

The *macula servitutis* of Roman freedmen. *Neque enim aboletur turpitudo, quae postea intermissa est?*

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Introduction

In 1736, the German jurist Joachim Potgieser wrote a monumental commentary on the Germanic laws of slavery. In a chapter called *De libertis*, he could not resist venturing comparison with the writings of Roman lawgivers on the subject. After mentioning Servius Tullus' role in the enfranchisement of freedmen, the summary continues as follows:

Quantumvis autem deinde AUGUSTUS, & TIBERIUS, de civium Romanorum existimatione solliciti, libertorum iura variis modis coercerent, adeo, ut pauci civitatem Romanam obtinerent; reliqui vero Latini and dedititii fierent, ne tam ingenti libertorum colluvie orbis domina amplius contaminaretur, sed ab omni, quoad eius fieri poterat, macula peregrini and servilis sanguinis incorruptus maneret populus.⁽¹⁾

This image of freedmen contaminating the body of Roman citizens and diminishing its prestige has long been the dominant interpretation of the many laws on freedmen passed under the first emperors. Although this view has been convincingly challenged by recent contributions,⁽²⁾ a persisting stain of slavery is generally held responsible for freedmen's status as "minder-berechtigte Mitglieder" of the citizen body or as second-class citizens.⁽³⁾ The aim of this article is to study whether and to which extent this idea of a *macula servitutis* adequately represents ancient reality. Lavan rightly noted that the Roman ideology of slavery was characterized by a high degree of inconsistency and contradiction and that "any generalisation about Roman attitudes to slaves can only be an oversimplification of a complex discourse".⁽⁴⁾ While freedmen's past as slaves would always be remembered in Rome's class-conscious society, to attribute (and thereby reduce) their restrictions

(1) POTGIESER, 1736, p. 771 (IV.14.3).

(2) When freedmen first emerged as a subject *sui generis* in academic research, scholarly discourse largely reproduced ancient elite stereotypes (e.g. Suet., *Aug.* 40, 3; Dio, LVI, 33, 3–4). See MOURITSEN, 2011, p. 2ff for a discussion of this long and influential tradition and a summary of its most important proponents such as FABRE, 1981. More recent works have rightly stressed the danger of using elite sources in reconstructing and evaluating the freedman condition, e.g. PETERSEN, 2006, *passim*; MOURITSEN, 2011, p. 80ff; 108 (cf. note 117 below); BELL AND RAMSBY, 2012.

(3) KLEES, 2002, p. 91; TAYLOR, 1960, p. 133.

(4) LAVAN, 2013, p. 79. See also FITZGERALD, 2000, p. 8; MACLEAN, 2012, p. 212; HOPKINS, 1978, p. 216 (writing about the intertwinement of politics and religion).

and social limitations to a stigma derived from their servile past is too narrow a view.

I will first show how the unquestioned assumption of a servile stain on the freedman's person has permeated classical studies and has strongly influenced the way scholars interpreted their sources. Secondly, I will situate the expression itself (*macula servitutis*) within its historical and legal context and compare similar stains on a person's honour, evaluate how pervasive, impactful and definite these were for the persons under consideration and gauge how this can broaden our understanding of a freedman's situation. Finally, I will outline the shortcomings of the *macula servitutis* view as an explanatory model and briefly provide some alternative interpretations for source material that has traditionally been regarded as definite proof for it.

Pervasiveness in modern scholarship

Statements about “une macule servile”, the “unique – and irredeemable – stigma the freedman carried”, are omnipresent in freedman studies up to the point that the phrase became eponymous for an entire chapter in Mouritsen's recent monograph on the Roman freedman.⁽⁵⁾ This decision was but the logical culmination of a tradition that had for a long time stressed the pervasiveness of the ex-slave's past in his social life. A few examples will suffice to demonstrate the influence this perspective has had and how it has steered both the analysis and conclusions of many studies.

At some point in its history, the highest magistracy in the Roman colony of Dion (Macedonia) was, quite exceptionally, in the hands of the freedman P. Anthestius Amphio.⁽⁶⁾ In one inscription – immortalizing their benefactions to the city – Amphio and his wife omitted their legal status.⁽⁷⁾ Demaille argued that they had done so “par souci d'honorabilité” because it was “une tâche

(5) Chapter 2 in MOURITSEN, 2011 is called “*Macula servitutis*: slavery, freedom, and manumission”. Quotes are from BOULVERT AND MORABITO, 1982, p. 111 and MOURITSEN, 2011, p. 111 respectively. Cf. DUFF, 1928, p. 52.

(6) Dion was refounded as Roman colony by Caesar or Augustus and this early context may explain how a freedman could obtain the highest municipal office: especially the former is known to have allowed freedmen to pursue political ambitions in his colonies (cf. the *lex coloniae Ursonensis* of 44 BC in *CIL* II, 5439, cap. 105, and note 11 below). However, the specific case of Amphio has alternatively been dated to the Severan period; well after the *lex Visellia* of AD 24 (*Cod. Iust.* IX.21) and even after the *lex municipii Malacitani* of ca. AD 82 (*CIL* II, 1964, cap. 54), which both formally excluded freedmen from local office (universally and for Spanish towns of Latin status respectively). The early date for Amphio's inscriptions is based on palaeographic and onomastic criteria, the Severan one on the archaeological evidence *in situ* and the context of the monuments. For the debate and the arguments, including references, see the extensive overview in DEMAÏLLE, 2008, p. 17-20; LÓPEZ BARJA DE QUIROGA, 2010, p. 330 has noted that taking the Visellian law as support for the earlier date amounts to circular reasoning, which too prematurely dismisses the possibility that this case may have been an exceptional one. Cf. RIZAKIS, 2001, p. 42. MOURITSEN, 2011, p. 74 (note 36) called the case of Amphio a “glaring anomaly”.

(7) *AE* 1950, 20: *P(ublius) Antestius Amphio / aed(ilis) augur Ilvir quinq(uennalis) / et Antestia Lucund(a) / aedem Libero / et colonis de sua / p(ecunia) f(aciendum) c(uraverunt)*.

indigne”: Amphio felt that his servile past tainted him in such a way that the juxtaposition of libertination and official titles would seem inappropriate.⁽⁸⁾ Accepting this motive or concern, however, renders problematic the fact that he (and his wife) *did* include full libertination in other, quasi identical, inscriptions.⁽⁹⁾ Conversely, L. Iulius Hyla and T. Granius Felix were *aediles* of the same colony but did not publicize their legal status in their dedications to Liber Pater.⁽¹⁰⁾ Although Dion is the only colony in Macedon known to have allowed freedmen to obtain public office in the late republic and early empire, the phenomenon was not exceptional in other Caesarian colonies throughout the Roman provinces.⁽¹¹⁾ In 45 BC, for example, L. Pomponius Malchio was *duumvir quinquennalis* in Curubis (Tunisia) and celebrated his contributions to the city in an inscription that explicitly mentioned his freed status.⁽¹²⁾ However, 25 years later, another *duumvir* of the same city – Cn. Domitius Malchio – chose not to include libertination when listing his acts of evergetism.⁽¹³⁾ Other Republican freedmen in positions of power had, like Amphio, multiple inscriptions erected, sometimes with but sometimes without explicit reference to their status.⁽¹⁴⁾ Inscriptions of freedmen who did not hold any office but who nonetheless eternalized their influence in and benefactions to a city, similarly suggest that the decision to include libertination was highly contextual. C. Iulius Zoilus – the famous freedman of Octavian – thus mentioned his contribution to the construction of the theatre of Aphrodisias (Asia) in an inscription that formally spelled out his freed status (θεοῦ Ἰουλίου υἱοῦ Καίσαρος ἀπελεύθερος).⁽¹⁵⁾ However, earlier inscriptions

(8) DEMAILLE, 2008, p. 3. He connects this omission to the function of the inscription (i.e. listing the acts of evergetism undertaken by the freed couple). However, other inscriptions referencing benefactions included libertination (cf. the next note).

(9) *AE* 1998, 1209: *Serapi et Isi et colonis / portic(us) duas ianum alam / P(ublius) Anthestius P(ubli) l(ibertus) Amphio aug(ur) aed(ilis) / Ilvir quinq(uennalis) et Anthesia P(ubli) l(iberta) / Lucunda d(e) s(ua) p(ecunia) f(aciunda) c(uraverunt)*; *AE* 2008, 1228: *Dianae et colonis / Antestia P(ubli) l(iberta) Lucunda aram d(e) s(ua) p(ecunia) f(aciendum) c(uravit)*.

(10) *AE* 1954, 23; 2006, 1262. For these and other freedmen holding public office in the colony of Dion, see RIZAKIS, 2003, p. 119-121.

(11) RIZAKIS, 2003, p. 120-121; SALMON, 1969, p. 135; TREGGIARI, 1969, p. 63-64. RIZAKIS, 2001, treats the municipal elites (many of whom were freedmen) of the colonies in Achaea, with specific attention to Corinth (p. 41-46), Dyme (p. 46-47), and Patras (p. 48), although the role of freedmen in the latter – as an Augustan military colony – was much less outspoken than in the other two. Cf. SPAWFORTH, 1996 for the composition of Corinth's early elite. DEMAILLE, 2008 discusses the freed P. Anthestii in Dion. A more general treatment of the role of freedmen in municipal life is provided by LE GLAY, 1990.

(12) *CIL* VIII, 977: *C(aio) Caesare Imp(eratore) co(n)s(ule) II[II] / L(ucius) Pomponius L(uci) l(ibertus) Malc[hio(?)] / duovir V / [m]urum oppidi totum ex saxo / quadrato aedific(andum) coer(avit)*.

(13) *CIL* VIII, 978: *M(arco) Appuleio / P(ublio) Silio co(n)s(ulibus) / Cn(aeo) Domitio / Malchion[e] / duovir(o) quin(quennali) / L(ucius) Sertorius Al[ex]an(der) / L(ucius) Vitruvius Alexan(der) / aed(iles) / pluteum perpetuum / scholas II i[tem(?)] / [h]orologium / [via]m muni[endam(?)] / ...*

(14) See, for example, the famous case of M. Caelius Phileros (*CIL* VIII, 26274; X, 6104) whose career as *aedilis* and *praefectus iure dicundo* in Carthage and as *duumvir* in the nearby Clupea is discussed in detail by GASCOU, 1984. Cf. LE GLAY, 1990, p. 623-625.

(15) REYNOLDS, 1982, no. 36 (ca. 30 BC).

set up in the same city (listing, for example, his contribution to Aphrodite's temple), presented Zoilus without any reference to his legal status.⁽¹⁶⁾ If shame or a feeling of inappropriateness was the primary motive for omitting libertination in the earlier inscriptions, then surely Zoilus would not have included it in the highly visible one in the theatre some eight years later.

The debate about the proportion of freeborn to freed persons in epigraphic sources in general has often produced similar arguments. Some scholars explained the enormous mass of *incerti* as a result of "the freedman's unwillingness to declare his inferior status (...)" and therefore suggested that these *incerti* were mostly embarrassed freedmen.⁽¹⁷⁾ The mention of libertination (except in the cases of imperial freedmen) did indeed decline at the end of the first and the beginning of the second century AD, but so did that of filiation.⁽¹⁸⁾ Moreover, when status was still accentuated, it was more often done by freedmen than by freeborn, and the former usually combined it with expressions of pride related to their newly attained freedom and citizenship, their family life, and their professional activities.⁽¹⁹⁾ A statistical approach in these instances undervalues the contextual motivations of individual actors in epigraphically representing themselves. Kleijwegt thus nuanced the existence of "post-servility stress", argued that the situation was "much more complex than the simplified equation hostility (on the part of the freeborn) leading to shame (on the part of the freed slave)" suggests, and that pride in having escaped slavery may have been at least as important as shame about that very past.⁽²⁰⁾ Verboven similarly noted that the continuing relation with an ex-master – and the (self-)representation of the freedman as an essential component of his trust network and social capital – was an identity dimension worth stressing rather than hiding.⁽²¹⁾ Others similarly added that libertination was a useful tool in situating oneself in the social networks not only of a patron, but also of other connections (professional colleagues, *colliberti*, etc...).⁽²²⁾ Finally, Perry has most recently shown for freedwomen in particular that libertination could express both an individual identity (e.g. when the *nomen* and *cognomen* are included besides libertination) and a

(16) REYNOLDS, 1982, no. 37 (38 BC). For a discussion of Zoilus' extant dedications, see besides REYNOLDS, 1982, p. 156-164 also WEAVER, 2004, p. 199-200; OSGOOD, 2006, p. 274-276.

