Informal Manumission and the Lex Junia (*)

by A.J.B. Sirks
(*Utrecht*)

In the handbooks of Roman law Junian Latinity turns up as a kind of "Fremdkörper". A Junian Latin was neither a slave, nor a coloniary Latin, nor a Latin in the sense of the grants of Latinity in the beginning of the Principate. And where/of was he citizen? Why did the Romans make this status, and why this instead of conferring generously the coloniary or other Latinity? Generally the answer is that the Romans made this status, adequate to a position halfway between slavery and freedom, to protect their informally freed slaves better. But as this is founded, in fact, on the assumption that only when free their situation would be safe, so that they ought to be free, does not it neglect by taking this view the equally relevant question why the Romans had slaves, why they freed them and why they sometimes freed them informally? If one considers this it will appear, as I hope to demonstrate, that Junian Latinity was a part of the whole system of slavery and patronage, and just a grade of dependence (as seen from the Roman point of view).

(*) This article is an expanded version of a communication held at the XXXIVth Congress of the S.I.D.A. at Brussels, 1980.

I wish to thank Prof. A. Kränzlein for his comments concerning the difference between the three Latinities, and Prof. A. Wacke for his information about the juridical position of women in Antiquity.

As with other antique nations, a Roman slave could be enfranchised. Usually this happened *vindicta, censu* or *testamento,* i.e. by the Quiritary owner in a formal way with assistance of a Roman magistrate, by the declaration for the census, or by testament (1). Such an enfranchisement in accordance to the law had as consequence that the freedman became a Roman citizen and the equal of a freeborn citizen, except for the fact that magistracies were not open to freedmen. This was at least the original situation, which may have existed for rather a long time (2).

However, it happened that slaves were freed without becoming citizens. For instance, if a master declared a slave free in presence of friends (*manumissio inter amicos*) or gave him or her a certificate of freedom (*manumissio per epistulam*), the slave became what I will call 'informally free', though remaining a slave under civil law. Such manumissions might occur in the provinces as a necessity, if the absence of a magistrate made formal manumission impossible. The repetition of the act (*iteratio*) when a magistrate did pass seemed the natural thing to do then (3). Informal manumission occurred also if someone who had a slave not as Quiritary owner, but *in bonis,* did enfranchise in one of the three formal ways (4). Further cases of informal manumission were produced by the lex Aelia Sentia of 4 A.D. which put enfranchisement under

(1) M. KASER, *Das römische Privatrecht* I, München 1971, pp. 294 f.; O. ROBLEDA s.j., *Il diritto degli schiavi nell'antica Roma*, Roma 1976, p. 198, notes 470 and 471; Frag. Dos. 5. The *manumissio censu* seems to have got out of use in the Late Republic.

(2) A.N. SHERWIN-WHITE, *The Roman Citizenship*, Oxford 1973, pp. 322 ff.; ROBLEDA (note 1), pp. 126 ff. This outcome was exceptional: in Greece f.i. freed slaves were non-citizens: cfr. M.I. FINLEY, *Ancient Slavery and Modern Ideology*, London 1980, p. 97. Cf. also note 51.

(3) So Plin. min. *ep.* 7.16.4. If *iteratio* was impossible, the master might enfranchise by testament, or ask the emperor for a grant (Plin. min. *ep.* 10.104). On informal manumission: ROBLEDA (note 1), pp. 135 ff.; KASER (note 1), pp. 295 f.

(4) Gai. 1.35, 167; FV 221. *Iteratio* here had to be done by the Quiritary owner (but see page 253).

certain restrictions (5).

One might think that in all these cases the master wanted to give full freedom but was prevented from doing so by some circumstance beyond his control. But the problem I want to discuss here is that in presence of the possibility of a perfect civil manumission, slaves were freed informally and were kept in the state of informal freedom. There is evidence that some Romans deliberately wanted it to be so, and the existence of the lex Junia and its content are strong arguments for this as well (6).

The position of an informal freedman was remarkable. Under the civil law he remained a slave as the manumission was invalid, and all he had or acquired was *peculium* and thus his master's property (Gai. 3.56). Yet the relation between master and slave was not as before. It seems that if the master tried to re-establish the old relation — WLASSAK suggests that a master might try to force him to do personal services (7) —, the ex-slave would be protected by the praetor in his personal freedom, probably by an exception. But there is no reason to think of only such a situation. Gaius' "*quos praetor in libertate tuebatur*" (in 3.56) might simply have meant "who the praetor maintained in freedom" in the sense that the praetor secured them during their lifetime in the possession of their goods in regard to anyone, and maybe even accepted them as litigants in lawsuits, which would have been impossible had they have been considered slaves. The fact that the Romans had no word

(5) Gai. 1.37-41; KASER (note 1), p. 297; ROBLEDA (note 1), pp. 152-155. See also Table 2 on page 276.

(6) So Tac. *ann.* 13.27 ("*Quos vindicta patronus non liberaverit, velut vinclo servitutis attineri. Dispiceret quisque merita tardeque concederet, quod datum non adimeretur*": Those who the patron had not freed *vindicta*, were held as by the bond of slavery. He should look carefully into the merits of each case, and be slow in granting, because a given thing could not be taken away). A certificate of informal freedom: FIRA 3.11. Further Gai. 1.41 ("*Latinum facere*"!).

(7) M. WLASSAK, *Die prätorische Freilassungen*, in: ZSS-R 28 (1905), p. 376.

for a state between *libertas* and *servitus* (8) except for Junian Latinity (as I will argue later on) might account then for the way Gaius expressed himself.

It was in all probability in 17 B.C. that a lex Junia was carried through that changed the consequences of informal manumission to some extent (9). According to Gaius the inform-

(8) M.I. FINLEY, *The Ancient Economy*, London 1979, pp. 64-65.

(9) Gai. 3.55-56: *Sequitur ut de bonis Latinorum libertinorum dispiciamus. Quae pars iuris ut manifestior fiat, admonendi sumus, id quod alio loco diximus, eos qui nunc Latini Iuniani dicuntur olim ex iure Quiritium seruos fuisse, sed auxilio praetoris in libertatis forma seruari solitos; unde etiam res eorum peculii iure ad patronos pertinere solita est. Postea uero per legem Iuniam eos omnes, quos praetor in libertate tuebatur, liberos esse coepisse et appellatos esse Latinos Iunianos: Latinos ideo, quia lex eos liberos proinde esse uoluit atque si essent ciues Romani ingenui qui ex urbe Roma in Latinas colonias deducti Latini coloniarii esse coeperunt; Iunianos ideo, quia per legem Iuniam liberi facti sunt, etiamsi non essent cives Romani. Legis itaque Iuniae lator cum intellegeret futurum, ut ea fictione res Latinorum defunctorum ad patronos pertinere desinerent, quia scilicet neque ut serui decederent, ut possent iure peculii res eorum ad patronos pertinere, neque liberti Latini hominis bona possent manumissionis iure ad patronos pertinere, necessarium existimauit, ne beneficium istis datum in iniuriam patronorum conuerteretur, cauere, ut bona eorum proinde ad manumissores pertinerent, ac si lex lata non esset; itaque iure quodammodo peculii bona Latinorum ad manumissores ea lege pertinent.* We proceed to consider the estates of (Junian) Latin freedmen. In order to make this branch of the law clearer we must call to mind that, as we have said elsewhere, those who are now termed Junian Latins, were in earlier times slaves by Quiritary law, but that they were maintained in apparent freedom by the praetor's intervention; and therefore their property used to go to their patrons by title of *peculium*; but that later, owing to the *L. Iunia*, all who used to be protected in a state of freedom by the praetor came to be free and to be styled Junian Latins: Latins because the law made them as free as if they were free-born Roman citizens who, by migrating from the city of Rome to Latin colonies, had become colonial Latins, Junian because it was by the *L. Iunia* that they were made free, though not Roman citizens. Now the author of the *L. Iunia*, realizing that as the result of this fiction the estates of deceased Latins would no longer go do their patrons, because of course they would die neither as slaves, whose property would go to their patrons by right of *peculium*, nor as (citizen) freedmen, whose estates would go to their

ally freed neither remained slaves under the civil law nor did they become Roman citizens, but they became free and assimilated to Roman freeborn citizens who by migrating to Latin colonies had turned out *Latini coloniarii*. As it was the lex Junia that made them Latins, they were styled Junian Latins.

