri potest noxali iudicio, nec una aestimatione, quam homo liber sufferret, defungi poterit. Is autem accipitur scire, qui scit et potuit prohibere. Scientiam enim spectare debemus, quae habet et voluntatem. Ceterum si scit, prohibuit tamen, dicendum est usurum edicti beneficio.*

he has been given in pledge (so he is not under the control of the master); at 47.2.62.2, there is a rescission of contract of sale; at 47.2.62.9, the slave is a *statuliber*; at 47.7.7.5, a tree is cut by an enslaved without the order of the master; at 47.8.2 *pr.*, the servile theft is done by force and during a tumult; at 47.8.2.16, a group of slaves is mentioned again, while, at 47.12.3.11, the slave builds a resting place in a tomb.<sup>123</sup> All these are instances in which external circumstances prevent the master from exerting control on the enslaved (tumults, groups of slaves inciting each other, etc.), or when the enslaved acts to pursue personal interest.

We can only list two cases in which the pattern of personal benefit and/or absence of the master's control just described is not followed strictly in the application of *noxae deditio*: at Dig. 47.5.1.5, where the slave is an 'employee' on a ship where some goods disappeared (an oddity for the jurist as well, since Ulpian asks himself why this happens and gives his opinion);<sup>124</sup> and at Dig. 47.10.17.4, which deals with *iniuria*.<sup>125</sup>

By now we are aware of the unique role played by the enslaved in the sphere of outrage, and indeed the last pronouncement deserves further scrutiny. When a slave perpetrates *iniuria*,

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<sup>123</sup> That reported in Dig. 47.12.3.11 is a rather puzzling case. Ulpian singles out two possibilities: a) if a slave lives in a tomb or builds a stable dwelling place there, while the noxal action is denied, an action for the violation of the tomb is viable (a penal action carrying dishonour, *infamia*); b) if, however, the slave builds a resting-place (*domunculam*), to which he would come occasionally, the noxal action is granted. This pronouncement can be better understood in light of the distinction (found in Gaius *Inst.* 2.2–3) between human things (*res humanae*) and divine things (*res divinae*), which in turn comprise sacred and religious things (*res sacrae* and *religiosae*). Such a distinction is also touched upon at Dig. 43.1.1 *pr.*, where Ulpian states that the *res divinae* pertain to religious and sacred places. The *actio noxalis* is thus given in b), on the basis of the supposition that the slave was found in a religious thing (i.e. the tomb). This explanation is given by Ramon (2017) 188 n. 453, whose work explores the *res sacrae* and *religiosae* in detail. There is a slight similarity between Dig. 47.12.3.11 and *Cod. Theod.* 9.17.4, which, discussing the violation of a tomb, mentions not only the religious crime, but also the fact that this was also a means to dishonestly acquire building materials. Lafferty (2014) well explains how religious beliefs, although exerting an influence in the determination of punishments for such acts, were not the prevailing factor.

<sup>124</sup> The entire passage regarding the liability of ships' masters, innkeepers and stablekeepers is problematic, as admitted by Bogen (1992).

<sup>125</sup> This is the only instance in which *noxae deditio* it is mentioned in the entire title 10 of book 47. Buckland (1908) solves the problem of the scarce emphasis put on it, stating that plausibly the damages inflicted by the slaves' *iniuria* were not significant enough to create grounds for *noxae deditio*.

there is an additional possibility along with the monetary redress and the *noxae deditio*: that of thrashing the culprit slave.<sup>126</sup> Ulpian explains:<sup>127</sup>

[Ulpian, *Edict*, book 57] When a slave effects an affront, he obviously commits a delict; and just as in the case of other delicts, so also a noxal action for insult will issue; but it is in the master's discretion whether he will **submit the slave to a thrashing to mollify the victim of the affront**; the master will not be obliged to present him for a thrashing but he will have the option of allowing him to be thrashed or, if that would not satisfy the affronted person, of giving him in noxal surrender or of accepting an award of damages in legal proceedings.

Regardless of the fact that the thrashing is entirely at the discretion of the master (who, since the punishment is phrased as being a way of mollifying the victim, negotiates with them and, in doing this, conceives the slave as being subject to him), the enslaved – being physically liable for his misbehaviour while suffering the thrashing – is here recognized as responsible for his actions. This physical liability, in fact, moves the conceptualization of the activity and liability of the *servus* a step further than the cases discussed so far.

The relevance of corporal punishment, when it comes to *iniuria*, is reiterated at Dig. 47.10.9.3, where the idea of the slave's personal liability stands out more clearly:<sup>128</sup>

[Ulpian, *Edict*, book 57] Should a **slave** commit **an aggravated affront** [*atrocem iniuriam*], **then, if his owner be present, proceedings can be taken against the owner; but if the owner be absent**, the slave is to be handed over to **the governor** who **will have him scourged**.

The possibility of the enslaved committing *iniuria* autonomously from the owner is here restated along with the physical punishment that follows. There is no trace of noxal liability, even though the affront is rather serious (*atrox*), and notwithstanding the fact that the *dominus*

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<sup>126</sup> The use of 'thrashing' instead of 'beating up' is here preferred since the verbs are respectively used as the translations of *verberare* and *pulsare*. Echoing Ofilius, Ulpian explains that the former implies a deliberate intention to inflict pain (Dig. 47.10.5.1). The difference between these two physical punishments is also attested, for instance, by Dig. 47.10.5 *pr.*, where they are mentioned together as alternatives. It is very common also in Greek and Ptolemaic law for slaves to be thrashed by public authorities, as shown in D. Lewis (2018) 45 n 69 and 194-6.

<sup>127</sup> *Cum servus iniuriam facit, maleficium eum admittere palam est, merito igitur sicuti ex ceteris delictis, ita et ex hoc iniuriarum noxalis actio datur. Sed in arbitrio domini est an velit eum verberandum exhibere, ut ita satisfiat ei qui iniuriam passus est. Neque erit necesse domino utique eum verberandum praestare, sed dabitur ei facultas praestare ei servum verberandum aut, si de eo verberibus satis non fiat, noxae dedendum vel litis aestimationem sufferendam.*

<sup>128</sup> *Si atrocem iniuriam servus fecerit, si quidem dominus praesens sit, potest agi de eo. Quod si afuerit, praesidi offerendus est, qui eum flagris rumpat.*

is absent and hence not in control of the delinquent slave. The *servus* is perceived as independent, personally liable and as such submitted to scourging.

An even more compelling image of the slave emerges from Dig. 47.10.17.7:<sup>129</sup>

[Ulpian, *Edicts*, book 57] **If, at the instigation of his master, a slave should perpetrate an affront**, the master can certainly be sued in his own respect. But if the case be put that the slave has been manumitted, Labeo was of the opinion that the action should be given against the freedman himself, because the wrong attaches to the actual wrongdoer, and **a slave is not obliged to obey his master in everything**,<sup>130</sup> equally, if the slave should kill someone at his master's behest, we proceed against him himself under the *lex Cornelia*.

The *noxae deditio* case of Dig. 47.6.1.1 had already introduced a slave contravening the master's order in committing an offence notwithstanding the attempt of the *dominus* to stop him. However, here the focus is shifted downright on the enslaved. In fact, the slave is seen as both passive (as before), acting on the master's instruction, *and* as a human being who is recognized as having the potential to refuse to obey on the basis of the faculty of judging the master's instruction. Naturally, it would be interesting to see how feasible this was in practical terms. Whatever the reality may have been, however, these lines present the slave's discretion in following the master's orders as something ultimately to the master's advantage. With all these due clarifications, though, it cannot be denied that, from what we have examined so far, the slave is not only physically liable, but is also granted the capacity to ignore the master's orders regarding a possible civil wrong that he does not deem right.<sup>131</sup> In short, this legal pronouncement illustrates that slaves can act on their own doing (and thinking) – i.e. in full human capacity.

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<sup>129</sup> *Si iussu domini servus iniuriam fecerit, utique dominus conveniri poterit etiam suo nomine. Sed si proponatur servus manumissus, placet Labeoni dandam in eum actionem, quia et noxa caput sequitur nec in omnia servus domino parere debet. Ceterum et si occiderit iussu domini, Cornelia eum eximemus.*

<sup>130</sup> Such pronouncement shares similarities with Sen. *Ben.* 3.20.2 (*nec enim aut nos omnia iubere possumus aut in omnia servi parere coguntur*). According to Seneca, regardless of being slaves in their bodies, *servi* have an inner part which is still free. This is a rather rosy picture echoing the dichotomy between body and soul and the idea of self-command which are cornerstones of the Stoic philosophy. As noted by many scholars, the kind of humanization of the enslaved held up by Seneca did not do much, practically, to alleviate their sufferings; see Garnsey (1968) 154–156 for a brief overview on the non-effectiveness of Stoic, Senecan and Christian thought for the actual amelioration of the servile condition.

<sup>131</sup> It must be pointed out that, in case of certain misdeeds which do not constitute atrocious offences or crimes (*quae non habent atrocitatem facinoris vel sceleris*), slaves are pardoned if they have followed the master's advice, as spelled out by Ulpian at Dig. 43.24.11.7.

## 2.1 Between *dominus* and *servus*: the liability to the extent of the *peculium*

When discussing the slave as autonomous actor in matters of theft, we mentioned Dig. 47.2.68.4, which needs to be given here in full:<sup>132</sup>

[Celsus, *Digest*, book 12] **A runaway slave stole a stolen thing from the thief; it is right that the thief should have the action for theft on that account against the slave's owner** so that the offenses of such slaves shall not bring them immunity and be a source of profit to their owner; **for often by such thefts, the *peculia* of these slaves are increased.**

The provision has undoubtedly a grotesque character,<sup>133</sup> but what is of greater interest for present purposes is the fact that the slaves might commit such acts in order to increase their personal allowances, termed as *peculia*, although the liability falls on their masters.

This is not the appropriate arena to explore an intricate issue like the *peculium* thoroughly, and yet some specifications are in order. Indeed, the formal concession of a *peculium* to a slave and the presence of a liability “to the extent of the *peculium*” (*dumtaxat de peculio*) for civil wrongs in Roman law drew on the idea of the responsibility of *servi*, which is a crucial aspect of the slave's recognized activity before the law.

Let us briefly quote Papinian's take on the *peculium* at Dig. 41.2.49.1, which will also clarify some of the points raised a moment ago:<sup>134</sup>

[Papinian, *Definitions*, book 2] **Those in another's power can hold [*tenere*] a thing in *peculium*, but they cannot have [*habere*] and possess [*possidere*] it**, because possession is a matter not merely of fact but also of right.

Thus, the *peculium* placed itself somewhere in between the master and the enslaved, being a sort of fund the *domini* allowed *servi* to hold and act as if they were considered owners, though

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<sup>132</sup> *Quod furi ipsi furtum fecerit furtivus servus, eo nomine actionem cum domino furem habiturum placet, ne facinora talium servorum non solum ipsis impunitatem, sed dominis quoque eorum quaestui erunt plerumque enim eius generis servorum furtis peculia eorundem augentur.*

<sup>133</sup> Buckland (1963) 581 defines this provision using precisely this adjective, while stressing its correctness in principle. The principle is that one is always entitled to act for something he is deprived of – despite having behaved dishonestly (and actually illegally) first. Watson (1987) 59 underlines the odd character of Celsus' words too, because the slave was not under the master's control at the moment of the theft. This is also one of the cases through which we can see that the juridical perspective put a major stress on actions, rather than on rights. The interest of the jurists, as Garnsey (2007) 180 argued, was to furnish Roman citizens with “a system of remedies” that were available to them.

<sup>134</sup> *Qui in aliena potestate sunt, rem peculiarem tenere possunt, habere, possidere non possunt, quia possessio non tantum corporis, sed et iuris est.*

with some limitations. Although the *peculium* was distinct (in accounting terms) from the *patrimonium* (the master's ordinary property), and notwithstanding that the slave was always seen as a *de facto* possessor of it, we must define it as "an aggregate of *res peculiares* which belong to the master, and of which the slave is administrator".<sup>135</sup>

In all probability, and it is necessary to acknowledge this for present purposes, *servi* were responsible and concerned about their *peculia* as it becomes self-evident if we think that, through these allowances, they could have also bought their own freedom.<sup>136</sup> This is the key to understand its mentioning by the jurists in the passage which will be discussed below and in others bringing into play a *dumtaxat de peculio* liability.<sup>137</sup> Let us consider, by way of example, Paul's pronouncement at 47.2.42 *pr.*, which sheds light on the link between *peculium* and servile misdeeds:<sup>138</sup>

Paul, *Sabinus*, book 9 **If, without his master's authority, a slave takes charge of a ship, in respect of any goods lost on board, the ordinary formula will be granted against the master but, in respect of the misdeeds of others, 'to the extent of the *peculium*'**; in respect of the slave operator's own wrongdoing, there is added: 'to surrender him noxally'. And if the slave should have been manumitted, an action in respect of the *peculium* will continue available against the master for a year while the delictal action will lie against the freedman himself.

As in the noxal surrender section, the slave is here acting autonomously from the master. In this case, however, being able to take charge of a ship and being permitted a *peculium*, the slave in question must have also enjoyed some form of recognition in society. Indeed, the holding of a *peculium* was not granted indiscriminately to every enslaved individual.<sup>139</sup> From this higher recognition (also considering the importance of 'to have' in order 'to be' in Roman juridical terms), a further grade in responsibility before the eyes of the jurists derives. The potential lessening of the slaves' allowances would have of course affected the master's assets, but it could have also worked as a deterrent for the slaves' misbehaviour, threatening their

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<sup>135</sup> Borrowing the words of Buckland (1908) 187.

<sup>136</sup> See Roth (2010) on the likelihood and issues related to this eventuality.

<sup>137</sup> For an in depth discussion of this type of liability see Aubert (2013).

<sup>138</sup> *Si servus navem exerceat non voluntate domini, de eo, quod ibi perit, vulgaris formula in dominum danda est, ut quod alter admisit 'dumtaxat de peculio', quod ipse exercitor, adiciatur 'ut noxae dederet'. Igitur si manumissus sit, persecutio quidem in peculio manebit adversus dominum intra annum, noxalis ipsam sequetur.*

<sup>139</sup> See Buckland (1908) 196 on the *concessio peculii* more in general, but also the argument advanced in Roth (2005) on the prevalence of *peculium* in Roman agriculture.

personal and economic interests. This would have constituted a guarantee for the masters, the slaves being less likely to commit civil wrongs for which they would have had to pay. However, seen from the angle of interest in this thesis, it is important to note that the foundation of this guarantee for masters directly rests on the idea of servile responsibility. Leveraging on the latter, even just for the slave-owners' concerns, implied in fact a recognition of such a responsibility on the part of the jurists.

### 3. Servile liability

In the previous section we started chipping away at the assumption that slaves, even when acting as offenders, are simple extensions of their masters. The convenient rule according to which the *dominus* was financially liable every time his *servus* committed a civil wrong can in fact be partially disproved just by looking at the passages which contemplate *noxae deditio*, corporal punishment related to *iniuria* and the lessening of the *peculium*. These constitute grounds for seeing some kind of personal responsibility on the part of the enslaved, though in embryonic form. The present section will trace a conceptual progression in this, providing an overview of the cases in which the jurists regard slaves as the actual wrongdoers and, as such, fully liable for their misdeeds.<sup>140</sup> This liability entails, again, corporal punishment (this time as a means to procure death) and it is restricted to the most serious offences, namely the penal ones. The fact that slaves are punished in this fashion echoes a principle already heralded in Greek legal thinking. Borrowing Demosthenes' words in *Against Androtion* (22.55), the crucial difference between slaves and free men is:<sup>141</sup>

... that **slaves must pay with their body for any misdeeds**, whereas **free men**, even in most unfortunate cases, **are able to protect themselves**; for in most cases, it is **by means of money** that punishment must be inflicted on them. But he [Androtion] rather **exacted vengeance from their bodies, as if they were slaves**.<sup>142</sup>

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<sup>140</sup> As Del Prete (1937) 187–188 notices, a recognition of responsibility is also due to the fact that, even if the *dominus* decided to take the slave's *defensio*, the punishment would have always been directed to the *servus*. He mentions Dig. 48.2.17 and 48.3.2 to corroborate his point.

<sup>141</sup> ... ὅτι τοῖς μὲν δούλοις τὸ σῶμα τῶν ἀδικημάτων ἀπάντων ὑπεύθυνόν ἐστιν, τοῖς δ' ἐλευθέροις, κἂν τὰ μέγιστ' ἀτυχῶσιν, τοῦτό γ' ἔνεστι σῶσαι· εἰς χρήματα γὰρ τὴν δίκην περὶ τῶν πλείστων παρὰ τούτων προσήκει λαμβάνειν. Ὁ δὲ τοῦναντίον εἰς τὰ σώματα, ὥσπερ ἀνδραπόδοις, ἐποιήσατο τὰς τιμωρίας.

<sup>142</sup> The distinction between slaves and free people in this respect, at any rate, was not simplistic and free of criticism, as shown, for instance, by Dio Chrys. *Or.* 15. 18–20. In the passage in question, an interlocutor

The establishment of a punishment which depends on the legal status of the culprit will intermittently surface, but a more extensive and focused treatment of the issue is postponed for Chapter 3. This section will take book 48 of the Digest, on criminal proceedings, as the obvious, privileged object of discussion. This book is a repository of situations in which slaves can act in both passive and active roles, but also of others in which the juridical thinking configures *servi* only as perpetrators. The completion of the survey will entail what I call ‘exclusively servile’ crimes, instances of which are provided also in Digest 49.

### 3.1 Crimes in which slaves are both objects and perpetrators

There is a limited range of crimes a slave can *both* commit and suffer, namely kidnapping, murder and castration.

The provisions on kidnapping and murder do not mention enslaved perpetrators explicitly, but punishment is prescribed for whoever commits them, as seen in passing in Chapter 1. According to Callistratus, the *lex Fabia* on kidnapping targeted whoever (*quique*), with malicious intent, persuaded enslaved individuals to run away, concealed them from their masters, kept them in fetters, bought them, or even acted merely as an accomplice in any of these scenarios (Dig. 48.15.6.2).<sup>143</sup>

A slight difference can be perceived in the treatment of murder. As already acknowledged, this crime also had to be punished *per se*, independently from the legal status of the perpetrator and the victim.<sup>144</sup> When exploring the enslaved as the object of murder, we have seen that his inclusion was not explicitly spelled out, being lumped in the use of *homo* employed to intend

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suggests that being in a position where one is beaten means that one is a slave; Dio, however, retorts that this is not true, because parents and gymnastic instructors can beat their children and their students respectively, even though the children and students are legally free.

<sup>143</sup> This pronouncement brings up runaway slaves and the issue of *fuga*. This offence (which could have been committed by slaves only) is not given isolated treatment in the set of books here considered. However, it constitutes too primary a concern to be ignored in this thesis and will therefore be explored in Chapter 6. At any rate, this offence is entirely devoted title 4 of Dig. 11 and, ultimately, in legal terms, runaway slaves are also regarded as thieves of themselves (Dig. 47.2.61).

<sup>144</sup> It does not follow, however, that free and enslaved perpetrators were prosecuted equally. According to Marcian (Dig. 48.8.3.5), the penalty of the *lex Cornelia* on murderers and poisoners includes deportation to an island and the forfeiture of all property for high born people, while capital punishment awaits people of the lower ranks.

both the free and the enslaved recipient.<sup>145</sup> The same happens with regard to the enslaved seen as the perpetrator of murder in the words of Marcian (Dig. 48.8.1.2–3):<sup>146</sup>

[Marcian, *Institutes*, book 14] 2. **Whoever [qui] kills a man [homo] is punished without distinction as to the status of the man he killed.** 3. The deified Hadrian wrote in a rescript that **he who kills a man, if he committed this act without the intention of causing death, could be acquitted;** and he who did not kill a man but wounded him with the intention of killing ought to be found guilty of homicide. On this account, it should be laid down that if someone draws his sword or strikes with a weapon, he undoubtedly did so with the intention of causing death; but if he struck someone with a key or a saucepan in the course of a brawl, although he strikes [the blow] with iron, yet it was not with the intention of killing.

Hadrian established that in order to be charged with murder, the intention of causing death (*occidendi animus*) was necessary for whoever (*qui*) committed the offence. Interestingly, a different version of the same Hadrianic rescript given by Ulpian brings into play a slave (Coll. 1.6.2–4):<sup>147</sup>

2. These are the words of the rescript: “He who has killed a man is customarily acquitted, that is if he did it without the intention of killing, and he who has not killed but sought to kill is condemned as a murderer. 3. It is therefore to be laid down on this ground – was it with iron that **Epaphroditus** struck the blow? For if he drew a sword or struck with a weapon, what doubt is there that he struck with the intention of killing? If, however, he struck with a key or a saucepan, or [even] struck with iron in the course of a chance brawl, but without design to kill [he should be acquitted]. 4. Therefore, find this out and, if there was an intention to kill, order **the slave** to be put to the extreme penalty as a murderer, in accordance with the law.”

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<sup>145</sup> See Robleda (1976) 86, along with the bibliography quoted in n. 71.

<sup>146</sup> 2. *Et qui hominem occiderit, punitur non habita differentia, cuius condicionis hominem interemit.* 3. *Divus Hadrianus rescripsit eum, qui hominem occidit, si non occidendi animo hoc admisit, absolvi posse, et qui hominem non occidit, sed vulneravit, ut occidat, pro homicida damnandum. Et ex re constituendum hoc: nam si gladium strinxerit et in eo percusserit, indubitate occidendi animo id eum admisisse, sed si clavi percussit aut cucuma in rixa, quamvis ferro percusserit, tamen non occidendi animo. Leniendam poenam eius, qui in rixa casu magis quam voluntate homicidium admisit.*

<sup>147</sup> 2. *Verba rescripti: “Et qui hominem occidit absolvi solet, sed si non occidendi animo id admisit, et qui non occidit, sed, voluit occidere, pro homicida damnatur.* 3. *E re itaque constituendum est: ecquo ferro percussit Epaphroditus? Nam si gladium instrinxit aut telo percussit, quid dubium est, quin occidendi animo percusserit? Si clave percussit aut cucuma, aut, cum forte rixaretur, ferro percussit, sed non occidendi mente”. 4. Ergo hoc exquirite et si voluntas occidendi fuit, ut homicidam servum supplicio summo iure iubete affici.*

Epaphroditus must be seen here as a real slave,<sup>148</sup> rather than a tool used as an example, given that *rescripta* were imperial responses on precise questions asked on points of law. Ulpian's pronouncement then highlights the individuality of this enslaved in committing murder, contrary to what Marcian does reshaping the rescript in a general rule. At any rate it is meaningful that, while as an object the *servus* is not openly mentioned, he is explicitly singled out as a perpetrator, showing the juridical acknowledgment of his agency in this respect.

A particular kind of murder must now be brought to the fore: parricide. Conventionally considered as the murder of a father, a more detailed analysis of both the etymology of the term and its occurrences in Roman sources proves that the meaning of parricide was much broader.<sup>149</sup> For this reason a regulation was necessary: promulgated in 70 BCE (or 55 BCE), the *lex Pompeia* finally created a sharp distinction between parricide and homicide, defining within which degree of relationship the parricide label could have been applied correctly.<sup>150</sup> Parricide and its regulation are given specific exploration in Dig. 48.9, where the identification of the degrees of relationship implied is followed by the statement of the punishment imposed on parricides, the penalty of the sack (*poena cullei*).<sup>151</sup> Venuleius Saturninus adds a clarification regarding slaves (Dig. 48.2.12.4):<sup>152</sup>

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<sup>148</sup> On the use of this and other slave names see Solin (1996). Epaphroditus, as Weaver (1994) 468 stated, is “perhaps the commonest of Roman slave names apart from ‘Felix’ which it sometimes renders as a Greek equivalent”.

<sup>149</sup> For an overview on this see Strachan-Davidson (1912) 21–23.

<sup>150</sup> This is specified by Dig. 48.9.1. For an extremely detailed discussion on the degrees of relationships involving parricide according to the *lex Pompeia* see Fanizza (1979).

<sup>151</sup> The enigmatic penalty is described by Modestinus at Dig. 48.9.9 *pr.*: the culprit is flogged with red-coloured rods, and mangled by a dog, a dunghill cock, a viper, and a monkey, which have been sewn up in a sack with them. The sack is then thrown into the sea. This is not the place to pursue the origin and interpretation of *poena cullei*, further discussion on which is provided by Beness (1998). Let us just say that the need of an exemplary punishment, the crime being capital, was justified by the lack of parental reverence, which was fundamental in Roman culture. Also, according to Tutrone (2010) 219, the *poena cullei* was, more than a juridical punishment, a form of *procuratio prodigi*, i.e. a religious ritual. For an interesting interpretation of the animals involved see Cantarella (2018)<sup>2</sup> 270–275. According to Radin (1920) the *poena cullei* could be justified since parricide was a killing with no possible compensation – in fact, those who were supposed to get the blood-price and the murderer were, essentially, the same person. Moreover, it is still debated whether there has been a (re)establishment of the *poena cullei* with the *lex Pompeia* or whether Marcian was only recalling an ancient custom. See, again, Radin (1920) on this.

<sup>152</sup> ... *item nec lex Pompeia parricidii, quoniam caput primum eos adprehendit, qui parentes cognatosve aut patronos occiderint; quae in servos, quantum ad verba pertinet, non cadunt, sed cum natura communis est, similiter et in eos animadvertetur...*

[Venuleius Saturninus, *Criminal Proceedings, book 2*] ... Again, the *lex Pompeia* on parricide is not [applicable] since its first chapter covers those who have killed their parents, blood relations, or patrons; **so far as the words go these do not apply to slaves, but when the essence of the case is the same, a similar punishment will be imposed on them also ...**

The passage insists on the label of parricide not being applicable to slaves, since their family ties are not acknowledged in the law. The legally recognized union known as *matrimonium* was not viable for them, because they were only allowed the quasi-marital union called *contubernium* – literally meaning dwelling together, and carrying no legal consequences.<sup>153</sup> Nonetheless, an analogous punishment must be reserved to *servi* when they commit a crime which would be called parricide if the situation involved the free. The slaves' agency, then, is acknowledged as possible (and therefore punishable), even if their misdeeds escape the proper legal framework.<sup>154</sup> The need of this clarification to be made by the jurists is an unmistakable sign of their conceptualization of the slaves as active in the matter here discussed – irrespective of the legal denial of the slaves' familial situation.

The last offence to be explored is castration. In Chapter 1, we have ascertained that such practice became forbidden by the law (Dig. 48.8.6). The ban is reiterated in Dig. 48.8.4.2, which openly mentions the crime in relation with perpetrators of servile condition:<sup>155</sup>

[Ulpian, *Duties of the Proconsul, book 7*] The same deified Hadrian wrote in a rescript: “It is laid down, in order to end the practice of making eunuchs, that those who are found guilty of this crime are to be liable to the penalty of the *lex Cornelia*, and their goods must deservedly

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<sup>153</sup> The term also designated the union of an enslaved individual and a free person (*PS* 2.19.6), and people living in this quasi-marital union were referred to as *contubernales*. Mouritsen (2011) 138 highlights the highest degree of vulnerability to external threats (including sexual abuse) for slave families due to the lack of legal recognition. At Dig. 38.10.10.5, belonging to a section where the degrees of relatives and their names are discussed, Paul maintains that it is customary to speak about parents, sons and brothers even in the case of slaves, although such relationships fall outside the realm of the law (*ad leges serviles cognationes non pertinent.*). *Contubernales* often define themselves as *maritus, pater, uxor* etc. (as if they contracted a legal marriage, *matrimonium*) in inscriptions, but see Treggiari (1981) for an epigraphic survey of *contubernales* in Rome.

<sup>154</sup> The category of social death created by Patterson (1982) can here be substituted by that of legal death. This is not the only case in which this absence of legal recognition is identified. Apart from what will be said below about adultery, let us consider also Dig. 41.2.49.1 on the *peculium*: again, this is something they factually held but whose ownership was not contemplated by the law.

<sup>155</sup> *Idem Divus Hadrianus rescripsit: “Constitutum quidem est, ne spadones fierent, eos autem, qui hoc crimine arguerentur, Corneliae legis poena teneri eorumque bona merito fisco meo vindicari debere, sed et in servos, qui spadones fecerint, ultimo supplicio animadvertendum esse ...”.*

be forfeit to my imperial treasury. **Slaves, however, who castrate others are to be punished with extreme penalty ...”**

This passage undoubtedly portrays slaves as the drivers of the action (i.e. those who do the castrating) and deserving of a more severe punishment for being so. It is known that slaves could have been in control of other slaves belonging to their *peculium*, and that the price of eunuchs was much higher than that of non-castrated slaves. Thus, some *servi* could have performed castrations on their subordinates (i.e. their *vicarii*) in order to increase the value of their *peculium*, committing a crime for personal, financial gain.<sup>156</sup>

### 3.2 Crimes in which slaves are perpetrators only

The identification of crimes in which the *servus* can act exclusively as a perpetrator (i.e. never as the sufferer), namely adultery and forgery, is essential to advance further in the re-configuration of the slave’s role in the jurists’ eyes.

Adultery will be the first offence to be investigated, as it links with what was noted in Section 3.1: although unions between *servi* were a reality, they had no legal consequences. This lack of legal recognition has considerable implications also in the case of adultery, which is of interest here and whose particular configuration is that of a crime which can be committed by a male slave but which an *ancilla* cannot suffer properly. As Papinian reminds us, in fact, the *lex Iulia de adulteriis coercendis*, which regulates it, is only applicable to free people.<sup>157</sup> The strict definition of adultery refers to a married woman of respectable rank having sexual

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<sup>156</sup> In proposing this interpretation, I agree with Robinson (1995) 52 to whom the particular victims the jurists had in mind in Dig. 48.8.4.2 were presumably slaves. There might also be an additional possibility for the creation of *spadones* by slaves. The enslaved could have worked, again, as tools in the hands of their masters who might have used (or blamed) *servi* for an act which would have cost themselves deportation on an island and forfeiture of their property if the victim was a free person (according to Dig. 48.8.3.5), or the confiscation of half of it in case the victim was a slave (as in Dig. 48.8.6). Since we know (from Dig. 48.2.12.4) that monetary punishments are not applicable to slaves, this provision would have worked as an expedient to tackle the mechanism with which the masters could have got away with their crimes, putting the blame on their *servi*.

<sup>157</sup> Robinson (1995) maintains that *adulterium* was previously a domestic matter and that the Augustan legislation was certainly propelled by some moral aim; however, the *princeps* actually aimed at limiting this very domestic jurisdiction, so that all matters would go through courts which he ultimately controlled. It must be stated that no complete copy of the *lex Iulia* survived to us, thus we rely on the major jurists’ interpretations of it (Modestinus, Papinian and Ulpian). For the *lex Iulia* see also Rizzelli (1997) and Fayer (2005).

intercourse with a man who is not her husband. Such intercourse would have tarnished the woman's family, threatening the production of legitimate children and, hence, heirs,<sup>158</sup> as this is not an issue for the female slave, if she falls victim of an action that should otherwise be *adulterium*, an *actio servi corrupti*, *iniuriarum* or another one pertaining to the *lex Aquilia* will apply instead, as touched upon in Chapter 1.<sup>159</sup>

However, a different perspective is taken when the (male) slave has sexual intercourse with a respectable Roman woman: he is indeed seen as committing adultery. At Dig. 48.2.5, Ulpian maintains that there is no doubt (*nulla dubitatio*) that male slaves also can be accused of adultery. Such a statement immediately entails the idea of the slave as mostly active in this particular case, at least before the law. In order to better understand the slaves' role it will be worth giving a brief overview of the consequences of adultery for the perpetrators. Our main source is again Papinian, who, at Dig. 48.5.23.2–4, outlines the possibilities opened to fathers and husbands when their daughter/wife is caught with an adulterer.<sup>160</sup> It is generally the father who is allowed the right to kill, though some exceptions may apply. When the adulterer belongs to certain social categories, indeed, the husband can avail himself of the *ius occidendi* (Dig. 48.5.25 *pr.*):<sup>161</sup>

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<sup>158</sup> The problem with the infidelity of the wife lay in the fact that through her illicit sexual relationships, she could have introduced the children of other men into the agnatic family. Praising indirectly the *lex Iulia* in *Carm.* 4.5.22–23, Horace wrote “the custom and the law tamed the vicious contagion and mothers are praised for their sons who resemble their fathers” (*mos et lex maculosum edomuit nefas, / laudantur simili prole puerperae*). For a comprehensive discussion on *adulterium*, its repression and reception in Latin literature see Treggiari (1991) 262–319. On the anthropological implications and value of the contamination created by *adulterium* see also Beltrami (1998).

<sup>159</sup> Lenski (2016) 282 remarks that the sexual abuse of slaves was so common and taken for granted that, before the rise of the Christian ethical standards in the later empire, it went largely unnoticed. Moreover, according to *PS* 2.26.16, sexual intercourse with female slaves belonging to someone else would have been punishable only if it resulted in a diminution of their value or if such an act of despising was directed to the owner of the *ancilla*.

<sup>160</sup> A father can kill in his own house, even if the daughter does not live there, and in that of the son-in-law too. Moreover, a person who is entitled to kill the adulterer can also inflict rough treatment on him. Papinian explains that the right to kill is primarily given to the father as this role in the family comes with a concern for family duty. The jurist also adds that the impetuosity of a husband in these situations should be restrained. See McGinn (1998) 202–207 for the *ius occidendi* and the adultery law more broadly and Benke (2015) for more on the right to kill given to the father.

<sup>161</sup> *Marito quoque adulterum uxoris suae occidere permittitur, sed non quemlibet, ut patri. Nam hac lege cavetur, ut liceat viro deprehensum domi suae (non etiam soceri) in adulterio uxoris occidere eum, qui leno fuerit quive artem ludicram ante fecerit in scaenam saltandi cantandive causa prodierit iudiciove publico*

Macer *Criminal Proceedings, book 1*: **A husband also is permitted to kill his wife's adulterer, but not, as the father is, whoever it may be**; for it is provided by this statute that a husband is permitted to kill a man whom he catches in adultery with his wife in his own house (not also [in that] of his father-in-law) **if the [paramour] is a pimp or if he was previously an actor or performed on the stage** as a dancer or singer **or if he has been condemned in criminal proceedings** and is not yet restored to his former status, or **if he is a freedman** of the husband or wife or of the father, mother, son, or daughter of either of them (and it is of no consequence whether he was the sole property of one of them or was owned jointly with someone else) **or if he is a slave**.

It is quite surprising that the slave is only mentioned last, especially comparing these passages with those examined while discussing the slave's conceptual passivity in Chapter 1 – where the *servus* was the prime example regularly used. Here, however, Macer is dealing with people, not with things. At any rate, this must not lead us to the conclusion that the adulterer slave was not a common figure. An extensive passage from Ulpian (Dig. 48.5.28), puts a great deal of attention on what happens when a slave accused of adultery is tortured to gain information. Also, Marcian, at Dig. 48.5.34 *pr.*, examines the matter of slave torture when a husband claims that one of his own *servi* has committed adultery with his wife.<sup>162</sup> The substantial discussion (in terms of lines) on matters related to the male slave as an adulterer underlines his activity in the jurists' mind when this particular crime was considered.

The other crime which slaves can commit, but not suffer, is forgery. Here the univocal role of the enslaved has the obvious reason that such a crime could only have documents and money as its objects. It is still debated whether Sulla's regulation of this offence comprised a law on forging wills and another one on forging money, or whether the *lex Cornelia de falsis* (81 BCE) decreed that both the offences had to be heard by the *quaestio de falsis* created to deal with

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*damnatus neque in integrum restitutus erit, quive libertus eius mariti uxorisve, patris matris, filii filiae utrius eorum fuerit (nec interest, proprius cuius eorum an cum alio communis fuerit) quive servus erit.*

<sup>162</sup> *Servi* having intercourse with their masters' wives will appear again in Chapter 4 specifically.

it.<sup>163</sup> The approach taken by the Digest is a unitary one and a preliminary outline of the crime is sketched by Marcian at 48.10.1 *pr.*:<sup>164</sup>

Marcian *Institutes, book 14*: The penalty of the *lex Cornelia* is imposed on a person who with malicious intent conspires for the giving of false witness or the delivering one after another of false evidence ...

A series of examples of breaches of this *lex* are given, before turning to punishment, notably mentioning the role of slaves (Dig. 48.10.1.13):<sup>165</sup>

[Marcian, *Institutes, book 14*] The penalty for forgery or its equivalent is deportation and confiscation of all property; and **if a slave commits any of these [offences], it is ordered that he suffer the extreme penalty.**

Leaving aside the aspect of the different legal sanctions, what is of interest here is that, immediately in this introductory section, the possibility of slaves committing forgery linked with false evidence is contemplated. Slaves and forgery of wills are mentioned together by Callistratus at Dig. 48.10.15.2–3. After specifying that a slave who grants himself manumission while writing his master's will can only be freed on the grounds of a *fideicommissum* (Dig. 48.10.15.2), the jurist admits that one shall not be that strict, provided that the *dominus* added a signed clause to explain that he dictated and recognized (*dictasse et recognovisse*) what was written by the slave (48.10.15.3). The necessity of this proviso, though, indirectly confirms that the jurist conceptualized the slaves as capable of acting autonomously in other instances.

Forgery, as cursorily stated above, can also be understood as money counterfeiting. This different nuance of the crime is briefly explained at Dig. 48.10.8, where one can immediately acknowledge it as a more serious matter, if compared with the forgery of documents:<sup>166</sup>

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<sup>163</sup> The former hypothesis is supported by Crook (1987), while the latter is preferred by Kocher (1965). The *lex* broadened its sphere of influence over time due to changes related to both the economy and the parallel development of private law. This enlargement through various *senatus consulta* is well explained by Pugliese (1982).

<sup>164</sup> *Poena legis Corneliae irrogatur ei, qui falsas testationes faciendas testimoniave falsa inspicienda dolo malo coiecerit.*

<sup>165</sup> *Poena falsi vel quasi falsi deportatio est et omnium bonorum publicatio et si servus eorum quid admiserit, ultimo supplicio adfici iubetur.*

<sup>166</sup> *Quicumque nummos aureos partim raserint, partim tinxerint vel finxerint. Si quidem liberi sunt, ad bestias dari, si servi, summo supplicio adfici debent.*

Ulpian, *Duties of Proconsul*, book 7: Persons who on the one hand shave down gold coins or on the other wash [with gilt] or cast [other coins], if they are freemen should be thrown to the beasts, **if slaves, sentenced to the extreme penalty.**

This difference in punishment (with which we will be properly concerned later) demonstrates how the slave's agency is not ignored either for this 'second type' of forgery, which was viewed as a major offence against the state. The economic aspect was not neglected, though the treason implied, due to the presence of the emperor's portrait on coins, was a weightier factor in the determination of the severe chastisement.<sup>167</sup>

Hence, the whole spectrum of the crime of forgery is perceived as possible for *servi* in the eyes of the jurists, and this is revealing. Indeed, it shows that the falsification and counterfeiting at the hand of the enslaved are threats lurking not only in the domestic contexts outlined with respect to their masters' wills, but also expanding much further – since the treason linked with money counterfeiting was understood as a crime endangering the security and the safeguard of the Romans.<sup>168</sup>

### 3.3 'Exclusively servile' crimes

What has been suggested so far about the slaves' active role in criminal matters, becomes self-evident in this final section, where the *servus* is envisaged as the only possible culprit. The climax for the active slave is reached in a range of crimes which, although rather narrow, comprises offences that either would not be conceived as such if perpetrated by a free individual or could not have been committed at all by a free person.<sup>169</sup>

The first instance of an exclusively servile crime, in the set of books here considered, is found at Dig. 48.19.28.11:<sup>170</sup>

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<sup>167</sup> Robinson (1995) 87. Coins could have been diminished in value following various techniques listed in *PS* 5.25.

<sup>168</sup> Treason, i.e. *crimen maiestatis*, will be examined in detail in Chapter 4.

<sup>169</sup> Dumont (1987) 133 briefly mentions exclusively servile crimes, but only categorizes running away and enrolling in the army as such.

<sup>170</sup> *Igni cremantur plerumque servi, qui salutem dominorum suorum insidiaverint, nonnumquam etiam liberi plebeii et humiles personae.*

Callistratus, *Judicial Examinations*, book 6: **Slaves who have conspired against the wellbeing of their master are generally burned in the fire**, as sometimes are also free plebeians and persons of low rank.

The endangering of the masters' lives, which could have also been put under the label of the *lex Cornelia* on murderers and poisoners (Dig. 48.8), is nonetheless allocated a separate discussion. This in fact confirms the activity of the slave at this juncture; it can also be added that the masters' anxiety about the possibility of this happening matches the jurists' concern, as the slave is here portrayed as totally and undeniably active.

Another interaction, this time between the enslaved, public justice and the master, is perceived as criminal at Dig. 49.14.2.6:<sup>171</sup>

Callistratus, *Rights of the Imperial Treasury*, book 2: Our own Emperor Severus Augustus has laid down that **slaves informing on their masters should not be given a hearing but subjected to punishment** and that freedman who are mandators of actions against their patrons should also be inflicted with punishment by provincial governors.

These lines can be framed within the more general prohibition that slaves should not be accusers in matters related to criminal law.<sup>172</sup> Slave testimony, in general, would have been validated only if extracted under torture. Moreover, there would have been recourse to it exclusively when (as specified by Dig. 48.18.1) the criminal was already suspect and incriminated by other evidence, so that the slave testimony appeared as the only element lacking. The jurist's pronouncement, however, is a clear sign of their perception of the slave as able to act in spite of this and, hence, to testify autonomously – at least theoretically.<sup>173</sup>

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<sup>171</sup> *Imperator noster Severus Augustus constituit, ne servi delatores dominorum audiantur, sed ut poena coerceantur. Libertos quoque causae mandatores contra patronos a praesidibus provinciarum poenae plectendos.*

<sup>172</sup> A few exceptions must be acknowledged: as stated at Dig. 48.4.7.2, 48.10.7 and 48.12.1, slaves could have been given a hearing when their masters were involved in cases of public frauds and tax offences, forgery of coins and regrating respectively. Watson (1987) states that these exceptions were probably established earlier than the constitution of Constantine's enactment contained in *Cod. Theod.* 9.5.1.1 of which the passage of the Digest is reminiscent. The case of the *crimen maiestatis* can be listed too (Dig. 48.4.7.2).

<sup>173</sup> This case in particular is indicative of the fact that servile agency in general remains an open question. The regulation on the information given by the enslaved against their own masters makes it difficult to decide whether in 'real life' there would have been actual autonomy, or rather some pressures exercised by third parties whose interest were at stake in the judicial case.

Next, there was a particular expression of free will (and, thus, agency) which was not tolerated in slaves – the one pertaining to military service, as clearly stated by Marcian (Dig. 49.16.11):<sup>174</sup>

Marcian, *Rules, book 2*: **Slaves are forbidden all military service**; otherwise they suffer **capital punishment**.

We have evidence for slaves being employed in the army due to shortage of (free) manpower,<sup>175</sup> but they were not allowed to volunteer for the *dilectus*.<sup>176</sup> This is not the place to investigate the slaves' reasons for offering themselves to war (which is in any case not discussed in the legal sources). What the relevant discourse does tell us, however, is that, according to the jurists, the possibility of *servi* willing to join the army was real and this was another aspect of their agency which needed regulation: in turn, this tells us that the slave's agency was recognized.

In offering themselves for military service, *servi* would have had to lie about their legal status and the last exclusively servile crime foregrounds a similar situation. According to Dig. 48.19.38.4, slaves would have claimed their freedom deceptively also on other occasions:<sup>177</sup>

[Paul, *Views, book 5*] **He who fails to prove that he has bought his freedom with his own money cannot claim his freedom; further, he is returned to the same master under penalty of fetters or, if the master himself prefers, condemned to the mines.**

Buying freedom can, by definition, only be undertaken by a slave. Important for the present argument is that, in this last legal pronouncement to be discussed, slaves are once more configured as active in their own right. The issue over the *servus suis nummis emptus* is of course a complicated one,<sup>178</sup> but whatever the legal details involved, the slave is regarded as

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<sup>174</sup> *Ab omni militia servi prohibentur, alioquin capite puniuntur.*

<sup>175</sup> See Del Prete (1937) 175 n. 5.

<sup>176</sup> A case as such is presented in Plin. *Ep.* 10.29 in which Pliny asks Trajan for advice, since a *dilector* discovered two slaves among the soldiers; the question is whether he should put them to death or not. Trajan's reply (Plin. *Ep.* 10.30) presents a tripartite scenario: in case the slaves were chosen, then the recruiting officers are to blame; if they were presented as substitutes, those who so presented them are responsible; finally, if they volunteered spontaneously, and with a knowledge of their unfree condition, they must be punished.

<sup>177</sup> *Qui se suis nummis redemptum non probaverit, libertatem petere non potest. Amplius eidem domino sub poena vinculorum redditur vel, si ipse dominus malit, in metallum damnatur.*

<sup>178</sup> On *servus suis nummis emptus* see Horsmann (1986).

clearly independent in this kind of (fraudulent) action: the slave in question is fully active in front of the law.

## Conclusion

No one would nowadays argue that slaves were simply the passive pawns of their masters, inert and exclusively subjected to their whim, or deny they had agency. And yet there has not been a comprehensive study of the juridical discourse in this respect. Such an examination, undertaken in the current and previous chapter, reveals the full nuance of a multifaceted conceptualization of human property. In Chapter 1, we have highlighted the very wide spectrum of passivity a slave could have experienced in the jurists' eyes. However, the earlier discussion needed to be expanded and complemented by the analysis presented in the present chapter (in which the slave was configured at one extreme as a fully-fledged active player) to give a complete impression of the legal conceptualization of the enslaved.

At the start, the list of delicts and crimes suffered by *servi* has been compared with that of the misdeeds they could have committed. The array of the latter immediately stood out as wider. Whatever such discrepancy should tell us, a clearer picture of the active slave was drawn from the analysis of the Digest passages on servile agency, whose discussion has been arranged in a way to delineate a conceptual progression, and hence a notable spectrum, in terms of liability.

Delicts prescribing a monetary fine to be paid by the master functioned as the point of departure. The mechanism of *noxae deditio*, a safeguard for slave-owners, started breaking through this scheme: it still entails an evident economic loss for the master, but also advances the recognition of the slave's personal responsibility. Following on from there, we approached offences which would have involved the lessening of the slaves' *peculia*, threatening an extremely coveted (and cherished) personal allowance granted by the *dominus*.

The real turning point of the discussion, however, occurred when it came to crimes, documenting full servile responsibility in the slaves' physical liability: the most serious offences, in fact, are followed by severe corporal punishment. This is the basic principle coming into effect in the situations at stake, which have been divided into three categories: crimes in which the slaves can be both the drivers and the recipients of the actions; those in which they are only admitted an active role; and those for which they are seen as the only perpetrators possible – reaching the peak of servile agency.

The existence of pieces of law documenting the existence of offences peculiar to slaves and the noticeable number of crimes of which they can be active subjects but not objects cannot but persuade the reader of the necessity to reverse the commonplace view regarding slaves before the law.<sup>179</sup> Even when dealing with civil wrongs, the jurists acknowledged that the enslaved possessed the faculty of disregarding their owners' instructions, being capable of choosing between committing offences or contravening their masters' commands when ordered to perpetrate others, notably on the basis of their personal judgement.

In sum, in the juridical realm of crimes and delicts portrayed in the Digest, the enslaved is far from being a mere object or tool, acting (at best) at the master's whim: Roman juridical thought perceived *servi* frequently as autonomous, capable of discernment, and eager to pursue their own interest – the hallmarks of the capable human mind.

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<sup>179</sup> Lenski (2016) 276 explains that slavery was a “violence-based institution that kept open a space for the ongoing exercise of violent force by masters but also encouraged the enactment of violence by slaves”. While he profusely discusses the exercise of violence on slaves by slave-owners, and even the exploitation of slaves for the criminal pursuits of their *domini*, slaves as agents of violence are only explored with regard to forms of rebellion like suicide, assaults on their masters and large-scale rebellions. These, along with running away and stealing, are the servile offences on which modern scholarship concentrates almost exclusively – see Bradley (1988), just to have an example.

## CHAPTER 3

### Servile Punishment: Legal Status, Legal Privilege and the Nuances in Between

#### Introduction

Paraphrasing Aubert,<sup>180</sup> there is scarcely a topic which can enthrall an audience more than the suffering of others, and indeed the doctrine of punishment in Roman law has been the object of many seminal and extensive studies. None of them, however, has been thoroughly and exclusively concerned with the legal sanctions to which the enslaved could be subjected.<sup>181</sup> Although the topic has been already broached in Chapter 2, it is essential to concentrate on servile punishment *per se*, in order to complete the present analysis and to obtain a well-rounded picture of the delinquent *servus*.<sup>182</sup> The present chapter, then, will (re)consider servile punishment through a sharp analytical focus, conceiving the physical violence exerted on the slave as the direct consequence of the enslaved person's breach of criminal law. This will bring our acknowledgement of the slave's responsibility – and, hence, their human nature and subjecthood – in the eyes of the jurists another step further.

Both the discussion on servile passivity and that on servile agency in the previous two chapters substantiated the fact that the juridical conceptualization of *servi* clustered around a diverse set of roles and concerns, producing a variegated pattern. It is thus opportune to ask whether the spectrum on which the Roman jurists placed enslaved individuals when considering delicts and crimes is also borne out by the way they wrote about punishment. By definition, being punished

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<sup>180</sup> Aubert (2002) 97–98.

<sup>181</sup> As briefly stated in this thesis' Introduction, when servile punishment is approached, it tends to be intertwined with another, violent (but otherwise not comparable) aspect, namely torture – with the latter significantly undermining discussion of the former, as can be noted in Buckland (1908) 86–97, Finley (1980) 93–122 and Robinson (1981) 213–254. This juxtaposition is justified by Cerami (1991) who claims that the Digest title of torture (18), in book 48, immediately precedes the one regarding punishment (19) as the boundaries between the two had become blurred at the time of Justinian.

<sup>182</sup> It is impossible to entirely exclude the discussion on punishment when one is concerned with delinquency. While explaining the fundamental character of punishment in Roman law, Brasiello (1937) 5 claims that very frequently the command contained in a legal provision, or rather the legal provision itself, was expressed by means of its legal sanction. In other words, in the Roman mentality, an act started representing a criminal violation only after the need for a certain chastisement for it was felt.

means to take on a passive role, i.e. that of the recipient of the punishment, exacted by others. There may not seem to exist, therefore, a case to advance the broader argument in this thesis. But once again, there are several factors that must be taken into consideration, and that challenge such a seemingly straightforward conclusion.

Let us come back, once again, to Libanus, whom we have seen bragging about his misdeeds in the Introduction to this thesis. Before enumerating his ‘criminal achievements’, Libanus had taken pride in the confidence and the strength of his shoulder blades and forearms (*Asin.* 549–552):

*qui aduersum stimulos, lamminas crucesque compedesque  
neruos, catenas, carceres, numellas, pedicas, boias,  
inductoresque acerrumos gnarosque nostri tergi  
qui saepe ante in nostras scapulas cicatrices indiderunt*

which [fought] against **goads, iron blades, crosses, fetters, strings, chains, prisons, shackles, stocks**, and the fiercest **markers who know our backs** and who have often impressed scars on our shoulder blades.