(17) TAYLOR, 1961, p. 122. Cf. HUTTUNEN, 1974, p. 129; MACLEAN, 2012, p. 126.

(18) TAYLOR, 1961, p. 119f; MROZEK, 1976, p. 40-43 (for Rome). For the situation in the rest of Italy, see e.g. LAZZARO, 1985, p. 465 (for Ateste); 1989, *passim* (for Padua). For a similar development in the East, see e.g. LEVEAU, 1984, p. 154 (for Mauretania Caesariensis). TRAN, 2006, p. 112-113 illustrated the evolution by an analysis of the *fasti* of the *collegium fabrum tignuariorum* of Rome. ŁOŚ AND CHANTRY, 1995, p. 1034-1036 argue that the decline of epigraphic libertination in this period was not (only) related to the epigraphic habit, but (also) reflects the decline of the importance of freedmen in general. This suggestion neglects the equally important observation that filiation disappeared at the same time.

(19) HUTTUNEN, 1974, p. 139-141, 187-188; JOSHEL, 1992, p. 167-168; 183-186. WEAVER, 1990, p. 294 stresses the optional character of mentioning libertination. PERRY, 2014, p. 100 gives an extensive overview of the debate.

(20) KLEIJWEGT 2006b, p. 94-95, 110-111.

(21) VERBOVEN, 2012, p. 98.

(22) E.g. NIELSEN, 1997, p. 204; JOSHEL, 1992, *passim*.

relational one (e.g. when the *nomen* is omitted but nonetheless implied by a reference to a patron *with* full nomenclature).⁽²³⁾

The matrix of individual decision making most likely contained elements of both interpretations. The point is that the shame explanation is based entirely on the assumption that an all-pervasive *macula servitutis* in the lives of freedmen was not only stressed in elite writing but was a crucial dimension of the freedman's self-appraisal and identity as well. The fact that on their epitaphs some ex-slaves chose to refer to each other as *conservus* and *contubernalis* instead of *collibertus* and *coniunx* cannot be explained by (and blatantly contradicts) a widely shared shame among ex-slaves. Apparently, it was more important for these individuals to stress the continuity and durability of their relationship (which had its roots in slavery) than to hide any stigma that may have been attached to it.⁽²⁴⁾

The assumption of a servile stain has also led scholars to suggest that Romans conditioned their freedmen and "inculcated a distinct set of values".⁽²⁵⁾ Mouritsen's assertion that *probatus* is applied only to freedmen in Cicero's letters of recommendation is factually true. However, when he uses this observation as an argument for the claim that "freedmen are praised for a different set of qualities than Cicero's other clients",⁽²⁶⁾ he overlooks the fact that freeborn individuals elsewhere were also praised for the exact same virtue. When he sends his *praefectus evocatorum*, D. Antonius, to Appius Pulcher to take command over several cohorts, Cicero describes him as a steadfast officer and enjoying his fullest confidence (*mihi probatus*).⁽²⁷⁾ His correspondents too make no status distinction when characterizing individuals as *probatus*. Brutus, for example, reassures Cicero that Marcus junior has his approval (*mihi se probat*) by his industry and endurance.⁽²⁸⁾ Although *probatus patrono esse* was undeniably an important quality of freedmen, being *probatus* to a social superior or even to peers was a virtue in freeborn persons as well.⁽²⁹⁾ This is not merely a quarrel over semantics but an important observation when considering the existence of a set of distinct

(23) PERRY, 2014, p. 98ff (esp. 101-102).

(24) MACLEAN, 2012, p. 133-134. Even if she is mistaken in restoring "CONSER" to "CONSERVI" (instead of "CONSERVATORI") in *CIL* VI, 582, the argument is still strong.

(25) MOURITSEN, 2011, p. 58. Further onwards, he writes about a "specific set of virtues", a "fairly well established format for the praise of freedmen", "common stereotypes used to praise freedmen" (p. 61), "pivotal virtues" (p. 62), a "limited range of virtues open to freedmen" (p. 63), "specific libertine qualities" (p. 64), and of elevating trust (*fides*), parsimony (*frugalitas*), and hard work (*industria*) as particular libertine qualities (p. 148).

(26) MOURITSEN, 2011, p. 62.

(27) Cic., *Fam.* III, 6, 5.

(28) Cic., *Brut.* II, 3, 6. *Probatus* here is linked to qualities which could very easily be associated with "freedman virtues" (*industria*, *patientia*, and *labor*). See for example the claim that such a combination of industry and respect was typically libertine in the Republic, MACLEAN, 2012, *passim*, e.g. p. 30ff.

(29) The same goes for characterizations like *pudens*: in Cicero's recommendations, *pudens* is attributed only to a freedman (C. Avianus Hammonius in *Fam.* XIII, 21) but elsewhere, it is used for *ingenui* too, e.g. C. Trebatius Testa (*Fam.* VII, 5, 3) whom Cicero – after explicitly weighing his words – describes as *probus*, *bonus*, and *pudens*. Cf. DENIAUX, 1993, p. 143-144; 191-192.

freedman virtues. While focusing on Cicero's letters of recommendation may suggest that *probatas* belonged to a "different set of qualities" reserved for freedmen, this interpretation becomes doubtful in the light of a broader lexical analysis.⁽³⁰⁾

The *macula servitutis* is thus attributed a pivotal role in the socialization of ex-slaves. But how legitimate is this assumption of a pervasive and omnipresent stain on the freedman's person? How discernible is it in our sources? Was it a widely held belief among Romans or rather a useful analytic concept for modern scholars to grasp (and group) the many particularities of freed status? To fully understand its meaning, we should not only look at the literal attestations of the expression and similar concepts such as the *labes*, *naevus*, *dedecus* or *ignominia* of slavery. It is equally important to analyse 1) the semantic scope of these words outside the realm of slavery and manumission and 2) to address the issue of a taint on someone's honour in more general terms, including the social and moral implications, its pervasiveness after restoration or social promotion and the discourse related to it.

Stains, marks, and blemishes

Throughout Roman literature, *maculae* of all sorts appear, ranging from stains or spots in a very literal sense to the blemish on one's reputation after misconduct. Examples of the first can be found in various descriptions of animals, fruits or symptoms of diseases and bodily flaws.⁽³¹⁾ Such plastic descriptions could in turn be used to express a figurative or metaphorical stain. When Ovidius is told the meaning of one of his dreams, a white heifer representing the poet's girlfriend had a black blemish (*macula nigra*) on her breast which the dream-interpreter took to indicate that her heart was not free of adultery's stain (*adulterii labes*).⁽³²⁾ This leads us to the moralising use of *maculae*: the stains on someone's person or character. When Cicero airs his disgust about the behaviour of jurymen to Atticus, he says they consisted – among others – of *maculosi senatores*.⁽³³⁾ In his public speeches too, Cicero could mention the stain on Cluentius' family as a result of his mother's lust; the *macula*, *invidia* and *infamia* cast on the state by wicked governors; the pollution and stains of treachery and corruption; and the stain and disgrace (*macula atque labes*) of his age in general.⁽³⁴⁾ On more dramatic occasions, such descriptions could amount to climactic bursts of rhetoric, as was the case in 57 BC when Cicero vehemently accused Clodius of sacrilege for polluting the Megalesian games with numerous crimes and staining them with infamy

(30) Cf. BLÄNSDORF, 2001, p. 452; VERMOTE (forthcoming).

(31) Possible examples are legion: Col., *RR.* VI, 37, 7; XII, 47, 2 and 49, 4; Plin., *N.H.* VIII, 23(62); 27(69); Liv., XLI, 21; Lucr., I, 590; Verg., *Aen.* V, 566; Plaut., *Capt.* 595; Ovid., *Met.* V, 455; Cels., II, 8, 32; III, 25; Cic., *N.D.* I, 79; Suet., *Aug.* 80, 1; 94, 4; *Nero* 51, 1; etc...

(32) Ovid., *Am.* III, 5, 43. Likewise, after he had set his mind on the praetorship, Cn. Scipio presented himself on the Campus Martius dressed in the white toga of the candidate but soiled by the stains of depravity (*turpitudinis maculae*), Val. Max., III, 5, 1.

(33) Cic., *Att.* I, 16, 3. Cf. *Cluent.*, 130 (*macula iudiciorum*).

(34) Cic., *Cluent.* 12; *Prov.* 13; 2 *Verr.* III, 144; *Rhet. ad Her.* IV, 47; *Font.* 36; 41; *S. Rosc.* 113; *Cael.* 16; *Balb.* 15; *Sest.* 108.

(*omni flagitio pollueres, dedecore maculares, scelere obligares*).⁽³⁵⁾ In its figurative sense then, *macula* is often used as a generic insult and, conversely, the lack of any *macula* as a praiseworthy quality.⁽³⁶⁾

Some masters named their slaves “Macula”, a name they would usually keep after manumission as part of their *tria nomina*. Thus a midwife from Mactaris (Africa Proconsularis), most likely freed, was called Aurelia Macula.⁽³⁷⁾ However, the name did not refer to any (past) condition and was as such not associated with slavery. Indeed, *ingenui* could carry it as well. Examples include Caius Cassius Macula from Patavium and Quintus Pompeius Macula, duumvir of Pompei in AD 25.⁽³⁸⁾ Most likely, the name Macula (or a derivative) instead referred to a physical trait or imperfection as did many *cognomina*. In a letter to Quintus Lepta, Cicero mentions another Macula.⁽³⁹⁾ This man is probably to be identified with Pompeius Macula in a passage of Macrobius’ *Saturnalia*. There, Avienus tells the anecdote of Sulla’s daughter Cornelia Fausta who had two lovers simultaneously: a certain Fulvius (the son of a fuller) and our Pompeius Macula. When noticing this scandal, her brother Faustus made a joke based on the literal meaning of *macula* and on the general elite aversion to manual labour: he asked himself whether his sister should have a stain (*macula*) because she had a fuller (*mirror sororem meam habere maculam, cum fullonem habeat*). He thereby addressed both the undesirability of his sister having two lovers and the humiliation of one of them being a mere fuller.⁽⁴⁰⁾ Although it could thus occasionally be used to mock someone, the name Macula in no way referred to a (past) servile condition.

There is no explicit evidence for a stain (*macula, labes, naevus, ...*) of slavery on freedmen in literary sources. In fact, the metaphorical or figurative use of these words is rarely – if ever – related to slavery or manumission. On the rare occasions where it is, the terms explicitly refer to the servile condition alone. For example, Publius Crassus provoked his captor in killing him, thus escaping the disgrace of servitude (*dedecus servitutis effugit*). Likewise, Procopius, Maximus and Eugenius – usurpers of the purple under Valens and Theodosius – are said to have undergone the shame of slavery (*ignominia servitutis*) before their execution.⁽⁴¹⁾

Besides being used as a name, *macula* was a relatively popular word to refer to one’s reputation on epitaphs, occurring most frequently in the formula *sine macula vixit*. In Christian texts, it was strongly associated with the concept of sin. Thus Saint Nazarius had led a *vita immaculabilis*⁽⁴²⁾ and in an epigram Saint Ambrose described a baptistery as a place where repenting men were

(35) Cic., *Har.* 27. *Polluere* is on other occasions used as synonym of *maculare* as well, e.g. *Mil.* 85.

(36) E.g. Cic., *Planc.* 15.

(37) *AE* 1980, 936.

(38) *CIL* V, 2918; *CIL* X, 896.

(39) Cic., *Fam.* VI, 19, 1.