The juridical construction of the lex Junia may have been like this. To civil law the informal manumission was incomplete and thus void. As it cannot have been the purpose of the law to treat the informal freedom as of no effect, it must have contained the fiction that all necessary requirements were fulfilled; maybe this was based on the *voluntas domini* (Frag. Dos. 7). Such fiction would have made the ex-slaves Roman

patrons by right of manumission — (the author of the *L. Iunia*) deemed it necessary, in order to prevent the benefit given to them from being turned to the injury of their patrons, to provide that their estates should go to their manumitters just as if the *lex* had not been passed. Hence under the *lex* the estates of Latins go to their manumitters as it were by right of *peculium*. (transl. by F. DE ZULUETA).

About Junian Latinity: Gai. 1.22-24, 3.55,56; Ulp. 1.5.10; Frag. Dos. 5-7; PW (v. *Latini Iuniani*) 12, 910-924 (STEINWENTER, 1924); NNDI (v. *Latini*) 9, 465-467 (M.A. DE DOMINICIS, 1968); A. BERGER, *Encyclopedic Dictionary of Roman Law*, Philadelphia 1953, v. *Latini Iuniani*; ROBLEDA (note 1), § 10; KASER (note 1), 295-296; all with literature. Most recent: M. DE DOMINICIS, *La 'Latinitas Iuniana' e la legge Elia Senzia*, in: TR 33 (1965), pp. 558-574; K.M.T. ATKINSON, *The Purpose of the Manumission Laws of Augustus*, in: *The Irish Jurist* 1 (1966), pp. 356-379; M. DE DOMINICIS, *Les Latins Juniens dans la pensée du législateur romain*, in: RIDA 20 (1973), pp. 311-324.

About the date of the lex Junia, for which have been offered 25 and 17 B.C., and 4, 15 and 19 A.D., see the literature mentioned with KASER (note 1), p. 296 note 40, and with ROBLEDA (note 1), p. 136 note 567. F. DE ZULUETA, (*The Institutes of Gaius*, Oxford 1953, vol. 2, p. 26) thinks 17 B.C. as probable as 19 A.D. He refers to H.M. LAST, (*Cambridge Ancient History*, vol. 10, p. 888) who conjectures 17 B.C., and also to V. ARANGIO-RUIZ, *Augustus*, in: *Acc. Lincei* 1938, pp. 45-47. M. DE DOMINICIS, (note 9, *Les Latins*), p. 313, favours 17 B.C. too. A. WILINSKI, *Zur Frage von Latinern ex lege Aelia Sentia*, in: ZSS-R 80 (1963), pp. 378-392, dates the lex Junia later than the lex Aelia Sentia, supposing that the former created *Latini coloniarii*, who were substituted by the later but more advantageous *Latini Iuniani*.

citizens, it would have abolished in practice, however, civil manumission, and this will have been impossible at that time. Another fiction, of which the incorporation in the law is testified by Gaius' *"atque si essent ..."* and *"ea fictione"* in 3.56, could prevent this. By the assumption that the ex-slaves were freeborn (10) Roman citizens who settled in *Latin* (not Roman) colonies, their civil status was simultaneously changed into Latinity, which put everything into proportion. It is possible that the legislator set out for Latinity from the beginning, but it might also be that simultaneously a Latinity, similar to coloniary Latinity, was the most to be expected outcome of the existing juridical techniques, in which fictions were practised to transform a pretorian legal situation into an adequate civil law position. I doubt whether a better or maybe even another status could have been attained for the informally freed.

Thus the ex-slaves were assimilated to coloniary Latins, but as they never emigrated to colonies, the change could only concern their *status libertatis,* and they will have become citizens of the town of their manumitter. Hence the adjective Junian, to denote the difference. Furthermore the lex Junia stated that at the death of a Junian Latin the law was supposed never to have existed (*"ac si lex lata non esset"* in 3.56). Their assets were consequently considered as *peculium* and went to their manumitters. As Gaius says that this was done to prevent injury on the side of the latter, he seems to have meant financial loss by this. The law established too that a Junian Latin who was instituted as *heres* or *legatarius* could not accept, though he could as *fideicommissarius* (11). Finally a Junian Latin was prohibited by the law to make a testament or to be instituted by testament as guardian (12).

(10) This seems to have been a requirement for such colonization (cfr Gai. 1.131). Even Salvian (ca. 400-468/470 A.D.) still compares Junian Latins with *ingenui* (see note 78). For *deductio in colonias latinas*: KASER (note 1), pp. 33, 281.

(11) Gai. 1.24, 2.110, 275; Ulp. 11.16. Maybe the enforcement of the *fideicommissa* had not yet been introduced at the time of the lex Junia.

(12) Gai. 1.23; Ulp. 11.16, 20.14; FV. 172.

So, if a Junian Latin wanted f.i. to accept a legacy, he had to become a Roman citizen within a hundred days (Ulp. 17.1, 22.3). There were ways open to him to achieve this.

First of all iteration would be the obvious way [13]. It had to be done by the Quiritary owner. Leaving out the *manumissio censu*, iteration theoretically was needed in the cases of a *manumissio vindicta* or *testamento* by a bonitary owner, or by a Quiritary owner in violation of the lex Aelia Sentia, and of a *manumissio inter amicos* by a Quiritary owner. We know that in the first instance of cases iteration by the Quiritary owner was possible (Gai. 1.35), but we do not know about the two other instances. STEINWENTER denies the possibility for the second instance, assuming that the chosen form finished Quiritary ownership anyway; consequently the *anniculi probatio* had to be introduced as remedy, according to him [14]. But apart from this, to what extent did such Quiritary ownership mean anything? It was important with regard to the tutelage (Gai. 1.167, FV 221). Did it remain by the person who was Quiritary owner at the time of the manumission, being sufficient for nothing more than iteration, or could it be transmitted to an *heres* or *legatarius per vindicationem*? The latter would make sense of the legate of a Junian Latin in Gai. 2.195 in some way, as the system of patronal rights did not allow for such a bequest (v. Gai. 3.57-70). Here as well as in another text Junian Latinity poses problems [15]. In any

(13) See note 3; Fragm. Dos. 14, Ulp. 3.4, Gai. epit. 1.4, Plin.min. *ep.* 7.16.3, Tac. *ann.* 13.27.

(14) PW 12, 921 (STEINWENTER, 1924). See also Table 2.

(15) This text is Plin. min. *ep.* 10.104. Pliny was instituted as heir of Paulinus and him were bequeathed in this way the rights on several Junian Latins. Paulinus' son must have been disinherited *nominatim* and have let it pass (maybe he got large legates) or the disinheritation was on solid grounds. Otherwise he could have claimed it, being entitled anyway (Gai. 3.65-70, which states this for *exheredatio inter ceteros*, *praeteritio* and abstinence of the estate) or invalidating the testament by a successful *querela inofficiosi testamenti*. A.N. SHERWIN-WHITE, who thinks Pliny patron as *heres per praeceptionem* — his interpretation of *excepto Paulino* — and the son not necessarily disinherited *nominatim* (*The Letters of Pliny*, Oxford 1966, p. 714), must have overlooked Gai.

case, only the manumitter who had the slave *in bonis* at the time of the first manumission was the rightful claimant of the estate at all times, in whatever way the Junian Latin became later on a Roman citizen, including iteration (Gai. 1.35, 167) and in his *origo* the freedman had to do *munera* (FV 221).

Again a Junian Latin could comply with the conditions of the lex Aelia Sentia of 4 A.D. (the *anniculi probatio*), of the lex Visellia of 24 A.D. (six, later three years of service with the *vigiles* of Rome), of an edict of Claudius of 51 A.D. (building a ship and placing it at the disposal of the *annona* of Rome), of a constitution of Nero of 64 A.D. (building a house in burned out Rome), of a constitution of Trajan (milling grain for Rome for three years), or by grant of the *princeps*. In the last case the rights of the patron were preserved, had the grant been done without his knowledge or against his will. Hadrian mitigated this by a SC stating that then the freedman could obtain full effects of citizenship by complying to the conditions of one of the other modes ([16]).

