

12

Philosophy and Law

Others . . . maintain that . . . slavery is unjust, for it is based on force.

Aristotle, *Politics* 1.2, 1253b20–23, trans. Rackham 1932

Kindly remember that he whom you call your slave sprang from the same stock, is smiled upon by the same skies, and on equal terms with yourself breathes, lives, and dies.

Seneca, *Epistles* 47.10, trans. Gummere 1917

Slavery is an institution of the law of all peoples (ius gentium) whereby, contrary to nature, one person is subject to the control of another.

Justinian's *Digest* 1.5.4.1

Introduction

Rather than literary representations and popular notions about slaves and slavery, this chapter focuses on philosophy and law: early critics of slavery and Aristotle's response to them, the Stoics and Christians, and ameliorations of slavery in Roman law. Philosophy and law are systematic, abstract, and explicit, but they are not independent of popular sentiments: philosophers often systematize or react to common ideas in their societies; law derives in part from a society's moral sense. For example, Aristotle's notorious theory of natural slavery clarified and systematized the notion that slaves are inferior as part of his justification of slavery. And Aristotle's conclusion that foreigners are natural slaves drew on Greek ethnic chauvinism. Like some Greek tragedies, the Stoics, adherents of another school of philosophy, represented slavery as the result of bad luck. They rejected the idea that some people are radically different and inferior and thus natural slaves. They accepted slavery, however, as a natural part of a world shaped by divine reason. Christians shared the Stoic emphasis on the unity of humanity; they were no more inclined than the Stoics to overturn the hierarchies of this world. Last chapter, we considered the frequent descriptions of violence against slaves in Roman comedy; in addition to philosophical responses, this chapter surveys ancient legislation to limit such abuse. Inevitably these laws were narrow in their

scope: physical punishment played such a central role in slavery that the law could not proceed far without undermining the whole system – which Roman lawmakers were not inclined to do.

From the quotations at the start of this chapter, you might expect that there arose in antiquity widespread and fundamental criticisms of slavery, perhaps even an abolitionist movement hastening the decline of ancient slavery. The real story is more depressing. We hear no more than the single sentence quoted above about the “others,” whose criticisms of slavery Aristotle tries to answer. At most times and places slavery does not seem even to have been controversial. Seneca, quoted above, aspired to be a good master. He did not want to end slavery nor even to free his own slaves, however much he thought of them as “brothers.” Legal theorists may have found slavery contrary to nature. This conclusion did not prevent Roman law from regulating in minute detail virtually every legal consequence or controversy that resulted from treating some people as private property. Next chapter, we’ll see that while slavery did decline with the disintegration of the Roman Empire, this was not because of moral objections or Christianity, and that some slavery continued. One recurring theme throughout this chapter will be the way that the conclusions of philosophers, Christians, and lawmakers were constrained by economic forces, especially the vested interest of the upper classes in the continuation of slavery. Other factors too contributed to the acceptance of slavery, not only by the average person – who may hardly have given this longstanding and ubiquitous institution a second thought – but also by philosophers and theologians, some of whom display exquisite moral sensibilities in other contexts and from whom one might have expected better.

Before turning to these topics, a few words about the use of slavery as a metaphor. Ancient Greeks and Romans thought more *with* slavery than *about* it (Weidemann 1997, 11). They used the metaphor or analogy of slavery as the basis (source domain) for thinking about many other areas of life (target domains). Humans often try to understand complicated or abstract objects or relations in terms of concrete and physical ones. Some examples are so ingrained in our thinking that we don’t even notice them. *Up* is better and *down* is worse: the team playing at a *higher* level is likely to win the game as things go *downhill* for their opponents. It is telling that slavery provided the source domain for so many parts of the classical worldview; slavery was obviously a well-known, everyday, and concrete reality that could be used to think about more abstract relationships. Plato, for instance, insists repeatedly that the body needs to be the *slave* of the soul rather than have the soul the *slave* of the body (*Phaedo* 79e–80a, cf. 66d1; *Timaeus* 34c.4). The Stoics hold that most people are *enslaved* to things that are neither of vital importance nor under their control – food, money, health, ambition, sex, social status. Similarly, Christianity aims to liberate people from being *slaves* to sin (1 Cor. 7:22, Eph. 6:6, Rom. 6:22).

The analogy of slavery was often applied to other steep hierarchies in power or status, usually in a critical sense. For example, during the Peloponnesian War, the Spartan general Brasidas gave a speech at Acanthus, which Thucydides reports (4.86.1, 4.86.4): Brasidas wanted to *free* the city from Athens. He would not interfere in their internal politics, neither to *enslave* the many to the few (impose an oligarchy) nor to *enslave* the few to the many (impose a democracy). Both the active and passive sides of the slavery metaphor had negative associations: it was evil to try to impose



Figure 12.1 EID MAR Denarius, Roman silver coin (42 BCE). The Roman goddess Liberty had the staff, the *vindicta*, and the freedman's *pilleus* as her attributes. Brutus, one of the conspirators who killed Julius Caesar, famously minted coins with daggers, to symbolize the assassination, and the *pilleus*, to symbolize the freedom that this deed had restored. "Eid Mar," Ides of March (March 15th), refers to the date of the assassination. It is striking that elite Romans were willing to use symbols deriving from the emancipation of slaves. *Source:* Courtesy of John Nebel.

metaphorical slavery; it was cowardly or effeminate to endure it. These figurative uses of slavery remained just as important in Roman culture (as in Figure 8.1). And, for example, the emperor Tiberius would mutter, "men ready to be slaves," whenever he left a meeting of the Senate, whose obsequiousness exasperated him – a scathing putdown of Rome's wealthy and proud political elite (Tacitus, *Annals* 3.65). The use of the slavery metaphor was as common as the institution of chattel slavery was ubiquitous. Even the Western ideal of freedom had its origin as the opposite of this metaphorical slavery (Patterson 1991; Raaflaub 2004). But let's now turn from metaphor to our main subject, those relatively rare, but fascinating, ancient discussions of the justice or injustice of slavery.

The Anonymous Opponents of Slavery

The honor roll listing ancient critics of slavery is a short one. Near the top of the list stands a group known among historians today as the Anonymous Opponents of Slavery. The Greek philosopher Aristotle (384–322 BCE) summarized their critique on his way to developing his own theory of "natural slavery" near the beginning of his *Politics*.

