

SLAVERY, PATRONAGE, *NEXUM*, DEBT, *TEMP.* XII – OUTLINE

(The primary sources referred to in this outline are attached, and cited in the outline as ‘Mats.’ with a hyperlink to where they appear. Clicking on the heading of the item in the Mats. will, in most cases, bring you back to where you were in the outline.)

These topics are harder than succession because the text of the XII doesn’t give us a framework as it does in Table V.

1. Let’s begin by reminding ourselves of a text that we looked at when we considering the family, D.H. 2.26 ([Mats. 1](#)). The key is the *ius vitae necisque*.
2. Slaves (some propositions from Watson with support, such as it is):
 - a. A child born of a slave mother was a slave irrespective of the status of the father. Support? (This is certainly the rule of the later law, and, in some sense the whole system depends on it.)
 - b. Capture in war, even of Latins → slavery. Livy 2.22 (6000 slaves made at a battle of Lake Regillus, in 496 BC. We need not believe the numbers.)
 - c. Anyone with whom the Romans did not have *hospitium* or a treaty of friendship could be seized as a slave. D.49.15.5.2 ([Mats. 2](#)).
 - d. Purchase from a non-Roman (even of a Latin) → slavery. Livy 41.8.10, 9.11 ([Mats. 3](#)). (These examples are quite late.)
 - e. A free Roman could not become a slave at Rome.¹ The argument is basically negative but the criminal sanctions are imperial at the earliest, and the edictal provisions (D 40.12.14pr [[Mats. 4](#)] and 23pr [[Mats. 5](#)]) are from the end of the Republic (the problem of fraudulent sale of a free man, particularly the self-sale; the remedy seems to be restitution of the purchase price, though Quintus Mucius suggested that at least in some situations slavery would result; none of this makes sense if a freeman can become a slave by sale).
3. Slaves were common temp. XII – birth was the normal method of acquiring. They were of neighboring stock. Watson’s argument comes from the provisions for manumission and citizenship, Roman economic weakness, slave festival for Diana, a Latin goddess. Festival of Compitalia (in which slaves participated) suggests that slaves were used for agricultural purposes (worship of the *lares* of the fields), *inter alia*.
Plutarch *Coriolanus* 24.4 ([Mats. 6](#)) in the middle of a strange story about a slave who was cruelly tortured and executed by his master reports: “in those days the Romans treated their slaves with great kindness, because they worked and even ate with them themselves, and were therefore more familiar and gentle with them.” All this is consistent with slaves as descendants.
4. Slaves were *res mancipi*. Noxal surrender (XII tab. 12.2a [[Mats. 7](#)]), *peculium* (tab. 7.12 [[Mats. 8](#)]). Could not be used for commercial transactions because cannot be sued. (That’s what Watson says, but what about the *peculium*?) No *matrimonium*. No murder. (But GI.3.213 [[Mats. 9](#)] argues to the contrary on the l. Cornelia on murder: “The owner of a slave who has

¹ Lévy-Bruhl, ‘Théorie de l’esclavage’, in *Quelques Problèmes* at 15, 16ff.

been killed has the option of prosecuting under the capital charge or suing on this provision [i.e., the *lex Aquilia*].”) Evidence late.

5. *Os fractum* (‘broken bone’) XII tab. 8.3 ([Mats. 10](#)). 300 sesterces (almost certainly wrong) for a free man 150 for a slave. (Cf. *lex Aquilia* which equates slaves to animals.)
6. Manumission *testamento, vindicta, censu*. The slave manumitted *vindicta* may originally not have become a citizen. Vatican Fragments 50 ([Mats. 11](#)): *Cessio in iure* existed temp XII but that is no argument for assuming *manumissio vindicta*, but the story of Vindiccius is. Read Livy 2.5 ([Mats. 12](#)).

The absence of the *vindicta* from the XII suggests that it may be older. *Manumissio vindicta* involves a dodge, therefore earlier than *manumissio testamento*. (I wonder about this argument). If this is right, then *manumissio censu* is even earlier because it is awkward and complicated and would not have been used if *manumissio vindicta* had been available. DH 4.22.4 ([Mats. 13](#)) referring to *manumissio censu* in the time of Servius Tullius suggests as much. *Manumissio testamento* – “As he has legated about his money/property (*res*) or the tutelage of his thing (*res*)” (*legare super pecunia tutelave suae rei*) (tab. 5.3 [[Mats. 14](#)] can hardly mean that, and the clause ratified a dubious practice; therefore, the *manumissio testamento* referred to in tab. 7.12 ([Mats. 15](#)) (conditional manumission) is comitial.

Notice how in all three cases bringing a man into the community involves some approval by the community. The absence of any intermediate status suggests that the way of manumitting a slave who was not to remain in the community was to take him down the road and let him go.

7. [Skip?] *Statuliber* (tab. 7.12 the provision uses the word *emptor* in the sense of “taker”. *Peculium* – tab 7.12 – Rules of Ulpian 2.14: “A man is ordered to be freed on this condition, ‘if he pays 10,000 to the heir’; even if he is sold by the heir, he achieves liberty by giving the money to the purchaser. This is laid down by the law of the XII Tables.” What do we know about it?²
8. The action for claiming liberty (*vindicatio in libertatem*):
 - a. Anyone could be the plaintiff (*adsertor*). JI.4.10pr ([Mats. 16](#)) .
 - b. Could be brought again and again. Cic. Dom. 29.77–78 ([Mats. 17](#)) .
 - c. The wager was low. GI.4.14 ([Mats. 18](#)).
 - d. Interim possession according to liberty (*vindicatae secundum libertatem*). D.1.2.2.24 ([Mats. 19](#)). Read the Verginia story again (Livy 3.44–45 [[Mats. 20](#)]). Use of *manus iniectio* (Watson, p 96), later this will be before the *Xviri stlitibus iudicandis*. (Certainly there are oddities in the role of Appius Claudius as a judge, not a paradigm case, but the legal details are good.)
9. Patronage
 - a. Read DH 2.9.1 ([Mats. 21](#)) → feudalism
 - b. Read XII tab. 8.2.1 ([Mats. 22](#)): “If a patron cheats his client, let him be accursed.” Story in Livy of the Claudii appearing with their clients (Livy 2.16.2 [[Mats. 23](#)]).

