

<http://montesquieu.ens-lyon.fr/spip.php?article2826>



XV.17 On emancipations

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

Date de mise en ligne : jeudi 6 septembre 2018

Copyright © Montesquieu - Tous droits réservés

XV.17 On emancipations

It is obvious that when, in a republican government, there are many slaves, many must be emancipated. The dilemma is that if you have too many slaves, they cannot be contained ; and if you have too many emancipated slaves, they cannot live, and become a burden to the republic ; not to mention that the republic can also be in danger from too many emancipated slaves and from too many slaves. The laws must therefore take cognizance of these problems.

The various laws and senatus consulta that were made in Rome for and against slaves, sometimes to hinder and sometimes to abet emancipations, make clear the predicament they faced in this regard. There were even times when they dared not make laws. When under Nero the senate was asked to allow patrons to re-enslave emancipated men who were ungrateful, the emperor wrote that they had to judge individual cases, and legislate nothing in general. [1]

I am hardly in a position to say what rules a good republic must make on this matter ; it depends too much on the circumstances. Here are a few observations.

One should not make a considerable number of emancipations all at once and by a general law. We know that among the Volscians, the emancipated, having become masters of the suffrages, passed an abominable law giving them the right to be the first to bed girls who married freeborn men. [2]

There are various manners of introducing new citizens progressively into the republic. The laws can favor the *peculium* and put slaves in a position to purchase their freedom ; they can set a term for servitude, like the laws of Moses which had limited the servitude of Hebrew slaves to six years. [3] It is a simple matter to emancipate a certain number of slaves every year, among those who by their age, health, and industry will have means of living. One can even cure the disease in its root : since the majority of slaves are bound to the various occupations to which they are assigned, to transfer some of these employs to the freeborn, for example trade or navigation, is to reduce the number of slaves.

When there are many freed men, the civil laws must specify what they owe to their patrons, or the emancipation contract must fix those duties instead.

It is clear that their condition must be more favored in the civil state than in the political state, because even in a popular government authority ought not to fall into the hands of the populace.

In Rome, where there were so many freed men, the political laws were admirable with respect to them. They were given little, and excluded from almost nothing ; they indeed had some share in legislation, but almost no influence on the resolutions that could be passed. They could share in administrative roles and even in the priesthood, [4] but this privilege was in a sense nullified by their disadvantages in elections. They had the right to enter the militia, but to be a soldier required a certain *cens*. Nothing prevented the emancipated from uniting in marriage with freeborn families, but they were not allowed to join the families of senators. [5] Finally, their children were freeborn, although they themselves were not.

[1] Tacitus, *Annals*, book XIII.

[2] *Supplément* to Freinsheim, 2nd Decade, book V.

XV.17 On emancipations

[3] Exodus, ch. xxii.

[4] Tacitus, *Annals*, book III.

[5] Oration of Augustus in Dio, book LVI.