Aristotle admits that there is controversy about the justice of slavery and summarizes the argument of the Anonymous Opponents:

Others however maintain that for one man to be another man's master is contrary to nature, because it is only convention/law [*nomos*, plural: *nomoi*] that makes the one a slave and the other a freeman and there is no difference between them by nature [*phusis*], and that therefore it [slavery] is unjust, for it is based on force (*Politics* 1.2, 1253b20–23, all trans. Rackham 1932).¹

The reference to convention/law (*nomos*) and nature (*phusis*) reflects a common type of argument, originally associated with the so-called Sophists, itinerant intellectuals of the fifth century BCE. Sophists would begin by showing that a certain social practice was conventional, in accord with *nomos*. By itself this was unobjectionable: especially if the *nomos* was widespread, one might assume there is a pretty good reason for its adoption. But a *nomos* is not an eternal law; it can be changed and ought to be changed when it is contrary to nature, against *phusis*. In some of Plato's dialogues, Sophists are represented as using this *nomos/phusis* argument to attack traditional rules that prevent the strong from doing and taking whatever they want. They argue that these *nomoi* are contrary to *phusis* and were merely the result of a conspiracy by the weak against the strong (e.g., *Gorgias* 482e–484a). In contrast to this, the dark, amoral use of the *nomos/phusis* distinction, the Anonymous Opponents use it to offer a moral argument against slavery as an institution originating from *nomos* but contrary to *phusis*.

The Anonymous Opponents added that the institution of slavery rests on violence. There are two ways to take this statement. No Greek could be unaware of the role in slavery of whipping and other violent punishments and threats. But Aristotle discusses a second role of violence in slavery: many slaves lost their freedom as the result of defeat in warfare (*Politics* 1.2, 1255a3–28). The Greeks considered it a *nomos* that the possessions of the defeated and the defeated themselves belonged to the victors in war (Xenophon, *Cyropaedia* 7.5.73). This *nomos* accorded with the high place accorded to military prowess in classical culture: defeat seemed to imply inferiority. Enslavement in war also provided some basis for a popular and longstanding, pseudo-contractual justification of slavery: slaves were permanently indebted to their captors, who had refrained from killing them. Accordingly, the Romans even believed that the word slave, *servus*, derived from the word, *servare*, “to save” (cf. Watson 1992, 1350–1353).

The Anonymous Opponents may overlap with another group – described by Aristotle as “many experts in law” – who object to this wartime *nomos* and argue that, “it is monstrous if the person powerful enough to use force, and superior in power, is to have the victim of his force as his slave and subject” (*Politics* 1.2, 1255a8–12). Aristotle concedes this point:

Wars may be unjust in their origin and one would by no means admit that a man who does not deserve slavery can be really a slave – otherwise we shall have the result that persons reputed of the highest nobility are slaves and the descendants of slaves if they happen to be taken prisoners of war and sold. (*Politics* 1.2, 1255a25–29)

¹ See also Euripides, *Ion* 854–856 and the scholiast on Aristotle, *Rhetoric* 1.13 1373b18 in Garnsey 1996, 75.

It may seem that Aristotle here accepts a strong argument against slavery as practiced, since wars and raids accounted for a large proportion of slaves in Greece either directly or indirectly. But, for Aristotle, non-Greeks were natural slaves anyway and wars against them just.² And while, like Plato, he condemns the enslavement of Greeks in war (*Politics* 1.2, 1255a29–32; Plato, *Republic* V 469b5–c1), they provided only a minority of slaves anyway – as we explored in Chapter 3.

Admittedly, Aristotle does concede that some slavery is by luck rather than by nature. Last chapter we interpreted the claim that slavery is a matter of bad luck as relatively benign; that is only true when compared to derogatory representations of slaves as inferior human beings. For masters to claim that it is just “bad luck” that their slaves are slaves is disingenuous. It is not bad luck but the master who whips the slaves, if they don’t obey him, or who chains them up so they can’t run away. The master bought slaves precisely for the work he could force them to do. When the Anonymous Opponents called slavery unjust, they went further than merely admitting that slaves and free people are not intrinsically different and then blaming their circumstances on luck.

Were the Anonymous Opponents abolitionists then? We simply don’t know. Various rationalizations could have justified inaction despite their fundamental criticisms of slavery. They might have argued that slavery was unjust but necessary for some greater good, or that their individual action – for instance, freeing their own slaves – would make little difference to a ubiquitous institution. The Anonymous Opponents may have included intellectuals and teachers, who, like some Sophists, did not derive their income directly from slave labor. Nevertheless, their livelihood depended on their ability to attract students from elite families. These students, wealthy young men, may not have wanted to pay good money to hear the basis of their family wealth and lifestyle attacked. Sophists and philosophers did not shrink from controversy, but perhaps calling slavery unjust was quite enough without pressing for any concrete action.

Aristotle’s Theory of Natural Slavery

Aristotle discusses the Anonymous Opponents in the context of his own, now notorious, theory of natural slavery. His reasoning is relatively simple, but the connection with the rest of his philosophy as well as the exact meaning of some passages can be complicated and obscure. Here I will merely organize some of his main arguments following a distinction made by Bernard Williams between Aristotle’s “argument from above” and his “argument from below” (Williams 1993, 115). The argument from above is Aristotle’s attempt to show that the institution of slavery is natural: great benefits derive from the hierarchy and specialization that slavery allows. This line of reasoning does not tell us whether there are people who are naturally slaves or masters and, if so, who they are. That is the function of Aristotle’s argument from below: there actually exist people whose best function in life is to be slaves. To take a modern parallel, the conviction of economists that a society’s wealth, health, and happiness depend on specialization is an argument from above. An argument from below, if somebody wanted to make it, would

2 See below and Aristotle, *Politics* 7.14, 1333b39–1334a3.

be that there are some people naturally suited to spend their lives as CEOs and others to spend their lives cutting up chickens in a poultry factory or digging ditches. Aristotle tries to show that slavery is natural in both senses, from above and from below.

Why did Aristotle think that the institution of slavery is natural, the argument from above? First of all, he conceives of the universe as deeply hierarchical: every composite has a ruling element and a ruled element. Within the household, a crucial composite and the building block of human society, masters rule slaves just as the soul should rule the body. The master thinks and the slave acts to carry out the master's orders with his body. Nature is not only hierarchical, but also purposeful. The purpose of human society can only be achieved in the city-state; the master of the house contributes to the city-state by using his intelligence and taking part in public life. Thus the hierarchy of slavery within the household allows for the accomplishment of the greatest human good. In reality, not all slaveholders were public-spirited philosophers: the time for politics and intellectual pursuits hardly constituted the only or main benefit the rich obtained through their slaves. Nevertheless, slavery makes sense within Aristotle's overall theory of a hierarchical universe and the goals he sets for humanity. That is his argument from above.