² A student in a former class wrote a paper on *peculium* in Plautus and Terence and came to the conclusion that institution existed in their time. Plautus and Terence are both pretty early.

- c. Read NA 5.13.5 ([Mats. 24](#)) reports that Sabinus in the 3d book on the *Ius civile* regards that the obligations to a *cliens* ranks after that to a *pupillus* and a *hospes* but before that to a *cognatus* and *adfinis*.
 - d. Conclude with the problem of *iniuria atrox* (patron not liable for *iniuria* unless *atrox*) and *furta domestica* (*libertus* cannot commit theft) suggesting that the idea of feudal jurisdiction is not quite gone.
10. *Nexum*. The *lex Poetelia* (probably 326 BC³) has to do with fettering, later applied to *nexum*. What survives is GI.1.123 ([Mats. 25](#)) and GI.1.140–141 ([Mats. 26](#)) (which read). There it applies to (a) noxal surrender and (b) to those being emancipated or adopted. Watson’s suggestion is that there was much greater reality before this. Read Livy 2.23–32 ([Mats. 27](#)).
11. If this is right, then Watson is on solid ground with tab. 4.2b ([Mats. 28](#)) (‘if a father sells his son three times’)? How *nexum* worked must have been more controversial. The key text is tab. 6.1 ([Mats. 29](#)): “When he makes *nexum* (bond) and *mancipium* (formal conveyance), as the tongue has named, so let the law be.”⁴
- a. Is *mancipatio* a type of *nexum*? Not for Varro (d. 27 BC) ([Mats. 30](#)) who shows that the *nexus* was not the property of the creditor, although probably originally *nexum* and *mancipium* were the same in loose usage. Varro says “he gives his labor in service until the debt is paid.” Hence this is not the same as judgment debtors (*addicti* or *iudicati*) because labor (not so with *addicti* or *iudicati*); no sale ‘across the Tiber’ (*trans Tiberim*); no evidence of *manus iniectio* in *nexum*. See XII tab.3.1–6 ([Mats. 31](#)) and its source in Aulus Gellius ([Mats. 32](#)), Livy 2.23–32 ([Mats. 27](#)) (already read), and Livy’s story on the *lex Poetelia*. Livy 8.28 ([Mats. 33](#)).

Advantages for both the creditor and the debtor

- i. security
 - ii. composition
 - iii. working off debts for a single creditor
 - iv. putting children in *nexum*
- b. So far Watson. Let’s try to take it a bit further. Varro seems to be telling us the *lex Poetelia* abolished *nexum*. ([Mats. 30](#)) He also seems to tell us that those who were *nexi* were freed if they swore some kind of oath, and that they could not be made *nexi* in the future. Livy suggests a broader statute: No one, except for a certain class of persons who ‘deserved punishment’ (*meruisset noxam*) would be held in chains or fetters (cf. tab. 3.3 where the same words [*compedibus* and *nervo*] are used) ([Mats. 31](#)). According to Livy this meant that (or maybe the statute prescribed that) the goods of a debtor and not his body should be liable for the money owed. *Nexi* were released, and, somewhat more ambiguously, *nexum* was abolished in the future.

³ Virtually everything that we know about the *lex Poetelia* is contained in two texts, Varro, *De lingua latina* 7.105 and Livy, 8.28 (Mats. 33). Livy talks about 326 BC, when there was a consul named Poetelius, Varro about 312 BC when there was a dictator named Poetelius. For reasons that I have not gone into, Livy’s date is generally accepted.

⁴ *Cum nexum faciet mancipiumque, uti lingua nuncupassit, ita ius esto.*

- c. Varro does not purport to give us the words of the statute. He just tells us what its effect was, the abolition of *nexum*. Thus, although Varro is generally to be preferred to Livy in his account of legal matters, he is not to be preferred here because he doesn't differentiate between what the statute provided and what its effect was. Livy, by contrast, gives us what looks like statutory language: "except he who deserved punishment (*noxam*) until he should pay the penalty (*poenam*), would be held in chains or fetters."⁵ Hence, it looks as if the statute had to do with binding and fettering, and we know that binding and fettering was in integral part of *manus iniectio*. We also know that the word *noxam* and the word *poena* have to do with the criminal law and the law of delicts, but not with the law of what we would call contractual obligations. The precise contours of the exception (whether just criminal liability, or even just capital criminal liability, or more broadly, any kind of delictual liability) cannot, on this evidence, be known, but the second part of Livy's sentence (which may not be statutory language) suggests that *poena* and *noxam* are to be contrasted with *obnoxium pecuniae creditae*, liability for money owed.
- d. Varro helps at this point, for he tells us that those who swore a certain oath, were released from the *nexum* they were in, and would not be liable to *nexum* in the future. Exactly what the contents of the oath were is unclear, but the suggestion that those who were already in *nexum* may have had to swear that they had some property and hence might eventually be able to pay off the debt is attractive.⁶
- e. There's one more piece of evidence not in the texts cited. After 326 BC the use of the word *nexus* to describe someone who is a debtor disappears.⁷ Now if we accept the notion that the statute did not abolish the institution (although it had that effect), how can we explain the change in terminology? Could the answer be that if you cannot bind your debtor literally, he is not *nexus* (which, after all means, 'bound')? Is it possible that what we are looking at here is an important development in the concept of obligation (another word that means 'bound'), but which is never connected with the notion of a transaction *per aes et libram*? Could this explain why Manlius, the older of the two authors whom Varro cites, cannot distinguish between *nexum* and *mancipium*, whereas Quintus Mucius, who in many ways is the first of the true Roman jurists, can?
12. Judgment debtors (*addicti* and *iudicati*). Read the creditor provisions from Gellius, *Attic Nights* 20.1.44–49 ([Mats 32](#), second paragraph. The quotations from the XII Tables in this text, with the exception of tab. 3.5, have traditionally been accepted as reporting the exact words of the XII. The Crawford edition casts doubt on this proposition. Let us assume, as do the course *Materials*, that that they are, at least in substance, correct. Even Crawford accepts Gellius' text tab. 8.2 for what traditionally is (Gellius 20.1.19) ([Mats. 34](#)): "If he breaks a limb and does not come to an agreement with him, let there be retribution in kind (*talio*)."⁸ → Douglas Hay's notion about 18th c. criminal laws → the uses of *nexum*. The interesting thing is that no one reports that the swinging penalties of tab. 3 were ever applied. Gellius specifically says that they were not. These provisions and tab. 8.2 must, according to Watson, be taken as

