

Ingenuus

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Ingenui were freemen who were born as such. According to Gaius (Gai. 1.11), freemen (*liberi*) were either *ingenui* or *libertini*, the latter being those who had attained liberty through manumission. Children born from legal marriage were always *ingenui* (I. 1.4 pr.) since marriage implies citizenship. *Ingenuus* was frequently used as a qualification of *liber* (*liber et ingenuus*: Livy 6.40; Hor. *Ad Pis.* 383). This could explain Festus' assertion (Paul. Fest. 241, s.v. *patricios* excerpted from Cincius' *De comitiis*) that this name was originally strictly reserved for patricians, because at that time only they were considered to be Roman citizens (Livy 10.8.10).

The factor that decided whether a *liber* was also an *ingenuus* was the status of the mother at the time of the birth, not at conception (Gai. 1.88–89; Ulp. 5.10; Dig. 1.5.5.2–3 Marc. 1 *Inst.*=Just. *Inst.* 1.4; Paul. *Sent.* 2.24.1 *CJ* 9.47.4; Quint. *Inst.* 3.6.5); following this rule, a manumitted pregnant slave would give birth to an *ingenuus*. Consistent with this principle was the fact that a *libertinus* could never become *ingenuus*, not even by adoption (Gell. NA 19).

This situation changed during the empire (23 CE, App. BC 338), when *ingenuitas* could be granted by imperial rescript, either by not interfering with patronal rights or by removing them (*CJ* 6.8). Both procedures are frequently mistaken: the former grant is known as *ius annulorum aureorum* (Dig. 40.10.6 Ulp. 1 *ad leg. Iul. Pap.*; CIL VI 1847) and did not affect patronal rights. The latter (the *natalibus restitutio*, or restitution of birthright) was an intervention of wider scope, since it was intended as a means of annulling the patron's rights, possibly by using the Stoic belief in the original freedom of all mankind as a rationale (Sen. *Ben.* 3.18.2; Dig. 40.11.2 Marc. 1 *Inst.*). This grant could be defined as a fiction of free

birth, and the patron's consent was needed (Dig. 40.11. 5 pr. Mod. 7 *reg.*).

Marriage between *liberti* and *ingenui* are known from the republic (CIL I 1528), and there is no evidence to suggest that such marriages were banned until Augustus' marriage legislation, as Mommsen claimed (1965: 429–32). Augustus forbade senators and their families from marrying freedwomen if they knew their status (Ulp. 13.1), but this prohibition only meant that those marriages were socially discouraged and politically penalized (by way of a censorial note), not that they were void (Kaser 1971: 269). *Ingenuae* and *libertinae* were treated differently by Augustan legislation, which defined the terms under which they could access the privileges granted by the *ius liberorum*.

Ingenuitas had some effects in public law, but the regime changed over the course of time. Being an *ingenuus* was a requirement to hold some offices, but today scholarship considers this fact a social rather than a legal qualification in many cases (Treggiari 1969: 54 ff.). Freedmen were excluded from the Senate and from the equestrian rank, but it seems (*contra* Mommsen 1965: 451 ff.) that their sons could hold magistracies as well as become senators, provided that they were accepted by the censors (Livy 9.46.10; 9.29.7.30; Hor. *Sat.* 1.6.9; Val. Max. 2.2.9; App. *B Civ.* 1.33.2). It was a requirement – or at least common practice – for office-holders in Italian towns and in Roman colonies to be *ingenuus* (ILLRP 742), but where new foundations were concerned, the *lex Iulia municipalis* apparently did not exclude *libertini*, since they were eligible in the *lex Coloniae Genetivae Iuliae seu Ursonensis* (II 105). It seems that Augustus restored *ingenuitas* as a requirement (*lex Malac.* 53).

Claims of free birth followed a specific procedure among the *causae liberales*, usually called *ingenuitatis iudicium* (Tac. *Ann.* 13.27; Paul. *Sent.* 5.1). That of Petronia Iusta survives (*Tab. Herc.* 13–30).

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