Women too could be manumitted informally and become Junian Latins. Maybe a *latina* could acquire citizenship in one of the mentioned ways, so far as the conditions allowed. F.i. in the *anniculi probatio* she might only be wife (but would become *romana* by that). An extra way for her was to bear three children ([17]).

All these possibilities of becoming Roman citizen which were — as we have to infer from the context in Gaius and Ulpian — not open to other Latins, and which were rather generous compared with the possibilities for those who were not Junian

3.70. But follows from the fact that Pliny asked for the *beneficium principis* that Paulinus had been bonitary owner? Or that Quiritary ownership stopped with him? The latter would contradict the aforementioned interpretation of Gai. 2.195.

(16) Gai. 1.29-34, 3.72; Ulp. 3.1-6.

(17) Ulp. 3.1. Seeing that this special way was opened to her, I doubt whether the *Latinae* played the same role in society as the *Latini* did, which would explain why the other ways seem to have been meant for male Latins only. Cf. FIRA 3.11 for a *latina*.

Latins, show the special place Junian Latins had in the Roman society. One reason for this may be that they had Roman citizens as patrons. It appears too in the succession to their estates.

Apart from all the prohibitions of the lex Junia, the last fiction of the law (*"ac si lex lata non esset"*) is remarkable. Its effect is that the restatement of the informal freedom in the terms of civil law fits exactly the original situation. At the same time it is a strong argument to assume that the goal of informal manumission was the securing of the *complete* estate of the informally freed man or woman, by the master or mistress. Otherwise the lex Junia might not have caused damages (*iniuria*). It might be that this construction rendered necessary the prohibitions of making a testament or accepting an inheritance (the latter might saddle up the manumitter with undesired obligations).

Thus the estate of a Junian Latin went to his or her manumitter, generally called the patron (though in case of iteration by the Quiritary owner the latter became patron, while the bonitary owner remained the claimant). The system of succession differed widely from the current system in regard to citizen freed men and women, and this difference was in accordance with the more pronounced trait of *peculium* in the property of the Junian Latins.

Normally, if there was progeny of a citizen freedman, his children would exclude all other claimants. In default of these, the patron was entitled to a part or the whole, in default of him his sons, after these his grandsons by sons, and finally his greatgrandsons by grandsons by sons; whether one of these was disinherited or not. An extraneous heir was never entitled; with more manumitters the estate was divided up in equal parts, no matter what the original proprietary shares had been; in case of default of a manumitter there was accretion; if all the claimants were descendants of the manumitter(s), the patronal claim was equally (*per capita*) divided up amongst those who were in the same degree of descendance, while they were excluded by a manumitter or descendants of a nearer

degree. For freedwomen the same classes of claimants existed, but here the patrons could always secure themselves of the whole estate, by refusing their consent (*auctoritas*) for a testament. This made them, as *agnati proximi*, sole heirs. A female patron was, with freedmen as with freed women, the only claimant. The lex Papia of 9 A.D. but reinforced this system (see Table 1).

With Junian Latins it was a different succession. In spite of children, their entire estate went as if it were *peculium* to a) their manumitter, b) to the manumitter's (extraneous) heir. Division between manumitters or their heirs took place according to the original proprietary shares. Heirs inherited by stems. In default of a manumitter no accretion occurred, but his part devolved to the Roman people as *caduca*. The SC Largianum of 42 A.D. modified this succession to a certain extent, as it put between the first and second class those children of the manumitter who were not *nominatim* disinherited ([18]).

If a male Junian Latin obtained Roman citizenship, he could accept inheritances and legacies, but most of all he could dispose freely of his property on occasion of his death, with the possible exception of a part due to his patron. Acquisition of that citizenship will have meant a lot for him for that reason. Not so for a female Junian Latin. Her *parens manumissor* could still get her entire property by the above mentioned method, and only by obtaining the *ius quattuor liberorum* she could thwart him (or her) ([19]).

The pretorian system of patronal succession to the estates of citizen freedmen was introduced between 118 and 74 B.C. in response to the complete freedom of the freedman before that time under the civil law. That of the lex Junia, so different,

(18) Gai. 3.58-64a; KASER (note 1), p. 697; P. VOCI, *Diritto Ereditario Romano*, vol. 2, Milano 1963, p. 34, says the *caduca* applied as the patron acquired *mortis causa*.

(19) See A.J.B. SIRKS, *A Favour to rich Freed Women (libertinae) in 51 A.D. On Sue. Cl. 19 and the Lex Papia*, in: RIDA 27 (1980), pp. 288-289.

was established in to all probability 17 B.C. and was, as I hope to have shown, the codification of an existing practice. This could mean hardly anything else than that the Romans were not satisfied with just the possibility of a part, but wanted the whole estate of a freedman, and that the lex Junia was at least the deliberate stabilization of a juridical loophole, created to attain that goal. I hope to adduce more arguments for this, by inquiring into the possible reasons for the lex Junia, by considering the relation between *dominus* and *peculium*, and by considering possible reasons for the system of *peculium* and manumission.

Why was the lex Junia proposed and accepted by the senate? Most writers consider a sentiment of humanity the main reason for the law. They suppose that the position of the informally freed was precarious and uncertain. A law would give more security than the pretorian protection. So WLASSAK (20), STEINWENTER (21), BISCARDI (22), M.A. DE DOMINICIS (23), WILINSKI (24), KASER (25), TREGGIARI (26), SHERWIN-WHITE (27) and M. DE DOMINICIS (28). MOMMSEN (29) and LEVY (30) were of the opinion that

(20) WLASSAK (note 7), p. 376.

(21) STEINWENTER (note 9).

(22) A. BISCARDI, *La manomissio per mensam e lo svolgimento storico delle affrancazioni pretorie*, in: *St. Senesi* 53 (1939), p. 398: "la *L. Iunia* abbia risolto il disagio di una penosa questione soziale".

(23) M.A. DE DOMINICIS (note 9), p. 465: "una tale situazione gravemente lesiva dell' 'aequitas'".

(24) WILINSKI (note 9), p. 392: "die prekäre Lage der massenhaften *in tuitione praetoris morantes*".

(25) KASER (note 1), p. 296.

(26) S.M. TREGGIARI, *Roman Freedmen during the Late Republic*, Oxford 1969, p. 30.

(27) SHERWIN-WHITE (note 2), p. 329-330: "a clear gain to its holders", "justice to a meritorious class with caution against excessive manumission, and (he) protected vested interests".

(28) M. DE DOMINICIS (note 9, *Les Latins*) p. 313: "cette situation inhumaine".

(29) Th. MOMMSEN, *Das römische Staatsrecht*, Leipzig 1887, vol. III, pp. 626-627: "dieses in jeder Hinsicht widernatürliche Personalrecht... In Folge dieser irreführenden Bezeichnung figurirt dieses hybride Institut seltsamer Weise bei alten und neuen Juristen als eine Gattung des

their position, halfway between citizenship and slavery, was stabilized only. An equalization with *Latini coloniarii* was the appropriate legal construction, but left them without a home town. MOMMSEN found this a practical annulment of the given freedom and therefore called Junian Latinity a qualified slavery.

The arguments as offered for a humane improvement of condition appear to be questionable. F.i., M. DE DOMINICIS says Latinity was a better protection than informal freedom, the proof of the latter being difficult and thus the freedom harder to obtain ([31]). But is it not the same proof for Latinity? Would not the praetor be even more reluctant to acknowledge in view of the now irreversible result? The same could be said of humanity: if the praetor was humane, then there was no need for the lex Junia, if he was inhuman then it would not help as it was the praetor who had to apply the law. And it is doubtful whether the concept of *humanitas* at that time could have led to the lex Junia. The structure of the law shows that the Romans did not want to give away for nothing; the same we will see when considering the relation between *peculium* and manumission. Tacitus reports that in 56 A.D. some Roman senators saw Junian Latinity as a way of keeping servants under control (*ann.* 13.27). The decision of the senate in 61 A.D., when L. Pedanius was murdered by one of his slaves, to execute all slaves under the same roof (four hundred in total), demonstrates the prevalence of an inhuman attitude in that body (Tac. *ann.* 14.42-45). Pliny reports a similar case, without disapproval (*ep.* 8.14). MOMMSEN's remark thus would be right, though he himself had no word for this intermediate state of dependence, and though he did not explain why they got this modified Latinity. Maybe the Romans aimed at Latin-

Latinischen Rechts, während es besser als ein qualificirter Sclavenstand gefasst würde".