⁵ *ne qui nisi qui noxam meruisset, donec poenam lueret, in compedibus aut in nervo teneretur*

⁶ See MacCormack, 'The *Lex Poetelia*', *Labeo* 19 (1973) 315–316.

⁷ See MacCormack, 'Nexi, Iudicati, and Addicti in Livy', *ZRG (RA)* 84 (1967) 350–355.

⁸ *si membum rupsit, ni cum eo pacit, talio esto.*

examples of the *decemviri* putting intolerable pressure on people to compromise. These were failures of the *decemviri*. If, as Crawford would have us do, we put the weight of the fetters at a maximum of 15 pounds rather than a minimum, and come to the conclusion, once more as Crawford would have us to, that the text of tab. 3.6 has been so garbled in the transmission that we really don't know what it said, then we might have more doubt.

SLAVERY, PATRONAGE, *NEXUM*, DEBT, *TEMP.* XII – MATERIALS

1. *Dionysius of Haliarnassus, Roman Antiquities 2.26 (Cary trans.):*

But the lawgiver of the Romans gave virtually full power to the father over his son, even during his whole life, whether he thought proper to imprison him, to scourge him, to put him in chains and keep him at work in the fields, or to put him to death, and this even though the son were already engaged in public affairs, though he were numbered among the highest magistrates, and though he were celebrated for his zeal for the commonwealth. . . . And not even at this point did the Roman lawgiver stop in giving the father power over the son, but he even allowed him to sell his son, without concerning himself whether this permission might be regarded as cruel and harsher than was compatible with natural affection. And – a thing which anyone who has been educated in the lax manners of the Greeks may wonder at above all things and look upon as harsh and tyrannical – he even gave leave to the father to make a profit by selling his son as often as three times, thereby giving greater power to the father over his son than to the master over his slaves.

2. *Justinian, Digest 49.15.5.2 (Pomponius) (Watson trans.):*

Postliminium is also granted in peacetime; for if we have neither friendship nor *hospitium* with a particular people, nor a treaty made for the purpose of friendship, they are not precisely enemies, but that which passes from us into their hands becomes their property, and a freeman of ours who is captured by them becomes their slave, and similarly if anything of theirs passes into our hands. In this case also *postliminium* is therefore granted.

3. *Livy, Roman History 41.8.10, 9.11 (Roberts trans.):*

8. [10] For in order to avoid any male descendants being left at home, they gave their children as slaves to some Roman or other, on condition that they should be manumitted, and as freedmen become citizens, whilst on the other hand those who had no male descendants became Roman citizens. Subsequently, even this legal presence was brushed aside. . . .

9. [11] In addition to this new law, and the consul's edict enforcing it, a resolution was passed by the senate ordering that whenever any one of them was manumitted and publicly declared to be free, the dictator, consul, interrex, censor or praetor for the time being should put the manumitter on his oath that he was not doing it for the purpose of altering his citizenship; in case he refused to take the oath the senate would declare the manumission invalid.

4. *Justinian, Digest 40.12.14pr (Ulpian) (Watson trans.):*

The praetor is absolutely right to check the craft of those who, knowing themselves to be free, have fraudulently permitted themselves to be sold as slaves.

5. *Justinian, Digest 40.12.23pr (Paul) (Watson trans.):*

If I have sold you usufruct of a freeman sharing in the price and performed *in jure cessio*, Quintus Mucius used to say that he is made a slave but that I become his owner only if I had bought him in good faith and that otherwise he would be a slave without an owner.

6. *Plutarch, Coriolanus 24.4 (Perrin trans.):*

[In the middle of a strange story about a slave who was cruelly tortured and executed by his master reports:] In those days the Romans treated their slaves with great kindness, because they worked and even ate with them themselves, and were therefore more familiar and gentle with them.

7. XII tab. 12.2a (CD trans.):

If a slave commits theft or harms a harm. . . .⁹

8. Rules of Ulpian 2.14 (=XII tab. 7.12) (CD trans.):

A man is ordered to be freed on this condition, ‘if he pays 10,000 to the heir’; even if he is later sold by the heir, he achieves liberty giving the money to the purchaser. This is laid down by the law of the XII Tables.

9. Gaius, Institutes 3.213:

213. The owner of a slave who has been killed has the option between prosecuting the killer on a capital charge and suing under the present statute for his damages.

10. Paul in Comparison of Mosaic and Roman Law (Coll.) 2.5.5 (= XII tab. 8.3) (CD trans.):

One kind of action for *iniuria* (personal affront) is founded on a *lex* The kind founded on a *lex* is based on the XII Tables: ‘whoever does *iniuria* to another, let him undergo a penalty of 25 sesterces.’ This law is general. There were also special ones like this: ‘If he breaks a free man’s bone with his hand or club, let him undergo a penalty of 300 sesterces, [if] of a slave, 150 sesterces.’