Libanus’ enumeration and the synonymic accumulation of instruments of coercion and punishment are certainly to be seen under the lens of comic exaggeration. However, the whole Plautine corpus persistently supplies details on servile punishment – an aspect that, given the insistence, must have been central to the experience of the enslaved in the Roman master’s mind (and most likely also in the experience of the enslaved).<sup>183</sup> Putting servile discipline to the fore, moreover, Plautus stresses a dimension which is not as prominent in the original Greek plays he elaborates.<sup>184</sup> In this particular case, Libanus metaphorically links the endured sufferings to an army which he defeated,<sup>185</sup> sealing this declaration with a final, notable remark (*Asin.* 557):

*... qui me est uir fortior ad sufferendas plagas?*

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<sup>183</sup> See Richlin (2017) for an elaboration of the realistic backdrop of Roman comedy in the experience of the enslaved.

<sup>184</sup> Parker (1989) 233 stresses that although we find a certain amount of slave beating in the Old Comedy and some references in the New Comedy (such as *Men. Dys.* 473, *Pk.* 134 and *Aspis* 239–45) too, there is “nothing approaching the frequency, variety, and detailed vocabulary of torture that Plautus shows”.

<sup>185</sup> On Plautine slaves speaking like parodies of Roman generals, see Leigh (2004).

... who is a stronger man than me **at suffering blows**?

Despite Libanus' efforts to depict the experience of punishment in an epic fashion, the reader still receives the impression of an inert, defenceless *servus*: he has been subjected to several chastisements and, by his own admission, only went as far as enduring them – thus offering some kind of resistance, although merely of a passive kind. The comic effect of this painful inventory, moreover, hinges on the fact that the body of the free was untouchable, creating a sharp distinction between the free and the enslaved.<sup>186</sup> In matters of punishment, indeed, “the governing principle was that the slave was answerable with his body for any infraction, whether serious or trivial”.<sup>187</sup> It has also been stated that the purpose of such treatment was precisely to undermine the slaves' humanity, using punishment as another marker to distinguish *servi* from those human beings who were not also items of property.<sup>188</sup>

Given the depiction of the enslaved's body as open to an unquestionable multitude of harsh chastisements, in contrast (by implication in this case) to that of the free, and considering that, quite obviously, punishment works in one direction (i.e. against the offender) it would be logical to assume, as already noted, that the kind of diversity explored and detailed in the previous chapters is not matched at this final end of the legal discussion of crimes and delicts. An assumption as such is also sustained by a few cases approached in Chapter 2, where servile perpetrators were allotted harsher chastisements than those of free culprits. And it is indeed true that Roman law established that punishments had to fit both the crime and the criminal.

In the evaluation (and treatment) of criminals, their free or servile status exerted regularly a substantial influence – this is not to be denied. But the present chapter demonstrates that, while deliberating on the punishment of the enslaved, the jurists did not exclusively take into account their legal status. The issue of servile punishment *per se*, as a result, proves itself to be a less challenging concern than expected, given that the enslaved is rarely singled out individually as the object of punishment and is more frequently associated with broader social groups, not only of low rank, when being subjected to certain legal sanctions. A mandatory

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<sup>186</sup> See the works cited in n.3.

<sup>187</sup> Bauman (2000) 118.

<sup>188</sup> Finley (1983) 93–6.

step to reach this conclusion, however, is to individuate the whole host of legal penalties targeting slaves and to test their area of application, as described in Digest 48. This exercise will form the backbone of the present chapter. First, however, a brief exposition of the general rules – i.e. those that seem to challenge the task at hand.

## 1. General rules regarding servile punishment

When dealing with the topic of punishment, title 19 of Digest 48 is a key area of investigation, as it is entirely devoted to this matter. In 48.19.1 we are offered a glimpse on what can be defined as the foundations of a general punishment doctrine. The first item of immediate interest for present purposes is found slightly further in this title, at Dig. 48.19.9.11:<sup>189</sup>

[Ulpian, *Duties of Proconsul, book 10*] ... You must know, however, that **there are distinctions between punishments, and not all persons can have the same one imposed on them ...**

Speaking in a very broad sense, Ulpian introduces a differentiation concerning the juridical idea of the offender. Ulpian's pronouncement is complemented by Claudius Saturninus' stance at Dig. 48.19.16 *pr.* There, after specifying that Roman law envisages punishments for things done, said, written and counselled, the jurist states that further consideration is due in relation to "the motive, the person, the place, the time, the quality, the quantity, and the outcome". More detailed information on "the person" is recorded in Dig. 48.19.16.3:<sup>190</sup>

[Claudius Saturninus, *Penalties of Civilians, sole book*] **The person is looked at in two ways: the person who did the act and the person who suffered [it]; for slaves and freemen are punished differently for the same crimes** and differently, too, someone who dares [to wrong] a master or parent as opposed to an outsider, or who [offends] a magistrate as opposed to a private person. In considering this matter, regard must also be had to age.

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<sup>189</sup> ... *Sed enim sciendum est discrimina esse poenarum neque omnes eadem poena adfici posse ...*

<sup>190</sup> *Persona dupliciter spectatur, eius qui fecit et eius qui passus est: aliter enim puniuntur ex isdem facinoribus servi quam liberi, et aliter, qui quid in dominum parentemve ausus est quam qui in extraneum, in magistratum vel in privatum. In eius rei consideratione aetatis quoque ratio habeatur.*

The bipartition in punishment due to the legal status of the perpetrator is patently declared in this passage and Callistratus elucidates what this different treatment entails (Dig. 48.19.28.16):<sup>191</sup>

Callistratus, *Judicial Examinations, book 6* **Our ancestors, whatever the punishment, punished slaves more severely than freemen**, and notorious persons more than those of unblemished reputation.

Not only are slaves penalized more than free men, but this has also been the case since time immemorial, thus providing strong socio-cultural ammunition for continuing with this practice.<sup>192</sup>

At first sight, then, it appears that the realm of punishment puts a firm end to the malleable approach to the enslaved that was singled out when considering *servi* as recipients and perpetrators of delicts and crimes. Indeed, the general view is that the enslaved is always punished in the most severe fashion and that this ‘prerogative’ later starts to be shared with people of low rank, the so-called *humiliores*.<sup>193</sup> Some nuances, however, deserve to be unpicked.<sup>194</sup> The jurists are, once again, more acute in their pronouncements and they do not automatically place the *servus* at the worst end of the spectrum. Legal penalties are not immediately determined by the culprit’s freedom (or lack thereof), because regard is occasionally given to the crimes in and of themselves, along with plenty of circumstantial aspects related to the modalities and the reasons for which they were committed. This places

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<sup>191</sup> *Maiores nostri in omni supplicio severius servos quam liberos, famosos quam integrae famae homines punierunt.*

<sup>192</sup> See Robinson (2007) 184 for an overview of servile penalties in republican times.

<sup>193</sup> Also named *tenuiores* – see Rilinger (1988) for questions related to semantic and terminology. This category is conceived as opposed to that of the *honestiores* (i.e. those belonging to the higher social classes) in a dichotomy characterizing the juridical discussion from roughly the end of the second century CE. In Dig. 48.19.10 *pr.*, Macer states that slaves are punished after the fashion of *humiliores*, illustrating a tendency to count the enslaved in the group of free people of low social background. For this reason, the dualism between *humiliores* and *honestiores* has been exploited by Garnsey (1970) and many other scholars since to advance the concept of a general binary structure. It seems sensible, however, to agree with the partial revision of this theory advocated by Rilinger (1988), according to whom the boundaries between upper and lower classes had surely shifted, rendering the polarity between *honestiores* and *humiliores* undeniable; nonetheless, residual elements of the original opposition between *ingenui* and *servi* were still effective.

<sup>194</sup> Bradley (1987) already stated that the servile penalties were also imparted to free people, but he only discusses their use in military law.

the enslaved at times even on an equal footing with legally free individuals, and not necessarily only those of low social status.

## 2. The punishment ladder

To validate the statement above, it is imperative to compile a full catalogue of the various servile punishments encountered in the Digest and subject these to careful scrutiny. Callistratus' overview provided at Dig. 48.19.28 is a convenient starting point.<sup>195</sup>

Callistratus, *Judicial Examinations*, book 6: The stages of capital punishments are more or less as follows. The **extreme penalty** [*summum supplicium*] is held to be **condemnation to the gallows**. There is also **burning alive**; this, however, though deservedly included in the term 'extreme penalty' [*summi supplicii appellatione*], is yet regarded as following after the first, because this class of punishment was devised at a later time. Also, there is **beheading**. Then, the next punishment after death is **sentencing to the mines**; after that, **deportation to an island**. 1. The remaining punishments **relate to a person's reputation, not to the risk of his life**, such as **relegation**, for a period or permanently, or to an island, or when someone is handed over to **forced labour**, or punished by **beating with rods**. 2. **It is not the custom for all persons to be beaten with rods, but only free men of the poorer classes** [*tenuiores*]; men of higher status [*honestiores*] are not subject to beating with rods, as is specifically laid down in imperial rescripts.

These lines offer a helpful account of what I call the punishment ladder, in which the main distinction operated does not take into account the legal status of the offenders. Ulpian creates a dichotomy between penalties jeopardizing one person's life (*caput*) and those tarnishing their reputation (*existimatio*). The concept of *existimatio* is explained, again by Callistratus, as a position of unimpaired dignity established by law and custom, which can be reduced or even

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<sup>195</sup> *Capitalium poenarum fere isti gradus sunt. Summum supplicium esse videtur ad furcam damnatio. Item vivi crematio, quod quamquam summi supplicii appellatione merito contineretur, tamen eo, quod postea id genus poenae adinventum est, posterius primo visum est. Item capitis amputatio. Deinde proxima morti poena metalli coercitio. Post deinde in insulam deportatio. 1. Ceterae poenae ad existimationem, non ad capitis periculum pertinent, veluti relegatio ad tempus, vel in perpetuum, vel in insulam, vel cum in opus quis publicum datur, vel cum fustium ictu subicitur. 2. Non omnes fustibus caedi solent, sed hi dumtaxat qui liberi sunt et quidem tenuiores homines, honestiores vero fustibus non subiciuntur, idque principalibus rescriptis specialiter exprimitur.*

removed, following certain misdeeds.<sup>196</sup> This inevitably evokes the idea of the civil honour deriving from the possession of full rights before the law, which immediately clashes with the legal status of the slave.<sup>197</sup> We must assume, then, that only the highest rungs of the punishment ladder illustrated by Callistratus, i.e. those aimed at procuring death, will be in the limelight. These are collectively termed as *summa* (or elsewhere *ultima*) *supplicia*, an expression generally translated as ‘extreme penalties’. Such a designation foregrounds the eminently physical dimension of these punishments, which would procure death through utmost pain and torment (a point that will recur in sheer graphic form in Chapter 5).<sup>198</sup>

Despite the insistence on bodily violence, the harsher legal sanctions are not categorically distinguished as servile only, while precise remarks on *servi* feature in Ulpian’s words at Dig. 48.19.8.12–13:<sup>199</sup>

[Ulpian, *Duties of Proconsul*, book 9] 12. **There is no doubting that slaves are customarily condemned to the mines [*in metallum*], or to the *opus metalli*, or again to the hunting games [*in ludum venatorium*]; and if they are handed over [for these] they are made penal slaves [*servi poenae*] and will no longer belong to him whose property they were before their condemnation.** In point of fact, when a certain slave, after being condemned to the mines, had been delivered from that punishment by the favour of the emperor, the Emperor Antoninus very correctly stated in a rescript that because the slave had ceased to be his master’s property once he was made a penal slave, he should not thereafter be returned to [that] master’s power. 13. If, however, a slave is condemned to **fettters**, whether permanently or temporarily, he remains the property of him who was his master before he was condemned.

<sup>196</sup> *Existimatio est dignitatis illaesae status, legibus ac moribus comprobatus, qui ex delicto nostro auctoritate legum aut minuitur aut consumitur* (Dig. 50.13.5.1).

<sup>197</sup> On *existimatio*, see Giltaij (2016). Given the ties between the notion of *existimatio* and that of *status*, the discussion contained in Trisciuglio (2017) is also pertinent.

<sup>198</sup> At Dig. 48.19.21, Celsus maintains that *ultimum supplicium* simply and solely entails death (*mortem solam interpretamur*). Celsus writes in the second century CE, one century before Callistratus who gives the reader a summary of the extreme penalties in the already mentioned Dig. 48.19.28 *pr*. There would have been no need to specify the range of *summa supplicia* if something had not changed: it makes thus sense to agree with Brasiello (1937), according to whom the expression ended up focusing on the extreme physical torment and pain that they encapsulated while reaching death as their ultimate outcome.

<sup>199</sup> 12. *Servos in metallum vel in opus metalli, item in ludum venatorium dari solere nulla dubitatio est et si fuerint dati, servi poenae efficiuntur nec ad eum pertinebunt, cuius fuerint antequam damnarentur. Denique cum quidam servus in metallum damnatus beneficio principis essetiam poena liberatus, imperator Antoninus rectissime rescipit, quia semel domini esse desiderat servus poenae factus, non esse eum in potestatem domini postea reddendum.* 13. *Sed sive in perpetua vincula fuerit damnatus servus sive in temporalia, eius remanet, cuius fuit, antequam damnaretur.*

The first paragraph plainly displays that sentencing to the mines (already mentioned in Dig. 48.19.28. *pr*) could have been imposed on enslaved individuals too, affirming how hard labour was conceptualized as a form of degrading adjacent to physical violence. Ulpian thus provides a complete inventory of the range of servile punishments, adding the hunting games to the picture. In short, if slaves had committed a crime, they would have been answerable through a number of *poenae* possibly comprising the following: the gallows, burning alive, beheading, condemnation to the mines, condemnation to the hunting games, and the fetters. The list must be supplemented with *extra ordinem* punishments,<sup>200</sup> alongside the many variations of corporal coercion already seen, for instance, in the cases of servile beating touched upon in Chapter 2.

Now, no neat cleavage between *servi* and *ingenui* is detectable in these summaries on punishment. Each chastisement must then be addressed separately in the context of specific crimes, in order to probe its potentially exclusive association with the enslaved, besides the level of complexity captured by the juridical pronouncements with regard to the punished *servus*.

### 3. Zooming in: the extreme penalties

The extreme penalties are the first item mentioned by Callistratus who, just like Ulpian and the other extant juridical writers, glosses over the precise characteristics of each enumerated punishment. As a consequence, our knowledge on the matter is fairly approximate, given our primary reliance on scattered literary texts.<sup>201</sup> At any rate, legal scholarship groups under the umbrella of *summa supplicia* the gallows, burning alive, beheading, and condemnation to the beasts. With the exclusion of beheading, all of them are seen as punishments which were for a long time used only against slaves, and which were then extended to the category of

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<sup>200</sup> *Extra ordinem* punishments had a specific character, which depended on the discretion of the magistrate imparting them. At Dig. 48.19.1.3, Ulpian makes it indirectly clear that, in case of *extra ordinem* proceedings, *extra ordinem* punishments would have been appropriate for those unable to pay a monetary fine (hence, we must assume, slaves too). Most of the instances of such chastisement in the Digest are referred to free people, also showing that it was not exclusively the lack of means which determined this legal sanction, but also the type of crime/delict perpetrated, and sometimes the circumstances in which it was committed too.

<sup>201</sup> Grodzynsky (1984). Ancient sources describing capital punishments are scanty and so are modern ones, according to Brasiello (1934) who laments the fact that this is a matter often neglected also by those studying Roman law, apart from Mommsen (1899) and Levy (1931), who focused mostly on death and exile. We can say that not much has changed since his time.

*humiliores*.<sup>202</sup> It is worth bearing in mind that their application is limited to major crimes whose repercussions affect the fabric of the whole society.<sup>203</sup> It is moreover rare to see any of these chastisements singled out as the only punitive possibility for a criminal offence;<sup>204</sup> rather, the jurists usually present two or three among the *summa supplicia* as suitable alternatives. Critically, the choice over them is not merely determined by the legal status of the offender, as will be presently shown, and Gaius indirectly confirms that any *summum supplicium* is suitable for *ingenui* while mentioning the loss of freedom and citizenship for those incurring such punishment (Dig. 48.19.29).

The prescription of *ultimum supplicium* for slaves (with no specification as to which particular punishment is to be preferred) is found when *servi* commit castration (Dig. 48.8.4.2), forgery (Dig. 48.10.1.13) and money counterfeiting (Dig. 48.10.8). In the first two instances, perpetrators of free standing suffer confiscation of their property and deportation (the latter only for *falsum*), while counterfeiting money results in the free being thrown to the beasts as well. A greater discretion is left to the magistrate in the case of a servile culprit who is to be punished with *summum supplicium* generically, but evidently, more than to the legal status of the criminal, the legislation on money counterfeiting gave prominence to the treason implied in this offence (as also seen in Chapter 2).

Those mentioned above are the sole cases in which *ultimum supplicium* is linked with the enslaved. The remaining crimes punished as such present no differentiation as to the legal status of the culprit: the rape of women (Dig. 48.6.5.2), the killing resulting from the administration of abortifacient or aphrodisiac drugs (Dig. 48.19.38.5) and the murder of certain family members (Dig. 48.9.9.1)<sup>205</sup> must meet exemplary chastisements regardless of the legal status of the offenders. The seriousness of the crime then emerges as the discriminating factor, placing

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<sup>202</sup> See, for instance, Bauman (2000) 110. More recently Bradley (2021) 2 stated that “the fact that the penalties had always previously been primarily associated with and applied to slaves speaks for itself, and casts doubt on any suggestion that Roman law softened over time in its general attitude towards slavery”.

<sup>203</sup> A point to be returned to specifically with regard to condemnation to the beasts, the gallows and burning alive, in Chapters 4 and 5. The fact that the seriousness of a crime is a determining factor in the meting out of *summa supplicia* is explicitly acknowledged, although in passing, by Santalucia (1994).

<sup>204</sup> Indeed, several overlaps will soon be noticed when considering the crimes punished with certain extreme penalties.

<sup>205</sup> Specifically of one who is not a father, a mother, a grandfather, or a grandmother. Since the alternatives presented are capital punishment and *ultimum supplicium*, one might argue that the latter was referred to the free and the former to the enslaved, although it is not spelled out. Other elements might have influenced the choice between the two.

the enslaved for once on the same level as the free before the law. All that said, some juridical pronouncements give more specific guidance on which chastisement to opt for, among the pool of the *summa supplicia*. This deserves our full attention and, sticking to Callistratus' order in Dig. 48.19.28, the gallows (*furca*) and their application will be considered first.

### 3.1 *Furca*

The detailed investigation on *summa supplicia*, then, begins with a closer look at the gallows (*furca*), i.e. a fork-shaped instrument used for near unique brutal physical punishments.<sup>206</sup> But this punishment tool cannot be treated separately from the cross (*crux*), of which it became a substitute after Constantine's reign.<sup>207</sup> Indeed, literary sources unanimously consider the *crux* as the epitome of servile punishment, as maintained by Cicero (*Rab. Post.* 16):<sup>208</sup>

... the executioner, the veiling of the head, and **the word "cross" itself**, may they be removed not only from the body of the Roman citizen, but from his thoughts, eyes and ear. Not only **the occurrence and endurance** of such things, **but also their legal possibility, expectation and even mere mention is unworthy of a Roman citizen and a free man.**

Along with both being associated with the enslaved in public opinion (suffice it to consider the occurrence of *furcifer* as an insult aimed at slaves in Plautine comedy), *crux* and *furca* shared another similarity. This lay in the fact that their gist was essentially the same – although the

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<sup>206</sup> The origins of the *furca* are still debated since there is no mention of it in the *Codex Theodosianus*. Moreover, in spite of the fact that the term is used by Prudentius and Augustine, it seems that they intended a different kind of punishment, as demonstrated by Franchi de' Cavalieri (1907) 76.

<sup>207</sup> Likely for religious reasons. On this systematic substitution of *crux* with *furca* in the Digest see Franchi de' Cavalieri (1907) 78 specifically. The word *crux* only appears seven times in the extant juridical texts, and they are all part of the *Pauli Sententiae* as pointed out by Grodzynski (1984); in this collection, the cross appears as the most serious form of punishment, followed again, in descending order, by burning alive and beheading. It is also uncertain whether this punishment was contemplated in the Twelve Tables or not. In *Nat. Hist.* 18.3.12, Pliny reports the case of a culprit to be hanged to Ceres' tree (*suspensumque Cereri necari iubebant*), and Mommsen (1899) 918–919 maintains that this is the first testimony of crucifixion, defined as “die ständige Form der Sclavenexecutionen”. Mommsen's interpretation of Pliny's passage has been challenged by Cantarella (2018)<sup>2</sup> 191–221. Parente (1979) believes that the punishment of the cross had Punic origins, as also testified s.v. *crux* in Ernout & Meillet (1967). One cannot ignore the argument in Cantarella (2018)<sup>2</sup>, according to which the Romans were already familiar with the similar Greek practice of ἀποτυπανισμός.

<sup>208</sup> ... *carnifex vero et obductio capitis et nomen ipsum crucis absit non modo a corpore civium Romanorum sed etiam a cogitatione, oculis, auribus. Harum enim omnium rerum non solum eventus atque perpessio sed etiam condicio, exspectatio, mentio ipsa denique indigna cive Romano atque homine libero est.*

gallows was possibly a more ‘humane’ form of execution (as far as this notion can be evoked at all in the present context). When condemned to the *furca*, criminals were hoisted with their hands tied at the end of the branches, having their feet tied as well, so that their body was pulled up on the pole and their head was placed across the fork. Hence, the condemned was strangled, dying in a considerably shorter space of time if compared to the cross, which caused people to perish gradually, with a deliberate protraction of pain.

The number of Digest passages actually concerned with this chastisement are scanty, but, more remarkably, none of them prescribes the gallows for *servi* – and this despite the widespread assumption that it was “a symbol of punishment for slaves”.<sup>209</sup> The closest we get to a servile application of *furca* is Paul’s view on people responsible for sedition or disturbance (Dig. 48.19.38.2); they can be sentenced to *furca*, thrown to the beasts or deported to an island, depending on their social standing (*dignitas*). There is, however, no open mention of the enslaved.

*Furca* then awaits notorious brigands (Dig. 48.19.28.15)<sup>210</sup> and people fleeing to the enemy and betraying the Roman counsels (Dig. 48.19.38.1). The perpetrators of these crimes are not defined in terms of their legal status, while, at Dig. 49.16.3.10, those hung on the gallows after deserting to the enemy and returning, can only be seen as free people since, as remarked in Chapter 2, the military recruitment of slaves was normally prohibited.

Lastly, when it comes to sacrilege, the application of this punishment (along with other *summa supplicia*) depends on a number of factors, listed by Ulpian as the condition of the person (*qualitas personae*), their age and sex, but also the type of property which was removed, and the time in which the crime was carried out (Dig. 48.13.7) – underlining once again that this punishment also affected the free.

In sum, the quintessentially servile character of the *furca* does not appear to be confirmed by the Digest, where its application follows less straightforward processes than merely checking on the offender’s legal status.

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<sup>209</sup> Hopkins (1993) 16 n. 25.

<sup>210</sup> Riess (2011) shows that the denomination of brigand (*latro*) comprised disparate realities, whose common features were the acquired ability to survive through violence and the easy access to weapons. *Latrones* were generally debtors at large, army veterans, deserters, gladiators and runaway slaves.

### 3.2 *Vivicomburium*

Callistratus' snapshot of the *summa supplicia* continues with burning alive (*vivus exuri, combustio, igni necari* or *vivicomburium*). This punitive measure traces back to the Twelve Tables (8.10), where it was suffered by arsonists.<sup>211</sup> In this case, the logic of the retaliation supporting the use of *vivicomburium* stands out as glaring. The same legal sanction is prescribed for the exact same crime, when committed intentionally (*sciens prudensque*), at Dig. 47.9.9, which omits any specifications regarding the legal or social status of the culprit.

Even after its field of application broadened,<sup>212</sup> *vivicomburium* did not seem to have the enslaved as a preferred target, according to the testimony of the Digest.<sup>213</sup> Merely in one case – i.e. type of crime – is death by burning aimed at servile perpetrators only, namely Dig. 48.19.28.11:<sup>214</sup>

[Callistratus, *Judicial Examinations, book 6*] **Slaves who have conspired against the wellbeing of their masters are generally burned in the fire**, as sometimes also are free plebeians and persons of low rank.

Evidently, Callistratus refers here to what we defined as an 'exclusively servile' crime in the previous chapter. It is then self-evident that the enslaved are specifically foregrounded as the recipients of death by burning here: only they could conspire against their *domini*. But this acknowledgement hardly limits our view on the enslaved only when it comes to this particular punishment – as Callistratus in fact makes immediately plain with his reference to other status groups that may be burnt alive.

When it comes to criminal behaviours potentially ascribable to both free and enslaved individuals, though, the slave does not appear as a stand-alone type of culprit to be punished

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<sup>211</sup> Grodzynsky (1984) highlights that *vivicomburium* often stands alone, with no alternatives, as a punishment prescribed for certain crimes, and not only in the Digest.

<sup>212</sup> I.e. during the late republican era, and especially under the principate, as claimed by Mommsen (1899) 923. Lovisi (2000) 141 also points out that there are no republican cases of arsonists punished following the fashion prescribed by the Twelve Tables. On the contrary, there are instances of people starting fires and being sentenced to death, but not by burning (as, for example, in Dion. Hal. *Ant. Rom* 12.6.6 where culprit slaves are beaten and crucified).

<sup>213</sup> And *pace* Lenski (2016) 279 who understands it as one of the chief means masters had to coerce their slaves along with beating.

<sup>214</sup> *Igni cremantur plerumque servi, qui salutem dominorum suorum insidiaverint, nonnumquam etiam liberi plebeii et humiles personae.*

more harshly through *vivicomburium*. What is more, *servi* are in fact not solely categorized with people of socially low birth either, contrarily to what Callistratus' pronouncement suggested.

Indeed, death by burning is imposed on state enemies and deserters (Dig. 48.19.8.2, 48.19.38.1)<sup>215</sup> as well as perpetrators of sacrilege (Dig. 48.13.7 *pr*), and the jurists do not hint at any distinctions in punishment resulting from the offender's legal status. This shows, once again, that at least formally the treatment of enslaved culprits was not a pure matter of assessing the offender's legal status. The use of burning alive seems motivated, rather, by the seriousness of the perpetrated offences.

### 3.3 *Capitis amputatio*

The third punishment listed by Callistratus is decapitation (*capitis amputatio*).<sup>216</sup> In Mommsen's opinion, this was the oldest form of execution, initially undertaken through the axe (*securis*),<sup>217</sup> which was replaced, in republican times, by the sword (*gladius*).<sup>218</sup>

Explicit mentions of *capitis amputatio*, in the Digest, would be looked for in vain, and the terms related to beheading, in general, are used sparingly in Latin literature. Verbs like *obtruncare* and *truncare* (i.e. 'to behead the body') are attested a handful of times, even in Latin epic.<sup>219</sup>

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<sup>215</sup> The use of death by burning for free people in this case is also acknowledged by Robinson (1981) 232 and Bauman (1996) 150.

<sup>216</sup> No literary source mentions slaves being beheaded. The exploration of this punishment here is added for the sake of completeness, since the initial assumption is that *servi* are condemned to *summa supplicia* on the basis of their lack of reputation (the besmudging of which would be at stake in the non-physical forms of punishment).

<sup>217</sup> Mommsen (1899) 924.

<sup>218</sup> Some later applications of *securi percussio* are found, for instance, at Liv. 2.59.11, Liv. 28.29.11, Sen., *Ira* 2.5.5, Joseph. *BJ* 2.242 and Suet. *Claud* 25. Cantarella (2018)<sup>2</sup> 169 claims that culprits had to perform a humiliating walk through the city, with their hands tied behind their back, being undressed and scourged before the actual beheading. Also, at 188, she specifies that *capitis amputatio* was first carried out in the Campus Martius, then in the Forum and later on the Esquiline hill, where decapitations took place in the imperial time.

<sup>219</sup> Weber (1969) explains that these verbs were difficult to manipulate in verse, but also unliterary and with such a radical meaning that rendered them too graphic to be used in even in ordinary prose, hence the preference to talk about 'death by the sword'. As demonstrated by Voisin (1984), probably also because of the lack of explicit mentions, beheading is a topic which has been long perceived as alien to Roman culture, in spite of its considerable presence in epigraphy, iconography and literature.

There is a marked predilection for the rather vague locution ‘death by the sword’, which in all likelihood implied beheading.

The juridical sources too, despite the lack of exact mentions, contain expressions presumably referring to beheading and hinging on the tool used to mete it out, which is, as in the literary contexts, the sword. Ulpian explains (Dig. 48.19.8.1):<sup>220</sup>

[Ulpian, *Duties of Proconsul, book 9*] Life is taken away **if, say, a person is condemned to be put to death with the sword. But it must be punishment by the sword** [*gladio*]; for **governors do not have the right of killing by the axe**, or the javelin, or the club, or the noose, or in any other manner.

There is no direct link between this type of execution and servile breaches of the law. Furthermore, its application in the Digest is actually restricted to cattle thieves. In a Hadrianic rescript discussed in Dig. 47.14.1 *pr.*, those committing *abigeatus* are thus condemned to the sword (*ad gladium*), but only in places where this offence is rife – forced labour, even of a temporary nature, is posited as the alternative. Notably, when Ulpian comments on the Hadrianic rescript here considered, he adds that, despite the imperial opinion, people of respectable rank should not be subjected to forced labour and/or the sword, incurring more appropriately relegation or removal from the civic order (Dig. 47.14.1.3).

As the jurist feels the need to make this remark, it cannot be ruled out that ‘death by the sword’ was meted out also to free people of respectable rank. At any rate, this punishment is beyond doubt suitable for free people of low rank in a broad sense, but again there is no explicit mention of enslaved perpetrators.

### 3.4 *Ludus venatorius* – *datio ad bestias*

Condemnation to the hunting games (*ludus venatorius*) marks our transition from Callistratus’ overview to the one provided by Ulpian in Dig. 48.19.8.12, where this punishment is presented by the jurist as unquestionably employed for slaves.<sup>221</sup> *Ludus venatorius* is also analysed at this

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<sup>220</sup> *Vita adimitur, ut puta si damnatur aliquis, ut gladio in eum animadvertatur. Sed animadverti gladio oportet, non securi vel telo vel fusti vel laqueo vel quo alio modo.*

<sup>221</sup> The discussion on *ludus venatorius* in the Digest concerns mainly the repercussions for those condemned to it, who become *servi poenae* (Dig. 48.19.8.11). This punishment implicated the loss of every right of

point given its close ties with the exposure to the beasts, known as *datio*, *obiectio* or *damnatio ad bestias*, which legal scholars count among the *summa supplicia*.<sup>222</sup>

But before delving into the occasions in which they were meted out to enslaved offenders, a brief excursus on these two forms of chastisement is required. The view that condemnation to the hunting games was not equalled to an immediate death sentence (and therefore not grouped with capital punishments) is enhanced by Ulpian at Coll. 11.7.4:<sup>223</sup>

There is, however, a difference between those who are given a capital sentence and those who are sentenced *ad ludum*: for those who are given a capital sentence are executed immediately, or, at least, should be executed within the year; this is stated in *mandata*. **Those who are condemned to the *ludus* are not always killed** but can even be freed and receive the *rudis* [i.e. the wooden sword symbolizing release from service in the amphitheatre] after an interval of time, inasmuch as they may be freed after a *quinquennium*, and given the *rudis* after a *triennium*.

In the books here considered, no direct example of condemnation to the hunting games as the legal outcome of a crime is detectable. Indeed, the *ludus venatorius* seems to disappear during Constantine's reign. A plausible explanation is that the chances of surviving the games would have led some magistrates to be reluctant in applying this sanction, favouring the employment of the more drastic *datio ad bestias*.<sup>224</sup> This extreme penalty entailed the culprit being left at the mercy of wild animals and is mentioned in Dig. 28.3.6.6, where Ulpian links it with decapitation and "other punishments which deprive of life".<sup>225</sup> At Dig. 48.19.11.3, Marcian presents the same association between the two chastisements, specifying that they are both

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inheritance and testament, along with the confiscation of one's property. Beggio (2020) contains an up-to-date and thorough discussion on the still debated matter of penal slaves. For the purpose of this chapter, suffice it to keep in mind that a penal slave ceased to be the property of his master and became owned by the state.

<sup>222</sup> Garnsey (1970) considers it to belong to the group, for instance.

<sup>223</sup> *Est autem differentia inter eos qui ad gladium et eos qui ad ludum damnantur: nam ad gladium damnati confestim consumuntur vel certe intra annum debent consumi; hoc enim mandatis continetur. Enimvero qui in ludum damnantur, non utique consumuntur sed etiam pilleari et rudem accipere possunt post intervallum, siquidem post quinquennium pilleari, post triennium autem rudem inducere eis permittitur.*

<sup>224</sup> See Potter (2010) 603 who, in talking about the disappearance of *ludus venatorius* in Constantine's time, also highlights that the rise of *datio ad bestias* was due to the 'milder' character of its counterpart, while *crux* was substituted with *furca* as the former was considered too brutal as a form of punishment. See Lo Giudice (2008) on the difficult standing of Christianity between the absolute rejection of the ludic dimension of the late antique city and at the same time the necessity not to isolate itself from such city and such 'traditional' practices like the gladiatorial games.

<sup>225</sup> In this pronouncement, people sentenced to the beasts see their wills invalidated. This is an indirect proof that free people could have suffered *datio ad bestias*, as slaves have no right to make wills.

capital. The missing mention of *datio ad bestias* in Callistratus' overview is justified by Mommsen with the fact that it was not deemed as a 'regular' form of execution. It depended, in fact, on the circumstance that popular festivals involving beast fighting had been arranged,<sup>226</sup> and also on the presence of *ad hoc* facilities.<sup>227</sup> The *datio ad bestias* fits in the gladiatorial games as an actual show which was held at lunchtime (*ludi meridiani*), with the culprits being consigned to wild beasts. It is self-evident that such spectacular executions are in line with the retributive character of Roman justice, with unmistakable exemplary connotations too.<sup>228</sup>

Coming back to our main object of pursuit, the use of *ad bestias datio* follows the same pattern observed in the other juridical sanctions analysed so far. There are two pronouncements, namely Dig. 48.8.11.1–2 and 49.1.18 which testify its use on the enslaved. The former, as we have seen already in Chapter 1, bans the use of this measure when not publicly enforced by a magistrate. The latter presents the case of a master lodging an appeal for a slave of his, who has been condemned to the beasts for an undetermined offence. However, no pronouncement in the Digest links *ad bestias datio* with *servi* committing specific crimes.

When we move to actual crimes punished with the consignment of the perpetrator to the beasts, this chastisement is presented in connection with people of low rank (as opposed to milder punishments for culprits of higher social class) for arson in urban contexts (Dig. 47.9.12.1), breaches of the *lex Cornelia* (Dig. 48.8.3.5) and money counterfeiting (Dig. 48.10.8),<sup>229</sup> along with fomentation of seditions and revolts (Dig. 48.19.38.2).

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<sup>226</sup> Mommsen (1899).

<sup>227</sup> Hengel (1977). It is also clear that this kind of punishment was still in use in Justinian's time, notwithstanding the abolition of gladiatorial games (*munera*). This abolition first occurred in 325 CE, through a law promulgated by Constantine. A wide number of scholars bring this change of attitude to the rise of Christian moral values. However, Grodzynsky (1984) downsizes religious influence, stressing also on the political one: bloodsheds, indeed, were not appropriate in a period of "civil ease and domestic quiet" (to use the words of *Cod. Theod.* 15.12.1 and *Cod. Iust.* 11.44.1). The abolition of *munera* and that of the *crux* are generally linked to the idea of martyrs being killed by animals and Christ's crucifixion respectively. Many other Christians, though, died by fire, which raises the question of why the Christian emperors did not banish this type of punishment too. On *munera* and *venationes* in general, see again Lo Giudice (2008). Potter (2010) argues that Constantine's ban referred not to the gladiatorial games, but rather to the *ludus venatorius*.

<sup>228</sup> This aspect of the *ludi meridiani* is particularly relevant in the imperial time, when Thomas (2010), focusing on gladiatorial games as a means of political communication in general, places the origin of such practice. We will return to the imperial significance of the *ad bestias datio* specifically in Chapter 5.

<sup>229</sup> For money counterfeiting, as previously stated, slaves are considered a separate category and vaguely destined to *summum supplicium*.

There are also several instances in which no distinction pertaining to social rank or legal status is observed when meting out this punishment. This happens when the criminal behaviour discussed is armed (*cum gladio*) cattle rustling (Dig. 47.14.1.3), sacrilege (Dig. 48.13.7), banditry (Dig. 48.19.28.15), parricide (Dig. 48.9.9 *pr.*) and, finally, desertion to and return from the public enemy (Dig. 49.16.3.10).

Once again, the imposition of *datio ad bestias* is not limited to servile offenders. Interestingly, the only juridical pronouncement heavily focused on the enslaved sentenced to the beasts aims at tackling this practice when arbitrarily decided by private masters. This brings to the fore that the thorny issue of mediating power over slaves between *domini* and the state is at the core of the jurists' pronouncements regarding the throwing to the beasts of *servi*, rather than the enslaved as the object of this punishment *per se*.

#### 4. Forced labour: *in metallum* – *opus metalli*

In consonance with the Roman elites' public disdain for manual work, forced labour in the mines is placed just below the death penalty in the punishment doctrine, and, as claimed by Ulpian at Dig. 48.19.8.12, there is no doubt (*nulla dubitatio est*) that *servi* can suffer it.

The nature of this chastisement, which also entailed deracination of the convicts from their places of origin,<sup>230</sup> is predominantly known from juridical sources,<sup>231</sup> which split such legal sanctions in the two categories of *in metallum* and *opus metalli*. To expound the difference between the two, we will borrow Ulpian's words (Dig. 48.19.8.6):<sup>232</sup>

[Ulpian, *Duties of Proconsul*, book 9] **The only difference** between those condemned to *in metallum* and those to the *opus metalli* **lies in their chains, that those condemned in metallum**

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<sup>230</sup> This feature creates a sharp distinction between condemnation to the mines and the other form of forced labour known as *opus publicum*. Millar (1984) 135 explains that those condemned to *opus publicum* were put to work in their own city. Moreover, this punishment was less degrading and humiliating than work in the mines and was generally imposed for limited periods. Also, convicts did not become *servi poenae* or *servi Fisci*. *Opus publicum* is found in correlation with *humiliores*; see for instance Dig. 48.19.10. *pr.* in which forced labour is prescribed for men of low rank, as opposed to a harsher punishment for slaves.

<sup>231</sup> Millar (1984) states that convict exploitation in the mines only appears in Suetonius and in Pliny's letters. See also Hirt (2010) on mines and quarries in the imperial time more broadly.

<sup>232</sup> *Inter eos autem, qui in metallum et eos, qui in opus metalli damnantur, differentia in vinculis tantum est, quod qui in metallum damnantur, gravioribus vinculis premuntur, qui in opus metalli, levioribus, quodque refugae ex opere metalli in metallum dantur, ex metallo gravius coercentur.*

**are weighed down with heavier chains and those to the *opus metalli* with lighter, and that any who abscond from the *opus metalli* are handed over *in metallum*, [while those who abscond] from *in metallum* are more severely punished.**

These few lines assert that both *opus metalli* and *in metallum* entailed hard physical labour, whose distinctive element was the restraining of the convict in his movements.<sup>233</sup> The *opus metalli* can be inferred as a softer form of punishment, and not only because of the lighter weight of the chains; in the passage considered above, in fact, absconding from *opus metalli* is commuted in *in metallum*, while criminals who tried to escape *in metallum* are destined an unspecified, albeit more severe punishment. Other suggestive features are those related to the resulting status of those condemned to it. In a rescript by Hadrian (quoted at Dig. 48.19.28.6), *opus metalli* is considered milder than *in metallum*, because the latter deprived a man of his legal freedom.<sup>234</sup>

Importantly, there are only two juridical pronouncements prescribing work in the mines (*in metallum* specifically) for slaves. At Dig. 48.19.38.4, a *servus suis nummis emptus* failing to prove that he has bought freedom with his money is condemned to *in metallum*, although, adds Paul, at the discretion of the owner the enslaved can also be returned to his master, under the penalty of fetters. Obviously, this is an exclusively servile offence, while, among crimes and delicts which can be committed by people of any legal standing, only Dig. 47.9.4.1 on looting from a wreck introduces *servi* as a third category being subjected to *in metallum* (jointly with flogging with the lash) as opposed to softer punishments for both *humiliores* and *honestiores*.<sup>235</sup>

Most of the *in metallum* instances, however, draw a line between people of low and high social rank, i.e. the just noted *humiliores* and *honestiores* respectively. Indeed, this punishment awaits

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<sup>233</sup> The deliberate use of the masculine possessive adjective depends on the fact that a different form of punishment was conceived for women, namely *ministerium metallicorum* (see Dig. 48.19.8.8). Hirt (2010) maintains that this consisted of some auxiliary mining or quarrying duty, which was physically less demanding.

<sup>234</sup> Hence, people condemned to *in metallum* became *servi poenae*. By the Severan period, however, no one could have retained their freedom after performing *opus metalli* either, and Garnsey (1970) believes that for this reason Callistratus pairs the two punishments and mentions the weight of the chains as a distinctive characteristic.

<sup>235</sup> Free offenders are beaten with rods and relegated for three years if *honestiores*, while people from lower ranks are sentenced to public works for the same amount of time.

*humiliores* in case of a ‘mild’ violation of tombs (Dig. 47.12.11),<sup>236</sup> highway robbery (Dig. 48.19.28.10), seduction of underage virgins (Dig. 48.19.38.3), administration of abortifacients and aphrodisiacs (Dig. 48.19.38.5), opening of the will of a person in their lifetime (Dig. 48.19.38.7), revelation and returning of documents in a lawsuit (Dig. 48.19.38.8-9)<sup>237</sup>. But occurrences of the application of *in metallum* regardless of the social and legal status of the culprit are not lacking. Condemnation to the mines is generally inflicted on kidnappers who, after being apprehended, are punished “according to the degree of their wrongdoing” (*pro delicti modo*), in Hermogenianus’ words (Dig. 48.15.7). Also in the case of nocturnal theft (Dig. 47.18.2) the circumstances of the theft take precedence in the determination of punishment, rendering condemnation *in metallum* a penal sanction potentially imposed on free people of high social standing too.

Taking the Digest’s testimony at face value, *opus metalli* seems hardly meted out. There is, indeed, one only mention, at Dig. 47.20.3.2, where the *opus metalli* represents the highest chastisement, not to be exceeded, for *humiliores* who swindle. However, one finds three instances of *poena metalli*, with which both types of convicted work in the mines can be intended, and none of them mentions *servi* explicitly. Armed theft or burglary, at Dig. 47.17.1, is punishable with the mines if committed by people of lower rank. The same might be inferred, even if it is not specified, from Dig. 48.19.38 *pr.*, which deals with stealing from the imperial mines or mint, the legal sanction being condemnation to labour in the mines and exile (with no clear implication that these are alternative chastisements). Finally, at Dig. 47.12.3.7, the mines await those committing despoliation of corpses without weapons, as opposed to the death penalty. Once again, there is no distinction regarding the legal status of the offender; instead, the jurist pays heed to the ways in which the despoliation has been perpetrated.

If one excludes the ‘servile only’ issue of the *servus suis nummis emptus*, and the case of looting from a wreck, the vast majority of instances in which forced labour in the mines is mentioned see the jurists less concerned about the legal status of the culprit and more about the social status as well as the nature of the committed delict/crime. It is possible to classify slaves under the *humiliores* denomination; yet, there is no explicit link between this form of punishment and the enslaved.

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<sup>236</sup> By ‘mild’ it is meant that the body in the tomb is not removed and that the bones are not scattered.

<sup>237</sup> Specifically when a procurator reveals documents to the opponent of his client.

Additionally, even when we move from away the realm of the *summa supplicia*, the seriousness of the crimes committed stands out as a notable criterion to be followed in the determination of punitive measures, as shown in the cases in which ‘respectable’ perpetrators too are potentially subjected to labour in the mines.

## 5. Corporal Coercion

In the previous chapter we have identified an acknowledgment of servile responsibility in the fact that, when committing *iniuria*, slaves could have been thrashed to mollify the victim of their affront (Dig. 47.10.9.3). More generally, beating, along with its variations that will be discussed shortly, was indeed deemed another suitable punishment for the enslaved. It may therefore be supposed that this was probably not stated outright by (the passages selected from) Callistratus and Ulpian for the ensuing reasons: a) it is taken for granted; b) corporal coercion is generally an accessory dimension of other legal sanctions.<sup>238</sup> Bodily chastisement was perceived as an extreme form of degradation, as testified by Macer, to whom a single blow is more serious (*gravior*) than a monetary fine (Dig. 48.19.10.2). It is also a form of punishment in exerting which, at least in theory, excessive cruelty must be restrained, as maintained by Ulpian (Dig. 48.19.8.3).<sup>239</sup>

[Ulpian, *Duties of Proconsul*, book 9] **Nor should anyone be condemned to death by flogging [verberibus], or scourging [virgis],<sup>240</sup> or by torture, although very many happen to die while being tortured.**

As anticipated, beating comprised a series of nuances, which are spelled out by Callistratus at Dig. 48.19.7:<sup>241</sup>

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<sup>238</sup> See for example Dig. 47.9.9 and 47.21.2, where it is paired with death by burning and forced labour respectively.

<sup>239</sup> *Nec ea quidem poena damnari quem oportet, ut verberibus necetur vel virgis interematur, nec tormentis, quamvis plerique dum torquentur deficere solent.* This legal provision echoes another pronouncement by Ulpian encapsulated in the already mentioned Dig. 48.19.8.1.

<sup>240</sup> The *virga* only appears here and at 48.9.9 *pr.* on parricide. For this reason, the issue is not explored in detail. For an account of the tools used for corporal chastisements see Kołodko (2006).

<sup>241</sup> *Veluti fustium admonitio, flagellorum castigatio, vinculorum verberatio.*

Callistratus, *Judicial Examinations*, book 6: such as *admonitio*, with rods; *castigatio*, with lashes; *verberatio*, with chains.

This convenient lexical distinction operated by the jurist is not accurately followed.<sup>242</sup> Let us then focus on the use of rods (*fustes*), lashes (*flagella*) and fetters (*vincula*) specifically, since, when dealing with beheading, we already observed the significance of the means through which this punishment was inflicted, in the Roman mind-set. At Dig. 48.19.10 *pr.*, after specifying that slaves are punished after the fashion of *humiliores*, Macer adds the following:<sup>243</sup>

*Macer Criminal Proceedings*, book 2 ... For the same reasons that **a freeman is beaten with rods** [*fustibus*], **a slave is ordered to be beaten with lashes** [*flagellis*] and returned to his master; and for those reasons that **a freeman, after being beaten with rods, is handed over to forced labor** [*opus publicum*], **a slave under the punishment of fetters** [*sub poena vinculorum*] for the whole of that time, **is ordered to be lashed** and returned to his master. If he is ordered, being under **the penalty of fetters**, to be returned to his master but is not taken back by him, he is ordered to be sold and, if he does not find a buyer, to be handed over to forced labour in perpetuity.

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<sup>242</sup> It is not unusual to spot inconsistencies such as this or even contradictory passages in the Digest, as seen in the previous chapters. To start with, *admonitio*, only appears in the above-mentioned Dig. 48.19.7. The verb *castigare* is mainly referred to physical punishment in general, also accompanied by the specification of the means through which it is imparted, as at Dig. 48.2.6 (*fustibus*) and Dig. 49.16.14.1 (*verberibus*). Examples of *castigatio* (with no indication of the tool employed) in Digest 47–49 are all linked to military discipline (48.3.12, 49.16.3.1, 49.16.3.5) or custody of prisoners (48.3.14.2, 48.3.14.3). Another occurrence of *castigare* is found at Dig. 47.9.9 on arson, which mentions no difference in punishment due to the legal and social status of the culprits: they are to be beaten mildly (*levius castigatur*), after committing this offence by chance or negligence. *Verberatio* is frequently intended as something inflicted by an offender rather than a punishment imposed by public jurisdiction (Dig. 47.8.4.14, 47.10.1.7, 47.10.5 *pr.*, 47.10.15.43, 47.10.15.46, 47.10.15.47, 48.6.7), but the verb *verberare* can also mean beating in general (this use dates back to the Twelve Tables, see 8.9–10, 8.14); paired with free individuals too, it is usually accompanied by mentions of the means used to carry it out. In this last case see Dig. 47.9.9 (which deals with arson and makes no social/legal status distinction), 48.9.9 *pr.* (concerning parricide and bringing into play the enigmatic *virgae sanguineae* due to the special character of the crime), 49.14.12 and 49.16.14.1 (which confirm this as a punishment suitable for *ingenui*). In various situations (such as 48.2.6), we find it in conjunction with *flagella*, a particular beating tool which will be considered shortly.

<sup>243</sup> ... *et ex quibus causis liber fustibus caeditur, ex his servus flagellis caedi et domino reddi iubetur. Et ex quibus liber fustibus caesus in opus publicum datur, ex his servus, sub poena vinculorum ad eius temporis spatium, flagellis caesus domino reddi iubetur. Si sub poena vinculorum domino reddi iussus non recipiatur, venundari et, si emptorem non invenerit, in opus publicum et quidem perpetuum tradi iubetur.*

This paragraph conceptualizes the rods as less serious than the lashes,<sup>244</sup> whose association with the enslaved is reiterated. Fetters appear too, although not as the beating tools previously envisaged by Ulpian, who probably mentioned them due to their versatility, since fetters would have also been used to immobilize those undergoing beating.<sup>245</sup>

Let us then put to the test the application of both *flagella* and *vincula* to the enslaved.

### 5.1 *Flagella*

The equation between servile corporal coercion and lashes (*flagella*) created by Macer is confirmed by an analysis of the recourse to such tools in the Digest. The lashes are indeed prescribed for the enslaved whenever people of low social standing suffer the application of rods. To begin with, the use of *flagella* must have carried a clear intention to inflict torment if we take Alfenus' words for it. Indeed, at Dig. 9.2.52.1, he explains that a shopkeeper has been hit by a thief with a *flagellum*, "in which there was pain" (*in quo dolor inerat*), highlighting the serious physical affliction accompanying the humiliation in the use of this tool.<sup>246</sup>

In the Digest, the lashes surface rarely in conjunction with specific offences, with the greatest number of occurrences being concentrated in the set of books under consideration. The crimes punished with their application are looting from a wreck (47.9.4.1), *iniuria* (47.10.17.2 and 47.10.45), and *levia crimina* (48.2.6). The *flagella* are mentioned when the culprits are slaves, while free offenders receive milder penalties.