(30) E. LEVY, *Libertas und Civitas*, in: ZSS-R 78 (1961), p. 146: "Lediglich um die Schränken dieser Rechtsfähigkeit halbwegs auszudrücken, wurde die Anknüpfung (sc. to coloniary Latinity) gewählt".

(31) M. DE DOMINICIS (note 9, *Les Latins*), p. 313.

ity; it seems to me, however, that the existing possibilities of the juridical techniques (as far as known to us) did not allow for anything else than Latinity, which had to be restricted or else the informally freed would have been too well off. If MOMMSEN and LEVY (and many others) were right, why don't we find a simple reference to the peregrines who were made Latins during the Principate? But Gaius refers to a mode of acquiring Latinity that in the Principate did not exist anymore; and the keeping of the tie with the manumitter is a remarkable deflection of Junian Latinity with that mode (32).

DUFF takes a position between MOMMSEN-LEVY and the majority of writers. According to him Augustus was afraid that great masses of freedmen would debase the Imperium. Consequently he restricted enfranchisement by the lex Junia, the lex Aelia Sentia and the lex Fufia Caninia. At the same time he prevented the immediate transition of slaves into the body of citizens by the creation of two new classes, the *Latini* (*ex lege Aelia Sentia* and *ex lege Junia*) and the *dediticii*. But Augustus provided a remedy for the Latins: if they proved themselves worthy of the citizenship, f.i. by serving in the corps of *vigiles*, they would get full citizenship. The *dediticii* were of course excepted. From this point of view Latinity was just a probationary stage (33). DUFF's theory draws its argument from the *causae probatio* and the *dediticium* of unworthy freed slaves, as laid down by the lex Aelia Sentia. The obvious counterargument is that the *causae probatio* had nothing whatsoever to do with morals. The examples given in Gai. 1.29 and 1.39 show the criterium to be lying in the closeness of the relation between the slave and the prospective

(32) See for an exposition of Latinity under the Principate the lecture of A. KRÄNZLEIN, "Latiner - Frage", held on the German Rechtshistorikertag in Augsburg 1980.

(33) A.M. DUFF, *Freedmen in the Early Roman Empire*, Oxford 1958 (reprint of the 1928 edition, with addenda), pp. 189-190. Like Duff: R. BARROW, *Slavery in the Roman Empire*, New York-London 1968 (reprint of the 1928 edition), pp. 184-190, 190-191. Was DUFF thinking of the relation of Europeans and natives in the colonies, with the division in citizens and subjects?

manumitter, f.i. it was allowed if the slave was a foster brother of the latter. Besides, it is nowhere said that the informally freed got (Junian) Latinity because they did not (yet) deserve Roman citizenship. As said before, they got it because they were slaves under the civil law, and more was not possible.

ATKINSON, in a quite different approach, has taken distance to the theory of humanity. She suggests that the lex Junia was meant to open a new source of recruits for the city troops and the legions. By serving in these the Junian Latins would become citizens (34). Though it is an interesting approach, objections can be made. There is a significant lack in the juridical sources: Gaius f.i. mentions the lex Visellia, but does not mention the corresponding reason of the lex Junia. But the distance between the lex Junia (passed according to ATKINSON in 25 B.C.) and the lex Visellia of 24 A.D. is too great anyway to suppose a carefully conceived scheme. And in 4 A.D. the *anniculi probatio* was available to the Junian Latins, though — one has to admit — not to all of them; it opposes however her reconstruction.

The theory that it was benevolence towards the informally freed finds its foundation in Gaius' remark that the law gave a *beneficium* to them (3.56). It was evident to him and so he does not explain it, but from his exposition we can infer that it was connected with the status of Latinity. It cannot have been the personal freedom, as the praetor took care of that. So the only possible advantage left is that the informally freed could marry and that their children would be freeborn Latins, not slaves. This was observed by BUCKLAND already (35). The lex Junia would thus remove the kinlessness that is, according to FINLEY, one of the three characteristics of slavery,

(34) ATKINSON (note 9), p. 366: "its real though not its ostensible purpose was to maintain a flow of recruits for the armed forces, looking forward not only to the solution of immediate difficulties, but to the same problems in the forseeable future". M. DE DOMINICIS (note 9, *Les Latins*) as a reaction on her article (see esp. pp. 317, 318, 323 of his article).

(35) W.W. BUCKLAND, *The Roman Law of Slavery*, Cambridge 1908, p. 445.

the other two, the totality of power over the slave and the property status of the slave, having been mitigated or removed earlier by the informal manumission (36). As the argument that the lex Junia left the Junian Latins devoid of a home town attaches too much importance to this — it is anyway doubtful whether this was the case, in view of FV 221 and 193 — it so appears that the law contained no disadvantages, but indeed a benefit and that BUCKLAND's explanation is still the right one.

But was the wish to grant this *beneficium* the motive behind the creation of Junian Latinity? Though I do not think it impossible that such a wish and in so far a humane feeling drove some to accept the lex Junia (but then for a more restricted goal than the improvement of the general conditions of the informally free), I doubt whether it was the sole or most important reason. Junian Latinity carefully preserved the former consequences of informal freedom in respect to the manumitters; and the new status and the inherent *ius commercii*, simultaneously with the *beneficium* a product of it, offered in comparison with the possibilities of informal freedom such advantages to them, that these were, in my opinion, more likely the decisive motives for the Romans to set up Junian Latinity, to which the abovementioned wish may have joined. To elucidate this we have to enter into the reasons for informal manumission.

Why slaves were freed informally is a question that is generally answered with the remark: lack of the possibility of a valid enfranchisement (37). I think this correct for a small proportion of the cases; we saw, however, that the point under discussion is that informal manumission happened and was perpetuated notwithstanding that possibility or the possibility of iteration (38). TREGGIARI sees as the only reasonable motive

(36) FINLEY (note 2), 77.

(37) So f.i. SHERWIN-WHITE (note 2), p. 330, who sees those circumstances as mentioned on p. 248 and the trespassing of legal prohibitions as a permanent cause of Junian Latinity.

(38) Even if one accepts STEINWENTER's view that in some cases iteration was no longer possible (see p. 253), still these cases did not occur before the lex Aelia Sentia. See also BUCKLAND (note 35), 716-718.

that an informal manumission might encourage a slave to work hard, to increase his *peculium* to the advantage of his master and so to lift the burden of providing board and lodging in some cases. She supposes that Augustus tried to control manumission and to regulate the position of freedmen by the lex Junia. But it can be said that the same incentives would work with unmanumitted slaves (39). As for her other arguments, I refer to the abovesaid. M. De Dominicis suggests that it might be an economic advantage to the master if he freed a slave informally. He unfortunately does not illustrate this. For him the lex Junia meant a change for the worse: the slave was definitively lost and the manumission probably subjected to the *vicesima libertatis*. The law thus made informal enfranchisement unattractive (40). Now it can certainly be argued that the *vicesima*, if levied, would be a nuisance. The freed person had to pay it (41), which means that the patron got less back at his death. Still, it can be argued too that the last fiction of the law annulled the freedom and so barred a levy of the *vicesima*. And though the manumission was definitive after the lex Junia, it was to all probability not less definitive before.

In my opinion the clue lies in the difference and correspondence between informal freedom and Junian Latinity. The difference is in the status: the former was not recognized in civil law, the latter was. The correspondence lies in the handling of the possessions of the Junian Latin as *peculium*, claimable after his death. That the Romans did not accept the consequences of the used fictions of the lex Junia, viz. a coloniary Latinity (this would be expected if one adheres to the abovementioned theory of humanity), but modified this outcome in order to get the freedman's estate as *peculium*, demonstrates that they were very keen on retaining the

(39) Treggiari (note 25), p. 70 note 7; Brinkhof (note 44), pp. 39-49, 218, 222, shows it for the slaves.

