

# *Cives Latini, servi publici* and the *Lex Irnitana*

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The existence of individual freeborn, or coloniary, *cives Latini* in the Roman Imperial period has been a matter of controversy since Professor Fergus MILLAR put forward a radically new interpretation of the subject in his book, *The Emperor in the Roman World*. The traditional position on the subject has been, and remains, that there existed in the Roman Empire individuals who possessed rights very similar to, though not identical with, those of full Roman citizens. These individuals were known as *cives Latini*, or *Latini coloniarii*. Such *cives Latini* are envisaged as having been the inhabitants of that category of *municipia* which possessed Latin rights, i.e. *municipia* with the *ius Latii*, rather than being *municipia civium Romanorum*. On the traditional viewpoint, therefore, this category of individual would have formed a substantial group of the inhabitants of the Western Empire, especially in the Spanish

provinces, which received a grant of *ius Latii* en bloc from Vespasian (1).

For MILLAR, on the other hand, a town's obtaining the *ius Latii*, merely entailed the concession of Roman citizenship to the magistrates of the town, and to a certain number of members of their families, on their leaving office, in the case of the *ius Latii minus*, or a concession of Roman citizenship to the entire *ordo* of the town in the case of the *ius Latii maius*. The juridical status of the main body of citizens of the towns concerned would, on the other hand, be unaffected by the grant and consequently they would have remained, legally speaking, *peregrini*. It follows from this position that the group of freeborn individuals with a particular set of legal rights and known as *cives Latini*, as envisaged by the traditional position, did not exist in the Imperial period (2).

The discrepancy between these two rival interpretations has led to a great deal of debate which has been intensified by the recent publication of our most substantial fragment of Roman municipal law found to date, namely the *Lex Irnitana*. Unfortunately the debate has remained inconclusive, as the opening chapters of the law, which would probably have given a definitive answer to the question, have been lost. Nevertheless chapter 72 of the law which bears strongly on this question

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1) Pliny, *N.H.* 3.30.

2) F.G.B. MILLAR, *The Emperor in the Roman World* (1977), pp. 485-6, pp. 630-5.

appears to have been neglected by proponents of both the "traditional" and "minimalist" interpretations of the law, and it is the implications of this chapter for the argument that will be discussed below.

The chapter is concerned with the manumission of the town's public slaves. According to its provisions it is clear that only a *duovir* could initiate this process of manumission. If he wished to do so, he had to bring the matter before the town's *ordo*, where a quorum of two thirds of the decurions was required to discuss the question. The *ordo* was then to decide on the amount the slave concerned was to pay for his manumission, and a two thirds majority of those present was required to bring the manumission into effect. Following this procedure the slave was then to be manumitted by the *duovir*. The formula for manumission to be employed here (*liberum liberamve esse iubeto*) is identical to that used in chapter 28 of the law, which is concerned with the manumission of private slaves before the *duoviri* (*[l]i[b]e[r]um liberamve e[s]se iusserit*). The description of the freed slave's consequent state in these two chapters is also similar, but differs to a greater degree: "*liber et Latinus esto...ei[dem]que municipi[pes] municipi Flavi Irnitani sunt*" in the case of the freed municipal slave and "*liber esto... uti qui optumo] iure Latini libertini liberi sunt erunt*" in the case of manumitted private slaves.

The law goes on to provide against anyone receiving more than the agreed amount for a slave's manumission, and establishes that the rights of the *municipium* over the *hereditas* of

the slave concerned were to be the same as those enjoyed by an Italian *municipium* over the *hereditas* of its *liberti*.

The chapter contains several difficult puzzles, the most important of which is the precise meaning of "*liber et Latinus*", the status enjoyed by the *liberti* created by its provisions. Two options immediately present themselves. The first is that on manumission municipal slaves assumed the same judicial status as that enjoyed by the freeborn citizen body of the town. If so, the description of their consequent status as "*Liber et Latinus*" must mean that these *liberti* became *cives Latini* of the same sort as the traditional theory believes that the bulk of the citizen body would have been in a town with the *ius Latii*. Consequently, if this interpretation is correct, the chapter provides clear evidence for the continuing existence of *cives Latini* in the imperial period. The second possibility is that the phrase "*Liber et Latinus*" is referring to a category of informally freed slaves, who were held to revert to slavery on death, namely the *Latini Iuniani*. If this interpretation is correct, we can deduce nothing about the status of the remainder of the citizen body from the provisions of the chapter, as they are dealing solely with the status of a specific group of *liberti* and consequently offer no hint as to the legal status of the rest of the citizens of the town.