11. Fragmenta Vaticana 50 (?Paul) (AS trans.):

In the case of mancipation or *cessio in iure* it is doubtful whether it [a usufruct] can be reserved from a time or until a time (*ex tempore vel ad tempus*), or from the happening of a condition or until its happening (*ex condicione vel ad condicionem*): as if he who receives the *in iure cessio* says, ‘I affirm that this land is mine, subject to a usufruct from Jan. 1,’ or ‘subject to a usufruct until Jan. 10,’ or ‘I affirm that this land is mine, subject to a usufruct if a ship shall arrive from Asia.’ The same in the case of a mancipation: ‘It shall be my purchase, subject to a usufruct from the first of such month,’ or ‘until the first of such month,’ and the same words are used in a condition. Pomponius accordingly [?however] is of the opinion that it cannot be reserved for a fixed time (*ad certum tempus*), neither by *in iure cessio* nor by mancipation, but that only the thing itself can be conveyed. I have taught that it can also be reserved until a time (*ad tempus*), because the Law of the Twelve Tables confirms both mancipation and *in iure cessio*. Can it therefore [?not] be reserved both from a time (*ex tempore*) and upon a condition (*condicione*)? It follows that a legacy can also be reserved until a time (*ad certum tempus*).¹⁰

12. Livy, Roman History 2.5 (Roberts trans.):

⁹ *si servus furtum faxit noxiamve noxit*. The quotation is derived from D.9.4.2.1 where there is an interesting discussion of whether noxal liability was different at the time of the XII Tables from what it was in the classical period.

¹⁰ “In mancipatione uel in iure cessione an deduci possit uel ex tempore uel ad tempus uel ex condicione uel ad condicionem, dubium est; quemadmodum si is, cui in iure ceditur, dicit : ‘aio hunc fundum meum esse deducto usu fructu ex kal. Ian’. uel ‘deducto usu fructu usque ad kal. Ian. decimas’, uel ‘aio hunc fundum meum esse deducto usu fructu, si nauis ex Asia uenerit’ ; item in mancipatione : ‘emptus mihi esto pretio, deducto usu fructu ex kal. illis’ uel ‘usque ad kal. illas’ ; et eadem sunt in condicione. Pomponius igitur putat non posse ad certum tempus deduci nec per in iure cessionem nec per mancipationem, sed tantum transferri ipsum posse. ego didici et deduci ad tempus posse, quia et mancipationem et in iure cessionem lex XII tabularum confirmat. num quid ergo et ex tempore et condicione deduci possit? sequitur et legatum deduci ad certum tempus posse.” There is no standard translation of Frag. Vat. What, probably Paul, is saying here is not completely clear, but may be of considerable interest.

[The story begins with a conspiracy to restore the Tarquins in 507 B.C. right after their expulsion. The conspirators were caught as the result of the report of an informer, and the conspirators were executed.] After the execution, the informer was rewarded; in addition to a gift of money he was granted his liberty with citizen rights. It was hoped that this measure might double the effect of the execution as a deterrent. The informer is said to have been the first slave to be emancipated by touching with the *vindicta* (staff); some think that the word *vindicta* was derived from his name, Vindicus. It was the custom subsequently to regard all slaves who were freed in this way as admitted to the rights of citizenship.

13. *Dionysius of Halicarnassus, Roman Antiquities 4.22.4 (Cary trans.):*

Tullius permitted even manumitted slaves to enjoy these same [citizen] rights, unless they chose to return to their own countries. For he ordered these also to report the value of their property at the same time as all the other free men, and he distributed them among the four city tribes, in which the body of freedmen, however numerous, continued to be ranked even to my day; and he permitted them to share in all the privileges which were open to the rest of the plebeians.

14. *XII tab. 5.3 (Crawford trans.):*

As he has disposed by will concerning his *familia* or goods, or guardianship, so is there to be a source of rights.

15. *XII tab. 7.12 (CD trans.):*

Ulpian 2.14: A man is ordered to be freed on this condition, ‘if he pays 10,000 to the heir’; even if he is sold by the heir, he achieves liberty by giving the money to the purchaser. This is laid down by the law of the XII Tables.

16. *Justinian, Institutes 4.10pr. (Thomas trans.):*

We must now point out that one may take proceedings in one’s own name or in that of another. In the name of another, as a procurator, tutor or curator; for, at one time, there could be no action on behalf of another save on behalf of the people, in respect of liberty of as a guardian. Further, it was provided by the *lex Hostilia* that a theft action might be brought in the name of those who are in enemy hands or absent on public service or for those who are in their guardianship. And, because there was no small inconvenience in the fact that it was not permissible either to sue or defend an action in the name of another, men began to litigate through procurators: for sickness, age, the need to go abroad and many other occasions are often an obstacle to persons pressing their claims in person.

17. *Cicero, On His House 29.77–78 (Watts trans.):*

Our ancestors, who were democratic not from pose or hypocrisy, but genuinely and wisely, ordained it as a right that no Roman citizen should be able to lose his freedom against his will. Moreover their intent was that, even if the Commission of Ten had given an unjust decision affecting the liberty of anyone, a man might still, in this kind of case alone, bring up again for decision, as often as he wished, a case on which a verdict had already been given; but no one by any decree of the people will ever lose his liberty against his will.

18. *Gaius, Institutes 4.14:*

14. The penal sum of the *sacramentum* was either 500 or 50 *asses*: concerning matters worth 1,000 *asses* or more on proceeded by a *sacramentum* of 500 *asses*, but concerning matters of lower value

by a *sacramentum* of 50 *asses*. For so the law of the Twelve Tables had provided. But where the dispute was as to a man's freedom, it was provided by the same law that the contest should be a with a *sacramentum* of 50 *asses*, however great the value of the man might be, obviously in order to favour freedom by not burdening assertors of freedom.