(40) M. De Dominicis (note 9, *Les Latins*), pp. 318, 323.

(41) H. Wallon, *Histoire de l'esclavage dans l'Antiquité*, Paris 1879, p. 390.

advantages of informal manumission (42). It means that they must have had financial aims with the informal manumission: no one would set up a law for penniless freedmen, but for the Junian Latins a quite divergent system of succession was set up. The financial aims consisted of investments, but for this we have to go into the relations between a *dominus*, the *peculium* and the manumission.

We know that there were rich Romans, senatorial as well as non-senatorial, who furnished their freedmen with capital, in order to get a share of the profit (43). They also gave slaves a *peculium* for the same purpose. It is generally assumed that a *dominus* would not recall this *peculium*, though being under the civil law the owner of it and entitled to withdraw, because the *peculium* came gradually to be seen as the social property of the slave; for that reason it generally stayed with him when manumitted (44). However, if we consider the institution of *peculium* not isolated but against the background of the institution of patronal claims on inheritances of freedmen, the picture changes and it is questionable whether such a development took place.

Originally a freedman was completely free to do what he wished with his assets, and his patron had no rights on his estate. In 118 B.C. the praetor Rutilius introduced an *actio*

(42) It is remarkable how DUFF sensed this possibility of Junian Latinity, but saw it only as an abuse of the lex Aelia Sentia, which Augustus tried to check by introducing the *anniculi probatio* (DUFF (note 33), pp. 82, 190 "a sordid advantage of this system"). This indeed may have been meant as a mitigation of the restrictions of the law and their effects, but originally it was only open to those freed when they were not yet thirty. It thus did not cover all cases of Junian Latinity.

(43) H. PAVIS D'ESCURAC, *Aristocratie sénatoriale et profits commerciaux*, in: *Ktema* 2 (1977), pp. 339-355, esp. pp. 345-347, where she also names Junian Latins as a source of profit, and 347-350 with epigraphic evidence. Unlike she says, one could not bequeath the "normal" patronal rights, and those on Junian Latins only in certain cases.

(44) KASER (note 1) p. 286, notes 49 and 50. Cf. J.J. BRINKHOF in his interesting monography on *peculium*: *Een studie over het PECULIUM in het klassieke Romeinse recht*, Meppel 1978, pp. 164 ff., 227.

pro socio, by which a patron could claim half of the assets of the freedman if the latter did not pay him the due *obsequium,* probably goods or money. Later praetors did not allow the action during the lifetime of the freedman, but granted the patron *bonorum possessio* for as much as he was entitled to with the action (45). The *societas* probably succombed to the criticism that such an agreement, which presupposed that the patron manumitted and in reverse the freedman would remunerate him, was not admissible (46). The patronal claim was based on the construction that the patron was as manumitter the *agnatus proximus* of the freedman. So, according to the pretorian classes, the patron had no right when there were children, but when there were no persons of the class *unde liberi* heir, whether testate or intestate, the patron was entitled to half the estate, and if there were no heirs at all, he got all. This and the *actio pro socio* show a) that originally the Roman patrons had no legal means to demand assets from their freedmen (probably because up till the second century B.C. material riches hardly existed among the Romans, so that only the labour power of the freedmen could be claimed (as *operae*) and was worth to be claimed, while from the second century onward the rise in personal fortunes — a result of the rise of the political power of Rome — necessitated a different legal approach, as the amount of capital administered by slaves and freedmen rose correspondingly (47); b) that the Romans found

(45) Ulp. *42 ad ed.* D. 38.2.1. I follow the interpretation of A. WATSON of this text, viz. that it is unlikely that the action was given because the freedman had to fulfill *operae,* so that the patron should choose between the *actio operarum* and the patronal part (A. WATSON, *The Law of Persons in the Later Roman Republic,* Oxford 1967, pp. 228-229, 231-234). HUBRECHT'S assumption that the praetor abolished the action to counteract the silent participation of senators in chartering and usury societies, is based on the interpretation of F. SERRAO, *Il frammento Leidense di Paolo,* Milano 1956, p. 21 note 6 (G. HUBRECHT, *Quelques observations sur l'origine et l'évolution de la bonorum possessio dimidiae partis,* in: *Rev. jur. et écon. du Sud-Ouest* 10 (1959), p. 60).

(46) Ulp. *11 ad leg. Iul. et Pap.* D. 38.1.36. See note 45.

(47) See about the connection between the rise of Rome and the fortunes of individuals, and about the rise in the latter in the second

it self-evident that a patron had a claim on the property of his freedman for at least the half, except if there were natural children, and not during his lifetime; and c) that juridically the position of the freedmen with regard to their property deteriorated (it probably ameliorated slightly in financial aspect) ([48]). The lex Papia of 19 A.D. but strengthened the patron's position.

It seems to me that if the patronal claim was that strong, it would be a surprise if the claim of a *dominus* on the *peculium* would be less. The absence of early texts about who owns the *peculium* can hardly be due to a conviction that it belonged to the slave; it is more probable that the ownership of the *dominus* was out of question. The apparent necessity of the adjecticial actions indicates that too. It is essential to stress this, as it explains the patronal claim. The suspension of the patronal vindication by the praetor until after the death of the freedman (and — more probable now — of the informally freed slave) may have been due to the praetor's wish to protect the creditors of the freedman (BRINKHOF suggests this as a reason for repelling the *ademptio* ([49])). But never the dominical claim disappeared. With a slave, a *dominus* got all (back); with an informally freed slave too. With a freedman the proceeds were reduced to the patronal claim, but then he was free to manumit or not, to leave a *peculium* with the freedman or not, so he had only himself to blame (cfr Gai. 3.43). However, it is not so that a freedman felt the patronal power only with regard to his inheritance. Originally he was subjected during his lifetime to the patronal power, which resembled the *patria potestas* ([50]), and one might say that the conferment of citizen-

and first century B.C.: W.V. HARRIS, *War and Imperialism in Republican Rome. 327-70 B.C.*, Oxford 1979, pp. 65-67, 74-104. The introduction of the adjecticial actions as the *actio de peculio* also indicates such a development, cf. BRINKHOF (note 44) p. 182.

(48) Already L. JUGLAR observed that the freedman's position worsened in the course of time (*Du rôle des esclaves et des affranchis dans le commerce*, Paris 1894 (repr. Roma 1972), pp. 46-52).

(49) BRINKHOF (note 44), pp. 164-165.

(50) KASER (note 1), pp. 118-119, 298-301.

ship was more a confirmation of the continuation of submission, than an act of liberal generosity (51). But there is another aspect, concerning the management. A slave could have *libera administratio* over his *peculium,* which means that he could do what he wanted as long as he did not alienate anything for free (52). A freedman could not alienate with the purpose of diminishing the patronal claim; with the *actiones Calvisiana* and *Fabiana* the patron could undo that. If a *libertus centenarius* made himself by fraud a *minus centenario,* his acts were even void (53). Was a freedman so much more free then? Between them stands the Junian Latin. Though he was the legal owner of his property, there were important restrictions: he could not make a testament, nor could he accept as heir or legatee. Salvian compares the usufructuary to the Junian Latins, which might indicate that they could not alienate for free (54). With regard to his inheritance he was like a slave. And if fraud by a citizen freedman was prosecutable, it will have been a *fortiori*

(51) The citizenship did not lessen much the dependence of the manumitted. The subordination to their patron and his *familia* was reflected for the males in their political impotence too. This outcome is not strange if we assume that the *populus Romanus* consisted of all the *patres familiares* and their free dependents, and that the primacy lay here. Subordination to a *pater* would then qualify for citizenship but at the same time the nature of the subordination would be reflected in the possibility and extent of the citizenship and v.v.

(52) Brinkhof (note 44), pp. 122-132.

(53) Ulp. *10 ad leg. Iul. et Pap.* D. 37.14.16. The two actions probably existed a long time before the lex Papia, see Kaser (note 1), pp. 626, 709.