Aristotle moves from the argument from above to the argument from below when he tries to find the people who fit into this natural hierarchy of slavery:

All men that differ as widely as the soul does from the body and the human being from the lower animal (and this is the condition of those whose function is the use of the body and from whom this is the best that is forthcoming) – these are by nature slaves, for whom to be governed by this kind of authority is advantageous. (*Politics* 1.2 1254b17–22)

But who are these people who are so inferior that they benefit from being slaves? Given the weight Aristotle puts on the slaves-are-like-bodies analogy and the priority he gives to intellectual activities, it is not surprising that he puts mental deficiency at the center of his definition of a natural slave: a person “who participates in reason so far as to apprehend it but not to possess it.”³

Greek culture sometimes treated slaves as being almost mere bodies: one word for slave was simply *sōma*, “body.” And a key distinction between free and slave at Athens was that slaves were subject to bodily punishment, whereas citizens were generally not (Demosthenes 22.55). For example, slaves could only give evidence in court under torture, a practice both cruel and puzzling.⁴ Aristotle may be drawing on this common association of slaves with the body, but philosophically he has gotten himself into a tight spot. On the one side, slaves at Athens did a wide variety of intellectual jobs: some were bankers, bureaucrats, skilled craftsmen, or managed farms, household finances, or mines. These slaves showed no obvious sign of mental deficiency, so Aristotle seems to be insisting on a high standard for the possession of reason. He may mean that slaves do not possess the deliberative abilities needed for politics or philosophy. On the other side, the possession of reason cannot be something that only a few people display:

³ Aristotle, *Politics* 1.2 1254b23–24. Kraut 2002, 284–290 provides a charitable exploration of what Aristotle might have meant.

⁴ See Hunt 2016c, 146–150 for a brief discussion with bibliography.

otherwise non-philosophers – that is, most masters – would fail the test.⁵ He can't set the bar too high either.

Aristotle's philosophical troubles are not yet over, since people's bodies should be suited for their natural tasks:

The intention of nature therefore is to make the bodies also of freemen and of slaves different – the latter strong for necessary service, the former erect and unserviceable for such occupations, but serviceable for a life of citizenship. (*Politics* 1.2, 1254b28–32)

Unfortunately, as Aristotle admits, in this case nature *often* fails and “the very opposite comes about – slaves have the bodies of free men and free men the souls only” (*Politics* 1.2, 1254b33–34). This high failure rate is hard to reconcile with Aristotle's concept of nature, otherwise powerful and effective.

These issues may explain why Aristotle turned to a popular notion, the inferiority of non-Greeks, to save his thesis of natural slavery (*Politics* 1.2, 1255a29–32; see also 1252b6–10). There may be some people in slavery who are not slaves by nature – mainly captive Greeks – but non-Greeks were natural slaves. Even though there are examples throughout Greek culture of ambivalence or even admiration of non-Greeks, Aristotle turns to a particularly extreme and crude ethnic chauvinism to confirm his argument from below that some people were natural slaves.

The general notion that slaves were inferior people preceded Aristotle and continued after him throughout the classical world. His philosophical elaboration of this view did not make much of an impression upon later thinkers in the ancient world – though it was to have an important impact in the New World as we'll see. If we can trust a late source, Diogenes Laertius, an intriguing possibility arises: Aristotle was a hypocrite, albeit in a good sense (Diogenes Laertius, *Lives of Eminent Philosophers* 5.11–16). Nicomachus, to whom his *Nicomachean Ethics* is dedicated, was the son of Aristotle by his *pallakē* (see Chapter 7), his ex-slave, Herpyllis. In his will Aristotle gave immediate freedom to one slave and left orders that three others be given their freedom when his daughter married. The other slaves who took care of Aristotle were not to be sold – presumably so as not to break up families or other ties – and were to be given their freedom “at the appropriate age.” It is difficult, but just possible, to reconcile manumission with Aristotle's theory, according to which natural slaves are better off in slavery (Kraut 2002, 297–298). In any case, from a modern point of view, Aristotle comes off far better from the instructions in this will than from his arguments for natural slavery in the *Politics*.

Stoicism and Christianity

Stoicism, the most influential of the Hellenistic schools of philosophy, was founded shortly after Aristotle's death by Zeno of Citium (ca. 344–262 BCE). Members of the Roman elite adopted and adapted Stoicism in the later Republic and early Empire. In

⁵ Aristotle, like many ancient philosophers, oversimplified and assumed that people are either slaves or masters. Presumably the audience or readership for philosophy consisted of wealthy slaveholders and not the free poor.

fact, the only complete works of Stoic philosophy to survive from antiquity were written under the Roman Empire. Two of these later Stoics, Seneca the Younger and Epictetus, will be the focus of my treatment, even though their outlook may diverge from the original and probably more radical theories of early Stoicism.⁶ Many historians have linked Stoicism to more humane attitudes towards slaves and even to Roman laws protecting slaves. We'll first consider why the Stoics have enjoyed such a good reputation but also the basically conservative nature of their recommendations. Early Christian attitudes towards slavery show many parallels with the Stoics, some of which were the result of Stoic influence. That Rome was a slave society, and that its more affluent members depended economically on slavery, severely limited the changes that any philosopher or church father was willing to advocate.

Seneca was a rich senator, a famous intellectual, and a close advisor to the emperor Nero, by whom he was eventually executed. The contrast between his philosophical professions and his wealth and intimacy with Nero opened him up to criticism. Seneca may even have composed the unconvincing lies by which Nero tried to justify the murder of his mother (Tacitus, *Annals* 14.11). Nevertheless, his rejection of natural slavery and his pleas for the kind treatment of slaves constitute a famous and admired example of Stoic social critique. He devotes to the topic of slavery one of his series of letters designed to instruct a certain Lucilius – and posterity – in Stoic ethics (*Epistles* 47). Seneca begins by complimenting Lucilius on his easy familiarity with his slaves. He anticipates objections from people who look down on slaves as utterly different and inferior and eventually presents three Stoic arguments against drawing sharp distinctions between masters and slaves.