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<sup>244</sup> In the Digest, both Macer (48.19.10 *pr.*) and Callistratus (48.19.28.3) agree in considering beating with rods (*fustes*) a form of punishment for *ingenui* of low rank. This is confirmed by 48.2.6 on *levia crimina*, 47.9.4.1 on looting from a wreck, and 47.10.45 on *iniuria*. The last two pronouncements envisage a tripartite punishment, with slaves considered as a separate category, along with *humiliores* and *honestiores*. Nevertheless, there are legal provisions in which beating *fustibus* is imparted to free people of unspecified status, such as when soldiers fall out of line (49.16.3.16), when fathers withdraw their sons from the army in peace time (49.16.4.11), and in case of seditious and riotous behaviour (48.19.28.3). Two pronouncements on pick-pockets and nocturnal thieves (47.11.7 and 47.18.2 respectively), moreover, present the rods as a punishment with no direct links to the culprit's legal or social status.

<sup>245</sup> Lovato (2013).

<sup>246</sup> The use of *flagella* and the laceration of the body of the criminals caused by them are explicitly brought up also at *Cod. Theod.* 9.37.4 (*corpora fuerint laesa verberibus tormentisque vexata*).

In clear contradistinction to the pattern highlighted so far dealing with the extreme penalty and forced labour, corporal coercion through the use of lashes was an option solely applicable to *servi*.

## 5.2 *Vincula*

The matter of *vincula* has cursorily been broached when discussing condemnation to *opus metalli* and *in metallum*. In Dig. 48.19.8.6, as seen, Ulpian pinpoints the main difference between the two chastisements in the weight of the chains (*vincula*), used to hamper the convicts' movements. *Vincula* intended in this sense, then, as already discussed, are suitable for both *servi* and free people.

In juridical writings, *vincula* also feature in a context other than forced labour, whose precise nature is still disputed. While fetters have long been seen as synonymic of detention (*carcer*),<sup>247</sup> this opinion has been recently challenged, although no certainty can be gained, given the slender literary evidence and the ambiguity of the juridical sources, which at times negate this correspondence.<sup>248</sup> A level of interpretation, then, comes into play when *vincula* are implicated,<sup>249</sup> and the issue cannot be simply resolved here. Suffice it to repeat that, as well as beating, they are mostly a supplementary element of other physical punishments.

Indeed, whatever the precise nature of *vincula*, our present concern is to verify their application to the enslaved. Slaves are *in vinculis* at Dig. 48.3.2 *pr.* where Papinian states that if they have

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<sup>247</sup> The interchangeability between *vincula* and *carcer* was first established by Mommsen (1899), since, when sent into prison, anybody is shackled by the law in a metaphorical sense, even when not in fetters. Discussion on the problematic issue of *carcer* started with Mommsen (1899), to whom it was a complementary coercive measure preceding trial or the actual chastisement. This argument created what Balzarini (1984) defined a dogma, which started being questioned only at the end of the last century, as shown, for example, by Rivière (1994), the collection of essays in Bertrand-Dagenbach (1999), and in Bertrand-Dagenbach, Chauvot, Salamito & Villancourt (2000).

<sup>248</sup> See for instance Dig. 50.16.216, where Ulpian highlights that, although imprisoned, one is not necessarily in fetters (*in vinculis*), unless their body has effectively been chained.

<sup>249</sup> All the more so when the *vincula* are *perpetua*. Different hypotheses on perpetual fetters have been proposed. Garnsey (1968) argues that *perpetua vincula* is life imprisonment, while Millar (1984) conceives them as servile life enchainment, but in private possession. Lovato (1994) links *perpetua vincula* and *opus publicum*: slaves condemned to it would be kept in *carcer* while not working and they would be chained if caught in an attempt to flee. The matter is further complicated by the poor attestation of *perpetua vincula* in both juridical and literary texts.

been accused of a capital crime and their master refuses to defend them, they have to plead their case in chains. At Dig. 48.16.16, *servi* are kept in fetters until their trial is concluded, with no amnesty granted on the occasion of specific holidays, whereas at 48.19.33 the possibility of them acquiring freedom after serving this sentence is presented. Finally, only one instance links the enslaved with *vincula* and a particular breach of the law, i.e. the already mentioned Dig. 48.19.38.4.<sup>250</sup>

Paul, *Views, book 5*: **A slave who fails to prove that he has bought his freedom with his own money cannot claim his freedom; further, he is returned to the same master under penalty of fetters** or, if the master himself prefers, condemned to the mines.

The pronouncement deals with the *servus suis nummis emptus*, and thus refers, again, to what was termed as an exclusively servile crime.

Speaking of offences with a broader pool of potential perpetrators, the use of fetters is indicated (with no details on legal and social status provided) for informers (*delatores*) not revealing their mandators at Dig. 49.14.2.5.<sup>251</sup> Also, anyone who kills their parents in a fit of madness (*sub furore*) shall not be punished, but rather strictly guarded and put into fetters, according to Dig. 48.9.9.1. These two provisions, however, are taken to hinder the possibility of escape and to avoid further violence dictated by the culprit's *furor* respectively.

Finally, books 48 and 49 of the Digest are dotted with broader discussions regarding the application of *vincula* on people of unspecified status,<sup>252</sup> while also the issue of people in fetters who died owning property (hence, not enslaved individuals) is touched upon at Dig. 49.14.45.1.

It follows, then, that even when their application does not concern forced labour in the mines, fetters are not solely, and not even primarily associated with the enslaved, who only appear in conjunction with *vincula* when the offence considered is an exclusively servile one, i.e. framed by their servile status.

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<sup>250</sup> *Qui se suis nummis redemptum non probaverit, libertatem petere non potest; amplius eidem domino sub poena vinculorum redditur vel, si ipse dominus malit, in metallum damnatur.*

<sup>251</sup> And possibly at Dig 48.4.4 *pr.*, which mentions *vincula* in relation with treason, although only in passing.

<sup>252</sup> See, for instance, Dig. 48.3.3 and 48.3.5 (which belong to the title on custody), 48.19.35 (where condemning someone to perpetual fetters is prohibited), 49.7.1.3 (which prescribes the avoidance of *vincula* in specific occasions).

## Conclusion

The (somewhat limited) appearances of *servi* as recipients of harsh legal sanctions in the Digest offer a rather different picture to the one favoured by often graphic literary representations. Libanus' introductory example was telling of the pivotal dimension of punishment in the life of the enslaved as configured on the Roman stage, whereas the legal sources showed themselves to be again more complex and comprehensive. Indeed, the jurists' pronouncements provided a vast assortment of scenarios, involving both the free and the enslaved, in the application of all punishments (with the marked exception of beating *flagellis*).

To be sure, while many of the legal provisions examined in the previous chapter openly defined the enslaved as the perpetrator (and in certain occasions as the only possible one), there is a scarcity of passages where slaves are individually considered the objects of a punishment. The range of physical chastisements to which they could have been subjected, moreover, appears to tally almost perfectly with the array potentially experienced by the free.

The highest majority of cases in which a specific chastisement is commented on explicitly and solely in conjunction with servile breaches of the law refers to the punitive implications of exclusively servile crimes, rendering the singling out quite obvious. But there does not seem to be a tendency to highlight the particular subjectivity of the enslaved to certain punishments when the offences considered can have both free and enslaved perpetrators. In numerous occurrences, in fact, no distinction is made on the basis of the social or legal status of the culprit: some crimes demand exemplary punishments, which keep their gruesome character and symbolic value independently of who has committed them. In meting them out, in fact, the focus is put on the impact of the corresponding offences, which surpass legal and social boundaries to reverberate on society at large.

As seen, the jurists plainly claim that slaves are punished more severely than free individuals, but the evidence gathered from the Digest passages was occasionally ambiguous and conflicting with this statement; this has no doubt to do with the influence of the *humiliores/honestiores* doctrine and the general exacerbation of penal law, but it is also evident that it reflects a complex conceptualization of the *servus* on the part of the jurists, that cannot merely be ascribed to these two aspects.

So, if the enslaved as the driver of criminal actions emerged unequivocally from the survey of the previous chapter, the slave as the receiving part of punishment *per se* appears as a less

debated concern for the jurists. This might be due to the fact that this is a matter more closely tied with the idea of domestic, rather than public discipline – and yet that slaves seldom feature as the recipients of punishment cannot but surprise, especially given the emphasis put on the punished *servus* in such texts as Plautine comedy, but also vis-à-vis the jurists' favoured example for their legal explications – i.e. the enslaved, as seen in Chapter 1. Clearly, in the above-mentioned contrast, the enslaved take a back seat when it comes to the legal discussion of punishments, regularly siding (as it were) with free and even freeborn individuals, of low and high social rank. The *servus*, then, is not the quintessential object of punishment in the jurists' mind.

But what this chapter has achieved also has a broader significance. In point of fact, starting with the goal of testing the absolute subjectivity of slaves to the most severe legal sanctions we gained, paradoxically, a broadening of their sphere of action, alongside the scaling down of their receptivity in terms of punishment.

Notably, if we consider the enslaved as grouped with the *humiliores*, despite the lack of an explicit mention, in being more severely punished than the *honestiores*, what comes to light is an expansion of the criminal sphere of action of the *servus*. The same can be inferred if we look at the considerable incidence of crimes punished with *summa supplicia* indiscriminately and thus targeting, potentially, also free individuals of higher social standing. In short, the free, of high and low rank alike, and the enslaved are at times placed on the same level before the law both in being subjected to the same legal sanctions and in seeing the possibility of committing certain offences equally acknowledged for both social groups in juridical writings.

We are extraordinarily unfair to the jurists, then, when we summarily state that the application of punishment in Roman law was tied to the legal status of the culprit: legal writers did not create such a rigid separation between the *ingenuus* and the *servus*. This is not to deny that being born an *ingenuus* of high social rank came with a pile of privileges also in the sphere of criminal law. In relation to the present topic, however, it can be said that, in being subjected to punishment, the enslaved is not automatically put at the worst end of the spectrum. Rather there are a series of nuances and exceptions surfacing when the jurists consider particular crimes, their motives, repercussions, circumstances and countless other variables which do not only concern the legal person of the perpetrator. In sum, when it comes to the juridical treatment of even the actions that Libanus was proud to have endured, the enslaved appear once again configured in a rather complex fashion. This silently acknowledges their human nature along

that of other legal status groups, and, hence, the need to work from a more diverse perspective on their agency and responsibility in our modern approximations to the topic of servile punishment.

## PART II

# LITERARY REPRESENTATIONS OF THE DELINQUENT SLAVE

Servile delinquency, naturally, was not an issue that interested only the jurists. On the contrary, slave ‘crime and punishment’ found its way into the Digest, where it is was repeatedly addressed, precisely because it was a concern surfacing on a daily basis in the lives of Roman masters, i.e. the members of the elite, whose point of view Roman law exclusively portrayed.

As stressed in the Introduction to this thesis, it is frequently overlooked that the exact same elite which produced the Roman jurists and even Roman law also saw many of its members engaging in the writing of non-legal literature. Given that the authors of the juridical and literary canon belonged to the same *milieu* and thus shared the same concerns, it is in many ways unsurprising that the perspective on servile delinquency and punishment embedded in their literary endeavours is characterized by a similar approach to that seen in their legal dealings. One chief aim of Part II is to illustrate, on the basis of three case studies, precisely that, and how the previously highlighted concerns have infiltrated the Roman literary universe.

Part I of this thesis showed that a significant degree of sophistication was displayed by the jurists when talking about the enslaved in ‘crime and punishment’ scenarios. Far from our modern approximations, the legal writers paid close attention to details, conceiving *servi* in a malleable and complex way which reflects the hybrid nature of the human chattel, at the crossroads between (wo)man and commodity; moreover, Part I has shown in detail that Rome’s jurists were capable of ‘employing’ the figure of the slave in multiple ways, including for the purpose of mere conceptual representation. Part II will demonstrate that also literary writers make diverse ingenious uses of the enslaved in their cultural constructions, and that these texts, therefore, speak to both real life settings as well as the underlying conceptual universe of Roman *domini*. In particular, the agency of *servi*, along with their receptivity both in terms of offences and punishments, are notably exploited in literary contexts too, enriching the texts in multiple ways. Intriguingly, the point made above regarding the shared social pool that produced both Rome’s laws and its literature can be powerfully illustrated not least through the regular recourse that Roman non-legal texts make to the world of law. More critically still, as will be seen on several occasions, a full appreciation of the texts under scrutiny is only possible

on the basis of the kind of understanding illustrated in Part I on the Roman jurists – thus revealing the aforementioned, underlying concerns that characterize the mind of the Roman slave-owner all round.

This argument will be put to the test by delving into the works of five Roman writers, which are associated with three literary universes: Petronius' satirical characterization in the *Cena Trimalchionis*, the novelistic adventures recounted in Apuleius' *Metamorphoses*, and, finally, the prescriptive texts produced by the so-called Roman agricultural writers – Cato, Varro and Columella. The choice of these texts is motivated in part in their chronological spread (which matches, roughly, that of the jurists most analysed in Part I), besides their well-known exploration of the theme of slavery. A further common trait that recommended these texts for selection is the fact that servile 'crime and punishment' has, surprisingly, received only superficial comment in them. Indeed, in Petronius' *Cena Trimalchionis* the countless sketches of slave punishment are seen mainly as comic additions to the main plot; delinquency has been acknowledged to permeate Apuleius' *Metamorphoses*, but its inextricability with the portrayal of enslaved characters, and its pervasiveness even in the novel's seemingly unimportant nooks, has not been given due credit. Finally, in the treatises of the agricultural writers, servile 'crime and punishment' is considered largely absent and at best confined to the sphere of paternalism.

Thus, insufficient attention has been paid to our thematic cluster in these texts. A renewed examination, combined with a richer understanding of the juridical treatment of servile 'crime and punishment' will fully realize the potential of the delinquent slave as a conceptual tool. Part I of this thesis, then, laid the foundations for Part II providing us with the means to recognize numerous 'new' references to slave 'crime and punishment' and the broader narratives constructed with the aid of the figure of the servile offender. But as the ensuing explorations will also suggest, the servile culprit did not exist for the cosmetic purpose of enhancing Rome's literary achievements. Rather, slave 'crime and punishment' emerges as an outward facing screen of the Romans' broader concern with slavery and freedom, linked to their attempt at establishing and maintaining their authority over the enslaved, but also going beyond the world of legal slavery proper. It is time to get ready for dinner.

## CHAPTER 4

### Re-assessing the Slave-owner's Authority: Slave 'Crime and Punishment' and Imperial Pretensions in the *Cena Trimalchionis*

#### Introduction

Any investigation of servile 'crime and punishment' in Roman literature begins or ends with one of the most spectacular Latin texts that have survived from antiquity – i.e. Petronius' *Cena Trimalchionis* (*Sat.* 26.9–78).<sup>253</sup> The lavish dinner party hosted by the freedman Trimalchio in the longest extant episode of the *Satyricon* takes the reader through an unprecedented show of extravagance,<sup>254</sup> and also contains one of the highest concentrations of servile punishments in the whole of Roman literature. While this latter fact has been duly noted, modern scholarship has primarily framed the punishment scenes in question in the context of the *Cena*'s comedic aspect,<sup>255</sup> stressing simultaneously their potential for opening a window onto the harsher realities of Roman society in general and Roman slavery in particular.<sup>256</sup> But there is more still that these instances of servile punishment (and the corresponding 'crime') unveil if the relevant passages are studied both in detail and in combination with each other.<sup>257</sup> Given the wealth of information related to this thesis' topic in this extraordinary Latin fictional text, the aim of this chapter is to explore and re-assess the role of 'crime and punishment' pertaining to enslaved

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<sup>253</sup> For a short introduction to the *Cena Trimalchionis* and its larger-than-life host, see Bodel (1999).

<sup>254</sup> Which has, understandably, attracted scholarly attention for centuries. Modern scholars focused on a myriad of themes: from the literary study of the narrative techniques at work, as in Sampino (2017) 109–167, but see also Hubbard (1986) 193–203 and his unfolding of the *Cena* as a *ringkomposition*, via the historical contextualization of the socio-economic milieu it depicts, chiefly in Andreau (2009), to the linguistic analysis of the language of the dinner guests, undertaken by Abbot (1907) and Boyce (1991). More recently, the presence of legal dimensions has been appreciated too, e.g. Roth (2016), although the role of law in the *Cena* has even been questioned outright. For examples of scholarly contributions which have denied the involvement of law (also in passages where the *ius* is explicitly mentioned), see the stance of Avery (1960), followed by Perotti (1997) and Mazzoli (2007), with regards to *Sat.* 35.7.

<sup>255</sup> Preston (1915), for instance, claims that many of the passages that will be scrutinized only add to the farcicality of the Petronian scenes.

<sup>256</sup> As summarised by Donahue (2016), who also uses them as a proof of the endemic violence of the dining hall.

<sup>257</sup> There is always more to unveil in a work like the *Satyricon*, whose complexity, due to its possible multiple readings and meanings, is explored by Slater (1990) and Rimell (2002).

characters in the *Cena Trimalchionis*. The investigation will demonstrate a much more profound relation of the *Cena* to Roman legal thought than hitherto acknowledged.<sup>258</sup> The results of this undertaking will moreover enable a fuller understanding of one of the underlying themes of Trimalchio's dinner – i.e. the text's imperial innuendos – themselves directly related to this thesis' topic.<sup>259</sup> But, first, the offences of the enslaved – seeming or real – and the corresponding punishments – threatened or applied.

### 1. 'Crime and punishment' in the *Cena Trimalchionis*: preliminary remarks

There are, in total, nineteen scenes of relevance to the present inquiry. A bipartition can be drawn between them at the outset: while some of them happened *before* the dinner party, and thus become part of it through secondary narration, others take place *during* Trimalchio's banquet.

There is also a further element that distinguishes the two groups outlined. The reported instances (recorded in the guests' conversations, at *Sat.* 45; a report by Trimalchio's clerk concerning his estate in Cumae, at *Sat.* 53; and Trimalchio's reminiscing of his days as a *servus*, at *Sat.* 69) all feature punishments that are effectively exerted. On the other hand, the relevant scenes contemporary to the dinner party encompass offences which are not perceived as worthy of punishment or misdeeds for which the enslaved is threatened with chastisements that end up being shunned – with one only exception, which will receive due attention shortly.

The instances of servile misdeeds and chastisements preceding the time of the *Cena* will be considered and contextualized with the juridical debate on the same issues first. The same analytical approach will then be used for the scenes happening during the dinner party. Combining the findings of both surveys, it will be emphasized that the theme of slave 'crime and punishment', neglected in part by scholarship or confined to the sphere of the comic expedient, helps to unearth a deeper layer in the *Cena*'s narrative ploy – thus demonstrating

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<sup>258</sup> The influence of law (be it the use of legal terms, formulas and procedures) in Petronius has been first acknowledged on many levels by Debray (1919). For more recent and focused works see also Bodet (2010), Cucchiarelli (1998), Gamauf (2007a), Gamauf (2009b), Roth (2016).

<sup>259</sup> The present inquiry will add to previous contributions reflecting on the universe of the *Cena* as a comic distortion of the imperial court and its culture, such as Bartsch (1994) and Vout (2009), who both argue for a Neronian contextualization of the dinner party.

the larger claim of this thesis, i.e. that the topic under scrutiny is of key importance for our understanding of Roman culture and society.

## 2. Before the *Cena*: actual punishments

The punishments that took place before the *Cena* immediately cast us in the middle of the dinner proceedings. In this section, they will be examined in order of appearance and paired with their corresponding misdeeds.

- **Sat. 45. 7–8: adultery – *ad bestias datio***

Four of the guests rise from the anonymity of the crowd at Trimalchio's table, as Petronius describes them discussing some trivial gossip interspersed with idle philosophy. The conversation between the freedmen Dama, Seleucus and Ganymedes soon takes on a gloomy tone, until Echion takes over, finding some silver linings in the expectation of an imminent public spectacle (*Sat.* 45.4). Among the attractions of the *ludus*, the figure of Glyco's *dispensator*, who is also of great interest to the present investigation, stands out:

*et dispensatorem Glyconis, qui deprehensus est cum dominam suam delectaretur. Videbis populi rixam inter zelotypos et amasiunculos. Glyco autem, sestertarius homo, dispensatorem ad bestias dedit.*

and there's **Glyco's account-keeper**, who **was caught amusing Glyco's wife**. You'll see some brawls between jealous husbands and lovers. Anyway, **Glyco**, that lesser man, **handed his steward to the beasts**.

From a Roman legal perspective, the sexual engagement of Glyco's *dispensator* with his *domina* falls into the remit of *adulterium*.<sup>260</sup> According to the *lex Iulia de adulteriis coercendis*, which regulated this crime, following the accusation of adultery, the husband should have also

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<sup>260</sup> Chapter 2 has highlighted the peculiar character of this crime, which could have been committed but not suffered by slaves.

divorced his wife, in order not to be accused of pimping (*lenocinium*)<sup>261</sup> as spelled out in Dig. 48.5.2.2.<sup>262</sup>

[Ulpian, *Disputations*, book 8] The crime of *lenocinium* is laid down by the *lex Iulia* on adultery, since a penalty is appointed by the statute **for the husband who acquires anything from the adultery of his wife** and also **for him who keeps her after she has been caught in adultery**.

It appears that divorce was not contemplated by Glyco who, in the follow-up of the present conversation, is derided for his leniency towards his wife. He did not take any punitive action against her and, as a result, ended up being ‘punished’ himself (*Sat.* 45.9):

*Glyco, Glyco dedit suas [poenas]; itaque quamdiu vixerit, habebit stigmam, nec illam nisi Orcus delebit.*

Glyco, **Glyco gave himself a punishment: as long as he lives, he’ll carry a mark**, no one but the death herself will clean that.

Interestingly, to underline that Glyco will always have the fame of the cuckolded husband, Echion uses the metaphor of *stigma*,<sup>263</sup> a mark which was impressed on delinquent slaves’ foreheads, causing immediate identification with their servile status, degradation or (at best) ridicule.<sup>264</sup> If Glyco did not actually receive the noted mark, the other punishment mentioned, that of the *dispensator*, appears to be factually and gruesomely applied.

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<sup>261</sup> The relevance of *lenocinium* to this passage is pointed out by Bagnani (1954). Divorce and *lenocinium* are widely discussed in Dig. 48.5.2.2–7. Interestingly, at Dig. 48.5.2.6, Ulpian states that he who hears a case of *adulterium* has the right to proceed against the husband with a *lenocinium* accusation. The *lenocinium* of the husband is dealt with again at Dig. 48.5.30 *pr.* The urgency of divorce in case of *adulterium* is also reiterated in Dig. 48.5.25.1, where the scenario of the male adulterer’s killing is presented. On *lenocinium* see McGinn (1998) 171–194.

<sup>262</sup> *Lenocinii quidem crimen lege Iulia de adulteris praescriptum est, cum sit in eum maritum poena statuta, qui de adulterio uxoris suae quid ceperit, item in eum, qui in adulterio deprehensam retinuerit.*

<sup>263</sup> The choice of this word is particularly interesting if we consider the conjecture of Treggiari (1991) 277 that a censorial *nota* might have been affixed on husbands turning a blind eye on their wives’ sexual misconduct.

<sup>264</sup> Slave marking was a practice typical of both Greek and Roman slavery. The precise nature of these marks, which could have been either brands (entailing the use of a hot iron pressed into human or animal flesh) or tattoos (impressed with iron needles and ink) is still debated. While Jones (1987) argues that *stigma* only means tattoo, other scholars like Pedrizet (1911) 80 claim that the verb *στίζειν* (from which the Latin *stigma* derives) indicated both practices in the Greek classical period. As Kamen (2010) suggests, branding might have been a more time-efficient way to impress marks *en masse*. For the purpose of the present argument, the exact nature of *stigma* is not relevant, what matters is the humiliation and the permanent association with

As seen in Chapter 3, condemnation to the beasts was a punishment generally imposed on slaves and people of the lower social orders when later the distinction between *humiliores* and *honestiores* came into practice. Although it must be acknowledged that all the extant juridical sources dealing with *ad bestias datio* date between the second and the third century CE, none of them mentions adultery as an obvious match for this chastisement.<sup>265</sup>

Let us then single out the known punishments for adulterous slaves in the legal sources, according to the above-mentioned *lex Iulia*. Such legislation equipped the father of the woman with the right of killing any male adulterer along with his own daughter, provided the two were surprised during the act in the house of the *paterfamilias* or in that of the son in law (Dig. 48.5.24.2).<sup>266</sup> The same legislation enabled the husband to kill exclusively the male offender, but only if he belonged to the category of *infames* (which comprised slaves too), and if the adulterers were caught red-handed in the husband's own house (Dig. 48.5.25 *pr.*). There is no specification as to how the male adulterer had to be killed. We can assume, however, that this was an impetuous reaction, since Papinian, explaining why the father has the right to kill the daughter, states the following (Dig. 48.5.23.4):<sup>267</sup>

[Papinian, *Adulterers*, book 1] The reason why it is the father not the husband who is allowed to kill the woman and any adulterer [caught with her] is that, for the most part, the concern for family duty implicit in the title of father takes counsel for his children; but **the heat and impetuosity of a husband** [too] readily jumping to a decision **should be restrained**.

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servile status attached to it. The link between marking and slaves is also strengthened by Petronius in *Sat.* 103.2, and by the shock caused by the adoption of this punishment (along with *ad metalla* and *ad bestias*) on people of the higher classes (*multos honesti ordinis*) in Suet. *Calig.* 27. The issue of *stigma* will be discussed further later in this chapter and in Chapter 6.

<sup>265</sup> See Chapter 3 on condemnation to the beasts in the Digest. In the *Pauli Sententiae*, moreover, *ad bestias datio* is applied, along with crucifixion, to those performing or arranging impious nocturnal rites with the aim of enchanting, cursing or binding someone (*PS.* 5.23.15), and to people engaging in magic (*PS.* 5.23.17). It was also the penalty for *humiliores* sacrificing human beings, obtaining omens from their blood or polluting shrines and temples (*PS.* 5.23.16). Throwing to the beasts is also meted out to *humiliores* committing *crimen maiestatis*, as an alternative to burning alive (*PS.* 5.29.1).

<sup>266</sup> See Treggiari (2002) on the degree of physical contact required for one to be considered caught in the act. Also, the father had to kill both the daughter and the adulterer, in order not to be charged under the *lex Cornelia* (Dig. 48.5.33 *pr.*)

<sup>267</sup> *Ideo autem patri, non marito mulierem et omnem adulterum remissum est occidere, quod plerumque pietas paterni nominis consilium pro liberis capit, ceterum mariti calor et impetus facile decernentis fuit refrenandus.*

Although the *ad bestias datio* does not seem the most obvious punishment for a slave who committed adultery, the identification of this chastisement in *Sat.* 45.8 is rather straightforward and its implication is not doubted in commentaries.

Moreover, the spectacular nature of the *ad bestias datio* and the logistical issues related to its arrangement (as cursorily mentioned in Chapter 3) make it easy to understand this punishment as one overseen, and formally meted out by the state. In the text under examination, however, it is presented as a chastisement falling within the remit of the slave-owner's powers. But there is an additional point that throws the involvement of the state into yet greater relief. With the promulgation of the *lex Petronia*,<sup>268</sup> as seen in Chapter 1, masters were no longer allowed to throw their slaves *ad bestias* at their own discretion (Dig. 48.8.11.2). This would have been a feasible chastisement only after the approval of a judge.

A magistrate, thus, had to be summoned, and most likely the *praefectus urbi*,<sup>269</sup> who was responsible for hearing and evaluating servile complaints against their masters, when settling conflicts between the enslaved and their owners.<sup>270</sup> Moreover, the *praefectus urbi* is mentioned specifically in relation to husbands alleging that one of their slaves committed adultery with their wives in Dig. 1.12.1.5.<sup>271</sup>

Seen in the round, this first punishment, then, highlights the depth of the interplay between public and private powers, state and masters, following the example of the crime of *adulterium* and the punishment *ad bestias*. Yet, the text does not address whether Glyco adhered to the formal requirements – for Petronius leaves the door open to envisage the bypassing of the *lex Petronia* in the Trimalchian underworld, and the application of a good dose of the *ius Cenae* instead.

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<sup>268</sup> The date of this *lex* is uncertain. This law is generally ascribed to a time between the reign of Tiberius and that of Nero. For Tiberius, see Garnsey (1970) 130 n. 7; Levick 1(976) 257 n. 47. For Nero, see Rotondi (1912), 468; Watson (1987) 121; Robinson (1995) 43.

<sup>269</sup> The *praefectus urbi* would have been involved in Rome, while in the provinces the same function would have been exercised by the governor, as specified by Bradley (1987).

<sup>270</sup> A comprehensive picture of the duties of the prefects, although related to the early third century, comes from Ulpian's *Liber Singularis de Officio Praefecti Urbi*, on which see Dell'Oro (1960) 239–249.

<sup>271</sup> The link is made by Gamauf (2007b).

- **Sat. 53.3: cursing the *genius* of Gaius – crucifixion**

A clerk starts reading aloud a report on Trimalchio's estate in Cumae and Encolpius equates the scene to a recitation of the *Urbis acta* (Sat. 53.1).<sup>272</sup> The memorable events recalled at the start of this oral gazette entail the following: an incredibly high number of *vernae* born on the estate, followed by an assessment of, first, the wheat produced and, second, of the oxen bought. The same number of accidents counterbalances these three initial successful 'production' notices: the crucifixion of a slave, the missed investment of ten million sesterces, and a fire that broke out in the *horti Pompeiani* (whose purchase Trimalchio had apparently forgotten). Circumstantial information, although scanty, is given about the slave sent to the *crux*:

*Mithridates servus in crucem actus est, quia Gai nostri genio male dixerat.*

The slave Mithridates **was crucified** because **he had cursed the *genius* of our Gaius**.

The offence committed by Mithridates is, then, the slandering of the *genius* of his master.<sup>273</sup> Focusing on the clerk's words, one realizes that, in mentioning his *genius*, Petronius prefers the genitive of Gaius (i.e. *Gai*), to that of Trimalchio's *cognomen*. The stress on Trimalchio's *praenomen* is not simply aimed at showing that the dinner host boasts the *tria nomina*;<sup>274</sup> it constitutes also a clear play on the emperor (also addressed as *Gaius*), and the *laesa maiestas*

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<sup>272</sup> As explained by Perrochat (1953) 85–86, this was a sort of daily gazette which, during the imperial age, mostly concerned matters directly related to the imperial house.

<sup>273</sup> Mithridates' act has long been interpreted as an inversion of the allegedly common practice, among slaves, of swearing an oath on their master's *genius* as some kind of deity. Smith (1974) maintains this, hinging on Hor. *Ep.* 1.7.94. Nonetheless, in Horace, the *genius* in question is that of a *patronus*, not a *dominus*. In Sen. *Ep.* 12.2, regarded as an additional proof for the statement above, a *vilicus* swears an oath by Seneca's *genius*; however, one cannot be entirely sure of his servile status. Plautus and Terence's characters do bring up the *genius* quite frequently in their oaths, however, they are not exclusively slaves and, when they are, they never swear on their masters' *genius*. An exaggeration of these comedic passages built the modern commonplace that this was a canonical form of oath for slaves in the republican era, as explained by Bömer (1966). His contribution also proves that such oaths on the *genius* follow the pattern of some Hellenistic inscriptions, in which the weaker dedicator swears by the *tyche* of the stronger dedicatee.

<sup>274</sup> The rods and *fasces* that Encolpius is (rightly) surprised to find in Trimalchio's living room (Sat. 30.2) are finished off with an inscription bearing his full name Gaius Pompeius Trimalchio. Towards the end of the *Cena* episode (Sat. 71.12), his funerary inscription contains also a second *cognomen*, Maecenatianus. Interestingly Mommsen (1878) suggested that Petronius too had the *praenomen* Gaius, on the basis of epigraphical evidence. Mommsen's opinion is still relevant in more modern scholarship, as testified by Völker & Rohmann (2011).

crime (normally translated as ‘treason’ or ‘lèse-majesté’) of which some emperors revealed themselves to be very fond.<sup>275</sup>

Unfortunately, the original text of the *lex Iulia maiestatis* is not preserved and we shall rely on later juridical pronouncements. A general definition is given by Ulpian in Dig. 48.4.1, as a crime committed against the Roman people or against their safety (*adversus populum Romanum vel adversus securitatem eius*). The jurist also provides examples of such crime, in committing which one is understood to have malicious intent (*dolo malo*). In Dig. 48.4.1–4, it is shown that treason ranged from the killing of hostages, to the taking up of arms and the occupation of places against the interest of the state; sedition, the killing of magistrates and the provisioning of help to the enemies of the Roman people were considered under the rubric of treason too, along with any kind of desertion, defection to the enemy, falsehoods in public records, and so on. The definition of *crimen maiestatis*, however, takes an unexpected twist at Dig. 48.4.4.1:<sup>276</sup>

[Scaevola, *Rules*, book 4] The senate cleared of this charge **a man who had melted down rejected statues of the emperor.**

This instance contrasts with the other cases mentioned, which are more conspicuously linked to the respect and security of the Roman people. More on the statues of the emperors follows at Dig. 48.4.5:<sup>277</sup>

Marcian, *Rules*, book 5: He who has restored **imperial statues which have fallen into disrepair with age does not incur a charge of treason.** 1. Nor has someone committed the offense of treason if he **happened to hit a statue** [of an emperor] with a chance-thrown stone, as Severus and Antoninus wrote in a rescript to Iulius Cassianus. 2. The same [emperors] wrote in a rescript to Pontius that there did not seem to be lèse-majesté in **selling likenesses of Caesar which had not yet been consecrated.**<sup>278</sup>

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<sup>275</sup> Both Schmeling (2011) and Sedgwick (1925) make references to *maiestas*, without engaging in a proper link between the crime and the passage.

<sup>276</sup> *Hoc crimine liberatus est a senatu, qui statuas imperatoris reprobata conflaverit.*

<sup>277</sup> *Non contrahit crimen maiestatis, qui statuas Caesaris vetustate corruptas reficit.* 1. *Nec qui lapide iactato incerto fortuito statuam attigerit, crimen maiestatis commisit et ita Severus et Antoninus Iulio Cassiano rescripserunt.* 2. *Idem Pontio rescripsit non videri contra maiestatem fieri ob imagines Caesaris nondum consecratas venditas.*

<sup>278</sup> A similar situation to this last one is reported, with reference to Tiberius’ reign, in Tac. *Ann.* 1.73.

Finally, after listing instances in which the penalty for treason *cannot* be applied, Venuleius Saturninus records one case where a certain kind of interaction with the emperor's statue constitutes a breach of the *lex Iulia maiestatis* (Dig. 48.4.6):<sup>279</sup>

Venuleius Saturninus, *Criminal Proceedings, book 2*: Persons are liable under the *lex Iulia* on treason **who melt down statues or likenesses of the emperor which are already consecrated, or who commit anything of the same kind.**

There is indeed a discrepancy between the first and the second part of the definition. Bauman well observed the presence of a dichotomy between the 'republican categories' of this crime, i.e. those regarding the security of the state,<sup>280</sup> and the injuries (whether verbal or real) pertaining to the emperor and his deified predecessors, a kind of extension which came into force with Augustus.<sup>281</sup> With the emperor thus representing the whole body of citizens and its *maiestas* (being endowed with the *imperium* and tribunician sacrosanctity, as well as appearing as the head of the state's religious order), the boundaries between the two categories became blurred, and the accusation for this crime was open to abuse, becoming also a powerful political weapon.<sup>282</sup> The later and systematic juridical description of the *crimen maiestatis* is confirmed by the more contemporary sources of Suetonius and Tacitus, who expose its heterogeneous (and absurd) nature.<sup>283</sup>

The Digest does not dwell on the envisaged punishment for *crimen maiestatis*; for this we have to turn to the *Pauli Sententiae*. According to *PS* 5.29.1:<sup>284</sup>

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<sup>279</sup> *Qui statuas aut imagines imperatoris iam consecratas conflaverint aliudve quid simile admiserint, lege Iulia maiestatis tenentur.*

<sup>280</sup> For an overview of the original meaning of *maiestas* and its evolution in the republican time see Gundel (1963).

<sup>281</sup> Bauman (1974).

<sup>282</sup> For a thorough summary of the scholarship on the *lex Iulia maiestatis* and its form(s) of punishment, see Melounová (2014).

<sup>283</sup> See, for example Tac. *Ann.* 2.50, 3.37–38, 3.44, 3.49, 4.19, 4.21, 6.9, 6.18–19 for Tiberius, Tac. *Ann.* 14.48 for Nero. Relevant material is also found in Suet. *Tib.* 58, which discusses the *crimen maiestatis* in relation with imperial statues as well, while Suet. *Tib.* 61.3 explains that even the utterance of simple words was considered a capital crime (which brings us back to Mithridates' case). See also Suet. *Dom.* 11 and especially *Dom.* 12 (*satis erat obici quaecumque factum dictumve adversus maiestatem principis*). The historians convey the impression that the accusation of treason flourished as part of a strategy employed by emperors to cut down their opposition.

<sup>284</sup> ... *His antea in perpetuum aqua et igni interdicebatur. Nunc vero humiliores bestiis obiciuntur vel vivi exuruntur, honestiores capite puniuntur. Quod crimen non solum facto, sed et verbis impiis ac maledictis maxime exacerbatur.*

... Those convicted of *maiestas* were perpetually interdicted from water and fire. But now *humiliores* are thrown to the beasts or burnt alive, while *honestiores* are punished capitally. This crime was not committed only through acts, but it was very much aggravated by impious words and curses.

These lines corroborate the hypothesis that we should understand Mithridates' cursing as an act which endangers the *maiestas* of the emperor and which therefore needed to be punished in an exemplary manner. Crucifixion is not contemplated in the quoted passage from the *Pauli Sententiae*, but from literary sources we can infer that a considerable flexibility affected this crime not only in terms of admitting charges, but also regarding the process of imposing penalties.<sup>285</sup>

Indeed, as illustrated by Chilton, this crime was under the jurisdiction of the court of the *princeps* and the consular court, which both rapidly began exceeding the penalty prescribed by the law. It has been argued that the Senate, although not strictly possessing this power to go beyond the law, ended up gaining it eventually; this probably happened in an attempt to please the *princeps* by intensifying the penalty in cases where he was himself involved. Both courts, however, effectively caused the disappearance of *interdictio* for the crime of lèse-majesté, with banishment and harsher forms of execution, especially for people of lower social standing, being commonly imposed.<sup>286</sup>

What is more interesting, for present purposes, is that, similarly to the previous case, the punishment imparted by the master is, if applied formally, one overseen and executed by the state. Referring to crucifixion and slaves, Hengel suggests that this chastisement occurred when “the powers of punishment of an individual householder, the *dominica potestas*, were no longer sufficient”.<sup>287</sup> Moreover, again, the later juridical sources present this punishment for offences

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<sup>285</sup> See, for instance, the passages referenced in n. 283.

<sup>286</sup> Chilton (1955).

<sup>287</sup> Hengel (1977) 54. In making his claim he references Cic. *Verr.* 2.5.12, Livy 22.33 and 33.36. It must be acknowledged, however, that an inscription from Puteoli (*AE* 1971: 88) testifies to the presence of firms providing, along with with undertaking services, also *supplicia* (among which there was crucifixion) as ordered by magistrates, but also by private slave-owners (*privatim*). Cook (2014) 370–386 contains discussion on this *lex*.

whose repercussions extend much beyond the small world of the private household,<sup>288</sup> with a distinct exemplary and symbolic value.<sup>289</sup> There should also be no doubt in seeing the *crux* as a form of state punishment, especially in light of the fact that, in *Sat.* 137.2, the magician Oenothea admonishes Encolpius saying:

*si magistratus hoc scierint, ibis in crucem.*

if the magistrates find out, you'll go on the cross.

To deserve the cross, Encolpius had killed a sacred goose in the temple of Priapus, an act which can be likened to sacrilege. Not only *sacrilegium* can indeed be punished with the cross,<sup>290</sup> but, along with the other crimes disciplined with *summa supplicia*, it was considered to have repercussions on the whole society. Nonetheless, *Sat.* 53.3 here works to set up the cross as a punitive tool used by a master against one of his slaves, in the private domain and for a much more trivial matter.

- ***Sat.* 53.10: various crimes and punishments**

The rest of the *Urbis Acta* section is replete with further instances of 'crime and punishment'. The clerk, indeed, goes on listing several relevant items thus:

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<sup>288</sup> See Chapter 3 on the absence of *crux* from the Digest, its substitution with the *furca*, and the field of application of the latter. The *Pauli Sententiae* are the only juridical source containing mentions of the cross as a punishment. Apart from *PS* 5.21 a 2 (which matches with *Dig.* 48.19.38.1 on people fleeing to the enemy and betraying the Roman counsels), the other instances in which the *crux* appears concern the following: seditions and incitation of people to revolt (*PS* 5.22.1), murder through weapons, poisoning or perjury (*PS* 5.23.1), participation in 'impious nocturnal rites' (*PS* 5.23.15), counterfeiting of documents (*PS* 5.25.1) and kidnapping (*PS* 5.30 b1). That said, there is another instance which, at first sight, seems to elude this pattern, namely consultation of seers by slaves on their masters' life expectancy (*PS* 5.21.4); however, this case must be seen as a nuance of a bigger issue, as *PS* 5.21.1, which introduces the provision in question, clearly warns about the wider impact of such practices on the fabric of society.

<sup>289</sup> In *Dig.* 48.19.28.15, for example, the execution of brigands on the gallows has to be public for a double order of reasons: this sight would have deterred the community from committing similarly deplorable acts and would have given the offended part some consolation. A similar stance is taken by *Ps. Quint. Decl. Min.* 274.13, in which the rhetor insists that culprits must be crucified in very busy streets, since punishment has to do more with setting an example than with the offences themselves.

<sup>290</sup> *Dig.* 48.13.7.

*iam nomina vilicorum et repudiata a circumitore liberta in balneatoris contubernio deprehensa, et atriensis Baias relegatus; iam reus factus dispensator, et iudicium inter cubicularios actum.*

the names of some overseers, **a freed-woman** repudiated by a night watchman, **after being caught with a bathman, a porter who had been relegated to Baiae, a prosecuted account-keeper and an action between some bed-chamber valets.**

The plethora and seeming interrelatedness of cases concentrated in these few lines prevents an immediate, clear understanding of them. First of all, there is (at least for us) some ambiguity regarding the legal status of the ‘culprits’ listed, apart from the only woman mentioned, who is explicitly addressed as a *liberta*. This vagueness affects our reading of the crimes and punishments too.

To begin with, the *balneator*, going by the job title, could have been either a slave or a freedman;<sup>291</sup> however, in this case, the fact that the relationship between him and the freedwoman is described as *contubernium* might suggest that he was of servile status.<sup>292</sup>

At any rate, neither his punishment, nor his crime are clearly spelled out. For the latter, however, the implication is given that it concerned *adulterium*, given that the *liberta* is subsequently repudiated; during the principate, *repudiare* was used to indicate the breaking off of an engagement or as a synonym for divorce.<sup>293</sup> As noted in Chapter 2 (and as will be seen again in Chapter 6), however, the adultery legislation was specifically concerned with high rank women and it is puzzling to find it alluded to here where the woman is a *liberta* and her husband’s status is ambiguous, since *circumitores* could have been slaves, imperial slaves and freeborn.<sup>294</sup>

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<sup>291</sup> Depending on the tasks they were allocated in the baths; see Wissemann (1984) for more on this.

<sup>292</sup> On *contubernium* see n. 153.

<sup>293</sup> See Treggiari (1991) 436–441. The main difference between *divortium* and *repudium* is the fact that the former originated from mutual assent, while in the latter one part (generally the husband) rejects the other.

<sup>294</sup> On *circumitores* (a term frequently syncopated in *circitores*) and their not exclusively servile status see J. P. Lewis (2016).

For the *atriensis*, we face a similar problem. Being frequently lumped together with other kinds of enslaved persons who have menial tasks, he is normally considered of a relatively low level in the household pecking order,<sup>295</sup> as shown by Dig. 7.1.15.1:<sup>296</sup>

[Ulpian, *Sabinus*, book 18:] **If the usufruct left as a legacy is one of slaves, the usufructuary must not put them to a wrong use**; his use of them must correspond to their respective characters. **For example**, if he sends a scribe into the country and makes him carry a basket of lime, or **if he makes** an actor do the work of a bath attendant or **a singer perform the duties of an *atriensis*** or if he takes a man from the wrestling arena and sets him to clean out the latrines, **he will be held to be making a wrong use of the property of the bare owner.**

Yet, the *atriensis* in question is allotted here *relegatio*. This kind of provision, prescribing exclusion from a specific territory without entailing loss of citizenship (as stated in Dig. 48.1.2), assumes that the culprit was a citizen, which cannot be the case for slaves.<sup>297</sup> Relegation is though frequently associated with freedmen, as testified by Ulpian (Dig. 1.12.1.2–3):<sup>298</sup>

[Ulpian, *Duties of Prefect of the City*, sole book] 2. But also **when needy *patroni* are raising complaints about the conduct of their freedman**, he is to grant a hearing, especially if they claim to be ill and request the support of their freedmen. 3. They have power of **relegation** and of **deportation** to any island designated by the emperor.

Ulpian's view finds corroboration in Tacitus' polemical comment on the fact that the only means of redress for masters against their ungrateful freedmen was to relegate them to the shores of Campania (*Ann.* 13.26). The Petronian passage, therefore, creates a dissonance

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<sup>295</sup> Carlsen (1995) claims that also Dig. 33.7.8.1 confirms the low position occupied by the *atriensis* in the slave hierarchy.

<sup>296</sup> *Mancipiorum quoque usus fructus legato non debet abuti, sed secundum condicionem eorum uti. Nam si librarium rus mittat et qualum et calcem portare cogat, histrionem balniatorem faciat, vel de symphonia atriensem, vel de palaestra stercorandis latrinis praeponat, abuti uidebitur proprietate.*

<sup>297</sup> The unsuitableness of relegation for slaves is also spelled out at Dig. 48.2.12.4. As it has been widely noted, moreover, such a *relegatio* is additionally absurd because it is to Baiae, a luxurious holiday resort (also quite close to Rome). There are two instances in which *relegatio* and slaves appear together in the Digest, namely 28.5.35.3 (in which the slave is 'as if' relegated, *quasi*) and 40.9.2. The latter probably refers to *relegatio* in its primitive form as an aspect of the authority of the *pater familias* on his wife and children and of the patron over his freedmen, as stated by Garnsey (1970) 119.

<sup>298</sup> 2. *Sed et patronos egentes de suis libertis querentes audiet, maxime si aegros se esse dicant desiderentque a libertis exhiberi.* 3. *Relegandi deportandique in insulam, quam imperator adsignaverit, licentiam habet.*

between the likely legal status of the *atriensis* and the punishment in question – a theme taken further by Petronius in the ensuing two items on the list, to which we must now turn.

First, then, there is the case of the *dispensator* that remains ambiguous, not only regarding his freedom, but also because neither any crime nor any punishment is mentioned. Yet, given that (private) *dispensatores* are often enslaved individuals,<sup>299</sup> the notion that this man was being prosecuted, i.e. subjected to a formal legal process, is – literally – laughable. Laughter aside, the window onto the man’s freedman status thus created must be noted. A similar lack of clarity concerns the mentioned legal action between the *cubicularii*,<sup>300</sup> barring the paucity of details, the notion that private servile bedroom guardians take each other to court (*iudicium inter cubicularios actum*) is almost more laughable – again literally – than the preceding joke.

This section of the *Urbis Acta*, then, presents a string of legally framed interactions that appears to play at too low a status level. In other words, the way the cheating of the *liberta* is discussed seems to indicate that she was married to someone rather important (i.e. in order for her to commit the adultery hinted at). One wonders why adulterous interactions regarding free people of high rank are worth pointing out at this juncture. In the case of the *atriensis*, then, there is a confusion between his (supposedly) servile status, and the type of punishment he received, which is exclusively applied to free individuals; but there is also a clash between the likely servile status of the *dispensator* and the *cubicularii* and their recourse to the official legal proceedings, which is another prerogative of free people. The overall effect is, of course, in the first instance, amusement, but it might also serve another purpose, to be explained later.

It is also worth pointing out that the exchange between the *actuarius* and Trimalchio lacks a natural ending, stopping abruptly with a radical change of topic in the following paragraph. For this reason, Rose rightly contends that the breaking in of the clerk, with his pompous bureaucratic report, was a scene prepared beforehand.<sup>301</sup>

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<sup>299</sup> Schumacher (2010). As pointed out by Treggiari (1975) 50, servile *dispensatores* were the preferred choice: they would have acted more conveniently for their masters, having no legal personality, and would have also been rather strictly controlled by *domini*. Their manumission would have then been delayed until their retirement. Weaver (1972) 104 places the manumission of *dispensatores* around their forties.

<sup>300</sup> These slaves’ job was to guard the private room of their masters and take care of the admittance of others there, as explained by Treggiari (1976).

<sup>301</sup> Rose (1967), who also uses the *crimen maiestatis* accusation, and the *cum elogio exheredabatur* referred to Trimalchio (*Sat.* 53.9) as evidence that the exchange with the clerk has been planned by the freedman. Trimalchio’s aim, in Rose’s view, is that of presenting his property in Cumae as a miniature of Rome, a conclusion I slightly disagree with, as will be discussed later.

- **Sat. 69.3: adultery – *in vilicationem relegatio***

The next narrated punishment occurs in the context of Trimalchio's attempt to calm down Scintilla's jealousy. The wife of his friend Habinnas is enraged by her husband's praise of the slave Massa, who is also threatened a punishment.<sup>302</sup> The dinner's host, then, recalls his youth as a slave, when he himself had sexual intercourse with his mistress:

*Crede mihi, et vos novimus. Sic me salvum habeatis, ut ego sic solebam ipsam meam debattuere, ut etiam dominus suspicaretur; et ideo me in vilicationem relegavit.*

Believe me, we know you women too. Bless my soul, **I used to bang my own mistress as well**, up to the point that also **my master became suspicious**; and so **he relegated me to the office of the vilicus**.

Whatever the social reality behind the sexual acts, the intercourse between Trimalchio and his mistress classifies as *adulterium*, from a legal point of view. The host was not caught *in flagrante* with the woman, otherwise he might have been killed, as seen earlier on. Trimalchio's master did not have sound evidence, merely a suspicion, and so decided to relegate him *in vilicationem*.

*Relegatio* is indeed a punishment which the *lex Iulia* envisages for *adulterium*. This is clearly stated at *PS. 2.26.14*:<sup>303</sup>

It has been established that **women convicted of adultery shall be punished with** the loss of half of their dowry, one third of their estates and **relegation to an island**. Similarly, **male adulterers shall be** deprived of half of their property and **relegated to an island**. However, the parties must be relegated to different islands.