Clearly the first of these options is preferable to supporters of the traditional interpretation of the *ius Latii*. It would allow us to see in this chapter of the *Lex Irnitana* a straightforward reference to *cives Latini/Latini coloniarii*, and to infer that this was the general legal status of the inhabitants of a *municipium*

with the *ius Latii*, and consequently prove the continuing existence of such a status group into the Imperial period. As such the chapter could be taken as a straightforward refutation of MILLAR'S minimalist thesis that such a group did not exist at this point in time.

Such an interpretation, moreover, would seem to make good sense in the context involved. On this point of view, the freed slave involved would have assumed the standard form of citizenship enjoyed by his fellow citizens. This process can be seen as conforming with the normal Roman rule for manumissions, namely that the newly freed slave took the juridical status of his manumitter, and as such would seem to reinforce the view that the citizens of towns with the *ius Latii* were in fact freeborn, individual *cives Latini*.

The fact that the law assumes that the *liberti* freed under these provisions possessed a *hereditas*, rather than a *peculium*, is also held to support the traditional interpretation. This is because it is normally believed that, if the manumitted municipal slaves concerned became truly free, like the other members of their community, they would have possessed a *hereditas*. The imperfectly freed *Latini Iuniani*, on the other hand, are normally held to have had a *peculium*, like slaves proper, rather than the *hereditas* of a freeman. If this is the case, the chapter's assumption that the municipal *liberti* created by its provisions possessed a *hereditas*, not a *peculium*, appears to rule out the possibility that they were *Latini Iuniani*, as then a reference to the

*peculium* of the *liberti* rather than *hereditas* would be required (3).

Nevertheless although the traditional interpretation appears, initially, to be the most natural of those available, there are still problems in accepting it. The first of these is whether the law, by its reference to *hereditas* rather than *peculium*, does rule out the possibility that municipal *liberti* could have been *Latini Iuniani*. Although the rules for inheritance laid down by Gaius seem at first to suggest that *Latini Iuniani* possessed a *peculium* and not a *hereditas*, a closer reading of the relevant section of the text suggests that in reality the reverse would have been the case. Gaius states that the dead Junian Latin's property reverts to his master not by "*iure peculii*", but by "*iure quodammodo peculii*" (*Inst.* 3.56). The best translation of this phrase should be "by a sort of law of *peculium*", i.e. not the law of *peculium* itself, but by a fiction analogous to it. Such a fiction was required to ensure that the property of the informally freed slave did revert to his former master in the same way as if it had legally been a *peculium*, although technically it was not of this status, but, in the strict legal terms was a *hereditas* (4). This confusion over the status of the *bona* of the deceased *Latinus Iunianus* probably led to the prolonged discussion in Gaius' *Institutes* of how such *bona* differed from those of a formally freed slave which

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3) See the commentary of J. GONZÁLEZ on ll. 17-19 of the chapter, in *The Lex Irnitana : a new Flavian municipal law*, *J.R.S.* 76 (1986) p. 223.

4) For a further discussion see A.J.B. SIRKS, *The Lex Iunia and the effects of informal manumission and iteration*, *R.I.D.A.* 30 (1983) p. 211ss., esp. pp. 251-4.

immediately follows the passage quoted above. Had the *bona* of a *Latinus Iunianus* been straightforwardly a *peculium* it would have been unlikely that such confusion would have arisen, and the ensuing discussion probably would have been superfluous. The possibility that chapter 72 is discussing *Latini Iuniani* rather than newly created *cives Latini/Latini Coloniarii* here cannot therefore be ruled out in the way supporters of the traditional position assume.