19. Justinian, Digest 1.2.2.24 (Pomponius) (Watson trans.):

24. When it had been resolved that statutes were indeed to be passed, it was proposed to the people that all the magistrates should abdicate their offices, in order that the Ten Men might be appointed to produce statute laws in writing. The Ten Men were accordingly appointed. But when they prorogued the magistracy in their own favor and exercised unlawful power and refused in due course to give way to the magistrates, aiming to keep possession of the commonwealth in perpetuity for themselves and their faction, they brought matters to such a pass, by the excesses of their harsh masterfulness, that the army seceded from the commonwealth. One Verginius is said to have taken the initiative in the secession. He had discovered that Appius Claudius, in breach of the very law which he himself had transcribed out of the ancient customary law into the *Twelve Tables*, had refused him [Verginius] interim custody of his own daughter and had awarded interim custody to a man whom Appius had put up to claiming her as his slave, and had been so captivated by lust for the maiden as to have got good and evil quite confused. At this discovery, Verginius was outraged, because over the *persona* of his daughter there had been a lapse from one of the most ancient observances of legal right (as, for example, when Brutus, who was the first consul of Rome, had ordained interim liberation in the case of Vindex, a slave of the Vitellii who had by his evidence uncovered a traitorous conspiracy). Thinking the chastity of his daughter more to be prized than even her life, Verginius snatched a knife from a butcher's shop and slew her with it, doubtless intent upon making the maid's death ward off from her the reproach of whoredom. Fresh from the slaying and still dripping with his daughter's blood, he forthwith took refuge among his army comrades. To a man, they abandoned their former leaders and carried their standards across to the Aventine Mount from Algidum, where the legions had been based for the pursuit of war. Soon the whole body of the city's *plebs* betook itself to the same place, and by popular consent [the Ten Men] were, some of them, [driven into exile; and others were] incarcerated and put to death.

20. Livy, Roman History 3.44–45 abbreviated :¹¹

44. This was followed by a second atrocity, the result of brutal lust, which occurred in the City and led to consequences no less tragic than the outrage and death of Lucretia, which had brought about the expulsion of the royal family. Not only was the end of the decemvirs the same as that of the kings, but the cause of their losing their power was the same in each case. [2] Ap. Claudius had conceived a guilty passion for a girl of plebeian birth. The girl's father, L. Verginius, held a high rank in the army on Algidus; he was a man of exemplary character both at home and in the field. [3] His wife had been brought up on equally high principles, and their children were being brought up in the same way. He had betrothed his daughter to L. Icilius, who had been tribune, an active and energetic man whose courage had been proved in his battles for the plebs. [4] This girl, now in the bloom of her youth and beauty, excited Appius' passions, and he tried to prevail on her by presents and promises. When he found that her virtue was proof against all temptation, he had recourse to unscrupulous and brutal violence. [5] He commissioned a client, M. Claudius, to claim

¹¹ Livy. History of Rome. English Translation by. Rev. Canon Roberts. New York, New York. E. P. Dutton and Co. 1912.

the girl as his slave, and to bar any claim on the part of her friends to retain possession of her till the case was tried, as he thought that the father's absence afforded a good opportunity for this illegal action.¹² [6] As the girl was going to her school in the Forum –the grammar schools were held in booths there –the decemvir's pander laid his hand upon her, declaring that she was the daughter of a slave of his, and a slave herself. [7] He then ordered her to follow him, and threatened, if she hesitated, to carry her off by force. While the girl was stupefied with terror, her maid's shrieks, invoking 'the protection of the Quirites,' drew a crowd together. The names of her father Verginius and her betrothed lover, Icilius, were held in universal respect. [8] Regard for them brought their friends, feelings of indignation brought the crowd to the maiden's support. She was now safe from violence; the man who claimed her said that he was proceeding according to law, not by violence, there was no need for any excited gathering. [9] He cited the girl into court. Her supporters advised her to follow him; they came before the tribunal of Appius. The claimant rehearsed a story already perfectly familiar to the judge as he was the author of the plot, how the girl had been born in his house, stolen from there, transferred to the house of Verginius and fathered on him; [10] these allegations would be supported by definite evidence, and he would prove them to the satisfaction of Verginius himself, who was really most concerned, as an injury had been done to him. Meanwhile, he urged, it was only right that a slave girl should follow her master. [11] The girl's advocates contended that Verginius was absent on the service of the State, he would be present in two days' time if information were sent to him, and it was contrary to equity that in his absence he should incur risk with regard to his children. [12] They demanded that he should adjourn the whole of the proceedings till the father's arrival, and in accordance with the law which he himself had enacted, grant the custody of the girl to those who asserted her freedom, and not suffer a maiden of ripe age to incur danger to her reputation before her liberty was imperilled.

45. Before giving judgment, Appius showed how liberty was upheld by that very law to which the friends of Verginia had appealed in support of their demand. [2] But, he went on to say, it guaranteed liberty only so far as its provisions were strictly adhered to as regarded both persons and cases. For where personal freedom is the matter of claim, that provision holds good, because any one can lawfully plead, but in the case of one who is still in her father's power, there is none but her father to whom her master need renounce possession. [3] His decision, therefore, was that the father should be summoned, and in the meanwhile the man who claimed her should not forego his right to take the girl and give security to produce her on the arrival of her reputed father. [4] The injustice of this sentence called forth many murmurs, but no one ventured on open protest, until P. Numitorius, the girl's grandfather, and Icilius, her betrothed, appeared on the scene. [and so on.]