As specified above when discussing the figure of the *atriensis*, such punishment is incompatible with the status of a slave, that Trimalchio possessed at the time of the affair with his mistress. At face value, the *relegatio* to which Trimalchio was subjected to could, then, be understood as yet another example of the kind of dissonance between legal statuses and legal repercussions that was discussed with regard to the *Urbis acta* – and on one level this is plainly the case. An additional joke in *this* reading is to be found in Trimalchio's relegation *to the*

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<sup>302</sup> This threat takes place during the dinner and will thus be explored in the following section.

<sup>303</sup> *Adulterii convictas mulieres dimidia parte dotis et tertia parte bonorum ac relegatione in insulam placuit coerceri. Adulteris vero viris pari in insulam relegatione dimidiam bonorum partem auferri, dummodo in diversas insulas relegentur.*

*countryside* – a matter repeatedly stressed by modern scholars, playing on stock notions of town-versus-country also evident in Roman comedy.<sup>304</sup> But on another reading level, Trimalchio's servile status opens a window on a different kind of punishment, i.e. demotion to a lesser office – that of the overseer (*vilicus*):<sup>305</sup> this type of punishment falls squarely into the remit of slave-owners, who used it to maintain discipline among their servile staff.<sup>306</sup> This understanding of the passage is reinforced by Trimalchio's own application of demotion, once a slave-owner himself, as a punishment for one of his *servi* earlier in the dinner proceedings (but to be discussed in this chapter only in what follows).

### 3. Punishment and the dinner: threatened and exerted chastisements

In order to continue with the threatened punishments, we need to take a step back, since the first ones occur even before the beginning of the banquet. The ostentation characterizing Trimalchio's house resounds also in the exaggerated punishments with which he intimidates his *familia* during the dinner party. These will be dealt with in order of appearance and with reference to the misdeeds that caused them.

- **Sat. 28.7: leaving the house – a hundred blows**

Before crossing the threshold of Trimalchio's house, Encolpius' attention is caught by a sign fixed on the doorpost. This prescribes a physical chastisement for the enslaved leaving the premises when this is not deemed necessary by the host himself:

*Quisquis servus sine dominico iussu foras exierit accipiet plagas centum.*

Any slave **going out without the master's order** will receive **one hundred blows**.

The act forbidden by the signpost identifies a misdeed which is not strictly contemplated by Roman law. Indeed, more than the behaviour of the *fugitivus* (runaway), the warning seems to

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<sup>304</sup> The banishment of Trimalchio to the countryside is taken for granted by Richlin (2009), Verboven (2009), Carlsen (2010), Schmeling (2011), just to cite the more recent contributions.

<sup>305</sup> The figure of the *vilicus* will be detailed further in Chapter 6. On *vilici* and Roman estate managers in general, see Carlsen (1995).

<sup>306</sup> As shown by Roth (2009).

be aimed at deterring that of the *erro* (wanderer).<sup>307</sup> The reasons behind the need of confining *servi* to the spaces that were allocated to them is related, of course, to both ideology, i.e. the need to exert full control over one's own human chattel, and profit: if runaways caused, as is well attested, a significant economic loss for the *domini*, wanderers are also likely to have created a drop in productivity. Borrowing Joshel's words, masters wanted to prevent that "slaves moved about too much in pursuit of their own pleasures (purposes) and/or did not move much on their owners' purposes".<sup>308</sup>

In tandem with the domestic nature of wandering around, the punishment dictated by the inscription at the entrance of Trimalchio's house is also a form of master-driven chastisement.<sup>309</sup> Yet, no instance of an enslaved individual exiting the house and being punished for it is actually narrated. Likewise, all the ensuing punishment sketches discussed in this section do not result in a show of violence either (with the exception of one, to be explored in due course).

- **Sat. 30.7: neglecting the master's clothes – beating**

Encolpius, Giton and Ascyltus have not properly entered Trimalchio's house yet – when a slave implores them to intercede for him:

*servus nobis despoliatus procubuit ad pedes ac rogare coepit, ut se poenae eriperemus.*

a **stripped** slave crawled at our feet and started begging us **to save him from punishment**.

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<sup>307</sup> Essentially, the *erro* does not plan on leaving permanently, while the *fugitivus* does. The difference between the two categories, explained by Ulpian at Dig. 21.1.17.14, will receive due discussion in Chapter 6, on the treatises of Cato, Varro and Columella. The masters' concern with the enslaved roaming independently is in fact most evident in the works of the agricultural writers, who constantly remind their audience to ensure that *servi* do not wander around. See for instance Columella (*Rust.* 1.8) echoing Cato's opinion that the *vilicus*, as the one in charge of controlling the other slaves, must not be one who walks about (*ambulator*) in the first place (*Agr.* 5).

<sup>308</sup> Joshel (2013) 118. The chapter contains an extensive discussion on the geographies of slave containment and movement.

<sup>309</sup> The various nuances of beating have been explored in Chapter 3, but the use of *plagas*, when linked with slaves, is mostly confined to the realm of domestic discipline (*Sat.* 105.4, Ps. Quint. *Decl. Maior.* 3.16, Juv. 14.19, Cic. *Flac.* 65.8, along with many occurrences in Plautus). There is one only reference to them in the Digest, namely 9.2.52 *pr.*, in which Alfenus presents the death of a slave resulting from *plagae*; however, the *plagae* in question are not seen as enforced by public justice. *Plagae* are also frequently inflicted on animals in Phaedrus and Apuleius.

Before even being asked, the slave explains what he did to deserve such treatment: due to his negligence, the ten sesterces worth of clothes of a *dispensator* of the host,<sup>310</sup> have been stolen at the baths.<sup>311</sup> The *dispensator*, of his own initiative as well, states why he reacted vigorously to this oversight (*Sat.* 30.10–11):

*Non tam iactura me movet, inquit, quam neglegentia nequissimi servi. Vestimenta mea cubitoria perdidit, quae mihi natali meo cliens quidam donaverat, Tyria sine dubio, sed iam semel lota.*

**It is not the loss that bothers me**, he said, **but the carelessness of this most incompetent slave**. He lost my dinner clothes which a client gifted me for my birthday, it was no doubt Tyrian dye, although they have been washed already once.

The main issue is not the material loss of the clothes, but rather what these clothes represented. A birthday present from a dependant (here called *cliens*, with the *dispensator* assuming in a sense the role of a *patronus*) implied the recognition of superior status in the domestic hierarchy, mimicking the offerings to the *genius* of the masters on their *dies natalis* which were mandatory for a slave.<sup>312</sup> The negligence of the slave has thus caused the loss of a garment with a highly symbolic value,<sup>313</sup> a point to be returned to in two other moments of the dinner party, with specific relation to Trimalchio. For now, suffice it to say that the offence for which the

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<sup>310</sup> According to Bedon (1996) the *dispensator* in question is Cinnamus, whose name is found in an inscription at *Sat.* 30.2.

<sup>311</sup> Although there is no doubt that the enslaved is a dependant of the *dispensator*, he could have been the *servus vicarius* of a servile *dispensator* (i.e. part of his *peculium*), or an actual property of a freedman *dispensator*. If this latter option figures as possibly more likely (given the mention of the *cliens*), his social standing is not explicitly specified. Given what stated above about private *dispensatores* often being of servile status, we cannot claim with certainty whether the one in question is a freedman or whether he is simply posing as such. Thus, this would add up to the social ambiguities seen in the *Urbis acta* section and in Trimalchio's case when recalling the affair with his mistress.

<sup>312</sup> MacLean (2018) 154.

<sup>313</sup> For the sake of completeness, it must be noted that *neglegentia*, along with its opposite, *diligentia*, is frequently found in correlation with *custodia*, i.e. custody, safekeeping, which resembles the task the *servus* failed to accomplish here (see for example Dig. 9.2.27.9, 44.7.1.5 and Dig. 13.6.5.5, 13.6.5.9 respectively). The concept of *custodia*, however, is rather nebulous in the Digest and it falls among those expressions that are not precisely defined regarding contractual responsibility, as stated by Berger (1953); this makes it troublesome to link it with a slave as in this case. It is worth noting, however, that the *custodia* of *vestimenta* is brought up too in juridical sources (concerning *fullones*), as testified by Dig. 9.2.27.9, 47.2.12 *pr.* and 47.2.48.4. The last example in particular, despite being set in a different context, brings into play both *custodia* and theft; the *fullones*, being freedmen, are charged with the *actio furti*. The *dispensator*, of course, could not have started an *actio furti* against his own careless *servus*; from Chapter 2 we know, in fact, that when enslaved people commit an offence, those who have them in their control or possession are liable.

slave seems about to receive punishment finds no parallel in any delict or crime considered by the juridical literature – although the juridical sources dwell considerably on the consequence of the slave’s carelessness, i.e. bath theft.<sup>314</sup>

The domestic misdeed is paired with a form of domestic punishment, namely a non-specified beating. This is inferred through the use of the verb *despoliare*, in relation to the beseeching slave – for *despoliare* has also the technical meaning of undressing to receive punishment.<sup>315</sup> As a confirmation of the fact that Petronius alludes to this technical nuance, we can adduce the fact that, when he simply wants to express the undressing of a character, he uses different expressions (such as *exiit se et omnia vestimenta secundum viam posuit*, at *Sat.* 62.5).

In any case, the beating is eventually thwarted thanks to the intercession of Encolpius and his companions, although they have mostly been passive spectators of the whole sequence of events. The scene, indeed, seems too well orchestrated: the slave falls at the guests’ feet just as they come in, conveying the impression he was expecting them, already stripped and with a prompt explanation; likewise, the *dispensator* reveals the reasons behind his indignation *sua sponte*, and then forgives the slave with suspicious quickness. Moreover, at *Sat.* 31.2 the ‘rescued’ *servus* reveals himself to be the *ministrator* in charge of serving Trimalchio’s wine. As a sign of gratitude, he will make sure that his protectors are only poured the finest wine. What emerges from the whole episode is therefore the generosity of the slave, designed to appear as a reflection of Trimalchio’s wealth. This, linked with all the above details, renders it likely that we are here dealing with the first of Trimalchio’s spectacles.<sup>316</sup>

- ***Sat.* 34.2: picking up an entrée dish – beating (*obiurgari*)**

An entrée dish is accidentally dropped as the table is cleared for one of the endless courses:

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<sup>314</sup> Small as it may appear, bath theft is actually devoted a specific section in the Digest (namely 47.17). For discussion on this particular delict, see Du Plessis (2021). Clothes at the baths were guarded either by the personal *servi* of masters and mistresses, or by a part of the servile staff of the baths with this precise task (*ad custodienda vestimenta*), as attested by Dig. 3.2.4.2. Interestingly at Dig. 1.15.3.5, *capsarii* are mentioned and described by Paul as those hired to look after people’s clothes at the baths, probably by the bathkeepers. This role would have fitted both people of free and servile birth (as shown respectively by *CIL* 05 3158 and *CIL* 06 3952, for instance). The *balneator* would have been ultimately responsible for their conduct if they were slaves.

<sup>315</sup> As in the para-legal context of *Controversiae*, such as in Sen. *Con.* 9.2.21 (which will be discussed later).

<sup>316</sup> The theatrical character of this sketch has been noted by Rankin (1970) and Panayotakis (1995).

*Ceterum inter tumultum cum forte paropsis excidisset et puer iacentem sustulisset, animadvertit Trimalchio colaphisque obiurgari puerum ac proicere rursus paropsidem iussit.*

In the rush, an entrée dish **accidentally** fell and a *puer* picked it from the ground. **Trimalchio** realized it and **ordered the *puer* to be punished with punches, and the dish to be put down on the floor again.**

Given the fact that slaves sometimes carried trays on their heads,<sup>317</sup> one might assume that the plate was dropped by the same *puer* who picked it up. The slave's fault, though, ironically, seems to be more related to lifting the plate up. In this triumph of opulence, in fact, such an act lowers the tone of the household.<sup>318</sup>

A misdeed of this kind is obviously absent from juridical sources, as is the form of beating expressed by the verb *obiurgare* in the punishment ordered (*iussit*) by the prodigal Trimalchio. Moreover, *obiurgare* is mostly used in the sense of reprimanding or rebuking, thus classifying this punishment as another matter of domestic discipline. All that said, we cannot be sure whether the slave has been punched or not. Petronius, rather than mentioning the fate of the *puer*, concentrates on the swift appearance of another enslaved (a *suppellecticarius*) who sweeps the refuse away, and of two long-haired Ethiopian boys who start pouring wine to the guests.

- **Sat. 47.12–13: not serving the course correctly – demotion to a lower office**

The guests are briefly freed from the tyrannical presence of Trimalchio, who leaves the dining room to relieve himself. As he joins his commensals again, three white pigs are introduced too. Trimalchio orders the oldest one to be slaughtered, threatening one of his cooks with the following words to persuade him to work exactly as expected:

*“Ex quota decuria es?” Cum ille se ex quadragesima respondisset: “Empticius an” inquit “domi natus?” “Neutrum” inquit cocus “sed testamento Pansae tibi relictus sum”. “Vide ergo” ait “ut diligenter ponas; si non, te iubebo in decuriam viatorum conici”.*

“Which company are you from?” When the cook replied the fortieth, he [Trimalchio] asked: “Were you purchased, or are you home-born?” “Neither,” said the cook. “I was bequeathed to

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<sup>317</sup> See, for instance, Juv. 3. 251–2.

<sup>318</sup> As noted by Sedgwick (1925) 94.

you in Pansa's will." "Make sure, then," he said "to serve this course diligently, or I'll order you to be demoted to the company of messengers."

The cook might thus become a messenger, if he does not serve the next course impeccably, thereby committing (potentially) another misdeed which is not punishable according to Roman law. The threat envisaged, i.e. demotion to a lesser office, is a form of domestic punishment which – as seen above, with *Sat.* 69.3 – Trimalchio has most likely experienced as well, although for a radically different offence. The demotion of the cook, however, does not eventually take place in the narrative universe of the *Cena*.

- ***Sat.* 49.5–6: forgetting to gut the pig - beating**

Trimalchio's gargantuan fare proceeds smoothly, course after course, until one of the cooks seems to have forgotten something crucial. The pig, which was about to be served, has not been gutted:

*"Quid, oblitus?" Trimalchio exclamat, "putes illum piper et cuminum non coniecisse! Despolia!". Non fit mora, despoliatur cocus atque inter duos tortores maestus consistit.*

"What? You forgot?" Trimalchio exclaimed "You would think he had not sprinkled pepper or cumin! **Strip him!**". The cook was promptly undressed and stood, miserable, **among two torturers**.

Again, the passage concerns an eminently domestic form of offence, with no parallel in juridical writings.<sup>319</sup> The chastisement envisaged is a physical one – which can be gleaned from Trimalchio's words when ordering the cook to be undressed. Indeed, the self-made magnate here reiterates the use of the verb *despoliare*, mentioned above.<sup>320</sup> Since a couple of *tortores*,

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<sup>319</sup> Both this instance and the previous one seem reminiscent of Cato's treatment of his *servi* during banquets as recounted by Plutarch (*Vit. Cat. Mai.* 21) but, as will be seen later, Petronius is adding a further, subtler layer to the scenes.

<sup>320</sup> Normally used in the sense of robbing, Burmann (1974) describes this verb as a "praetorian", alluding to its *only* use which is paired with the figure of the praetor, namely *Sen. Con.* 9.2.21. This *controversia* deals with a *lèse-majesté* accusation directed to Flaminius, who killed a criminal during a dinner party. He did so in order to please a prostitute eager to see a man's head being cut off, since she had never witnessed such a gory spectacle. Abuse of power and *crimen maiestatis* are by now familiar themes in the *Cena*, but the convivial setting of both the *Controversia* and this scene, paired with the gutting of the pig and the beheading of the man, create an uncanny coincidence. Moreover, the passage from the *Cena* seems to echo *Sen. Contr.* 9.2 which is a re-enactment of what had supposedly happened (therefore a 'staged' scene as the one of the *Satyricon* reveals itself to be).

who are the material executors of torture,<sup>321</sup> accompany the cook, we might presume that the slave is first going to be forced into confessing his carelessness. Once more, however, the cook's whipping is eventually shunned, and not only due to the guests' intervention. Indeed, the whole scene reveals itself as a charade planned by Trimalchio to showcase an even more extravagant culinary munificence: as the cook's shaky hands carve the pig's belly, sausages and black puddings start tumbling out of it. Moreover, in *Sat.* 50.1 the cook's performance is rewarded with a silver crown and a drink – a toast is made by the *familia* in honour of Gaius (*Gaio feliciter!*).<sup>322</sup>

- **Sat. 52.4: being *nugax* – auto-inflicted beating**

The above-mentioned rewards are offered to the cook on a Corinthian tray. Such detail provides Trimalchio the chance to bluster about his dinnerware. But as he describes his collection of vases and cups, a *puer* drops a wine glass (*puer calicem proiecit*). The perfect timing of this mishap and Trimalchio's bizarre reaction encourage us to see here another orchestrated scene to flaunt wealth. Indeed, the freedman exclaims:

*Cito, inquit, te ipsum caede, quia nugax est.*

Quick, **beat yourself** as you're such a stupid!

Trimalchio's phrasing targets the frivolous attitude of the enslaved *puer* as worthy of punishment, neglecting the material loss. Once more, the offence in question is domestic in nature, and it is corrected with a bizarre form of enforced domestic discipline: an auto-inflicted beating expressed by the verb *caedere*. This verb is attested in later juridical sources, and normally used to mean 'beating' in the most general terms.<sup>323</sup> For this reason, it is frequently followed by an ablative to specify the medium with which the beating is inflicted.<sup>324</sup> Seen against this juridical conceptualization, the joke, here, lies in the self-inflicting dimension of

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<sup>321</sup> Berger (1953) explains they need to be distinguished from the *quaesitores*, the officials whose task was to question the accused or the witnesses.

<sup>322</sup> While entering and exiting the dining room, two groups of slaves call Trimalchio Gaius again (*vale Gai... Ave Gai*) at *Sat.* 74.8. Habinna uses his *praenomen* too (*Sat.* 67.1), as well as Scintilla (*Sat.* 75.2).

<sup>323</sup> As in Dig. 47.8.4.13 (on goods taken by force and on tumult), 47.10.5.1 and 47.10.9.1 (both dealing with *iniuria*).

<sup>324</sup> Dig. 48.19.10 (*fustibus, flagellis*), 48.19.28.2 (*fustibus*), 48.19.28.5 (*fustibus*), 49.16.3.16 (*fustibus*), 49.16.4.11 (*fustibus*), 49.18.1 (*fustibus*), 49.18.3 (*fustibus*). The centrality of the tool employed when it comes to physical punishment has been explored in Chapter 3.

the punishment. Rather than specifying any tool with which the punishment is to be carried out, Trimalchio replaces such means with the enslaved individual himself. This has a broader function, namely the further commodification of the *puer*. Trimalchio makes the enslaved, a living tool in Roman mentality, act also as the tool with which the punishment is to be inflicted, on himself. At base, and returning to our prime topic, the act of *caedere* here lies firmly within the scope of the possibilities open to Trimalchio as a master.

Not surprisingly, even in this case, a proper chastisement scene is lacking, as the careless *puer* is eventually forgiven, with language that contains imperial allusions.<sup>325</sup>

- **Sat. 54.3–5: falling on Trimalchio’s arm – manumission + wrapping Trimalchio’s arm in white wool – beating**

In the midst of an acrobats’ show, a *puer* slips, falling (we assume)<sup>326</sup> on Trimalchio’s arm, and the host starts moaning loudly. A squad of first aiders hastens, along with his wife Fortunata, and part of the servile staff which was in the vicinity. The chaotic atmosphere suggests that this is an accident eluding Trimalchio’s control, as argued by many commentators. Setaioli, for instance, quotes Gagliardi to underscore the complexity of planning the falling and ensuring that the *puer* would not have seriously injured Trimalchio.<sup>327</sup> However, also the culinary prodigy of the un-gutted pig would have been arduous to devise and accomplish – yet nothing is impossible in Trimalchio’s *domus*. Thus, Encolpius, offering us a clue as to how the narrator expects us to interpret the scene (namely as one designed by Trimalchio), juxtaposes the present instance with the trick of the pig (*Sat. 54.3–5*):<sup>328</sup>

*Nam puer quidem, qui ceciderat, circumibat iam dudum pedes nostros et missionem rogabat. Pessime mihi erat, ne his precibus per ridiculum aliquid catastropha quaeretur. Nec enim adhuc exciderat cocus ille, qui oblitus fuerat porcum exinterare. Itaque totum circumspicere*

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<sup>325</sup> *Tandem ergo exoratus a nobis missionem dedit puero* (*Sat. 52.6*). The imperial character is noted by Panayotakis (1995).

<sup>326</sup> A lacuna in *Sat. 54.1* renders the interpretation of the passage problematic, but this issue does not compromise the present argument.

<sup>327</sup> Setaioli (2004) 63, quoting Gagliardi (1989) 19, n. 31. Setaioli adds that Trimalchio manages to fit this unexpected incident under his direction *a posteriori* through his poetic outburst in *Sat. 55* and the double entendre (*hunc casum*) preceding it.

<sup>328</sup> I see no reason to doubt Encolpius’ words, who is the sole –intradiegetic– narrator; in other words, the entire narrative is recounted exclusively through his voice.

*triclinium coepi, ne per parietem automatam aliquod exiret, utique postquam servus verberari coepit, qui brachium domini contusum alba potius quam conchyliata involverat lana. Nec longe aberravit suspicio mea; in vicem enim poenae venit decretum Trimalchionis, quo puerum iussit liberum esse, ne quis posset dicere tantum virum esse a servo vulneratum.*

The fallen *puer* was crawling around our feet, begging for mercy. **I had the uneasy feeling that among his whining some funny coup de théâtre was planned. That cook** who forgot to gut the pig **hadn't slipped my mind**. So I started looking around the dining room, in case some contraption should come out of the wall, especially after **the slave who wrapped the arm of the master in white wool, instead of purple wool, started being beaten. My suspicion did not wander far**: indeed, instead of a punishment **a decree of Trimalchio** came, **in which he ordered that the *puer* be freed**, so that no one could say that such a great man was wounded by a slave.

The passage would contain two punishments related to two domestic offences, although one becomes, rather, an occasion of reward – i.e. manumission. Much has been written on the manumission of the *puer*,<sup>329</sup> but for present purposes we need to highlight another aspect which links this scene to the one of the cook in *Sat.* 49.5–6, and that reinforces the idea of this sketch as one carefully staged by the host: the two passages contain the sole instances of enslaved characters being rewarded during the dinner. Just as the cook's acting abilities earned him a drink and a silver crown (*Sat.* 50.1), the acrobat *puer* receives freedom. Indeed, the task of falling on Trimalchio's arm without hurting him was more challenging and it entailed a higher risk for the acrobat himself too.

Furthermore, this passage stands out as it presents the only instance of a *servus* actually being punished during the present time of the *Cena* – namely that of the enslaved wrapping Trimalchio's bruise with white instead of purple wool. Contrary to the case of the *puer* dropping an entrée dish (*Sat.* 34.2), where no application of the chastisement follows the order thereof, here the *servus* has started being beaten already when Encolpius directs his gaze towards him.

Trimalchio's up-side-down world, culminating in the reward to the *puer* who physically hurt him and the beating of the one who helped him, is absurd but not surprising: the wilful choices and the punishment exerted fall squarely within the remit of the prerogatives of masters.

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<sup>329</sup> An in-depth analysis of the manumission scene is found in Roth (2016).

- **Sat. 64. 9–12: causing a fight between dogs – no punishment**

Two new members of Trimalchio’s household are introduced: the *delicium* Croesus and the obese puppy dog Margarita.<sup>330</sup> At the sight of the latter, the host orders the enormous dog Scylax to be sent in as well. Passionately praising Scylax, Trimalchio triggers the jealous reaction of Croesus who unexpectedly provokes his puppy to attack the canine rival:

*Scylax, canino scilicet usus ingenio, taeterrimo latratu triclinium implevit Margaritamque Croesi paene laceravit. Nec intra rixam tumultus constitit, sed candelabrum etiam super mensam eversum et vasa omnia crystallina comminuit et oleo ferventi aliquot convivas respersit. Trimalchio ne videretur iactura motus, basiavit puerum ac iussit super dorsum ascendere suum. Non moratus ille usus est equo manuque plena scapulas eius subinde verberavit, interque risum proclamavit: “Bucca, bucca, quot sunt hic?”*

Just as dogs do, Scylax filled the dining-room with a most hateful barking, and almost chewed up Croesus’ Margarita. The dogfight was not only about the noise: a lamp, knocked over the table, broke all the crystal vases to pieces, and also sprinkled some of the guests with hot oil. **Trimalchio unwilling to seem upset at this loss, kissed the boy**, and made him climb on his back. **Croesus** instantly mounted his horse and **hit Trimalchio’s shoulders with his open hand**, yelling amid laughter: “Mouth, mouth, how many are there?”<sup>331</sup>

The dog-mayhem stirred up by Croesus results in the annoyance of the guests along with the destruction of the precious lamp and crystal vases; nonetheless, Trimalchio pretends not to care about this at all, rather asking Croesus to jump on his shoulder. The *puer*, still yearning to teach him a lesson, gives the master the beating which he himself should have received by Trimalchio. The scene, then, reinforces the picture of a world that is profoundly up-side-down, as seen in the previous instance. In so doing, it also elaborates on the wilful nature of both the identification of a servile ‘crime’ and its subsequent punishment, especially when these serve the purpose of showing off Trimalchio’s wealth and clemency towards his slaves.

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<sup>330</sup> The term *delicium*, generally translated as ‘favourite’ or ‘pet-boy’, designated a young slave generally kept in rich households for the sake of amusing and keeping company. They were also likely to attract the sexual attention of their masters. For discussion on *delicia*, see Slater (1974).

<sup>331</sup> My choice of a literal translation of Croesus’ line depends on the obscure character of the game the *delicia* is playing. According to Brewster (1943) this would be a game for two players, one of which holds up a number of fingers of their hand, challenging the other to guess the number. Such an interpretation gained the most favour among scholars, but Colin (1952) 106–107 n. 4 believes that the game had more obscene implications.

- **Sat. 69.2: being agaga – tattoing**

As previously touched upon, not long after their arrival, Habinnas and Scintilla start wrangling over the *servus* Massa, who has been profusely praised by Habinnas, much to the resentment of the wife. Habinnas has in fact enumerated the many talents of the *servus*, but, according to Scintilla, the list is incomplete. In her view, he also has another vocation:

“... *Agaga est; at curabo, stigmam habeat.*”

“... **He is a pimp. But I’ll make sure he gets a mark.**”

In acting as a pimp (at least in Scintilla’s view) Massa is committing neither a delict nor a crime *stricto sensu*. Concerning the mark, this is again a punitive measure implemented by masters and which is mostly associated with servile runaways – although, in the juridical sources, no clear link between a peculiar misdeed and the use of *stigma* is detectable. That said, while the impression of *stigmata* falls into the remit of domestic punishment, it implicates broader legal repercussions. According to Gaius, the *lex Aelia Sentia*, enabled Augustus to bar marked *servi* from Roman citizenship upon manumission. Consequently, manumission ‘produced’ three types of freedpersons, namely full-fledged Roman citizens, Latins and *dediticii*. Gaius documents the allocation of slaves with *stigmata* to this last group (*Inst.* 1.13).<sup>332</sup>

**slaves** who have been chained by their masters as a punishment, or those **who have been marked**, or interrogated under torture concerning some wrongdoing and convicted of that offence, or handed over to fight in gladiatorial combat with swords or with the beasts, or sent to the games or thrown into custody, and who have afterwards been granted freedom, whether by that master or by another, **shall be free men of the same status as peregrines who have capitulated** (*dediticii*).

The threat thus, is not simply a matter of aesthetics. We could imagine Massa trying so hard to please Habinnas in order to get the highest reward for his fidelity: manumission. However, should Scintilla impose a mark on him, Massa’s efforts would have been to no avail. Indeed,

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<sup>332</sup> *Qui servi a dominis poenae nomine vincti sunt, quibusve stigmata inscripta sunt, deve quibus ob noxam quaestio tormentis habita sit et in ea noxa fuisse convicti sunt, quive ut ferro aut cum bestiis depugnarent traditi sint, inve ludum custodiamve coniecti fuerint et postea vel ab eodem domino vel ab alio manumissi, eiusdem condicionis liberi fiant, cuius condicionis sunt peregrini dediticii.*

he would not be able to gain, along with freedom, citizenship – a distinct downgrading of what was potentially on offer that adds a deeper dimension to this scene.<sup>333</sup>

- **Sat. 70.5–7: fighting while drunk, breaking amphorae and ignoring T.’s verdict – no punishment**

Trimalchio’s nonchalance about his material possessions keeps taking centre stage as the dinner party draws to a close. When two *servi* returning from a water tank engage in a drunk fight, the host intervenes thus:

*Cum ergo Trimalchio ius inter litigantes diceret, neuter sententiam tulit decernentis, sed alterius amphoram fuste percussit. Consternati nos insolentia ebriorum intentavimus oculos in proeliantes notavimusque ostrea pectinesque e gastris labentia, quae collecta puer lance circumtulit.*

**Trimalchio administered justice to the disputants, but neither of them accepted his verdict, and they smashed each other’s waterpots with sticks. Dismayed at their drunken insolence,** we stared at them fighting, and noticed that their pots were dropping oysters and scallops, which a boy picked up and served around on a tray.

As the guests perceive the scuffle between the two enslaved characters as an outrageous nuisance, one would expect the prompt meting out of a punishment for this domestic offence. And yet, Trimalchio is passively looking at the *servi*, who also ignored his verdict. As in the case of Croesus (*Sat.* 64.9–12), the shattering of amphorae leaves him indifferent. But while on the previous occasion the outburst of the favourite’s rage was unexpected, this scene reveals itself to have been planned by the freedman in order to serve shellfish in a spectacular way. Almost predictably by now, no punishment follows.

There is an additional striking feature pertaining to the scene and it lies in the portrayal of the host as a *praetor*, as the formula *ius dicere* is unequivocally related to this state magistrate. This conveys the impression that some sort of official jurisdiction is being exercised in this private *domus*, despite the lack of a punishment here.

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<sup>333</sup> For further discussion on this see Roth (2011).

- **Sat. 78.2 letting mice and moths spoil T.’s funeral clothes – burning alive**

A particularly horrific punishment is broached when the banquet turns into Trimalchio’s mock funeral. The host orders the enslaved Stichus to bring his grave clothes, including a *toga praetexta* (as specified in *Sat.* 78.1) and to safeguard them scrupulously with the following words:

“*Vide tu*” inquit “*Stiche, ne ista mures tangant aut tineae; alioquin te vivum comburam.*”

“Make sure” he said “Stichus, that neither mice nor moths touch them, or **I’ll burn you alive**”

As it stands, the offence seems purely domestic, constituting a similar form of negligence to the one found in *Sat.* 30.8 to the detriment of Trimalchio’s *dispensator*. Contrary to the previous case, however, the punishment envisaged is not a domestic one.

As seen in Chapter 3, burning alive is a punitive measure which was employed, according to later Roman jurists, for crimes that had a public character. In literary sources, it is never a punishment paired with an offence, although Cic. *QFr.* 1.2.6 suggests that one could be sentenced to it (*iudicio comburantur*). Burning alive is also enforced in wartime,<sup>334</sup> and by ruling or simply powerful figures whose cruelty needs to be underlined.<sup>335</sup> In a similar vein we also find references to *vivicrematio* in Suetonius’ portrayal of Gaius (Suet. *Calig.* 27.4), when the emperor metes this out in the middle of the arena to a writer of Atellan farces due to a line of double meaning (*ob ambigui ioci uersiculum*).<sup>336</sup> This was perceived as an insult to himself, and thus equalled to a breach of the *lex maiestatis*. It is interesting that, according to *PS* 5.29.1, burning alive had later started replacing the *aquae et igni interdictio* as the penalty for the *humiliores* committing *crimen maiestatis*.<sup>337</sup> The spectacular and exemplary character of *vivicombustio* cannot be ignored either.

Just as in Caligula’s case, it is a trivial offence that is paired with burning alive by Trimalchio, who is however just a private *dominus*, not a representative of the state: the joke is therefore self-evident. In addition, this is the only case in which Trimalchio does not delegate the task of punishing to someone else but claims to be ready to impart it himself (*te vivum comburam*). In

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<sup>334</sup> Caes. *B Gall.* 1.53.7, 7.4.10.

<sup>335</sup> Cic. *Fam.* 10.32.3, Livy 24.45.14, Val. Max 9.2 ext.5.

<sup>336</sup> Just after the sentence in question, Suetonius also talks about Gaius condemning to the beast a Roman knight who, after protesting his innocence, had his tongue cut out.

<sup>337</sup> Along with *ad bestias datio*, while *honestiores* were allocated capital punishment.

sum, we are once again witnessing a world up-side-down and out of due balance, in which the larger-than-life dinner host displays as he pleases his wilfulness and power over his *servi*.

#### **4. The shape of Trimalchio's domestic jurisdiction**

The foregoing overview of instances pertaining to servile misdeeds and chastisements in the *Cena Trimalchionis* has emphasized that 'crime and punishment' is a pervasive theme. Moreover, the interpretation of the texts regularly requires legal knowledge in order for it to be fully appreciated.

A summary of each of the instances discussed in the previous section is provided in Table 1, where they are listed in a schematic fashion and following their order of appearance in the Petronian text. Apart from the bipartition already drawn between servile misdeeds and punishments happening *during* the dinner party vis-à-vis the *reported* instances, several other important structural aspects are foregrounded in Table 1. In particular, three critical features are taken into account: the type of offence committed or theorized (e.g. the cursing of the *genius*); the kind of punishment exerted or threatened (e.g. crucifixion); and the power framework behind the punishment – i.e. master/household or law/state (without wishing to imply a rigid barrier between these two frameworks). Dealing with punishments specifically, a further demarcation, between those ordered by Trimalchio to be meted out on the one hand, and the chastisements which he is willing to enforce himself on the other, is also shown. The resulting classification of the 'crime and punishment' sketches in the *Cena* also highlights the presence of staged scenes (i.e. those carefully planned by Trimalchio). Furthermore, rewards are noted as well, as they expose the non-casual nature of the vignettes to which they belong.

**Table 1**

	<b>REF.</b>	<b>WHEN</b>	<b>WHO</b>	<b>WHAT</b>	<b>TYPE OF MISDEED</b>	<b>TYPE OF PUNISHMENT</b>	<b>APPLIED</b>	<b>MODE OF ORDER</b>	<b>PLANNED</b>	<b>REWARD</b>
<b>1</b>	<i>Sat.</i> 28.7	<i>Cena</i>	<i>quisquis servus</i>	leaving the house without permission	domestic offence	master: beating	NO	written	YES	NO
<b>2</b>	<i>Sat.</i> 30.7	<i>Cena</i>	<i>servus</i>	neglecting the master's clothes gifted by a <i>cliens</i>	domestic offence	state: <i>despoliatus</i> / master: beating	NO	N/A	YES	NO
<b>3</b>	<i>Sat.</i> 34.2	<i>Cena</i>	<i>puer</i>	picking up an entrée dish	domestic offence	master: beating	?	verbal	NO	NO
<b>4</b>	<i>Sat.</i> 45.7–8	reported	Glyco's <i>dispensator</i>	sexual intercourse with the master's wife	crime: <i>adulterium</i>	state: <i>ad bestias datio</i>	YES	N/A	N/A	NO
<b>5</b>	<i>Sat.</i> 47.12–13	<i>Cena</i>	<i>cocus</i>	not serving the course correctly	domestic offence	master: demotion	NO	verbal	YES	NO

	REF.	WHEN	WHO	WHAT	TYPE OF MISDEED	TYPE OF PUNISHMENT	APPLIED	MODE OF ORDER	PLANNED	REWARD
6	Sat. 49.5–6	<i>Cena</i>	<i>cocus</i>	forgetting to gut the pig	domestic offence	state: <i>tortores</i> / master: beating	NO	verbal	YES	YES
7	Sat. 52.4	<i>Cena</i>	<i>puer</i>	being <i>nugax</i>	domestic offence	master: self-inflicted beating	NO	verbal	YES	NO
8	Sat. 53.3	reported	Mithridates	slandering the <i>genius</i> of Gaius	domestic offence	state: crucifixion	YES	?	YES	NO
9	Sat. 53.10	reported	<i>balneator</i>	being caught with a freedwoman	crime: <i>adulterium</i> (?)	?	?	?	YES	NO
10	Sat. 53.10	reported	<i>atriensis</i>	?	?	state: <i>relegatio</i>	YES	?	YES	NO

	<b>REF.</b>	<b>WHEN</b>	<b>WHO</b>	<b>WHAT</b>	<b>TYPE OF MISDEED</b>	<b>TYPE OF PUNISHMENT</b>	<b>APPLIED</b>	<b>MODE OF ORDER</b>	<b>PLANNED</b>	<b>REWARD</b>
<b>11</b>	Sat. 53.10	reported	<i>dispensator</i>	? ( <i>reus factus</i> )	?	?	?	?	YES	NO
<b>12</b>	Sat. 53.10	reported	<i>cubicularii</i>	?	?	?	?	?	YES	NO
<b>13</b>	Sat. 54.3-5	<i>Cena</i>	<i>puer</i>	falling on T.'s arm	domestic offence	-	N/A	N/A	YES	YES
<b>14</b>	Sat. 54.3-5	<i>Cena</i>	<i>servus</i>	wrapping T.'s arm in white wool	domestic offence	master: beating	YES	?	YES	NO
<b>15</b>	Sat. 64.9-12	<i>Cena</i>	Croesus	causing a dog fight, the breaking of a lamp and nuisance to the guests	domestic offence	-	N/A	N/A	NO	NO

REF.	WHEN	WHO	WHAT	TYPE OF MISDEED	TYPE OF PUNISHMENT	APPLIED	MODE OF ORDER	PLANNED	REWARD	
16	Sat. 69.2	Cena	Massa	being <i>agaga</i>	domestic offence	master: mark	NO	N/A	N/A	NO
17	Sat. 69.3	reported	Trimalchio	sexual intercourse with his mistress	crime: <i>adulterium</i>	master: demotion	YES	N/A	N/A	NO
18	Sat. 70.5-7	Cena	<i>duo servi</i>	breaking of amphorae and ignoring T.'s verdict	domestic offence	-	N/A	N/A	YES	NO
19	Sat. 78.2	Cena	Stichus	letting mice and moths spoil T.'s funeral clothes	domestic offence	state: burning alive	NO	- direct execution	YES	NO

The structural representation offered here allows us to see at a glance that none of the misdeeds taking place *during* the *Cena* can be classified as either *crimen* or *delictum* in the juridical sense of the term. The chastisements envisaged are mostly physical (barring no. 5) and ‘masterly’, although the very last one, burning alive (no. 19), is a punishment imposed by the state (if understood to have been carried out within the legal framework) or by the state in the person of the emperor. Significantly, the physical punishments in question, despite being very vividly envisioned, do not result in *actual* punitive actions in the *Cena*, with the exception of no. 14, which will be dealt with in due course.

In their totality, the scenes in which punishments are threatened or applied, *during* the dinner party, display the following characteristics:

- a) an arbitrariness in the evaluation of servile misdeeds – patently exemplified by the contrast between no. 3, where the enslaved *puer* picking up the entrée dish is ordered to be punished, and no. 15, where Croesus, despite instigating mayhem between dogs, is not only forgiven, but also allowed to slap Trimalchio;
- b) an ambiguity regarding the social status of a considerable number of the (supposedly) servile characters involved in the punishment scenes, namely nos. 9, 10, 11, 12, 17;
- c) the delegation of the act of punishment on the part of Trimalchio, who, except for no. 19, always orders chastisements to be meted out by others – a pattern which reaches its ironic peak with no. 7, where the *puer* who dropped a cup is asked to beat himself;
- d) the excessive nature of the chastisements, given the misdeeds they correspond to – for example in no. 19, where failure to protect Trimalchio’s grave clothes may result in *vivicomburium*;
- e) the threatening of punishments that, especially during the dinner, find no actual application (barring no. 14, for which there is no preceding threat either).

It is also the case that most of these instances of ‘crime and punishment’ are part of a spectacle painstakingly directed by Trimalchio to startle and entertain his guests, while a smaller number of instances occur outwith the host’s control, namely nos. 3 and 15. Nonetheless, even these unforeseen mishaps are wittily transformed into occasions of offering displays of wealth.

Seen this way, it is now possible to identify an important contrast to the accounts of the reported punishment instances: the chastisements have been effectively administered; moreover, they all constitute punishments actually prescribed by the law, either in a very real sense (nos. 4 and 8) or in the language which is used to describe them (nos. 10 and 17). In addition, these exacted chastisements are enforced following misdeeds that are framed by juridical thinking. Most of the instances belonging to this category, then, classify as abuses of power perpetrated by masters. The only exception is represented by no. 17, with Trimalchio's demotion falling into the remit of masterly possibilities. There is also an ambiguity regarding the social status of a considerable number of the (supposedly) servile characters involved in the punishment scenes, namely nos. 9, 10, 11, 12, 17.

If one concentrates on the 'crime and punishment' vignettes directly pertaining to Trimalchio, it is manifest that the munificent freedman tends to use specific technical juridical terms, prefers alluding to some delicts and crimes over others, and regularly provides details regarding the people in charge of carrying them out (more or less explicitly). Moreover, the chastisements encountered are characterized by disproportion and, quite often, they arise from causes that are not factually, let alone legally, fully comprehensible, but play on a wider symbolic theme. In trying to make sense of the observed details, distinctions and patterns, this panorama of punishments will now be subjected to more probing examination, to unearth the motives behind the freedman's actions. After all, he himself claims that he does nothing without a reason (*nihil sine ratione facio*, *Sat.* 39.14).

#### **4.1 Building the *ius Cena*, constructing imperial authority**

It is unchallenged that Trimalchio constitutes a caricature of the wealthy freedman, as his ostentation of wealth and arrogance well reflect the coeval prejudices on ex-slaves. At a deeper level of scrutiny, however, it appears quite reductive to confine the baroque host of the dinner to this social group exclusively. Indeed, Trimalchio's grandeur, some of his habits and foibles have been recognized as imperial innuendos.<sup>338</sup> Walsh, moreover, has singled out uncanny similarities between the freedman and the emperor Nero, while also showing how the boorish dinner host epitomizes some of the fixations of Augustus and Claudius.<sup>339</sup> Trimalchio, thus, is

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<sup>338</sup> See Crum (1952), Rose (1971), Miller (1989), Rosati (1999), Hales (2009), Vout (2009), but also many others.

<sup>339</sup> Walsh (1970) 137–9.

not just the representative of a new bourgeois society loathed by the upright Roman. His portrait has been also proved to carry unmistakable imperial features, which are the object of Petronius' satirical pen. And, in fact, the imperial power sees its material representation as early as in *Sat.* 30.1–3, where the walls of Trimalchio's *domus* are adorned with *fasces* and *secures*, the symbols of *imperium*, and *tabulae* – which cannot be explained as prerogatives of Trimalchio's sacerdotal order.<sup>340</sup>

It can be added that servile 'crime and punishment' buttresses this imperial theme too, despite the fact that the majority of scholars consider this as another tool to ridicule the freedman further. According to Joshel, for example:<sup>341</sup>

... at the dinner party of the wealthy freedman Trimalchio, the display of masterly violence serves as social criticism of this parvenu. ... these scenarios of punishment and reprieve portray the power of a vulgar freedman who has wealth but not class. ... his slaves then enable him to exercise a power denied by his social position, and Petronius' depiction of its vulgar display makes the wealthy freedman ridiculous.

The present section will disprove such a claim through a closer, methodical look at the identified instances. This will allow us to recapitulate and integrate what has been so far acknowledged, while also uncovering a hitherto unappreciated, significant contribution to the imperial theme in the figure of Trimalchio, thanks to close attention to our theme of servile 'crime and punishment'.

Thus, the larger part of the 'crime and punishment' scenes, as stressed earlier, have been planned by Trimalchio. The following list-like section will focus on the most significant non-casual instances:

- Panayotakis has highlighted the mock imperial tone of the inscription in no. 1,<sup>342</sup> whose very presence raises several questions about slave literacy.<sup>343</sup> Possibly, then, when affixing such a message, Trimalchio targets mostly his guests, to warn them, already upon entrance, of the total control exercised upon his *familia*.<sup>344</sup>

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<sup>340</sup> Cucchiarelli (1998).

<sup>341</sup> Joshel (2011) 225.

<sup>342</sup> Panayotakis (1995).

<sup>343</sup> Joshel (2013).

<sup>344</sup> Also, according to Silver (2012), this sign serves to limit Trimalchio's legal liability for offences that his slaves might commit when not under his control.

- Nos. 2 and 6 respectively contain a *despoliatus* slave and another one who is ordered to be stripped with the imperative *despolia!* The use of this particular verb alludes to the figure of the *lictores*, whom Trimalchio, as a *sevir Augustalis*, was indeed entitled to have.<sup>345</sup> However, *despoliare* (along with *spoliare*) is associated with *lictores* performing punitive tasks solely when acting as instruments of the methods of coercion allocated to a magistrate with *imperium* (scourging and capital punishment).<sup>346</sup> Indeed, for capital *coercitio*, lictors were in charge of stripping the coerced criminal naked, preliminary to the actual chastisement.<sup>347</sup> Their presence, thus, must be linked to the above-mentioned *fascēs* and *securēs*, and not to Trimalchio's position as a *sevir*.
- In no. 5 one of the cooks is threatened with being demoted to the *decuria* of *viatores*.<sup>348</sup> Demotion is a kind of punishment Trimalchio is familiar with, having suffered it previously (no. 17). While the host was condemned to join the rank of *vilici*, notoriously possessed by private masters too, Trimalchio's cook risks to become a *viator*.<sup>349</sup> With this latter mention, Trimalchio alludes to magistrate assistants he was technically not entitled to as a *sevir Augustalis*.<sup>350</sup> These messengers, who were salaried by the state

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<sup>345</sup> There is no consensus on their number. It would have been just one, according to Prag (2006), while Schmeling (2011) claims they were two. Moreover, Habinna, a sort of small-scale model of Trimalchio, as defined by Cicu (1991), owns *lictores* too. In *Sat.* 65.3, indeed, his entrance is solemnly signalled by a *lictor* knocking on the door, so that Encolpius worries that the praetor is about to join them (*ego maiestate conterritus praetorem putabam venisse, Sat.* 65.4).

<sup>346</sup> Along with *Sen. Contr.* 9.2, which discusses a *maiestas* accusation and has been mentioned in n. 320, we can also list Plautus' words in *Cas.* 819 (*tua vox superet tuomque imperium: vir te vestiat, tu virum despolies*). The playwright ironically uses the double meaning of *despoliare* as a prerogative of someone who has *imperium*, and as the act of robbing someone. For the pairing of *spoliare* and *lictores*, see *Liv.* 2.55, and *Liv.* 8.32.

<sup>347</sup> Hölkeskamp (2011).

<sup>348</sup> Scholars have already claimed that the abundance and the organization in *decuriae* of the freedmen's slaves renders the household comparable to a miniature imperial court. More on Trimalchio's slaves and freedmen can be found in Puglisi (1987).

<sup>349</sup> This term is frequently used as a synonym for messenger, but, according to Varro (quoted by Aulus Gellius in *NA* 13.12.6), *viatores* were allotted only to magistrates who owned *prensio* (i.e. the power of arrest), such as the tribunes of the plebs. It is true that Varro writes in republican times, but if we consider his pronouncement, the 'crime and punishment' scenes would indirectly bring into play the concepts of *imperium* and *tribunicia potestas*, which are the pillars of the imperial authority.

<sup>350</sup> Although other religious figures, such as augurs, *septemviri epulones* and *quindecimviri sacris faciundis* were equipped with them.

and had to be free during their appointment, served emperors, praetors, tribunes and consuls, along with some of the *vigintiviri*.<sup>351</sup>

- Coming back to no. 6, Smith remarks that in dealing with his (only apparently) forgetful cook, Trimalchio has *tortores* at his disposal,<sup>352</sup> these are normally public slaves and thus possessed by public power, notably the state.
- No. 12 calls into play *cubicularii*, who could have been simple servile bedroom servants, but also people in charge of admitting access to a *persona publica*, as happened with officials already in the late republic.<sup>353</sup> More interestingly, emperors started considering them as personal servants and almost confidants.<sup>354</sup>
- Nos. 8, 9, 10, 11 are entries in the bulletin compared by Encolpius to the *Urbis acta*, and present rather explicit clues to the imperial theme. Referring to them, Walsh has justly claimed that “Trimalchio governs with the trappings and the justice of the imperial court”.<sup>355</sup> In the case of the *balneator*, *atriensis*, and *dispensator*, we already underscored how their ‘crimes and punishments’ resembles those normally linked with free people, despite their (seemingly) servile status. This seems to suggest that Trimalchio’s jurisdiction does not strictly concern only enslaved people. Moreover, Trimalchio’s Cumaean *fundus*, in which state punishments are applied and state functionaries appear,<sup>356</sup> mirrors the freedman’s *domus*, figuring almost as a province of it.

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<sup>351</sup> For further discussion on *viatores*, and *apparitores* more broadly, see Purcell (1983). Interestingly, at least in republican Rome, these attendants had the power of making arrests for magistrates with *imperium* and for the tribunes, even when the magistrates were absent, as pointed out by Lintott (1968) 101.

<sup>352</sup> Smith (1974). This is also confirmed by Courtney (1980) 324, who describes them as “public slaves charged with the punishment of other slaves” when commenting on Juv. 6.480. It should be added that *tortores*, curiously, are also an asset of which the tyrant, or the king portrayed with tyrannical feature, frequently takes advantage (Livy 40.55.5, Curt. 6.11.13, Sen. *Controv.* 2.5.5 and 2.5.9, Val. Max. 3.3.ext.5). Saller (1994) 147–148 claims that they were also available for private hire for masters; however he does so only on the basis of Trimalchio’s use of *tortores*, Juvenal’s line quote above, and the inscription of Puteoli (see n. 287) where *tortores* are not explicitly mentioned.

<sup>353</sup> Cic. *Verr.* 2.3.8, *Att.* 6.2.5.10. Maxey (1938) believes that they were highly trusted as they had to exercise their discretion in admitting people.

<sup>354</sup> In *Tib.* 3.21, *Nero* 38.1 and *Dom.* 17.2, Suetonius gives a glimpse of the familiarity between these emperors and their *cubicularii*.

<sup>355</sup> Walsh (1970) 131.

<sup>356</sup> *Aedilii* feature in Trimalchio’s estate, as shown by *Sat.* 53.9 (*iam etiam edicta aedilium recitabantur*).

- The application of *relegatio* as a punishment to Trimalchio himself in no. 17 also insinuates doubts about his legal status.
- Finally, we have previously linked the burning alive promised in no. 19 to the *crimen maiestatis*, a typically ‘imperial’ offence.

These scenes, consequently, inform us of the bizarre presence of official functionaries in Trimalchio’s *domus* and *fundus*, two places upon which he exerts a jurisdiction which is oddly similar to the public one, i.e. that of the state, and which carries and magnifies all its flaws. Hence, it cannot be denied that servile delinquency and punishment open a window on the imperial theme of the *Cena*. But what for?

