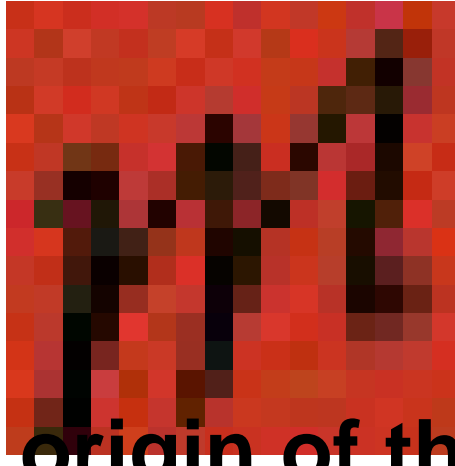


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# XV.2 The origin of the right of slavery in Roman jurisconsults

- The Spirit of Law - Book XV. How the laws of civil slavery relate to the nature of the climate -

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One would never believe it had been pity that had established slavery, and that it went about it in three ways. [1]

The law of nations has held that prisoners were slaves, so they would not be killed. The Romans' civil law allowed debtors, whom their creditors could mistreat, to sell themselves. And natural law has held that children whom an enslaved father could no longer feed should be made slaves like their father.

These reasons of the jurisconsults are not sensible. It is false that it is permissible to kill in war other than in case of necessity ; but once a man has made a slave of another, he cannot say that he had to kill him, since he has not done so. The only right that war can give over captives is to secure their person sufficiently so that they can no longer do harm. Homicides committed in cold blood by soldiers and after the heat of the action are rejected by every nation on earth. [2]

Secondly, it is not true that a free man may sell himself. A sale supposes a price ; with the slave selling himself, all his property would be subsumed into the master's : therefore the master would pay nothing, and the slave would receive nothing. He would have a *peculium*, [3] you will say. But the *peculium* is accessory to the person. If it is not permissible to kill yourself, because it robs your homeland of your person, it is not more permissible to sell yourself. The liberty of each citizen is a part of public liberty. This quality in the popular state is even a part of sovereignty. To sell one's title of citizen [4] is an act of such extravagance that a man may not be supposed capable of it. If freedom has a price for the man who buys it, it is without price for the man who sells it. The civil law which allowed men to divide property could not have included in the property a portion of the men who were to make that division. The civil law that makes restitution on contracts that contain some illegal loss cannot deny restitution against an agreement that contains the most illegal loss of all.

The third manner is birth. It falls along with the two others. For if a man could not have sold himself, he could even less have sold his unborn son. If a prisoner of war cannot be reduced to servitude, even less can this be done to his children.

What makes the death of a criminal something licit is that the law that punishes him has been made for his benefit. A murderer, for example, has benefitted from the law that condemns him : it has preserved his life at every moment ; he therefore cannot protest against it.

The same is not true of the slave : the law of slavery can never have done him any good ; it is in all cases against him, and never for him, which is contrary to the fundamental principle of all societies. It will be said that it could have done him some good, since the master has provided him with food. Slavery would then have to be limited to persons unable to earn their living. But no one wants slaves like that. As for children, nature, which gave milk to mothers, has provided for their nourishment ; and the rest of their childhood is so near the age when they have the greatest capacity for becoming useful that one could not say that the man who would feed them to be their master contributed anything.

Slavery is moreover as contrary to civil law as to natural law. What civil law could prevent a slave from fleeing, he who is not in society, and who is consequently not concerned by any civil laws ? He can only be retained by a family law, which is to say the master's law.

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[1] *Institutes of Justinian*, book I.

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[2] Not to cite those who eat their prisoners.

[3] [Change set aside as personal savings.]

[4] I am speaking of slavery in the strict sense, as it was among the Romans and is established in our colonies.