[21. Dionysius of Halicarnassus, Roman Antiquities 2.9.1 \(Cary trans.\):](#)

After Romulus had distinguished those of superior rank from their inferiors, he next established laws by which the duties of each were prescribed. The patricians were to be priests, magistrates and judges, and were to assist him in the management of public affairs, devoting themselves to the business of the city. The plebeians were excused from these duties, as being unacquainted with them and because of their small means wanting leisure to attend to them, but were to apply

¹² Translator's note: In cases where a person's status was in question, whether he were a freeman or not, the custody of the person was by the Twelve Tables assigned to those who claimed his freedom, and who had to give security to the other side to produce him for trial. Appius therefore was breaking a law which he had taken a part in enacting.

themselves to agriculture, the breeding of cattle and the exercise of gainful trades. This was to prevent them from engaging in seditions, as happens in other cities when either the magistrates mistreat the lowly, or the common people and the needy envy those in authority. He placed the plebeians as a trust in the hands of the patricians, by allowing every plebeian to choose for his patron any patrician whom he himself wished The regulations which he then instituted concerning patronage and which long continued in use among the Romans were as follows: It was the duty of the patricians to explain to their clients the laws, of which they were ignorant; to take the same care of them when absent as present, doing everything for them that fathers do for their sons with regard both to money and to the contracts that related to money; to bring suit on behalf of their clients when they were wronged in connexion with contracts, and to defend them against any who brought charges against them; and, to put the matter briefly, to secure for them both in private and in public affairs all that tranquillity of which they particularly stood in need. It was the duty of the clients to assist their patrons in providing dowries for their daughters upon their marriage if the fathers had not sufficient means; to pay their ransom to the enemy if any of them or of their children were taken prisoner; to discharge out of their own purses their patrons' losses in private suits and the pecuniary fines which they were condemned to pay to the State, making these contributions to them not as loans but as thank-offering; and to share with their patrons the costs incurred in their magistracies and dignities and other public expenditures, in the same manner as if they were their relations. For both patrons and clients alike it was impious and unlawful to accuse each other in law-suits or to bear witness or to give their votes against each other or to be found in the number of each other's enemies; and whoever was convicted of doing any of these things was guilty of treason by virtue of the law sanctioned by Romulus, and might lawfully be put to death by any man who so wished as a victim devoted to the Jupiter of the infernal regions.

22. XII tab. 8.2.1 (CD trans.):

If a patron cheats his client, let him be accursed.¹³

23. Livy, Roman History 2.16.2 (Roberts trans.):

[504 BC] A conflict which broke out amongst the Sabines between the peace party and the war party brought an accession of strength to the Romans. Attius Clausus, who was afterwards known in Rome as Appius Claudius, was an advocate for peace, but, unable to maintain his ground against the opposing faction, who were stirring up war, he fled to Rome with a large body of clients. They were admitted to the citizenship and received a grant of land lying beyond the Anio. They were called the Old Claudian tribe, and their numbers were added to by fresh tribesmen from that district. After his election into the senate it was not long before Appius gained a prominent position in that body.

24. Aulus Gellius, Attic Nights 5.13.5 (Rolfe trans.):

Masurius Sabinus, however, in the third book of his Civil Law assigns a higher place to a guest (*hospes*) than to a client (*cliens*). The passage from that book is this: "In the matter of obligations our forefathers observed the following order: first to a ward (*tutela*), then to a guest (*hospes*), then to a client (*cliens*), next to a blood relation (*cognatus*), finally to a relation by marriage (*adfinis*). Other things being equal, women were given preference to men, but a ward who was under age took precedence of one who was a grown woman. Also those who were appointed by will to be

¹³ Patronus si clienti fraudem fecerit, sacer esto.

guardians of the sons of a man against whom they had appeared in court, appeared for the ward in the same case.”

25. Gaius, Institutes 1.123:

If it be asked why a woman who has made a *coemptio* differs in status from persons who have been mancipated the answer is that by making a *coemptio* she is not reduced to a servile status, whereas persons, male or female, who have been mancipated by their parents or their *coemptionatores* are placed in the position of slaves, and so much so that they can receive an inheritance or a legacy from their holder *in mancipio* only if by the same will they are at the same time declared free, as is the law in the case of slaves.

26. Gaius, Institutes 1.140–141:

Persons in *mancipio* since they rank as slaves, become *sui iuris* if manumitted by *vindicta*, census or will. More than this, it possible for them to obtain liberty by the census even against the will of their holder in *mancipio* with the exception of one whom his father has mancipated with a proviso for remancipation to himself; for in that case the father is considered in a sense to reserve his *potestas* in virtue of the fact that he covers him by mancipation. Nor, we are told, does a person acquire liberty by the census against the will of his holder in *mancipio* if his father gave him in mancipation on account of his wrongful act, for example if he (the father) was condemned for theft on his (the son's) account and surrendered him by mancipation to the plaintiff; for in that case the plaintiff holds him in lieu of money. Be it noted finally that we are not allowed to behave insultingly to those whom we hold in *mancipio*; if we do, we shall be legally liable for the insult (*iniuria*). And further, a man is not detained long in this status which for the most part is created only for a moment, as a matter of form, except, of course, where a man is mancipated on account of wrongdoing.

27. Livy, History of Rome 2.23–32 (Roberts trans.):

[495 B.C.] The chief cause of the dispute was the plight of the unfortunates who were ‘bound over’ to their creditors for debt. These men complained that while they fighting in the field to preserve their country’s liberty and to extend her power, their own fellow-citizens at home had enslaved and oppressed them; the common people, they declared, had a better chance of freedom in war than in peace; fellow Romans threatened them with worse slavery than a foreign foe. finally, their growing resentment was fanned into flame by a particular instance of the appalling condition into which a debtor might fall. An old man suddenly presented himself in the Forum. With his soiled and threadbare clothes, his dreadful pallor and emaciated body, he was a pitiable sight, and the uncouthness of his appearance was further increased by his unkempt hair and beard. Nevertheless, though cruelly changed from what he had once been, he was recognized, and people began to tell each other, compassionately, that he was an old soldier who had once commanded a company and served with distinction in various ways – an account which he himself supported by showing the scars of honourable wounds which he still bore upon his breast. A crowd quickly gathered, till the Forum was as full as if a public assembly were about to be held; they pressed round the pathetic figure of the old soldier, asking him how it was that he had come to this dreadful pass. ‘While I was on service,’ he said, ‘during the Sabine war, my crops were ruined by enemy raids, and my cottage was burnt. Everything I had was taken, including my cattle. Then, when I was least able to do so, I was expected to pay taxes, and fell, consequently, into debt. Interest on the borrowed money increased my burden; I lost the land which my father and grandfather had owned before me, and

then my other possessions; ruin spread like a disease through all I had and even my body was not exempt from it, for I was finally seized by my creditor and reduced to slavery: nay, worse – I was hauled away to prison and the slaughterhouse’.