#### 4.2 Purple wool: a revealing instance

We must now pursue a hitherto unappreciated contribution to the imperial theme in the figure of Trimalchio. The pattern of threatening and shunning punishments, which seems to be Trimalchio’s *modus operandi* during the banquet, is eluded only in one case: the wool-wrapping incident (no. 14). It has frequently been overlooked that the enslaved who picks the wrong colour for Trimalchio’s bandage – white instead of purple-red – is the only one to be undoubtedly chastised *during* the dinner proceedings, in plain sight and after committing a quite negligible domestic offence. Since Petronius isolated this scene, by making it unique in the application of punishment, it is imperative to look more closely at the meaning of the purple cloth claimed by Trimalchio. This will demonstrate that, in no. 14, the imperial theme played out on the justice system is actually much sharper than hitherto realized, keeping in mind that, as previously underlined, this is a scene set up by the host.

Traditionally, Trimalchio’s reaction to his arm being wrapped in white wool is explained with reference to his superstition, confirming an attitude amply shown by the host throughout the dinner party.<sup>357</sup> Indeed, Romans believed that purple-red had healing properties, and Casartelli reports the use of amulets against fever and headache made up of various contents, wrapped up in purple clothes.<sup>358</sup> In linking these amulets to no. 14, however, she also mentions *Sat.* 131.4–5, outside of the episode of the *Cena*. There, following an old woman’s advice, Encolpius

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<sup>357</sup> On Trimalchio, religion and superstition in the broader context of the *Cena*, see Grondona (1980).

<sup>358</sup> Casartelli (1998). This use is moreover testified, for red and its shades, by Plin. *HN* 21.166, 24.170, 30.98–99.

throws enchanted pebbles enveloped in a *purpura* fabric on his chest, to treat his impotence. In Encolpius' treatment, this is exactly the case: the healing power of the 'necklace' relies indeed on the red-purple cloth. However, the association of the use of these remedies with Trimalchio's *conchyliata lana* in no. 14 does not appear as strong. On one level, Casartelli's interpretation certainly works, as Trimalchio is both injured and superstitious; yet, there is a possible further meaning related to the use of this colour.

In a very hierarchical society like the Roman one, clothing colours created an immediate link between the person wearing them and the social category to which they belonged. Specifically, *conchyliatus* is a shade of purple-red, a quite luxurious and prestigious colour which comes in different nuances. As stated in Plin. *HN* 22.3 when discussing dyes for clothes:

*Iam vero infici vestes scimus admirabili fuco, atque, ut sileamus Galatiae, Africae, Lusitaniae e graniis coccum imperatoriis dicatum paludamentis, transalpina Gallia herbis Tyria atque conchylia tinguit et omnes alios colores.*

We know that garments are dyed with an extraordinary vegetal dye, and, to say nothing of the fact that, among the berries of Galatia, Africa, and Lusitania *cocum* is reserved **to the military cloaks of generals**,<sup>359</sup> and that Transalpine Gaul produced with herbal dyes **Tyrian purple**,<sup>360</sup> **oyster purple**<sup>361</sup> and all the other colours.

These three gradations of purple-red all appear in the *Cena*, exclusively in relation to Trimalchio. At the beginning of the narrative, the protagonists spot him casually playing with green balls with his *servi*. He is probably unaware of being watched, and his outfit simply consists of a *tunica russea* and his slippers (*Sat.* 27.1). Nonetheless, after his thermal bath, he is swathed in a *coccina gausapa* (*Sat.* 28.4), getting ready for his dazzling entrance in the dining room. On this occasion, he also wears a *pallium coccineum* and a *laticlavam mappam*, a napkin with the senatorial stripe (*Sat.* 32.2). In *Sat.* 38.1–4, when the guest sitting next to Encolpius recounts all of Trimalchio's possessions, he starts with agricultural products and livestock on his estate. His list, however, is weirdly capped off with the mention of the numerous pillows in the dining room: they are all purple-red (*conchyliatum aut coccineum*, *Sat.* 38.5). Finally, in no. 2, Trimalchio's *dispensator*, brags about his stolen clothes being made *sine dubio* with

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<sup>359</sup> *Cocum*, erroneously considered a berry, is described in Plin. *HN* 37.204 as the most expensive product of the earth (*e terra*).

<sup>360</sup> The Tyrian die, consisting of a double dyeing process, was used for lavish garments (Plin. *HN* 9.139).

<sup>361</sup> The main ingredient to make *conchyliatus* is *cocum*, whose shade is made lighter by the use of urine and water. The resulting paleness is much admired, in the words of Pliny (*HN* 9.138), not a fault.

Tyrian dye.<sup>362</sup> Let us not forget that, on this occasion (one designed by the host), the *dispensator* supports the execution of the punishment (which will be shunned), stressing the symbolic value much more than the economic loss. In showing mercy towards the enslaved, flippancy towards his (supposedly) very expensive clothes he carries obvious resemblances with Trimalchio's attitude; the specification of the symbolic rather than monetary value of the garments, however, is very Trimalchian too.

If green and red are the dominant colours of Trimalchio's household,<sup>363</sup> the more 'coveted' shades of red remain Trimalchio's prerogative:<sup>364</sup> he wears them when certain to be under his guests' gaze, and he uses them to embellish his 'ceremonial hall' (i.e. the dining room). Similarly, the *lana conchyliata* of no. 14 is part of a show carefully rehearsed by the freedman. Purple, in fact, is not only an extreme luxury,<sup>365</sup> but also an appanage of senators and magistrates. Moreover, the efforts made by some emperors to limit the use of purple to imperial symbols and official purposes, demonstrate that this colour was deeply connected to the supreme power of the *princeps*.<sup>366</sup> Thus, when Trimalchio is denied the *lana conchyliata*, in a scene orchestrated by himself, a prerogative of his imperial status is not recognized by his *servus*. It is for *this* reason that the enslaved truly deserves punishment: through the pretension of purple wool, Trimalchio demands an open and unmistakable recognition of his superior, imperial authority. Moreover, the fact that the guests are made to watch the beating of the

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<sup>362</sup> Their cheap value of ten sesterces makes us doubt that this could have been more than a simple pretentious claim. Possibly, Trimalchio's *dispensator* has learnt to brag from his master/patron too.

<sup>363</sup> Text commentators poorly explain their combination as a symptom of Trimalchio's bad taste. Green is normally linked to the *factio prasina* of chariot races, for more on which see Cameron (1976).

<sup>364</sup> In *Sat.* 67.4, Fortunata wears a cherry-coloured tunic (*cerasina tunica*). According to Gloyin (2012) this lexical choice aims at lowering the status of Fortunata in comparison with her husband: this shade of red is linked with wealth, but not with social importance. A *cerasinum cingulum* is also worn by the *ostiarius* (*Sat.* 28.8).

<sup>365</sup> Beran (1973) comments that in this scene Trimalchio, as a very wealthy man, is reluctant to the use of this plain treatment with the cheap, white cloth. Such an observation brings us back to the traditional idea of Trimalchio as the boorish freedman who wants to appear as what he is not and is echoed by Grant (2004) 247, to whom this is a simple colour joke working at a "basic level". I contend, on the contrary, that the irony is rather subtle.

<sup>366</sup> See Reinhold (1970) 48–61. The process started before the official establishment of the empire, as testified by Suet. *Iul.* 43.1. Restrictions on the use of purple were also put into place by Augustus (Cass. Dio. 49.16.1) and Nero (Suet. *Nero* 32.3). See Plin. *HN* 9.136 for the use of purple among the mythical Roman kings. McGinn (1998) 154–155 emphasizes how colour and clothing were object of regulation under Augustus, before detailing, in 156–171, the symbolic use of dress-code specifically regarding the *lex Iulia de adulteriis*. McGinn (2008) also explains that regulations on clothing must be understood in the context of the many Augustan reforms introduced for the sake of status-maintenance and thus social control.

enslaved in no. 14 recalls precisely the role of public punishment in ancient Rome. To summarize the essential points, let us consider Cicero's claims on punishment in his *De Officiis* and *De Legibus*: fear of punishment (*poenae metus*) has the greatest efficacy in preventing crimes, while the aim of punishment is to promote the benefit of the community.<sup>367</sup> Considered with this in mind, the 'open' nature of the slave's punishment in no. 14 underscores further the public nature of Trimalchio's justice system: the slaves' beating is promptly meted out in front of the guests' eyes to work as a warning for them. In sum, the fact that the scene is the only one in which a punishment is actually applied is indicative of the importance of the underlying claim: Trimalchio's authority, being of an imperial nature, must not be overlooked, offended or challenged, even by analogous (and seemingly innocent) behaviours.

Trimalchio's imperial characterization, foregrounded at the outset of the *Cena* with the inscription in no. 1 (and partly by the scene of the *dispensator* in no. 2), is strengthened by the wool-wrapping incident (no. 14) in the middle of the episode and reaches its peak at the end of it, with no. 19. This new reading of no. 14, in fact, also sheds light on no. 19. The *vivicrematio* with which Stichus is threatened, should he fail to guard Trimalchio's grave gear, can be seen as another case of *lèse-majesté*: the potential spoiling of the *toga praetexta*, which has a purple border,<sup>368</sup> emerges again as a direct insult to the imperial person of Trimalchio. The link with the *crimen maiestatis* is corroborated by the fact that burning alive was also one of the punishments prescribed for this crime, when committed by *humiliores*, as discussed earlier (*PS* 5.29.1). Hence, the damage of such a symbolic garment puts the enslaved's potential offence on the same level as *maiestatis deminutio* cases, in which, as already seen, emperors were allowed to trample on the law, just like Trimalchio does here, overcoming, in his case, the possibilities afforded to a private master.

But Trimalchio's reactions in nos. 14 and 19 also crumble the façade of the affectionate master, who is almost a playmate to his slaves, touching on the imperial theme of clemency (*clementia*).<sup>369</sup> This virtue is the tendency to cultivate mercy and reject cruelty that he who is

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<sup>367</sup> The adduced Ciceronian notion of *utilitas publica* will remain a linchpin of the theory of punishment, as confirmed three centuries later by Callistratus, in *Dig.* 48.19.28.15, briefly discussed at n. 289.

<sup>368</sup> Schmeling (2011) points out the lack of external evidence on the possibility of a *sevir* to wear the *praetexta*.

<sup>369</sup> See Konstan (2001) for an overview on *clementia* and its interpretations. The emergence of this virtue as pivotal, as Cowan (2016) maintains, responds to the need to create a rhetoric and a philosophy that could combine the strict application of the law with the sporadic acts of clemency on part of the emperor. The Roman justice system, in fact, started relying progressively on *cognitio* legal procedures (in which judges

in a position of power must show and is seen by Seneca as the doctrinal bedrock of the principate. According to Seneca (*Clem.* 1.20.3), nothing is more glorious than an emperor who, when wronged, decides to remain unavenged. Trimalchio's *servi* are forgiven for the trivial offences of which they are accused, including when they are a nuisance to the guests (nos. 15 and 18); however, punishment is inescapable when they directly insult the host through the cursing of his *genius* (no. 8), the denial of the imperial purple (no. 14), and the potential spoiling of his purple funeral attire (no. 19). In sum there is neither *clementia* nor justice in place at all: Trimalchio's justice system figures as unpredictable, unfair, and tailored entirely to his need for status recognition.

## Conclusion

The overview of servile 'crime and punishment' offered in this chapter has underscored the pervasiveness of the theme, and the significant influence of legal conceptualization on it. It has been argued that a full appreciation of the punitive sketches is not possible without legal knowledge. The present discussion therefore adds to the growing number of studies that advocate the importance of law for a more comprehensive reading of Petronius' *Satyricon*. It also represents clear evidence for the broader argument advanced in this thesis – i.e. that knowledge of Roman law was ingrained in Roman culture and society when it came to the exploitation of human beings as slaves.

This chapter did not reject *in toto* the fact that the scenes of servile 'crime and punishment' in the *Cena Trimalchionis* create immediately humorous detours for the reader. It highlighted, however, that Petronius was far from considering Trimalchio's slaves as background figures who are only fit to be lampooned. Rather, he shaped them as pillars of his mordant satire. When taken together, these 'crime and punishment' sketches cohere to create a justice system that adds a vital dimension to the wider imperial theme noted in other aspects of the *Cena* – namely a critique not so much of the freedman host, but of the imperial authority that this character

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had a stronger say in determining punishments) and saw a growing number of treason trials that were heard before the senate and in which the emperor was expected to intervene to moderate punishments. Interestingly, *clementia* is seen as sometimes independent, sometimes intertwined with the idea of *iustitia* along with *pietas* and *liberalitas*. In Sen. *Clem.* 1.20.2, *clementia* is the virtue which softens chastisements, while *iustitia* has a more objective character, looks for the truth and protects the innocent; in sum, the latter is the virtue of the emperor when he acts as *iudex*. See Benoist & Gangloff (2019) for the evolution of the idea of justice (and *clementia*) with regard to the figure of the emperor more broadly.

embodies. As is well known, previous commentators saw Trimalchio as a grotesque Nero, or highlighted incredible similarities between his fixations and those of Augustus and Claudius. The ‘crime and punishment’ theme, however, goes beyond the ridicule and critique of a single emperor or reign. Petronius’ sting in accentuating the string of miscarriages of justice is general, not person-specific, constituting instead a powerful satirical take on Roman imperial rule *per se*.

More to the point, Petronius is in fact using Trimalchio’s dining room-turned-court to attack the inadequacy of imperial justice, which derives from the fact that this is a prerogative of a single character. The freedman accuses his *servi* of the most absurd misdeeds when they act autonomously and forces them to commit wrongdoing through his careful planning, puzzling the guests with his punitive choices. The whimsicality of the host is unmistakable as well as the irrevocable nature of his decisions: the punishments threatened are of an extreme nature and frequently neither factually nor legally justifiable – but they encounter no opposition whatsoever. The most gruesome chastisements, namely the effectively exerted crucifixion (no. 8) and the mentioned *vivicomburium* (no. 19), are evident abuses of power. In this unpredictable context, a word has more weight than an action (as Mithridates learned in no. 8), and the symbolic implications of servile behaviour (when the use of purple is concerned as in no. 14) are worthy of exemplary punishment. The focus in all this is the relevance of the judgement of one person only. Trimalchio’s domestic jurisdiction, thus, closely resembles the public one, especially in its shortcomings: what constitutes a misdeed is at Trimalchio’s discretion, much as determining punishments is exclusively his prerogative, and there is no appeal against his decisions, just as is the case of the emperor. Trimalchio has also assimilated and substituted the traditional figures of justice, as he presents himself as a *praetor* and disposes of legal infrastructures on his *fundus*. Petronius’ choice to expose the problems of Trimalchio’s domestic justice with a view to criticizing that of the state becomes even clearer when we remember that a good deal of an emperor’s public image and the overall perception of his reign depended on the way he dealt precisely with the administration of justice.<sup>370</sup>

In its totality, the freedman’s household is a satirical microcosm of the state at large, providing a parody of the enormously powerful, central role of the emperor in relation to the law. Augustus is frequently described as devoting his time to the tribunal, imperial historiography pictured Claudius as literally obsessed with justice, the involvement of traditionally ‘bad’ emperors in judging treason accusations (and the abuse thereof) is well documented both for

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<sup>370</sup> Millar (1992) 528–529.

the Julio-Claudian and the Flavian dynasty, while the pronouncements of Antonine emperors recurrently feature in juristic commentaries. That the emperor was approachable (at least through his secretaries) to discuss legal matters is indubitable, but his involvement in cases regarding him directly (i.e. the accusations of *lèse-majesté* discussed above) rapidly culminated in the imperial monopoly of the legal authority.<sup>371</sup> Through the prism of satire, Petronius manifests this development in the *Cena*, i.e. the preludes of a dangerous tendency that will culminate in the third century with the consecration of the emperor as the supreme source of justice. It is not merely the lack of justice that concerns the author, but also its channelling through a sole, ultimately truly unpredictable and essentially unfair authority.

From all this follows that, although the *Cena* works at a superficial level as an attack on the pretentiousness and vulgarity of *libertini*, a sustained analysis of servile ‘crime and punishment’ shows that the emperor, not the freedman, is the ultimate object of derision. The generally agreed direction of Petronius’ satirical pen is therefore in need of revision, and the importance of our chosen theme for a deeper understanding of the *Cena* can no longer be doubted. But the Petronian universe is not alone in giving ‘crime and punishment’ in Roman slavery centre-stage – as the following chapter will show.

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<sup>371</sup> This monopoly was also recognized in law textbooks that started depicting a more emperor-centric justice, as shown by Wibier (2019). See also Tuori (2016) for more details on the administration of justice by the emperor.

## CHAPTER 5

### **Mortal Morsels: Servile Vulnerability and the Slave-owner's Discretion in Apuleius' *Met.* 8.22**

#### **Introduction**

Trimalchio's absolute arbitrariness when it comes to servile delinquency and the means to contain it is not an exclusive prerogative of this spectacular freedman. The present chapter will in fact show that concern over the discretion of the slave-owner also emerges elsewhere – here in a seemingly unimportant section of Apuleius' *Metamorphoses*, where the *dominus* whose slaves misbehave is not only nameless and irrelevant to this novel's main plot, but also from a provincial, rural backwater – thus adding another layer to the cultural canvas explored in the second part of this thesis.

#### **1. Slavery and delinquency in the *Metamorphoses***

As is well known, the *Metamorphoses*, written around the second century CE, follows the accidental asinine transformation of the aristocratic youth Lucius. In his Thessalian peregrinations, he experiments with the dangers of magic on his own skin and eventually gains back his human body, receiving also spiritual salvation, through Isis. However, his animalization will first put him in a subordinate condition, which is comparable to slavery in

several respects,<sup>372</sup> and which will force him to interact with the very lowest strata of society.<sup>373</sup> As a result, slaves are ubiquitous in the novel,<sup>374</sup> and there is an insistence on poverty, struggle, and oppression, which are often overcome through delinquency.<sup>375</sup>

The two themes that are central to this thesis are thus pivotal for this novel too, but if the ties between slavery and the main plot of the *Metamorphoses* have already been duly explored, there is more that needs saying. In particular, the novel's concern with 'crime and punishment' goes further than hitherto acknowledged. To argue this case, one need not even focus on the scenes most discussed by other scholars; suffice it to explore the so-called inserted tales which Apuleius disseminated among Lucius' (mis)adventures. These highly elaborated sub-narratives

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<sup>372</sup> As illustrated by Bradley (2012) 59–78; at 63 he also claims that the novel “perhaps uniquely in classical literature, captures the essence of the process of enslavement and what that process meant in human terms through the connections it establishes between animal and slave”. The Roman mentality recognized strong analogies in the treatment of slaves and animals, as delineated in Chapter 1 with regard to the juridical literature. Hilton (2009) has reinforced Bradley's interpretation of the pervasiveness of slavery in the work linking it to the instances of madness resulting from religious and social upheaval in the novel. Moreover, Apuleius' central themes of deracination and restoration, as maintained by Fitzgerald (2000), are clearly intertwined with the animal fable, which has been recognized as possibly the only literary genre preserving traces of a servile production of fiction. This should not tempt us to see the Apuleian novel as advocating for slaves. The master's perspective adopted by Lucius-Apuleius is predominant, emerging even in the tiniest details, as this chapter will show. For servile production of fiction, consider that Aesop and Phaedrus, the two most famous fable writers of antiquity, were freed slaves. Holzberg (1993) 17–18 deals with Aesop's historicity. Hopkins (1993) uses the fabulist's *Vita* to assess what this work can testify about the reality of slavery. For an interpretation of Phaedrus' fables with an eye to his freedman status, see Bloomer (1997) 73–109. For comparable material in the context of American slavery, see the Uncle Remus stories and the discussion in Flusche (1975).

<sup>373</sup> The novel “depicts levels of social and economic life which the vast mass of surviving Classical literature simply ignores”, as remarked by Millar (1971) 335.

<sup>374</sup> It is not by chance that Thébert (1993) hinges on the rich variety of the Apuleian *servi* to illustrate the figure of the enslaved in the Roman culture, and that Bradley (2012) 79–103 emphasizes the presence of slaves in the households of the *Metamorphoses* in his analysis of fictive families. However, only one monograph was devoted to *servi* in the Apuleian novel, namely Ávila Vasconcelos (2009), focused on the semantics of slavery. The more recent contributions of May (2019) and Paschalis (2019) explore the figure of Photis and the linguistic choices regarding slaves and masters with an eye to the pseudo-Lucian *Onos* respectively.

<sup>375</sup> The centrality of delinquency is highlighted by Blaquez Pérez (1986), according to whom the high incidence of crimes (not only in a strictly legal sense), punishments, the author's and the characters' attitude towards them, along with the motivations leading to deviant behaviours, seem to anticipate the crisis of the third century CE.

have been recently (and rightly) proven to be central for the dramatic economy of the novel.<sup>376</sup> Their re-evaluation, however, left important aspects unappreciated: these digressions present a well-furnished gallery of servile characters; furthermore, they put the enslaved in leading roles exclusively when engaging in delinquency and receiving punishment as consequence.<sup>377</sup> That said, there are only three tales in which slaves – i.e. a *vilicus*, an urban slave named Myrmex and a dotal slave (*servus dotalis*),<sup>378</sup> figure among the protagonists.<sup>379</sup> A summary is provided first in what follows, in order to assert the centrality of the sphere of servile ‘crime and punishment’ within the episodes, before moving on to a deeper analysis of our theme in one of these seemingly nugatory tales.<sup>380</sup>

### 1) The *vilicus* (*Met.* 8.22)

A slave in charge of an enormous estate, despite being married to a fellow slave, has a lover who is a free woman from a different household. When the *vilicus*’ wife discovers

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<sup>376</sup> As explained by Shumate (2005). Previously, a strand of scholarship typified by Perry (1967) simply linked them to the openly declared entertaining spirit of the novel, and thus considered them as ancillary diversions reminiscent of comedy, mime, and the scarcely known genre of the *fabula Milesia*.

<sup>377</sup> This renders the lack of interest in criminal slaves even more striking if compared to the extensive studies on robbers, both from a social and a literary point of view, in the *Metamorphoses*. See for example Riess (2001), which distinguishes the fears of the Roman elite and historical reality in Apuleius’s depiction of *latrones*.

<sup>378</sup> The figure of the *vilicus* is discussed in Chapter 6. For the dotal slave, who was an important asset within a wife’s dowry, see the recent discussion in Forschner (2020).

<sup>379</sup> The canonical number of the tales is nineteen, as counted by Bernhard (1927). These are: (1) the vengeance of the witch Meroe on Socrates (*Met.* 1.5–19), (2) Pythias’ abuse of power (1.24–25), (3) the charlatan seer Diophanes (2.13–14), (4) Thelyphron’s mutilation (2.21–30), (5) Lucius’ trial at the Risus Festival (2.32–3.14), (6) the deaths of the robbers (4.9–21), (7) Cupid and Psyche (4.28–6.24), (8) the bandit Haemus (7.5–8), (9) the cruel boy killed by a bear (7.24–25), (10) Charite’s revenge on Thrasyllus (8.1–14), (11) the snake-monster (8.18–21), (12) the execution of the *vilicus* (8.22–22), (13) the unfaithful wife hiding her lover in a storage-jar (9.5–7), (14) Myrmex and the cheating on his master Barbarus (9.17–21), (15) the sneezing of the lover (9.24–25), (16) the baker killed by a witch (9.30–31), (17) the death of the three sons (9.33–38), (18) the attempted murder of a stepson by his stepmother and a dotal slave (10.2–12), (19) the multiple murders of a criminal woman (10.23–28).

<sup>380</sup> The chapter will not deal with the confession of the slave-girl Photis at *Met.* 3.15–18, which is not unanimously considered an inserted tale, despite being labelled as such by Shumate (2005). It must be acknowledged, though, that this digression shows Photis as the spoke-person and main protagonist of the events because she has committed a double set of offences (i.e. failing to secure the lock of hair requested by her mistress, and causing Lucius’ humiliation as the Risus Festival) and expects physical punishment for them. This narrative, then, would fit the outlined pattern in which slaves receive prominence when acting as perpetrators of offences and recipients of chastisements.

the affair, she seeks revenge by burning the accounts and the harvest. She then ties a noose to both her neck and that of the baby she had with the husband, before jumping in a deep well. As the appalling news reaches the master, he decides to punish the *vilicus* by tethering his body, once smeared with honey, to a rotten fig-tree infested with ants. The slave's body is left at the mercy of the insects, who slowly devour it, leaving a set of gleaming bones behind.

## **2) Myrmex (*Met.* 9.17–21)**

A jealous husband, named Barbarus, is about to embark on a business trip. He therefore entrusts the custody of the wife Arete to his slave Myrmex, adding multiple threats (*carcer* and *vincula*) should he fail to keep a watchful eye on her. The slave obeys, but Arete's beauty and the strict surveillance of Myrmex intrigue the bold Philesither. Unable to gain access to the woman, Philesither approaches Myrmex, who appears inflexible until a bribe is offered to both himself and Arete for a night of love with the woman. Arete happily receives Philesither into her house, but Barbarus' untimely arrival spoils the lovers' plan. In his hasty retreat, Philesither leaves behind his sandals, which are found by Barbarus the morning after. This solid proof that a stranger accessed his bedroom urges Barbarus to punish Myrmex. Hiding his concerns to the rest of the household, Barbarus orders the slave to be chained and dragged to the forum, where the duo bumps into Philesither. The resourceful lover starts beating up Myrmex, cursing and accusing him of stealing his sandals at the baths. Along with exonerating Philesither, this cover-up story gives peace of mind to Barbarus. Being relieved that his slave is a thief and not a go-between, the master forgives him and simply instructs him to return the shoes to their owner.

## **3) The dotal slave (*Met.* 10. 2–12)**

A decurion has a modest and diligent son, whose mother has died, causing the man to re-marry. The new wife, from whom he has another son, falls in love with the stepson. After disclosing her feelings to the young man, she realizes that these are not mutual, and thus plans revenge. She instructs a dotal slave to buy poison to be administered to the ungrateful youth. When her own son accidentally drinks this poison, instead of abandoning herself to bereavement, the stepmother exploits the accident to frame the

indignant stepson. She tells the husband that his son declared his love *to her* and, at her rejection, he killed his half-brother, threatening to do violence to her too. A trial is set up and the dotal slave is immediately singled out as a prime witness. The slave confirms the stepmother's alibi even under torture, but the decurion's son is saved by the intervention of an old senator, who is the doctor from whom the slave purchased the poison. The physician exposes the murderous plot of the woman, but he simultaneously explains that, being suspicious, he sold the slave a very powerful sleeping drug, instead of poison. As the supposedly dead son is indeed found alive, the dotal slave and the stepmother are condemned to the gibbet (*patibulum*) and perpetual exile respectively.

The three slaves occupy centre stage as they have committed offences, acting against their masters' interest (pursuing their own, rather, as in tales 1 and 2) or even against the law (the *lex Cornelia* on murderers and poisoners specifically) at the instigation of their owners (as in tale 3). Additionally, all of them are punished for their misbehaviour: the *vilicus* is eaten alive by ants, while Myrmex, before being dragged to the forum, has been chained – a punishment with serious post-manumission repercussions, as seen in Chapter 4; finally, the *servus dotalis* is sent to the *patibulum*.<sup>381</sup> In tales 2 and 3, moreover, the threats of punishment, and the exaction of it have an unmistakable public dimension: Myrmex is promised detention and fetters,<sup>382</sup> while the *servus dotalis* is sentenced to death in a court trial. Tales 2 and 3 have received ample exploration. In particular, Myrmex's tale has been mainly commented upon in light of the *lex Iulia de adulteriis coercendis* and for its similarity with the genres of mime and tragedy.<sup>383</sup> The trial of tale 3, on the other hand, has been analysed within the framework of mime and declamation,<sup>384</sup> but also with regard to the display of juridical knowledge and the

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<sup>381</sup> On this chastisement, generally lumped together with *crux* and *furca*, see Hengel (1977), but also the more recent re-assessment of non-Christian sources by Van Wingerden (2020).

<sup>382</sup> Though the public dimension of prison is unquestioned, the nature of *carcer* is still unclear, due to the scanty archaeological evidence, and the ambiguity of the extant juridical sources. The issue has been briefly touched upon in n. 247.

<sup>383</sup> Bradley (2012) 229–256. See also Hijmans, Van Der Paardt, Schmidt, Wesseling, & Zimmerman (1995). Sánchez (2000) briefly links adultery and theft in this story, emphasizing Apuleius' lexical choices. See also Blanquez Pérez (1987) on the bath theft allegedly perpetrated by Myrmex.

<sup>384</sup> Zimmermann (2000). At 144 she claims that, in the trial itself, there is an opposition between the physician and the slave (rather than with the woman), which is reminiscent of both mime and declamation. When examining the episode through the lens of these two literary genres and tragedy (at 424–431), however, the slave is the only character who is not given separate and extensive discussion.

charges put on the defendants.<sup>385</sup> Both of them, at any rate, contain quite explicit references to the official jurisdiction, and thus it comes as no surprise that the tales have received comment in this respect. Plainly, these tales fall squarely under the rubric explored in the present thesis – adding further evidence for a pervasive concern with crime and punishment in (the literary discourse on) Roman slavery.

On the other hand, the eminently domestic setting of tale 1, both on the ‘crime’ and on the ‘punishment’ side, caused this inserted narrative to be essentially excluded from such an analysis. Indeed, the offences of the *vilicus* and his wife create a disruption of the order limited to their master’s estate, and the *dominus* himself promptly steps in to re-establish it – creating an image of proper law and order, albeit in a private context. Admittedly, this tale has lacked attention on the whole, and is the least discussed in Apuleian scholarship.<sup>386</sup> The ghastly tone that permeates the story, accentuated by the quick pace, has been widely noted; as a result, the episode has been dismissed simply as an insertion to set the tragic atmosphere of the books lying ahead or to further characterize the dangerous landscape where the action of the main plot is happening.<sup>387</sup> Nevertheless, among the distinctive features of the *vilicus*’ tale, the presence of two slaves acting autonomously as the protagonists stands out for the purpose of this thesis, along with the insistence on a form of punishment that becomes total annihilation at the hands of the master. As will be demonstrated, the episode also contains overlooked legal resonances, which carry fundamental points on the conceptualization of the slave-owners’ authority over their slaves.

More to the point, this chapter will show that this seemingly trifling narrative, as anticipated in the introduction to this chapter, exploits servile delinquency and the punitive measures to contain it as a way for the master-writer to relentlessly (re)establish his power over his slaves. In this overly short story of the *vilicus*, Apuleius speaks of authority and discretion, playing

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<sup>385</sup> The display of juridical knowledge that Apuleius makes within this last narrative has been seen by Summers (1970) as a way for the author to express his loathing for the Roman judicial system. Elster (1991), on the other hand, has broken down some of the charges in this trial defining them as inexact or anachronistic, as many other legal references which are added to furnish the text with a ludic and entertaining dimension.

<sup>386</sup> As Fitzgerald (2018) laments, also noting that this is the only tale ignored by Winkler (1985) in his narratological analysis.

<sup>387</sup> This was the stance of Paratore (1928) and Junghanns (1932) which has remained almost unchanged in more recent scholarship. Tatum (1969) 518 maintains that “there has been a reluctance to attribute much more to it than a deepening of the mood of horror and despair”, and yet does not elaborate on the meaning of the tale. Francis (2011) considers *Met.* 8.22 among the tales told while traveling with a purely entertaining purpose.

actively on Roman public and criminal law, even if the legal provisions that he echoes are not strictly relevant for the tale under scrutiny. By alluding to legal themes and terms, Apuleius creates a comic effect that reaches culmination in the punishment of the *vilicus*. Yet, comic appeal is not the end of the story: much like in the fabulous dining room of Trimalchio, entered in the preceding chapter, in Apuleius' travels, too, the powers of the state and those of the masters, not surprisingly by now, overlap to create a distinctive message.

## 2. The tale of the *vilicus*

### 2.1 Context and text

There are no strong ties between Lucius' peregrinations and the tale of the *vilicus*; yet, it deserves our close attention. As is well known, after the death of their masters, the slaves of Tlepolemus and Charite decide to flee, taking the donkey along. They embark on an ominous journey through inhospitable lands populated by bandits, ferocious beasts, and monsters. Just before reaching their final destination, a city, the runaway army spends the night in a village. This village stop is not a pivotal leg of the escape expedition: nothing happens here. The main narrative bends to accommodate a story about the fate of a *vilicus*, which they hear upon arrival. There is no involvement whatsoever with the travellers, but Lucius is keen to narrate it (*narrare cupio*) since, he claims, it constitutes a very noteworthy deed (*facinus oppido memorabile*).<sup>388</sup> As the tale is rather brief, it is worth giving it in full:

*Servus quidam, cui cunctam familiae tutelam dominus permiserat, suus quique possessionem maximam illam, in quam deverteramus, vilicabat, habens ex eodem famulatio conservam coniugam, liberae cuiusdam extrariaeque mulieris flagrabat cupidine. Quo dolore paelicatus uxor eius instricta cunctas mariti rationes et quicquid horreo reconditum continebatur admoto combussit igne. Nec tali damno tori sui contumeliam vindicasse contenta, iam contra sua saeviens viscera laqueum sibi nectit, infantulumque, quem de eodem marito iam dudum susceperat, eodem funiculo nectit seque per altissimum puteum adpendicem parvulum trahens praecipitat. Quam mortem dominus eorum aegerrime sustinens adreptum servulum, qui causam tanti sceleris luxurie sua praestiterat, nudum ac totum melle perlitum firmiter*

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<sup>388</sup> This definition, as Murgatroyd (1997) has underlined, is purposely vague to instil curiosity in the reader, while being at the same time an understatement if compared to what the tale is about. Ebel (1970) 166 defined *Met.* 22 as a “synopsis of a catastrophe: brief, relentless, and mechanical”.

*alligavit arbori ficulneae, cuius in ipso carioso stipite inhabitantium formicarum nidificia bulliebant et ulro citro commeabant multiuga scaturrigine. Quae simul dulcem ac mellitum corporis nidorem persentiscunt, parvis quidem sed numerosis et continuis morsiunculis penitus inhaerentes, per longi temporis cruciatum ita, carnibus atque ipsis visceribus adesis, homine consumpto membra nudarunt, ut ossa tantum viduata pulpis nitore nimio candentia funestae cohaererent arbori.*

A **slave** to whom the master had entrusted the care of the whole slave family was also managing his enormous estate in the village where we had our overnight stay.<sup>389</sup> Despite being married to a slave from the same household,<sup>390</sup> **he was burning with desire for a free woman, belonging to a different household. The wife, blinded by the pain of having a rival, set fire to the husband's accounts as well as anything that was kept in the barn.** She was not appeased for her offended bridal bed by doing **such a damage** and, turning her rage against her own flesh, **she tied a rope around her neck and that of the baby** she just had with her husband. **She then jumped in a deep well dragging the child with her.** Profoundly disturbed by this death, the master caught the slave **whose lust caused such disgrace, and he tied him to a fig tree, naked and smeared with honey. The rotten trunk was teeming with nesting ants** and the insects were marching in and out in an incessant flow. Perceiving the sweet smell of the body, they attacked it with minuscule, but numerous and continuous bites. **He was thus tortured for a long time, his flesh and entrails eaten up, the man being consumed.** The ants stripped his limbs so that only the de-fleshed bones, polished with a brilliant white colour, remained fastened to the woeful tree.

A few lines incorporate the setting, the introduction of the characters, and the relationship between them, along with a string of servile offences. Interestingly, Lucius-Apuleius deploys the same number of lines to describe the master's reaction to this frenzy and elaborates heavily on the torment of the ants inflicted on the *vilicus*. It is time to examine more closely this seemingly simple story.

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<sup>389</sup> The *vilicus* lacks a proper name, as many other characters of low social status that appear in the inserted tales. For a study on character introduction and names in the *Metamorphoses*, see Brotherton (1934).

<sup>390</sup> The terms *uxor* and *maritus* provoke the thought of legal marriage (*matrimonium*), from which the enslaved were formally excluded, as seen in n. 153. The use of such terminology in relation to the enslaved, however, is not infrequent, especially in the realm of epigraphy (e.g. *CIL* 03, 04960; *CIL* 08, 01898; *CIL* 08, 24688; *CIL* 11, 07340). As Treggiari (1991) 124 points out meritorious slaves would receive mates as a reward as early as in Cato's time (*Cato Agr.* 143). It is unclear whether they would have had a say in the matching or whether this was entirely up to the master, but numerous inscriptions of slaves and ex-slaves bring up marital affection.

## 2.2 ‘Crime(s) and punishment’

To set the scene, it must be noted that the tale of the *vilicus* – possibly circulating in a myriad of other versions outside and before Apuleius – has been previously defined as a “short, economical, and self-contained story of crime and punishment”.<sup>391</sup> It seems in fact replete with both, as the following table illustrates in a schematic way, showing also how the actions of the *vilicus* and his wife are described with terms that resound with juridical notions of crimes and delicts.

	OFFENCE	JURIDICAL CLASSIFICATION	RECIPIENT	PUNISHMENT APPLIED BY THE MASTER
<b>VILICUS</b>	cheating	crime (?)	woman’s family (?)	none
	<i>contumelia tori</i>	- (moral misdeed)	wife	none
	<i>scelus</i>	- (domestic misdeed)	master	‘ <i>ad formicas datio</i> ’
<b>VILICUS’ WIFE</b>	arson of registers and harvest ( <i>tali damno</i> )	- (domestic misdeed)	master	none
	slave murder	- (domestic misdeed)	master	none
	suicide	- (domestic misdeed)	master	none

A brief overview of the narrated crimes and the exerted punishment, along with their (potential) juridical dimensions, is in order. As will be seen shortly in detail, a reading that is sensitive to the law leaves some uncertainty regarding the classification of the *vilicus*’ cheating, which is

<sup>391</sup> Fitzgerald (2018) 293.

the propelling element of the tale.<sup>392</sup> If adultery is the first thought that is triggered, one may note that the *vilicus*' behaviour is described by Lucius, adopting the wife's perspective, as an insult to the bridal bed of the two slaves. The term employed is *contumelia*. As discussed in Chapter 1, this word can indicate a delict as well, thereby opening up, right from the start, a fluid, even ambiguous appreciation of the *vilicus*' action which draws on terms that are known in the world of law. Dealing with the wife, the actions taken by her to avenge the husband's unfaithfulness are partly summed up by the word *damnum*, another term with legal resonances: it echoes the *lex Aquilia* (also considered in Chapter 1) and thus the delict of wrongful damage to property. Finally, when the master steps in, the *vilicus* is seen as responsible for a *scelus*: this, in turn, evokes the archaic terminology of 'crime and punishment' in the *leges regiae*.<sup>393</sup> Turning to punishment *per se*, the *vilicus* is subjected to a slow, cruel death inflicted on him through ants – what I call, for reasons to be made clear below, *datio ad formicas*, thereby introducing another legal echo. Thus the story's 'crime(s) and punishment'.

### 3. An adultery tale (?)

Notably, despite the range of narrated offences, there is one crime in particular which scholarship has consistently linked with this inserted tale, namely adultery. In fact, the association of the plot with adultery has been almost universal, so much so that the episode has long been classified as an insertion to create the ambiance for the adultery tales of book 9.<sup>394</sup> Its fulcrum is, indeed, the slave's cheating and the punitive implications of the act. But it is here, at a seemingly unproblematic conceptualization and ensuing classification, that

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<sup>392</sup> There is a long scholarly tradition on the presence of law in Apuleius. Legal references in the *Metamorphoses* have been acknowledged as early as in the studies of the humanist Filippo Beroaldo. Norden (1912) concentrated on the influence of private law in the novel, while Summers (1967) provided a legal commentary of the whole text. For more recent contributions on legal, themes, language and knowledge in Apuleius' novel see Maehler (1981), Elster (1991), with a focus on criminal law, Keulen (1997) and Facchini (2011). See also Osgood (2006) with specific reference to the tale of Cupid and Psyche.

<sup>393</sup> See Mommsen (1899) 9 n. 4, on this solemn connotation of the word. Its use as a 'generic' synonym for bad deed, fault and crime, is testified s.v. *scelus* in Ernout & Meillet (1967). See Santalucia (1981) on *scelus* in monarchic times.

<sup>394</sup> See Tatum (1969) 518–519, Tatum (1979) 75, Hijmans, Van der Paardt, Schmidt, Settels, Wesseling & Westendorp Boerma (1985) 188, Kirichenko (2010) 78, and Benson (2019). Tatum (1969) 519 describes *Met.* 8.22 as a tale on "the corrupting power of *voluptas* and the terrible forms which revenge for adultery may take", echoed almost literally by Bechtle (1995). Additionally, Paratore (1912), Paulson (1967), Lateiner (2000), Konstan (2018), just to give a few examples, classify the slave as adulterous. Bradley (2012) 229–256 more cautiously (and rightly) speaks of the *vilicus* as faithless.

knowledge of Roman law has a profound impact on one's understanding of the 'crime and punishment' dimension of this tale. In brief, as the following discussion will show, if one thinks in legal terms, the definition of this story as an 'adultery tale' emerges as unfounded, with consequences for our broader appreciation of the tale.

### 3.1 Unfolding the *scelus*

In the first instance, adultery, that is Latin *adulterium*, is not explicitly mentioned in the tale. The unfaithful slave is subjected to punishment since the master believes he provided a cause to the wicked deed that happened on the estate (*causam tanti sceleris ... praestiterat*). As is well known, the term *scelus*, with its ethical and sacral undertones, is used by Apuleius more generally for actions with a negative connotation and/or worthy of punishment. Let us consider what *scelus* entails with regard to this tale specifically.

#### 3.1.1 Adultery and the disdain of the marriage

Lucius states that the *vilicus* was taken by the desire for a woman from another household (*extraria*), who is characterized as free (*libera*).<sup>395</sup> Now, given the *vilicus*' conduct and the free status of the woman, the passage does indeed conjure up the idea of adultery – a crime in Roman law, as detailed in Chapter 2. Importantly though, according to the *lex Iulia de adulteriis coercendis*, adultery only concerns intercourse with married free women, while sexual relations with a free virgin or widow would have fallen under the scope of *stuprum*.<sup>396</sup> In order to denote the *vilicus*' actions as adultery, then, we need to pin down the marital status

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<sup>395</sup> The use of the latter adjective, rather than *ingenua*, meaning freeborn in strictly legal sense, might indicate that the woman in question is a freedwoman. The former attribute, on the other hand, as suggested by Summers (1967), triggers the thought of the *senatus consultum Claudianum*, promulgated in 52-53 CE. Although the original text of this provision is not extant, its gist can be inferred from literary texts (Tac. *Ann.* 12.53 and Suet. *Vesp.* 11) and several later juridical sources (*PS.* 2.21a, Gaius *Inst.* 1.84, 1.91 and 1.160; *Cod. Theod.* 4.12 and *CJ.*7.24); according to these, if a freeborn Roman or Latin woman, who had formed a union with the slave of another, perseveres in this co-habitation despite the master's opposition and denunciation, she is to be made an *ancilla* of the slave's master. An analysis of the *SC Claudianum* is given in Erdődy (2020).

<sup>396</sup> In Dig. 48.5.6 *pr.* Papinian explains that *adulterium* and *stuprum* concern only free people (*liberas tantum personas*), while at 48.5.6.1 the jurist expounds the difference between the two crimes as explained above.

of the woman – the noted *libera*; that said, she is not explicitly described as married, preventing us from claiming an exact link between this tale and the legal provisions on adultery, a point already made by Summers and reiterated by Bradley.<sup>397</sup>

Such a negative conclusion, though, is far from rejecting the presence of the theme of adultery in the tale. First, as noted, there is cheating going on.<sup>398</sup> Second, the thought (of adultery) is certainly triggered linguistically, given the two adjectives used to describe the woman (especially in a story which is not rich in details when it comes to the characterization of its protagonists). Importantly, however, the adulterous connotations are in fact subverted by Lucius himself, who, when narrating the wife’s discovery of the affair, labels the actions of the *vilicus* an *insult* to his marriage with the fellow slave woman (*contumelia tori*). *Contumelia* comes from *contemnere*, meaning ‘to despise’, which is precisely what the *vilicus* is doing here with regard to his marriage.<sup>399</sup> Apuleius could have used different terms to express the concept of disdain,<sup>400</sup> and yet he decides to opt for one which, along with the commonplace meaning of insult, also designates a juridically prosecutable form of insult, *iniuria*, in its moral connotations. One would look in vain for cheating as an affront for which an *actio iniuriarum* is granted. Moreover, this *actio* always presupposes an interaction between (at least) one free person and an enslaved person, while here the affront has been inflicted on the slave woman by her slave husband. Apuleius is, then, evoking another series of legal provisions, this time through the use of terminology whose application is even more absurd than the adultery to which he previously alluded. The reasons for this mismatch between the themes of the tale and their legal framework will become clear when examining the next few items of interest.

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<sup>397</sup> Summers (1967) and Bradley (2012) 229–256.

<sup>398</sup> In the *vilicus*’ “burning with desire” there is a strong echo, an intratextual marker pointing in the direction of sexual intercourse; the phrase *cupidine flagrans* was earlier deployed for Psyche in the context of arousal by and, most importantly, physical contact with Cupid (*Met.* 5.23), thus strongly suggesting a similar context here. The connection between these tales is, besides, further underscored by the use of ants (see n. 410). This reading is also the most common understanding of the passage, all the works cited in n. 394, which talk about *Met.* 8.22 as an adultery tale, accept it.

<sup>399</sup> S.v. *contumelia* in Ernout & Meillet (1967).

<sup>400</sup> Commonly used words for insult are *probrum* (indicating a shameful act) and *maledictum* (implicating slandering and/or gossiping).

### 3.1.2 The wife's fury and the *lex Aquilia*

A suitable further element to shed light on Apuleius' seemingly confused narration, torn between theme and technicalities, is the write-up of the actions of the *vilicus*' wife, which begins when the slave-woman becomes aware of the husband's affair. After burning the account books and the content of the storeroom, the woman is still not appeased "with such a damage" (*tali damno*), to borrow Lucius' words. Hence, the wife's revenge plan is summed up as *damnum*. Given that this plan entailed setting fire to documents and supplies, one might be reminded of the *lex Aquilia* which regulated wrongful damage to property (*damnum iniuria datum*). This *lex* was divided in three chapters, the second of which, already at the time of Ulpian, was deemed legally defunct.<sup>401</sup> The third chapter, however, concerned the spoiling of material property through burning, breaking or tearing apart (*urere, frangere, rumpere*). The same law also included, in its first chapter, the killing of slaves (*occidere*), and the woman's vendetta is indeed complete only after the killing of her baby and her suicide.<sup>402</sup> That said, the scenarios unfolded in the juridical discussion of the *lex Aquilia* always present the slave as the object of damage,<sup>403</sup> or as the perpetrator of damage towards another master's property. In this case, however, the *damnum* is inflicted by the slave-wife towards the asset of her own master, to which she herself also belongs.

From what has been stated above, then, it follows that no action under the *lex Aquilia* is accessible for the master against his own slaves; the whole idea seems quite humorous, legally speaking. Yet, this does not prevent him from getting some form of retribution – which helps to unravel the underlying message of the tale, and its technique, further, as will presently be seen.

### 3.1.3 *Scelus* as a domestic misdeed

So far, the analysis has demonstrated that no actual (i.e. legally defined) crimes and delicts are committed by the *vilicus* and his wife, despite the practical allusions, underscored by the choice of language, with its technical, legal associations. In consequence, the narrated offences emerge

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<sup>401</sup> Dig. 9.2.27.4.

<sup>402</sup> See Annequin (1993) for an exploration of the theme of suicide in this tale and in the *Metamorphoses* in general.

<sup>403</sup> For more on slave 'damaging' see Du Plessis (2013).

simply as a series of domestic misdeeds. To be sure, when going back to the master's reason for punishing the *vilicus*, the male slave is characterized in the following way:

*Qui causam tanti sceleris luxurie sua suae praestiterat*

(He) who provided **ground for the wicked deed with his lust**

The master, then, holds the *vilicus* accountable for the wife's wreaking havoc on his estate.<sup>404</sup> It is indeed the *vilicus*' cheating, i.e. his lust, that had prompted the wife to act aggressively against the master's property.<sup>405</sup> His responsibility encompasses the whole sequence of accidents on the estate and, in this twisted domestic jurisdiction, the *vilicus* is paying for his wife's conduct, in the same way as a *paterfamilias* would do with regard to misbehaving sons and slaves in his *potestas*.<sup>406</sup>

If the legal accountability of the slave sounds bizarre, holding the enslaved accountable would not have been absurd in human terms or to a Roman master's mindset in general: the *vilicus* has indeed started the chain of unfortunate events through his behaviour, and for the *dominus* it was only fair to punish him, as the tale makes clear. Given the *vilicus*' actions lie, as discussed above, outside the realm of juridically defined offences, the responsibility of the *vilicus* is actually of a moral nature and, as such, not easy to define and quantify. As a consequence, the concept of moral responsibility then becomes a tool in the hands of the master in order to mete out punishment. But given the legal vacuum that surrounds the *vilicus*' 'crime', the master is not actually able to draw on the law for the purpose of punishment. However, who among the *slave-owning* members of Apuleius' audience would question the master's right to punish their slaves, especially after having heard the many disasters that the *vilicus*' actions brought on? Just as the wife was keen to avenge the insult to her bridal bed, ultimately a moral misdeed

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<sup>404</sup> This relative clause is the object of a philological controversy between *uxori suae* and *luxurie sua* – which it is not possible to solve at this juncture either. While manuscript F (Florence, Laur. 68.2 (=F), from which all other surviving witnesses to the *Metamorphoses* descend, reads *uxori su(a)e*, it also contains a variant in the margin which has been erased. There is also a group of descendants which has *luxurie sua*, a *lectio* more widely accepted. Regardless of what the right *lectio* is, the responsibility of the *vilicus* is not questioned. The second reading, *qui causam tanti sceleris uxori suae praestiterat* ("he who provided ground for his wife's wicked deed") shows in fact an even more explicit causal link between the behaviour of the *vilicus* and his wife's actions.

<sup>405</sup> Cheating on the wife, the *vilicus* failed his master in both spheres on which he was delegated control. Indeed, at the beginning of the tale, the slave is described as the one to which the master entrusted the management of both his household and his huge estate (*Servus quidam, cui cunctam familiae tutelam dominus permiserat suus, quique possessionem maximam ... vilicabat*).

<sup>406</sup> See Chapter 2 on this.

‘only’ (at least in the slave-context in which the story unfolds), the master seems to have felt a distinct need to punish the *vilicus*, even if not by the law – a point to which we must now turn more fully.

#### 4. The ‘*datio ad formicas*’

There is, then, more still to be gained from a ‘legal reading’ of the text. The appearance of the master on the estate coincides with a gruesome re-establishment of order, in which he himself has a prime role. Not only does he choose a peculiar chastisement, but he administers it by his own hand. Indeed, the master fastens the *vilicus*, once stripped naked and smeared with honey, to a fig tree, which is chosen no doubt for the associated sexual connotations,<sup>407</sup> but most importantly for the development of the narrative because it brims with ant nests. The sweet smell attracts the insects, which consume the body of the disobedient slave with minuscule but incessant bites. What they leave behind is a shiny skeleton tied to the tree as a memento.