First, Seneca begins by recreating an imaginary debate with those who object to treating slaves on an equal footing:

“They are slaves,” people declare. No, they are men. “Slaves!” No, comrades. “Slaves!” No, they are lowly friends. “Slaves!” No, they are our fellow-slaves, if one reflects that Fortune has equal rights over slaves and free men alike.” (*Epistles* 47.1, all trans. Gummere 1917, here modified)

Here Seneca repeatedly asserts the humanity of slaves. His last point, that they are “fellow-slaves” subject to fortune invokes an important Stoic doctrine, that the only thing that matters is inner calm and virtuous conduct. Everything else is an *indifferent* (Greek: *adiaphora*), because it does not make a difference to a person's true happiness.⁷ Ignoring *indifferents*, however, is a tall order. As the modern meaning of the word *stoic* implies, ancient Stoics sought not to be affected by personal disasters such as illness, slavery, or the death of loved ones. So Zeno of Citium propounded a famous paradox in terms of the slave metaphor: only the (Stoic) sage is free; everybody else is a slave to *indifferents* that ought not to matter. Since there are few sages and lots of average Joes and Janes, no matter how rich and noble and self-confident you are, you are probably no better than a slave to things outside your control. Seneca here points out to his intended

⁶ See Brunt 1998 on slavery in the *Meditations* of Marcus Aurelius, a Roman emperor and the third of the famous Stoics of the imperial period.

⁷ The Stoics did admit that some *indifferents* were preferable to others, making for a more sensible, but less elegant philosophy. They mainly stressed the foolishness of worrying about *indifferents* at all.

readers (rich and educated Roman slaveholders) that they and actual slaves are equally dependent on *indifferents* and in this sense are “fellow-slaves.” Conversely, slaves have the same (slim) chance as masters to attain wisdom and thus free themselves from *indifferents* (*On Benefits* 3.18.2, 3.28.1–2).

An example of fortune’s power provides a second argument against natural slavery: you too could end up a slave. Seneca explains that, for example, many young and ambitious Roman nobles lost their freedom as the result of military disasters (*Epistles* 47.10). This point reminds us of the Greek tragedies, such as the *Trojan Women*, that also focus on nobles reduced to slavery. These changes in status can undermine a blanket theory of natural difference between slave or free, as Seneca stresses here. Nevertheless, we should not exaggerate this problem: remember that tragedy preserves a distinction between “born slaves” and the free and noble for whom slavery is a catastrophe; even Aristotle concedes these exceptional cases of nobles enslaved contrary to their nature, all the while insisting on natural slavery.

Seneca’s third argument is that both slave and free are “sprung from the same stock” and have “the same origins” (*Epistles* 47.10; cf. *On Benefits* 3.28.1). This refers to the Stoic belief that the same divine spirit – *pneuma*, literally “breath” – constitutes the souls of all people (*Epistles* 31.11). All souls have this same origin and composition and all humans share a sort of kinship. Seneca’s rejection of sharp intrinsic or natural differences between slave and free has roots in this Stoic cosmology.

From this fellowship of all humanity, Seneca infers that we have a duty to be kind to slaves. He occasionally invites slaves to join him at dinner – presumably served and cooked by his other slaves – even though he anticipates that some haughty readers will denounce this sort of familiarity as “debasing and disgraceful” (*Epistles* 47.13). He also condemns the usual harsh treatment of household slaves during dinner:

All this time the poor slaves may not move their lips, even to speak. The slightest murmur is repressed by the rod; even a chance sound – a cough, a sneeze, or a hiccup – is visited with the lash. There is a grievous penalty for the slightest breach of silence. All night long they must stand about, hungry and mute. (*Epistles* 47.3)

He rejects the aphorism we encountered last chapter – “You have as many enemies as you have slaves” – with the rebuttal that slaves are not enemies until we make enemies of them (*Epistles* 47.5). He praises Lucilius for “lashing his slaves only with the tongue,” and argues that only animals need physical punishment (*Epistles* 47.19). Such benign treatment of slaves in close contact with their masters – not as likely, I think, for slaves working under overseers on distant farms – may have been common well beyond the circle of Stoics (Griffin 1976, 256–285). For example, in another work Seneca mentions that “cruel masters” were scorned and hated throughout Rome (*On Mercy* 1.18.3). Still, Seneca and the Stoics look pretty good so far: they insist on the essential fellowship of slaves and masters and favor humane treatment.

A blind spot in the Stoics’ moral outlook becomes apparent when we compare them with the Anonymous Opponents, who argue that slavery was contrary to nature, unjust, and violent. Since the Stoics find no essential distinction between masters and slaves, they reject Aristotle’s argument from below and natural slavery. But there is also a profoundly conservative strain in Stoic thought. The Stoics believe that human society, including its hierarchies, is permeated with the divine reason (*logos*) and thus good and

natural in some sense. Roman Stoics in particular did not aspire to change society but rather urged every individual to perform his or her given role virtuously (Garnsey 1996, 105). Seneca, for instance, sees his role as a father figure to his slaves, a paternalistic ideal (*Epistles* 47.14). He advises masters to act according to justice and mercy and to “treat your inferiors as you would be treated by your betters.”⁸ For slaves, performing their role well requires primarily that they do more for their masters than they are required to – including heroic self-sacrifice if needed – a view similar to that of Greek tragedy and not any more subversive (*On Benefits* 3.23–27).

Worldly wealth, including slaves, is a Stoic *indifferent* and attachment to it could hinder one’s progress as a Stoic (e.g., *Epistles* 31.10). In fact, Zeno of Citium, the school’s founder, reportedly did not possess a single slave (Seneca, *Consolation of Helvia* 12.4). Seneca also cites with approval a story about Diogenes of Sinope, the founder of Cynicism but also a Stoic hero, about his independence from material concerns. When Diogenes’ single slave ran away, Diogenes did not pursue him: “It would be a disgrace if Diogenes is not able to live without Manes when Manes is able to live without Diogenes” (*On Tranquility of Mind* 8.7) – remember that Manes was a stereotypical slave name. Stoicism had become more conformist over the centuries and with its adoption by the Romans, so Diogenes and Zeno – like Christian monks in later centuries – became sources of inspiration rather than models for everybody’s imitation. So Seneca ends his discussion of owning many slaves – which he represents as a source of aggravation, poor guy! – with the statement that we today do not have the “strength of character” of Diogenes and should merely try to limit the number of our slaves (*On Tranquility of Mind* 8.8–9).

Seneca’s claim that master and slave were really fellow-slaves to fortune undermined the notion that some people were natural slaves. But diverting attention to metaphorical slavery – a common Stoic and later Christian ploy – tended to conceal the significance and possible injustice of actual, legal slavery. That the lifestyles and wealth of the rich required slavery goes a long way towards explaining this preference for talking about metaphorical slavery. Williams even argues that Aristotle’s attempt to justify slavery was more honest than the Stoic avoidance of the topic: “Seneca and his various associates can let the social world be unjust, because they can, in accordance with one or another of their fantasies, suppose that one can get out of it” (Williams 1993, 116).