(54) Salv. Mass. 3.7.31: *proprietatem peculii capiunt et ius testamentarium consequuntur, ita ut et viventes cui volunt res suas tradant, et morientes donatione transcribant. nec solum hoc, sed et illa quae in servitute positi conquiserant, ex dominorum domo tollere non vetantur*: "They (viz. freedmen citizens in contrast to Junian Latins and usufructuaries) get the property of their peculium and obtain the right to make a testament, so that when they live they can give their goods to whom they want, and when they die they can transfer (those goods) as gift. And not only this, but they are not prohibited to take from the house of their masters those things which they got when they were (still) in servitude".

when done by a Junian Latin. This all goes for the informally freed slave too.

The question now is: if the Romans used their slaves and freedmen to put out capital, why did they do so and why did they manumit, considering that they would get less of the estate of a freedman than of a *peculium*? FINLEY has argued that the antique ideal was: being free, neither living under the constraint of, nor being employed for the benefit of another; this ideal led to the establishment of a slave society, as there was no real alternative, wage labour being out of the question (55). PAVIS D'ESCURAC mentions that a) the Roman aristocracy developed a value system in which the soil was the most esteemed possession, b) the *dignus* and *fides* of a senator were incompatible with mercantile greed, and c) commercial occupation stood in way of the for a senator indispensable *otium* (56). What applied for senators, of course applied for those rich Romans who aspired to get into the senate too. The only way to achieve this was to employ slaves, and to give them enough independence. I suggest that manumission not only occurred because there was a tradition with the Romans of manumission and clientelage, but also because it was found necessary in some cases that the patron kept a certain distance between himself and the pursued interests. For instance, it is recorded that Cato the Censor thought out a profitable and secure way of lending maritime loans (*pecunia traiecticia*), which was considered as the most despicable way of usury. It was, however, his freedman Quintius who actually lent it out (57). It is an instance of the mutual and dialectical dependence of patron and slave or freedman (58).

(55) FINLEY (note 2), p. 90, (note 8), pp. 64-66. Contrary to what FINLEY gives as reasons for the absence of wage labour as a solution, the late introduction of a monetary system seems more the origin of his followed solution, wage labour in itself existing already long before.

(56) PAVIS D'ESCURAC (note 41), pp. 341-342.

(57) Plut. *Cato Maior* 21.6. By doing so Cato was not committed.

(58) Cfr G.W.F. HEGEL, *Phänomenologie des Geistes*, (B) IV.A (S. 121-128 1. Aufl.).

And not only dominant values put the rich Romans and the senators, who had to be rich, under a restraint: for senators there even existed legal prohibitions, which barred them from the pursuit of profit in person. With some minor exceptions, they could not own commercial sea ships, farm taxes or contract for public necessities (59). MOMMSEN gives as explanation that the senate judged over the state finances and therefore had to remain free of interests in public contracts (60). PAVIS D'ESCURAC still has given evidence that members of senatorial *familiae* did partake, so did BADIAN (61), so probably too much demands are made on the senate. WILLEMS thought the prohibition of ships was to protect provincials from extortion: now the spoils could not be carried away (62). Whatever the origins of these prohibitions and values may be (the best solution seems to me to consider them as Roman religious prescriptions (63)), it suffices here to notice that they existed and had to be followed, at least in public, up till far into the Principate. Some writers suggest that a *societas* with a freedman was the solution (the senator or rich Roman becoming a silent partner) that the Romans used, but that must have been socially impossible (64). On the other hand, the sums involved must have been too large to use the intermediation of a citizen freedman: notwithstanding the *pars patroni*, too

(59) PS 5.28a.3; Scaev. *3 reg.* D. 50.5.3; Liv. 21.63.3,4 (218 B.C.); Cic. *Verr.* 2.49.122; Pap. *1 resp.* D. 50.2.6.2; Dio. 69.16; MOMMSEN (note 29), pp. 509, 899 note 1.

(60) MOMMSEN (note 29), p. 899; Th. MOMMSEN, *Römisches Strafrecht*, Leipzig 1899, p. 720. Like Mommsen: Cl. NICOLET, *L'ordre équestre*, Paris 1966, tome 1, p. 328 (but on p. 330 he says that senators could partake in those for religious purposes).

(61) PAVIS D'ESCURAC (note 43), pp. 352-354, 349; E. BADIAN, *Publicans and Sinners*, Oxford 1972, pp. 101 ff.: never they were *socius*, but they acted through intermediaries or had (not on name registered) *partes*.

(62) P. WILLEMS, *Le sénat de la république romaine*, Louvain-Paris 1878, tome 1, pp. 202-204. But that would be ineffective.

(63) I cited arguments for this at Brussels, but to put them down here would make this article surpass the limits of Junian Latinity and manumission.

(64) See note 45.

much would have remained with the freedman to make the investment attractive (65).

Here, I suggest, informal manumission proved to be a solution. The freed slave could be called a freedman under the pretorian law, while all his assets went, at his death, to his manumitter. The reason for the lex Junia could have been that this solution showed deficiencies. According to the civil law the slave was still a slave, the patron directly involved. At the moment that Augustus purged the senate and tried to impose and revive the old Roman morals (in 18 and 17 B.C.), the law had to be reinforced as well, and under this pressure the construction may have succombed. Maybe the Romans now wanted to avoid any possible legal connection, maybe the praetor could not accept the informal free (anymore) as owners or litigants: in any case we know that the lex Junia was accepted and that that law but converted the former situation in a perfect civil law one, while it cleared away all the disadvantages. As a Junian Latin was the legal owner of f.i. a ship, no one could accuse his patron — if a senator — of immoral or illegal conduct; nor if he was a *redemptor*.

For this vision on the purpose of informal manumission and Junian Latinity I have two other — and I think strong — arguments. The first is Gai. 1.41, where Gaius discusses the possibility for a minor to make a (Junian) Latin (*Et quamvis Latinum facere velit minor xx annorum dominus*, etc.). The second is an edict of the *princeps* Claudius of 51 A.D., reported in Sue. *Cl.* 18.4,19 (66). Claudius wanted to incite citizens, Junian Latins and freedwomen to build ships in behalf of the *annona* of Rome. He offered the Junian Latins Roman citizenship and to the freedwomen the *ius quattuor liberorum*, which relieved from the legal guardianship of the *parens manumissor*.

(65) Though some devices were developed to prevent that: the vow of celibacy, the enlargement of the *operae*, the *causa libertatis imposita*, which does not seem to have been the same as *operae*, seen D. 37.14.20.

(66) For the Junian Latins confirmed and supplemented by Ulp. 3.1,6 and Gai. 1.32c. See for the interpretation of the term *feminae* my article referred to in note 19.

Now there are on two points remarkable similarities between these two groups. In the first place the fact that Claudius must have had the conviction that they had enough money to build ships (and that will not have been a small investment), or else it was a meaningless measure — but it was not so, as Suetonius praises it. This capital must have come from their patrons. It is said that the freedmen had a knack for commerce and so they got rich, but the argument can be reversed, and with more ground, that slaves and freedmen had more chance of developing and exploiting an extant capacity because they could easily obtain access to the necessary funds, viz. their masters', which a free but poor Roman could not ([66bis]). So, if Claudius had the rich Junian Latins in view, the senate must have had too when it accepted the lex Junia. As said, it would not have done it for penniless people. That means that at the moment of manumission the slave would have a good chance of becoming rich, or was already rich, which again means that his *dominus* was rich. In any case Junian Latinity is chosen then in order to ensure that all the freedman's assets go to his patron. With the freed women the situation will have been the same. Although we know that there existed rich and very rich women in Antiquity, and that they enjoyed a very independent position ([67]), for freed women it must have been difficult to amass fortunes in commerce and like occupations, and if one became rich it will have been by donations and inheritances. Claudius' edict shows, however, that there were rich freed women.

The second similarity lies in the effect of the reward. Of the estate of a Junian Latin the whole went to his patron, of a citizen freedman with more than a 100,000 sesterces (the

([66bis]) FINLEY (note 8), pp. 76-77.