(40) Macr., *Sat.* II, 2. Since one of the tasks of a fuller was the removal of stains out of dirty garments, *macula* can have both a literal and a figurative meaning in this case, cf. Ovid., *Fast.* III, 821; Plaut., *Capt.* 841.

(41) Front., *Strat.* IV, 5, 16; Hier., *Ep.* 60, 15.

(42) *CIL* V, 6250.

freed from sin's stain (*maculosum crimen*).⁽⁴³⁾ Despite the omnipresence of the metaphor of slavery in early Christian ideology, none of these texts refer to the (cleansing of) a stain of slavery in particular.⁽⁴⁴⁾

In non-Christian sources, the *sine macula* often referred to the nature of an ideal marital union. In the epitaph for his beloved wife Urtilia Benedicta, Q. Dasumius Euelpides mentions that he lived with her for eleven years *sine macula*.⁽⁴⁵⁾ Similarly, it seemed important for Artorius Felicissimus to stress that he had had no quarrel with his late wife Aemilia Barbara (*macula non habui*) during the 56 years they had lived together.⁽⁴⁶⁾ Slaves, freedmen and freeborn persons alike commemorated their marital bond in this manner, confirming that the expression did not so much refer to their social identity or legal status as to the quality of their marriage.⁽⁴⁷⁾ This is clear also from the fact that *macula* in the same formula is often replaced by other terms. Flavius Amantius, for example, uses *sine querella*, Decimus Iulius Doles *sine ullo stomacho*, and like many other people, Cornelia Paulina preferred *sine ulla animi mei laesione*.⁽⁴⁸⁾

When *sine macula* is used outside a marital relationship to describe an end-of-life achievement, it could be tempting to read it as an apologetic statement, denying any remaining stains from a servile past. For example, both the imperial freedman Aurelius Petronianus and Lucius Statius Onesimus – probably a freed trader – are presented as *sine macula* after having died at the age of 46 and 48 respectively.⁽⁴⁹⁾ However, slaves too could be praised in these terms. Thus, a certain slave girl Data is described by her *conservus* Verna as *sine ulla macula*, just like Urbicus, *vilicus publicus* of Volaterrae.⁽⁵⁰⁾ If this *macula* referred to any stain as a consequence of the servile condition, stating that these slaves had no such blemish would seem rather odd. Moreover, freeborn people are at least as often praised for the lack of any stain on their person. Thus Aurelia Aia (*Titi filia*) is described by her husband as having lived *sine ulla macula*.⁽⁵¹⁾

There is no reason to assume that dedicators of epitaphs had any apologetic intentions relating to a servile past when including the phrase *sine macula* in their commemoration. It described the end-of-life achievement of people of all statuses and when attributed to freedmen there is no indication of any status specific connotation. Of course, *macula servitutis* would not have become the key-phrase par excellence to refer to the freed condition in modern studies if it did not have any footing in the source material. The references in support usually derive from law texts.

(43) *CLE* 908.

(44) For a good starting point to the immense bibliography on this subject, see COMBES, 1998; BYRON, 2003; HARRILL, 2006; NASRALLAH, 2014.

(45) *AE* 1992, 221.

(46) *CIL* III, 8425. Other examples include *CIL* III, 2213; *CIL* V, 143; *AE* 1991, 298.

(47) E.g. *CIL* V, 5322 (possibly two freedpersons sharing the same *nomen*); *CIL* VI, 22657 (idem); *CIL* X, 8418 (an imperial slave and his – probably freed – wife); *CIL* XIII, 1884 (a freeborn veteran and his wife).

(48) *AE* 1992, 725; *CIL* X, 3409; *CIL* XIII, 1851; 1838; 1880; ...

(49) *AE* 1957, 127; *CIL* VI, 9663.

(50) *CIL* IX, 3365; *CIL* XI, 1751.

(51) *CIL* VII, 793.

Macula servitutis in law texts

The expression is usually taken from three legal texts in which it literally occurs.⁽⁵²⁾ In the Digest, it is mentioned during the treatment of *restitutio natalium*. It is established that a freedman who “has been freeborn” is considered to be as if – made a freeborn man – he would not have sustained the the stain of servitude (*macula servitutis*)” in the meantime (*medio tempore*).⁽⁵³⁾ Secondly, from the Justinian Code we learn that a slave who has willingly usurped the office of *aedile* should be appropriately punished because he had “defiled the dignity of the decurionate with the *servilis macula*”.⁽⁵⁴⁾ In these two cases, the stigma referred to is pertaining to the servile condition and not the libertine. This is very clear in the last passage where the defiling is a result of the *slave*’s usurpation of the office. In the first passage, it is not clear whether the *medio tempore* (during which the subject had suffered the *macula servitutis*) refers to his time as a slave or to the period between his manumission and the *restitutio*.

A comparative approach may be illuminating here, even though conceptions (and discursive representations) of the servile and freed condition in temporally and geographically remote societies can by no means provide clear-cut or transposable conclusions, and should therefore be considered solely as presenting a window of possibilities. The phrase *macula servitutis* appears in a range of different sources throughout European history.⁽⁵⁵⁾ But when it did, the writers consistently referred to the stained condition of slaves, not freedmen. In 1257, Bologna may have been the first city ever to collectively free its serf population. The act was recorded, together with the names of the beneficiaries, in the famous *Liber Paradisus*. When presenting the motives for this radical decision, the lawgivers resorted to a biblical discourse on the original *perfectissima et perpetua libertas* of mankind. For this reason, they argued that the city should henceforth be free from people shackled by servitude by restoring them to their original freedom.⁽⁵⁶⁾ In a sense, then, the collective manumission was perceived as a *restitutio natalium*. Interestingly, the city of Bologna would, as a result of the act, cease to be tainted by the *macula servitutis* which therefore clearly pertained solely to the servile condition. When almost two centuries later Iacobus Gali, a merchant and citizen of Barcelona, freed his *serva et captiva* Astacia, he gave her and her descendants “pure and perfect freedom”. Since Astacia

(52) Most studies mentioning or discussing the *macula servitutis* quote MOURITSEN, 2011, p. 12 and the three law texts it refers to, e.g. NASRALLAH, 2014, p. 58.

(53) *Dig.* XL, 11, 5, 1: *Libertinus, qui natalibus restitutus est, perinde habetur, atque si ingenuus factus medio tempore maculam servitutis non sustinuisset.*

(54) *Cod. Iust.* X, 32, 2: *Praeses provinciae, si eum qui aedilitate fungitur servum tuum esse cognoverit, si quidem non ignarum condicionis suae ad aedilitatem adspirasse perspexerit, ob violatam servili macula curiae dignitatem congruenti poena adficiet (...).*

(55) I here only discuss this phrase as representative of other similar expressions that appear in identical contexts, e.g. *naevus servitutis* (Prudentius Trecensis, *De Praedestinatione*, PL 115, 1047D; Paulus Diaconus, *HL* I, 12), all of which refer to the condition of slavery alone.

(56) *Liber Paradisus*, Porta Stiera: ... *servitutis maculam radicitus extirpavit et servitutis vinculo compeditos provocavit ad pristinam libertatem.*

was originally freeborn, the manumission again takes the form of a *restitutio natalium*, restoring her *iura ingenuitatis*. Iacobus addresses her directly when he stresses that she will henceforth live as if she were freeborn and had never carried the stain of slavery (*si ingenua esses et nunquam servitutis maculam habuisses*).⁽⁵⁷⁾ Again, this case is particularly reminiscent of our passage in *Dig.* XL, 11, 5, 1. Since Astacia is made *ingenua*, she skips the stage of *libertinitas*. The *macula servitutis* mentioned here, therefore again refers to the stain she suffered as a *slave*. Finally, when slaves were freed in eighteenth century Brazil, their manumission papers – be it the testament of their master or a document specifically drawn up for the occasion – typically included a formula expressing that the slave would henceforth be free “as if he were born in that condition”.⁽⁵⁸⁾

Not only in cases similar to the Roman *restitutio natalium* but also after normal manumissions was a slave considered cleansed of his *macula servitutis* in both ancient and modern accounts. In AD 375, Saint Jerome wrote a letter mentioning that his companion Hylas, a *famulus*, had cleansed the stain of slavery through the purity of his virtues.⁽⁵⁹⁾ In modern times, Voltaire demanded in the first article of his *projet d'affranchissement* that “tous nos sujets soient libres, et de franche condition, sans tache de servitude personnelle et réelle”. At the beginning of the manifest he had cited Jean Ferault, a jurist of king Louis XII, who in his treatise on the privileges of the French kings, had stressed the right and duty of kings to free slaves, remove their stain of slavery (*servitutis maculam delere*) and restore them to their original freedom.⁽⁶⁰⁾ In the work of Potgieser, cited at the beginning of this article, the blemish of slavery occurs quite regularly and usually in the form of the expression *macula servitutis*. He mentions, for example, that not all German *coloni* live under one and the same law. Indeed, many of them, after being cleared of the *servitutis macula*, are truly free.⁽⁶¹⁾ When men of servile status entered a Batavian community, lived in it as citizens and if during the course of a year no questions arose as to their status, it was held that the *macula servilis conditionis* was utterly washed away.⁽⁶²⁾ In all of these cases, the *macula servitutis* referred to the blemish on the person of the slave only, without it persisting after manumission. If he was freed, the defilement would dissolve immediately instead of remaining as a distinctive identity trait.⁽⁶³⁾

We cannot, of course, rely on an exceptional act of jurisprudence in thirteenth century Bologna, on the words of a fifteenth century Spanish merchant or on the account of an eighteenth century author writing about Germanic slave law to draw conclusions about Roman practice and ideology. But when considered as a whole, the comparative evidence is much in line

(57) Firenze, AS, *Notarile antecosimiano*, 18791, fasc. III, no. 46, line 28.

(58) MATTOSO, 1979, p. 203.

(59) Hier., *Ep.* III, 3 (*ad Rufinum Monachum*).

(60) *Regium munus est et monarcha dignum servos manumittere, servitutis maculam delere, libertos natalibus restituere ...* (p. 403-406 in the edition of L. Moland).

(61) POTGIESER, 1736, p. 231 (I, 4, 53).

(62) POTGIESER, 1736, p. 768 (IV, 13, 8).

(63) Cf. also POTGIESER, 1736, p. 238 (I, 4, 57): *existimantes illos non servos, sed homines proprios, imo, abstersa servili macula, plane liberos esse dicendos*.

with the statement of Saint Jerome that his freed friend had shook of the *macula servitutis* after manumission.

Returning to *Dig.* XL, 11, 5, 1, it should be clear that a strong case can be made to interpret the *medio tempore* as referring to the period of servile subjugation. Thus, at least one, and probably two, of the canonical mentions of the *macula servitutis* in the juridical sources do not relate to freedmen.

In one case only, then, does it occur in relation to an actual freedman:

Cum precum tuarum conceptio, licet eum contra quem supplicas ex ancilla natum esse expresserit, tamen nomini cognomen, quo liberi dumtaxat nuncupantur, addiderit et non servum esse, sed servili macula adpersum comprehenderit, contra eum qui servus non est supplicasse te intellegitur.

Because the terms of your request, even though it expressed that he against whom you filed it is the child of your female slave, added a *cognomen* (by which only free persons are referred to) to his name and by that act made clear that he is not a slave but [merely] tainted by the stain of slavery, [because of this then] you are understood to have addressed your request against someone who is not a slave.⁽⁶⁴⁾

It seems unlikely that the slave in question was a formally freed Roman citizen. The only factor that would lead the lawgiver (and force the master) to consider him free was the possession of a *cognomen*. Indeed, his status at the end of the passage is not described as *civis* or *libert(in)us* but merely as someone *qui servus non est*. Therefore, and since a formal manumission would hardly have required or evoked a statement like this, it looks like this passage is referring to an informally freed slave.⁽⁶⁵⁾ Bearing in mind both the various possibilities of upgrading this status to formal freedom and the Romans' pragmatic willingness to erase stigma of all shape and form (see below), it could be argued that this *macula servitutis* would cease to exist once (if ever) the freedman was formally made a Roman citizen.