It does not come as a surprise that this horrific punishment is the aspect most investigated by scholars in a tale otherwise long neglected.<sup>408</sup> Strikingly, however, although clearly within the thematic realm of punishment, its legal resonances have so far been unappreciated, possibly because the analysis of the *supplicium* of the ants has privileged literary and symbolic elements. Notably, Cazzaniga traced it back to a novelistic motif, due to its similarity with Antonius Liberalis’ novella 11, on Aedon and Polytechnos.<sup>409</sup> In the novella, though, the covering of the adulterous man with honey and his exposition to flies are more of a nuisance (eventually stopped by the forgiving wife) than an expedient to procure death.<sup>410</sup> Apuleius, then, might not

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<sup>407</sup> Hijmans, Van der Paardt, Schmidt, Settels, Wesseling & Westendorp Boerma (1985) links this to Hor. *Sat.* 1.8 in which a statue of Priapus is made from a *truncus ficulnus*.

<sup>408</sup> To Dowden (1993) the fate of the *vilicus* anticipates *Met.* 8.30 in which Lucius is fastened to a tree and 8.31 where the donkey faces the prospect of being eaten. The tale then becomes one of the many elements testifying the distinctive and coherent identity of book 8. König (2013) argues that the bones of the *vilicus* become part of the landscape, and reads, in this, one example of Apuleius’ obsessive fascination with the vulnerability of the human and animal bodies to the physicality of the landscapes where Lucius travels.

<sup>409</sup> Cazzaniga (1949). More recently Benson (2019) linked the punishment with the practice of scaphism as described by Plut. *Vit. Artax.* 16.2–4. He specifies though that in the *vilicus* story there is no such logic or ideology causing this type of execution, since pure cruelty is the driver.

<sup>410</sup> This would fit in the Q464 of the Motiv-Index of Folk-literature as singled out by Santini (1986) where the pain of the punishment has a ridiculous element to it, resembling more misadventure and humiliation, given that it never leads to death. The replacement of flies with ants is probably aimed at creating some

be simply replicating this: the torture of the *vilicus* culminates with death through full and defenceless exposure to the insects.

Crucially, as the *vilicus* is left at the mercy of voracious ants, his fate recalls that of criminals condemned *ad bestias* – one of the extreme penalties discussed in Chapter 3, which justifies my choice of referring to the punishment as *datio ad formicas*. Of course, ants are not the canonical beasts, as they lack size and ferocity, which creates a comic effect.<sup>411</sup> Notwithstanding the insects' apparent harmlessness and the improvised venue of the orchard as opposed to the arena, there are further elements that strengthen the idea of this execution as a satirical take on the public sentencing to the beasts.<sup>412</sup> Thus, in the *datio ad bestias*, criminals were regularly introduced in the arena almost entirely naked, tied with ropes, chains or even bound to poles, and also occasionally smeared with animal blood for scent.<sup>413</sup> The analogy with the treatment of the *vilicus*, fastened to a fig-tree and coated with honey, is patent, while the fact that Lucius heard the story, despite spending only one night in the village, might indicate that such an execution had been displayed as a spectacle, much like the actual condemnations *ad bestias*. Furthermore, while normally the bodies of the *noxii* were mauled and bloodied,<sup>414</sup> the ants achieve an absolute annihilation of the *vilicus*, leaving behind his polished white bones only. Viewed in the way here suggested, the *datio ad formicas* is shaped up to be a domestic and exaggerated enactment of an official state punishment while simultaneously figuring as an abuse of it, told with a considerable dose of comic effect. But this is not the end of it either.

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continuity between this episode, one of the tasks assigned to Psyche by Venus (*Met.* 6.10) and the figure of the slave Myrmex (*Met.* 9.17–21).

<sup>411</sup> See Lo Giudice (2008) for an overview of the animals used in *venationes* and *ad bestias* condemnations and Guasti (2004) for a more detailed analysis of the supply of wild animals for public entertainment in Rome.

<sup>412</sup> Coleman (1990) 49 lists the basic requirements of public executions, namely “a person or administrative system to mount the spectacle; a venue equipped with adequate facilities; a supply of persons to be displayed; an approving audience”. All of them, as will be seen, can be detected in the *vilicus* tale, although in a domestic setting.

<sup>413</sup> For more on the spectacular and gruesome dimension of sport in the ancient world in general, see Kyle (2014). Most of our information on *ad bestias* executions comes from visual representations of them. An extremely valuable piece of evidence is the amphitheatre mosaic from the Villa di Dar Buc Ammera, at Zliten (modern Libya).

<sup>414</sup> Pagan sources on such executions go as far as saying that the beasts would tear, rip, or mangle the victims; the idea of criminals being eaten in the arena is a modern misconception partly originating from Christian accounts, as noted by Kyle (1998) 185.

There are, then, two elements that drive this depiction that are worthy of closer scrutiny. To start with, condemnation to the beasts was limited to publicly recognized crimes (and, as pointed out, neither the actions of the *vilicus* nor of his wife can be classified as such), with consequences extending much beyond the microcosm of the household;<sup>415</sup> in addition, it was forbidden for masters to resort to it, without the involvement of public justice in the person of a judge. As we have seen in Chapters 1 and 4, sentencing slaves to the beasts at the master's discretion was prohibited by the *lex Petronia* (whose content is partly preserved in Dig. 48.8.11.2).

Seen against this legal backdrop on which the punishment plays, the *datio ad formicas*, then, exposes the master's monopolization of force and authority over his slave – he is not only the judge of his slave's misdeeds, but also the punisher. Comically distorted, the *dominus* metes out a chastisement that could only be imparted at a magistrate's discretion, and, moreover, in opting for it, he equates his slave's domestic misdeeds to the more serious crimes that law punished thus – despite the offences undertaken by the *vilicus* lacking recognition in the law, as shown in the earlier sections above. It is crucial to recall at this point that when the imperial government condemned criminals *ad bestias*, the monopolization of force expressed in these executions was seen as a “necessary, reassuring means of social vengeance against persons who had offended societal norms”.<sup>416</sup> By (at least in part comic) analogy, precisely the same exemplary value seems to be given by the master to this cruel and arbitrary display of violence. However, the *supplicium* of the *datio ad formicas* is imparted to punish actions that ultimately only impacted the master's estate, i.e. a domestic, that is private possession, with no obvious repercussions on the community at large.

The punch of the story lies with the powers of the *dominus* and thus with the ‘punishment’ issued by him, rather than with the ‘crime’ committed by the *vilicus* (and by his wife). This perspective – here elaborated on the basis of a reading that is cognizant of the law – is discernible also in the structure of the tale. Earlier in this chapter, when providing context for this digression, it was noted that one half of the inserted tale packs together the setting of the

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<sup>415</sup> As seen in Chapters 3 and 4, being handed over to the beasts was reserved for crimes affecting the whole community. Such an application of this chastisement is also echoed in literary sources such as, for instance, Mart. *Spect.* 7 in which the *supplicium* is linked to slaves murdering their masters, sacrilege and arson.

<sup>416</sup> Kyle (2014) 419. For an overview on public executions of criminals see also Coleman (1990), although her main focus is the staging of violent executions as mythological re-enactments.

scene and the multiple servile misdeeds, while the other half concentrates on the master's reaction to this turmoil, indulging heavily on the torment of the ants. Despite not being a spectator to the *ad formicas*-scene the narrator seems to undergo the same process described by Coleman for the audience at the arena who would enjoy the spectacle identifying themselves with the people imparting justice, rather than with the criminals being (deservedly, in their opinion) dispatched.<sup>417</sup> What comes to the fore, then, is a prime focus on domestic (i.e. masterly) powers, which mimic the language, the judgements and the methods of the state powers. Importantly for present purposes, this focus serves to highlight the vulnerability of the enslaved. Irrespective of the fact that the *vilicus* has clearly done something that is morally wrong, his actions are not actually what drives the tale's message. Hence, more than an adultery tale, this is a punishment tale.<sup>418</sup>

The key points here made can be strengthened through a quick comparison. The nameless master of *Met.* 8.22 adopts a *modus operandi* akin to that of Trimalchio, who, as illustrated in the previous chapter, crucified Mithridates for slandering his *genius* and threatened to burn alive Stichus if he spoiled his funeral gear. Both *domini* assign themselves an authority which has tyrannical features. While Trimalchio's *domus* has been shown as a satirical counterpart of the state at large, obedient and frightened by the sole authority of its ruler, the master of the *vilicus*, although not showing imperial traits as explicitly as Trimalchio, does behave, on his estate, like an unquestionable despot. Possibly he is even more bloodthirsty than Trimalchio, perhaps even more than Glyco. It is not the first time, in fact, that *datio ad bestias* is meted out to a slave in a position of responsibility who had intercourse with a free woman. At some point in the *Cena Trimalchionis*, the conversation of the guest revolved around Glyco's *dispensator*, who had been caught 'amusing' his mistress (*deprehensus est cum dominam suam delectaretur*, *Sat.* 45.7), and hence was handed over to the beasts. Notably, in Glyco's case there exists no explicit specification about the involvement of public justice, although the involvement of a magistrate cannot be completely discarded, contrary to what happened in the *vilicus*' story. Leaving aside for now the particular role played by the fate of Glyco's *dispensator* in the *Cena Trimalchionis*, there are admittedly other important differences between the two episodes: first, the Apuleian *vilicus* had not been caught red-handed and was having a relationship with a

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<sup>417</sup> Coleman (1990).

<sup>418</sup> Schlam (1992) claimed, in passing, that this story is focused on the revenge of the woman and the punishment of the master, but, as shown, the latter element is the one on which Apuleius insists.

woman of undefined status (free, of course, but maybe not freeborn and/or married), who was moreover not his owner – the *domina*. At the same time, while the *vilicus* was apparently burning with desire, Glyco's *dispensator* is said to have been coerced into adultery by the woman herself, i.e. by the wife of his *dominus* (*Quid servus peccavit, qui coactus est facere?*, *Sat.* 45.8). But despite these 'technical' differences between the stories of the Apuleian *vilicus* and the Petronian *dispensator*, the epilogue (as it were) is the same if seen from the perspective of household management: the two 'crime and punishment' stories both accentuate the vast discretion of the master, who, in dealing with his troublesome property, is able to step even beyond the boundaries imposed (theoretically) by the law. The underlying concern with the master's power is undisputable.

## Conclusion

The appreciation of the legal resonances and the comic function of the *vilicus*' punishment are essential to reach a fuller understanding of the 'crimes' of the tale too. When examining the misdeeds of the *vilicus* and his wife, we have ascertained that these constitute an array of purely domestic misdeeds. However, they are described in a way that is evocative of adultery and through terms which have both a commonplace meaning and a more 'technical' one in the field of Roman law, within the realms of insult and damage.<sup>419</sup> What is the point of this mismatch between the 'crime and delict' themes and terminology, and the actual legal framework that is called up by those misdeeds?

In the first instance, Apuleius is simply using comic distortion on the 'crime' matter in the same fashion that he did, more explicitly, with the 'punishment' element, as seen above. But let us delve into the core element of the tale, i.e. the relationship between the *vilicus* and the free woman. The adultery label which has been given to the tale is probably influenced by our own idea of adultery, i.e. cheating on a spouse, an act that the *vilicus* does indeed perform – but which, of course, does not apply to enslaved individuals. For a Roman reader, however, the thought of 'proper' *adulterium* is also triggered, especially because the woman with whom the *vilicus* has intercourse is a *libera*. As the adultery legislation is the product of upper-class concerns regarding potential intrusions in the production of a lineage, it appears that this issue would have been relevant for the family of the free woman, in the person most likely of either

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<sup>419</sup> Apuleius' predilection for such ambiguous terms is also discussed by Maehler (1981).

the father or the husband.<sup>420</sup> None of the two, however, is mentioned as this tale is focused only on the *vilicus*' household, comprising his slave-wife and their off-spring. Of course, the microcosmos of the *vilicus*' household here called up is also full of comic undertones – from the same perspective of the slave-owner already noted above: after all, the publicly (and legally) recognized householder is the *vilicus*' master, not the *vilicus* himself. In brief, through the theme of adultery, Apuleius is playing with the reader's expectations concerning a pivotal juridical theme in Roman culture, as he does in many other instances.<sup>421</sup> By contrast, from the wife's perspective the behaviour of the *vilicus* is a moral misdeed, an insult to their marital union, which the text describes as *contumelia*. Nevertheless, given the word's resounding references to *iniuria*, the servile, domestic misdeed seems equated to a legally prosecutable offence. Apuleius is here moving again to and fro, ultimately inflating and giving a larger-than-life dimension to what is essentially an argument between (enslaved) husband and wife. On the same note, when the wife's course of action is condensed to the word *damnum*, the educated Roman ear would have picked up on the commonplace meaning of loss and damage, though probably also on the echoes of the *lex Aquilia*. But again, just like the *lex Iulia* and the *actio iniuriarum* were not relevant, the *lex Aquilia* is not applicable either: the thematic and lexical allusions serve only one purpose, that of rendering daily life alienated and exaggerated, with comic effect.<sup>422</sup>

There is a build-up in this tale, however brief, and this distortion creates the noted comic effect: the ironic distortion becomes gradually more and more tangible.<sup>423</sup> Starting from hints at thematic ideas of adultery, Apuleius then uses the juridical term *contumelia* to describe a moral insult (not strictly contemplated by the provisions on *iniuria*) and in the wrong context, since

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<sup>420</sup> See for example Papinianus' etymology of *adulterium*, in Dig. 48.5.6.1, which is linked to the idea of a married woman conceiving children by another man (*propter partum ex altero conceptum composito*). The intrusion of external third parties in someone's lineage (the disturbance of the blood, *turbatio sanguinis*, as Ulpian put it in Dig.3.2.11.1) was very much feared as it could have brought social and economic repercussions upon the offended household. If the woman was *libertina*, however, she would not have a legal father.

<sup>421</sup> Keulen (1997) furnishes further examples of instances in which Apuleius uses juridical language and themes counting on his readers' expectations.

<sup>422</sup> As Elster (1991) has contended on the use of juridical terms in the *Metamorphoses*, although not with regard to this specific tale.

<sup>423</sup> One could also argue that the setting itself is part of this comic exaggeration. Apuleius is in fact displaying particularly 'Roman' terms and themes in a provincial village, in the middle of nowhere. It might be the case that such bizarre setting would have contributed to draw attention to the legal theme and its satirizing element.

the affront is perpetrated by one slave towards another one. The progression continues with the word *damnum*, used to encompass the setting on fire of documents and supplies and slave-killing, which are precisely the topics of two out of three chapters of the *lex Aquilia*; if the term seems to be used appropriately, we are again in the wrong context as the slave wife is inflicting a *damnum* to the asset of her own master. Finally, the archaic word *scelus* summarizes all this, adding solemn undertones to common troubles on a master's estate. In the exertion of punishment, which not only evokes a precise law, but also exceeds it, the comic exaggeration started with the spoof legal language reaches its peak.

Seen in the round, then, the tale of the *vilicus* tells a story that craftily plays on law and public order while not actually entering those spheres. Beyond doubt, Apuleius triggers the thought of a pivotal crime, adultery, and pivotal delicts, *iniuria* and wrongful damage to property, along with a spectacular public punishment; ultimately, however, the action takes place in – and only affects – a domestic context, i.e. the estate of a *dominus*. The acts of the *vilicus* and his wife are described with legal allusions which give a larger-than-life dimension to the narrated marital issue between two slaves and the consequences thereof (a consistent loss in terms of asset for the master only). The magnified character of the servile misdeeds emerges even more patently in the punishment allotted to them, a distorted version of one prescribed by the imperial government for much more than 'trivial' domestic offences. The subtle laughs of subverted expectations on adultery and allusions to juridical terms flow into a more explicit joke when the master himself, embodying arbitrariness and physical coercion, sends the *vilicus* to an extemporary arena to fight against minuscule beasts. The ants will still prevail, the slave being prevented any kind of movement or reaction, and the fight will meaningfully end in the complete annihilation of the disobedient *servus*.

But whose laugh are we hearing? To find amusing nods about a slave being eaten alive by insects was only possible through a reading which was sensitive to the law, and by means of a total adoption of the master's perspective: looking at this story with the eye of a Roman slave-owner, a seemingly insignificant digression becomes a 'calming' narrative, reasserting the slaver's full and complete authority. In short, the comic perversion of 'law and order' that unfolds throughout this tiny episode climaxes in the course of action undertaken by the master. The thematic cluster of servile 'crime and punishment' is, then, exploited by Apuleius to highlight the absolute discretion of the master towards his human chattel. In *Met.* 8.22 a slave pursues his own interest, commits a moral offence, and is subjected to a penalty, which he

should have been spared, given the *lex Petronia* and the *senatus consulta* relating to it. The master, in fact, hands him over to the ‘beasts’, circumventing these provisions which removed from Roman slavers the power of doing so at their own discretion. With the *dominus* not being reprimanded (contrarily to what happened to Glyco, even if only after the fact), let alone stopped or punished for overcoming the *lex Petronia*, the tale here examined functions in effect to challenge the very notion of the noted powerlessness of Roman *domini*, and their dependence on the state in coercing their human property. Indeed, the *vilicus*’ master takes upon himself the role of judge and punisher. At one reading level then, the laugh that comes through the lines is that of the Roman slave-owner – always in power, within their own households, no matter what the law. Seen the other way, the legal vacuum that the tale actually displays – as demonstrated in the above discussion – is thus paired with the actions of the master, who claims without much ado the powers supposedly reserved to the state and its representatives, challenging the very notion of Roman law and order, at least in the provincial context portrayed in Apuleius’ novel.

In sum, along with highlighting the dependence of the enslaved on their master’s fickle favour, the tale of the unfaithful *vilicus* ultimately exposes the master’s sovereignty of judgement when it comes to what they perceived to be servile misdeeds and the unquestionable character of their punitive decisions. Moreover, the strong legal resonances concerning the punishment of the *vilicus* draw attention to the extreme cruelty that can be encapsulated within that power, at least in the Apuleian universe. That said, the disastrous destruction of the master’s assets, through the *vilicus*’ wife, in response to the *vilicus*’ cheating, in turn provides a massive opening for seeing the fault entirely with the enslaved: at base, the moral offence committed by the *vilicus* thus gives the master the moral right to punish. As seen in Chapter 3, enslavement was no ultimate bar from being held responsible – a grand legal nod to the humanity of the enslaved. What this however means *for the enslaved* is also quite patent – even if not spelled out in our text as such: the fault – to pervert the verdict on Glyco’s *dispensator* by Trimalchio’s dinner guests – is that of the enslaved. In other words, even the recognition of humanity in the enslaved is turned against them. That the final punishment was inflicted by seemingly harmless animals – ants – makes this point even more painful. One only wonders what the enslaved members of Apuleius’ tale would have made of this story. What Roman masters made of their seemingly unlimited punitive powers over their unruly servile chattel must on the other hand also be explored ‘on the ground’, as it were, i.e. away from the remit of novel and satire: for

this, there cannot be any better place than the comparatively mundane writings of the Roman agronomists – to which we must now turn.

## CHAPTER 6

### The Whip and the Words: Slave Management and Juridical Thought in the Agricultural Writers

#### Introduction

Any study on Roman slavery cannot but include the manuals of the so-called agricultural writers. This collective denomination traditionally comprises three works on farming written by Cato, Varro and Columella, which have been long viewed as eminently practical and thus received marginal *literary* exploration until their recent re-evaluation.<sup>424</sup> The three agronomists concentrate on how to run a *villa* economy,<sup>425</sup> and, naturally, furnish advice on managing the enslaved too: indeed, servile labour was employed in all areas of farming already throughout the republican period, and certainly intensively so from the mid-republican age onwards, as the work of Cato testifies. Marcus Porcius Cato (234–149 BC), also known as the Censor, collected a series of precepts for absentee owners in his *De Agricultura*, which consequently influenced the praetor and leading scholar Marcus Terentius Varro (116–27 BC). With the declared purpose of instructing his wife on farm management, Varro shaped his *De Re Rustica* as a set of three dialogues (corresponding to three books), where the actual agricultural teaching is intertwined with philosophical, political, and satirical allusions. Lastly, Lucius Junius Moderatus Columella (AD 4–70), a native of Southern Spain who possessed numerous farms in central Italy, explored the same topic in the twelve books of his *De Re Rustica* – allegedly the most systematic treatment of Roman agricultural management written in Latin.<sup>426</sup>

The choice of investigating servile ‘crime and punishment’ in these manuals is then obvious and we will explore the agronomists’ approach to these issues, which directly pertain to servile management. It will be seen that the landowners’ concerns match those of the jurists, although

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<sup>424</sup> Diederich (2007), Nelsetuen (2015), Reitz (2013) and Reitz (2017), just to give a few examples, challenged the idea of the merely practical character of Roman agricultural manuals. Kehoe (2007) also recognized a legal dimension to these texts – however, focusing on farm tenancy, he does not treat the management of the enslaved in the fields. This latter aspect is central to Bradley (1987), who, nonetheless, concentrating on the practical side of day-to-day dynamics, bypassed the legal discussion.

<sup>425</sup> On the *villa* economy, its nature, profit, and social implications see Launaro (2015).

<sup>426</sup> For a comparable text written in Greek, see Bryson’s *Oeconomicus* in Swain (2013).

this becomes evident only when drawing from the findings of Part I of this thesis. While making a precise kind of reader subtly aware of the worrying possibility of servile delinquency, the clever treatment of servile offences and punishments, moreover, is aligned to the writers' agenda of presenting the perfect estate – thus utilizing the topic to draw a significantly wider canvas. Moreover, as noted at the end of the preceding chapter, however idealistic these agricultural treatises may be deemed, they are much closer to the ground than the works so far explored in Part II of the present thesis. In a sense, exploration of these treatises is a *sine qua non* in taking the argument constructed so far one step further: prescription aside, if the discourse on Roman rural slave management is infiltrated with the same concerns highlighted hitherto, the case for an underlying, very real pre-occupation with the masters' powers – their authority and discretion – is strengthened at once. And this is indeed the case, as shown by surveying the mentions of servile crime and punishment contained in them – which the ensuing discussion will now do.

### **1. The common perception of Roman agricultural slave management**

To set the scene for the treatment of servile delinquency in the agricultural writers' manuals (and the consequent scholarly perception), a comparison with their modern 'counterparts' from the American Antebellum South constitutes a useful point of departure.

In his discussion of ideal plantation management, from the nineteenth century, James Henry Hammond included the following systematic comments on servile offences and punishment:<sup>427</sup>

The following is the order in which offences must be estimated and punished: 1) Running away, 2) Getting drunk or having spirits, 3) Stealing hogs, 4) Stealing, 5) Leaving the plantation without permission, 6) Absence from the house after horn blown at night, 7) Unclean house or person, 8) Neglect of tools, 9) Neglect of work.

The highest punishment must not exceed 100 lashes in a day not severely given and only in extreme cases.

In clear contradistinction, no such systematic and focused comments are evident in the corpus of the agricultural writers.<sup>428</sup>

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<sup>427</sup> Hammond (1857–1858) 21.

<sup>428</sup> Hammond is not an isolated case. To have a better understanding of slave management (and thus discipline) in the Antebellum South, the anthology compiled by Breeden (1980) is a valuable starting-point.

Thus, when dispensing advice on how to deal with their human chattel, Cato only comments on food rations (*Agr.* 56), wine rations (57), relish (58) and clothing allowances (59), but he had already detailed the figure and duties of the overseer, i.e. the *vilicus* (5).<sup>429</sup> Varro adds to the previous discussion, explaining the preferable character for a *servus* and the most desirable features of the overseer (*Rust.* 1.17.4). Paragraphs 1.17.5–7 recommend a system of rewards and liberal treatment (already advocated by Cato in the noted *vilicus* section, and repeated at 1.19.3). On a practical note, paragraph 1.18 deals with the required number of *servi* with regard to the size of the estate (*fundus*) and the nature of the crops the owner is willing to grow. Lastly, Columella (*Rust.* 1.8.15) insists on the need for masters to address *servi* with familiarity yet keeping a watchful eye on them (1.8.16–17). Paragraphs 1.8.18–19 promote again just treatment and a reward system for *servi*, in order to minimize the risk of insubordination and encourage reproduction. A couple of more pragmatic remarks are added too: the physical characteristics functional to perform servile tasks at best (1.9.1–6), and a division in squads, to stimulate hard work through rivalry (1.9.7–8). Book 11, before dwelling on a comprehensive list of activities to be carried out according to the calendar, elaborates the tasks of the *vilicus* (already touched upon in 1.8 *passim*). More than his predecessors, Columella stresses his responsibility to influence the work ethic of his supervisees: he needs to exercise control without taking advantage of the other *servi* and provide them with a good role model.

This brief overview recalls the absence of servile ‘crime and punishment’ as an overt theme in the ‘management sections’ of the agricultural writers. The possibility of slaves committing offences is only considered in passing. When addressing the land-owner, Cato advises him not to let the slaves commit offences (*familiam ne siveris peccare* 4.6), and mentions disagreements (*litis*, 5.1) among the enslaved, which need to be settled by the *vilicus*. Varro, on the other and includes a small caveat on the ethnicity of the enslaved; the purchase of too many from the same region, in fact, might lead to *offensiones domesticae*.<sup>430</sup> These are all very broad and fleeting remarks, in crass contrast to the approach illustrated at the outset on a modern American example. Unsurprisingly, therefore, modern scholarship has not given the analysis

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<sup>429</sup> For the Latin lexicon of the farm personnel see Bruno (1969) 162.

<sup>430</sup> The expression is generally intended as ‘domestic quarrels’ (as, for example, in Ash’s Loeb translation), or as something trivial. There there might be more than little disagreements at stake, however, since Plato (*Leg.* 777b-d) already warned that the ethnic homogeneity of slave populations renders them more liable to revolt.

thereof in these authors centre stage.<sup>431</sup> Indeed, it has even been argued that the Roman agricultural writers did not share Hammond's pressing concerns with the management of the servile labour force and its application to issues to do with delinquency and punishment.<sup>432</sup>

while Roman management thought emphasized **control through adherence to an annual agricultural calendar, the antebellum principles offered fine-grained control for each workday**, designating specific times for rising, working, eating, and resting.

Seemingly, then, Roman landowners, as proverbially down-to-earth individuals, emphasized *work*, to be carried out meticulously and according to the seasons, while American masters were rather obsessed with *workers*, prescribing a stringent control of every moment of the human chattels' lives.

The purpose of the present chapter is to show, by contrast, that the management of the servile labour force, as expressed through the lens of 'crime and punishment' was actually a central feature of the ancient Roman texts too. To uncover this, careful analysis of passages that are obviously related to servile discipline will be paired with discussion of passages that appear less patently tied with the topic – at least at first sight. As will be seen, the lines in question crack open, upon due contextualization, through the relevant legal evidence. It will become apparent, as a result, that the Roman agricultural writers demonstrate the same kind of mind-set as did the jurists when considering servile delinquency and punishment on their estates.

## 2. Servile offences in the agricultural writers

Among the servile offences attested by the agricultural writers, two major categories can be singled out: thieving and running away.<sup>433</sup> Let us start with the first.

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<sup>431</sup> See Del Lago & Katsari (2008) for one of the most recent and self-evident examples. When discussing punishments and rewards for enslaved individuals in the Roman and American perspective, the former topic fails to receive proper consideration, while the latter is discussed extensively in order to underline a paternalistic attitude in both the ancient and modern slave-owners.

<sup>432</sup> Ruef & Harness (2009) 602.

<sup>433</sup> The association between the enslaved and these two offences, which we have also seen in the jurists' pronouncements, is practically ubiquitous. See, for instance, Hor. *Ep.* 1.16.46 in which a slave exonerate himself claiming *nec furtum feci nec fugi*.

## 2.1 Thieving

Section 5 of Cato's *De Agricultura* dwells on the duties of the overseer. The very start of this list (*Agr.* 5.1) points out that the overseer is in charge of the discipline of his subordinates and specifies the importance of feast days to be observed (although *servi* should work nonetheless, as stated in 2.4). These introductory remarks characterize the *vilicus* as a surrogate of the master, before hinting at a negative behaviour:

*Haec erit vilici officia. Disciplina bona utatur. Feriae servantur. Alieno manum abstineat, sua servet diligenter.*

These are the **duties** of the *vilicus*. He should exercise good discipline. The holidays should be observed. He should **withhold his hands from what does not belong to him** and diligently preserve what is his.

When the *vilicus* is addressed as an overseer (and thus as a mere subordinate of the *dominus*, not as someone deputizing for him), Cato immediately associates him with thieving. Only a few lines later, right in the middle of the overseer's section (*Agr.* 5.4), the agronomist comes back to the issue of the thievish attitude of *servi*. He insists that the *vilicus*:

*nequid emisse velit insciente domino, neu quid dominum celavisse velit.*

should **not** want to **sell anything without the knowledge of the master**, nor to **hide anything from the master**.

If the overseer should not take any initiative in terms of selling, again at *Agr.* 5.4, he is also reminded that:

*segetem ne defrudet ...*

**he should not scam on the seed for sowing ...**

Cato indicates that this should be avoided as it constitutes an *infelix* action, which can both mean an unproductive practice and a measure bringing bad luck. If Cato's judgement is ambiguous, the use of *defrudare*, containing the word *fraus* (translated as 'deceit' or 'fraud') clearly indicates his recognition of the overseer's intention to cause some economic detriment to the master, to benefit himself. In short, Cato immediately warns his readers about the possibility of overseers to thieve, providing further details too: the *vilicus* can scam the master acting on his behalf when selling the products of the estate, but also when carrying out farming operations.

Cato's lesson seems to be well received by Columella, who agrees on the enslaved's proneness to thieving. In *Rust.* 1.8.4, where the characteristics of the preferable *vilicus* are discussed, he maintains that, along with the essential knowledge of husbandry, a meticulous attitude, which will make him a fast learner, is desirable. However, Columella does not intend his ideal *vilicus* to be literate. After stating that the ability of reading and writing is beneficial, he reports Celsus' opinion, according to whom only a retentive memory is necessary, as literacy is a potential channel for corruption:

*Potest etiam inlitteratus, dum modo tenacissimae memoriae, rem satis commode administrare. eius modi vilicum Cornelius Celsus ait, saepius nummos domino quam librum adferre, quia nescius litterarum vel ipse minus possit rationes confingere vel per alium propter conscientiam fraudis timeat.*

**Even an illiterate person**, as long as equipped with a very strong memory, can manage affairs adequately. Cornelius Celsus says that such an overseer **brings money to his master oftener than his book**, because, **being illiterate, he is either less able to falsify the calculations, or he fears doing so through someone else, whom he would make aware of the deception.**

To Columella, then, the more a *vilicus* is ignorant about letters, the fewer possibilities he will have to cheat regarding the accounts.

Earlier, at the end of section 1 of his first book, Columella had already touched upon the matter, explicitly talking about *servi* being tempted by *rapina*. The agronomist is discussing what is needed for those desiring to undertake agriculture as a profession and he narrows it down to three essential conditions: knowledge of the matter, financial security, and willingness to work. It is this last aspect that Columella stresses the most, revealing that *domini* are less and less inclined to take part in the actual farm operations lately. Civic duties are their priority, yet the owner should at least be committed to supervise the work on his estate, visiting it frequently. It is thus prudent not to purchase remote land (*Rust.* 1.1.20):

*nam qui longinqua, ne dicam transmarina rura mercantur, velut heredibus patrimonio suo et, quod gravius est, vivi cedunt servis suis, quoniam quidem et illi tam longa dominorum distantia corrumpuntur et corrupti post flagitia, quae commiserunt, sub expectatione successorum rapinis magis quam culturae student.*

those who purchase lands far away, not to mention estates across the seas, cede their inheritances to their slaves, as to their heirs and, what is worse, they do so while they are still alive; **it is indeed certain that slaves are corrupted due to the great remoteness of their**

**masters** and, once corrupted and expecting to be substituted by others after their misdeeds, **they have a greater interest in pillaging than in farming.**

Strict supervision is therefore mandatory to prevent the enslaved from thieving. The notion of a servile predisposition to this kind of behaviour comes up again when Columella describes the more profitable farm labour. A thoughtful choice in this respect is one of the fundamental duties of the owner, which are the topic of 1.7. The employment of tenant farmers (*coloni*), when possible, is the option to be preferred, especially on remote estates of grain land (*Rust.* 1.7.6):

*tum praecipue frumentarium, quem et minime, sicut vineas aut arbustum, colonus evertere potest et maxime vexant servi, qui boves elocant eosdemque et cetera pecora male pascunt nec industrie terram vertunt longeque plus imputant seminis iacti, quam quod severint, sed nec quod terrae mandaverunt sic adiuvant, ut recte proveniat, idque cum in aream contulerunt, per trituram cotidie minuunt vel fraude vel negligentia.*

to an estate of grain land in particular, a tenant farmer can do minimal harm, as he can to vines and trees, while **slaves damage it tremendously**, since **they let out oxen for hire**, and **feed them and the other animals poorly**; they do not plough the ground carefully, and **they claim credit for sowing far more seed than they have actually done**; they do not bother taking care of what they have planted so that it will grow properly; and **when they have gathered the produce on the threshing-floor, they lessen the actual amount every day either by trickery or by negligence.**

Without the constant threat of the master's inspections, thus, the enslaved make profit from hiring out the master's oxen and being sparing with the pasture of the livestock. Moreover, as Cato already stated, they scam on the seeds and defraud the masters when it comes to harvesting too; it is also noteworthy that Columella uses the word *fraus*, just as Cato did. This punctual description seems still insufficient to Columella, who feels the need of ending the section by summing it up in the following fashion (*Rust.* 1.7.7):

*nam et ipsi diripiunt et ab aliis furibus non custodiunt, sed nec conditum cum fide rationibus inferunt. Ita fit, ut et actor et familia peccent et ager saepius infametur.*

for **they themselves** [the slaves] **steal and do not protect** [the estate] **against other thieves**, and **they do not provide accurate accounts of what is stored away**. And so it happens that **both the manager and the slaves are at fault**, and that the land, rather often, develops a bad name.

No distinction is made between servile supervisors and ‘regular’ *servi*, all equated on the basis of their penchant for thieving.

As just seen, the thieving *servus* does not appear in a proper discipline section, either in Cato, or in Columella.<sup>434</sup> Servile thieving, however, although not an isolated theme, emerges as an important issue and does so on several occasions. Even though Cato and Columella do not describe what the delict in question consists of, and do not even specify what will happen to the enslaved thieves on the estate, they both contemplate the possibility of thieving in their treatises. We might have expected to find hints of this servile delict in the lines devoted to *vilici*, while their presence in Columella’s section on the essential tools for successful farming and the duties of the *pater familias*, is more surprising. Be this as it may, the mention of servile thieving in these pivotal sections makes it self-evident that this is actually a key problem for the agronomists.

The repeated, scattered references in the works of Cato and Columella can be paired with later juridical provisions, allowing us to acknowledge the long-lasting belief in a tight connection between the enslaved and *furtum* within the mind of the slave-owners. If we consider the later testimony of the Digest, thieving is the delict mostly associated with servile offenders, with *servi* featuring heavily and in the most disparate situations in 47.2, namely the title on thefts (as seen in Chapters 1 and 2). Thieving *servi* are also given a specific provision in Dig. 48.19.11.1 regarding pilfering from their masters (*furta domestica*), which can be seen as a proper equivalent to the situations reported by Cato and Columella. There is then a clear conceptual overlap in the works of the agricultural writers and the jurists assembled in the Digest. This suggests a broader backdrop. But thieving is not the only form of servile delinquency recorded in their manuals.

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<sup>434</sup> Varro does not exclude the possibility of *furtum* in his estate. According to him, however, this is a danger mostly coming from the outside: in 1.12.4 higher locations are preferable for farms as low-lying depressions are more likely to be visited by robber bands (*repentinae praedonum manus quod improvisos facilius opprimere possunt*); in 1.13.2 thieves are mentioned in passing too, while 1.16.2 hinges on the robberies of the neighbours (*latrocinia vicinorum*) to emphasize the need for a safe space; additionally, at 2.10.3 the herdsmen protect animals from wild beasts and robbers. It is curious that the terms used by Varro can define pirates too, as shown by Ortu (2010). These references, thus, might be intentional, since the staging of book 2 of the *De Re Rustica* explicitly mentions the *piraticum bellum*, as explained by Nelsestuen (2015) 118–123.

## 2.2 Running away

In *Agr.* 2.1, Cato pictures the arrival of the *dominus* on his estate for an inspection. After paying respect to the gods of the household, he should check on what has been accomplished and what still needs to be done, prior to making an estimate of the labour force used and the time consumed. This calculation will be handy in case the amount of work carried out on the *fundus* is not satisfactory, as shown in 2.2:

*Si ei opus non apparet, dicit vilicus sedulo se fecisse, servos non valuisse, tempestates malas fuisse, servos aufugisse, opus publicum effecisse, ubi eas aliasque causas multas dixit, ad rationem operum operarumque vilicum revoca.*

If the amount of work does not seem adequate to him [the owner], **the overseer promises that he has done his best, but** that the slaves have been unwell, the weather has been adverse, **slaves have run away, they had public work to carry out**; when the overseer has come up with these and many other excuses, call him back to your calculation of the work done and the people employed.

The defaulting *vilicus* justifies the impossibility of the expected work to be carried out in time due to adverse weather conditions, and, when it comes to his subordinates, to sickness, public work, and flight. No punishment awaits the negligent overseer. Indeed, Cato's reason for arranging this scene is to provide prompt solutions by which the masters could handle any difficult situation caused by lack of cooperation or bad weather. As already noted by Astin, Cato only supplies advice on what to do in case of severe weather (2.3), *feriae* (2.4), and sickness (2.4).<sup>435</sup> Astin, though, does not underline enough that the issues of *servi* being runaways or put to public work are not furnished with any remedy. He simply resolves the absence of the treatment of runaways with the fact that they are "difficult to comment on" and skirts the issue of public labour (which could have been a punishment imposed on enslaved individuals too, especially in the harshest nuance of forced mine working, as discussed in Chapter 3).<sup>436</sup>

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<sup>435</sup> Astin (1978) 349.

<sup>436</sup> The Loeb translation intends *opus publicum* as work on public roads. Landowners were in fact liable to some minor upkeep of roads (removing fallen trees and boulders, filling potholes, etc.) already in the Twelve Tables (Fest. 508 L). This, however, is referred to by Cato as *viam publicam munire* (2.4) and is a task given to the *vilicus* on feast days. On Roman republican road see Wiseman (1987), 126–156.

When assessing Cato's work, inconsistencies like the present one are generally associated with the fact that his treatise is the least systematic among the three.<sup>437</sup> But what if Cato's omissions depend on the fact that he did not deem this kind of specification necessary for his readership? This will be better understood in the light of the elusive attitude adopted by Varro and Columella when approaching the same topic. In all the three manuals, indeed, we lack any record of the punishment for *servi* escaping from the estate, besides a general overview of the delict.

Varro forbids leaving the estate in an utterly redundant way (*Rust.* 1.16.5):

*Itaque ideo Sasernae liber praecipit, nequis de fundo exeat praeter vilicum et promum et unum, quem vilicus legat; siquis contra exierit, ne impune abeat; si abierit, ut in vilicum animadvertatur. Quod potius ita praeciendum fuit, nequis iniussu vilici exierit, neque vilicus iniussu domini longius, quam ut eodem die rediret, neque id crebrius, quam opus esset fundo.*

And so Saserna's book establishes that **no person shall leave the farm except the overseer, the steward, and one whom the overseer may designate; if someone leaves, breaking this rule, he shall not go unpunished, and if he does, the overseer shall meet punishment.** But this rule should have rather been stated thus: that **no one shall leave the farm if not by order of the overseer, nor the overseer if not following the master's order, for more than a day and more frequently than it is necessary for the farm.**

A justification for adding this prohibition is given in the previous lines, where Varro praises the highest profitability of a farm where no time is wasted in performing tasks, being located in a neighbourhood where all kinds of services are at hand. However, the richness of detail and the almost pleonastic character of the passage insinuate the possibility that the more pressing issue of runaways is at stake.<sup>438</sup>

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<sup>437</sup> According to Brehaut (1933) xvi "there is sufficient repetition of chapters and confusion of arrangement to create the suspicion that this book was put out in an insufficiently revised condition". Richter (1978) 7–17 disagrees, summarizing theories on why Cato's work survived to us in such a configuration, along with suggesting (throughout his whole book) that the *De Agricultura* is coherently organized. The paltry evidence for slave flight in Cato – compared to the more abundant material we have for the late republic (especially in Cicero) – is also addressed by Bradley (1989) who rightly claims that this does not indicate that servile *fuga* was a rarer possibility in the early republic. The scattered and superficial engagement with the theme, as will be argued in this chapter, depends on the prescriptive and idealistic nature of Cato's writing (which applies also to Varro and Columella).

<sup>438</sup> Section 2.2.1 will clarify this argument.

Likewise, Columella triggers the thought of this delict, recalling it explicitly with the name of *fuga* and the practice of marking enslaved fugitives, albeit not placing the issue at the centre of his discourse.<sup>439</sup> At *Rust.* 10.124–126, the book in verse devoted to horticulture, pepperwort is described in the following way:<sup>440</sup>

... *et lactis gustus quae condiat herba,  
deletura quidem fronti data signa fugarum,  
vimque suam idcirco profitetur nomine Graio.*

... the herb which seasons the taste of milk, **removes the signs of flights from the brow** [of runaways], and thus demonstrates its virtue in its Greek name.

Columella's choice of describing the herb through this precise characteristic is quite peculiar. When dealing with the same topic, Pliny (*HN* 20.70) does state that pepperwort is a caustic plant but spotlights other uses of it: it purifies the complexion, it alleviates leprosy (as also maintained by Dioscorides 2.174) and psoriasis. Pliny then generically reports that the plant removes sores left by scars and mitigates tooth-ache, dwelling much more on the latter issue than on the former. Despite the many properties listed by Pliny, Columella concentrates on its abrasive power to remove "the signs of flight", pairing pepperwort and runaways in an association which, we can assume, is not the most usual.

Once again, the phenomenon of servile flight regularly surfaces in the later juridical sources, where hunting down fugitives and returning them to their masters is enumerated among the key duties of the praefect of the city guard (*praefectus vigilum*).<sup>441</sup> Fugitives are encountered frequently in the set of books analysed in this thesis too: they appear mostly in Dig. 47.2 (since *fugitivi* are juridically seen as thieves of themselves)<sup>442</sup> and 47.10 on goods forcibly taken, but also feature in book 48 and receive one mention in book 49.<sup>443</sup>

The fact that this was a rather compelling problem for slaveholders is confirmed by Dig. 11.4, a title dealing exclusively with the topic of *fugitivi* and some masterly practicalities (i.e. harbouring, searching of runaways, etc.). Continuing on issues pertinent to the masters, at Dig.

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<sup>439</sup> Slave marking and its legal repercussions have been discussed in Chapter 4.

<sup>440</sup> The Latin word for pepperwort is *lepidum*, but the herb is not explicitly named for metrical reasons. Boldrer (1996) clearly shows that *fuga* is a metonymy for *fugiens*, not only in this passage. The "signs of flight" could have been removed by doctors and barbers too, as remarked by Mart. 10.56.6 and 6.64.26.

<sup>441</sup> Dig. 1.15.4.

<sup>442</sup> Dig. 47.2.61

<sup>443</sup> Dig. 48.3.14.7, 48.15.2.1, 48.15.2.2, 48.15.5, 48.15.6.1, 48.19.16.5, 49.16.4.14.

21.1.19, concerning the Edict of the Aedile on selling, Ulpian specifies that it was illegal not to inform the prospective buyer on the previous *fuga* of an enslaved individual.

A rich debate rose around this form of servile delinquency, as demonstrated by Ulpian in the whole Dig. 21.1.17, where the proper definition of a *fugitivus* occupies a consistent number of lines. The label of *fugitivus* curiously leverages on the willingness, i.e. the inclination (*affectus animi*) of the enslaved when escaping (Dig. 21.1.17.3).<sup>444</sup>

[Ulpian, *Curule Aediles' Edict, book 1*] 3. And we find in Vivian that **a fugitive is to be so determined from his attitude of mind and not merely from the fact of his flight** ... All this applies to those who, having fled, return to their master; but, says Vivian, if they do not return, then they are unquestionably fugitives.

The attitude of the enslaved, and not the mere act of running away, is thus considered distinctive.<sup>445</sup> The concept is further explored in Dig. 21.1.17.14.<sup>446</sup>

[Ulpian, *Curule Aediles' Edict, book 1*] ... if we wish to be accurate, **we define a wanderer as one who does not indeed run away but frequently indulges in aimless roaming and, after wasting time on trivialities, returns home at a late hour.**

If the enslaved returns home, and is thus not willing to escape, he is to be considered simply a wanderer (*erro*). None of this is specified by the agricultural writers; yet, we must assume that this wider canvas would have lurked in their readers' minds – a point that will be crucial to the next sections.

### 2.2.1 Snails, bees and slaves at large

It is time to unpack the above-mentioned concern over servile misdeeds further, albeit by drawing on passages that appear to have nothing to do with them, at least at first sight. When referring to enslaved runaways in Varro's *De Re Rustica*, I have argued for the existence of this concern through the insistence of 1.16.5, where the prohibition of leaving the estate was pedantically underlined. The argument is actually strengthened by the analysis of two

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<sup>444</sup> *Item apud Vivianum relatam est fugitivum fere ab affectu animi intellegendum esse, non utique a fuga ... Haec ita, si eos fugisset et ad dominum venisset; ceterum si ad dominum non venisset, sine ulla dubitatione fugitivum videri ait.*

<sup>445</sup> This has been noted, in passing, already in Chapter 4.

<sup>446</sup> ... *Sed proprie erroneam sic definimus: qui non quidem fugit, sed frequenter sine causa vagatur et temporibus in res nugatorias consumptis serius domum redit.*

additional passages of Varro's book 3.<sup>447</sup> Thus, although fugitives lack a proper mention in the sections regarding *servi*, the vocabulary of *fugitivi* is oddly applied to some of the animals discussed in the section on *pastio villatica*, meaning the husbandry to be practised in or around the *villa*.

This is the sole topic of book 3, and it comprises aviaries (*ornithones*), animal-hutches (*leporaria*), and fishponds (*piscinae*).<sup>448</sup> The animals in the *leporaria* are split in two groups: one comprising boars, roe-deer, and hares, and one to which snails, bees, and dormice belong.<sup>449</sup> Notably, this latter category is constituted by animals which need to be kept enclosed, as specified numerous times in the dialogue.

An analogy between the obsession about the enslaved running away and the animals being enclosed within the perimeter of the *villa* can be identified here, but it is only by looking at the application of the specific terminology of servile delinquency to bees and snails that the parallel becomes well-founded.<sup>450</sup>

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<sup>447</sup> It has been ascertained that Varro challenges his readers with satirical allusions on the late republic social and political life. Book 3 is seen as the biggest repository of these, being set in the *Villa Publica* of the Campus Martius, which can easily be seen as a metaphor for the *Res Publica*, as Green (1997) illustrated. Kronenberg (2009) 73–129 and Nelsestuen (2015) 170–210 engage in a further discussion on this too. While Green and Kronenberg basically ignore the practical advice given by Varro, I agree with Nelsestuen (2015) 208 on the fact that his contribution worked on the intellectual level, but also on the didactic-remedial one. Varro indeed provided a viable model of farming production too.

<sup>448</sup> Focusing on birds, Green (1997) 443 proves the ornate aviary described by Varro to be “a small city-like structure for bird-citizens”, now hostages in Octavian's birdcage. However, it will be shown, the *Res Publica* described in *De Re Rustica* 3 comprised slaves too; indeed, it is stated, at the beginning, that the *Villa Publica* belongs to both *cives* and *reliqui homines* (3.2.4).

<sup>449</sup> Varro's fondness for the number three and its multiples is evident, as illustrated by Rawson (1978) 13–19.

<sup>450</sup> *Praeterea in eodem consaepto fere habere solent cocliaria atque alvaria atque etiam dolia, ubi habeant conclusos glires* (3.12.2). My argument hinges on snails and bees as juridical terms are used for these animals only. Although *fuga* is not mentioned in the dormice section (3.15), this contains echoes of the provisions on slave management too. Most of it deals with the descriptions of the place where they need to be shut in with a stone plaster on top of it (so that they do not creep out, *ne ex ea erepere possit*) and the jars where they are fattened. Their rooms should be big enough to host their young and attention is given to water, which should not be too much. This latter reference to water could be linked to Columella's 1.6.20, where it is stated that *servi* should have baths only on holidays, as frequent baths would weaken their bodies.

### 2.2.1.1.1 Snails and the *fugitivarius*

In *Rust.* 3.14.1, Axius claims that taking care of bees and dormice cannot be an extremely demanding job (*neque magnum molimentum esse potest*).<sup>451</sup> Appius dissents, because the task is actually trickier than one might think, and suggests:

*Nam et idoneus sub dio sumendus locus cochleariis, quem circum totum aqua claudas, ne, quas ibi posueris ad partum, non liberos earum, sed ipsas quaeras. Aqua, inquam, finiendae, ne fugitivarius sit parandus.*

An apt place must be chosen for snails, under the open sky, which you would **entirely enclose with water**. If you do not do it, when you put the snails to breed, you would have to look **not for the young snails**, but for the old ones. I say it again, **they have to be shut in with water, so that a runaway-catcher is not needed**.

In a few lines, the need of snails to be enclosed is mentioned twice, their flight is recorded as likely if this preventive measure is not taken, making it necessary to allocate to someone the task of controlling them. Nothing similar is detectable, for instance, in Pliny's treatment of snail breeding.<sup>452</sup> What is more, the 'snail guardian' is termed *fugitivarius*, a rare Latin word designating the person in charge of looking for enslaved individuals at large.

Only fragmentary evidence on this figure is available,<sup>453</sup> but the fact that the juridical evidence is more abundant than the literary one marks this term as technical. Apart from Varro's passage, in which the word is normally seen as metaphorically used in modern commentaries, the only other literary instance is found in Flor. *Epit.* 2.7. Here, Florus clearly references the *fugitivarius* as a runaway catcher, in the same way as he is characterized in the juridical texts, which we will now explore to contextualize the lines in question more fully.

The juridical evidence consists of three passages, portraying the *fugitivarius* as an ambiguous figure. According to *PS* 1.6.a.1:<sup>454</sup>

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<sup>451</sup> Axius is one of the characters of the dialogue constituting book 3, along with Appius and Merula, who will intervene later. Varro makes imaginary characters (with eloquent names) and contemporaries of his interact. A prosopographical study of the real interlocutors of book 3 was realized by Linderski (1989). Something comparable for the rest of the *De Re Rustica* books still lacks.

<sup>452</sup> *HN* 9.173, where snail breeding and fattening is briefly discussed. There is no mention of such concern in books 4 and 5 of Arist. *Hist. An.* either.

<sup>453</sup> Ruggiero (2012) contains an up-to-date summary of the scholarship on the topic.