Possible support for the minimalist position also comes from the phrasing of chapter 28 of the *Lex Irnitana*. Given the close similarities between the procedures laid down in this chapter and those of chapter 72, it would seem reasonable to assume that they are dealing with an identical form of manumission leading to the creation of freedmen who would, in both cases, enjoy the same legal status. In chapter 28, as seen above, the resulting freedmen are said to be *Latini libertini*. This closely parallels the phrase Gaius uses to describe *Latini Iuniani*, "...*de bonis Latinorum libertorum...*" (5). The formula used to liberate the slaves in both chapters, "*liberum esse iubere*", was also used for informal liberations, again suggesting that the chapters are dealing with informally freed Junian Latins rather than formally freed slaves who obtained the status of "coloniary" Latins. For example, on a document from Roman Egypt, Marcus Aurelius Ammonion is said to have freed his slave girl,

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5) Gaius, *Institutes*, 3.55.

Helena, informally, using this same formula : "*inter amicos manumisit liberamque esse iuss[i]t*" (6).

Finally the minimalist interpretation appears to fit better than the traditional approach with the rest of our knowledge about the ability of towns to manumit their municipal slaves formally. Some kind of special dispensation would have been required for manumissions of this kind, as none of the standard methods of performing them, namely by will, *census*, or *vindicta*, would have been available. A town, obviously, could not manumit by will, and given the Roman doctrines of collective ownership (7), and the indefinability of the citizen body, manumission by *census* would also be impossible (8), as would manumission by *vindicta*, as this did not admit the possibility of a substitute for the actual owner of the slave, here the whole town, performing the ceremony (9). We know that such a concession was granted, first to the towns of Italy, and then to the provinces, from a passage of the *Codex Iustiniani*, dating to the period of Diocletian, which, unfortunately, is, in part, corrupt (10). This reads "*itaque secundum legem +Vectibulici+ , cuius*

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6) RICCOBONO, *F.I.R.A.*, vol. 3, n°11, dating from 211 A.D.

7) Digest, 1.8.6. (Marcian) : *...ideoque nec servus communis civitatis singulorum pro parte intelligitur, sed universitatis*. See also L. HALKIN, *Les esclaves publics chez les Romains* (1965), p. 142s.

8) Digest, 41.2.1.22 (Paulus) : *...quia universi consentire non possunt, and Sententiae Pauli 22.5 : nec municipia nec municipes heredes institui possunt, quoniam incertum corpus est*.

9) Codex Justinianus, 7.1.3 : *...nec mulierem per maritum nec alium per procuratorem vindicta manumittere posse, non est ambigui iuris*.

10) Codex Justinianus, 7.9.3.



*potestatem senatus consulto, Iuventio Celso iterum et Neratio consulibus, facto ad provincias porrectam constitit, manumissus civitatem ROMANAM consecutus es*" (emphasis mine). We know that the Juventius concerned was consul in 129 A.D., and consequently the *senatusconsultum* is probably Hadrianic in date. The corrupt name of the original law is a more difficult problem. It is frequently assumed to be Trajanic in date and the passage amended to read "*legem +Vetti Bolani+*", consul in 111 A.D., with C. Calpurnius Piso (11). MOMMSEN, on the other hand, thought that the concession ought to have been granted in the Republican period, and amended the passage to read, "*legem veteris reipublicae*" (12). Given that the original law involved here deals only with Italy, where all communities had enjoyed Roman citizen status since the first century B.C., and with the granting of specifically Roman citizenship, its purpose was, presumably, to enable the communities of Italy to liberate their municipal slaves as freedmen enjoying the same status as the rest of the free citizen body, i.e. that of Roman citizen, despite the technical difficulties outlined above. Such a provision would follow the normal Roman practice of manumission, where the liberated slave took the legal status of his manumitter, in this case presumably the legal status of the manumitting magistrate, or possibly that of the town itself. If the law was of this nature, i.e. allowing manumitted public slaves to take the same status as the

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11) This amendment is accepted by, amongst others, HALKIN, *op.cit.*, p. 143.