(67) For literature about the juridical and social position of women in Antiquity see A. WACKE, *"Elterliche Sorge" im Wandel der Jahrtausende — Zum Sorgerecht der geschiedenen Mutter nach römischem Recht*, in: *Zeitschrift für das gesamte Familienrecht*, 27 (1980), p. 205, note 1. Also Sarah POMEROY, *Goddesses, Whores, Wives and Mothers*, New York N.Y., 1975, pp. 163, 177, 198-200.

class Claudius must have had in mind) in most cases only a child's portion, so the freedman could leave more to his children or heir. A freed woman needed the consent of her patron to make a testament, and if he withheld that, her whole estate would go to him (or her) by intestate succession. It is very probable that the patron asked for his *auctoritas* more than half of the estate, maybe nearly all. With the *ius quattuor liberorum* he was no longer the guardian and thus the freedwoman was free to make a testament, but now the patron was entitled to a child's portion (68). So in both cases the advantage will have been, on the average, the same, as in Antiquity families tended to be small, i.e. consisting of no more than two surviving children (which fact, by the way, was used in reverse in the lex Papia to the advantage of patrons of *liberti centenarii*) (69). It seems that Claudius addressed himself to two juridical groups by whom senators and other rich Romans put out capital (70), and maybe he even tried to dissociate capital from these persons in this way. The antagonism between him and the other senators was strong enough for that (71).

In the foregoing we have seen that the lex Junia, which gave the informally freed a status of Latinity, established a system of patronal rights so different from the existing system regarding citizen freed men and women, that we can conclude the Romans intentionally wanted it to be so. As its effect was that the assets of a Junian Latin were treated like *peculium* claimable after death, so that there was no difference between the consequences of informal freedom (where it was *peculium*), we can conclude too that the Romans not only wanted to retain

(68) See Table 1 for an exact comparison.

(69) P.A. Brunt, *Italian Manpower*, Oxford 1971, pp. 143-146. For the lex Papia, see Table 1.

(70) Women f.i. could farm taxes, which senators and decurions were forbidden to do (cf. Paul. *2 decr.* D. 49.14.47.pr.: "*Moschis quaedam fisci debitrix ex conductione vectigalis* ...").

(71) See f.i. RE 3, 2786, 2789, 2800, 2802 (Gaheis, 1899); *Der kleine Pauly* 1.1216.

these consequences, but also that these must have been the object of informal manumissions.

Surely there will always have been cases in which informal manumission happened by lack of the possibility of a perfect manumission, f.i. the absence of a magistrate, or in case the manumitter later turned out to be only bonitary owner. MITTEIS has argued that after the *Constitutio Antoniniana* in those regions where the inhabitants kept to their original non-Roman way of manumitting, the freed men and women who before became fully-qualified peregrines, now would become Junian Latins. He thought, however, that between Constantine and Justinian Junian Latinity got gradually out of use (72). Sometimes, up till the early fifth century, Junian Latinity was used as a penalty, when a citizen freedman was reduced to that state and all his assets would go to his patron or the male descendants *in potestate* of the patron (73). But all these instances do not hamper the fact that in a certain amount of cases informal manumission during the Late Republic and the Principate must have been done with the abovementioned intention, as is proven by the divergent system of succession of the lex Junia.

Now freedmen and slaves were used by Roman society to manage their riches, not only because the distances made the use of intermediaries desirable if not indispensable, but also because the Romans had values, rules and prohibitions that necessitated the rich and the senators to make use of freedmen and slaves. The law of the second century B.C. gave cause for discontent: with a slave the *dominus* kept the property of the put out capital and the profits, but was deemed personally liable *in solidum*; with a freedman the patron was not liable but he got nothing back, except if he had lent money. Partial adaptations some time before 100 B.C. (as adjecticial actions and the *pars patroni*) may have met those points, still

(72) L. MITTEIS, *Reichsrecht und Volksrecht*, Leipzig 1891, pp. 377-381.

(73) C. Th. 2.22.1, 326 [320]. Like Tacitus' remark (*ann.* 13.27), this does not prove that this was the purpose of the law; it only says that it could be used in this way.

informal manumission as long as accepted by the praetor must have been rather a good solution too, as it was non-existent for civil law and thus, after the freedman's death, all his assets were his master's property. The weak point will have been the status of the informal freedman and consequently his liability and legal personality. The lex Junia, preserving the peculiar advantage, in this respect brought a clear gain to the patrons, as the informally freed now got a status recognized in civil law, and were enabled by the *ius commercii* to contract with private persons or the state (*redempturae*), to own and to litigate.

Next to this the new status of Latinity gave the informally freed the opportunity of a legal marriage and freeborn children. It is well possible that this too was a motive behind the law, though whether it may have come out of a feeling of humanity or out of the thought that it would incite the Junian Latins to work harder, it is not known. But if there was humanity, still it will have been aimed at a certain special circumstance of informal freedom, and not at a general precarious situation (for which no convincing evidence has been found, nor is suggested by Gai. 3.56).

Furthermore the moral revival under Augustus (74) may have rendered necessary or prompted a restating of the informal freedom in terms of civil law, and so can have been a cause of the lex Junia too. It was to all probability issued at a time, 17 B.C., when Augustus pressed for that.

Probably all these motives made a contribution to the making of the lex Junia. Still, as it were the patrons who made the law, I think their interests will have prevailed over their concern for the status of the progeny of their informally freed, particularly as the breeding of slaves was an accepted idea. Thus such a concern, if present (and maybe aroused by discontent of the informally freed), most probably will have been considered from the point of profitability, and not have been a decisive factor.

(74) Cf. J.H.W.G. Liebeschuetz, *Continuity and Change in Roman Religion*, Oxford 1979, pp. 90-100.

That the Romans used their slaves, Junian Latins and freed men and women for the said purposes, I hope to have demonstrated sufficiently by the comparisons with regard to the patronal rights to their estates, their possibilities to administrate their possessions, and the consequences of certain rewards. Differences appeared to be consisting more in degrees in dependence, than in a sharp differentiation between freedom and slavery. Epigraphically we cannot expect to find traces of Junian Latinity as the Latin name system was identical to the Roman: any *libertinus* could be a Junian Latin (75); nor do the legal sources allow for that, Junian Latinity being abolished before the codification. But there ought to have been many, *vide* the legal rules concerning them and the indications by Gaius of the problems these rules could cause, and the incomes out of them like out of other freedmen (and freed women) will have been considerable on the whole, as is suggested for the emperors in the Principate (76).

For the informal freedman it all brought an improvement only with regard to his partner (whom he could marry) and to his children: now they would be born free, and he would leave a name (77). For the rest it was as Salvian wrote more than four hundred years after the lex Junia, « that they live, viz. as if they were freeborn, and that they die as slaves » (78).

(75) E. MEYER, *Einführung in die lateinische Epigraphik*, Darmstadt 1973, p. 89.

(76) ILS 1521 (= CIL 6.8450) mentions a *fiscus libertatis et peculiorum* in or after 161-169 (probably ILS 1522 too). A.H.M. JONES, *Studies in Roman Government and Law*, Oxford 1960, p. 160, suggests that this concerned the collection of *peculia* and *partes patroni* after death, and not the collection of fees for manumission. That informal manumission and consequently Junian Latinity long played a role show Ulp. 3, FV 261 and Salvian (notes 10 and 78).

(77) For a *Latina* the situation was more complicated, as the status of her children would depend of that of her husband.

(78) 3.7.31: *ut vivent scilicet quasi ingenui, et moriantur ut servi.* It was not until 531 A.D. that Justinian abolished Junian Latinity. Accordingly the Digest does not contain references to cases with Junian Latins, though it is apparent from Gaius that they must have given ground for juridical questions.

TABLE I

Outline of the succession to the *bona libertorum et libertarum* by patrons and their successors, based on Gai. 3.39/53.

