

# Observing current social issues in Japan from the perspective of Roman law: part 3

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## According to Professor Mariko Igimi, Kyushu University, we still have much to learn from Antiquity and Roman Law in relation to the current issues of an aging society in Japan

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### “Customized” treatment of freed slaves: A lesson from Iusta’s Case

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My previous article on Iusta, a girl from Herculaneum in the 1st Century AD, tried to show that she engaged in a lawsuit because she wanted to stay in the family of the former owner of her mother, Vitalis, who was a freed slave but continued to live under the protection of her former owner even after her manumission. For former slaves who have always acted under order and supervision of their owners until they were freed, it might be difficult to start their lives independently (s. Reception Beyond (2)). The case may have indicated that the “safety net” covered not only the actual slaves manumitted by the owners but even their dependents, in the case of Iusta, the daughter.

### Contract of mandate and freed slaves

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How was the situation of libertus who were more proficient than Vitalis or Iusta? In general, owners gave peculium to their skilled slaves who did not otherwise possess legal competence, so that they could use it as their own assets to engage in transactions etc. If they were good at businesses, the peculium would grow, and the owners would benefit from it, because the assets of slaves are officially assets of their owners, while they were liable only up to the amount of peculium, when they would be sued by the counterparty of their slaves. This is said to be the origin of the limited liability, today. It was a very common practice that slaves owned slaves, hence there was a special word for a slave’s slave, i.e., vicarius. For such slaves, it would not be an issue to run businesses on their own and earn their living independently after the manumission.

Our legal source, however, provides very little clue on such former slaves. In D.17,1, the chapter dealing with mandate, there is only one source in which a freed slave is mentioned, although the appointment of libertus, beside friends, to an agent seems quite normal (D.3,5,30). In a case in which the former owner buys land, pays 2/3 of the price and tells his freed slave to pay the rest so that the land would be transferred to the latter, the question was whether libertus could recover the money he paid, when the former owner sells the land to a third party (D.17,1,12,8). Papinian replied that it would depend on the nature of the transaction, i.e., if it was a mandate, he could, whereas if it was a gift, he could not. If he served in the interest of the former owner, the contract would be a mandate, while providing a place to live for the former slaves or to make profit to maintain

their living was perhaps former owners (social) responsibility (1). On the other hand, if it would only benefit the freed slave, hence the transaction would not be a mandate but a gift of the 2/3 price of the estate paid by the former owner (2).

Besides, another source in a chapter which deals with a deposit mentions libertus in the context of mandate (D.16,3,1,14). This time, however, the freed slave is not a contracting party of the mandate, but the former owner “demands” someone to deposit it to his freed slave rather than to himself. The main issue here is how to evaluate the “demand” legally, whether the former owner “mandated” to deposit an object to his freed slave (3) or it was just “advice” (4), or even that the freed slave was merely a place for deposit which belonged to the former owner (5). Whether or not the person who deposited could sue the former owner on the ground of mandate or deposit was the issue in question.

## **Slaves gaining gradual independence**

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From the cases (1) to (5) we have seen in the Digest, we find diversity in treatments of freed slaves. Most attached to patronus would be the libertus in case (5) who acts as a place of deposit of the former owner, where the freed slave was fully integrated into the business of the former owner.

Their close relationship could be observed also in the case (1) in which the former owner provides his freed slave with the land as his own matter, followed by the case (2) that indicates, while acquiring of residence falls into the freed slave’s own affair, still its 2/3 price was provided by the former owner as a gift (perhaps for independence). In cases (3) and (4), it seems that the freed slave is independently running a business in which deposit was involved. In case (4), the former owner just gives advice to deposit at his former slave, that the trade of the former slave must have been already established, which probably indicates that the freed slave was fully independent. It seems, on the other hand, that the former owner offers himself as a guarantor in the case (3), by taking over the risk which eventually occurs from the transaction with his freed slave by concluding a contract of mandate. From the wide range of relationships between former owners and freed slaves, we might be able to observe how the Romans delicately balanced the protection and the independence based on the personal bonds, competence and experiences of individual freed slaves etc.

## **Learning from Roman Law: Social welfare and diversity of today**

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In today’s democratic world, people are equal, free and respected as individuals. Maintenance for survival should be ultimately secured by the states as social welfare funded basically by taxpayers’ money. This remoteness between those who are supporting and being supported is, in my opinion, causing some of the major issues we are facing today. It is particularly problematic in an aging society like Japan that elderly people claim for support without recognizing poverty and suffering of the younger generation (s. Reception beyond (1)). Furthermore, if the seniors are looked after by the

government, it would generally be unreasonable to have children, because people can expect to maintain their lives after retirement without the support of their own children, while the cost to bring them up is considerably high.

Besides, in order to provide maintenance for the many in need, governments inevitably must standardize them, regardless of the personal circumstances of each being supported. Humans are, however, not “equal” in their competence and weakness, hardship, social and family relationships etc. Hence, the support might end up inadequate or excessive, sometimes interfering with the independence of the assisted. Such shortcomings could perhaps be a reason why we need to consider “diversity” in every aspect of our society and to provide disabled people explicitly with “reasonable accommodation” today.

There might still be things to learn from Antiquity and Roman Law, as the current model of the modern society is showing its deficiency.

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