Of these three often quoted legal passages, then, probably two attribute the *macula servitutis* solely to slaves and the only one that links it to a freedman does so in the context of an informal and seemingly unintended manumission. In any case, these three legal passages are hardly decisive proof of a general habit of the Roman jurists to explicitly and literally stress the freedman's servile stain.

However, there are other legal mentions of the *macula servitutis* that are rarely ever considered by scholars. When specifying the status of children born of a union between a free and an unfree parent, for example, the lawgivers repeat the standard rule of thumb: if the mother was free but the father was not, the child would be free. However, if the situation was reversed, the child would follow the servile condition of the mother (*maternae condicionis*

(64) *Cod. Iust.* VII, 16, 9.

(65) Before the *lex Iunia*, informally freed slaves remained slaves *de iure* and although their freedom was protected by the praetor in the Republic (e.g. against an *actio Publiciana*), it was only a *forma libertatis* (Gaius *Inst.* III, 56; *Fr. Dos.* 4-5). Even afterwards, the freedom of Iunian Latins was regularly (albeit mostly rhetorically) associated with servile status, e.g. Tac., *Ann.* XIII, 27; Salvian., *Ad Eccl.* III, 33.

maculam).⁽⁶⁶⁾ The stain again pertains to the servile status and does not characterize the condition of a freedman.

Traditionally, children who were abandoned by their parents retained their original status in the eyes of the law and could, in theory, reclaim it through the process of *vindicatio in libertatem* (if freeborn) or could be reclaimed by their original master (if slave).⁽⁶⁷⁾ This changed rather suddenly in AD 331 when the recollection of abandoned children by the original parents or master was prohibited and said children were reduced to whatever status their new parents saw fit (including slave status).⁽⁶⁸⁾ If this change was drastic, then the rulings of Justinian two centuries later were nothing short of revolutionary. This emperor confirmed the prohibition on reclaiming abandoned slaves or children, but added that these children would not be considered either freedmen, slaves, *coloni* or *adscripticii* (*vel loco libertorum vel loco servorum aut colonorum aut adscripticiorum*) but rather free and freeborn (*liberi et ingenui*), regardless of their status at the moment of abandonment.⁽⁶⁹⁾ They would be able to acquire and transmit any property they wanted to their posterity or external heirs “without being branded by the stain of servitude or the condition of *coloni* or *adscripticii*” (*nulla macula vel servitutis vel adscripticiae aut colonariae condicionis imbuti*). It is not clear whether the *macula servitutis* here refers to the condition of slaves or freedmen, but from the continuation of the passage, it seems that probably the latter was meant. Indeed, it is specified that those who have subjugated the foundlings do not gain any rights over their property *quasi patronatus iura*. Earlier in this passage, however, freedmen (*libertina progenie*) had been contrasted with both freeborn children (*ab ingenuis genitoribus*) and slaves, who were described as *servili condicione maculatus*. In one and the same legal text, then, the *macula servitutis* is attributed to both slaves and freedmen. The difference between the two is that the expression is used not for *libertini* but for *liberti*, that is, freedmen in direct relation with their patron, specifically referring to the patron’s rights on their estate.

Thus in the only two legal passages in which a freedman – and not, as seems more common, a slave – is attributed a *macula servitutis*,⁽⁷⁰⁾ it is mentioned within the context of the individual patronage relation. In addition

(66) *Cod. Iust.* XI, 48, 24pr.

(67) *Dig.* XXII, 6, 1, 2; XL, 4, 29; *Cod. Iust.* VIII, 51, 1; *CTh.* V, 10, 1. Cf. Plin., *Ep.* X, 65–66. In reality, many exposed children would not have been aware of their original status nor of the opportunities the law provided to reclaim it, cf. D. Chr., *Or.* XV, 22–23; RAMIN AND VEYNE, 1981, p. 474ff. For child abandonment in the Roman world, see especially HARRIS, 1994 and HARPER, 2011.

(68) *CTh.* V, 9, 1. For this ruling as a phase in the ongoing process of abandoning the principle of inalienability of free status in favour of the rights of *nutritores*, see HARPER, 2011, p. 406–407. It was still intact almost a century later, *CTh.* V, 9, 2 (AD 412) but may have been partially revoked again shortly after, *Const. Sirm.* 5 (AD 419).

(69) *Cod. Iust.* VIII, 51, 3. Twelve years later (AD 541), another constitution (*Nov. Iust.* 153) confirmed this ruling, referring to the early imperial precedent of permanently freeing sick slaves who were abandoned by their masters on the island of Aesculapius (Suet., *Claud.* 35). See HARRIS, 1994, p. 19–22 and TATE, 2008, p. 129–139 for this evolution in regulating child abandonment.

(70) *Cod. Iust.* VII, 16, 9 and VIII, 51, 3.

to the lack of explicit mentions of a servile stain on freedmen in literary and epigraphic sources, this observation renders even more pertinent the question whether a *macula servitutis* was in fact the primary reason for the public disabilities of freedmen. Especially when we consider the fact that in Roman thought, stains on someone's character or honour were rarely a priori persistent.

Social promotion and persistence of *maculae*

It cannot be denied that past status or behaviour often resonated after social promotion. Indeed, in a commentary on the *lex Iulia* and the *lex Papia Poppaea*, Ulpian states that a woman who had practiced prostitution in the past was disgraced in the eyes of the law “for disgrace (*turpitudō*) is not erased by later discontinuing the behaviour”.⁽⁷¹⁾ Similarly, as is very well known, freed slaves in Greece (few in numbers as they may have been) or informally freed ones in Rome were not granted full citizen rights but continued to constitute a marginalized part of the population due to their servile past (metics and Iunian Latins respectively).⁽⁷²⁾ For other freedmen in Rome as well, the specific category of *dediticii* was formalized as part of the Augustan reforms. This was the lowest status an ex-slave could obtain. It was reserved for those slaves who had been beaten, branded, chained or who had been forced to fight in the arena; in short, for all slaves whose previous treatment was incompatible with citizenship.⁽⁷³⁾ They often carried the *maculae* of slavery in a very literal sense (e.g. the freedman in Martial who had covered up his branding scars to avoid being recognized as a former slave).⁽⁷⁴⁾ Contrary to other freedmen or prostitutes, their stigma was absolute. In the case of prostitutes, even though Ulpian (and other lawmakers) stated that the loss of a woman's honour was definitive, others explicitly argued that there were ways to regain it – especially through formal marriage after manumission: a feature which freedpersons, not coincidentally, frequently stressed in their epitaphs.⁽⁷⁵⁾ Similarly, female slaves could become respectable Roman matrons after manumission, indicating that their dishonourable past was

(71) *Dig.* XXIII, 2, 43, 4: *Non solum autem ea quae facit, verum ea quoque quae fecit, etsi facere desiit, lege notatur: neque enim aboletur turpitudō, quae postea intermissa est.*

(72) For Greek manumission, see CALDERINI, 1908; ZELNICK-ABRAMOVITZ, 2005. Whereas Greek freedmen may have been “marginal” also in terms of their number, this was most likely not the case for Iunian Latins, cf. WEAVER, 1997, p. 55; SIRKS, 1981, p. 274; KOOPS, 2014, p. 116ff.

(73) Gaius *Inst.* I, 13; 15; 26-27; Suet., *Aug.* 40. This status would become increasingly rare and was abolished under Justinian (*Cod. Iust.* VII, 5, 1).

(74) Mart. II, 29.

(75) *Cod. Iust.* V, 4, 23pr-1 is an explicit grant of pardon by the emperor Justinian to women who chose to better their way of life after previous misconduct. It would be unfair, so the logic goes, to deny free women what could be granted to freedmen (referring to the procedure of *restitutio natalium*). Tainted women, too, could now be purified from all blemishes (*omni macula penitus direpta*). *Infamia* could also more generally be lifted (e.g. also in the cases of gladiators or actors), *Dig.* III, 1, 1, 9. Cf. GREENIDGE, 1894, p. 177-185; GARDNER, 1993, p. 153-154.

outranked by their newly attained status.⁽⁷⁶⁾ Since *matres familias* were explicitly defined as women who had not lived dishonourably (*non inhoneste vixit*)⁽⁷⁷⁾, the inclusion of freedwomen in this category is indeed significant. Finally, as has been mentioned, Augustus famously provided ways for Iunian Latins to gain full Roman citizenship after having fulfilled specific conditions such as producing offspring or performing acts of civic service.⁽⁷⁸⁾

A stain rarely seemed to have been absolute or persisting. In their correspondences, Cicero, Pliny and Fronto never speak of the *macula servitutis* but they do occasionally mention a stain on someone's honour or reputation. In a letter to Brutus, Cicero mentions "the great blot on the honour of the Roman people" (*magna populi Romani macula*) as a consequence of Caesar's tyrannical rule, which had reduced the Roman citizens to slave-like status.⁽⁷⁹⁾ In his description of Silius Italicus' career, Pliny mentions the fact that he had damaged his reputation (*laeserat famam*) under Nero by acting as an informer.⁽⁸⁰⁾ Not only were informers considered to sustain and aid wicked emperors in the suppression of their subjects, but they – as a consequence – were often considered slavish themselves.⁽⁸¹⁾ Fronto, when trying to obtain the reinstatement of Volumnius Serenus as decurion of Concordia, wonders whether it is justified to inflict a significant stain (*insignem maculam*) on a very old man (i.e. by denying him this reinstatement).⁽⁸²⁾ It is significant that in all of these cases, the focus shifts from the stigma itself to the fact that it was either already cleansed or that it could be cleansed in the future. Indeed, in the quoted passages, Cicero speaks of a *macula deleta* after Caesar had been killed. Pliny stresses the fact that Silius Italicus had removed (*abluerat*) the stigma of his former activities by his honourable retirement. And Fronto wonders whether and when the stain on Volumnius' reputation was to be effaced (*quando, oro te, abolendam?*). Here, as in the case of freedwomen, Iunian Latins and prostitutes, there were clear-cut ways of diminishing or completely shaking off the stain of past actions and condition, even when these stains were at least rhetorically related to slavery.

Regardless, it would be naive to think that a freedman's past was forgotten in any class-conscious society. Indeed, Horace's sneer at a wealthy freedman (*fortuna non mutat genus*)⁽⁸³⁾ found remarkable – and sometimes almost

(76) For the freedwoman Hispala Faecina in Livy's account of the Bacchanalia, it seemed important to stress that she had not accompanied her *domina* to these rites after she was set free. As a slave girl, she had "nothing to lose" from association with the cult – she did, in fact, not have much of a choice in the matter – but as a free woman, she wanted to stay away from this *officina corruptelarum omnis generis* (Liv., XXXIX, 10, 5-8; 12, 6-7).

(77) Dig. L, 16, 46, 1.

(78) For the *anniculi probatio*, see WEAVER, 1990, *passim* (esp. p. 277; 280; 301). For a summary of the other conditions, see SIRKS, 1981, p. 254; LÓPEZ BARJA DE QUIROGA, 1998, p. 145-146.

(79) Cic., *Brut.* I, 15, 4. Cicero often interchangeably used "monarchical rule" and "slavery" and presented Caesar as ruling over an enslaved Roman people (e.g. *Off.* III, 84).

(80) Plin., *Ep.* III, 7, 3.

(81) E.g. Tac., *Dialog.* 13 or the stain on informers (*macula delatoris*) in the legal sources, e.g. *Cod. Iust.* IX, 35, 3; X, 11, 3.

(82) Fronto, *Ad. Am.* II, 7, 8.