		PATRONUS			PATRONA				FILIA PATRONI		
		Lex XII tabularum	Edictum praetoris	Lex Papia	Lex XII tabularum, Edictum praet.	Lex Papia: ingenua iure II libb.	Lex Papia: libertina iure III libb.	Lex Papia: ingenua iure III libb.	Lex XII tabularum	Edictum praetoris	Lex Papia: ingenua iure III libb.
Libertus											
TEST.	heres ≠ liber nat.	0	$\frac{1}{2}$	$\frac{1}{2}$	0	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	0	0	$\frac{1}{2}$
	heres = liber nat.	0	0	0	0	0	0	0	0	0	0
INT.	no heredes sui	1	1	1	1	1	1	1	1	0	1
	heres s. ≠ liber nat.	0	$\frac{1}{2}$	$\frac{1}{2}$	0	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	0	0	$\frac{1}{2}$
	heres s. = liber nat.	0	0	0	0	0	0	0	0	0	0
	liber(i) nat.	0	0	0	0	0	0	0	0	0	0
Libertus centenarius											
TEST.	heres ≠ liber nat.	0	$\frac{1}{2}$	$\frac{1}{2}$	0	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	0	0	$\frac{1}{2}$
	1 liber nat.	0	0	$\frac{1}{2}$	0	0	0	$\frac{1}{2}$	0	0	0
	2 liberi nat.	0	0	$\frac{1}{3}$	0	0	0	$\frac{1}{3}$	0	0	0
	3 or more liberi nat.	0	0	0	0	0	0	0	0	0	0
INT.	no heredes sui	1	1	1	1	1	1	1	1	0	1
	heres s. ≠ liber nat.	0	$\frac{1}{2}$	$\frac{1}{2}$	0	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	0	0	$\frac{1}{2}$
	1 liber nat.	0	0	$\frac{1}{2}$	0	0	0	$\frac{1}{2}$	0	0	0
	2 liberi nat.	0	0	$\frac{1}{3}$	0	0	0	$\frac{1}{3}$	0	0	0
	3 or more liberi nat.	0	0	0	0	0	0	0	0	0	0
Liberta											
TEST.	heres ≠ liber nat.	1″	1″	1″	0	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	0	0	$\frac{1}{2}$
	heres = liber nat.	1″	1″	1″	0	0	0	0	0	0	0
INT.		1	1	1	1‴	1‴	1‴	1‴	1	0	1
Liberta cum iure IV liberorum											
TEST.	heres ≠ liber nat.	0	0	1=	0	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	0	0	$\frac{1}{2}$
	1 liber nat. superstes	0	0	$\frac{1}{2}$	0	0	0	0	0	0	0
	2 liberi nat. superst.	0	0	$\frac{1}{3}$	0	0	0	0	0	0	0
	p liberi nat. superst.	0	0	$\frac{1}{p+1}$	0	0	0	0	0	0	0
INT.	no liber nat.	1	1	1	1	1	1	1	1	0	1
	1 liber nat.	1	1	1	1	1	1	1	1	0	$\frac{1}{2}$
	2 liberi nat.	1	1	1	1	1	1	1	1	0	$\frac{1}{3}$
	p liberi nat.	1	1	1	1	1	1	1	1	0	$\frac{1}{p+1}$

Explanation:

The number or fraction indicates the inheritance or the part of the inheritance to which the patronal right entitles.

TEST.: in case of a testament; INT.: without a testament; heres s. ≠ liber nat.: the *heres suus* is not offspring of the *de cuius* (e.g. an *uxor in manu*); 1″: the patron's part depends on himself (his *auctoritas* is needed for the testament); 1‴: *capitis deminutio* reduces the patron's part to zero; 1=: if we accept Girard's and Krüger's textual reconstruction.

PATRONUS includes his *filius*, his *nepos ex filio* and his *pronepos ex nepote ex filio*.

FILIA PATRONI includes *neptis ex filio patroni* and *proneptis ex nepote ex filio patroni*, except for the Lex Papia.

TABLE II

THE EFFECTS OF MANUMISSION OF SLAVES

	MANUMISSIO	By a quiritary owner, who has *in bonis* too	By one who has only *in bonis*	Access to Roman citizenship
IUS ANTIQUUM				
	testamento	civis	servus (9)	?
	censu	civis	servus (9)	*iteratio* (7)
	vindicta	civis	servus (9)	*iteratio* (7)
	inter amicos	servus (9)	—	*iteratio*
LEX IUNIA (17 B.C.)	testamento (1)	civis	Latinus	rem. 1 (7)
	censu	civis	Latinus	rem. 1 (7)
	vindicta	civis	Latinus	rem. 1 (7)
	inter amicos	Latinus	—	rem. 1
LEX AELIA SENTIA (4 A.D.) (2)				
- dom. mai. XX ann.				
serv. mai. XXX ann.	testamento (1)	civis	Latinus	rem. 1 (7)
	vindicta	civis	Latinus	rem. 1 (7)
	inter amicos	Latinus	—	rem. 1
serv. min. XXX ann.	testamento (1)	Latinus (3)	—	rem. 2 (8)
	vindicta	?	—	(rem. 2) (8)
	vindicta & c.i. probatione	civis	Latinus	rem. 2 (7)
	inter amicos & c.i. probatione	Latinus	—	rem. 2
- dom. min. XX ann.				
serv. mai. XXX ann.	testamento (1)	— (4)	—	
	vindicta	— (4)	—	
	vindicta & c.i. probatione	civis	Latinus	rem. 1 (7)
	inter amicos & c.i. probatione	Latinus	—	rem. 1
serv. min. XXX ann.	testamento (1)	— (5)	—	
	vindicta	— (5)	—	
	vindicta & c.i. probatione	civis	Latinus	rem. 2 (7)
	inter amicos & c.i. probatione	Latinus (6)	—	rem. 2

Remedium 1: *iteratio, beneficium, militia, navis, aedificium, anniculi probatio* (SC Pusio-Pegasianum, 75 A.D.), *pistrinum.*

Remedium 2: *iteratio, beneficium, militia, navis, aedificium, anniculi probatio* (lex Aelia Sentia, 4 A.D.), *pistrinum.*

For a Latina a remedy was to bear thrice (or three) children; it is not known whether she had access to the other remedies.

(1) With some quantitative restrictions by the lex Fufia Caninia of 2 B.C.

(2) The *manumissio censu* has been left out, as this mode to all probability was not used anymore in the Early Principate.

(3) Ulp. 1.12.

(4) Gai. 1.41, Epit. Gai. 1.1.7.

(5) Gai. 1.40, Epit. Gai. 1.1.7.

(6) Gai. 1.41.

(7) The *iteratio* has to be done by the quiritary owner. The Latin will become his *libertus*, while the owner *in bonis* keeps his claim on the inheritance.

(8) According to STEINWENTER (PW 12,917-918, 921 (1925)) *iteratio* was impossible here, as the quiritary ownership had ended owing to the chosen method of manumission.

(9) A *servus morans in tuitione praetoris.*

Edictum und *lex edictalis*. Form und Inhalt der Kaisergesetze im spätrömischen Reich

von N. van der Wal
(*Groningen*)

Die Formalien der spätrömischen Kaisergesetzgebung haben sich aus den Formen der Kaiserverordnungen der Prinzipatszeit entwickelt. Dass sie trotzdem nicht dieselben sind, erklärt sich aus der seit der Regierung Konstantins des Grossen erheblich geänderten Staatsverfassung. Die *constitutiones principum*, die unter den Rechtsquellen der klassischen Zeit nur eine ziemlich untergeordnete Rolle gespielt hatten, waren im vierten Jahrhundert das einzige Mittel geworden, mit dem neues Recht eingeführt werden konnte, weil nur noch der Kaiser die Befugnis zur Gesetzgebung hatte. Dazu kommt, dass von den vier Arten dieser Konstitutionen, die die klassischen Juristen als Rechtsquellen erwähnen — *edicta, decreta, mandata* und *rescripta* (1) — nur die Edikte als wirkliche Gesetze im heutigen Sinne betrachtet werden können; aus den übrigen Massnahmen — Entscheidungen, Amtsinstruktionen für Provinzmagistrate und Gutachten — wurden erst durch nachträgliche Interpretation der Juristen allgemeine Rechtsregeln gebildet.

(1) Diese Aufzählung ist die übliche der Handbücher; die römischen Juristen nennen nur *edicta, decreta* und Briefe (s. Gaius *Inst.* 1, 5 und die in Inst. 1, 2, 6 und D 1, 4, 1 § 1 fast gleichlautend überlieferte Stelle aus den Institutionen Ulpians), weil die *mandata* zwar als Rechtsquellen betrachtet wurden, aber nach klassischem Sprachgebrauch keine *constitutiones* waren.