28. XII tab. 4.2b (Crawford trans.):

If a father thrice sell a son, from the father the son is to be free.

29. XII tab. 6.1 (CD trans.):

When he makes *nexum* (bond) and *mancipium* (formal conveyance), as the tongue has named, so let the law be.

30. Varro, On the Latin Language (De lingua Latina) 7.105 (CD trans.):¹⁴

Manilius writes that *nexum* is everything that is done *per aes et libram*, in which *mancipia* are [included]; Mucius [says that it is] those things that are done *per aes et libram* so that they may be obliged, except those things that are given by *mancipium*. The very word under discussion shows that this is more correct, for it is that which is obliged by the scales [which] becomes ‘not his’ (*neque suum*), whence it is called *nexum*.¹⁵ A free man who gives his labor into servitude for money that he owes until he pays it is called *nexus*, as ‘debtor’ (*obaeratus*) is called from ‘bronze’ (*aes*). This was, during the time of C. Poetelius Libo Visolus the dictator, abolished that it might not happen and that everyone who swore to sufficient property would not be *nexi* [and they were] freed.

31. XII tab. 3.1–6 (CD trans.):

1. Of bronze acknowledged and for matters adjudged in law (*in iure*), let thirty days be right (*iusti*).
2. Next after let there be a *manus iniectio* (a casting on of hand). 3. If he does not do the thing adjudged or (no-)one stands surety for him in law (*iure*) let there be a leading with him (the creditor), let there be a binding either with a thong or with fetters of 15 pounds, not less,¹⁶ or if he wishes, let there be a binding with a greater.
4. If he wishes, let him live on his own. If he does not live on his own, let he who has him bound give him a pound (reading *libram*) of spelt a day. If he wishes, let him give more.
5. Aulus Gellius, *Attic Nights* 20.1.15.46–47: There was moreover a right to make an agreement in the meantime and if they did not make an agreement, they were kept in chains sixty days. During those days they were produced before the praetor in the assembly on three consecutive market days, and the amount of money that had been adjudged against them was announced. On the third market day they underwent capital punishment or were sold abroad, across the Tiber.
6. On the third market day let them cut shares. If they cut more or less, let it be without damage.

¹⁴ The Varro text is a mess. It has come down to us in corrupt mss. What I translated above as ‘that is’ (*id est*) is emended by some to ‘that bronze’ (*id aes*). If you read *id est*, you have to supply a *quod* later in the clause or assume a very elliptical phrase. The last sentence is also something of a mess, though none of the proposed emendations seems satisfactory.

¹⁵ This is a false etymology. *Nexum* is derived from *necto*, which means ‘to bind’.

¹⁶ Crawford, and many before him, suggest that ‘lesser’ and ‘greater’ ought to change places.

[32. Aulus Gellius, Attic Nights 20.1.36–49 \(=XII tab. 3.1–6\) \(Rolfe trans.\):](#)¹⁷

“¹⁸But if this is as I say, and as the condition of fairness itself dictates, those mutual retaliations that you imagined were certainly rather ingenious than real. But since you think that even this kind of punishment is cruel, what cruelty, pray, is there in doing the same thing to you which you have done to another? especially when you have the opportunity of compromising, and when it is not necessary for you to suffer retaliation unless you choose that alternative. As for your idea that the praetors’ edict was preferable in taking cognizance of injuries, I want you to realize this, that this retaliation also was wont of necessity to be subject to the discretion of a judge. For if a defendant, who refused to compromise, did not obey the judge who ordered retaliation, the judge considered the case and fined the man a sum of money; so that, if the defendant thought the compromise hard and the retaliation cruel, the severity of the law all the virtues that the Roman people sprang from a lowly origin to such a height of greatness, but most of all and in particular they cultivated integrity and regarded it as sacred, whether public or private. Thus for the purpose of vindicating the public honour it surrendered its consuls, most distinguished men, to the enemy,¹⁹ thus it maintained that a client taken under a man’s protection should be held dearer than his relatives and protected against his own kindred, nor was any crime thought to be worse than if anyone was convicted of having defrauded a client. This degree of faith our forefathers ordained, not only in public functions, but also in private contracts, and particularly in the use and interchange of borrowed money; for they thought that this aid to temporary need, which is made necessary by the common intercourse of life, was lost, if perfidy on the part of debtors escaped with a slight punishment. Therefore in the case of those liable for an acknowledged debt thirty days were allowed for raising the money to satisfy the obligation, and those days the Ten called ‘legitimate,’ as if they formed a kind of moratorium, that is to say, a cessation and interruption of judicial proceedings, during which no legal action could be taken against them.

“Then later, unless they had paid the debt, they were summoned before the praetor and were by him made over to those to whom they had been adjudged; and they were also fastened in the stocks or in fetters. For that, I think, is the meaning of these words:²⁰ ‘For a confessed debt and for judgment duly pronounced let thirty days be the legitimate time. Then let there be a laying on of hands, bring him to court. If he does not satisfy the judgment, or unless someone in the presence of the magistrate, intervenes as a surety, let the creditor take him home and fasten him in stocks or in fetters. Let him fasten him with not less than fifteen pounds weight, or if he wish, with more.’²¹ If

¹⁷ The Attic Nights of Aulus Gellius. With An English Translation. John C. Rolfe. Cambridge. Cambridge, Mass., Harvard University Press; London, William Heinemann, Ltd. 1927.https://www.loebclassics.com/view/gellius-attic_nights/1927/pb_LCL212.413.xml.