12) *R. Staatsrecht* (1871), vol. 1, p. 624, n. 3.

rest of the citizen body, clearly the extension of its provisions to the provinces would mean that if communities composed of freeborn *Latini* existed, the liberated municipal slaves of such communities would take on the status of *cives Latini/Latini coloniarum* on manumission. On this interpretation there appears to be no conflict with the traditional interpretation of chapter 72 of the *Lex Irnitana* here, but rather a confirmation of it.

However both the original law and its extension to the provinces, as outlined above, appear to postdate the *Lex Irnitana*. This poses a major problem for the traditional interpretation of chapter 72, which wishes to see it providing for the creation of formally freed *liberti* of the same judicial status as the rest of the citizen body, as it appears that even communities in Italy did not enjoy this right at the time of the *Lex Irnitana*'s creation. Even if MOMMSEN was right in assuming that the original law dates from the Republican, rather than the Trajanic, period, this is of no help in the present case, as the extension of this privilege to provincial towns appears to be firmly Hadrianic in date, and so postdates the *Lex Irnitana* by almost half a century. At the time of the creation of the *Lex Irnitana* therefore, it appears reasonable to assume that provincial communities did not enjoy the right to formally manumit their municipal slaves in the way that supporters of the traditional view envisage. Hence the traditional interpretation, which requires precisely this to have been the case, has a severe chronological problem, which needs, at least,

a major reinterpretation of the passage of the *Codex* discussed above (13).

Despite the legal problems involved in manumitting communal slaves, we know that municipal slaves were liberated in the Republican period, as Varro mentions this in his discussion of nomenclature (14). Nevertheless there need not be a clash between the evidence of Varro, and the postulation of a Trajanic, rather than Republican date for the *Lex +Vetti Bolani +* mentioned above. The *lex* provides for a form of formal manumission which would convey full Roman status, "*civitatem Romanam*", to the manumitted slave. It is very likely, however, that the freed slaves mentioned by Varro were informally manumitted, and hence had the status not of *cives Romani*, but that of *in libertate tuitione praetoris* prior to the passing of the *Lex Iunia Norbana*, and that of *Latini Iuniani* after the enactment of this law. It is clear that these slaves were manumitted by the magistrates of towns concerned, as Varro notes that at Rome, on occasions, they took the name of the magistrate who had performed the manumission ceremony, rather than that of their previous owner proper, namely the town, or that of "*Publicius*". Presumably later, this form of incomplete freedom was thought to be an insufficient reward (or an insufficient incentive to purchase freedom ?) for these slaves, and hence the laws

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13) This difficulty is recognized by GONZÁLEZ, *op.cit.* above n.3.

14) Varro, *L.L.* 8.41 : *Habent plerique libertini a municipio manumissi.*

mentioned in the *Codex Iustiniani* were passed to remedy this situation and make the full citizenship available for such slaves.

Even the informal manumission of municipal slaves would have required some form of legislation however, as can be seen from the *Sententiae Pauli*, where it is stated that a slave with more than one owner could not be liberated even to Junian Latin status by only one of his owners (15). Given this statement and the problems concerning communal ownership and the indefinability of the citizen body outlined above, some form of dispensation would have been necessary for even the informal manumission of municipal slaves. It may well be that chapter 72 of the *Lex Irnitana* embodies this dispensation, allowing the informal liberation of public slaves, and defines the form it was to take and the method by which it was to be carried out.

If our chapter is dealing with informal manumission, it can be best interpreted by the minimalist position, as, as has been seen, the traditional approach requires that the chapter should be dealing with formal manumission, which does not seem to have been possible for cities in the provinces, and probably not even for those in Italy, at the time of the *Lex Irnitana*'s creation. The notion of informal manumission, on the other hand, provides no problems for the minimalist position, and indeed follows naturally from it, interpreting the *Latini* created by the provisions

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15) *Sententiae Pauli*, 4.22 (*de manumissionibus*): *servum communem unus ex dominis manumittendo Latinum facere non potest nec magis civem Romanum*. See also *Fragmentum Dositheanum*, frag. 10: *communis servus ab uno ex sociis manumissus neque ad libertatem pervenit*.