(83) Hor., *Epod.* IV, 6.

literal – resonance throughout the history of European slavery. In the ninth century, for example, one could still reproach a freedman by exclaiming that he was indeed free but that he could never obtain the social standing of a nobleman.⁽⁸⁴⁾ Horace's account is harsher since it rhetorically implies a natural difference between freed and freeborn, whereas its ninth century parallel merely states that freed status is an impediment to becoming *nobilis*. The entire discussion should be seen in the light of any elite's wish to distance itself from the lower classes in general rather than from any general public stigma of *libertini* in particular. In Rome especially, the highly ambivalent and controversial nature of "the" freedman made him the target par excellence of this discourse of distinction.⁽⁸⁵⁾ Together with the strong preoccupation of safeguarding patronal rights and preventing freedmen from obtaining a position of power over their former masters, this observation not only highlights the inherent problems of the *macula* framework, but also goes a long way in providing alternatives in explaining the disabilities of freedmen.⁽⁸⁶⁾

Inconsistencies and alternatives

The exclusion of freedmen from the legions and their restrictions in both inheritance law and voting rights are examples of measures meant to safeguard patronal interests. Soldiers were expected to be deeply invested in their country to guarantee their motivation and zeal. The exclusion of slaves and even Iunian Latins from the legions would have been easy enough on the grounds of them not possessing citizenship, but even first generation freed citizens seem to not have fit this expectation. On the one hand, no account survives that formally excluded freedmen from the legions, but on the other, no evidence exists of ex-slaves actually serving as legionnaires. As a consequence, most assumptions on the matter essentially derive from an *ex silentio* argument, and conflate absence of proof with proof of absence.⁽⁸⁷⁾ On a different level, it could be argued that the elite's contempt for *homines novi* was an expression of the very same social mechanism of distinction

(84) Theganus, *de Gestis Ludovici Pii*, cap. 44 *Fecit te liberum, non nobilem, quod impossibile est post libertatem*.

(85) Or to paraphrase WIEDEMANN, 1987, p. 11 (writing about Greek slavery): slavery and manumission were tools and concepts used to address broader social issues. For example, good emperors were rulers who respected and protected the social hierarchy. The control over and indulgence towards their freedmen was often taken as a yardstick of their policy and worth (Plin., *Pan.* 88, 1-3; cf. Tac., *Hist.* 3, 55 for a similar discourse on the granting of Latin rights to foreigners).

(86) MOURITSEN, 2011 (e.g. p. 122) and PERRY, 2014 (e.g. p. 137) sometimes hint at this but never abandon the *macula* ideology as explanatory framework for the freedman's disabilities.

(87) ATKINSON, 1966, p. 366 argued rather speculatively that freedmen could and did serve in the legions and that the *lex Iunia* was intended precisely to provide army recruits. SHERWIN-WHITE, 1973, p. 324-325 plausibly suggested that freedmen are not found in the legions simply because they were too old at the time of their manumission, not because there was a formal ban.

and exclusion.⁽⁸⁸⁾ Mouritsen mentions the potential lack of loyalty and skill in freedmen as reasons for their exclusion from the legions, but typically describes these concerns as “conventional prejudices against the ‘slave nature’”.⁽⁸⁹⁾ Again, a persisting *macula servitutis* is invoked to explain a limitation that could otherwise be accounted for. In addition to the fact that manumission (especially after the *lex Aelia Sentia*) would take place too late in life for a freedman to aspire military service, the resulting loss of his services and availability, or the chance of freedmen rising to positions of power or authority over their patrons were concerns likely to be at least as pressing on both an ideological and pragmatic level.

Other measures, as well, seem to have had the patrons’ interests in mind rather than any contamination or degradation of a particular body or group. When in 169 BC the censor Ti. Sempronius Gracchus proposed a motion that would deprive freedmen of the vote, his colleague C. Claudius Pulcher opposed it because it constituted a fundamental infringement on the freedman’s freedom and citizenship (*id esse ciuitatem libertatemque eripere*).⁽⁹⁰⁾ The affair was but one episode in the ongoing struggle between *populares* and *optimates*, who continuously sought to expand or restrict the distribution of freedmen over the thirty-five tribes. The Roman system of block-voting allowed for an artificial reduction of democratic representation by grouping a large societal group in but a few tribes.⁽⁹¹⁾ Although this practice met with strong opposition from the *populares* who appealed to the fundamental freedom of all citizens, the very same notion of *libertas* was invoked by the *optimates* to justify the manifest discrimination of ex-slaves. In the elite’s mind, complete equality was essentially unjust (*iniqua*) because it ignored the moral superiority of the highest echelons of society and fundamentally tarnished the *gradus dignitatis*.⁽⁹²⁾ Any attempt to equate the lower orders with the higher ones would thus infringe on the very *libertas* the *populares* claimed to pursue by pleading for equal voting rights for all citizens. It is therefore not surprising that originally, not only freedmen but a much larger group of unspecified *humiles* were restricted to the four urban tribes.⁽⁹³⁾ When Clodius tried to open up the rural tribes for freedmen, the attempt provided Cicero with effective ammunition to convince a jury of his depravity. Cicero’s main concern, however, was not the safeguarding of the rural tribes against any form of contamination in a moral sense. His main fear – and thus undoubtedly also the unease he wanted to evoke or

(88) For the prejudice against *homines novi* and the difficulties they faced when trying to climb the social ladder, see e.g. Cic., *Fam.* I, 7, 8; Cic., *Leg. Agr.* II, 1; 3-6; 55; Sen., *Ben.* IV, 30, 1; Sal., *Cat.* 23, 5-6. Cf. WISEMAN, 1971.

(89) MOURITSEN, 2011, p. 72.

(90) Liv., XLV, 15. The compromise was to enroll all freedmen into one single urban tribe (the Esquiline), severely diminishing their weight in the *comitia tributa*.

(91) For (the evolution of) the distribution of freedmen in the tribes, see especially TAYLOR, 1960, *passim* (esp. p. 132-149); TREGGIARI, 1969, p. 37-52; FABRE, 1981, p. 135-138; MILLAR, 1995; ARENA, 2006; MOURITSEN, 2011, p. 76-79.

(92) Cic., *Rep.* I, 43; 53, mirrored in Plin., *Ep.* IX, 5, 3. ARENA, 2006 is dedicated entirely to this ideological adaptation of the notion of *libertas* by both *populares* and *optimates*.

(93) Liv., IX, 46. Cf. TREGGIARI, 1969, p. 42, 52.

manipulate in his audience – was that freedmen would, as a consequence of the Clodian law, obtain an unparalleled preponderance in elections, and, accordingly, an indirect influence over their patrons. If enacted, Clodius' laws, Cicero vigorously argued, "would have made us subject to our own slaves" (*incidebantur iam domi leges, quae nos servis nostris addicerent*).⁽⁹⁴⁾ Cicero, in this instance, clearly used *servi* instead of *liberti* for rhetorical effect – like he often did throughout his speeches.⁽⁹⁵⁾ Later commentators indeed assumed that this phrase referred to Clodius' motion on tribal distribution.⁽⁹⁶⁾ In a contribution meaningfully titled "Fear of freedmen", López Barja de Quiroga similarly argued that the sheer number of known instances where the freedman vote dominated the political agenda throughout the Republican period betrays the fact that the elites considered it a very real threat.⁽⁹⁷⁾ Likewise, Arena has drawn attention to the "numerous instances of agreement or silent acceptance of *populares* measures on the part of the senate" but stressed that the enrolment of freedmen in all tribes would mean too much of a threat to *optimates* supremacy to give way to it, and was therefore repeatedly and consistently fought.⁽⁹⁸⁾

If a distribution among all thirty-five tribes would grant freedmen only indirect influence over their patrons,⁽⁹⁹⁾ access to political office constituted a prospect to be dreaded even more profoundly. Even prior to the *lex Visellia*, which formally barred freedmen from obtaining public office in the municipalities, ex-slaves seem to have been de facto excluded from these dignities.⁽¹⁰⁰⁾ This did not mean that freedmen were entirely excluded from the *honores* system. The freedman L. Iunius Puteolanus, for example, is said to have held all the honours (*omnes honores*) which freedmen could take up.⁽¹⁰¹⁾ Similarly, the imperial freedman Titus Flavius Crescens received from

(94) Cic., *Mil.* 87. Cf. TREGGIARI, 1969, p. 50; ARENA, 2006, p. 79-80.

(95) E.g. Cic., *Mil.* 89, which refers to the same Clodian law: *lege nova, quae est inventa apud eum cum reliquis legibus Clodianis, servos nostros libertos suos effecisset*. TREGGIARI, 1969, p. 265 argued that the "*servi*" were in fact *liberti* and the "*liberti*" clients. Other scholars interpreted Clodius' proposal not as a distribution law, but as an attempt to legally enshrine the freedom of informally freed slaves (an early "*lex Iunia*" as it were). Even if correct – the suggestion cannot be proved – "*servi*" would still have to refer to (informal) freedmen, and a reading of "*liberti*" as clients remains necessary since no (informally freed) slave would become an actual freedman of Clodius. Cf. ŁOPOSZKO, 1980, p. 84ff; BENNER, 1987, p. 131-133; TATUM, 1999, p. 238-239. For a justified criticism, see MOURITSEN, 2011, p. 78.

(96) Ascon., 52C: *Significasse iam puto nos fuisse inter leges P. Clodi quas ferre proposuerat eam quoque qua libertini, qui non plus quam in IIII tribubus suffragium ferebant, possent in rusticis quoque tribubus, quae propriae ingenuorum sunt, ferre*.

(97) LÓPEZ BARJA DE QUIROGA, 2007.

(98) ARENA, 2006, p. 80-81 (with examples in note 46).

(99) The analytic distinction patron-freedman often obscures the fact that many patrons were themselves of servile descent. Not every patron therefore necessarily sympathised with the "optimate" definition of *libertas* and the consequent distribution of freedmen in the four urban tribes only. From an elite's perspective, however, the empowerment of freedmen would obviously be conceived as a threat to "normal" status categories.

(100) *Cod. Iust.* IX, 21, 1.

(101) *CIL* II, 1944. The mention of the *municipium Suelitanum* provides AD 53 as terminus *post quem* for the erection of this altar; well after the *lex Visellia*.

the decurions and people of Gabii many *honores*, which he faithfully took up.⁽¹⁰²⁾ These (and similar) inscriptions indicate that freedmen could receive certain honours, as long as these did not entail any formal power. The *lex Visellia* therefore aimed at safeguarding the natural order rather than stressing and consolidating any innate inferiority of freedmen.⁽¹⁰³⁾ The exceptional leniency in allowing freedmen to hold municipal office in Caesar's colonies seems to confirm this picture. There was no danger of freedmen gaining direct *auctoritas* over their patron in these contexts and it may have often been by the initiative of these very patrons themselves that their freedmen were elevated to such exceptional heights, e.g. to secure important commercial or strategic positions in the region.⁽¹⁰⁴⁾ The creation ex nihilo of many of these colonies would ensure that there was no opposition of an entrenched elite corps. If freedmen were considered inherently incapable or undeserving of holding municipal magistracies, these exceptions – let alone the case of Anthestius Amphio mentioned above – would not have been tolerated and encouraged.

The same *lex Visellia* formally allowed the emperor to grant the right of wearing the golden ring to a freedman (*ius anulorum aureorum*). This *beneficium* annulled all formal restrictions in the public sphere, entitled the freedman to the appearance – though not the actual status – of free birth (*imago non status ingenuitatis; ut ingenuus habetur*), and thus allowed him to exercise all functions of a freeborn person (*omnia ingenuitatis munia habet; officia publica ingenuorum peragunt*).⁽¹⁰⁵⁾ However, this cleansing would not erase the connection and obligations to his patron, who maintained his (inheritance) rights over the freedman and to whom the latter continued to owe *reverentia* and support.⁽¹⁰⁶⁾ Like a Iunian Latin who lived free but died a slave, a freedman who received the golden ring lived as an *ingenuus* but still died as a freedman (*hic enim vivit quasi ingenuus, moritur quasi libertus*).⁽¹⁰⁷⁾ Saller observed that these grants were “matters of patronal favoritism” and were as a consequence often granted to imperial favourites.

(102) *CIL* XIV, 2807. His name situates Crescens in Flavian times.

(103) It has been justly argued that the consequences of this restriction differed in no fundamental way from those of the formal requirements and informal mechanisms that prevented the lower classes in general from obtaining high office. Cf. MOURITSEN, 2011, p. 73; PERRY, 2014, p. 134.