We might expect a more radical Stoic critique of slavery from Epictetus (ca. 55–135 CE), a Stoic philosopher from the opposite end of the social spectrum from Seneca. He was born a slave and transported to Rome. He won his freedom and eventually retired to teach Stoic philosophy in Greece. Epictetus was lame, according to one story, as the result of punishment or abuse he suffered as a slave. When it comes to his personal conduct, several stories indicate that he lived a simple life with little regard for property. It is entirely possible that, like Zeno, he did not own slaves.

In the *Discourses*, Epictetus sometimes seems to address the experiences of slaves rather than masters, Seneca’s intended audience. For example, Epictetus argues that what is rational for a given person depends on what sort of person they are (*Discourses* 1.2.11). For one person, a slave, it is rational to hold a chamber pot for somebody else to avoid being deprived of food or whipped – remember Figure 9.1. But, Epictetus continues,

8 Seneca, *On Mercy* 1.18.1; Seneca, *Epistles* 47.11. Earlier Stoics propounded the same principle.

“Some other man feels that it is not merely unendurable to hold such a pot himself, but even to tolerate another’s doing so” (*Discourses* 1.2.8–9, all trans. Oldfather 1925–1928). This second man, a better Stoic, does not care about being whipped or fed and will not submit to this indignity of slavery; he will not even allow others to be so treated. Perhaps we see here a flash of an ex-slave’s deep-seated resentment of the humiliations of slavery. In another passage, Epictetus says that some birds starve themselves to death in captivity and constantly attempt to escape. He imagines an interchange with such a bird:

“And what is wrong with you here in your cage?” “What a question! My nature is to fly where I please, to live in the open air, to sing when I please. You rob me of all this, and then ask, ‘What is wrong with you?’” (*Discourses* 4.1.28)

Epictetus here vividly depicts how contrary to nature it is to deprive any creature of its freedom, as the institution of slavery does.

I would like to be able to represent Epictetus as one of the rare heroes in our story, but just after his subversive fable of the freedom-loving bird, Epictetus switches to the usual Stoic argument that “enslavement” to *indifferents* is worse than legal slavery and even uses the example of an actual slave. When a slave is freed, he imagines that he’ll be happy and independent. But, if he lacks Stoic wisdom, he just suffers a succession of new slaveries to various people, ambitions, and vices as he ascends the social ladder (*Discourses* 4.1.33–38). This imaginary freed slave even reflects how good he had it in slavery, when somebody else was responsible for feeding and clothing him. Suddenly we are back to Seneca’s complaint about slaves as a burden on their masters! Perhaps Arrian, the high-ranking senator who apparently wrote down and edited Epictetus’ lectures to create the *Discourses*, distorted or softened some of Epictetus’ more disturbing views. A process of self-censorship or deliberate ambiguity is also possible. Epictetus’ career (to take a cynical perspective) or his ability to help his followers towards wisdom (on a more charitable view) depended on not alienating his wealthy students, who, we can assume, were all slaveholders. His predicament recalls for us a familiar constraint, succinctly summarized in a famous aphorism of the American socialist and novelist Upton Sinclair: “It is difficult to get a man to understand something, when his salary depends upon his not understanding it!” (1994 (originally 1935), 109).

You might not expect the same consideration to apply when it came to the early Christians, among whom every social class was represented. Jesus Christ was executed by crucifixion, a punishment reserved for slaves and non-citizens and called “the servile punishment.” The *Gospels* contain several anti-elitist messages and early Christianity spread rapidly among diverse urban populations, containing many slaves and ex-slaves (e.g. Mark 10:25 (= Matt. 19:24, Luke 18:25); Meeks 2003, 9–73). Nevertheless, the Christianization of the Roman Empire and the conversion of the emperor Constantine – traditionally dated to 313 CE – did not result in the abolition of slavery or even contribute to its decline. The history of ancient Christian attitudes towards the institution of slavery is a long and complex one; the metaphor of slavery too played a large, but complicated, role in Christian theology. Here I’ll merely highlight a couple of salient features, focusing mainly on the first century after Jesus.⁹

9 Important later developments include the critique of slavery by Gregory of Nyssa and Augustine’s theology according to which slavery was somehow a punishment for original sin (Garnsey 1996, 80–86, 206–220).

One main stream of Christian thought, like Stoicism, denied essential differences between slave and free. Just as both possess the divine spirit according to Stoicism, so too are they equal in the eyes of Christ: “There is neither Jew nor Greek, there is neither slave nor free man, there is neither male nor female; for you are all one in Christ Jesus” (Gal. 3:28, all trans. *New American Standard Bible*; see Neutel 2015). Despite the spiritual unity of humanity, Christians no more intended in this world to get rid of social distinctions between slave and free than to eliminate those between male and female. Like the Stoics, Christians were more interested in playing their roles well than in any radical reformation of social structure. The apostle Paul (ca. 4–64 CE) recommended that people remain in the places in society – for example, slaves or free – that they occupied when called to the faith, although it was fine if a Christian slave won manumission (1 Cor. 7:20–24; cf. Philemon). Stoics adopted their conservative view on the ground that human society is natural and in accordance with the divine. Christian thinking was similar, but sometimes went further and viewed the relation of slave and master as parallel to man’s relationship with God, an extremely unequal bond. Thus, a few notorious passages urge slaves to obey their masters: “Slaves, in all things obey those who are your masters on earth, not with external service, as those who merely please men, but with sincerity of heart, fearing the Lord.”¹⁰ These injunctions made the obedience of slaves a religious obligation and strongly condemned any sort of resistance, not to mention revolt. In a biblical passage from the generation after Paul, masters too were required also to keep God in mind (Eph. 6:9): “And masters, do the same things to them [slaves], and give up threatening, knowing that both their Master and yours is in heaven, and there is no partiality with Him.” Christianity, like Stoicism, demanded virtuous behavior from those in power and, one hopes, this had some effect. Plentiful evidence, however, makes it clear that slave life was similar under Christian masters to what it had been before (Bradley 1994, 147; Harper 2011, 225–238). For example, Kyle Harper points out, “The ancient church, in all the voluminous material it has left behind, bequeathed to posterity not a single statement encouraging the protection of the slave family” (2011, 273).

Christian authors made just as much use of the metaphor of slavery as the Stoics: Jesus Christ was the great liberator of humanity (e.g., Gal. 4:1–10, 5:1, 5:13). In early Christian thought, however, there was a good as well as a bad metaphorical slavery: “One is either a slave to sin or a slave to God” (Garnsey 1996, 183). The Latin term *Dominus* is today translated “Lord,” but it was originally a common way to refer to a master of slaves. That early Christians adopted *Dominus* as their word for God strongly implied an analogy with slavery. The negative implications of slavery to sin are easy to understand, but patristic scholars disagree about the exact reason that slavery to God was an appealing metaphor. Two aspects of slavery probably played a part: the slave was viewed as utterly subject and humble towards his master just as a pious person is to God; a slave was also closely connected with his or her master and derived prestige from the status of the master. So church leaders who claimed to be slaves of God were not only being modest – “I’m just like a slave compared to God” – but also asserting their close connection to God.