<sup>454</sup> *Servus a fugitivario comparatus intra decem annos manumitti contra prioris domini voluntatem non potest.*

**A slave bought from a *fugitivarius* cannot be manumitted before ten years in case the prior owner does not agree on this.**

The aim of this proviso was probably to avoid collusion between *fugitivarii* and *fugitivi* to gain money (i.e. the *peculium* of the enslaved individuals) and freedom respectively. The *fugitivarius* appears also in *Cod. Theod.* 10.12.1.1, which casts, again, a suspicious light on him:<sup>455</sup>

But the *vindicatio* for his own goods [i.e. slaves] should pertain to the masters and every person should be liable to the same punishment which is given **in regard to those who hide slaves and *fugitivarii*.**

These runaway catchers are thus juxtaposed to people hiding runaways, and there is a fine line between this ‘profession’ and delinquency, so that in some cases the former and the latter could have incurred the same punishments. The unreliability of *fugitivarii* is testified also by Dig. 19.5.18,<sup>456</sup> where the relationship between them and the master involves an intermediary:<sup>457</sup>

Ulpian, *Edict, book 30*: **I deposited money with you to pay to Titius if he had returned my runaway slave; you do not pay it because he did not return [the slave]. If you should not return the money to me, it is better to sue *praescriptis verbis*; for I and the *fugitivarius* did not both deposit the money**, for example, as there would be a deposit with a stakeholder.

The presence of a third party was possibly an additional guarantee to the *dominus*. All these features point to Guizzi’s exhaustive definition of a figure at the margins of society, whom one would normally avoid, but who suddenly becomes a precious ally in the case of *fuga*. Indeed, *fugitivarii* are handy not only for the masters hiring their services, but also and especially for the enslaved, who rely on their knowledge of places, people, and so forth to escape.<sup>458</sup>

The specific relationship between the *fugitivarius* and runaways seems thus established by juridical sources. The use of the term *fugitivarius* in juridical texts and in Florus, who unambiguously references this figure in the juridical sense, makes it extremely likely that

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<sup>455</sup> *Sed et dominis propriorum vindicatio competat et eadem poena, quae de occultatoribus et fugitivariis data est, unusquisque teneatur.*

<sup>456</sup> I agree with De Pascali (2012) on the fact that, despite the lack of an explicit mention, *fugitivarii* are implicated in Dig. 48.15.2.1–2 too.

<sup>457</sup> *Si apud te pecuniam deposuerim, ut dares Titio, si fugitivum meum reduxisset, nec dederis, quia non reduxit. Si pecuniam mihi non reddas, melius est praescriptis verbis agere; non enim ambo pecuniam ego et fugitivarius deposuimus, ut quasi apud sequestrem sit depositum.*

<sup>458</sup> Guizzi (1964) 239.

Varro, also due to the witty nature of his writing, would have wanted to use it as a means to talk about servile delinquency, while discussing (of all animals) snails.

The parallel between the enslaved and snails in those lines has already been pinpointed by Cardauns, who, however, attributes it to Varro's "dicacitas und hilaritas": to him, the author is simply projecting human feelings onto animals for comic effect.<sup>459</sup> In making this claim, he also takes into account another passage of book 3 which will be examined next, before we round up the findings for present purposes.

### 2.2.1.2 When bees become *fugitivae*

The lengthy section 16 of *De Re Rustica* 3 is entirely devoted to bees. Their nature and keeping is discussed by Appius, whom we already encountered dispensing advice on snails, and Merula. It is the latter who, giving instructions on the delicate matter of transferring bees, asserts the following (3.16.21):

*Si e bono loco transtuleris eo, ubi idonea pabulatio non sit, fugitivae fiunt.*

**If you move them from a good place to one where there is no sufficient pasturage, they become runaways.**

It is more than understandable that these insects, if put in an unfavourable situation, become tempted to fly away. Varro could have expressed this concept in many other ways, yet he decides to describe the bees as *fugitivae*, which immediately creates an association with servile flight.<sup>460</sup>

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<sup>459</sup> Cardauns (2001) 27.

<sup>460</sup> Aristotle (at *Hist. An.* 626a) advises that bees must be fed over the winter so that they do not die (if temperatures drop) or abandon the hive (if the weather is mild). Since bee-keeping is not addressed by Cato, it is worth comparing Columella's treatment of bees, which occupies book 9 in almost its entirety. The need for the insects to be enclosed, which Varro applies to all the animals in the *leporaria*, does not appear in Columella, who prescribes the realization of not too high a wall around the hives, unless one is afraid of thieves (*Rust.* 9.5.3). He also adds that when bees are bought and carried to the farm, one must make sure they do not fly out of the hive all together, as this is a sign that they are planning on breaking free (*fugam meditantur*, 9.8.4). In 9.9.1, the new-born bees go away (*effugiunt*), if they are not checked on by a *curator*, while 9.9.4, where they are about to fly away, shows them as *eruptionem facturae*. In 9.10, the kings of the bees fighting among each other are discussed; their wings shall be cut as they might want to bring their swarm elsewhere, an act which is described as *profugere, eruptionem facere, fuga* and *evagari* (9.10.3). *Eruptio* and *fuga* occur again in 9.12.1, along with the participle *fugiens* 9.12.2, as the bees' behaviour in

As in the case of snails, this pronouncement, when not ignored, has mostly received stylistic remarks. Guiraud, commenting on it, simply labels it as “fort intéressant”, adding that this exemplifies Varro’s very imaginative way of presenting things.<sup>461</sup> On the other hand, Green, who stressed the pun *liberos-fugitivarius* in 3.14.1 explaining that even snails, as wild animals, will try to gain back their natural freedom, merely states that the same applies to bees here.<sup>462</sup>

The link between the word choice and the matter of servile delinquency is missing in the discussion and, therefore, needs now to be singled out and explained. Instead of having a purely metaphorical or philosophical connotation, I contend that this second veiled reference also allows Varro to hint at runaways, a matter which, like servile delinquency more broadly, is deemed important and hence is addressed, however cursorily and cryptically.

As the need of a *fugitivarius* for snails – the quintessential slow animals – would have made the reader laugh, the parallel between bees and the enslaved fugitive, created by the use of *fugitivae*, would have initially had the same effect. First, these insects are associated with work – and Appius describes their primary concerns accordingly as food, dwelling and labour (*cibus, domus* and *opus*, 3.16.5), after specifying in the same paragraph that they are like men (*ut homines*). In 3.16.9 bees are said to be working and sleeping, in a continuous cycle; they have someone directing them as well, a general (*dux*, who resembles the *vilicus*), as they are described as an army (*ut in exercitu*). Intriguingly, the insects are praised for not being idle, while *servi* are proverbially lazy, and they are likened to soldiers, whereas servile enlisting in the army was forbidden by the law. The reader would have had a humorous reaction to this first account on bees and *servi* made by Appius (3.16.4–9), but the second section on bees (3.16.10–38, to which our passage on *fugitivae* bees belongs) is reported by Merula, whose tenor is very different. Merula’s longer account is focused on the profit that can be made from bees and reveals them as dominated by self-interest and the idea of the survival of the fittest.<sup>463</sup> Seditions (*seditiones*) can rise among them (3.16.18); their health should be preserved from illness (3.16.20) and the dangers of heat, cold, or rain (3.16.37); moreover, the bees can be manipulated and lured to new homes with the use of attractive substances (3.16.30), they fight

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spring is given attention. In all these cases, even if some instances like 9.9.4 would have rendered *fugitivae* suitable, Columella avoids this term. For the role of animals in Columella see Fögen (2016).

<sup>461</sup> Guiraud (1997) 96.

<sup>462</sup> Green (1997).

<sup>463</sup> See Kronenberg (2009) 126, who however uses the bees as a polemical response to Cicero’s *De Re Publica* where they constitute an ideal society.

and indulge in mead, almost getting drunk (3.16.35), so the beekeeper has to supervise and intervene regularly. The bulk of Varro's discussion of bees is clearly reminiscent of Aristotle's *History of Animals*,<sup>464</sup> but the repetition, omission and variations of certain themes are telling. The analogy between bees and men as social animals is made by Aristotle (*Hist. An.* 488a), yet Varro decides to employ *homo* to repeat the concept. To be sure, *homo*, which is frequently used for the enslaved, can also simply mean 'human being'. However, if Aristotle points out that the presence of too many leaders in the hive has the detrimental result of creating factions among the bee population (the verb used is *διασπάω* at 553b),<sup>465</sup> Merula describes the same effect opting for *seditio*, a word that is also used to express rebellion against an established authority.<sup>466</sup> Moreover, the insistence on food, dwelling and labour is not as marked in Aristotle. Merula's words also seem to mirror the servile stereotypes (their *seditiones* remind us of the *offensiones domesticae* mentioned by Varro in 1.17.5, for instance), and echo some of the agricultural writers' provisions on food, clothing allowances and health care. However, the identification between bees and *servi* is thrown yet further into relief through the legal sources.

Since bee-keeping was a rather lucrative activity, these insects and ownership thereof kept lawyers very busy, as Frier has shown.<sup>467</sup> The feature that disturbed them the most was the bees' peculiar nature: although being juridically recognized as wild they had a habit of going and coming back which made them in some way tamed. Pliny (*HN* 11.11) resolved the question by claiming that these insects belonged neither to a domesticated type, nor to a wild one. Such an ambiguity, however, could not have been accepted by the jurists. To them, there was only

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<sup>464</sup> In Varro, the signs that bees are about to flee, for instance, are the same presented by *Hist. An.* 625 b and 627 b (respectively a peculiar hum and the bees' hanging from each other in the hive). There are also instances in which Varro misinterprets Aristotle, i.e. when he refers to the drone as the robber (*fur*, 3.19), while for Aristotle this is actually a different type of bee (624b). For an account of the Greek echoes in the treatment of bees in Latin literature see Whitfield (1956).

<sup>465</sup> The verb expresses separation, see also *Hdt.* 1.59, *Arist. Rh.* 1386a 10.

<sup>466</sup> Hellegouarc'h (1972) 136. The established authority, in our case, could be that of the slave-owner.

<sup>467</sup> Frier (1982–1983). See also Frier (1994) for a complete account of the juridical discussion of the issue.

one bipartition of juridical significance regarding animals: wild (*ferae*) and tamed (*mansuetae*).<sup>468</sup> Since these categories could not be bent, Gaius finds a ruse (Dig. 41.1.5.5):<sup>469</sup>

[Gaius, *Common Matters or Golden Things*, book 2] The wild nature of peacocks and doves is of no moment because it is **their custom to fly away and to return; bees, whose wild nature is universally admitted, do the same ... In the case of these animals which habitually go and return, the accepted rule is that they are held to be ours so long as they have the instinct of returning [revertendi animum]; but if they lose that instinct, they cease to be ours and are open to the first taker.** They are deemed to have lost that instinct when they abandon the habit of returning.

An analogous ambiguous nature, in juridical writings, is the one pertaining to the enslaved, who is juridically a *res*, despite having an undeniable human nature – a point laboured already at various points in this thesis. Borrowing Buckland’s words “what struck them [i.e. the jurists] was that a slave was a *res*, and for the classical lawyers, the only human *res*”.<sup>470</sup> This nurtured a debate on this troublesome property (which reveals all its contradictions in Dig. 47.10 regarding *iniuria*, to cite just one example).<sup>471</sup> It is also curious that the category of animals to which bees are ascribed belongs to the possessor until they show an intention to return, which is described as *animus revertendi*. The insistence on this *animus revertendi* cannot but remind us of the *affectus animi* mentioned earlier as an indispensable feature for the proper definition of the enslaved on the run.<sup>472</sup>

There is little doubt that coincidence is not a good explanatory tool here. Rather, Varro’s choice of vocabulary and treatment of matters regarding *servi* under a section on untamed animals, which shall be kept enclosed, clarifies that the possibility of servile flight is contemplated by

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<sup>468</sup> The latter are treated as any other kind of property (our ownership on them continues even when we lost possession of them, and we are liable for the damages caused by them). The former are *res nullius* (they belong to no one) when in the wild, and our ownership starts when we have physical control of them (*occupatio*), ending when we lose it.

<sup>469</sup> *Pavonum et columbarum fera natura est nec ad rem pertinet, quod ex consuetudine avolare et revolare solent. Nam et apes idem faciunt, quarum constat feram esse naturam ... In his autem animalibus, quae consuetudine abire et redire solent, talis regula comprobata est, ut eo usque nostra esse intellegantur, donec revertendi animum habeant, quod si desierint revertendi animum habere, desinant nostra esse et fiant occupantium. Intelleguntur autem desisse revertendi animum habere tunc, cum revertendi consuetudinem deseruerint.*

<sup>470</sup> Buckland (1908) 3.

<sup>471</sup> As seen in Chapter 1.

<sup>472</sup> The link is briefly touched upon by Daube (1959) 69. See section 2.2 for the juridical pronouncements on *affectus animi*.

him, although, again, he decides not to dwell on the characteristics of *fuga* and the means to tackle it.

Finally, there is another allusion to the enslaved in the passage that strengthens the present argument. Elsewhere, Varro talks extensively about *servi* pasturing with the help of the *peculium*, an asset which enhances their living conditions.<sup>473</sup> In 1.2.17, the *peculium* is described as given by the masters to the slaves, precisely so that they can pasture (*ut pascant*). The use of the verb *pascere*, from which *pabulatio*, that is used for the bees, derives,<sup>474</sup> is indicative. Moreover, being essential for their maintenance, the *peculium* would have attached the enslaved to the *fundus*, just as the suitable pasturage would have assured the presence of bees there. In sum, Varro's reference to good pasturing, too, brings his bees into the world of human slavery.

### 3. Servile punishment in the agricultural writers

#### 3.1 Discipline on the *fundus*

As seen in the previous chapters, servile punishment is a cornerstone of the slave-holders' self-representation in their literary outputs: it is mostly through this that they reinforce their absolute discretion over their human chattel. Both Petronius and Apuleius profusely insisted on a masterly power which is undisputed – either because it comes from a superior, imperial authority or because brute force can overcome the law recurring to a subterfuge respectively. In stark contrast, Cato, Varro and Columella do not seem to share the same obsession for punishing the enslaved. The thematic cluster of punishment, though, is far from neglected. It is rather hinted at and used so that the resulting representation of the peaceful *fundus* reflects on the agricultural writers' reputation.

Keeping the enslaved on track constituted the more tangible example of successful mastery, an endeavour carrying indisputable prestige. As MacCarthy put it, this represented “the mark of someone who was constantly up to the difficult task of making others conform to his or her will and whose power in the world was multiplied by being able to act through others”.<sup>475</sup>

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<sup>473</sup> As noted in Chapter 2. For more on role of pasture in servile *peculium* allowances, see Roth (2005).

<sup>474</sup> See s.v. *pasco* Ernout & Meillet (1967).

<sup>475</sup> MacCarthy (2004a) 24.

In light of this, it is clear that the favourable reputation of masters (especially if they aspire to rise to the role of mentors for good slave management, as in the case of the ideal treatises under analysis here) has close ties with slave discipline. The agricultural writers seem therefore very concerned about promoting an image of the fair treatment of their human chattel, almost naturally creating the sought-after discipline. For this reason, as we have just seen, servile delinquency is addressed cursorily, and is not given an exhaustive and isolated treatment: there are no troubles on such well managed estates.

The same intention urges our writers to deal with the issue of servile punishment in an analogous way. In what we have called ‘management sections’ introducing this chapter, a great emphasis is put on rewards for the enslaved, but the complementary dimension of punishment is bypassed in silence. Nonetheless, it cannot be surmised that such matter is absent from these manuals – especially for an original readership who would have immediately understood the full implications of certain terms with juridical echoes.

Let us start, though, with the more explicit references to servile punishment. The first one appears in Cato, at *Agr.* 5.1. While listing the overseer’s duties, he states:

*siquis quid deliquerit, pro noxa bono modo vindicet.*

if anyone commits an offence, **he** [the *vilicus*] **shall punish** them properly according to **the fault committed**.

The ‘baddie’ is the *vilicus*, not the *dominus*, who actually reminds his overseer that punishment must be doled out fairly, weighing up the nature of the offence. Columella takes a similar stance, only alluding to punishment when discussing the tasks of the *vilicus* (*Rust.* 11.1.25). The overseer is advised to show moderation in the exercise of discipline, even with the less diligent among his subordinates (*parcat etiam minus probis*). He should aim at being respected for his strictness (*severitas*), more than hated for his cruelty (*saevitia*);<sup>476</sup> and he is encouraged to achieve this in the following manner:

*si maluerit cavere, ne peccet operarius, quam, cum peccaverit, sero punire.*

**if he prefers to make sure that the labourer commits no offence, rather than punishing him later, when he had done so.**

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<sup>476</sup> A point already made in *Rust.* 1.8.10.

These brief mentions, however, do not cover the whole material provided by the agricultural writers. The manuals also hint at physical chastisement and fetters in the same dismissive fashion we have highlighted for servile ‘crime’, to which this discussion must next turn.

### 3.2 Physical punishment

Along with being the people associated with the infamous prerogative of punishment in Cato and Columella, *vilici* are also portrayed by Varro in the act of meting out what is the most common chastisement in the context of agricultural slavery: the physical one. This is the only mention of physical punishment in the whole corpus under scrutiny here, and, more surprisingly, lashes (*verbera*) are presented in opposition to words (*verba*). The whip must be discarded when the same outcome can be reached without violence (*Rust.* 1.17.5):

*Neque illis concedendum ita imperare, ut verberibus coerceant potius quam verbis, si modo idem efficere possis.*

It should not be permitted to them [those presiding over slaves, i.e. the *vilici*] **to control their subordinates with whips rather than with words, as long as you can do the same.**

These lines have only received comment due to the paronomasia *verba/verbera*, a pun found in Plautus and Terence too.<sup>477</sup> Further discussion is prevented by the fact that *verbera* are mentioned in passing, following a pattern according to which they are not at the centre of the discourse, and they lack a specific argumentation on when and how to have recourse to them.

The juridical discussion could help us cast a light on the matter. As we have seen in Chapter 3, *verberare* is frequently used in the Digest to express beating in a broad sense, occasionally followed by a specification of the means used to inflict the beating. The verb, however, also indicates a type of beating which is imparted intentionally to procure pain, as opposed to *pulsare*, in the opinion of Ofilius, reported by Ulpian (Dig. 47.10.5.1). Possibly, thus, Varro and his readers would have interpreted the *verbera* of the *vilicus* as a heavy beating, without the necessity to explain it plainly. Although left in silence, this warning might have also meant that some milder corrective beating would have been excused on Varro’s estate. In any case, beating is not the only physical punishment to be mentioned.

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<sup>477</sup> See for instance *Men.* 978 and *Heaut.* 356 respectively.

### 3.3 Fetters

In tandem with beating, the scholarly tradition classifies fetters as the other servile punishment on the estate *par excellence*.<sup>478</sup> The matter of chaining in Roman agricultural slavery is far from clear; however, what needs to be underlined for present purposes is that chained *servi* (or those who have previously been punished in this way as Gaius states)<sup>479</sup> are recorded in Cato and Columella too. References to them can be found in the ‘proper’ management passages and in the *vilicus* sections. While considering food and wine allowances (in *Agr.* 56 and 57 respectively), Cato specifies that *compediti* (shackled slaves) are entitled to have more food. Columella emphasized the issue more, creating a dichotomy between *servi soluti* and *vinci* (unchained and chained) at *Rust.* 1.7.1. In 1.6.3 he had already marked this difference putting *soluti* in sunlit *cellae*, and confining *vinci* in an underground *ergastulum* (whose precise nature is still controversial).<sup>480</sup> Section 1.8.16 contains further warnings: these slaves must be constantly guarded, and one must personally check whether the *vilicus* had chained or unchained any fellow slave without the master’s permission.<sup>481</sup> *Alligati* can also be exploited in vineyards, according to Columella (1.9.4):

*Non solum enim fortem, sed et acuminis strenui ministrum postulat, ideoque vineta plurimum per alligatos excoluntur.*

[Working in vineyards] demands of who does it that he be not merely **strong but also sharp-witted**; for this reason **vineyards are** for the most part **worked by slaves in fetters**.

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<sup>478</sup> The assumption is based on Plautus’ comedies; see Roth (2012) on the comic instances where this kind of punishment is mentioned, which actually link them to other kinds of labour rather than agricultural.

<sup>479</sup> Gaius, *Inst.* 1.13. For discussion, see Roth (2011) 74–77.

<sup>480</sup> See Étienne (1974) on the topic in general. One of the aspects which renders the definition of these spaces problematic is the fact that the archaeological evidence can only be matched with the literary one in a few cases; for more on this see De Franceschini (2005). Fitzgibbon (1976) contains references to *ergastula* beyond the sphere of agricultural labour, especially in political skirmishes at the end of the republic.

<sup>481</sup> Varro is the only author who does not set a bipartition between *soluti* and *compediti*. In describing the ‘types’ of people working on the estate in *Rust.* 1.17.2 he operates another distinction (free men, *mercenarii*, *servi* and *obaerarii*), which is clearly based on juridical principles, as explained by Étienne (1974) 258. Varro’s reasoning mirrors the jurists’ one also in 1.2.14: in order to prove that animal-husbandry falls outside the proper definition of agriculture, Stolo uses an etymological argument which brings into play the *vilicus* and the *magister pecoris*. This practice finds a parallel in the one adopted in legal texts (as seen in Chapter 1), where slaves are the prime examples to clarify important juridical issues.

Fetters, thus, figure as a given for Cato and Columella: any discussion on their nature and the precise grounds on which their use is allowed seem superfluous. In this, as we have seen in Chapter 3, they are not too far from the approach of the jurists. Nevertheless, the juridical sources help us understand the agricultural writers' treatment of the issue further.

When selling a slave, according to the Edict of the Aedile, one had to declare their defects. This rule is established by Ulpian at Dig. 21.1.1, where it is also stated that some defects would have caused a lessening of the human chattel's value. Marcellus notes that the value of a *servus* who had been temporarily put in chains as a punishment was subsequently reduced (Dig 21.1.27):<sup>482</sup>

Marcellus, *Digest*, book 5: **The mortgagor of a slave chained him for a trivial offense, then unchained him.** The debt was not paid and **the creditor sold the slave for less.** Should the creditor be given an action against the debtor, as the action on the loan does not suffice to enable him to recover the residue? Suppose the debtor to have killed him or put out his eye? If he killed him, he is liable in the action for production. If he put his eye out, we shall allow an action as if for wrongful damage to the extent that the weakening or chaining reduced the value of the action on mortgage. Imagine that because of a procedural error the action on the loan fails. I think the praetor might well take note and give a remedy. Ulpian notes: he is liable **if he chained the slave to harm the creditor**, not if the slave deserved it.

This passage thus reveals the consequences of chaining from the perspective of the slave-owner. However, this private management tool had clear legal consequences for the enslaved themselves too. Gaius' remarks on the *lex Aelia Sentia* (*Inst.* 1.13) which were brought up in Chapter 4 regarding marked slaves also apply to chained *servi*. Fetters were, in fact, one of the many private punitive measures which, once imposed, would have barred the enslaved from gaining full citizenship: slaves who had been chained, upon manumission, would have become *dediticii* only.

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<sup>482</sup> *Servum, quem quis pignori dederat, ex levissima offensa vinxit, mox solvit, et quia debito non satisfaciebat, creditor minoris servum vendidit. An aliqua actio creditori in debitorem constituenda sit, quia crediti ipsius actio non sufficit ad id quod deest persequendum? Quid si eum interfecisset aut eluscasset? Ubi quidem interfecisset, ad exhibendum tenetur; ubi autem eluscasset, quasi damni iniuriae dabimus actionem ad quantum interest, quod debilitando aut vinciendo persecutionem pignoris exinanierit. Fingamus nullam crediti nomine actionem esse, quia forte causa ceciderat; non existimo indignam rem animadversione et auxilio praetoris. Ulpianus notat: si, ut creditori noceret, vinxit, tenebitur, si merentem, non tenebitur.*

Considering that the later juridical literature paired significant repercussions (on both *domini* and *servi*) with this punishment, chains would have constituted quite a strong juridical category in Cato's and especially in Columella's mind. This would have rendered it redundant and counterproductive to add further details. The intended readership of the agricultural writers was made up of slave- and land-owners who shared the writers' same knowledge and concerns – a little lexical reminder would have been enough to create awareness about servile punishment without irreversibly spoiling the harmonious picture.

## Conclusion

This chapter has shown that the themes of servile delinquency and punishment, although not being extensively and separately discussed as in the Antebellum South manuals, are yet present in the treatises of the agricultural writers. The initial hesitancy in acknowledging the presence of servile 'crime and punishment' in the works of Cato, Varro and Columella is ascribable to a double set of reasons: firstly, modern readers (for the most part) lack the juridical knowledge of their contemporaries, thus missing important innuendos; secondly, these manuals do not give an account of the Roman rural economy as it was, but rather as it should ideally have been, thus marginalizing the theme under scrutiny here in the pretty images they paint. The two reasons are correlated.

This said, the capability to decode the more and less obvious hints at misbehaving (and punished) *servi* is another mechanism through which the agricultural writers strengthen the values of the social class to which they belong. If Diederich and others have been right in highlighting the literary, religious, and philosophical aspects intertwined with the actual agricultural teachings, and in proving how they are all fused together to support the social category of *nobilitas* and the *mos maiorum*,<sup>483</sup> the same effect needs to be recognized for the juridical knowledge that is embedded in the three manuals: legal thinking, too, however distanced from the realm of law actually, gives away the member of the Roman elite – authors and readers alike. In short, the agronomists' juridical knowledge allows us to see through the edulcorated picture of the estate, exposing the realities of slave-owning that stood behind that rosy picture.

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<sup>483</sup> Diederich (2013).

As partly illustrated in Chapter 1 too, thieving and running away are the offences most recurrently associated with the enslaved in the (later) legal writings, with an overabundance of details. Cato and Columella, too, explicitly mention the slaves' *fraus* and *fuga* and given the overlap between the insistence of both the jurists and the agricultural writers, we must interpret servile thieving and escape as worries common to slave-owners that became mirrored and consolidated by the (mostly) later juridical discussion. The scattered way in which the two problems are approached renders even these explicit examples not as immediately apparent to the modern readers, yet the two delicts are openly named by Cato and Columella. Varro's more cryptic stance, on the other hand, constitute an even more solid proof that the agricultural writers drew on the same line as the lawyers did when it came to servile delinquency in the *fundus*. When discussing the enslaved's *fuga* through snails and bees (the former guarded by a *fugitivarius*, the latter likely to become *fugitivae*) we needed contextualization through the legal texts, but the original audience would not have been mistaken. While not a topic pursued in the present thesis, the use of animal analogies, already seen in the preceding chapter (there with regard to ants and to Lucius-ass more in general), emerges as a notable element of the textual discourse here analysed. This recalls, also from this angle, the embeddedness of the discourse under scrutiny in the broader sea of the masterly approach to the enslaved – only too often animalized in the slave-owner's mind or at the very least understood in relation to the animal world, a point to be returned to shortly.

Additionally, the works of the agricultural writers appear as forerunners when it comes to the servile punishment issues crystallized in the juridical discourse. Cato and Columella described *servi* respectively as *compediti*, *vinciti* and *alligati*, making unambiguous references to the punishment of fetters. Their application, given the later crucial repercussions on both the enslaved's and the owner's side reported in the juridical writings, must have been a strong category in the slave-owner's mind. The agronomists, then, presented these punishments as mere results: indeed, the readers would have no doubt picked up on how and when to impose them. Even Varro's lashes are presented as a mere result, with no specification on the nature and the circumstances of this chastisement. The three authors, however, are unanimous in *patently* expressing the necessity of a fair punishment system, where chastisements are commensurate with the offences committed (in their eyes), and where the whip is the last resort, at least if the same outcomes can be obtained through words.

Of course, it could be argued that the themes that have been central to my explorations are mere *topoi*, devoid of deeper meaning. Clearly, the preoccupation with moderation and fairness, when deliberating on punishment, as well as the rapacious nature of slaves are also evident in much earlier authors, including in Greek literature. However, this does not make these themes any less meaningful in a Roman context: indeed, the way the agricultural writers interacted with them, adapted them, foregrounded or diminished them reveals much about their own specific context and understanding. By way of example, let us consider the very last remark made by Ischomachus in Xenophon's *Oeconomicus* (21.12). This concerns the godlike capacity of he who is able to win willing obedience over his subordinates, rather than enforcing a counterproductive despotic rule. This lesson is no doubt received and observed by the agricultural writers, judging from the way they approach the issue of punishment. At the same time, though, when Ischomachus mentions servile thieving (14.2) and his blending of Dracon's, Solon's and the Persian king's laws to deal with offending slaves (14.4–7), he indirectly gives us a range of offences which are potentially committable by slaves,<sup>484</sup> and also indicates some corresponding punishments (i.e. demotion, at 14.8) in a way that clashes with the approaches of Cato, Varro and Columella, who gloss over the themes of precise offences and chastisements. Predictably, the concerns of the Greek and Roman land- and slave-owners are rather similar, but the comparison illustrates how these concerns, expressed in *topoi*, are used for the Roman agricultural writers' pursuits. The different approach to slave 'crime and punishment' is essential to the goal of their writing. Without wasting unnecessary details on the issue, Cato, Varro and Columella would have painted the image of a peaceful, ideal *fundus*. This, in turn, would have proved the point that their perfect rule would have created a perfect estate. On such thoughtfully and carefully managed estates, there is no need to talk about servile discipline openly, simply because this is a problem that does not arise. The agricultural writers portray themselves as masters treating their slaves benevolently, and, as a result, no impulse to misbehave is felt by the enslaved.

Servile 'crime and punishment', however, are such strong categories and pivotal worries, that they creep out also in the depiction of the idyllic estate, managed by the impeccable and magnanimous master. They are only plainly visible to those who can detect the relevant hints, but this is enough to spoil the picture for those in the know and to prove that such concerns were always in the back of the Roman slave-owner's mind. It is at this juncture that the witty

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<sup>484</sup> Among which, however, running away does not appear.

approach displayed by Varro when drawing on animals comes full circle. Notably, Varro's bees and snails are used to epitomize the idle, wicked and fast-legged human run-away – a contradiction in terms, and one that is deliberately depicted not so much to animalize the enslaved but to comment on the obsession of the ideal estate owner with the control of the estate's servile population. What Varro was after in writing may escape us forever. However, we can be in no doubt that his choice of putting *fugitivi*, in the animal world, *where they do not belong*, underscores the point here advanced, i.e. that servile crime and punishment was a central tenet of the Roman estate owner's mind, so much so that it provided a perfect locus for satirical comment on the part of Rome's most learned mind.<sup>485</sup>

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<sup>485</sup> The reading of Varro's work in the already mentioned Nelsestuen (2015) demonstrates fully that the agronomist is a deep satirist.

## CONCLUSION

This thesis commenced with an odd bandying of compliments between the enslaved Leonidas and Libanus, and it is with the unusual words of their master, Demaenetus, that it ends. The slaves' reciprocal panegyrics set our scene, revealing the centrality of 'crime and punishment' in the representations of servile life passed on to us by the masters-writers. What triggered their exchange was the successful scam devised by the duo to procure Demaenetus' son, Argyrippus, the twenty silver minas that he needed to conquer his love interest. The sum, as is well known, was stolen from the dowry of Demaenetus' wife and, surprisingly, the instigator of this domestic theft was not Argyrippus, but Demaenetus himself. Determined to help his son, the father implores Libanus to team up with Leonidas and find the money. When asked by his slave where from, he firmly replies (*Asin.* 91):

*me defrudato.*

**once you have cheated me.**

Demaenetus renews the same invitation, detailing it further at *Asin.* 96–97, and finally tells his slave to take whatever dishonest action is necessary (*Asin.* 102):

*fabricare quiduis, quiduis comminiscere*

**forge** anything you like, **devise** anything you like!

The banter between the master and the slave (who only agrees to help when reassured about the fact that he will receive no punishment) efficiently sums up the points raised in the course of the six chapters of this work, disclosing in the process more about the *dominus* than about the lived reality of the *servus*. Notably, it has been widely remarked that, by making the success of the intrigue dependent on the slave's *ingenium*, Demaenetus is further ridiculed.<sup>486</sup> This *ingenium*, as is customarily the case in Plautus' comedies, is inextricably linked to the trope that slaves are prone to trickery. This means that we have here another example of the conceptual use of the enslaved observed in this thesis: the crux of the joke hinges on servile delinquency (intended in a broader sense) and is functional to the pursuit of the author's agenda, which, in this case, is the creation of comic effect.

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<sup>486</sup> Dunkin (1946), Hurka (2010).

This conceptual employment of the delinquent slave, however, as was demonstrated, is not always so patent. It becomes much subtler, through the use of legal echoes, when there is more than just a laugh at stake.

Such legal echoes must have been more apparent to an ancient audience than a modern one since they were used to raise meaningful points that arose from ancient reality. Thus, in order to unlock these resonances in the literary texts, we began with a prolonged consideration of the juridical pronouncements on servile ‘crime and punishment’. A detailed examination of the topic as expressed in the *summa* of Roman law codes, the Digest, was undertaken in Part I, furnishing us with the means to tackle more productively a selection of key literary works. Combining these heterogeneous pieces of evidence, it was demonstrated that the kind of thought characteristic of the jurists was in fact a cornerstone of the Roman slave-owner’s mind-set more generally, even when engaged in literary writing.

Aside from the broader argument of this thesis, a study of slave ‘crime and punishment’ in the juridical literature was very much needed *per se*. In the modern discussions of ‘crime and punishment’ in the Roman world, slaves are conspicuously absent. Scholarly contributions with wide breadth especially grant *servi* only fleeting mentions and at best associate them with the lower strata of society in describing them as one single social group suffering the most severe legal treatment. Slaves are denied any kind of relevance through this lack of individual (let alone comprehensive) consideration. In the realm of law, where the enslaved are defined as *res*, there is a certain hesitancy to elevate them as more than objects of proprietary rights. On these premises, it is problematic to place the enslaved in the sphere of delinquency. Moreover, since any breach of criminal law provokes consequences, procedures and safeguards only properly affecting those who have legal standing (i.e. people, not things), studies on criminal law have mostly concentrated on free perpetrators. In privileging the perspective and the agency of the free, we might believe that we are reproducing the ways of the class-conscious Roman elite, who gathered, in their juridical outputs, the preoccupations of the *ingenui* only. And yet, while the modern perspective tends to dismiss the figure of the enslaved when it comes to ‘crime and punishment’, Roman jurists were perfectly capable of voicing their concerns of *ingenui*, while also incorporating a rather acute conceptualization of *servi*. There might not have been a separate ‘Roman law of slavery’ to use Buckland’s phrasing, but in being dealt with next to the free, slaves were far from being neglected.

In exploring the legal writers' approach, Chapter 1 highlighted the nuanced conceptualization of *servi* in the juristic sources, even with regard to the most expected servile role, i.e. that of the receiving party of offences. Looking at the juridical pronouncements with a fresh and focused perspective, it was established that in this context the enslaved obtain a triple configuration: conceptual objects, material objects and victims. The Digest shows a systematic reliance on the figure of the slave when the jurists wish to elucidate crucial points of criminal law. *Servi* stand out as the quintessential examples, and they are thereby doubly reduced to their role of things, being devised as conceptual tools to exemplify the law. When portrayed at the actual receiving end of offences, slaves are discussed in relation to delicts targeting property rights and serious crimes. In the latter case, sufferers of servile and free legal standing are generally put on the same footing, but only because the crimes considered reverberate on the whole fabric of society – violence for violence's sake must be avoided to keep the *status quo*. However, some juridical concerns for the physical and mental well-being of the enslaved are not subordinated to the interest of the freeborn. At times there are even hints of empathy in the juristic discussion (e.g. of *iniuria*). The lack of repercussions for physical and verbal aggressors towards slave victims is shown to be unacceptable on the account of the slaves' perception of pain and personal disposition – an explicit and potent reminder of the recognized human nature of the enslaved.

An even more patent awareness of the human character of their *res* is shown by the jurists when discussing the enslaved as perpetrator of offences, displaying initiative, judgement, and a drive for personal gain. Chapter 2 challenged rather forcefully the idea that the enslaved is mostly an item of property in the minds of the jurists. Servile agency was brought to the fore,<sup>487</sup> paying heed to the plethora of offences in which, at least in the jurists' construction, slaves could act as offenders. Interestingly the list of crimes and delicts that *servi* can commit is significantly longer than that of those they can suffer. Along with offences to which slaves can both be the object and the subject, the jurists envisage *servi* only in active roles (i.e. as perpetrators, but not as sufferers) when considering certain crimes. Some behaviours, moreover, are perceived as criminal solely when exhibited by *servi*. The recognition of servile agency, thus, reaches its peak with these 'exclusively servile' offences, but slave delinquency, in general, is handled by

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<sup>487</sup> Servile agency is scarcely addressed in the large part of the existing bibliography on ancient slavery, especially after Patterson (1982), according to Vlassopoulos (2021). This claim is, however, somewhat overdone: see especially the comments of Bradley (2022) 230, who explains that, in the recent past, issues like slave resistance, identity and emotions have indeed been brought to the fore.

the jurists with a curious amount of detail. This demonstrates that servile breaches of the law were not underplayed by them, but actually contemplated as tangible possibilities, which thus needed to be furnished with remedies on any occasion. The broad domain of servile agency traced by the jurists, however, was not the only surprising finding of the chapter: the topic also offers the jurists occasion to reflect on the relationship between slaves and masters, considering masterly instigations to criminal behaviour, servile obedience and exercise of judgement.

Chapter 3 tackled servile punishment using the lens of agency. Thus, rather than focusing on brutal chastisements as heinous (and de-humanizing) servile prerogatives, the exaction of these punishments on the enslaved was seen as an expression of the juridical recognition of their responsibility and liability. In doing so, the chapter also revised the idea that the enslaved, when apprehended, was dealt with solely on the basis of their legal status. Analysis of the most gruesome forms of bodily chastisements and physical coercion highlighted how these chastisements are not discussed with regard to slaves exclusively. Rather, they are paired with perpetrators of undetermined status – which encourages us to see the enslaved and the free on the same level before the law, at least when committing the most serious criminal offences. The *servus* is singly described in conjunction with disciplinary measures only when these are applied to punish what we termed as ‘exclusively servile’ offences. Rather than pushing the passivity of the *servus*, then, the discourse on punishment paradoxically enlarged the area of servile agency, adding more offences to the already high number of those that the enslaved could commit *qua* enslaved (as seen in Chapter 2). The strong emphasis placed by the jurists on the enslaved as perpetrators is not matched with an insistence on the enslaved as the objects of punishment. When deliberating on punitive measures, indeed, the jurists pondered over multiple factors, among which the legal status of the criminal was not predominant.

The image of the *servus* that we receive from the Digest provisions on slave ‘crime and punishment’ has less oppressive tones than expected,<sup>488</sup> especially in view of its vision of a broad spectrum of servile agency. Yet, we must not over-interpret the evidence as indicating some open humanitarian concerns: although some pronouncements are compelling, there is no validation of what may be called slave rights, not even in an embryonic form. As has been argued on the basis of legal evidence from a different period and society,<sup>489</sup> what interests the

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<sup>488</sup> A similar conclusion is reached by D. Lewis (2018) with regard to the slaves of the Gortyn law code as compared to enslaved people from other Greek regions.

<sup>489</sup> See the point raised by D. Lewis (2013) on slave marriage in the Gortyn law code.

jurists is providing solutions to the problems created by (dealings with) the enslaved. Hence, we must see the Roman jurists as showing a deep understanding of the compound figure of the *servus* – as *res* and as human – and the issues engendered by such a dual nature, rather than advocating for the enslaved themselves.

In capturing the complexity of the enslaved and their hybrid nature, legal writers showed a host of opportunities for them to break the law to the detriment of their masters, and thus repeatedly acknowledge a threatening aspect of slave-ownership. On the other hand, literary texts seemed to work precisely so as to exorcise these worrying scenarios. The main area of pronouncement of the jurists was servile ‘crime’: the enslaved as perpetrator was repeatedly and individually designated as such, with a meticulous recounting of the ostensibly plentiful situations in which they could have broken the traditionally passive mould. Servile ‘punishment’, on the other hand, is the focal point of literary texts. Slave-owners appear obsessed with the topic as it represents a way for them to constantly (re)configure themselves as in control of their troublesome property, at least in the world of fiction. The “fears and anxieties which conditioned the lives of slaves”, to use the words of Bradley,<sup>490</sup> were mirrored by a whole set of preoccupations in the mind of the slave-owners, all circling around the matters of authority and discretion.<sup>491</sup> These are critical issues when managing someone who, despite being allocated the legal status of *res* (and also in a context in which this ‘material’ perspective should be prevailing), is nonetheless conceived as possessing all the faculties of a human being.

The aforementioned contrast between the legal and literary approach to slave ‘crime and punishment’, however, thrives from a similar understanding and use of this theme, as illustrated in the three case studies analysed in Part II of this work: Petronius’ *Cena Trimalchionis*, the inserted tales of Apuleius’ *Metamorphoses* and the three manuals of the agricultural writers highlighted a common ground between their authors and the jurists, who indeed belonged to the same social pool of elite slave-owners.

To begin with, in Chapter 4, we realized that, at the most famous dinner banquet of Latin literature, Petronius allotted a pivotal role to Trimalchio’s slaves. Featuring in the numerous punitive sketches, they do create humorous detours (if considered from a master’s perspective), and also elaborate on the pretentious attitude of the host, depicted *prima facie* as a freedman.

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<sup>490</sup> Bradley (1987) 143.

<sup>491</sup> On fear of slaves, and of enslavement, in the Graeco-Roman world, see the collection of essays in Serghidou (2007).

However, at a deeper level of scrutiny, Trimalchio's mistreated slaves are the backbone of Petronius' ferocious satire of the imperial justice system. The freedman starts to resemble the emperor when he accuses his slaves of the most absurd misdeeds, forces them to commit them, and finally pardons them to parade his clemency. Nevertheless, his actual punitive responses unveil his most ruthless side: harmless behaviours are disciplined with chastisements normally meted out by the Roman jurisdiction for crimes that subvert and endanger the social order. Upon further analysis, however, these innocent acts appear as attacks upon Trimalchio's imperial aspirations. Trimalchio's misplaced court of justice in the dining room, then, duplicates and amplifies all the shortcomings of the official jurisdiction, now answering to one unappealable authority. His *servi*, on the other hand, being defenceless at the mercy of their master, figure as counterparts to the Roman citizens, caught in the clutches of their *principes*.

The need to establish an absolute domain over human chattel is also expressed where one would less anticipate that this would be the case. Thus, Chapter 5 highlighted the grisliest portrait of masterly authority in a novel whose protagonist, Lucius, should show compassion, as he has been proven to undergo a process akin to falling into slavery.<sup>492</sup> What is more, this cruel affirmation of the slave-owner's discretion and authority occurs in what is an unconnected addition, if seen through the lens of the advancement of the *Metamorphoses'* main plot. In the inserted tale of the *vilicus*, narrated by Lucius, the disruption created by the initiative (and possibly the ambition) of a slave is overshadowed by the masterly intervention to contain it – a total annihilation at the hands of minuscule ants. The employment of these insects to this end creates humorous nods, but the laugh of the master becomes more resounding if one understands the exemplary and symbolic value of such a chastisement. The re-establishment of order by the *dominus* on his estate, in fact, is embodied by the comic perversion of the *lex Petronia*, a legal provision that was instituted precisely to curb the slave-owners' powers over their human property. The boundaries between private and state jurisdiction appear once again blurred.

While for Petronius and Apuleius obedience seemed easier to impose than to earn, Cato, Varro and Columella dissented. In their treatises, explored in Chapter 6, the insistence on the most brutal expressions of slave discipline is absent, while servile punishment is addressed quite

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<sup>492</sup> Shumate (1996) rightly claims that if Lucius prides himself in being very open minded at the beginning of the story (*Met.*1.4), this is a quality that he simply parades, not only as a man, but also when he is turned into a donkey, a condition which should make him more aware of different situations and perspectives.

broadly, brandishing a paternalistic attitude. There is no detailed account of the dimension of ‘crime’ in the agricultural writers, and the subject is almost completely dismissed. This could strike us as extremely telling, since these prescriptive texts give the illusion of presenting a realistic account of slave management. The treatment of servile ‘crime and punishment’, though, is one of the hints illustrating that this was not the case and that the agricultural writers elaborate merely on the ideal estate. Hence, a systematic dissertation on servile discipline is not included as it compromises their aim of outlining the idyllic *fundus*, a goal that can be accomplished by following their impeccable rules. And yet, on a closer inspection, encoded servile offences surface on bewildering occasions, and with comic undertones, demonstrating that slave insubordination is a preoccupation persistently lurking at the back of the slave-owner’s mind. Indeed, the overlap between the servile offences mentioned by the agricultural writers and those most heavily associated with the enslaved by the jurists configures the concerns of the agronomists as masterly preoccupations also crystallized in the juridical literature, and more prominently so especially in the later, richer legal texts. The same applies to punishment, alluded to with terms charged with juridical meanings that rendered it unnecessary to delve into meticulous explanations. Despite the wide and cursory approach, the agricultural writers do concede that there is a disciplinary dimension to the running of their estates – but only for the reader who can latch on the legal allusions.

What emerges from this whole discussion is that enslaved individuals have an extremely malleable characterization in Roman law. In the juridical texts, this malleability works in favour of a more detailed recognition of the slave’s role(s) in the eye of the jurists. In the same way that the jurists were using *servi* as quintessential examples, the literary authors also exploited the figure of the delinquent enslaved to their own ends. Spared, punished and self-driven *servi* were put on the scene to underline the abuses of imperial authorities and to alleviate the anxiety of not being in charge (when the power over *servi* needs to be mediated through public justice); they were also concealed or dressed up in animal disguises to apply a rosy and fitting veneer to the rural estate and its management.

Taking the findings from Part II to its extreme, it may be fair to say that the punch line of all these literary texts, then, rests upon the slave. *Servi*, long relegated to the roles of cosmetic and comic background additions, at a deeper scrutiny come to the forefront as formidable conceptual tools, with the most disparate potentiality of figurative exploitation. This ingenious use of the delinquent enslaved, however (and contrary to the exchange between Demaenetus

and Libanus with which we began), often remains unnoticed, if we bypass the legal knowledge clearly presupposed by the ancient writers.

This preparedness to use legal allusions in association with delinquent slaves is another trait that associates law and the writers of literature. Such legal resonances also titillate (more or less explicitly) the slave-owners' humour. But upon closer inspection, the laughs caused by Petronius' slaves, Apuleius' ants, Varro's bees and snails are all bitter at a higher level *for* the slave-owner. The physical abuse of slaves becomes a satirical metaphor for the mistreatment of citizens by the *princeps*, gives the slave-owner the fictional, comforting, but ultimately depraved illusion of being a little emperor in his own estate, and warns the absentee master that servile delinquency will find its way, even among the most unexpected subordinates – thus permanently challenging even the best of estates, and hence the slave-owners' very designs.

A fuller appreciation of the legal background to slave 'crime and punishment' therefore enables us to discover an entirely new layer of meaning in a variety of literary works. And reading, vice versa, these texts with a heightened awareness of possible legal dimensions helps us realize the pervading influence of the law in most aspects of Roman daily life. The formulations, agreements and disagreements of the jurists reveal how they thought about, acted and reacted to law. This has been widely recognized, shelving the presumption that Roman law was an abstract entity with limited contact with 'real life'. To bolster this argument, this thesis has shown that it is not only the mind of legal practitioners and writers that can be better appraised through the exploration of the legal texts. Indeed, law emerged as a type of knowledge deeply ingrained in the mind of the Roman slave-owning elite, at least when they reflected on the exploitation of human beings (which we must assume to have happened on a virtually day-to-day basis).

The importance of law in matters of servile 'crime and punishment' could have been, in a way, predicted. Roman law endowed masters with an almost uncontested power over their human chattel and the menace of servile delinquency challenged this very notion. The human nature of the enslaved, however, could not be erased by *dominium*: ownership of *servi* compromised neither the enslaved individuals' ability and will to challenge this ownership, nor the response of the central power to the masters' reactions to deviant behaviours. It is natural, then, that the field of 'crime and punishment' provides fertile ground for reflections on masterly authority and discretion, which both emanate from the main issue of servile management. The fact that this thematic cluster appears even in texts seemingly totally detached from the theme of slave

management is indicative. It also suggests the possibility, or rather probability, that a much larger body of literature reveals traces of these same concerns.

Servile management, and legal discourses thereon, were seemingly a staple of the Roman slaveholders' mind-set, a mind-set that was beset by anxiety with regard to their human property. The exercise of ownership over human beings fosters a climate of fear and disquiet at *each* extremity of this relationship. Despite the undeniable greater vulnerability of the enslaved in the said dynamic, there is a perceptible nervousness on the masters' part too, given the dependency from and the unpredictability of the human chattel. Moreover, this very anxiety is redeployed, fittingly, at junctures that destabilize the very standing of Rome's slave-holding, free elite itself, under imperial government. As I hope to have shown in this thesis, much can be gained from exercising awareness of these matters when exploring both legal and literary texts. By using such apprehension of the Roman *domini* as a lens – detecting the whole set of implications of the delinquent slave as a conceptual instrument, and the interpenetration between the legal and literary spheres – new hermeneutic possibilities open up, even for the most hackneyed works, and probably beyond the Latin realm of Roman literature too.

## BIBLIOGRAPHY

- Abbott, F. F. (1907), 'The use of language as a means of characterization in Petronius', *CPh* 2, 43–50.
- Albanese, B. (1959), 'Actio servi corrupti', *Annali del Seminario Giuridico dell'Università di Palermo* 27, 5–152.
- Amielańczyk, K. (2020), 'Slave as a subject of legal protection in the Roman public criminal law: a contribution to the discussion of the situation of slaves in the Roman state', *Studia Iuridica Lublinensia* 24, 11–27.
- Andreau, J. (2009), 'Freedmen in the *Satyrice*', in J. Prag & I. Repath (eds.), *Petronius: a Handbook*, Oxford, 114–24.
- Andreau, J. & Mancourant, J. (1999), 'À propos de la "rationalité économique" dans l'antiquité gréco-romaine', *Topoi Orient-Occident* 9, 47–102.
- Annequin, J. (1998), 'Lucius–asinus, Psyché–ancilla. Esclavage et structures de l'imaginaire dans les Métamorphoses d'Apulée', *Dialogues d'Histoire Ancienne* 24, 89–128.
- Astin, A. E. (1978), *Cato the Censor*, Oxford.
- Aubert, J. J. (2002), 'A double standard in Roman criminal law? The death penalty and social structure in Late Republican and Early Imperial Rome', in J. J. Aubert & A. J. B. Sirks (eds.), *Speculum Iuris: Roman Law as a Reflection of Economic and Social Life*, Ann Arbor, 94–133.
- Aubert, J. J. (2013), 'Dumtaxat de peculio: what's in a *peculium*, or establishing the extent of the principal's liability', in P. J. Du Plessis (ed.), *New Frontiers. Law and Society in the Roman World*, Edinburgh, 192–206.
- Avery, W. T. (1960), 'Cena Trimalchionis 35.7: Hoc est ius cenae', *CPh* 55, 115–8.
- Ávila Vasconcelos, B. (2009), *Bilder der Sklaverei in den Metamorphosen des Apuleius*, Göttingen.
- Bagnani, G. (1954), *Arbiter of Elegance*, Toronto.