(104) TREGGIARI, 1969, p. 62-64; MOURITSEN, 2011, p. 74-75. See, however, MILLIS, 2014, who shows (at least for Corinth) that these colonial situations were not cases of exceptional social mobility of freedmen but rather the result of economic and politico-strategic considerations of elites (and therefore precisely an impediment to social mobility). The argument is an echo of FREDERIKSEN's, 1959, p. 111 who focused on the commercial use of freedmen to secure and consolidate the power-hold of certain families. See also KLEJWEGT, 2006a, p. 49 who draws attention to the specific “political constellation which favoured members of an outsider group to counter or reduce the influence of another group”.

(105) *Cod. Iust.* VI, 8, 2; IX, 21pr; *Dig.* II, 4, 10, 3; XL, 10, 5, 6; Dio, XLVIII, 45, 8-9. For the *ius anulorum*, see DUFF, 1928, p. 85f; SHERWIN-WHITE, 1973, p. 331; DEMOUGIN, 1984, p. 218-219.

(106) *Dig.* II, 4, 10, 3; XXXVIII, 2, 3pr; XL, 10, 5, 6. On the other hand, the freedman would not forfeit the benefits related to the patronage relation, e.g. *Dig.* XL, 10, 1pr.

(107) *Dig.* XXXVIII, 2, 3pr; Gaius *Inst.* III, 56.

He concluded that we cannot gauge the extent to which these grants were actually desired or actively pursued by freedmen.⁽¹⁰⁸⁾ However, a freedman like L. Marius Doryphorus would give the achievement pride of place in his funerary inscription, where it significantly preceded the account of his impressive apparitorial career as *scriba*, *praeco*, *viator*, and *lector*.⁽¹⁰⁹⁾

From a *macula servitutis* point of view, the *ius anulorum* was a “remarkable invention” because it entailed a “miraculous suspension” of the freedman’s stigma. For this reason, its formalization under Augustus has been considered surprising since it was precisely this emperor who was a vigorous defender and enforcer of traditional status boundaries.⁽¹¹⁰⁾ However, Augustus’ responsibility is only surprising when we interpret the *ius anulorum* essentially as purging persons who were inherently inferior due to a servile past. Rather than considering it merely as a legal, *public* cleansing of an ideological stain, the potential subversive effects of the *ius anulorum* derived in no small degree from its influence on *private* relations. As a social practice, the impact existed primarily in the elevation of a freedman to a legal status that could potentially endow him with formal authority over his patron. This is implied by the provision that the grant of the *anulus aureus* required the permission of the patron and could be revoked if obtained without the latter’s knowledge.⁽¹¹¹⁾ Since the promotion of his freedman would by no means diminish a patron’s rights or financial claims over him, the explicit requirement of patronal approval served to safeguard other interests. On an ideological level, this prerequisite was a formal recognition of the patron’s authority over and judgement of his freedman. On a more pragmatic level, it was important for a patron to explicitly agree with granting one of his freedmen the golden ring, since the change in legal status would allow the latter to obtain a position of formal power over his ex-master. Both ideologically and pragmatically, the change in legal status had to be approved by the party that was (besides the freedman himself) affected most directly by the transition.⁽¹¹²⁾

The same logic lay behind the special treatment of freedmen in inheritance law. As citizens, *libertini* should by definition have the same property rights as freeborn citizens. As *liberti*, however, they were increasingly disadvantaged.

(108) SALLER, 1982, p. 53. Contra DUFF, 1928, p. 86 who speaks of “large numbers of humbler freedmen” who, like imperial freedmen, gained the privilege.

(109) CIL VI, 1847: [L(ucius)] Marius L(uci) lib(ertus) Doryphorus anulos aureos / consecutus a divo Commodo scrib(ae) aedilic(io) et / tribunic(io) scrib(ae) libr(ario) aedil(ium) curul(ium) praeco co(n)s(ulis) / praeco(o) quaestorius sacerdotal(is) viator(is) augurum / lictor curiat(or) Laurens Lavinas fecit sibi et / Ae(liae) Asclepiodote coniugi item libertis / libertabusque suis posterisque eorum.

(110) MOURITSEN, 2011, p. 107-108.

(111) Dig. XL, 10, 3: Divus Commodus et ius anulorum datum ademit illis, qui invitis aut ignorantibus patronis acceperant.

(112) MOURITSEN, 2011, p. 47 (note 68) claims that the *ius anulorum* “only altered the relationship between the freedman and the outside world”. Although this is true in a strictly legal sense (cf. note 106 above), the possibility of an ex-slave obtaining formal positions of power had repercussions for the dynamic of the patronage relation as well (as is suggested by the explicit requirement of patronal approval for a grant of the *ius anulorum*).

Somewhere during the fifth century BC, the Law of the Twelve Tables ensured that after he died, the property of a freedman who left a will or who had *sui heredes* would transfer according to the rules that applied to inheritances of freeborn citizens.⁽¹¹³⁾ In two later stages patronal rights increased, even though initially the situation of freedmen was still identical to that of emancipated sons.⁽¹¹⁴⁾ The reasons for granting special privileges to patrons were less inspired by a freedman's servile inferiority than by pragmatic concerns to curb the increasing influence and wealth of freedmen who, at the time of these legislative measures, sometimes surpassed their patrons in both respects. Perhaps even more important, these measures (the *lex Papia Poppaea* in particular) need to be framed in the Augustan reforms in which the *discrimina ordinum* in general was rigorously observed and patrons' rights carefully protected.⁽¹¹⁵⁾

The *lex Iulia de maritandis ordinibus* (18 BC) was meant to safeguard precisely this *gradus dignitatis* in society at large.⁽¹¹⁶⁾ This Augustan law, prohibiting senators and three generations of descendants in the male line, from marrying a freedwoman (*libertina*) or a woman who herself or whose mother or father had practiced the *ars ludicra*, is occasionally explained as a stigmatizing tool, its goal being to prevent these persons' innate inferiority from rubbing off and contaminating the elite.⁽¹¹⁷⁾ There are, however, indications that the *raison d'être* for this ban was a concern with sustaining the exclusivity of the senatorial body in general, rather than a fear of servile contamination in particular.⁽¹¹⁸⁾ Indeed, the same law explicitly guaranteed that other *ingenui* incurred no stigma when marrying freedwomen. The accentuation of the division between senators on the one hand and the rest of society (including other elite members like knights and *decuriones*) on

(113) Gaius *Inst.* III, 40.

(114) Gaius *Inst.* III, 41-42; *Dig.* XXXVII, 12, 1. For a comprehensive overview of this evolution, see GARDNER, 1993, p. 21-23.

(115) PERRY, 2014, p. 137 drew on Gardner to make a similar argument: the disabilities of *libertae* are not designed to mark any inferiority but rather to protect patrons' rights. Contra MACMULLEN, 1974, p. 104 who saw these disabilities as a punishment for the tainted freedperson. For the *discrimina ordinum* as corner stone of the Augustan reforms, see MOURITSEN, 2011, p. 89-91. For its central role in elite ideology, see Tac., *Ann.* II, 33.

(116) *Dig.* XXIII, 2, 44pr; *Tit. Ulp.* XIII, 1; Dio, LIV, 16, 2.

(117) E.g. NASRALLAH, 2014, p. 57; MOURITSEN, 2011, p. 21. This is probably too literal an interpretation of certain ancient writers (cf. note 2 above). See however MOURITSEN, 2011, p. 80ff; 108. METTE-DITTMAN, 1991 and MCGINN, 2002 discuss the Augustan marriage law in particular. PERRY, 2014, p. 134-135 (including notes) reasonably argued that any resulting disabilities of freedpersons (exclusion of "the most elite standing" but also legal disabilities, as social status became increasingly important in Roman law) were a corollary of the primary purpose of the laws to secure the exclusivity of the senatorial order. He sees in them a tightening of social status groups and as such a foreshadowing of the later divide between *honestiores* and *humiliores* (p. 135): "If freedwomen were inferior to senators and their wives, then they shared this inferiority with the overwhelming bulk of Roman citizens; in terms of practical application, the law did not entail freedwomen being treated all that differently than the majority of free female citizens".

(118) Pace MOURITSEN, 2011, p. 21 who saw the ban as a measure to prevent "contamination" of the citizen body in general" (though nonetheless adding that "the highest order in particular" was envisaged). Cf. FABRE, 1981, p. 186 who stresses "la protection de la pureté du recrutement du Sénat (et de l'ordre sénatorial)".

the other, was already clear in the passages of (the commentaries on) the *lex Iulia* that separated senators from *ingenui ceteri*,⁽¹¹⁹⁾ but it was even more explicitly stressed in the *lex Papia Poppaea* (9 AD) which confirmed that all freeborn men *praetor senatores eorumque liberos* could marry freedwomen.⁽¹²⁰⁾ The *Tituli ex corpore Ulpiani* provide the clearest distinction between the two groups since their respective restrictions are treated in separate subdivisions.⁽¹²¹⁾ If any *macula* precluded the marriage between freed and freeborn, the ban would have been made more general. Instead, its limitation to the senatorial class is a clear indication of its being directed at this exclusive order rather than to that of freedpersons. Indeed, senators were equally barred from marrying, for example, actresses (i.e. practitioners of the *ars ludicra*), prostitutes (those who made *corpore quastum*), or women who were *damnatae publico iudicio*.⁽¹²²⁾

In his seventh *Controversia*, Seneca has a speaker give evidence for marriages between senators and freedwomen in the past. The only example he comes up with is the marriage of Cato the Elder. However, Cato married a low ranking freeborn woman, not a freed one. For the speaker, these ranks were interchangeable, the only relevant trait being their common distinction from the senatorial order.⁽¹²³⁾ Moreover, in the same passage, any difference between a freedman and a *colonus* is explicitly and meaningfully downplayed by comparing it to the much greater difference between the speaker and the great Cato himself (*plus interest inter me et Catonem quam inter libertum et colonum*). Later marriage regulations, not dealing with freedpersons specifically, seem to have had the exact same concerns in mind.⁽¹²⁴⁾ These laws were inspired by a strong preoccupation with safeguarding the natural *discrimina ordinum* and *gradus dignitatis*, rather than an attempt to stigmatize freedmen or to prevent servile contamination. Instead of “lashes of the law” trying to alter or adjust existing malpractices, these provisions were confirmations of an already existing and established social practice among Rome’s senatorial elites. Their immediate result was therefore not a de facto discrimination of freedpersons, actresses, or prostitutes, but rather

(119) E.g. *Dig.* XXIII, 2, 44, 8: *Eas, quas ingenui ceteri prohibentur ducere uxores, senatores non ducent.*

(120) *Dig.* XXIII, 2, 23.

(121) *Tit. Ulp.* XIII, 1 considers the regulations for senators, and XIII.2 those of the *ceteri ingenui*. Although the text is valuable precisely for explicitly making this distinction, the actual content of the respective restrictions should be treated with care since editorial flaws and postclassical additions have likely occurred, cf. GARDNER, 1993, p. 123-125; MCGINN, 2002, p. 50-54.

(122) *Dig.* XXIII, 2, 43, 10; 2, 44pr; *Tit. Ulp.* XIII, 1-2 (see, however, the reservation in the previous note).

(123) Sen., *Contr.* VII, 6, 17, cf. Plut., *Cat.* XX, 1. See also Cic., *Phil.* III, 17 in which Antonius is despised for having children by a woman of servile descent. However, it is not any remaining servile stain but rather her want of noble birth in general (*ignobilitas*) that provides Cicero with his rhetorical ammunition. Indeed, Antonius’ father is attacked on the exact same grounds for marrying the (freeborn) daughter of a traitor.

