

On Who is a Slave: Literary Ideas of Slavery and the Freedom Trials of *Digest* 40.12

The prevalence of cross-generic discussions on the nature of slavery and what makes a person a slave speaks to an anxiety about the fluidity of Roman status and the boundaries between free and slave. In this paper, I examine situations of status determination (free or slave) in literary sources and contemporaneous jurists found in the *Digest of Justinian*. I argue that this anxiety about status comes from the performance-based criteria of deciding status and the uncertainty this engenders. The sources for this paper come from different genres; however, they can be studied together to grasp a more coherent and unified discourse on Roman slavery and status.

Dio Chrysostom's 15th Discourse centers around the determination of status, when one speaker accuses the other of being a slave. The accused asks what makes the accuser so confident of his slave status, "In heaven's name, I ask you, what is it that I do of which you have knowledge, or what is it that is done to me, which justifies your saying that you know that I am in a state of slavery?" (τί δὲ καὶ ποιῶντά με ἐπίστασαι πρὸς θεῶν ἢ τί πάσχοντα, ὅτι με φῆς ἐπίστασθαι δουλεύοντα;) (Dio 15.16-18). The question ties status to knowledge, to the particular actions of a person, that is, to a performance of slavehood. The accused's question links the ability to know and understand who is a slave to what they do and allow to be done to them. The language emphasizes the idea that one can know or gain the skill (*ἐπίσταμαι*) of recognizing a slave by his actions; in the mind of the accuser, the actions of the would-be slave cement his certain slavehood.

In this exchange, Dio insists on the similarities of the relationship between master and slave and father and son, specifically calling reference to the *paterfamilias* and Roman Law (Dio 15.20). Dio is examining Rome's particular version of slavery, which is the manifestation of the

institution in his lifetime. In showing the difficulty of status determination through performance or behavior, Dio is mirroring the issues the jurists face in the freedom trials.

In the legal literature about freedom trials, that is trials held when it was unknown if someone was a free person or a slave, the jurists weigh whether a person behaved like a slave or a free person, and whether the performance was genuine or duplicitous. Ulpian, the Severan jurist, cites the 2nd century jurist Julian in his discussion of freedom trials. Ulpian explains that objective status is not at the heart of the matter. A successful suit for freedom will have someone “in possession of freedom without fraud. But let us consider what ‘without fraud means.’ For Julian says that all who think themselves free have been in a state of freedom without fraud, provided that they behave as freemen, even though they are slaves,” (*qui liberale iudicium patitur, sed in possessione libertatis sine dolo malo fuisse. quid sit autem ‘sine dolo malo fuisse’, uideamus. nam Iulianus ait omnes, qui se liberos putant, sine dolo malo in libertate fuisse, si modo se pro liberis gerant, quamuis serui sint*) (D.40.12.11). The question of a person’s freedom lies in the realm of the mind, he who honestly believes himself to be free is free. The focus is on if the man in question carries himself as a slave or a freeman, which is contrasted with a person who knows he is a slave, but is behaving like a free person in bad faith.

This concern with deception is also seen in Dio, when his would-be slave relates a tale that highlights and twists confusion of status. Dio tells of a groom returning from abroad who passes himself off as his master because of their similar appearance (*τὴν δὲ ὄψιν ὁμοιοῦς*) and “besides he spoke Greek accurately and could read and write,” (*ἔτι δὲ ἠλλήνιζεν ἀκριβῶς καὶ γράμματα ἠπίστατο, ἀλλὰ ἕτεροί γε μυρίοι τοῦτο πεπόνθασιν*) (Dio 15.16). While some slaves could read and write the language of their masters, it was unusual for a groom. These skills are, while certainly not exclusive to the free population, potential distinguishable markers of

freedom. The deception of the groom— his ability to conduct himself as a free person fraudulently— plays into the jurists’ concern about how to decipher who is free and who is a slave. Dio’s tale highlights the anxiety present about the potentials for ambiguity of status in the empire’s growing and cosmopolitan society.

Dio, J W. Cohoon, and H L. Crosby. *Dio Chrysostom*. Cambridge, Mass: Harvard University Press, 1971.

Mommsen, Theodor, Paul Krueger, and Alan Watson. *The Digest of Justinian*. Philadelphia: University of Pennsylvania Press, 1985.