¹⁰ Col. 3:22, which may not be by Paul, but reflects early Christian attitudes; cf. Titus 2:9, 1 Tim. 6:1, Eph. 6:5, 1 Pet. 2:18.

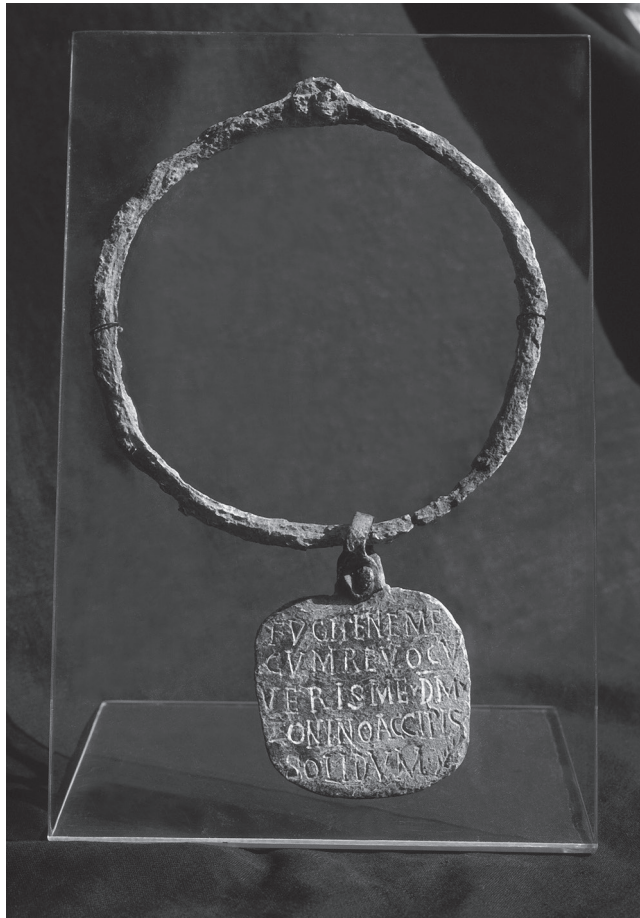


Figure 12.2 Metal slave collar. Almost forty metal slave collars have been found. Their inscriptions often included “I am a runaway. Seize me,” identified the master, and promised a reward for the return of the slave. All date to the late Empire and a number suggest Christian slaveholders. One plausible explanation for the late dates is that Christians considered it blasphemous to disfigure a person’s face with a brand or tattoo, previously a common punishment and way to discourage flight (see Chapter 9). When this practice was outlawed under Constantine (*Theodosian Code* 9.40.2), good Christian slaveholders substituted slave collars which, unlike tattoos, can survive to be found by archaeologists. See Trimble 2016 for a fascinating discussion. *Source:* © 2016. Photo Scala, Florence. Courtesy of the Ministero Beni e Att. Culturali.

The Amelioration of Slavery in Roman Law

Roman legal codes describe slavery as “an institution of the law of all peoples (*ius gentium*) whereby, contrary to nature, one person is subject to the control of another” (*Justinian’s Digest* 1.5.4.1). This is the only case in Roman law where the *ius gentium* is said to be contrary to nature, and some historians suspect Stoic influence (Davis 1966, 83). In any case, the definition of slavery as contrary to nature did not undermine the validity of Roman laws about slaves or the determination of the Romans to enforce them.

Another legal principle, the *favor libertatis*, held that when the application of the law or facts of a case are uncertain, judges should rule so as to favor liberty (Brunt 1998, 144–146). For example, the child of a slave woman was by law a slave, but what if the mother's status changed during her pregnancy? By the *favor libertatis*, if the mother were free during any point in her pregnancy, the child would be free (*Pauli Sententiae* 2.24.3 in Watson 1987, 12). The *favor libertatis* again leans in the right direction, but most slaves were plainly slaves and not on any fuzzy border where they might hope for the benefit of the doubt. This thus provides our first example of a set of laws that show humane feelings but resulted only in amelioration around the edges of slavery rather than changing anything central to the institution.¹¹ A series of laws aiming to protect slaves from abusive treatment had similar and limited results.

To kill a slave was the most extreme measure a master could take.¹² Throughout Roman history, the law emphasized that masters had the power of life and death over their slaves (*Justinian's Institutes* 1.8.1). In reality, this right was gradually constrained. The earlier phases of this process are unclear, but by the reign of Claudius (41–54 CE) a master could be accused of murdering his own slave (Suetonius, *Claudius* 25.2). We learn more details from the second century CE, when an edict of the emperor Antoninus Pius made killing a slave “without cause” a capital offense (*Justinian's Institutes* 1.8.2; Watson 1987, 126). “Without cause” probably implied that a master needed to get the approval of a judge before having a slave executed. Other laws prevented masters from selling their slaves to the horrific animal fights – where gladiators fought wild animals or condemned criminals were simply eaten alive – or to the mines, also considered a capital punishment. But if the masters obtained approval from a judge, they could inflict these punishments on their slaves (*Justinian's Digest* 48.8.11.1).

One fourth-century CE legal response by the emperors Diocletian and Maximian to a soldier allows us to reconstruct a grim little story and illustrates one complication of trying to protect slaves even from murder:

When you maintain that your slave died as a result of serious illness, your innocence – whose truth you maintain – does not permit the accusation of slander to be clearly seen, because of your immoderate punishment. (*Collatio Legum Mosaricarum et Romanarum* 3.4.1, trans. Watson 1987, 124)

A soldier claimed that his slave died of an illness, and the emperors' response neither contested nor accepted his version. The soldier also accused a third person of slander for saying, it seems, that he had murdered his slave. The emperors refuse to confirm this accusation of slander on the grounds that the soldier punished his slave so severely that it's not obvious whether the “slander” was true or not. We may imagine either that the

¹¹ Three seemingly more substantial reforms turn out to be red herrings. A ruling of Constantine, eventually interpreted as a general law against breaking up slave families, condemned the practice, but only applied to the imperial estates in one province (Harper 2011, 271–273). The unreliable *Scriptores Historiae Augustae* reports that the emperor Hadrian banned the use of *ergastula* (private prisons) of slaves or of free people, an improbable story (Brunt 1998, 149; Eck 2006 on *Hadrian* 18.10). Romans could sell a slave woman on condition that she not be made a prostitute, but this did not affect slaves who were already prostitutes or those sold without such an agreement (McGinn 1998, 288–337).