of the chapter as *Latini Iuniani*, i.e. the products precisely of informal manumission. Nor does the chronological problem faced by the traditionalists arise with the minimalist interpretation. If the *Latini* created by the provisions of the chapter obtained the status of *Latini Iuniani*, as they had been freed by a process of informal manumission, as freedmen mentioned by Varro probably were, there is no problem that the provisions of the *Senatusconsultum Neratianum* postdate the *Lex Irnitana*. These deal with a separate subject, namely the formal manumission of municipal slaves, and hence can be seen as modifying and improving the system of informal manumission of municipal slaves which was already in place, and for which our chapter lays down the method of procedure.

Thus far the minimalist position, despite its initial lack of attraction, appears to be the stronger of the two cases. However supporters of the traditional interpretation still have one extremely strong counter argument against this approach. This is, given that, on the minimalist view of the *ius Latii*, *municipia* with this right would be composed mainly of *peregrini* with a small number of *cives Romani*, it seems strange that *servi publici* had the possibility of purchasing a legal status which, with its close similarities to the Roman citizenship proper, would be higher than that of the vast majority of the freeborn population of the town. Such a situation might well have seemed highly anomalous to the population at large and hence perilous to institute, or straightforwardly impossible, and hence necessary to discard as a possibility.

This problem requires a consideration of two factors : the nature of the *servi publici* themselves and that of their manumitters. In general *servi publici* appear to have a particularly privileged section of the servile community (16). We know from the correspondence of Pliny with Trajan that they received pay, the "*annua*", for their work (17) and it is possible that lodgings for them were also provided by the town (18). Trajan refers to the *servi publici* as "*probi ministri*" and is appalled that convicts have usurped their roles in various towns in Bithynia, especially in Nicaea and Nicomedia. His orders to Pliny to re-employ these convicts "*in ea ministeria quae non longe a poena sint. Solent enim eiusmodi ad balineum, ad purgationes cloacarum, item munitiones viarum et vicorum dari*" (19) are also illuminating, as they suggest that these roles were not filled by *servi publici*, or, at least, that there was a class of *servi publici* who were of a higher social standing than this (20). We know that some public slaves appear to have filled important posts of responsibility in the financial, archival, and legal

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16) See HALKIN, *op. cit.*, p. 218 ss.

17) Pliny, *Ep.* 10.31.

18) See A.N. SHERWIN-WHITE, *The Letters of Pliny : an historical and social commentary* (1966), comments on *ep.* 10.19, pp. 586-7.

19) Pliny, *Ep.* 10.32.

20) Nevertheless we must bear in mind that there were *servi publici* who undertook menial tasks, such as the prison warders mentioned by the Younger Pliny (*Ep.* 10.19.1). However it is debatable how frequently such slaves would have been liberated compared to their more prestigious colleagues.

administration of towns <sup>(21)</sup>. Such slaves could apparently obtain a reasonable degree of wealth, judging by the dedications made by some of them. For example at Asculum, the *dispensator arcae summarum*, Rufus, dedicated a statue in a temple, towards whose construction he had personally spent a considerable amount of money <sup>(22)</sup>. At Aequiculi, Apronianus, the town *Arkarius*, dedicated a small shrine, an "*aediculum*", complete with statues, to Isis and Serapis from his own financial resources, "*pec(unia) sua*" <sup>(23)</sup>. Similarly, at Asisi, Sucessus, also a municipal slave, built a temple to Jupiter at his own expense <sup>(24)</sup>. Further signs of the high standing which some municipal slaves had in the community are the public funeral awarded to the slave Urbicus at Volaterrae <sup>(25)</sup>, and the fact that several public slaves held office in *collegia* whose members were predominantly freeborn <sup>(26)</sup>.

Such slaves would have formed part of the elite of the community, being considerably more literate, and more wealthy, than the average freeborn citizen. Such wealth is hinted at in the provisions of our chapter, which allows the decurions of the

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21) As *arcarii*, *tabularii*, and *actores*. For a full discussion see HALKIN, *op.cit.*, p. 153ss.

22) C.I.L. 9. 5177.

23) C.I.L. 9. 4112.