(124) E.g. MATHISEN, 2006, p. 1028-1032 (discussing a fourth century marriage law prohibiting *provinciales* from marrying *barbari*) and HARRILL, 2006, p. 387 (Tertullian invoking the exemplum of slavery to forbid mixed marriages between Christians and non-Christians).

a confirmation of ideological beliefs of distinction in a social context where endogamous marriages – within the same status groups – had been the unwritten rule all along.⁽¹²⁵⁾

The a priori acceptance of the *macula*-ideology as determinant of the freedman's condition poses other problems as well. As is well known, Roman law did not postulate that slaves were inferior by nature.⁽¹²⁶⁾ However, the condition and experience of slavery in itself could change a person's character in a way that made him or her inferior to free people.⁽¹²⁷⁾ The conviction that moral inferiority is a result of being a slave (rather than the other way around) is difficult to reconcile with the procedure of *vindicatio in libertatem* by which wrongfully enslaved persons could reclaim their freedom. Interestingly, they would legally become *ingenui* again and would as such not suffer from any formal *macula servitutis*, despite having endured servile treatment.⁽¹²⁸⁾ However, a necessary consequence of the conception of slavery as not natural is that the praxis and experience of slavery should, at least theoretically, leave as much of a stain on these people as on real slaves – both categories having been born equal and subsequently subjected to the same servile experience.⁽¹²⁹⁾ Indeed, freeborn prostitutes or actors were automatically branded with *infamia* because of their occupation and behaviour (cf. *infra*). On the contrary, law texts clearly stated that the practice of (unjust) slavery did not make a freeborn person servile.⁽¹³⁰⁾ The fact of unjustly having been a slave was not responsible for any disabilities in public or private life in these cases. The same could be said of the practice of *postliminium* whereby freeborn Romans who were enslaved by foreigners could reclaim their freeborn status without any permanent limitation or

(125) RAEPSAET-CHARLIER, 1994; MCGINN, 2002, p. 57-58; MOURITSEN, 2011, p. 84-85, 91-92; PERRY, 2014, p. 135. For an alternative view, see GARDNER, 1993, p. 39.

(126) The law explicitly stated that according to the *ius naturale*, all men are born free (*Dig. I, 1, 4*) and therefore essentially equal (*Dig. L, 17, 32*). BUCKLAND, 1908, Chapter 1 (e.g. already p. 1-2), 347. For a recent discussion with many references to both ancient literary, philosophical, and legal sources as well as to modern opinions, see MOURITSEN, 2011, p. 14-17.

(127) MOURITSEN, 2011, p. 22; cf. KLEES, 2002. Similarly, a woman caught in the act of adultery was branded with *infamia* even before (or without) any conviction took place because the degradation resulted from the (f)act itself rather than from any formal condemnation (... *quia factum lex, non sententiam notaverit*, *Dig. XXIII, 2, 43, 12*).

(128) HARPER, 2011, p. 395 (with notes); WATSON, 1967, p. 218-222; TREGGIARI, 1969, p. 19. LAVAN, 2013, p. 80f. As mentioned above (note 69), there were exceptional ways for slaves to become *ingenui* without incurring any formal *macula servitutis*.

(129) In defence of the *macula* ideology, Mouritsen tries to show that “some ‘taint’ did indeed remain in the eyes of society because of the reality of servitude, however unjustified”, MOURITSEN, 2011, p. 17 (note 39). The single case of Vespasian's wife is, however, hardly sufficient evidence.

(130) E.g. *Cod. Iust. VII, 14, 10*. *Cod. Iust. VII, 16, 6* states that an *ingenuus* cannot lose his *ingenuitas* even by voluntarily declaring that he is a slave. Freeborn children who were sold into slavery did not lawfully forfeit their original status, cf. BUCKLAND, 1908, p. 420-421; HARRIS, 1994. Debtors who were condemned to serve their creditors as slaves in order to pay off their debt, however, may have been freed like other slaves and end up as freedmen (Quint., *Inst. V, 10, 60* and *VII, 3, 26-7*). Cf. LAVAN, 2013, p. 77.

stain.⁽¹³¹⁾ Either way, these observations nuance the belief that any moral deficiency as a consequence of servile treatment was the primary reason for the freedman's social and public disabilities. It was the formal legal status of *ingenuitas* or *libertinitas* that determined the evaluation of the consequences of a servile subordination, not the other way around.

Reasoning backwards, the fact that in some – albeit exceptional – cases a freeborn individual could become a freedperson without ever having been a slave confirms this conclusion. In AD 52, the *Senatus Consultum Claudianum* ruled that a freeborn woman who had a sexual relationship with a slave without the consent of the slave's master would become a slave herself. If, however, the master agreed to the union she was to be a *liberta* only.⁽¹³²⁾ Modern authorities disagree on the precise purpose of this SC but the *communis opinio* seems to be that it was not intended as a punishment for the woman in question.⁽¹³³⁾ In any case, this measure shows that being a freedperson but not having been a slave was not an insurmountable contradiction and that the restrictions and disabilities of these women therefore did not result from any servile past.

The ability of enslaved freeborn people to reclaim their original status without incurring formal disabilities, or the possibility of being branded with any without formally having been a slave thus reveal an inconsistency in the idea that a moral *macula servitutis* was the primary identity dimension of freedmen. In the first scenario, this assumption becomes even more problematic when we consider that the formal modes of manumission (at least *vindicta* and maybe *censu* as well) were in fact legal fictions that presented the process of manumission as *restitutiones in libertatem*.⁽¹³⁴⁾ In an attempt to ideologically explain and justify the transformation of slave into free person, it was pretended that the slave was at some point unjustly enslaved and, by the formal manumission, restored to his original status, thus symbolically placing him on the same footing as *ingenui* restored to their birth right by the procedures of *vindicatio in libertatem* or *postliminium* mentioned above. Especially the public restrictions freedmen would nonetheless suffer from, indicate that it was their formal legal position in society rather than an ideological belief of moral inferiority that constituted the basis of differentiation. It seems rather insufficient to dismiss these flaws in the *macula*-framework as mere exemptions or inconsistencies.⁽¹³⁵⁾

Finally, a comparison between the stigma of freedmen and the social and legal condemnation of *infames* is illuminating. Freedmen shared their exclusion from political office with other social groups like women and

(131) For *postliminium*, see *Dig.* XLIX, 15, 19; *CTh.* V, 7, 1. BUCKLAND, 1908, 304ff. Cf. also the procedure of *restitutio natalium* (*Dig.* XL, 11, 5).

(132) Tac., *Ann.* XII, 53. For this *senatus consultum* and its purpose, see (among others) SIRKS, 2005 and HARPER, 2010. *Cod. Iust.* VII, 16, 3 declares that the same “crime” committed by a free *man* is not punished in this way.

(133) See particularly HERRMANN-OTTO, 1994, p. 28-33 and SIRKS, 1994.

(134) TREGGIARI, 1969, p. 21-22; BUCKLAND, 1908, p. 441-442. People held in slavery, who were not aware that they were legally free, constituted a distinct category in Roman law: a *liber homo bona fide serviens* (p. 331-352). See MOURITSEN, 2011, p. 11-12 for further references.

(135) MOURITSEN, 2011, p. 25 (note 84).

infames. Whereas this legal disability was ascribed to freedmen and women, it was acquired by *infames*: the former were inflicted with it by their very condition (legal and biological), the latter incurred it throughout their lives as a result of immoral or criminal behaviour.⁽¹³⁶⁾ Although the legal status of freeborn *infames* and that of freedmen was fundamentally different,⁽¹³⁷⁾ their restrictions in public life would often overlap. It is well known that there did not exist one all-encompassing notion of *infamia* under which all those branded by it could be equally categorized. Indeed, there were several gradations in the restrictions imposed, and limitations depended both on the context of the crime and on the status of the offender.⁽¹³⁸⁾ Roman citizenship in general was no package deal.⁽¹³⁹⁾ Parts of it could be granted or revoked, and the notion of *infamia* (downgrading *ingenui*) – much like the *ius anulorum* (upgrading *libertini*) – was instrumental in maintaining a trapped system of (citizen) rights.

Even though the restriction on freedmen and women was similarly ascribed, the two groups differed from each other since women could not, by their very *nature*, under any circumstance lay claim to *auctoritas*. Tacitus explicitly writes that informers had to find alternative ways to incriminate women because they could not, a priori, be charged with usurpation of power, and ambitious women could be silenced by a reference to their *impotentia muliebris*.⁽¹⁴⁰⁾ On the contrary, the exclusion of freedmen (or freeborn *proletarii* for that matter) was not natural or, to nuance Horace's sneer, not based on their supposedly different *genus*. Indeed, the *lex Visellia* provided that freedmen who pretended to be freeborn and usurped the office of *decurio* would become *infamis* (*cum infamia adficitur*).⁽¹⁴¹⁾ Freeborn people who had been subjected to the servile punishment par excellence – flogging – could still legally be admitted to the *ordo decurionum* since they were not considered *infamis*, even though the jurists implied this would be *inhonestus*, and advised that priority be given to *virii honesti*.⁽¹⁴²⁾ In terms of dishonour,

(136) The standard works on *infamia* remain GREENIDGE, 1894 and KASER, 1956. For the most relevant contributions for the current discussion, see GARDNER, 1993, p. 110-154 (with a list of the most important legal sources on *infamia* on p. 126-128) and EDWARDS, 1997.

(137) For example, although Tacitus (*Ann.* VI, 7) harshly condemned the behaviour of Cotta Messalinus who was *egens ob luxum* and *per flagitia infamis*, even the historian had to admit that he nonetheless remained a noble (*nobilis quidem*).

(138) GARDNER, 1993 provides a discussion of the range of potential consequences. Besides public restrictions like exclusion from public office, citizen privileges that could be revoked included: providing or receiving legal representation (p. 111-118), acting as (and later also making use of) a witness (p. 118-123), and marrying freeborn persons (p. 123-126).

(139) MATHISEN, 2006, p. 1019-1020.

(140) Tac. *Ann.* VI, 10: *quia occupandae rei publicae argui non poterant (...); Ann.* XII, 57: *nec ille [Narcissus] reticet, impotentiam muliebrem nimiasque spes eius [Agrippinae] arguens*. Freedmen, on the contrary, were often ascribed *potentia*, no matter how transgressive this was perceived (Tac. *Hist.* IV, 11; *Ann.* IV, 59; XI, 28; XII, 54; Suet. *Cal.* 56, 1).

(141) *Cod. Iust.* IX, 21, 1.

(142) *Dig.* L, 2, 12. For the notorious "servility" of flogging, see Quint. *Inst. Or.* I, 3, 13-4.

these people were the freeborn equivalent of freed *dediticii*: morally inferior after having suffered an ostensibly servile treatment. Nonetheless, they were allowed to take up magistracies which even freed citizens *optimo iure* could not. This points to a significant discrepancy between legal ruling and social practice. A flogged freeborn person, Callistratus implied, was certainly degraded by the experience, but in terms of legal consequences, he did not acquire the restriction that was *a priori* ascribed to freedmen. Whereas elite literature invoked a servile past or treatment to justify and consolidate the generalized disability of freedmen, the jurists clearly did not (primarily) have this consideration in mind when judging similarly impaired freeborn persons. Again, the different legal condition strongly determined the extent of the consequences of similar degrading experiences. This is, of course, not to say that legal rank was the only criterion by which social status was determined. Nicolas Tran, for example, has convincingly argued that Roman *collegia* provided a locus for freedmen to achieve social respectability or even prestige, and that being a *collegiatus* constituted a valuable complement (rather than an absolute alternative) to legal status and subordination to a patron.⁽¹⁴³⁾ Legal rank, however, was the most salient identity dimension invoked to justify formal restrictions. Rather than a moral taint or a servile scar (which freedman would logically share with unjustly enslaved freeborn persons or even with rightfully flogged *ingenui* in general), it was a desire to uphold the *gradus dignitatis* and status boundaries, together with a persistent attention to safeguarding patronal interests that was responsible for the formal disabilities of freedmen.