¹² In this section, I follow Watson 1987, 120–129, which also contains translations of most of the passages I cite.

solider deliberately inflicted a punishment so severe that the slave did not survive, or that he injured the slave in a violent rage and the slave eventually died. This was not an isolated case where the master's right to punish and the ban on killing a slave without official sanction made for a legal difficulty. The emperor Constantine promulgated two decrees to adjust previous policies regarding slaves who died as the result of punishment. He forbade killing slaves deliberately or in certain specific (horrible) ways, but his main goal was to reassure masters that there would be no investigations if their slaves died as the result of punishment: the interest of masters in "not destroying their own property" made for a presumption of innocence (*Codex Theodosianus* 9.12.1–2).

Slave eunuchs became more common over the course of the Roman Empire despite a series of increasingly harsh laws against the castration of slaves. These provide, unfortunately, a textbook case where repeated legislation against a practice provides evidence of its continued existence and not of its suppression (Suetonius, *Domitian* 7; *Justinian's Digest* 48.8.6, 48.8.4.2). The emperor Claudius tried to curb another callous practice: when sick slaves no longer seemed worth the trouble of caring for, some masters would just abandon them – for example, in the temple of Asclepius, a god of healing, on Tiber Island in Rome. In an edict Claudius ordered that, if such slaves recovered, they were to be free.¹³ A kind thought and just deserts for the masters no doubt, but this measure only helped the small fraction of slaves who seemed sure to die and were abandoned, but pulled through. And the masters suffered no penalty other than the loss of a slave they had given up for dead in any case.

From the fifth century BCE, if not earlier, Greeks and then Romans permitted slaves to flee to temples to escape their master's ill treatment; in the Roman Empire statues of the emperor also served this function. As you may already suspect, neither the Greeks nor Romans were about to allow slaves to gain their freedom just because they were unhappy about their treatment and managed to get to a sanctuary. Rather a magistrate would investigate the slave's case and, if he determined that the abuse was indeed extreme, the slave would be auctioned to a new master. The abusive master would probably only get a low price – since a slave who'd gone to a sanctuary was suspect as damaged goods or as a trouble-maker – but he suffered no other punishment. The prospects were risky for the slave too, since likely buyers of cheap, possibly troublesome slaves included masters whose operations were based on brute violence and physical constraint. And, if the slave did not convince the magistrate, he or she would go back to his master, unlikely to be in a good mood. This whole procedure guaranteed that only the most cruelly abused slaves would decide to flee to a sanctuary.

One case, apparently involving a group of such slaves, made it all the way to the emperor Antoninus Pius, who, consulted by a governor, made the following decision: "So investigate the complaints of the slaves of Julius Sabinus who fled to the statue . . . Tell Sabinus that I will deal severely with him, if he tries to evade my decision" (*Justinian's Institutes* 1.8.2). It must have been reassuring to have this benevolent emperor taking a personal interest in your case. I suspect the deck was usually stacked the other way. Magistrates were slaveholders themselves, and they were likely to sympathize with other slaveholders about whether slaves suffered intolerable abuse or had just got what they deserved for their misbehavior and laziness – or whatever the master was claiming

13 Suetonius, *Claudius* 25.2; *Justinian's Digest* 40.8.2; *Justinian's Codex* 7.6.1.3.

in his own defense. And what if the master was a powerful man? In this case, why did a Roman governor need to check with the emperor about a longstanding practice? Was Julius Sabinus such a grand personage that even a governor didn't want to get into a quarrel with him without backup?

Another procedural difficulty affected all the laws curbing abuse: slaves were rarely permitted to bring accusations against their masters; as witnesses, they typically gave evidence under torture (Watson 1987, 81–80). Thus, Constantine ordered that slaves who brought charges against their masters or freedmen against their patrons were not to be given a hearing at all but were to be crucified instead for their “atrocious audacity” (*Codex Theodosianus* 9.5.1.1). Admittedly, these laws were complicated and changed over time, but generally a third party, a free citizen, would have to bring charges against a master on the slave's behalf. No doubt some citizens wanted to do the right thing or used an opportunity to harass an enemy: the “slanderer” of the soldier we mentioned above might fit into either category. How often would such a third party both know and care enough to institute legal proceedings against a fellow slaveholder?

With all these protective laws, the state intruded into the areas of private property and the rule of the *paterfamilias* over the household, interventions that Roman law was usually hesitant to encourage (Manning 1989, 1540). Our sources give two justifications. First, such interventions prevented the destruction of familial property, that is, slaves. They are parallel to laws protecting family fortunes from being wasted by spendthrifts (*Gaius's Institutes* 1.53). Second, Emperor Antoninus Pius argued that, “it is in the interest of masters that help against savagery or hunger or intolerable injury should not be denied to those who rightly entreat for it” (*Justinian's Institutes* 1.8.2, trans. Watson 1987, 120). Historians interpret this as suggesting that egregious abuses by individual masters threatened the interests of the slaveholding class as a whole. Recall that the first Sicilian revolt reportedly began with the slaves of a particularly abusive master. The motivations of reformers were admittedly mixed, but to stress only the selfish and prudential ones is too simplistic (Griffin 1976, 274). It is also redundant: these reforms did not threaten the stability of slavery or the wealth and lifestyle of slaveholders. Slaveholders could afford to indulge humane feelings when it came to a few outrageously mistreated slaves.

Whether or not these humane feelings derived from any philosophy or religion is hard to gauge. We've noted that Seneca was not necessarily much ahead of some of his non-Stoic contemporaries among Roman slaveholders. And no clear pattern connects Stoic statesmen like Seneca with more benign legislation about slaves and freedmen (Manning 1989, 1536). The satirist Juvenal even mocks a slaveholder who proclaims that the souls and bodies of slaves are the same as “our own” – a reference to Stoic doctrine – but terrifies his own slaves and delights in having them tortured if they ruin a few towels (*Satires* 14.16–22). The possibility of such hypocrisy is worth keeping in mind, but Juvenal's portrayal of Roman morals and practices is notoriously negative and hostile. A more balanced approach is not only to imagine occasional positive impacts of philosophy and religion, but also to allow for humane feelings among the un-philosophical and irreligious. Occasional kind feelings, however, were not of central importance as long as slavery survived and continued, inevitably, to depend on violence. Most telling for the whole story of legal amelioration is the *Senatus Consultum Silanianum*, which required the torture and execution of all slaves in the house of a master killed by a slave (see Chapter 9). This remained the law of the land, repeatedly revised and refined, into the sixth century CE, an indication of how little the violent institution of slavery had changed.