- Balzarini, M. (1984), 'Pene detentive e *cognitio extra ordinem criminale*', in *Sodalitas. Scritti in Onore di Antonio Guarino*, 6, Napoli, 2865-90.
- Barrow, R. H. (1937), *Slavery in the Roman Empire*, London.
- Bartsch, S. (1994), *Actors in the Audience. Theatricality and Doublespeak from Nero to Hadrian*, Cambridge (MA) & London.
- Bauman, R. (1965), *Crime and Punishment in Ancient Rome*, London.
- Bauman, R. (1974), *Impietas in Principem. A Study of Treason against the Roman Emperor with Special Reference to the First Century A.D.*, Munich.
- Bauman, R. (2000), *Human Rights in Ancient Rome*, London & New York.
- Bechtle, G. (1995), 'The adultery-tales in the ninth book of Apuleius' *Metamorphoses*', *Hermes* 123, 106–16.
- Bedon, R. (1996), 'Pétrone, Satiricon, XXX, le dispensator Cinnamus', *Bulletin de l'Association Guillaume Budé* 2, 151–66.
- Beggio, T. (2020), *Contributo allo Studio della Servitus Poenae*, Bari.
- Bellen, H. (1971), *Studien zur Sklavenflucht im römischen Kaiserreich*, Wiesbaden.
- Beltrami, L. (1998), *Il Sangue degli Antenati. Stirpe, Adulterio e Figli Senza Padre nella Cultura Romana*, Bari.
- Beness, L. (1998), 'When the punishment rivals the crime: the sack treatment and the execution of C. Villius', *Ancient History* 28, 95–112.
- Benke, N. (2015), 'On the Roman father's right to kill his adulterous daughter', in M. Lanzinger (ed.), *The Power of the Fathers. Historical Perspectives from Ancient Rome to the Nineteenth Century*, London & New York, 6–30.
- Benoist, S. & Gangloff, A. (2019), 'Culture politique impériale et pratique de la justice: regards croisés sur la figure du prince "injuste"', in O. Hekster & K. Verboven (eds.), *The Impact of Justice on the Roman Empire*, Leiden, 19–48.
- Benson, G. C. (2019), *Apuleius' Invisible Ass: Encounters with the Unseen in the Metamorphoses*, Cambridge.

- Beran, Z. (1973), 'The realm of sensory perception and its significance in Petronius' *Satyricon*', *Živa Antika* 23, 227–51.
- Berger (1953), 'Encyclopedic dictionary of Roman law', *TAPhA* 43, 333–809.
- Bernhard, M. (1927), *Der Stil des Apuleius von Madaura: ein Beitrag zur Stilistik des Spätlateins*, Stuttgart.
- Bertrand-Dagenbach, C. (ed.) (1999), *Carcer I. Prison et Privation de Liberté dans l'Antiquité Classique*, Paris.
- Bertrand-Dagenbach, C., Chauvot, C.A., Salamito, J. M. & Vaillancourt, D. (eds.) (2000), *Carcer II. Prison et Privation de Liberté dans l'Empire Romain et l'Occident Médiéval. Actes du Colloque de Strasbourg*, Paris.
- Birks, P. (1985) 'The Roman law concept of *dominium* and the idea of absolute ownership', *Acta Juridica* 1, 1–37.
- Birks, P. (1997) 'Harassment and Hubris: the right to an equality of respect', *Irish Jurist. New Series* 32, 1–45.
- Blanquez Pérez, C. (1986), *El mundo romano a través de la obra de Apuleyo (delito, delincuente y castigo en las Metamorfosis)*, PhD thesis, Univerisdad Complutense de Madrid.
- Blanquez Pérez, C. (1987), 'Desigualdades sociales y praxis jurídica en Apuleyo', *Gerión* 5, 119–31.
- Bodel, J. (1999), 'The *Cena Trimalchionis*', in H. Hofmann (ed.), *Latin Fiction: the Latin Novel in Context*, London & New York, 38–51.
- Bodel, B. (2010), 'Kangaroo courts: displaced justice in the Roman novel', in F. de Angelis (ed.), *Spaces of Justice in the Roman World*, Boston, 311–30.
- Bogen, D. S. (1992), 'Ignoring history: the liability of ships' masters, innkeepers and stablekeepers under Roman law', *The American Journal of Legal History* 36, 326–60.
- Boldrer, F. (1996), *L. Iuni Moderati Columellae Rei Rusticae Liber Decimus (Carmen de Cultu Hortorum)*, Pisa.
- Bömer, F. (1966), 'Der Eid beim Genius des Kaisers', *Athenaeum* 44, 77–133.

- Bonfiglio, B. (1998), *Corruptio Servi*, Milan.
- Boyce, B. (1991), *The Language of the Freedmen in Petronius' Cena Trimalchionis*, Leiden.
- Bradley, K. (1987), *Slaves and Masters in the Roman Empire: a Study in Social Control*, Brussels.
- Bradley, K. (1988), 'Roman Slavery and Roman Law', *Historical Reflections/Réflexions Historiques* 15, 477–95.
- Bradley, K. (1994), *Slavery and Society at Rome*, Cambridge.
- Bradley, K. (2012), *Apuleius and Antonine Rome: Historical Essays*, Toronto, Buffalo & London.
- Bradley, K. (2021), 'All's well that ends well? A reflection', *Ancient Narrative* 18, 1–17.
- Bradley, K. (2022), 'Historicising ancient slavery', *Slavery & Abolition* 43, 229–231.
- Brasiello, U. (1934), *La Pena Capitale Romana: a Proposito di Recenti Studi*, Naples.
- Brasiello, U. (1937), *La Repressione Penale in Diritto Romano*, Naples.
- Breeden, J. (1980), *Advice among Masters: the Ideal in Slave Management in the Old South*, Westport.
- Brehaut, E. (1933), *Cato the Censor on Farming*, Cedar Rapids.
- Brewster, P. G. (1943), 'A Roman game and its survival on four continents', *CPh* 38, 134–37.
- Brotherton, B. (1934), 'The introduction of characters by name in the *Metamorphoses* of Apuleius', *CPh* 29, 36–52.
- Bruno, M. G. (1969), *Il Lessico Agricolo Latino*, Amsterdam.
- Brunt, P. A. (1980), 'Evidence given under torture in the Principate', *ZRG* 97, 256–265.
- Buckland, W.W. (1908), *The Roman Law of Slavery*, Cambridge.
- Buckland, W. W. (1963), *A Text-book of Roman Law from Augustus to Justinian*, Cambridge.
- Burman, P. (1974), *Gaius Titus Petronius Arbiter Satyricon. Tomus primus. Curante Petro Burmanno*, reprint of the edition Amsterdam 1743, Hildesheim & New York.
- Cameron, A. (1976), *Circus Factions: Blues and Greens at Rome and Byzantium*, Oxford.

- Canevaro, M. (2018), 'The public charge for hubris against slaves: the honour of the victim and the honour of the hubristēs', *JHS* 138, 100–26.
- Cantarella, E. (2018)<sup>2</sup>, *I Supplizi Capitali. Origine e Funzioni delle Pene di Morte in Grecia e Roma*, Milan.
- Cardauns, B. (2001), *Marcus Terentius Varro. Einführung in sein Werk*, Heidelberg.
- Carlsen, J. (1995), *Vilici and Roman Estate Managers until AD 284*, Rome.
- Carlsen, J. (2010), 'Recruitment and training of Roman estate managers in a comparative perspective', in U. Roth (ed.), *By the Sweat of your Brow: Roman Slavery in its Socio-Economic Setting*, London, 75–90.
- Carrié, J–M. (2005), 'Une rationalité quand même', *Topoi Orient-Occident* 12, 293–303.
- Casartelli, A. (1998), 'La funzione distintiva del colore nell'abbigliamento romano della prima età imperiale', *Aevum* 72, 109–25.
- Cazzaniga, I. (1949), 'Il supplizio del miele e delle formiche: un motivo novellistico nelle Metamorfosi di Apuleio (VIII, 22)', *SPh* 46, 1–5.
- Cerami, P. (1991), '*Tormenta pro poena adhibita*', *Annali del Seminario Giuridico dell'Università di Palermo* 41, 31–51.
- Cheesman, C. (2009), 'Namens in *-por* and slave naming in Republican Rome', *CQ* 59, 511–531.
- Chilton, C. W. (1955), 'The Roman law of treason under the Early Principate', *JRS* 45, 73–81.
- Cicu, L. (1991), 'Fortunata', *Sandalion* 14, 63–102.
- Cloud, J. D. (1969), 'The primary purpose of the *lex Cornelia de sicariis*', in *ZRG*, 258–86.
- Coleman, K. M. (1990), 'Fatal charades: Roman executions staged as mythological enactments', *JRS* 80, 44–73.
- Coleman, K. M. (2018), 'The fragility of evidence: torture in ancient Rome', in S. A. Anderson & M. C. Nussbaum (eds.), *Confronting Torture: Essays on the Ethics, Legality, History, and Psychology of Torture Today*, Chicago & London, 105–19.

- Colin, J. (1952), 'All'uscita dal banchetto di Trimalchione: Petronio 79', *Rivista di Filologia Classica* 30, 97–110.
- Cook, J. G. (2014), *Crucifixion in the Mediterranean World*, Heidelberg.
- Corbino, A. (2005), *Il Danno Qualificato e la Lex Aquilia: Corso di Diritto Romano*, Padova.
- Courtney, E. (1980), *A Commentary on the Satires of Juvenal*, London.
- Cowan, E. (2016), 'Contesting *clementia*: the rhetoric of *severitas* in Tiberian Rome before and after the trial of Clutorius Priscus', *JRS* 106, 77–101.
- Crawford, M. H. (2010), 'From Alcibiades to Diocletian: slavery and the economy in the longue durée', in U. Roth (ed.), *By the Sweat of your Brow: Roman Slavery in its Socio-Economic Setting*, London, 61–73.
- Crook, J. A. (1967), *Law and Life of Rome*, Ithaca (NY).
- Crook, J. A. (1987), '*Lex Cornelia de falsis*', *Athenaeum* 65, 163–71.
- Crum, R. H. (1952), 'Petronius and the emperors, II: *Pax Palamedes!*', *The Classical Weekly*, 45, 197–201.
- Cucchiarelli, A. (1998), 'Trimalchione e la cena di Marte (partendo da *Satyr.* 34.5)', *Studi Classici e Orientali* 46, 585–601.
- Cursi, M. F. (2012), '*Pati iniuriam per alios* (Gai. 3.221–222)', *Bullettino dell'Istituto di Diritto Romano Vittorio Scialoja* 106, 255–88.
- Davis, D. B. (1984), *Slavery and Human Progress*, Oxford.
- Daube, D. (1959), 'Doves and Bees', in *Droits de l'Antiquité et Sociologie Juridique. Mélanges H. Lévy-Bruhl*, Paris, 63–75.
- De Franceschini, D. (2005), *Ville dell'Agro Romano*, Rome.
- De Pascali, N. (2012), *I Servi Fuggitivi nella Società e nelle Legislazioni di Atene e di Gortina*, PhD Thesis, Università degli Studi di Ferrara.
- Debray, L. (1919), 'Pétrone et le droit privé romain (Suite et fin)', *Nouvelle Revue Historique de Droit Français et Étranger* 43, 127–86.

- Del Lago, E. & Katsari, C. (2008), 'Ideal models of slave management in the Roman world and in the ante-bellum American South', in E. Dal Lago & C. Katsari (eds.), *Slave Systems. Ancient and Modern*, Cambridge, 187–213.
- Del Prete, P. (1972), *La Responsabilità dello Schiavo nel Diritto Penale Romano*, Rome.
- Dell'Oro, A. (1960), *I Libri De Officio nella Giurisprudenza Romana*, Milan.
- Descheemaeker, E. (2013), 'Solatium and injury to feelings: Roman law, English law and modern tort theory', in E. Descheemaeker & H. Scott (eds.), *Iniuria and the Common Law*, Oxford, 67–95.
- Descheemaeker, E. & Scott, H. (2013), 'Iniuria and the common law', in E. Descheemaeker & H. Scott (eds.), *Iniuria and the Common Law*, Oxford, 1–31.
- Desideri, P. (2015), 'Gli spazi del 'fugitivus' nell'impero romano', in A. Beltran, I. Sastre & M. Valdès (eds.), *Los espacios de la Esclavitud y la Dependecia desde la Antigüedad*, Madrid, 385–93.
- Diederich, S. (2007), *Römische Agrarhandbücher zwischen Fachwissenschaft, Literatur und Ideologie*, Berlin & New York.
- Donahue, J. (2016), 'Party hard: violence on the context of Roman *Cenae*' in W. Riess & G. G. Fagan (eds.), *The Topography of Violence in the Graeco-Roman World*, Ann Harbor, 380–400.
- Dowden, K. (1993), 'The unity of Apuleius' eight book and the danger of beasts', in H. Hofmann (ed.), *Groningen Colloquia on the Novel V*, Groningen, 91–109.
- Du Plessis, P. J. (2013), 'Damaging a slave', in A. Burrows, D. Johnston & R. Zimmermann (eds.), *Judge and Jurist. Essays in Memory of Lord Rodger of Earlsferry*, Oxford, 157–65.
- Du Plessis, P. J. (2021), 'Trouble at the baths', *RIDROM* 26, 308–33.
- Dumont, J. C. (1987), *Servus. Rome et l'Esclavage sous la République*, Rome.
- Dunkin, P. S. (1946), *Post-Aristophanic Comedy: Studies in The Social Outlook of Middle and New Comedy at both Athens and Rome*, Urbana.
- Ebel, H. (1970), 'Apuleius and the present time', *Arethusa* 3, 155–76.

- Elster, M. (1991), 'Römisches Strafrecht in den Metamorphosen des Apuleius', in H. Hofmann (ed.), *Groningen Colloquia on the Novel IV*, Groningen, 135–54.
- Erdödy, J. (2020), 'SC Claudianum: positive feedback on property or defence of family bonds?', *Journal on European History of Law* 11, 152–59.
- Ernout, A. & Meillet, A. (1967), *Dictionnaire étymologique de la langue latine. Histoire des Mots*, 4<sup>th</sup> edition, Paris.
- Étienne, R. (1974), 'Recherches sur l'ergastule', in *Actes du colloque sur l'esclavage. Besançon 2–3 mai 1972*, Besançon, 249–66.
- Facchini, B. (2011), 'Giurisprudenza da favola. Note sul lessico giuridico delle Metamorfosi di Apuleio', *Lexis* 29, 301–24.
- Fanizza, L. (1979), 'Il parricida nel sistema della *lex Pompeia*', *Labeo* 25, 266–89.
- Fayer, C. (2005), *La Familia Romana: Aspetti Giuridici ed Antiquari. Parte Terza*, Rome.
- Finley, M. (1980), *Ancient Slavery and Modern Ideology*, New York.
- Fitzgerald, W. (2000), *Slavery and the Roman Literary Imagination*, Cambridge.
- Fitzgerald, W. (2018), 'Cruel narrative: Apuleius' Golden Ass' in M. Gale & D. Scourfield (eds.), *Texts and Violence in the Roman World*, Cambridge, 286–308.
- Fitzgibbon, J. C. (1974), 'Ergastula', *Echos du Monde Classique: Classical News and Views* 20, 55–59.
- Flusche, M. (1975), 'Joel Chandler Harris and the folklore of slavery', *Journal of American Studies* 9, 347–63.
- Fögen, T. (2016), 'All creatures great and small: on the roles and functions of animals in Columella's *De re rustica*', *Hermes* 144, 321–51.
- Forret, J. (2008), 'Conflict and the "slave community": violence among slaves in upcountry South Carolina', *The Journal of Southern History* 74, 551–588.
- Forschner, B. (2020), *Servus Dotalis. Der Sklave in der Ordnung des klassischen römischen Mitgiftrechts*, Wiesbaden.

- Foss, T. F. (2012), 'Roman ideas in the Late Republic about animals: pervasive cruelty as indicated and propagated in the *Bellum Catilinae* of Sallust and interrelating narrative. II', *Quaderni Urbinati di Cultura Classica* 102, 95–121.
- Franchi de' Cavalieri, P. (1907), *Della Furca e della sua Sostituzione alla Croce nel Diritto Penale Romano*, Rome.
- Francis, C. (2001), 'Telling tales in the *Metamorphoses* of Apuleius', *Acta Classica* 44, 53–76.
- Frier, B. W. (1982–1983), 'Bees and lawyers', *CJ* 78, 105–14.
- Frier, B. W. (1994), 'Why did the jurists change the law? Bees and lawyers revisited', *Index* 22, 135–49.
- Gagliardi, D. (1989), 'Il tema della morte nella 'Cena' petroniana', *Orpheus* 10, 13–25.
- Gallo, F. (1958), *Studi sulla Distinzione tra Res Mancipi e Res Nec Mancipi*, Turin.
- Gamauf, R. (2007a) 'Petronius 97: *Quaestio lance et licio* oder Rechtspraxis des ersten Jahrhunderts?', in C. Cascione & C. Masi Doria (eds.), *Fides Humanitas Ius. Studi in onore di Luigi Labruna*, Naples, 2037–45.
- Gamauf, R. (2007b), '“*Cum aliter nulla domus tuta esse possit...*”: fear of slaves and Roman law', in A. Serghidou (ed), *Fear of Slaves, Fear of Enslavement in the Ancient Mediterranean*, Besançon, 145–64.
- Gamauf, R. (2009a), 'Slaves doing business: the role of Roman law in the economy of a Roman household', *Revue Européenne d'Histoire* 16, 331–46.
- Gamauf, R. (2009b), '*Aliquid de iure gustare*: portrayal and criticism of lawyers in Petronius', in P. Mach, M. Nemeč & M. Pekarík (eds.), *Ius Romanum schola sapientiae. Pocta Petrovi Blahovi k 70. Narodeninám (Festschrift für Peter Blaho)*, Trnava, 151–65.
- Gardner, J. F. (2011) 'Slavery and Roman law', in Bradley, K. & Cartledge, P. (eds.), *The Cambridge World History of Slavery. Volume 1: The Ancient Mediterranean World*, Cambridge, 414–437.
- Garnsey, P. (1968), 'Why penalties become harsher: the Roman case, late republic to fourth century empire', *The American Journal of Jurisprudence* 13, 141–62.

- Garnsey, P. (1970), *Social Status and Legal Privilege in the Roman Empire*, Oxford.
- Garnsey, P. (2007), *Thinking about Property, from Antiquity to the Age of Revolution*, Cambridge.
- Giltaj, J. (2016), ‘*Existimatio* as “human dignity” in Late Classical Roman law’, *Fundamina* 22, 232–49.
- Gloyn, L. (2012), ‘She’s just a bird in a gilded cage. Freedwomen at Trimalchio’s dinner party’, *CQ* 62, 260–80.
- Grant, M. (2004), ‘Colourful characters: a note on the use of colour in Petronius’, *Hermes* 132, 244–47.
- Green, C. M. C. (1997), ‘Free as a bird: Varro *De re rustica* 3’, *AJPh* 118, 427–48.
- Gordon, M. L. (1960), ‘The nationality of slaves under the Early Roman Empire’, in M. Finley (ed.), *Slavery in Classical Antiquity. Views and Controversies*, Cambridge, 93–111.
- Grodzinsky, D. (1984), ‘Tortures mortelles et catégories sociales. Les *summa supplicia* dans le droit romain aux III<sup>e</sup> et IV<sup>e</sup> siècles”, in *Du châtime dans la cité. Supplices corporels et peine de morte dans le monde antique. Table ronde de Rome (9–11 novembre 1982)*, Rome, 361–403.
- Grondona, M. (1980), *La Religione e la Superstizione nella Cena Trimalchionis*, Brussels.
- Guasti, L. (2004), ‘Animali per Roma’, in E. Papi (ed.), *Supplying Rome and the Empire: the Proceedings of an International Seminar held at Siena–Certosa di Pontignano on May 2–4, 2004, on Rome, the Provinces, Production and Distribution*, Portsmouth, 138–52.
- Guiraud, C. (1997), *Varron. Économie Rurale. Livre III*, Paris.
- Guizzi, F. (1964) ‘Professionisti e no: il “*fugitivarius*” ’, in A. Guarino & L. Labruna (eds.), *Synteleia Vincenzo Arangio–Ruiz* 1, Naples, 237–39.
- Gundel, H. G. (1963), ‘Der Begriff *Maiestas* im politischen Denken der römischen Republik’, *Historia* 12, 283–320.
- Hales, S. (2009), ‘Freedmen’s cribs: domestic vulgarity on the bay of Naples’, in J. Prag & I. Repath (eds.), *Petronius: a Handbook*, Oxford, 161–80.
- Hammond, J. H. (1857–1858), *Plantation Manual*, South Carolina.

- Harper, K. (2010), 'Slave Prices in Late Antiquity (and in the Very Long Term)', *Historia* 59, 206–38.
- Harries, J. (2013), 'The *Senatus Consultum Silanianum*: court decisions and judicial severity in the early Roman Empire', in P. J. Du Plessis (ed.), *New Frontiers. Law and Society in the Roman World*, Edinburgh, 51–72.
- Hellegouarc'h, J. (1972), *Le Vocabulaire Latin des Relations et des Partis Politiques sous la République*, Paris.
- Hengel, M. (1977), *Crucifixion in the Ancient World and the Folly of the Message of the Cross*, Philadelphia.
- Hijmans, B. L., Van Der Paardt, R. Th., Schmidt, V., Settels, C. B. J., Wesseling, B. & Westendorp Boerma, R. E. H. (1985), *Apuleius Madaurensis, Metamorphoses, Book VIII. Text, Introduction and Commentary*, Leiden.
- Hijmans, B. L., Van Der Paardt, R. Th., Schmidt, V., Wesseling, B. & Zimmerman, M. (1995), *Apuleius Madaurensis, Metamorphoses, Book IX. Text, Introduction and Commentary*, Leiden.
- Hilton, J. L. (2009), *Furor, Dementia, Rabies: Social Displacement, Madness and Religion in the Metamorphoses of Apuleius*, Cape Town.
- Hirt, A. M. (2010), *Imperial Mines and Quarries in the Roman World. Organizational Aspects 27 BC–AD 235*, Oxford.
- Hölkeskamp, K. (2001), 'The Roman republic as theatre of power: the consuls as leading actors', in H. Beck, A. Duplá, M. Jehne & F. Pina Polo (eds.), *Consuls and Res Publica*, Cambridge, 161–81.
- Holzberg, N. (1993), *Die Antike Fabel: ein Einführung*, Darmstadt.
- Honoré, T. (1978), *Tribonian*, London.
- Hopkins, K. (1978), *Conquerors and Slaves*, Cambridge.
- Hopkins, K. (1993), 'Novel evidence for Roman slavery', *Past and Present* 138, 3–27
- Horsmann, G. (1986), 'Die *divi fratres* und die *redemptio servi suis nummis* (Zu den Motiven der *epistula ad Urbium Maximum*, Dig.40,1,4)', *Historia* 35, 308–21.

- Hubbard, T. K. (1986), 'The narrative architecture of Petronius' *Satyricon*', *L'Antiquité Classique* 55, 190–212.
- Humfress, C. (2005), 'Law and legal practice in the age of Justinian', in M. Maas (ed.), *The Cambridge Companion to the Age of Justinian*, Cambridge, 161–84.
- Hurka, F. (2010), *Die Asinaria des Plautus. Einleitung und Kommentar*, Munich.
- Johnson, W. (2003), 'On agency', *Journal of Social History* 37, 113–124.
- Johnston, D. (1995), 'Limiting liability: Roman law and the civil law tradition', *Chicago-Kent Law Review* 70, 1515–38.
- Johnston, D. (1999), *Roman Law in Context*, Cambridge.
- Jones, C. P. (1987), 'Tattooing and branding in Graeco–Roman antiquity', *JRS* 77, 139–55.
- Joshel, S. (2010), *Slavery in the Roman World*, Cambridge.
- Joshel, S. (2011) 'Slavery and Roman literary culture', in K. Bradley & P. Cartledge (eds.), *The Cambridge World History of Slavery. Vol. 1: The Ancient Mediterranean World*, Cambridge, 214–40.
- Joshel, S. (2013), 'Geographies of slave containment and movement' in M. George (ed.), *Roman Slavery and Roman Material Culture*, Toronto, 99–128.
- Junghanns, P. (1932), *Erzählungstechnik von Apuleius' Metamorphosen und ihrer Vorlage*, Leipzig.
- Kamen, D. (2010), 'A corpus of inscriptions: representing slave marks in antiquity', *Memoirs of the American Academy of Rome* 55, 95–110.
- Keulen, W. (1997), 'Some legal themes in Apuleian context', in M. Picone & B. Zimmermann (eds.), *Der antike Roman und seine mittelalterliche Rezeption*, Basel, 203–29.
- Kirichenko, A. (2010), *A Comedy of Storytelling: Theatricality and Narrative in Apuleius*, Heidelberg.
- Kołodko, P. (2006), 'Prawne aspekty ograniczenia chłosty w prawie rzymskim', *Miscellanea Historico-Iuridica* 4, 25–39.

- König, J. P. (2013), 'Landscape and reality in Apuleius' *Metamorphoses*', in M. Paschalis & S. Panayotakis (eds.), *The Construction of the Real and the Ideal in the Ancient Novel*, ANS 17, Eelde, 219–41.
- Konstan, D. (2011), 'Clemency as a virtue', *CPh* 100, 337–46.
- Konstan, D. (2018), 'Apuleius and the idea of taste in classical antiquity', in T. S. Thorsen & S. Harrison (eds.), *Dynamics of Ancient Prose: Biographic, Novelistic, Apologetic*, Berlin, 32–41.
- Kyle, D. G. (1998), *Spectacles of Death in Ancient Rome*, London & New York.
- Kyle, D. G. (2014), *Sport and Spectacle in the Ancient World*, Hoboken.
- Karakasis, E. (2013), 'Masters and slaves', in A. Augoustakis & A. Traill (eds.), *A Companion to Terence*, Malden (MA) & Chichester, 211–22.
- Kehoe, D. P. (1997), *Investment, Profit, and Tenancy: The Jurists and the Roman Agrarian Economy*, Ann Arbor.
- Kehoe, D. P. (2007), *Law and the Rural Economy in the Roman Empire*, Ann Arbor.
- Kirschenbaum, A. (1987), *Sons, Slaves and Freedmen in Roman Commerce*, Jerusalem.
- Kocher, E. E. (1965), *Überlieferter und ursprünglicher Anwendungsbereich der Lex Cornelia de Falsis*, Munich.
- Kronenberg, L. (2009), *Allegories of Farming from Greece and Rome*, Cambridge.
- Lafferty, S. (2014), 'Ad sanctitatem mortuorum: tomb raiders, body snatchers and relic hunters in late antiquity', *Early medieval Europe* 22, 249–79.
- Lardone, F. (1932), 'A note on *plagium* (kidnapping in Roman law)', *University of Detroit Law Journal* 1, 163–71.
- Lateiner, D. (2000), 'Marriage and the return of spouses in Apuleius' *Metamorphoses*', *CJ* 95, 313–32.
- Launaro, A. (2015), 'The nature of the villa economy', in P. Erdkamp, K. Verboven & A. Zuiderhoek (eds.), *Ownership and Exploitation of Land and Natural Resources in the Roman World*, Oxford, 173–86.

- Leigh, M. (2004), *Comedy and the Rise of Rome*, Oxford.
- Lenski, N. (2016), 'Violence and the Roman slave', in W. Riess & G. G. Fagan (eds.), *The Topography of Violence in the Graeco-Roman World*, Ann Arbor, 275–98.
- Levick, B. (1976), *Tiberius the Politician*, London.
- Levy, E. (1931), *Die Römische Kapitalstrafe*, Heidelberg.
- Lévy–Bruhl, H. (1947), *Nouvelles Études sur le Très Ancien Droit Romain*, Paris.
- Lewis, D. (2013), 'Slave marriages in the laws of Gortyn: a matter of rights?', *Historia* 62, 390–416.
- Lewis, D. (2018), *Greek Slave Systems in their Eastern Mediterranean Context, c.800–146 BC*, Oxford.
- Lewis, J. P. (2016), 'Guardians of the aqueducts? "Circitores" in the Roman army, economy and administration', *ZPE* 200, 519–30.
- Lewis, J. P. (forthcoming), ' "Ne spadones fiant": Domitian's emasculation ban: effectiveness and purpose'.
- Linderski, J. (1989), 'Garden parlors: nobles and birds', in R. I. Curtis (ed.), *Studia Pompeiana et Classica in Honor of Wilhelmina E Jashemski. Vol. II*, New Rochelle, 105–28.
- Lintott, A. (1968), *Violence in Republican Rome*, Oxford.
- Lo Giudice, C. (2008), 'L'impiego degli animali negli spettacoli romani: *venatio e damnatio ad bestias*', *Italies* 12, 361–95.
- Lovato, A. (1994), *Il Carcere nel Diritto Penale Romano: dai Severi a Giustiniano*, Bari.
- Lovato, A. (2013), 'Corporis coercitio (III-VI secc.)', *Iuris Antiqui Historia* 5, 15–28.
- Lovisi, C. (2000), *Contribution à l'étude de la peine de mort sous la République romaine (509-133 avant J.-C.)*, Paris.
- Lowance, M. & Pilditch, J. (2008), 'Writing the law: literature and slavery in nineteenth century America', *Australasian Journal of American Studies* 27, 66–82.
- MacLean, R. (2018), *Freed Slaves and Roman Imperial Culture: Social Integration and the Transformation of Values*, Cambridge & New York.

- Maehler, H. (1981), 'Lucius the donkey and Roman law', *Museum Philologicum Londiniense* 4, 161–77.
- Maxey, M. (1938), *Occupations of the Lower Classes in Roman Society*, PhD Thesis, University of Chicago.
- May, R. (2019), 'Apuleius' Photis: comic slave or elegiac mistress?' in C. Panayotakis & M. Paschalis (eds.), *Slaves and Masters in the Ancient Novel*, ANS 23, Eelde, 203–20.
- Mazzoli, G. (2007), 'Ius cenae (Petron. 35.7)', in L. Castagna & E. Lefèvre (eds.), *Studien zu Petron und seiner Rezeption/ Studi su Petronio e sulla sua Fortuna*, Berlin & New York, 51–9.
- McCarthy, K. (2004a), *Slaves, Master and the Art of Authority in Plautine Comedy*, Princeton.
- McCarthy, K. (2004b), 'The joker in the pack: slaves in Terence', *Ramus* 33, 100–19.
- McGinn, T. A. J. (1998), *Prostitution, Sexuality, and the Law in Ancient Rome*, New York.
- McGinn, T. A. J. (2002), (2008), 'Something old, something new ...: Augustan legislation and the challenge of social control', *Ancient History Bulletin* 22, 1–32.
- Melounová, M. (2014), 'Crimen maiestatis and the poena legis during the Principate', *Acta Antiqua Academiae Scientiarum Hungaricae* 54, 407–30.
- Millar, F. (1971), 'The world of The Golden Ass', *JRS* 71, 63–75.
- Millar, F. (1984), 'Condemnation to hard labour in the Roman Empire, from the Julio-Claudians to Constantine', *PBSR* 52, 124–47.
- Millar, F. (1992), *The Emperor in the Roman World (31 BC – AD 337)*, London.
- Miller, J. F. (1989), 'A travesty of ritual in Petronius (*Satyricon* 60)', *Hermes* 117, 192–204.
- Mommsen, T. (1878), 'Trimalchios Heimath und Grabschrift', *Hermes* 13, 106–21.
- Mommsen, T. (1899), *Römisches Strafrecht*, Leipzig.
- Morabito, M. (1981), *Les Réalités de l'Esclavage d'après le Digeste*, Besançon.
- Mouritsen, H. (2011), 'The families of Roman slaves and freedmen,' in B. Rawson (ed.), *A Companion to Families in the Greek and Roman Worlds*, Malden (MA), 129–44.
- Murgatroyd, P. (1997), 'Three apuleian openings', *Latomus* 56, 126–33.

- Nelsestuen, G. A. (2015), *Varro the Agronomist: Political Philosophy, Satire, and Agriculture in the Late Republic*, Columbus.
- Norden, F. (1912), *Apuleius von Madaura und das römische Privatrecht*, Wiesbaden.
- Ortu, R. (2010), ‘“*Captus a piratiis*”: schiavitù di fatto?’, *Rivista di Diritto Romano* 10, 1–12.
- Osgood, J. (2006), ‘*Nuptiae iure civili congruae*: Apuleius’s story of Cupid and Psyche and the Roman law of marriage’, *TAPhA* 136, 415–41.
- Palma, A. (1992), *Humanior interpretatio: Humanitas nell’Interpretazione e nella Normazione da Adriano ai Severi*, Turin.
- Paulson, R. (1967), *The Fictions of Satire*, Baltimore.
- Panayotakis, C. (1995), *Theatrum Arbitri: Theatrical Elements in the Satyrica of Petronius*, Leiden.
- Paratore, E. (1928), *La novella in Apuleio*, Palermo & Rome.
- Paratore, E. (1976), *Tito Maccio Plauto. Tutte le Commedie*, Florence.
- Parente, F. (1979), ‘*Patibulum, crux, furca*’, *RIFC* 107, 369–78.
- Parker, H. (1989), ‘Crucially funny or Tranio on the couch: the *servus callidus* and jokes about torture’, *TAPhA* 119, 233–46.
- Paschalis, M. (2019), ‘Masters and slaves in pseudo-Lucian Onos and Apuleius’ *Metamorphoses*’, in C. Panayotakis & M. Paschalis (eds.), *Slaves and Masters in the Ancient Novel*, *ANS* 23, Eelde, 221–32.
- Patterson, O. (1982), *Slavery and Social Death*, Cambridge (MA).
- Perelli, L. (1978), ‘Società romana e problematica sociale nel teatro plautino’, *Studi Romani* 26, 307–27.
- Perotti, P. A. (1997), ‘*Ius cenae* (Pétrone 35, 7)’, *Les Études Classiques* 65, 345–9.
- Perozzi, S. (1906), *Istituzioni di Diritto Romano, Vol. 1*, Florence.
- Perrochat, P. (1953), *Le Festin de Trimalcion. Commentaire Exégétique et Critique*, Paris.
- Perry, B. E. (1967), *The Ancient Romances: a Literary-Historical Account of their Origins*, Berkeley & Los Angeles.

- Poma, G. (1987), ‘“*Servi fugitivi*” e schiavi magistrati in età triumvirale’, *Index* 15, 149–74.
- Potter, D. (2010), ‘Constantine and the Gladiators.’ *CQ* 60, 596–606.
- Prag, J. (2006), ‘*Cave navem*’, *CQ* 56, 538–47.
- Preston, K. (1915), ‘Some sources of comic effect in Petronius’, *CPh* 10, 260–69.
- Pugliese, G. (1982), *Linee Generali dell'Evolutione del Diritto Penale Pubblico durante il Principato*, Rome.
- Puglisi, G. (1987), ‘Il microcosmo di C. Pompeius Trimalchio Maecenatianus. Schiavi e liberti nella casa di un mercante romano (Petr. 27–78)’, *Index* 15, 207–26.
- Pulman, C. G. (2011), ‘Where is the free agency in personal agency?’, *The Philosophical Quarterly* 61, 630–632.
- Purcell, N. (1983), ‘The *apparitores*: a study in social mobility’, *PBSR* 51, 125–73.
- Radin, M. (1920), ‘The *lex Pompeia* and the *poena cullei*’, *JRS* 10, 119–30.
- Ramon, A. (2017), *I Beni degli Dei. Considerazioni sul Regime Giuridico delle ‘Res Sacrae’ e ‘Religiosae’*, PhD thesis, Università degli Studi di Milano.
- Rankin, H. D. (1970), *Petronius the Artist. Essays on the Satyricon and its Author*, The Hague.
- Rathbone, J. D. (2005), ‘Economic rationalism and the Heroninos archive’, in *Topoi Orient-Occident* 12, 261–69.
- Rawson, E. (1978), ‘The introduction of logical organisation in Roman prose literature’, *PBSR* 46, 12–34.
- Reduzzi Merola, F. (2017) ‘Schiavi fuggitivi, schiavi rubati, “*servi corrupti*” ’, *Studia Historica. Historia Antigua* 25, 325–329.
- Reinhold, M. (1970), *History of Purple as a Status Symbol in Antiquity*, Brussels.
- Reitz, C. (2013), ‘Columella, *De re rustica*’, in E. Buckley & M. T. Dinter (eds.), *A Companion to the Neronian Age*, Oxford, 275–87.
- Reitz, C. (2017), ‘*Auctoritas* in the garden: Columella’s poetic strategy in *De re rustica* 10’, in E. Formisano & P. van der Eijk (eds.), *Knowledge, Text and Practice in Ancient Technical Writing*, Cambridge, 217–30.

- Richlin, A. (2009), 'Sex in the *Satyrica*: outlaws in literatureland', in J. Prag & I. Repath (eds.), *Petronius: a Handbook*, Oxford, 82–100.
- Richlin, A. (2017), *Slave Theater in the Roman Republic: Plautus and Popular Comedy*, Cambridge.
- Richter, W. (1978), *Gegenständliches Denken Archaisches Ordnen. Untersuchungen zur Anlage von Cato De Agri Cultura*, Heidelberg.
- Riess, W. (2001), *Apuleius und die Rauber: ein Beitrag zur historischen Kriminalitatisforschung*, Stuttgart.
- Riess, W. (2011), 'The Roman bandit (*latro*) as criminal and outsider', in M. Peachin (ed.), *The Oxford Handbook of Social Relations in the Roman World*, Oxford, 693–714.
- Rilinger, M. (1988), *Humiliores-Honestiores: zu einer sozialen Dichotomie im Strafrecht der römischen Kaiserzeit*, Munich.
- Rimell, V. (2002), *Petronius and the Anatomy of Fiction*, Cambridge.
- Rivière, Y. (2004), *Le Cachot et les Fers. Détention et Coercition à Rome*, Paris.
- Rizzelli, G. (1997), *Lex Iulia de Adulteriis: Studi sulla Disciplina di Adulterium, Lenocinium, Stuprum*, Lecce.
- Rizzelli, G. (2010), 'Il *fugitivus* di D. 50.16.225 (Tryph. 1 Disp.)', in C. Russo Ruggeri (ed.), *Studi in onore di Antonino Metro V*, Milano, 253–82.
- Robinson, O. F. (1981), 'Slaves and the criminal law', *ZRG* 98, 213–54.
- Robinson, O. F. (1995), *The Criminal Law of Ancient Rome*, London.
- Robinson, O. F. (2007), *Penal Practice and Penal Policy in Ancient Rome*, London & New York.
- Robleda, O. (1976), *Il Diritto degli Schiavi nell'Antica Roma*, Rome.
- Roby, H. J. (1884), *An Introduction to the Study of Justinian's Digest*, Cambridge.
- Rosati, G. (1999), 'Trimalchio on stage' in S. J. Harrison (ed.), *Oxford Readings in the Roman Novel*, 85–104.
- Rose, K. F. C. (1967), 'Trimalchio's accountant', *CPh* 62, 258–59.

- Rose, K. F. C. (1971), *The Date and the Author of the Satyricon*, Leiden.
- Roth, U. (2005), 'To have and to be: food, status and the peculium of agricultural slaves', *JRA* 18, 278–92.
- Roth, U. (2009), 'In vilicationem relegavit: Petronius, *Satyricon* 69.3', *RPh* 2, 253–60.
- Roth, U. (2010) 'Peculium, freedom, citizenship: golden triangle or vicious circle? An act in two parts', in U. Roth (ed.), *By the Sweat of Your Brow. Roman Slavery in its Socio-Economic Setting*, London, 91–120.
- Roth, U. (2011), 'Men without Hope', *PBSR* 79, 71–94.
- Roth, U. (2012), 'Comic Shackles', *Mnemosyne* 65, 746–49.
- Roth, U. (2016), 'Liberating the *Cena*', *CQ* 66, 614–34.
- Rotondi, G. (1912), *Leges Publicae Populi Romani*, Milan.
- Ruef, M. & Harness, A. (2009). 'Agrarian origins of management ideology: the Roman and Antebellum cases', *Organization Studies* 30, 589–607.
- Ruggiero, I. (2012), 'Il maestro delle *Pauli Sententiae*: storiografia romanistica e nuovi spunti ricostruttivi', in C. Baldus, M. Miglietta, G. Santucci & E. Stolfi (eds.), *Dogmengeschichte und Historischenindividualität der Römischen Juristen - Storia dei Dogmi e Individualità storica dei giuristi di Roma. Atti del Seminario Internazionale (Montepulciano 14 – 17 Giugno 2011)*, Trento, 485–531.
- Saller, R. P. (1994), *Patriarchy, Property and Death in the Roman Family*, Cambridge.
- Salway, B. (2010), 'Mancipium rusticum sive urbanum: the slave chapter of Diocletian's edict on maximum prices' in U. Roth (ed.), *By the Sweat of your Brow: Roman Slavery in its Socio-Economic Setting*, London, 1–20.
- Sampino, G. (2017), *Il Satyricon come "Iper testo Multiplo": Forme e Funzioni dell'Intertestualità nel Romanzo di Petronio*, Phd thesis, Università degli Studi di Palermo.
- Sánchez, M. R. (2000), 'Los cuentos de adulterio del libro IX de las Metamorfosis de Apuleyo', *Faventia* 22, 39–49.

- Santalucia, B. (1981) 'Osservazioni sulla repressione criminale romana in età regia', in *Le Délits Religieux dans la Cité Antique. Actes de la table ronde de Rome (6–7 avril 1978)*, 39–49.
- Santalucia, B. (1994), *Studi di Diritto Penale Romano*, Rome.
- Santini, C. (1986), Il supplizio del miele e delle formiche (Apuleio *Met.* VIII 22), in *Materiali e Contributi per la Storia della Narrativa Greco–Latina* 4, Rome, 125–30.
- Scheidel, W. (2005), 'Real slave prices and the relative cost of slave labor in the Graeco-Roman world', *Ancient Society* 35, 1–17.
- Schiller, A. (1930), 'Trade secrets and the Roman law: the *actio servi corrupti*', *Colum. L. Rev.* 30, 837–45.
- Schlam, C. C. (1992), *The Metamorphoses of Apuleius. On Making an Ass of Oneself*, London.
- Schmeling, G. (2011), *A commentary on the Satyrical of Petronius*, Oxford & New York.
- Schumacher, L. (2010), 'On the status of private actores, dispensatores and vilici', in U. Roth (ed.), *By the Sweat of your Brow: Roman Slavery in its Socio-Economic Setting*, London, 31–47.
- Seagal, E. (1987), *Roman Laughter: the Comedy of Plautus*, Cambridge.
- Sedgwick, W. B. (1925), *The Cena Trimalchionis of Petronius Together with Seneca's Apocolocyntosis*, Oxford.
- Sellin, T. J. (1976), *Slavery and the Penal System*, New York.
- Serghidou, A. (ed.) (2007), *Fear of Slaves - Fear of Enslavement in the Ancient Mediterranean (Discourse, representations, practices). Rethymnon 4-7 november 2004*, Besançon.
- Setaioli, A. (2004), 'I due "epigrammi" di Trimalchione (Petr. *Sat.* 34.10, 55.3)', *Prometheus* 30, 43–66.
- Shumate, N. (1996), *Crisis and Conversion in Apuleius' Metamorphoses*, Ann Arbor.
- Shumate, N. (2005), 'Apuleius' *Metamorphoses*. The inserted tales', in H. Hofmann (ed.), *Latin Fiction. The Latin Novel in Context*, 2nd edition, London & New York, 96–106.
- Silver, M. (2012), 'A note on two signs in Petronius', *RIDROM* 8, 79–85.

- Sirks, A. J. B. (2013), 'Noxa caput sequitur', *RHD* 81, 81–108.
- Slater, N. W. (1974), 'Pueri, turba minuta', *BICS* 21, 133–140.
- Slater, N. W. (1990), *Reading Petronius*, Baltimore & London.
- Smith, M. S. (1974), *Petronii Arbitri: Cena Trimalchionis*, Oxford.
- Solin, H. (1996), *Die stadtrömischen Sklavennamen. Ein Namenbuch, I–III*, Stuttgart.
- Stewart, R. (2012), *Plautus and Roman Slavery*, Malden (MA).
- Strachan-Davidson, J. L. (1912), *Problems of the Roman Criminal Law I*, Oxford.
- Summers, R. G. (1967), *A Legal Commentary on the Metamorphoses of Apuleius*, PhD thesis, Princeton.
- Summers, R. G. (1970), 'Roman justice and Apuleius' *Metamorphoses*', *TAPhA* 101, 511–31.
- Swain, S. (2013), *Economy, Family, and Society from Rome to Islam: a Critical Edition, English Translation, and Study of Bryson's Management of the Estate*, New York.
- Tatum, J. (1969), 'The tales in Apuleius' *Metamorphoses*', *TAPhA* 100, 487–527.
- Tatum, J. (1979), *Apuleius and the Golden Ass*, Ithaca (NY) & London.
- Thébert, Y. (1993), 'Lo schiavo', in A. Giardina (ed.), *L'Uomo Romano*, Bari, 159–98.
- Thomas, P. (2010), 'Gladiatorial games as a means of political communication during the Roman Republic', *Fundamina* 16, 186–98.
- Thome, G. (1992), 'Crime and punishment, guilt and expiation: Roman thought and vocabulary', *AClass* 35, 73–98.
- Treggiari, S. (1976), 'Jobs in the Household of Livia', *PBSR* 43, 48–77.
- Treggiari, S. (1979a), 'Questions on women domestics in the Roman West', in M. Capozza (ed.), *Schiavitù, Manomissione e Classi Dipendenti nel Mondo Antico*, Rome, 185–201.
- Treggiari, S. (1979b) 'Sentiment and property: some Roman attitudes', in A. Parel & T. Flanagan (eds.), *Theories of Property. Aristotle to the Present*, Waterloo, 53–85.
- Treggiari, S. (1981), 'Contubernales in CIL 6', *Phoenix* 35, 42–69.

- Treggiari, S. (1991) *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian*, Oxford.
- Treggiari, S. (1996), 'Social status and social legislation', in A. K. Bowman (ed.), *The Cambridge Ancient History, Vol. X The Augustan Empire, 43 BC–AD 69*, 2nd edition, Cambridge, 873–904.
- Treggiari, S. (2002), 'Caught in the act: *in filia deprehendere* in the *lex Julia de adulteriis*', in C. Damon, J. F. Miller, K. S. Myers & E. Courtney (eds.), *Vertis in Usum: Studies in Honor of Edward Courtney*, Munich, 243–49.
- Trisciuglio, A. (2017), 'Concetto di *status* nel pensiero giuridico', *Diritto e Processo*, 13–23.
- Tuori, K. (2016), *The Emperor of Law: The Emergence of Roman Imperial Adjudication*, Oxford.
- Tutrone, F. (2010), 'Confini in discesa. Rappresentazioni della violenza e della bestialità nella cultura romana', V. Andò & N. Cusumano (eds.), *Come bestie? Forme e Paradossi della Violenza fra Mondo Antico e Disagio Contemporaneo*, Caltanissetta & Rome, 209–33.
- Vacca, L. (1982), *Delitti Privati e Azioni Penali nel Principato*, Berlin.
- Valditara, G. (1998), *Sulle Origini del Concetto di Damnum*, Turin.
- Van Wingerden, R. (2020), 'Carrying a *patibulum*: a reassessment of non-Christian Latin sources', *New Testament Studies* 66, 433–53.
- Verboven, K. (2009), 'A funny thing happened on my way to the market. Reading Petronius to write economic history', in J. Prag & I. Repath (eds.), *Petronius: a Handbook*, Oxford, 125–39.
- Vlassopoulos, K. (2021), *Historicising Ancient Slavery*, Edinburgh.
- Völker, T. & Rohmann, D. (2011), '*Praenomen Petronii*: the date and the author of the *Satyricon* reconsidered', *CQ* 61, 660–76.
- Vogt, J. (1965), *Sklaverei und Humanität. Studien zur Antiken Sklaverei und Ihrer Forschung*, Wiesbaden.

- Voisin, J. L. (1984), 'Les Romains, chasseurs de têtes', in *Du châtime dans la cité. Supplices corporels et peine de morte dans le monde antique. Table ronde de Rome (9–11 novembre 1982)*, Rome, 241–93.
- Vout, C. (2009), 'The *Satyricon* and Neronian culture', in J. Prag & I. Repath (eds.), *Petronius: a Handbook*, Oxford, 101–13.
- Urbainczyk, T. (2014), *Slave Revolts in Antiquity*, London.
- Wacke, A. (1963), *Actio Rerum Amotarum*, Cologne & Graz.
- Walsh, P. G. (1970), *The Roman Novel: the Satyricon of Petronius and the Metamorphoses of Apuleius*, Cambridge.
- Watson, A. (1968), *The Law of Property in the Later Roman Republic*, Oxford.
- Watson, A. (1970), 'The development of the praetor's edict', *JRS* 60, 105–19.
- Watson, A. (1987), *Roman Slave Law*, Baltimore.
- Watson, A. (1996), 'Trade secrets and Roman law: the myth exploded', *Tulane European and Civil Law Forum* 11, 19–29.
- Weaver, P. R. C., *Familia Caesaris. A Study of the Emperor's Freedmen and Slaves*, Cambridge.
- Weaver, P. R. C. (1994), 'Epaphroditus, Josephus, and Epictetus', *CQ* 44, 468–79.
- Weber, C. (1969), 'The Diction for Death in Latin Epic', *Agon* 3, 45–68.
- Westermann, W. L. (1949), 'Ancient Slavery', *Scientific American* 180, 40–43.
- Whitfield, B. G. (1956), 'Virgil and the bees: a study in ancient apicultural lore', *Greece & Rome* 3, 99–117.
- Wibier, M. (2019) 'Legal education, Realpolitik, and the propagation of the Emperor's justice', in O. Hekster and K. Verboven (eds.), *The Impact of Justice on the Roman Empire*, Leiden, 19–48.
- Winkler, J. (1985), *Auctor and Actor: a Narratological Reading of Apuleius' Golden Ass*, Berkeley, Los Angeles & London.
- Wise, S. M. (2000), *Rattling the Cage: Toward Legal Rights for Animals*, London.

Wiseman, T. P. (1987), *Roman Studies: Literary and Historical*, Trowbridge.

Wissemann, M. (1984), 'Das Personal des antiken römischen Bades', *Glotta* 62, 80–9.

Ziliotto, P. (2020), 'Le ingiurie allo schiavo', *Teoria e Storia del Diritto Privato* 23, 1–34.

Zimmermann, M. (2000), *Apuleius Madaurensis Metamorphoses, Book X. Text, Introduction and Commentary*, Leiden.