24) C.I.L. 11. 5375.

25) C.I.L. 11. 1751.

26) E.g. a *tabularius* of Volsinii, C.I.L. 11. 2710, Ianuarius at Sentium, C.I.L. 14. 2156. For a full discussion see E.M. STAERMAN and M.K. TROFIMOVA, *La esclavitud en la Italia Imperial* (1975), pp. 197-9.

town to fix individual prices for liberty, rather than setting a standard amount which might, on occasions, have seemed too low, and in the provisions against blackmailing a public slave, forcing him to pay more than the amount laid down for his liberty. It would probably not have seemed incongruous, therefore, that such slaves should, on manumission, go on to enjoy a high legal standing in the community.

The importance of the privilege being granted is shown by the high attendance and majority required from the *ordo* if the request for manumission were to be passed. The requirements are stricter, for example, than those concerning the method of adoption of a patron for the community (chapter 61), where the same quorum, but only a simple majority is required. This in turn suggests that something more than the granting of a legal status common to all the *municipes* is at stake. Curiously, the chapter makes no mention of the need for the consent of the provincial governor, which is mentioned in two passages of the *Codex Iustiniani* dating from the period of Gordian III (27). However perhaps was a later precaution taken after the passing of the *Senatusconsultum Neratianum* to ensure that this privilege was not abused, when the status to be granted could amount to full Roman citizenship.

The final question to be asked is by far the most difficult for the minimalist interpretation to answer. This is why such slaves came, specifically, to enjoy Junian Latin status. The

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27) C.J. 7.9.1 : *consentiente etiam praeside provinciae* and C.J. 7.9.2 : *si decretum ordinis auctoritas rectoris provinciae comprobavit*.



answer to this probably lies in the nature of their manumitters. It is clear that only the *duoviri* of a town could manumit, or indeed initiate the process of asking for a manumission for, municipal slaves. It is likely that these *duoviri* would be Roman citizens, given the normal domination of municipal politics by a small group of families, and the fact that Roman citizenship was granted to *aediles*, an office probably performed by most, if not all, *duoviri* before rising to the status of *duovir* (28). As the community itself, as a whole, could not perform the manumission, a representative of the community, the *duovir*, had to perform the ceremony, and consequently the status of the slave was probably influenced by that of the actual manumitter himself, in this case the *duovir* concerned, i.e. a Roman citizen. The formula of manumission appears to take the same form as that of the informal manumission of a private slave by a Roman citizen. Hence the form of manumission concerned appears to be that of informal manumission by a Roman citizen and therefore the status of Junian Latin would naturally devolve on the resulting freedman. Varro's remarks that municipal slaves at Rome often took the name of the manumitting magistrate show that some relationship existed between the *libertus* and his manumitter. However this relationship did not involve any legally enforceable obligations on the *libertus* as would a private informal manumission, and a freed public slave's formal patron was, in

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28) An interesting, and as yet unanswered, question raised here is: was there a municipal *cursus honorum*?

legal terms, not the individual who performed the ceremony of manumission, but the town itself (29).

It appears reasonable to believe, therefore, that the slaves of a town with the *ius Latii* would become *Latini Iuniani* on manumission, as this status would be appropriate given the legal status of their manumitters. Nor, given the prominence which some such slaves achieved in their communities, would this level of privilege appear inappropriately high.

In conclusion therefore, although chapter 72 of the *Lex Irnitana* appears superficially to lend support to the traditional interpretation of the *ius Latii*, a closer inspection might, on the contrary, suggest that the minimalist case is the correct one. Unfortunately we cannot be completely certain that the minimalist interpretation is correct, but this chapter of the *Lex Irnitana* does suggest that far from totally discrediting the minimalist theory, as is sometimes asserted, the *lex* may in fact in places lend support to it.

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29) Digest 2.4.10.4 (Ulpian) : *nam non est illorum* (i.e. of *singuli*) *libertus sed reipublicae*. Digest 38.3.1. pr. (Ulpian) : *municipibus plenum ius in bonis libertorum libertarum defertur, hoc est id ius quod etiam patrono*.