¹⁸ Book 20.1 of Attic Nights is a dialogue about the Twelve Tables between one Sextus Caecilius, who is described as a jurist, and one Favorinus, who is described as a philosopher. Caecilius is speaking here. Both the jurist and the philosopher were real people, slightly older contemporaries of Aulus Gellius (OCD, s.nn.), but the dialogue seems to be a product of Gellius’ imagination. In the dialogue Caecilius generally defends the XII Tables against Favorinus’ charge that they are cruel and primitive, but as can be seen here and in following extract, there are some things in them that even he finds offensive.

¹⁹ Translator’s note: In the Samnite war, after the battle of the Caudine Forks in 321 b.c.

²⁰ Translator’s note: iii. 1–4. [The reference here is to the standard text of the XII Tables.]

²¹ Translator’s note: F. D. Allen, Remnants of Early Latin, p. 86, suggested that *minore* and *maiore* probably ought to change places.

the prisoner wishes, he may live at his own expense. If he does not, the creditor shall give him a pound of meal each day. If he wishes, he may give more.’ In the meantime the right of compromising the case was allowed,²² and if they did not compromise it, debtors were confined for sixty days. During that time on three successive market-days²³ they were brought before the praetor and the amount of the judgment against them was announced. But on the third-day²⁴ they were capitally condemned or sent across the Tiber to be sold abroad. But they made this capital punishment horrible by a show of cruelty and fearful by unusual terrors, for the sake, as I have said, of making faith sacred. For if there were several, to whom the debtor had been adjudged, the laws allowed them to cut the man who had been made over to them in pieces, if they wished, and share his body. And indeed I will quote the very words of the law, less haply you should think that I shrink from their odium:²⁵ ‘On the third market day,’ it says, ‘let them cut him up; if they have cut more or less, let them not be held accountable.’ Nothing surely is more merciless, nothing less humane, unless, as is evident on the face of it, such a cruel punishment was threatened in order that might never have to resort to it. For nowadays we see many condemned and bound, because worthless men despise the punishment of bondage; but I have never read or heard of anyone having been cut up in ancient days, since the severity of that law could not be scorned. Or do you suppose, Favorinus, that if the penalty provided by the Twelve Tables²⁶ for false witness had not become obsolete, and if now, as formerly, one who was convicted of giving false witness was hurled from the Tarpeian Rock, that we should see so many guilty of lying on the witness stand? Severity in punishing crime is often the cause of upright and careful living. The story of the Alban Mettius Fufetius²⁷ is not unknown even to me, although I read few books of that kind. Since he had treacherously broken a pact and agreement made with the king of the Roman people, he was bound to two four-horse teams and torn asunder as the horses rushed in opposite directions. Who denies that this is an unusual and cruel punishment? but see what the most refined of poets says:²⁸

But you, O Alban, should have kept your word.”

[33. Livy, History of Rome 8.28 \(Roberts trans.\):](#)

The consuls were ordered [by the Senate] to lay before the people that no one, except he who deserved punishment until he should pay the penalty, would be held in chains or fetters, that the goods of the debtor not his body should be liable for money owed. Thus the *nexi* were released, and it was provided that in the future they not to be bound (or, ‘made *nexi*’).

²² Translator’s note: iii. 5.

²³ Translator’s note: The *nundinae*, or market days, came on every ninth day, reckoned in the Roman fashion. The time between two market days was the French “huit jours” and our “week.” *Tertiis nundinis*, counting the one at the beginning of the period (in the Roman fashion, would be about two weeks (actually seventeen days).

²⁴ Translator’s note: iii. 6.

²⁵ Translator’s note: iii. 6.

²⁶ Translator’s note: viii. 23.

²⁷ Translator’s note: He was the ruler of Alba Longa in the time of Tullus Hostilius, the third king of Rome (673–641 b.c.).

²⁸ Translator’s note: Virg. Aen. viii. 643.

[34. Aulus Gellius, Attic Nights 20.1.14–19 \(Rolfe trans.\):](#)²⁹

“³⁰Again, some things in those laws [the XII Tables] obviously cannot, as I have said, even be carried out; for instance, the one referring to retaliation, which reads as follows, if my memory is correct: ‘If one has broken another’s limb, there shall be retaliation, unless a compromise be made.’³¹ Now not to mention the cruelty of the vengeance, the exaction even of a just retaliation is impossible. For if one whose limb has been broken by another wishes to retaliate by breaking a limb of his injurer, can he succeed, pray, in breaking the limb in exactly the same manner? In this case there first arises this insoluble difficulty. What about one who has broken another’s limb unintentionally? For what has been done unintentionally ought to be retaliated unintentionally. For a chance blow and an intentional one do not fall under the same category of retaliation. How then will it be possible to imitate unintentional action, when in retaliating one has not the right of intention, but of unintentionation? But if he break it intentionally, the offender will certainly not allow himself to be injured more deeply or more severely; but by what weight and measure this can be avoided, I do not understand. Nay more, if retaliation is taken to a greater extent or differently, it will be a matter of absurd cruelty that a counter-action for retaliation should arise and an endless interchange of retaliation take place. But that enormity of cutting and dividing a man’s body, if an individual is brought to trial for debt and adjudged to several creditors,³² I do not care to remember, and I am ashamed to mention it. For what can seem more savage, what more inconsistent with humanity, than for the limbs of a poor debtor to be barbarously butchered and sold, just as to-day his goods are divided and sold?”

²⁹ The Attic Nights of Aulus Gellius. With An English Translation. John C. Rolfe. Cambridge. Cambridge, Mass., Harvard University Press; London, William Heinemann, Ltd. 1927.https://www.loebclassics.com/view/gellius-attic_nights/1927/pb_LCL212.413.xml.

³⁰ Caecilius is speaking here too.

³¹ XII, tab. 8.2.

³² Translator’s Note: The law reads: *tertiis nundinis partis secanto. Si plus minusve secuerunt, se fraude esto*, “on the third market day (i.e. after about two weeks; see note on § 49, below) let them cut him into pieces. If they have cut more or less (than their proper share), let it be without prejudice (to them).”