Conclusion: Why no Abolitionists?

This survey of philosophical treatments and legal amelioration of slavery has revealed only a few good guys, no clear abolitionists, and plenty of villains and equivocators. And, with the exception of Aristotle's reference to the Anonymous Opponents, we rarely get the sense that theories of slavery were defensive, that they were reacting to criticisms of the institution. For instance, the Stoic belief that human society, including slavery, was in accord with nature derived from their cosmology; they were not trying to counter calls for abolition. Indeed, Seneca defends himself from attacks on the other side, from people who didn't think slaves are equally human and should be treated kindly. One might contrast the justifications of slavery in the United States South before the Civil War, which were obviously and vehemently reacting to abolitionist attacks on the institution. In the classical world, abolitionism was not an organized body of opinion that required refutation.

We have noted repeatedly that the most obvious factor that precluded the development of abolitionist tendencies was the almost universal ownership of slaves among the upper classes, who dominate our extant literary evidence just as they dominated their own society. We don't know what criticisms of slavery individual slaves or ex-slaves might have developed in conversations with friends for example. And we have scarcely an inkling about what free people too poor to own slaves thought. A wide range of individual opinions may have existed without leaving evidence. But the texts that discuss the justice or injustice of slavery were almost all written by, or at least for, people likely to own at least a couple of slaves – or those who aspired to, a group that included many ex-slaves. So our surviving evidence is slanted in a pro-slavery direction. The acceptance – in various guises – of slavery and the general lack of interest in the subject is still striking. Other factors beyond the vested interest of the elite and literate probably contributed.

One theory points to the weakness or absence of a concept of human rights in the classical world (Bradley 2010, 627). On this view, classical culture did not acknowledge that people had rights as the result simply of being human; they had rights only within their own community or state. Outside his or her homeland, a person was already on a slippery slope towards the “natal alienation” of slavery. To take a Greek example, “enslaving” – to abduct citizens in order to sell them as slaves – was a capital crime in Athens, but the many non-Athenian slaves there were perfectly legal. This viewpoint helps to explain why slavery seemed natural and unobjectionable but can't be the whole story. To resume our example, Athens was a major center of trade and accorded strong legal rights to foreigners for practical, economic reasons (Cohen 1973); we are far from “open season” on foreigners on the streets of Athens. And this chapter is about philosophers: the Stoics, for example, were cosmopolitan in rejecting distinctions between different nationalities. Ethnic chauvinism and the strong distinction between citizens and outsiders must have made slavery seem less like criminal abduction to most people, but it provides less insight into the complicity of intellectuals.

In a vicious circle, the fact that slavery was ubiquitous contributed to its acceptance: widespread practices can seem natural and slavery was practiced in virtually every ancient society around the Mediterranean and on Rome's frontiers.¹⁴ And, as far as classical Greeks and Romans were concerned, slavery was an eternal institution with its origins lost in the mists

14 Two possible exceptions are the Essenes, perhaps the community that produced the Dead Sea Scrolls, and the “Therapeutae” (Philo in Garnsey 1996, 78).

of time (Vidal-Naquet 1986). So, for example, after they gained their own freedom, affluent ex-slaves typically bought slaves themselves. Nobody thought this was remarkable: owning slaves was just part of being successful and rich. But this approach too may be more successful in helping to understand popular rather than philosophical views. Classical philosophers questioned all sorts of seemingly natural and universal institutions. Most famously, Plato's *Republic* envisages a ruling class without the family or private property, but most scholars believe that the *Republic* nonetheless includes slaves.¹⁵ The acceptance of slavery among ancient philosophers remains something of an oddity, since in other cases they happily presented radical critiques of their society and suggested alternative social arrangements.

In sum, our sources may under represent the full span of ancient opinions about slavery, but the lack of moral concern for outsiders, the ubiquity of slavery in ancient societies, and, most of all, the economic and social dependence on slavery help explain why the institution was rarely, if ever, subject to sustained critique. Indeed, scholars of modern abolitionism tend to argue in the opposite direction (e.g., Davis 1966, 90; Davis 1984): what special circumstances made slavery an urgent moral issue after millennia of acceptance?

Suggested Reading

Peter Garnsey's *Ideas of Slavery from Aristotle to Augustine* (1996) covers justifications, criticisms, and ameliorations of slavery through most of classical antiquity with extensive translations of original sources and concise and perceptive discussions. The bibliography on Aristotle's theory of natural slavery and on his Anonymous Opponents is immense and grows each year. Cambiano's reconstruction of the basis and context of the opinions of the Anonymous Opponents (1987) provides an excellent introduction. Williams 1993 provides an insightful reading and suggests the division into the argument from above and from below, which I follow above. Kraut 2002 provides a clear and thorough treatment of the whole theory in the context of Aristotle's general political philosophy; he tends to present a charitable view of Aristotle's thinking. Millett 2007 considers Aristotle's theory in the context of the practice of slavery at Athens. In the chapter "Freedom, Stoicism, and the Roman Mind," Patterson (1991) discusses slavery in Roman Stoic thought and particularly in Epictetus and Marcus Aurelius, the former slave and the emperor, respectively. Manning 1989 provides clear and judicious discussion of Stoic views on slavery and the possibility that they influenced Roman law. Griffin's biography of Seneca (1976) includes a clear and important chapter arguing mainly that his views on slavery were not particularly ahead of their time. Brunt 1998 considers in its historical context the treatment of slavery in the *Meditations* of Marcus Aurelius, a Roman emperor and the third of the famous Stoics of the imperial period. G. E. M. de Ste. Croix, a Marxist historian, provides a critical and trenchant approach to Christian attitudes (Ste. Croix 1975). Balch and Osiek 2003 includes several chapters on slavery within early Christian households and Powery 2013, a recent "special forum" section of *Biblical Interpretation*, includes diverse articles by distinguished scholars of early Christianity and a reply by Keith Bradley. Lenski 2012 presents a positive view of the impact of Christianity and particularly Constantine on the law and practice of slavery. Watson 1983 and 1987, 115–133, takes a skeptical view of the theory that reforms in Roman law improved the life of most slaves.

¹⁵ Vlastos 1973; *contra* Gonda 2016. In Plato's *Laws*, slaves and ex-slaves are subject to harsher regulations than in contemporary Athens (Morrow 1939) – which is hard to explain if Plato were a closet critic of slavery.