The legal disqualifications and the social stigma attached to *infamia* have often been considered a consequence of a moral condemnation of behaviour or crimes by society at large.⁽¹⁴⁴⁾ Like the *macula servitutis* ideology, however, a strong moralizing *condemnation* in literary texts should not be conflated with the lawgivers' *reasons* for imposing certain restrictions. Much like ascribed restrictions of women and freedmen, acquired *infamia* was not necessarily a consequence of moral depravity. Gardner, for example, has argued that the infamy of *praecones* (auctioneers), *dissignatores* (overseers in a broad sense), and *libitinarii* (undertakers) – and specifically their exclusion from the *ordo decurionum* and thus local office – was not due to any moral wantonness, despite recurrent literary condemnation.⁽¹⁴⁵⁾ Indeed, the *lex Iulia municipalis* states that this restriction applied only to actual practitioners of these occupations (*dum eorum quid faciet*), but ceased to exist once these persons gave up their profession.⁽¹⁴⁶⁾ Gardner thus plausibly suggested that their exclusion from municipal office was intended to prevent conflicts of interest as all three professional groups would often take and

(143) TRAN, 2006, *passim* (esp. p. 112, 124-137, 462-470, 490-493, 506-518). Cf. also note 153. Other identity dimensions able to mediate social status have been studied in detail, e.g. professional pride (JOSHEL, 1992; TRAN, 2013), respectful marriage (PERRY, 2014), and personal connections (NIELSEN, 1997, p. 204).

(144) E.g. GREENIDGE, 1894, p. 8. For a justified nuance, see especially GARDNER, 1993, p. 110ff; EDWARDS, 1997, p. 69-70.

(145) GARDNER, 1993, p. 130-134.

(146) *Tabula Heracleensis* (CIL I, 593 lines 94-96).

work under contracts from the decurional council. She concluded that no particular stigma or prejudice was attached to these people: not while actually being *praecones*, *dissignatores*, and *libitinarii*, nor after abandoning these professions. This again points to a vital and often undervalued distinction between individual depravity as a *reason* for *infamia* and its resulting restrictions on the one hand, and the juridical *consequence* of being branded with *infamia* (regardless of the reason) on the other.⁽¹⁴⁷⁾ Similarly, Edwards has scrutinized the discourse and prejudices concerning three “unspeakable professions” that shared an association with providing public pleasure, and that were consequently branded with *infamia*: those of actors, gladiators, and prostitutes. Even though mostly implicitly, this contribution too respects the distinction between a *general* moralizing discourse by which elites consistently defined these others (and thus themselves) on the one hand, and the actual *individual* reasons for branding them with *infamia* on the other.⁽¹⁴⁸⁾

The difference between the reason for a restriction – both embedded in and emanating from social practice – and the judgement” of the afflicted individuals – often framed in a moralizing discourse of distinction – should thus be given its due attention. Neither *infamia* (in the legal sense of the word as opposed to its appropriation in literary texts) nor freed status should be a priori conceived as a consequence of inherent immorality. A similar judgement of freedmen and *infames* in elite literature, firmly situated in a discourse of moral corruption, obscures the potentially different reasons for the imposed restrictions. A monolithic elite discourse of distinction (and thus self-identification) could very well explain and legitimate the exclusion of, for example, *praecones* and actors, but in doing so, it ironed out and thereby obfuscated potentially diverging motivations. As has been suggested throughout, the *macula servitutis* framework similarly reduces underlying social practices to generalizing and self-serving (elite) representations. Like *praecones* – who were pragmatically excluded to prevent conflicts of interest within a municipality’s *ordo decurionum* – or actors – who besides their close connection to sexual transgressions (on which elite discourse often focused) were considered as useless, unproductive, and therefore undesirable elements in society⁽¹⁴⁹⁾ – freedmen too were a category *sui generis* in terms of the underlying reasons for their disabilities, despite elite discourse that grouped all of them together as “the other” from whose behaviour any virtuous citizen should stay clear. As has been argued, a potential conflict of interest between patron and freedman is at least as important, if not more so, as moral

(147) The distinction is most explicitly made in GARDNER, 1993, p. 142-143. These pages contrast the later legal compilations that considered condemned criminals, beast-fighters, and prostitutes as *inherently* infamous with the original praetorian edict that *judged* these people as infamous. *Dig. III, 1, 1, 5* echoes this distinction when it states that the praetor *notavit* (external judgment) those persons who were *notabiles turpitudine* (inherent feature), and even Cicero distinguished between externalizing inherent immorality by committing a crime and the legal condemnation of it (Cic., *Leg. I*, 90, 50-51).

(148) EDWARDS, 1997, *passim*, e.g. p. 83: “Yet this association [with transgressive sexual behaviour] does not explain (...) their relegation to the category of *infames*”. For the *infamia* of actors in particular, see DUCOS, 1990.

(149) GARDNER, 1993, p. 152.

depravity in assessing the reasons for ex-slaves' public disabilities, especially in light of the lack of stains of servitude in our sources.

Conclusion

Neither in literature nor in epigraphic sources do we find evidence for a Roman habit of capturing the libertine condition by an all-encompassing catch phrase such as *macula* (or *labes*, *naevus*, *dedecus*, *ignominia*, ...) *servitutis*. It could be argued, therefore, that using this expression (and the load it covers) as a conceptual framework in freedman studies is anachronistic. Only the jurists mention it on occasion, but in so doing usually had the servile condition in mind. This is in line with the analysis of source material from later periods which – without stressing the point too hard – invariably attributes the *macula servitutis* to slaves who would be cleansed of it after manumission. Moreover, the Romans were clearly very pragmatic in allowing the cleansing of all kinds of stigmata. At the very least then, *macula servitutis* seems a misnomer when used as a common denominator for the social condition of freedmen. But there is more to it.

Surely, we cannot deny the disparaging stereotypes of freedmen which permeate the elite's discourse. And of course, the description of freedmen as slaves was an easy, almost gratuitous, way of ridiculing and attacking them. But throughout Roman literature various persons of any status group were compared to slaves.⁽¹⁵⁰⁾ Moreover, when freedmen are described as such, there was usually a very specific reason to do so, indicating that these persons were not *a priori* considered *quasi servi* but only because they proved to be incapable of living like free men should (at least in the eyes of the elites).⁽¹⁵¹⁾ As such, servility was a recurrent topos in elite discourse. The reproaching of freedmen as slaves should also be seen in this light.

Most of the arguments in support of an all-encompassing stain of slavery on freedmen come from elite literary sources. The norms and values in these texts, however, are notoriously more strict than mainstream ideology, precisely because the elite wanted to distinguish itself from it. Petersen has shown that the idea of a "freedman art" – typically supported by analyses of elite sources – should be revisited.⁽¹⁵²⁾ Similarly, the age-old conviction that there was a general contempt in Rome towards manual labour stems from an overstressing of this elite's discourse of distinction and is now rightly

(150) E.g. Verres and his supporters (Cic., 2 *Verr.* IV, 126); men subordinated to women in general (Cic., *Par. Stoic.* 36); aristocrats (Tac., *Ann.* I, 2; 7); senators (Tac., *Ann.* III, 65; *Hist.* IV, 8); soldiers (Tac., *Ann.* I, 26; 31); governors (Tac., *Ann.* VI, 32); emperors (Tac., *Ann.* VI, 20); entire states (Tac., *Ann.* II, 4). Cf. GARNSEY, 1996, p. 220-235.

(151) MOURITSSEN, 2011, p. 18 (notes 47 and 48) believes Tacitus' mentions of the *servilium ingenium* (*Ann.* II, 12, 3; *Hist.* V, 9, 3) and the *servilis animus* (*Ann.* XV, 54, 4) of freedmen are indications of the general servile stain of freedmen. It should be clear, however, that these particular freedmen had provoked these derogatory comments by their "misconduct" (manipulating the emperor or betraying their patron) and not by *a priori* being quasi slaves.

(152) PETERSEN, 2006.

being contested.⁽¹⁵³⁾ I have tried to show that the framework of the *macula servitutis* can be subjected to a similar revision. Like artistic or professional stereotypes, a servile past was merely instrumental in a broader process of protecting the *discrimina ordinum*.

When we do not take the regular attacks on freedmen and their past in elite literature as representative of daily belief and practice – which, indeed, we should not – and when we contextualize both the literal mentions of a *macula servitutis* and the concept of a stain on one's honour in general, a less conflicting explanation for the social and legal disadvantages of freedmen becomes much more preferable. Instead of an inherent stain on the ex-slave's person, looming large in every aspect of his life, it was the reflex of the elite to distinguish themselves from lower class citizens in general that triggered the treatment of – especially rich and powerful – freedmen who would not by any other objective standard differ from these traditional elites.

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(153) The locus classicus for this elite contempt is, of course, Cic., *Off.* I, 150-151. An enormous boost to the revisiting of this generally held belief was the publication of LIS AND SOLY, 2012. See VERBOVEN, 2014 for a discussion of its immediate relevance for antiquity. Cf. MOURITSEN, 2011, p. 209-211. TRAN, 2013 provides the most comprehensive overview of the evolution (p. 187-189), as well as an original in-depth analysis of the interaction between aristocratic and lower class mentalities (*passim*). His notion of *statut de travail* highlights the important potential of professional activity to positively shape and mediate social identity (cf. also note 143).

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SUMMARY

The *macula servitutis* of Roman freedmen. *Neque enim aboletur turpitudō, quae postea intermissa est?*

The disabilities and restrictions in the public life of Roman freedmen are traditionally explained as a consequence of the servile stigma these individuals carried. *macula servitutis* (stain of slavery) has become the widespread catchphrase to capture this state. This contribution's main aim is to show that the social condition of freedmen cannot be reduced to such a common denominator, despite the significant influence this framework has had in many classical studies. The inconsistencies and shortcomings of the *macula*-model will be addressed, drawing on evidence from literature, epigraphy and legal texts. The expression itself (and similar ones) will be situated in its historical and legal context and compared to similar stains on a person's honour in order to gauge their respective pervasiveness. The concluding remarks present an alternative to the *macula*-model and are meant to spur further debate in other spheres and aspects of the freedman's life.

Key words: Freedmen, stigma, *macula servitutis*, socialization, distinction

RÉSUMÉ

Le *macula servitutis* des affranchis romains. *Neque enim aboletur turpitudō, quae postea intermissa est?*

Les limitations dans la vie publique des affranchis romains sont traditionnellement expliquées par leur stigmatisation due à leur passé d'esclaves. Cette *macula servitutis* est devenue le slogan répandu dans les études sur des affranchis. Le but principal de cette contribution est de montrer que les efforts visant à réduire la condition sociale

des affranchis à de telles descriptions essentialistes souffrent d'incohérences et des lacunes importantes. En analysant des sources littéraires, épigraphiques et juridiques, on aspire à déconstruire ce modèle de *macula*. L'expression et ses dérivés seront situés dans leur contexte historique et juridique et, en utilisant une perspective comparative, on situera sémantiquement aussi bien que sur le plan du contenu la notion de tache et de stigmatisation en termes généraux. Les remarques finales présentent une alternative au modèle de *macula* et servent à stimuler le débat en l'élargissant aux autres domaines et aspects de la vie des affranchis.

Mots clés: Affranchis, stigmat, *macula servitutis*, socialisation, distinction

SAMENVATTING

De *macula servitutis* van Romeinse vrijgelatenen. *Neque enim aboletur turpitud, quae postea intermissa est?*

De beperkingen in het publieke leven van Romeinse vrijgelatenen worden traditioneel beschouwd als een gevolg van het stigma van hun serviele verleden. Deze *macula servitutis* is uitgegroeid tot de slagzin bij uitstek in studies over vrijgelatenen. Het doel van deze bijdrage is aan te tonen dat de pogingen om de sociale status van ex-slaven te reduceren tot dergelijke essentialistische beschrijvingen lijden onder significante inconsistenties en tekortkomingen. Op basis van literaire, epigrafische en juridische bronnen zal dit *macula*-model dan ook gedeconstrueerd worden. De uitdrukking (en afgeleiden) worden gesitueerd in de historische en juridische context en er wordt een vergelijkend perspectief ingenomen teneinde het concept van smet en stigma zowel semantisch als inhoudelijk te kunnen kaderen in een ruimere context. De slotbemerkingen hebben als primair doel een alternatieve benaderingswijze aan te wijzen en het debat hieromtrent aan te wakkeren.

Sleutelwoorden: Vrijgelatenen, stigma, *macula servitutis*, socialisatie, distinctie